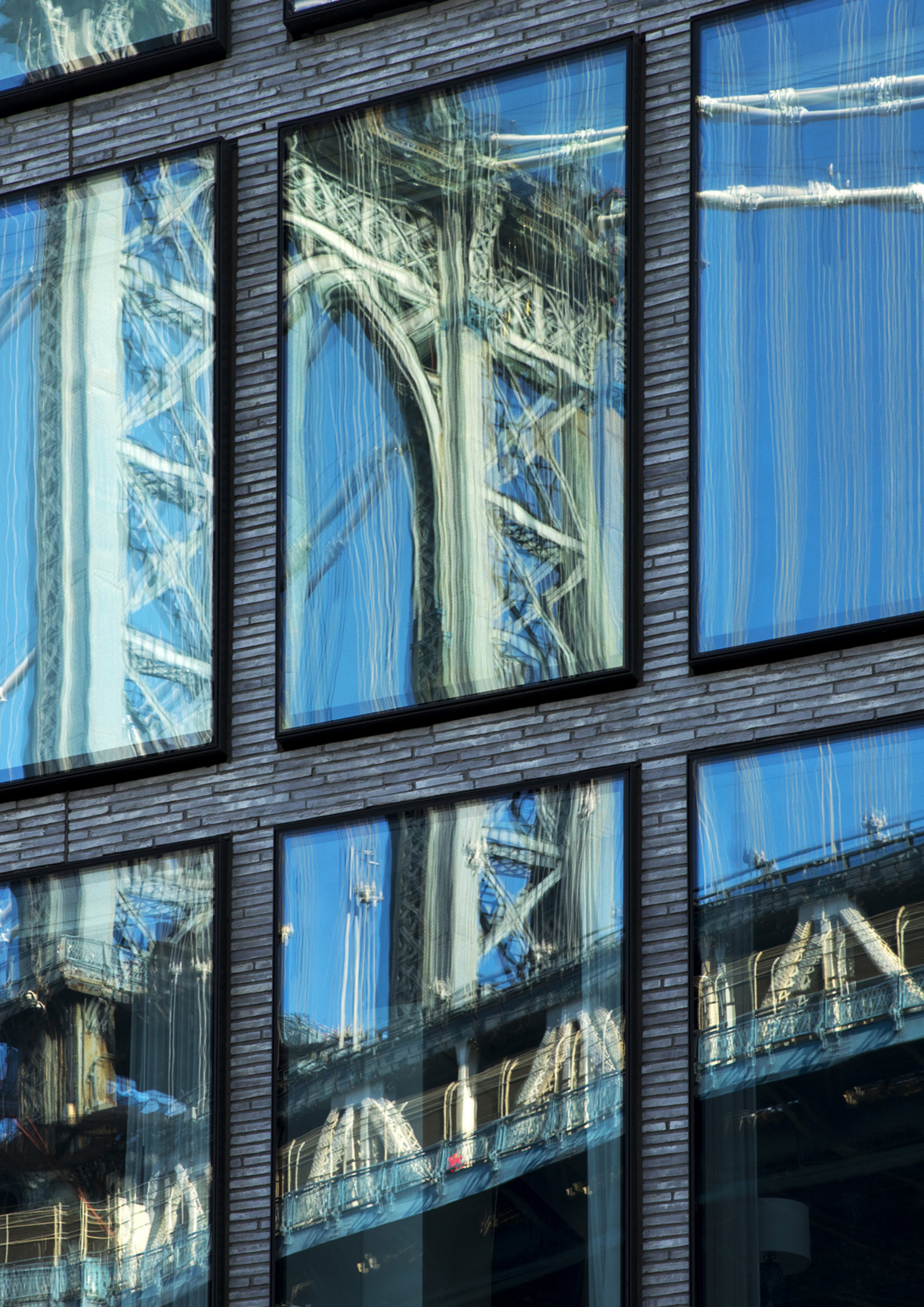
Doing M&A in the Americas

Tax traps and structuring opportunities



Contents

Foreword

America is a vast continent often referred to as a 'continent of contrasts' due to its natural, economic, cultural and demographic diversity. In addition, it also presents inequalities in economic and developmental structure. These factors create a source of tax uncertainties where doing business in this area can be challenging in terms of tax environments that are not as similar.

While conducting transactions in the Americas still presents attractive opportunities to many investors.

Our M&A tax services and international tax experts often encounter tax risks that they know how to successfully navigate in order to increase the success of the deal-making process and the success of the subsequent integration process.

In this study, we highlight what businesses can expect from conducting deals in the region and how they can avoid tax traps and make the most of the structuring opportunities.

Methodology

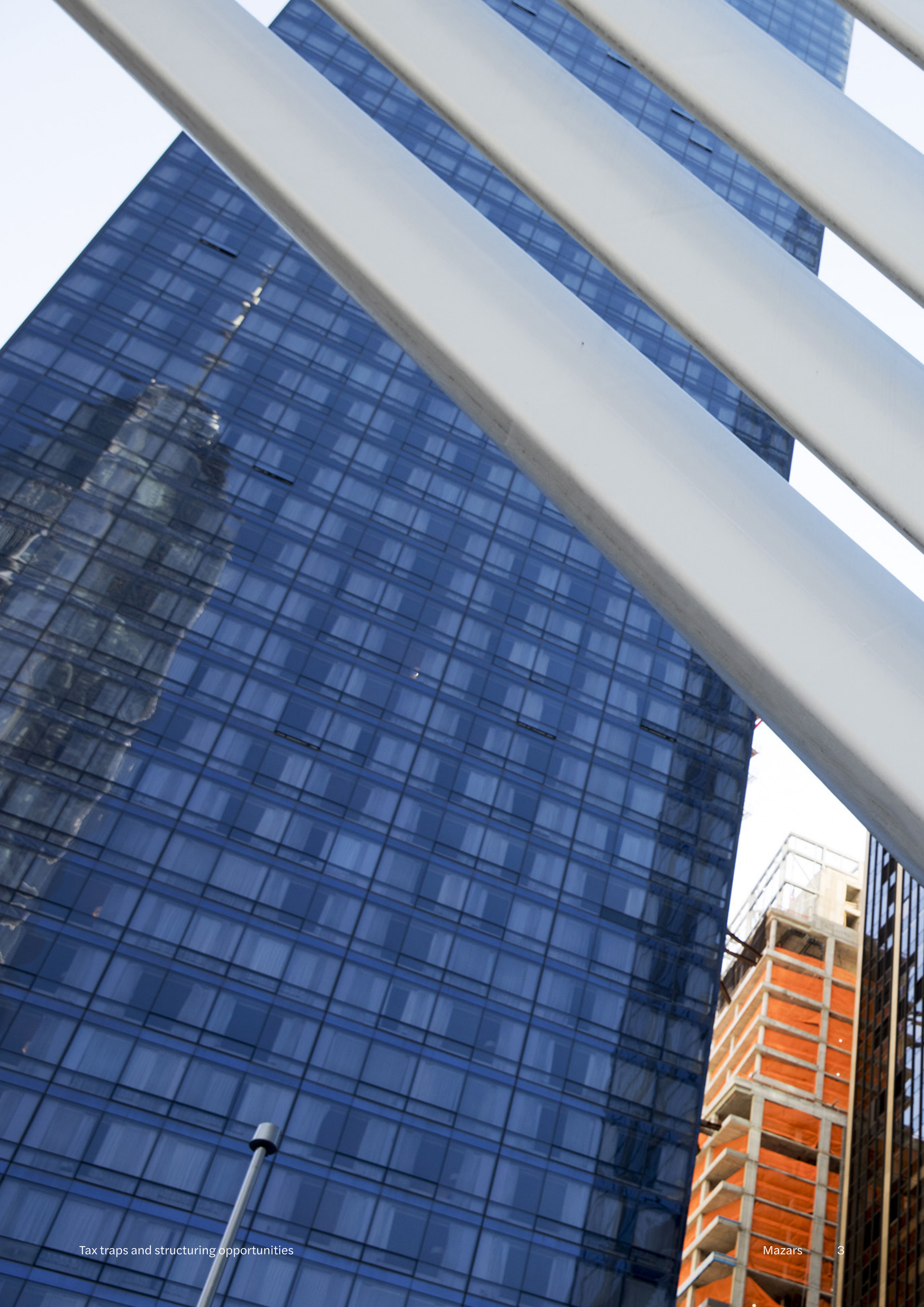
This study aims to provide investors with guidance on the traps they may encounter and the incentives they may be offered by host countries when making acquisitions in the Americas.

For this purpose, Mazars developed a study around the main tax traps and tax incentives encountered in tax due diligence and tax optimisation processes when conducting acquisitions in the area.

Our local experts have highlighted the importance of engaging in multiple levels of scrutiny of the information provided, broadening the scope of due diligence to address the critical areas, and administering groundwork with local experts and advisors.

The study has been conducted in close collaboration with Mazars' experts operating in the ten targeted countries within the Americas: Argentina, Brazil, Canada, Chile, Colombia, Mexico, Peru, Uruguay, United States of America, and Venezuela.

Applied colour codes should be interpreted in terms of likelihood of the occurrence. For instance, a red colour code implies a high likelihood of encountering the issue, hence a clear red flag. Alternatively, a white colour code does not automatically imply that the issue cannot be encountered in a given jurisdiction – although we do not view the issue to be prevalent in that part of the world.



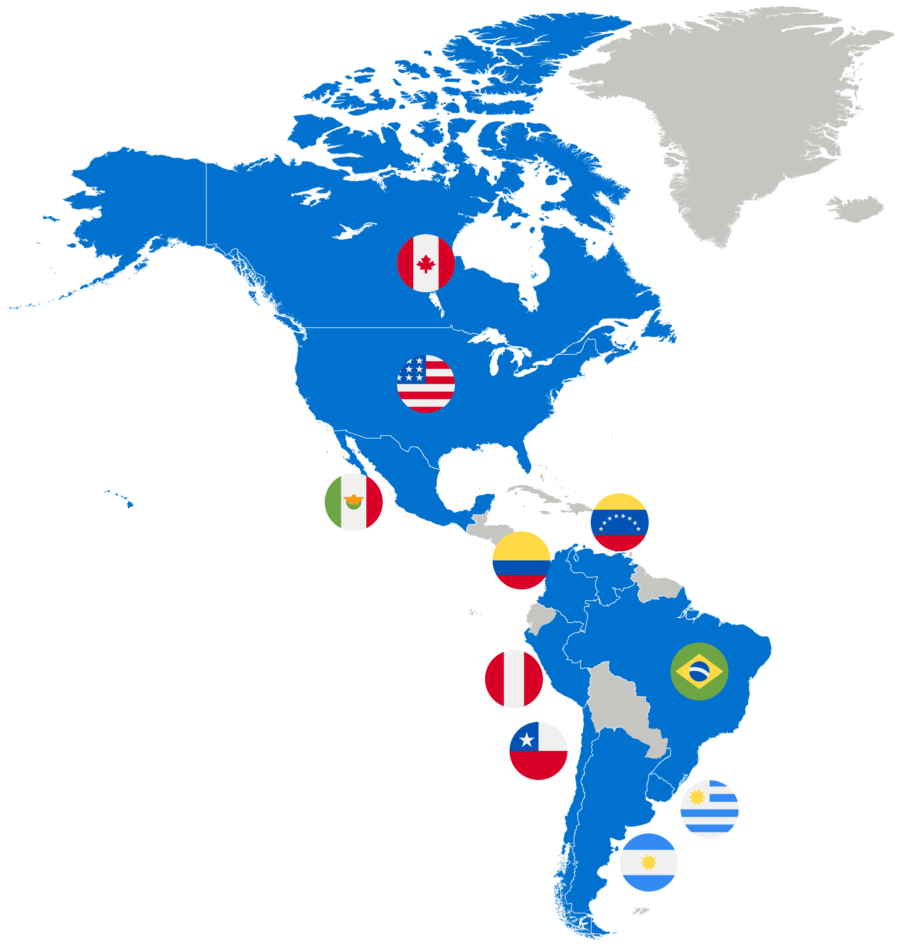
Top tax traps

	Argentina	Brazil	Canada	Chile	Colombia	Mexico	Peru	Uruguay	United States	Venezuela
Financial expenses deduction	Moderate trap	Significant trap	Significant trap	Significant trap	Significant trap	Significant trap	Significant trap	Moderate trap	Significant trap	Moderate trap
Transfer pricing documentation	Moderate trap	Significant trap	Moderate trap	Moderate trap	Significant trap	Moderate trap	Significant trap	Moderate trap	Significant trap	Moderate trap
Controlled foreign companies rules	Non-significant trap/not applicable	Non-significant trap/not applicable	Non-significant trap/not applicable	Significant trap	Moderate trap	Moderate trap	Moderate trap	Non-significant trap/not applicable	Significant trap	Moderate trap
Dissuasive tax rates (corporate income tax/capital gains)	Non-significant trap/not applicable	Significant trap	Non-significant trap/not applicable	Significant trap	Moderate trap	Moderate trap	Non-significant trap/not applicable	Moderate trap	Moderate trap	Moderate trap
Tax treaties	Non-significant trap/not applicable	Significant trap	Moderate trap	Moderate trap	Moderate trap	Moderate trap	Moderate trap	Moderate trap	Moderate trap	Moderate trap
Stamp duties on structuring operations	Non-significant trap/not applicable	Non-significant trap/not applicable	Non-significant trap/not applicable	Non-significant trap/not applicable	Moderate trap	Non-significant trap/not applicable	Non-significant trap/not applicable	Non-significant trap/not applicable	Moderate trap	Moderate trap
Use of tax losses in case of change of control of the tax payer	Non-significant trap/not applicable	Significant trap	Significant trap	Significant trap	Moderate trap	Significant trap	Non-significant trap/not applicable	Non-significant trap/not applicable	Significant trap	Moderate trap

Significant trap

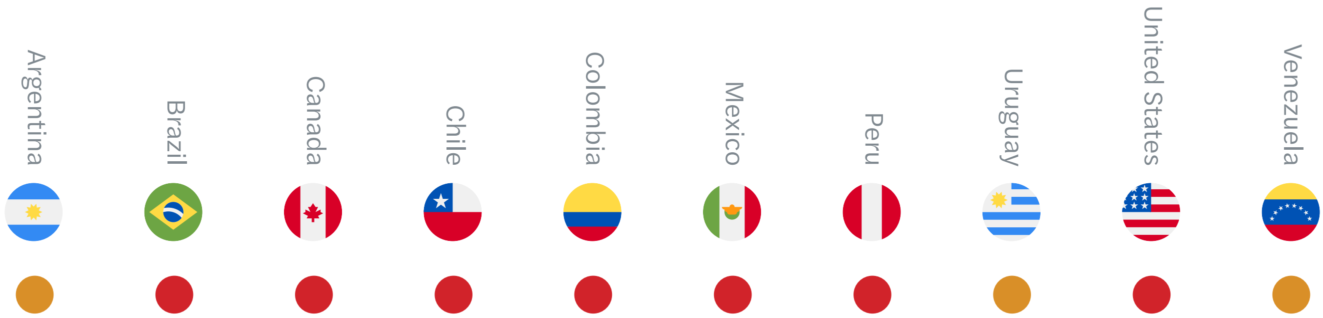
Moderate trap

Non-significant trap/not applicable



Top tax traps

Financial expenses deduction



Nature

The equity available to a corporate taxpayer corresponds to the only 'free' resource enabling the coverage of any company's liability towards its creditors, who bear the solvency risk of the company. Therefore, local tax provisions most often regulate the proportion of financing of the corporate taxpayer through equity and debt. Such provisions aim at solving solvency issues borne by the company's creditors as well as at limiting the possibility of abuses through excessive interest deductions. In addition, rules similar to ATAD have been implemented and financial expenses deduction see new limitations applicable on top of thin-capitalisation rules.

Impact

Financial expenses deduction rules determine the proportion of financial expenses actually incurred by the corporate taxpayer that can be considered as deductible for corporate income tax (hereafter 'CIT') purposes. The amount of interest paid in excess of the limits is not tax deductible.

Solutions

Companies must monitor the level of their debt and financial expenses to achieve a full deduction of their financial expenses.

Illustrations

Argentina

The capitalisation rule applies as a restriction on the deductibility of interest and FX losses arisen from debts of financial nature, contracted by taxpayers with related entities (local or foreign). The deduction is limited to 30% of the taxpayer´s income before interest, Fx losses and depreciation. However, there are some exemptions to the application of this regime.

Mexico

Thin capitalisation rules apply on interest generated by excess debt lent by a foreign related party to a Mexican resident and such interest is non-deductible for CIT purposes. Excess debt is defined as that exceeding three times the value of shareholders' equity (i.e. a 3:1 debt-to-equity ratio) as per local GAAP or IFRS balance sheet.

In addition, net interest deductibility (BEPS ACTION 4) limitation applies as part of the Tax Reform corresponding to FY20. In this sense, CITL subject taxpayers with interest expense over MXN20 million to a net interest expense deduction limitation equal to 30% of the 'adjusted taxable income'. Non-deductible interest expense for each year could be carried forward for 10 years. Certain debts incurred for construction, operation, or maintenance of productive infrastructure associated with Mexico's strategic areas or to generate electricity may be excluded from the computation of these two rules.

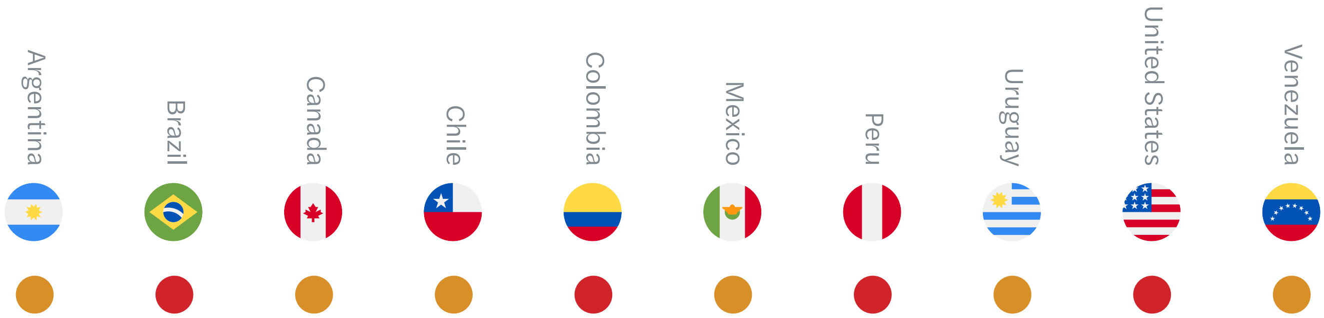
Peru

As of fiscal year 2021, the net interest of indebtedness contracted with related parties and third parties (regardless of the date the loan was granted) will be deductible for the part that does not exceed 30% of

the EBITDA of the previous fiscal year (certain situations listed in the law are exempted). For these purposes, net interest is defined as the amount of interest expense that exceeds the amount of interest income, while EBITDA is defined as the net income after setting off net operating losses, plus net interest, depreciation, and amortisation. Only the amount of interest that proportionally corresponds to the maximum amount of debt permitted after applying such coefficient is deductible; the excess may be carried forward to the following 4 years.

Top tax traps

Transfer pricing documentation



Nature

Intercompany prices are sometimes used to relocate the companies' tax basis to a favourable tax jurisdiction in order to optimise the amount of corporate income tax. Therefore, in most countries, the local tax authorities have adopted the 'arm's length principle' implemented at OECD level, which stipulates that transactions between related parties should be carried out under the same conditions, notably in terms of pricing, as those that would have been agreed to between third parties. The companies must be capable of proving that the intra-group transaction they are involved in meets the arm's length criteria and must be able to justify, based on a sound documentation, that the price or the corresponding allocation of income, assets and/or equity (when recorded in respect of a branch) at stake duly reflects the situation of a non-related party under similar circumstances (transfer pricing documentation).

Impact

In practice, the fraction of inter-company expense exceeding the level of similar expenses incurred at arm's length is added-back to the corporate taxpayer's income for corporate income tax purposes. Similarly, indirect subsidies resulting from prices set below arm's length terms may be disallowed for corporate income tax purposes at the level of the corporate taxpayer. Lastly, in certain cases (e.g., lack of transfer pricing documentation), additional penalties may apply.

Solutions

Companies must meet the arm's length principle to avoid the tax risks of transfer pricing. Proper documentation should be available to justify the transfer pricing policy applied.

Illustrations

Argentina

In Argentina, transfer pricing (TP) regulation applies on intercompany transactions. The principles adopted are similar to OECD (even Argentina is not member) and are aimed to the fulfilment of 'arm´s length principle' to determine the value of transactions that involve foreign related companies. Taxpayers must file with the annual income tax return, a supplementary return and a transfer pricing study.

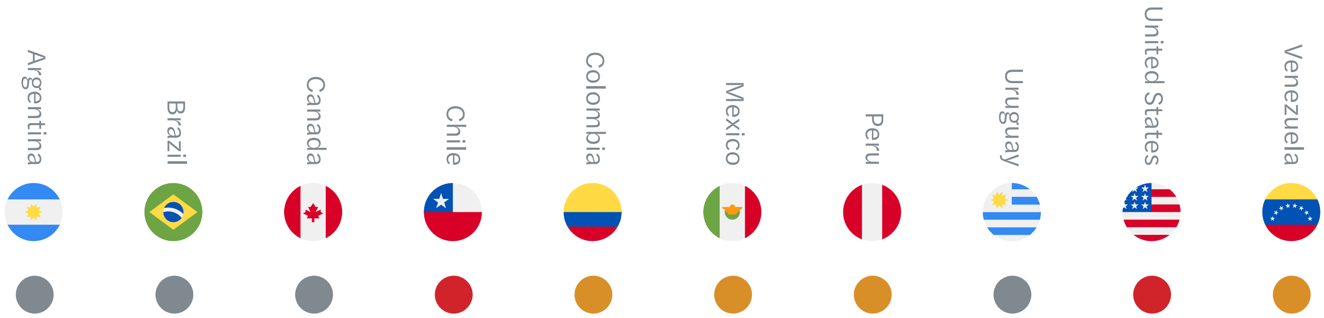
Brazil

In Brazil, TP rules are solely applicable to international transactions with affiliates and to transactions with entities established in 'privileged tax' jurisdictions. A 'privileged tax' jurisdiction is defined by (i) not taxing income and earnings from abroad (or taxing them at a rate below or equal to 20%), (ii) not permitting access to and limiting transparency on transactions, structure, ownership, and (iii) offering tax privileges to non-resident individuals or entities without any economic activity. Besides, Brazilian TP rules are substantially different from OECD transfer pricing standards: instead of the arm's length principle, which is the TP standard adopted by the OECD, fixed profit margins should be used to determine the transfer price, as per Brazilian rules.

Uruguay

Every intercompany cross border transaction should respect the 'arm's length principle'. Transactions with companies in low tax jurisdictions and Uruguayan free zones are also included in the regime. For intercompany transaction below the threshold of U 258.000.000 (for FY 2021) taxpayers must keep documents and proof in order to be able to demonstrate that the 'arm's length principle' is respected, but no specific filing is required. For intercompany transaction above the threshold, transfer pricing documentation (including TP report and TP return) must be filed on an annual basis. Country by country filing requirements are also in force.

Controlled foreign companies (CFC) rules



Nature

Subsidiaries located in a jurisdiction where they benefit from a privileged tax regime (i.e., low taxation) are sometimes used to relocate their parent companies' tax basis in this favourable tax jurisdiction to optimise the amount of corporate income tax. Controlled Foreign Companies (CFC) rules aim at avoiding the use of low-taxed jurisdictions to shelter profits that would otherwise be taxed at a substantially higher rate.

Impact

CFC rules may vary from one country to another. Several countries do not have such provisions/rules. In most cases, the tax consequences of abusive use of those CFC consist in having the CFC income taxed at the level of the parent company.

Solutions

Companies should monitor the level of taxation locally and be able to prove the absence of abuse.

Illustrations

Chile

Taxpayers or qualified estates domiciled, resident or constituted in Chile, which directly or indirectly have control on entities not domiciled or resident in the country, should consider as accrued or received the passive income received or accrued by such controlled entities, under the rules of Chilean Income Tax Law.

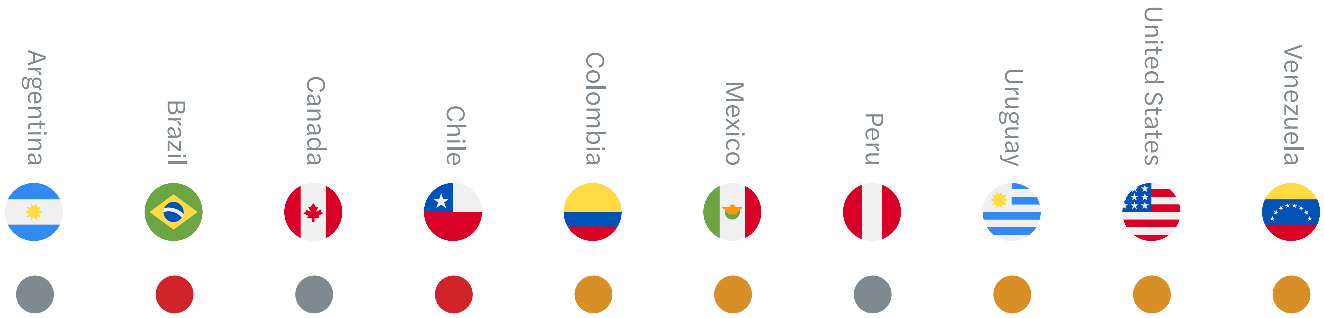
Peru

CFC rules are in force to avoid the deferral of income tax on passive income obtained from foreign companies controlled (defined as at least 50% of ownership, voting rights, or gains) by domiciled taxpayers, provided such companies are situated in tax havens or jurisdictions with nil or reduced tax rates.

USA

The two main regimes which prevent US shareholders to defer taxes on income derived from foreign corporations are known as Subpart F and GILTI (global intangible low-taxed income tax). A CFC is defined as a foreign corporation where more than 50% of the stock of which is owned, either by voting power or stock value, by US persons on any day of the taxable year. In turn, a 'US shareholder' is defined to include a US citizen, resident and/or domestic entity that owns 10% or more of the CFC stock.

Dissuasive tax rate (corporate income tax/capital gains)



Nature

Capital gains tax rates may differ from local corporate tax income rates in order to limit the disposal of assets locally. This may be related to the nature of the assets at stake or to the way the assets are held (i.e., the vehicle through which the assets are owned).

Impact

Some applicable rates may discourage investors from selling their assets. Tax treaties should also be considered as they may provide reduced tax rates or exemptions

Solutions

Appropriate structuring may help minimise the tax impact, for instance through the disposal of the enterprise at a higher tier of the legal structure, enabling the taxable gain to be in a country where it is subject to a lower tax rate.

Illustrations

Brazil

In Brazil the taxpayers are subject to income tax upon the realisation of capital gains (15% up to R$5 million: 17,5% between R$5 and 10 million; 20% between R$10 and 30 million; 22,5% over R$30 million). The tax must be paid by the last business day of the month following the receipt of the sales proceeds.

Chile

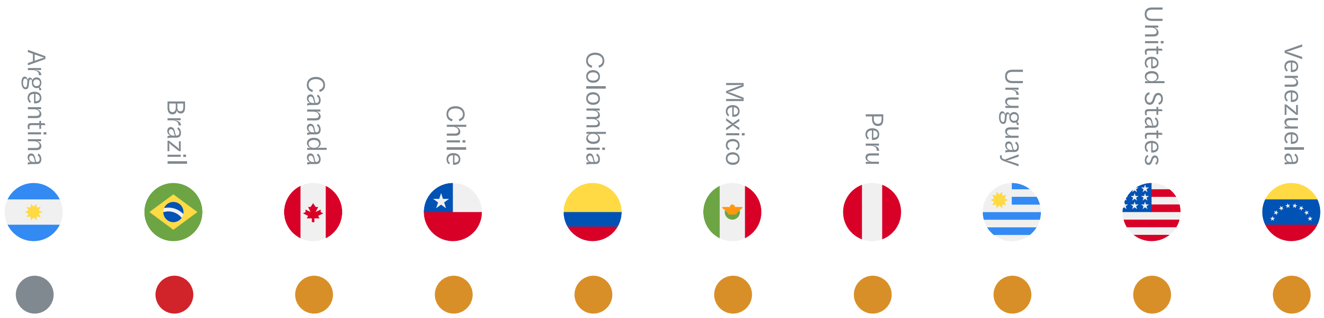
As a general rule, capital gains attributed to non-resident individuals or entities are subject to a 35% withholding tax. Treaties establish reduced rates applicable on such capital gains

Uruguay

There are no dissuasive tax rates. Capital gains realised by companies on assets located in Uruguay (including assets of Uruguayan entities) are taxable at the normal corporate income tax rate of 25%. An individual seller or a non- resident is subject to capital gains tax at the rate of 12%, when selling assets located in Uruguay. The sale of assets located in foreign countries is not taxed in Uruguay. However, there is a special case when selling shares of a company located in a jurisdiction of low or no taxation (BONT), which possess assets in Uruguay for more than 50% of its total assets. In such case the sale of shares of the foreign (BONT) company is taxed in Uruguay.

Top tax traps

Tax treaties



Nature

Since taxes aim to finance state budgets, they are generally set by governmental bodies and legislators that have jurisdiction over one country. Therefore, conflicting provisions from distinct countries may result in double taxation issues. To avoid such issues, states often enter tax treaties that aim at avoiding double taxation. Tax treaties are drafted based on models issued either by the OECD and/or, more rarely, the UN. For example, France has signed a significant number of tax treaties with emerging countries. These treaties aim to limit double taxation and facilitate economic exchange between different countries.

Impact

In practice, the provisions of the tax treaties considered allow two objectives to be achieved (i.) avoidance of double taxation: double taxation is avoided either through exclusive taxation of the income measured in the State who is a member of the tax treaty or through granting tax credits that aim at neutralising the impact, at the level of the beneficiary of the income, of the taxes possibly withheld at source at the level of the taxpayer who generated the income, (ii) reduction of withholding tax rates: tax treaties often introduce specific reduced withholding tax rates applicable to certain types of income (e.g., dividends, interests and royalties).

Solutions

Proper tax structuring could improve tax leakage on repatriation of profits, notably through the rerouting of profits which may enable withholding tax savings.

Illustrations

Canada

The tax treaties will reduce the withholding tax of 25% for dividends, interest, royalties, etc.

Colombia

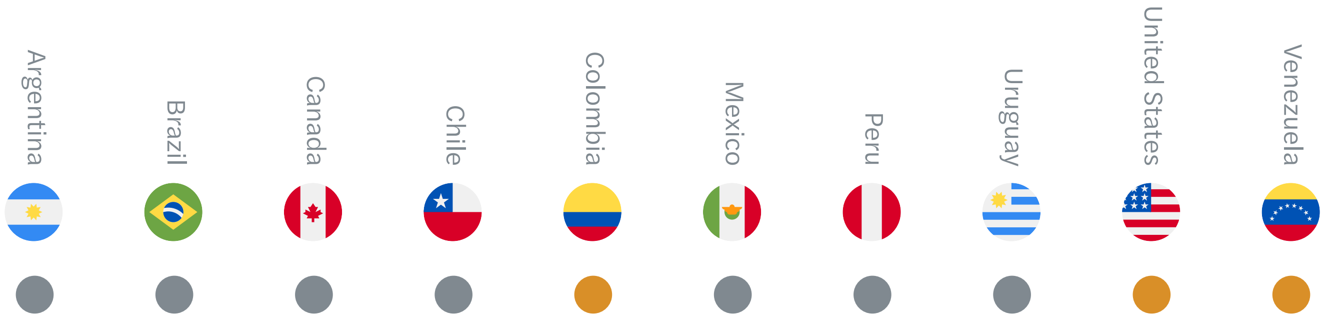
Colombia has agreed on 16 double taxation treaties around the world.

Notwithstanding, only the tax treaties agreed with Ecuador, Bolivia, Perú, Spain, Switzerland, Chile, Canada, Mexico, Korea, India, Portugal, Czech Republic, Italy, and France are currently in force.

Venezuela

Venezuela joined the global income regime at the beginning of the 21st century and treaties to avoid double taxation have allowed income to be taxed in the correct place, without doubling the tax to be paid.

Stamp duties on structuring questions



Nature

Where enforced, this tax is applied on the transfer of homes, buildings, copyrights, land, patents and securities. When this tax exists, the transfer of documents in locations is legally enforceable only when they are stamped, which proves the amount of tax paid. As they correspond in most cases to fixed amounts or relatively low costs, stamp duties are often seen as ancillary taxes. However, structuring transactions (asset deals, share deals, capital decreases, mergers...) usually involve stamp duties depending on the laws of the countries. In certain cases, those costs may be substantial and could impact the carrying out of a transaction.

Impact

Stamp duties are an actual cost in transactions which has a direct cash effect at the level of the paying party. In certain countries, there exists a joint liability of both parties to a transaction for the payment of the stamp duties related to the transaction.

Solutions

In practice, companies should adopt the best routes that involve the most minimal stamp duty costs, either through the relocation of the transaction or the modification of the assets transferred.

Illustrations

Colombia

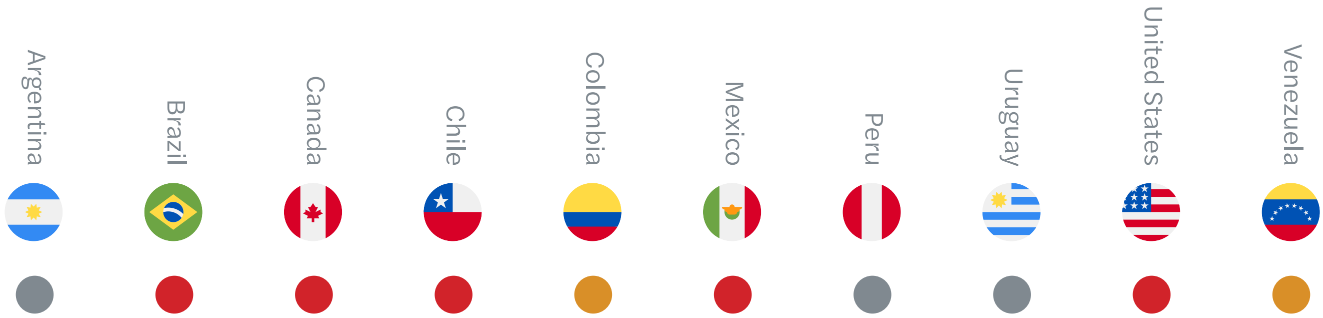
Colombia has a stamp duties regime. Currently Colombia established a registration tax that will be paid by the taxpayers who register a public deed or commercial act. The tax will be collected by each departments or estate, instead of the national tax administration, and the rates will vary depending on the department. But the tax will vary from 0.5% to 1%.

Venezuela

Income obtained by individuals, legal entities, or communities, from the sale of shares, whose public offering has been authorised by the National Securities Commission, under the terms provided in the Capital Markets Law, provided that sale carried out through a stock exchange domiciled in the country, will be taxed with a proportional tax of 1%, applicable to the amount of the gross income of the operation. In the event of losses that may occur in the disposal of those shares, the losses caused may not be deducted from other enrichments of the vendor.

In the case of dividends in shares, issued by the paying company to natural or legal persons, the proportional tax levied on the dividend will be subject to a 1% tax advance on the total value of the decreed dividend, which will be credited to the amount of the proportional tax that results to be paid in the declaration.

Use of tax losses in case of change of control of the taxpayer



Nature

For corporate income tax purposes, most states enable the offsetting of past tax losses carried forward against the taxable income of the year to enable the determination of the corporate taxpayer's corporate income tax basis. Therefore, existing tax losses may give rise to the recognition of deferred tax assets in the consolidated accounts, when it is likely that the losses will be used for offsetting tax purposes. In order to limit the abusive use of tax loss carry-forwards by corporate taxpayers who did not generate the corresponding losses and to whom the tax attributes have been transferred, the change of control may trigger the forfeiture of tax losses or may limit their use.

Impact

The total or partial forfeiture of tax losses carried forward in case of a change of control could have a potential impact on cash flows (as the corporate income tax cash out increases) and on deferred taxes. Please note that several countries have no restrictive legislation on this matter.

Solutions

It is very difficult in practice to avoid the forfeiture of tax losses in case of a control change when the local tax provisions impose such forfeiture. In this case, the risk could be reduced by acquisition price adjustments considering the amount of tax attributes lost.

Illustrations

Canada

Tax losses carried forward are not impacted by a change of control to the extent there is no change in the underlying business line that generated the tax loss (losses may be carried forward for 20 years maximum; the carry-back of losses is for 3 years.) The capital loss cannot be carried forward after an acquisition of control.

Mexico

Mexican income tax law allows taxpayers to carry forward inflation-adjusted tax losses for a period of 10 years. If taxpayers do not apply the loss in the year, they were eligible for amortisation, they lose the right to do so in any subsequent year. No carry back is allowed. Furthermore, after a change in control, the losses of an entity acquired can only be used against income from the same line of business that generated the losses. The carry forward period is 10 years.

Please also consider that in Mexico there are some precedents by Mexican Tax Authorities which establish that in case of a taxpayer generates and applies NOL´s, the statute of limitations can be extended up to 10 years going back.

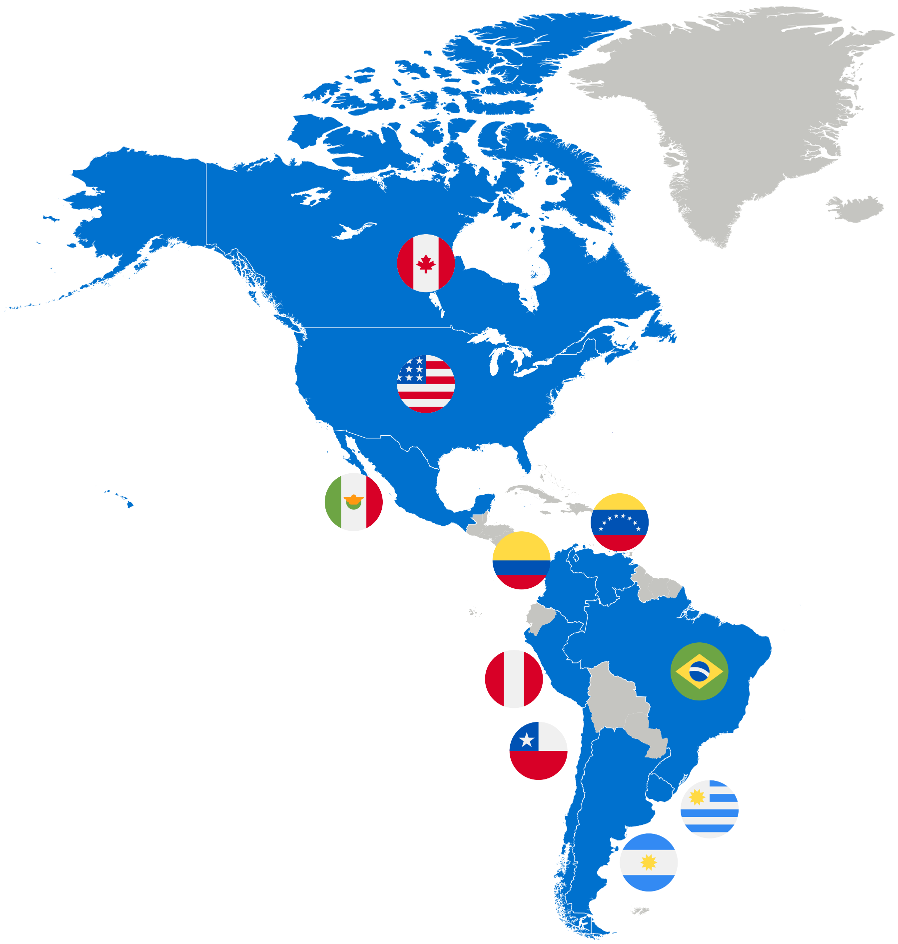
USA

Tax losses are subject to a limitation on the amount of taxable income that can be offset by carryovers of net operating losses if there has been an 'ownership change'. In general, an ownership change takes place when the cumulative ownership of 5%-or-more shareholders of a loss corporation increases by more than 50 percentage points within a period of three years.

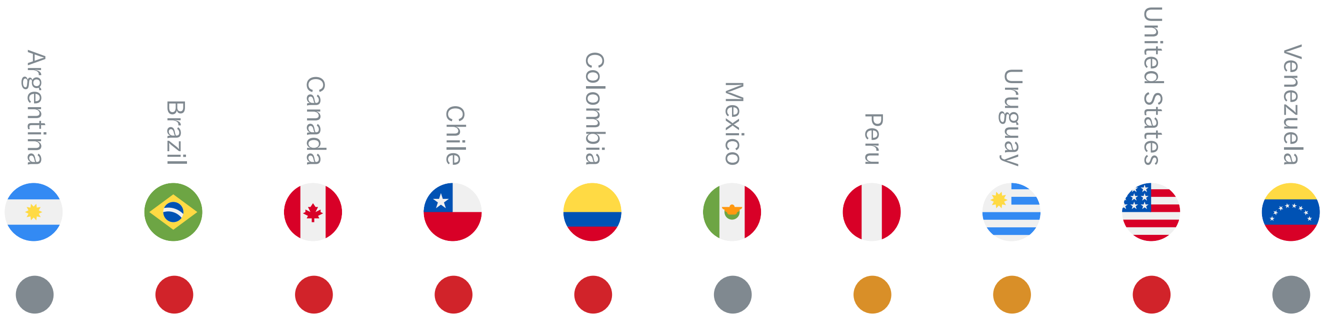
Top tax structuring opportunities

	Argentina	Brazil	Canada	Chile	Colombia	Mexico	Peru	Uruguay	United States	Venezuela
Amortisation of assets/goodwill	Non-significant	Significant	Significant	Significant	Significant	Non-significant	Moderate	Moderate	Significant	Non-significant
Corporate income tax/captial gains rates	Non-significant	Non-significant	Moderate	Moderate	Moderate	Moderate	Significant	Significant	Significant	Moderate
Carry back/carry forward of tax losses	Significant	Significant	Moderate	Non-significant	Moderate	Moderate	Significant	Moderate	Significant	Moderate
Tax treaties (tax sparing credits)	Significant	Significant	Non-significant	Non-significant	Significant	Non-significant	Non-significant	Non-significant	Moderate	Moderate
Deduction of financial costs	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate
Group tax regime	Non-significant	Non-significant	Non-significant	Non-significant	Non-significant	Moderate	Non-significant	Non-significant	Moderate	Moderate
Tax exemption applied to mergers/demergers	Significant	Non-significant	Moderate	Significant	Significant	Significant	Significant	Moderate	Significant	Moderate
Local incentives supporting investments	Moderate	Significant	Moderate	Moderate	Moderate	Non-significant	Moderate	Significant	Moderate	Non-significant

Significant opportunity   Moderate opportunities   Non-significant opportunities/not applicable



Top tax structuring opportunities
Amortisation of assets/goodwill



Nature

As a general principle, goodwill is an intangible asset which provides a competitive advantage, such as a strong brand, reputation, or high employee morale. In an acquisition or restructuring, goodwill appears on the balance sheet of the acquirer in the amount by which the purchase price (or transfer value) exceeds the net tangible assets of the acquired business/company. In such a context, this amount is considered as representing the synergies between the existing business and the acquired/transferred business, either in the form of Cost reductions and/or revenue enhancement. The recognition of such goodwill is sometimes supplemented by the possibility to amortise such goodwill from an accounting standpoint and, in some countries, from a tax standpoint, in order to reflect that a part of the price paid at the moment of acquisition, corresponds to future profits of the business transferred or acquired. Note that the amortisation of goodwill and intangible assets for tax purposes is not systematically allowed.

Benefits

Where possible, the goodwill (market share, opportunities) and intangible assets (patents, software) may gradually be amortised using a straight-line method. Amortising those assets may lead to significant tax cost reductions.

Optimisation process

Accordingly, companies should carry out further studies about the feasibility and the domestic tax treatment with respect to amortisation.

Illustrations

Canada

The goodwill and intangible asset will be amortised when it is an asset deal.

Chile

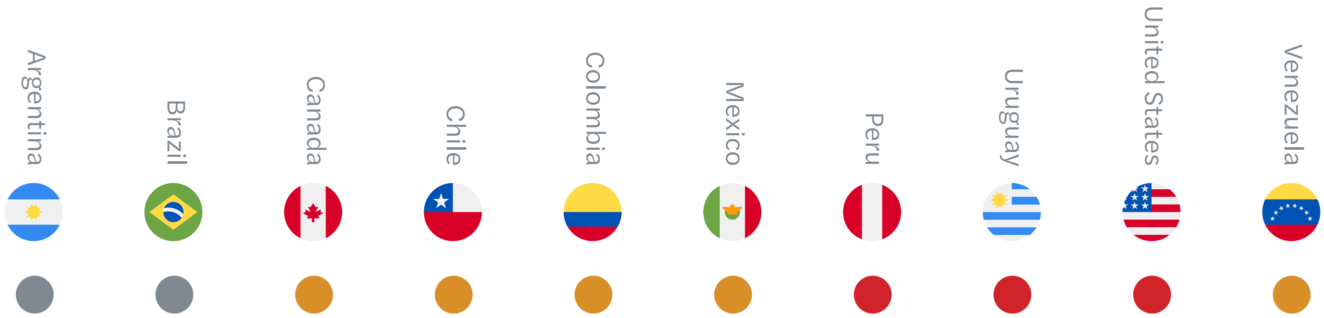
Amortisation of goodwill is tax deductible in Chile, if it is allocated among tangible underlying assets not exceeding their market value. Any excess is not amortisable. Physical tangible assets are depreciated on a linear or an accelerated basis.

Colombia

Colombia allows the amortisation of fixed tangible or intangible assets, only for companies or individuals obliged to keep accounting books. Related to the tangible assets, the depreciation period will be set by the tax law, establishing a minimum useful live depending on the asset characteristics (for example: 45 years for constructions, 10 years for vehicles and furniture, 5 years for computer equipment).

On the other hand, the intangible assets will be amortised using a straight lime method, with a limitation of 20% per year. In Colombia is possible to amortise the goodwill.

Top tax structuring opportunities
Corporate income tax/capital gains rates



Nature

The profits derived from a corporate taxpayer's day-to-day activities as well as the gains resulting from the disposal of its assets are generally subject either to CIT under standard rules or to capital gains tax, the rate of which often varies depending on the nature of the assets disposed. In several cases, reduced tax rates may be set up by local tax authorities and used as incentives to corporate taxpayers. Please also note that most tax treaties aiming to avoid double taxation also set forth reduced tax rates (mainly for withholding tax purposes) which may enable tax savings upon proof of the tax residency of the taxpayers on each end of the financial flow.

Benefits

Some applicable rates may encourage investments.

Optimisation process

An appropriate structuring could improve the utilisation of these incentives, notably through proper routing of the financial flows of income.

Illustrations

Peru

There is no capital gains tax under the income tax provisions. However, a real estate transfer tax at a municipal level is levied on all transfers of urban and rural real estate property. The taxpayer is the purchaser of the property. The taxable base is equivalent to the retribution agreed by the parties involved in the transaction, provided it is higher than the property´s value (in the relevant year for purposes of the real estate property tax), as reflected in the internal records of the corresponding municipal authority.

Uruguay

Capital gains realised by companies on assets located in Uruguay (including assets of Uruguayan entities) are taxable at the normal corporate income tax rate of 25%. An individual seller or a non- resident is subject to capital gains tax at the rate of 12%, when selling assets located in Uruguay. The sale of assets located in foreign countries is not taxed in Uruguay. However, there is a special case when selling shares of a company located in a jurisdiction of low or no taxation (BONT), which possess assets in Uruguay for more than 50% of its total assets. In such case the sale of shares of the foreign (BONT) company is taxed in Uruguay.

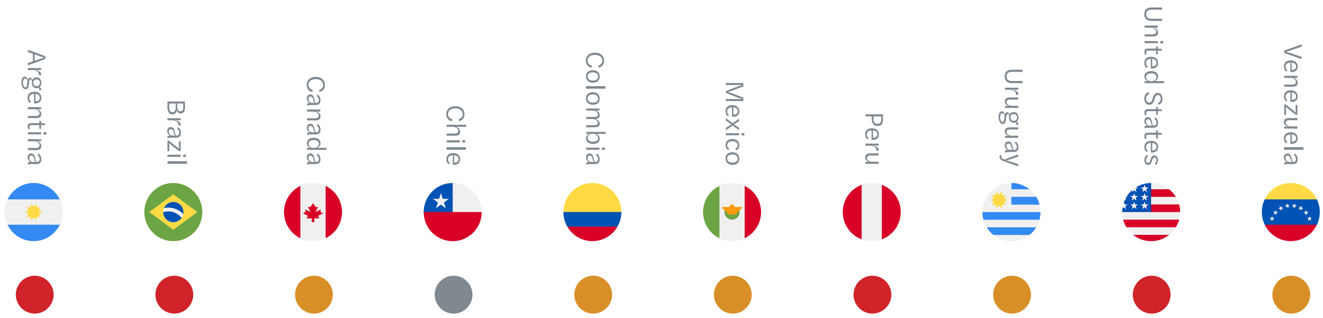
USA

There is no difference in rate for capital gains, as these are subject to corporate tax. Ordinary income and capital gains derived by corporations are taxed at a flat rate of 21%.

Venezuela

In cases of transfer of real estate or rights over them, for consideration, including contributions of such assets or rights to the capital of companies of any kind or deliveries made by these companies to partners in case of liquidation or reduction of the capital stock or distribution of profits, a 0.5% tax advance will be calculated on the sale price, whether it is made in cash or on credit. This advance will be credited to the amount of the tax resulting from the definitive declaration of the corresponding fiscal year.

Top tax structuring opportunities
Carry back/carry forward of tax losses



Nature

For corporate income tax purposes, most states enable the carry-forward or the carry-back of past tax losses in order to offset them against the taxable income of either past years (carry-back) or subsequent years (carry-forward). Thus, the carry-forward and the carry-back impact the determination of the corporate taxpayer's corporate income tax basis. Therefore, existing tax losses may give rise to the recognition of deferred tax assets in the consolidated accounts if it can be evidenced that it is likely, at year-end, the taxpayer will generate enough tax basis in the future to offset those tax assets. Carry forward is mainly adopted by emerging countries but not all countries allow carrying tax losses back.

Benefits

Both carry-back and carry-forward mechanisms allow some flexibility in the management of losses by corporate taxpayers. Also, having losses carried forward or carried back will impact the deferred tax in consolidated accounts.

Optimisation process

Companies should monitor the expiry of the tax losses in accordance with the provisions of their domestic tax law.

Illustrations

Brazil

In Brazil, NOLs may be carried forward indefinitely.

Peru

The existence of two different systems for carrying forward losses allow taxpayers to plan the best scenario for consuming them based on expected cash flow projections.

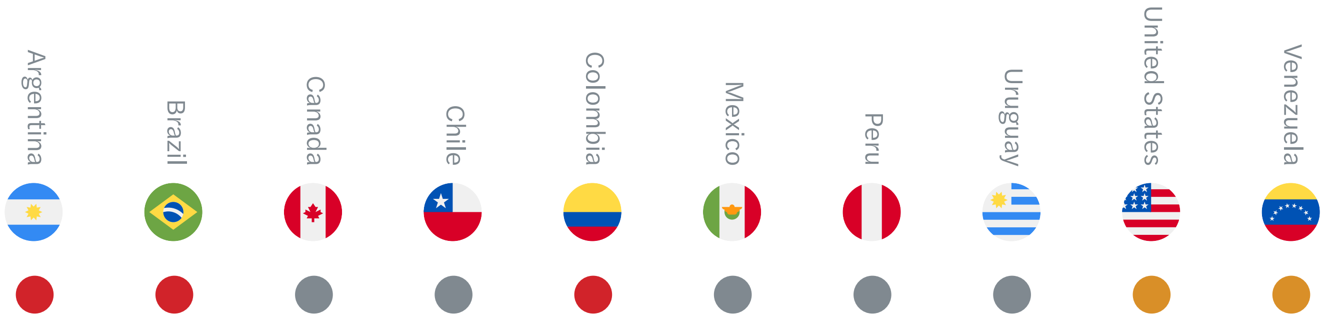
Uruguay

Losses can be carried forward five years and set off against taxable income with no limitation of amount or percentage. Tax losses are stated in local currency and adjusted based on the inflation rate. No carry back is allowed.

USA

Most C corporations are allowed to deduct net operating losses. In general, net operating losses arising in tax years beginning after 31 December, 2017 and before 1 January 2021 may be carried back five years and carried forward indefinitely subject to annual limitations.

Top tax structuring opportunities
Tax treaties (tax sparing credits)



Nature

In some cases, the amount of tax credit necessary to avoid double taxation may be higher than the amount of the income tax that should be paid in the country where the income is originated. This results in a potential tax optimisation when the tax credit can be offset by the tax due at the level of the beneficiary of the income.

Benefits

Such mechanism increases the tax credit to be offset by the tax charge of the beneficiary of the income sourced abroad.

Optimisation process

Considering that the gain could be significant for a company that operates an entity in an emerging country benefiting therefore from tax-sparing credits - companies should find a way to manage the tax credit offsetting at the level of the beneficiary.

Illustrations

Argentina

In general, tax withholdings set by tax treaties are lower than those set by regulation. Also, it is important to mention that taxpayers are entitled to recognise a tax, credit paid in the countries where they have obtained foreign source income, in respect of similar national taxes, up to a cap, which is the increase in their Argentinean tax liability, due to the inclusion of the foreign income. Any excess remaining in a tax period, can be carried forward to the next 5 years.

Chile

Chilean tax treaty policy does not consider negotiating tax sparing credits.

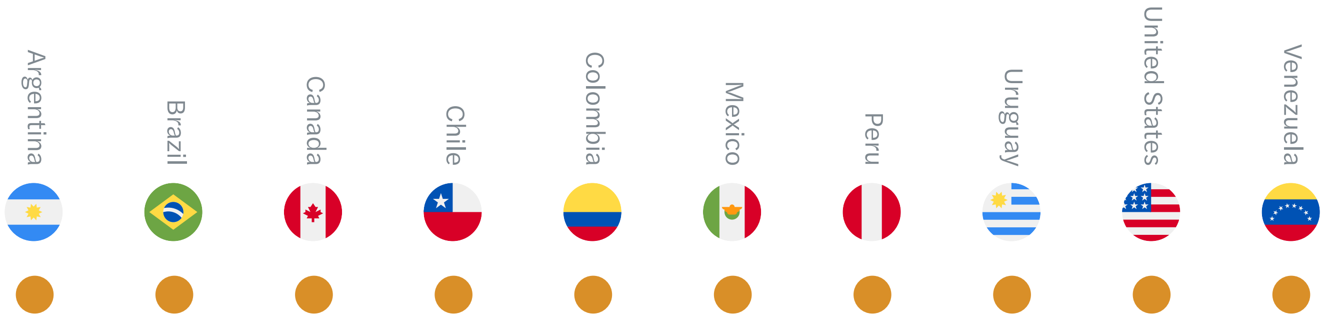
Colombia

Colombia allows tax sparing credits on its tax treaties and upholds an internal law to use a tax credit related to the taxes paid abroad that refers to the same income producing activity that is going to be taxed in Colombia.

Mexico

There are no tax sparing credits in Mexico; however there are some transactions that could be treated as business profits or exempts as follows: a) capital gains, pursuant to domestic law 25% over the income or 35% over the gain - according some treaties, the transfer of shares could be exempt; b) dividends, 10% according to domestic law or exempt as stipulated in some treaties; c) technical assistance, 25% according to domestic law or business profit (exempt) according to some treaties ; and d) fees, 25% according to domestic law or business profit (exempt) according to some treaties.

Top tax structuring opportunities
Deduction of financial costs



Nature

As a rule, it is important to determine whether domestic tax law provisions put limitations on the tax deduction of financial expenses. Indeed, such restrictions may result either from thin capitalisation rules, aiming at preserving the solvency of the corporate taxpayer at stake or from specific provisions aiming at discouraging several tax optimising structures considered abusive by the local tax authorities.

Benefits

The deduction of financial costs enables tax leveraging of investments abroad and more flexibility in the repatriation of profits.

Optimisation process

Companies should seek an improvement of the gearing between equity financing and debt financing and optimise the use of specific capital structures.

Illustrations

Argentina

In Argentina, financial costs linked to taxable incomes are fully deductible, except for those arisen from financial loans with related parties, which have particular limitations.

Brazil

In Brazil, the deduction of financial costs related to acquisition of shares and assets is allowed to the extent those costs cannot be regarded as interest paid on moneys borrowed to earn tax-free income is generally not tax deductible.

Canada

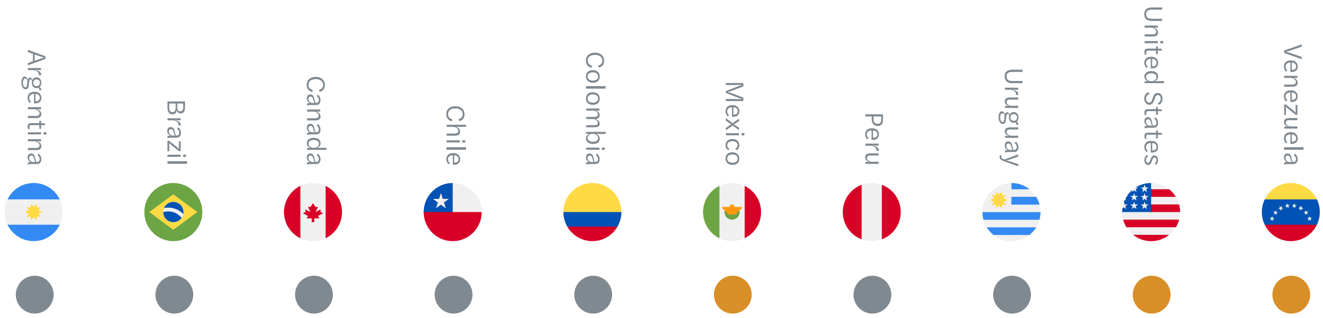
The deduction of financial costs related to acquisition of shares and assets is allowed. Some exception could apply, for example: interest paid on moneys borrowed to earn tax-free income which is generally not tax deductible

Chile

The deduction of financial costs related to acquisition of shares and assets is permitted on the condition that those costs cannot be regarded as interest paid on money borrowed to earn tax-free income, which is generally not tax deductible.

Top tax structuring opportunities

Group tax regime



Nature

Specific incentives may apply to groups of companies (participation exemption, assessment of corporate income tax charges based on the aggregated income of the group members, etc.).

Benefits

The group tax regime enables a reduction of the tax basis through the offsetting of the losses incurred by tax group members by the profits earned by other tax group members.

Optimisation process

Proper structuring is sometimes needed to be eligible to participation exemption or tax group regimes.

Illustrations

Canada

There is no group tax regime in Canada.

Colombia

Colombia has not tax incentives for groups of companies. There are incentives related to individual companies and its commercial activity or location, but not for groups.

Mexico

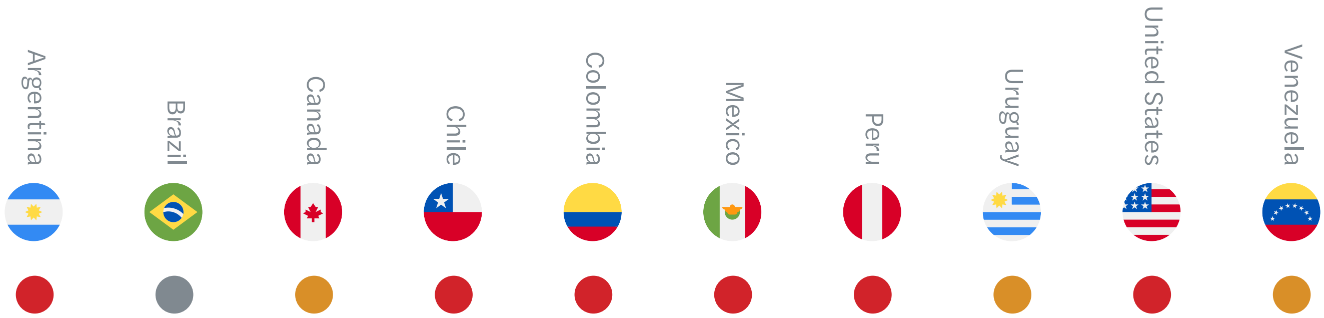
The tax consolidation regime was repealed in 2014, and a tax integration regime was introduced.

Under the tax integration regime, corporate groups may decide to calculate income tax on a consolidated basis. The regime provides certain benefits for the payment of tax when companies have profits or losses in the same year within a corporate group. For tax purposes, a group consists of a Mexican holding company and all the Mexican subsidiaries in which the holding company holds directly or indirectly more than 80% of the voting shares. Tax may be deferred for a maximum of three years. The Mexican Tax Administration must authorise the application of the integration regime, and written consent of the legal representative of each of the companies that would be participating must be filed before 15 August of the year prior to the first year of integration to request the proper authorisation.

Venezuela

The law considers cases of ad hoc associations, such as consortiums, or other types of joint ventures, as taxable. There is no group tax regime or specific incentives applicable to groups of companies.

Top tax structuring opportunities
Tax exemption applied to mergers/demergers



Nature

In a number of countries, the tax impact of mergers, de-mergers, and transfers of branches of activities may be neutralised (tax roll over) to the extent that a number of requirements are met.

Benefits

Companies are tax-exempt on the gain that may result from a merger, de-merger or assimilated transaction at the level of the absorbing company.

Optimisation process

Eligibility to such regimes should be carefully verified.

Illustrations

Argentina

According Argentinean tax regulation, the transfer of goods as consequence of a company´s reorganisation is considered to be free of tax as long as it fulfils the conditions set by law. Otherwise, the goods transferred will be treated as a sale and will be taxed in VAT and turnover tax, and the profit of such sale will be reached for income tax purposes.

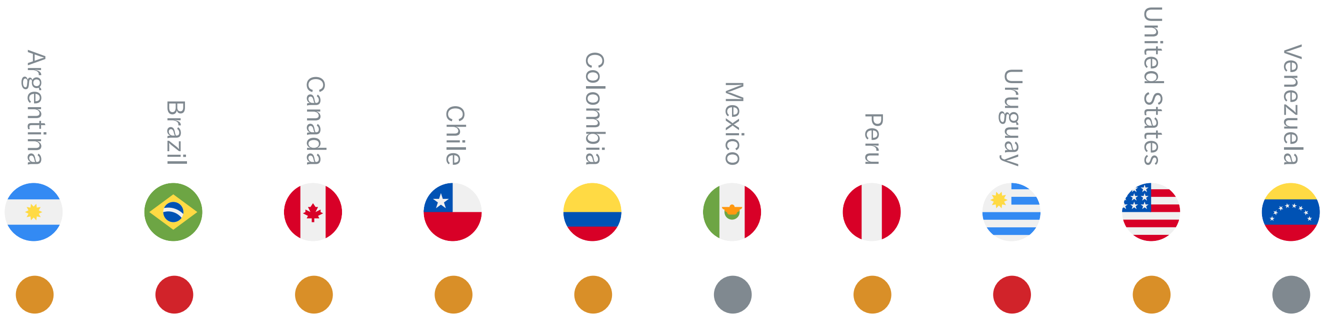
Mexico

According to Mexican tax provisions, a domestic merger may be carried out tax-free under conditions of shareholding, holding period, etc.). Furthermore, as part of the tax reform corresponding to FY22 the financial statements used to carry out the merger or spin-off of companies, as well as those prepared as a result of such acts, must be audited by CPA in accordance with the general provisions issued by the Tax Administration Service for this purpose.

Venezuela

For tax purposes, it will be considered that, in addition to the rights and obligations of the merged companies, any tax benefit or liability corresponding to the merged companies will subsist at the head of the company resulting from the merger.

Top tax structuring opportunities
Local incentives supporting investments



Nature

Local tax law may encourage the development of a sector of activity or of an undeveloped geographic area by granting various tax incentives (e.g., corporate income tax exemption or a lower tax rate).

Benefits

A company entitled to benefit from such incentives will reduce its tax burden. As a result, it will be able to expand its activity.

Optimisation process

Identification and eligibility to a specific tax incentive may sometimes be a driver for the location of the foreign establishment

Illustrations

Brazil

The northern region of Brazil enjoys some special tax incentives not available elsewhere in the country. These incentives (exemptions or a reduction of corporate income tax (IRPJ), among other) were created to enable regional development as the region is far away from Brazil's major consuming centres. Basically, there are three separate areas in the northern region subject to special tax incentives (Manaus Free Trade Zone, the Western Amazon and free trade areas).

Peru

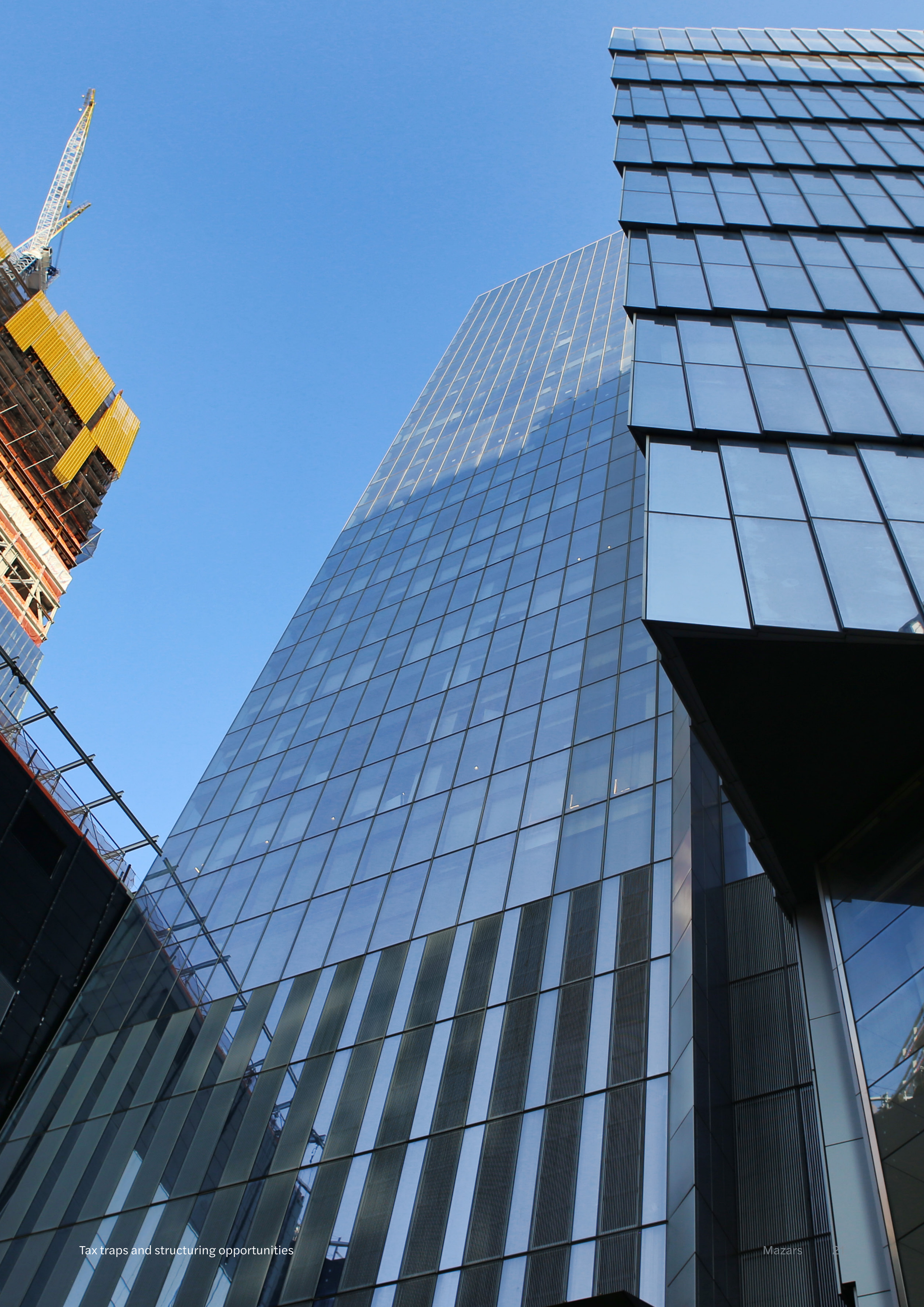
Investors may enter into stability agreements with the government, either under the general regime or specific regimes (mining and petroleum). There are also VAT recovery regimes, and the possibility to sign Private Public Partnerships (PPP) for paying part of the tax liability in the form of regional infrastructure work.

Uruguay

There are relevant tax incentives in Uruguay for the acquisition of new assets, provided that the investment contributes to key indicators such as: innovation, clean technologies, employment, decentralisation, increase in exports. Upon filing of a request and according to the punctuation that the project receives, the company might be granted several tax exemptions, including a direct deduction against corporate income tax of a significant percentage of the investment.

USA

The Tax Cuts and Jobs Act of 2017 temporarily allows taxpayers to write off the cost of acquisitions of qualified property immediately, by raising the bonus depreciation rate to 100%. The 100% bonus depreciation allowance applies to qualified property acquired and placed in service after 27 September 2017, but before January 1, 2023 (January 12024 for long production period property and specified aircraft).



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