

# Latam Lithium Guide

2024-2025

A comparative review of the legal  
and tax considerations for the  
lithium industry in Latin America

Latam Lithium Guide 2024/2025

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# Latam Lithium Guide

2024/2025



# About this 2024/2025 Latam Lithium Guide



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*Our Lithium Investment Guide Latin America has established itself as a must-read reference for those who wish to have a complete overview of the Lithium landscape in Latin America. In its 2024 new edition, we have incorporated the latest regulatory developments in the countries of our subcontinent, and it aims to continue to be useful for those who are reviewing their long-term investment options in the exploration and development of Lithium in the region.*



*This publication has brought together several of EY Latam's leading mining industry professionals, with a mix of regulatory, tax, economic and accounting backgrounds, to share their unique views and explain the key elements that serve as a starting point for evaluating investments by international mining and metallurgical companies in Argentina, Bolivia, Brazil, Chile, Mexico and Peru.*

*In this guide we have examined various aspects that, in our experience, miners and investors around the world usually take into account before making critical decisions on the development of new operations.*

*This guide includes an overview of the political structure of the Latam countries, the business environment, the macroeconomic profile, key indicators and outlook for the coming years, geological potential, mining and metallurgical sector trends and the latest developments. The guide also provides access to essential information to help foreign investors understand the regulations governing investment and, in particular, the legal, tax and regulatory requirements for operating in the lithium sector taking into consideration the different specific state/provincial regulations that lithium has in Latam.*

*This guide has been designed to be easily consulted and to offer a balanced*

*and objective account of the areas of potential interest to foreign mining investors. The objective as always is to provide international mining and exploration companies with a database and critical information to facilitate and support their discussions and investment decisions in the region.*

*This report also sets out and summarizes the different strategies and laws that Latam countries are implementing in order to promote this industry within the context of the energy transition and recent ESG requirements. It represents another step in our commitment to build a better working world and provide the wider public with knowledge and understanding of the regulations, political developments, and business challenges for lithium enterprises in Latin America.*

*We sincerely hope that this will be the start of fruitful conversations with our teams who are available to resolve your main doubts and delve deeper into what you need to materialize your investments in the lithium industry in Latam.*

# CON TENT

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# 1 INTRODUCTION

In a world increasingly focused on sustainability and technological innovation, lithium is emerging as a critical resource as key industries transform. Known as the “metal of the future,” lithium plays a crucial role in the clean energy revolution, being an essential material in the lithium-

ion batteries that power electric mobility and store renewable energy. Its geological abundance, combined with its unique properties, places it at the heart of the transition to a more renewable and connected world.

As economies and industries are decarbonized, lithium becomes a strategic commodity as companies lead the next wave of innovation and competitiveness in key sectors such as automotive, consumer electronics, energy, and technology. In this context, understanding the current and future landscape of the lithium market, as well as its implications, will be critical to making informed and strategic decisions.

In this guide, we will explore the legal and tax considerations for the lithium industry in Latin America (LATAM), the importance of the industry in the current landscape, and some of the market trends, opportunities, and challenges.

Let's start by understanding what lithium is.

Lithium is a soft, silvery metal and is the lightest of all metals. It reacts vigorously with water and has a low melting point. Lithium is used in rechargeable batteries for electronics and electric vehicles, in the manufacture of glass, and also



made into alloys with aluminum and magnesium to form strong, lightweight metals for use in aircraft and bicycle frames.

There are currently two types of lithium ore extraction:

- ▶ Lithium extraction from hard rock: This involves mining three commercially viable minerals: petalite, lepidolite, and spodumene, with spodumene being the most commercially significant. The process includes crushing the minerals and then subjecting them to separation processes to concentrate the lithium and remove impurities.
- ▶ Lithium brine extraction: This method involves pumping brine into evaporation ponds, where other salts crystallize out, leaving a lithium-rich solution. This solution then undergoes a purification stage to remove any impurities.

Once the lithium ore is extracted, it is refined to obtain the following products:

- ▶ Lithium carbonate: Also known as LCE, this compound is utilized in the production of lithium-ion batteries that power electronic devices, phones, computers, and electric vehicles.

- ▶ Lithium hydroxide: This chemical is employed in lithium-ion batteries and is particularly crucial for high-energy applications such as electric vehicles and energy storage systems.

- ▶ Technical Grade Lithium Hydroxide: This grade is used in greases for automobiles, airplanes, and train cars. These greases are non-corrosive and consist of 56.5% lithium hydroxide.

- ▶ Battery Grade Lithium Hydroxide: It is employed in the manufacture of cathodes with a high nickel content, enabling the production of batteries with a higher energy density. This advantageously allows electric vehicles to achieve an extended driving range.

Lithium reserves and resources are found worldwide, but the greatest concentration of reserves is in Latam. Ongoing exploration has significantly increased identified lithium resources to approximately 103 million metric tons. In the United States, identified lithium resources from continental brines, clays, geothermal brines, hectorite, oilfield brines, and pegmatites total 12 million metric tons. Resources in other countries have been revised to 91 million metric tons. The distribution of identified lithium resources is detailed in the table below:

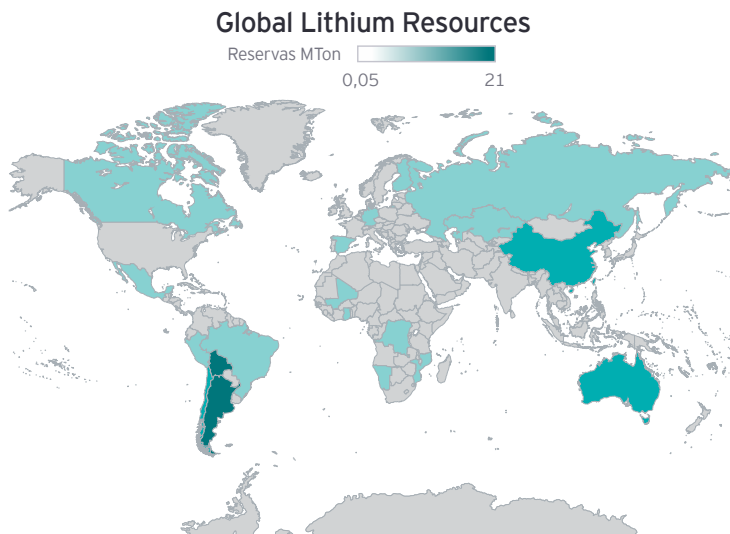


## Global resources (million metric tons)

Country	Resources (Million Metric Tons)		Reserves
	Lithium metal (Li)	Lithium carbon equivalent (LCE)	World total: 28,000,000 (rounded)
Bolivia	23	122.4	-
Argentina	22	117.1	3,600,000
Chile	11	58.6	9,300,000
United States	12	63.9	1,100,000
Australia	8.7	46.3	6,200,000
China	6.8	36.2	3,000,000
Germany	3.8	20.2	**
Canada	3	16.0	930,000
Democratic Republic of Congo	3	16.0	**
Mexico	1.7	9.0	**
Czech Republic	1.3	6.9	**
Serbia	1.2	6.4	**
Peru	1	5.3	-
Russia	1	5.3	-
Other	3.6	19.2	1,070,000

\*\* These countries are reported on a consolidated basis, including other jurisdictions, with a total reserves calculated at 2,800,000.

Source: [USGS Mineral commodity summaries 2024](#)





# 2

## COUNTRY TAX SUMMARY

Argentina

Bolivia

Brazil

Chile

Mexico

Peru



# Argentina

## Legal restrictions or considerations for exploitation of lithium

The exploitation by private parties exists in cases of legal concession for an unlimited period of time, whereas the government may only exploit or dispose of the mines in exceptional cases.

The Mining Code also rules the process to be followed by the subjects willing to carry out a mining activity in the Argentine territory, starting with the request for authorization from the competent authority.



## Corporate income tax

Progressive rates ranging from **25% to 35%** depending on the amount of the profit subject to taxation.



## Mining tax or royalty

Jurisdictions that implement a royalty system may not collect more than **3%** of the pithead price of the extracted ore. Specific agreements with the provinces.



## Tax incentives

Total tax burden stability for 30 years. Double income tax deduction for exploration expenses.

System to request VAT credits from mining exploration activities.

Exemption from the payment of customs duties.

Provision for environmental expenses deducted from the income tax assessment.

Income tax exemption for income from mining contributions and rights.



## Government or State lithium strategy

National government and the Provinces of Jujuy, Catamarca and Salta formed the National Lithium Roundtable ("Mesa Nacional del Lito"), the main purpose of which consisted of the coordination of provincial policies related to lithium production, mining competitiveness, legal security, legislation, environmental impact, processes, and enforcement controls, seeking the promotion of the development of this sector.



## Main producers

Diverse producers.



## Value added tax

The general VAT rate is **21%**.

Export of goods and services is exempt.

Exporters are permitted to request refunds on VAT credits under certain requirements.



## Dividend withholding

**7%:** dividends paid out of profits accrued in fiscal years starting from January 1, 2018. Such rate applies to distributions made to resident individuals or foreign investors, while distributions to resident corporate taxpayers are not subject to withholding.

**0%:** dividends paid out of profits accrued during fiscal years prior to January 1, 2018. However, in these cases, a 35% withholding tax (known as "equalization tax") is triggered if the distribution exceeds the after-tax accumulated taxable income of the taxpayer.

## Export duty or tax

Depends on Tariff Code.

For Tariff Code 2805.19.90.100C for lithium and 2836.91.00.000G for lithium carbonate:

**4.5%** rate on FOB value.



## Depreciation

Optional accelerated amortization system for income tax purposes for capital investments incurred in executing new mining projects and expanding existing projects.



## IFRS compliance

Required for public companies and optional adoption in the case of private companies.



# Bolivia

## Legal restrictions or considerations for exploitation of lithium

Only the Bolivian government is authorized to engage in any activity within the lithium production chain, through a government entity called "Yacimientos de Litio Bolivianos," especially in the initial stages of production (from exploration to basic chemistry).

In subsequent stages, such as semi-industrialization and industrialization, private companies may enter into accidental association agreements or service contracts with the government.

## Corporate income tax

Standard rate of  
**25%**

Additional Aliquot:  
**7.5%-12.5%**  
(if lithium is understood as a mineral)

Surtax: Additional  
**25%**  
on extraordinary incomes



## Mining tax or royalty

3% over the gross sale value.



## Tax incentives

Tax exception for investment in Potosi and Oruro region (where lithium is found).

Tax exemption includes: import taxes and custom duties related to the importation of machinery and raw material, Transaction Tax on the sales, Corporate Income Tax and property taxes.





**Government stake  
(free or not and %)**

**51%**  
in Associations or partnerships  
with private companies.



**Government or  
State lithium strategy**

There is no defined strategy. However,  
the exploitation of lithium has become  
a significant focal point in the strategy  
to combat poverty.



**Main producers**

Without competitors.  
Only the Bolivian government is  
responsible for production of lithium.



**Value added tax**

Local sales are taxed  
with VAT at a rate of  
**13%**  
and is applied on the price  
including VAT itself. Bolivia follows  
a system of VAT outputs and inputs.  
Exports are free of VAT (taxed at  
a rate of 0%).



**Dividend withholding**

Dividends are not  
subject to taxation.  
A **12.5%** tax is levied  
on remittances abroad.



**Export duty or tax**

No



**Depreciation**

Tangible assets  
(except land), such as buildings,  
machinery, vehicles, furniture,  
and equipment are subject to tax  
depreciation according to rates  
established by SD 24051 (CIT).



**IFRS compliance**

The adoption for IFRS  
in Bolivia is not applicable.  
Only when there is no specific  
regulation related to a particular  
issue will IFRS apply.



# Brazil

## Government or State lithium strategy

The increase in the global lithium demand has boosted the Brazilian government's prospects about the energy transition, which over time has led to measures to make it less bureaucratic and more attractive for private companies to exploit metals that are considered strategic in the culture of decarbonization. In addition, higher purity of Brazilian lithium contributes to more sustainable standards in its extraction and, consequently, greener energy solutions.



## Mining tax or royalty

2%



## Tax incentives

Tax incentive for investment in research and development.

Tax exemption / reduction applicable to the import or internal acquisitions of capital goods.

Tax exemption / reduction applicable to the importation or internal acquisitions of inputs.

Lithium Mining and Industrial Hub in the Jequitinhonha and Mucuri Valleys.



### Main producers

Sigma Lithium  
Latin Resources  
AMG Lithium  
Lithium Ionic  
CBL  
Atlas Lithium



### Corporate income tax

34%



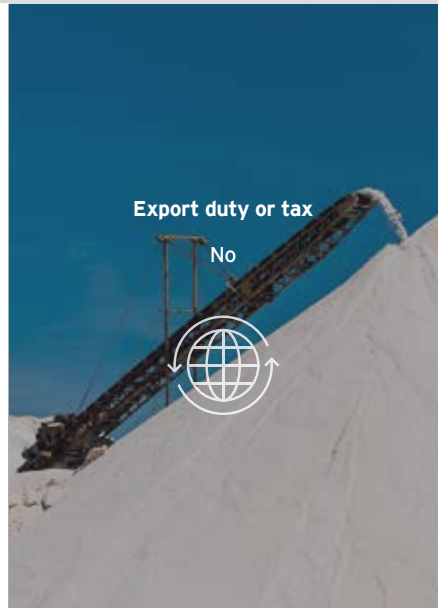
### Value added tax

Sales are subject to  
**18% VAT**,  
and exports are exempt from VAT.



### Export duty or tax

No



### Depreciation

R&D legislation allows companies to accelerate the depreciation, for tax purposes only, on R&D assets. Depreciation of 100% is available for eligible R&D assets upon the same year of acquisition.



### IFRS compliance

The adoption of IFRS in Brazil is applicable for all processes as of 2007.



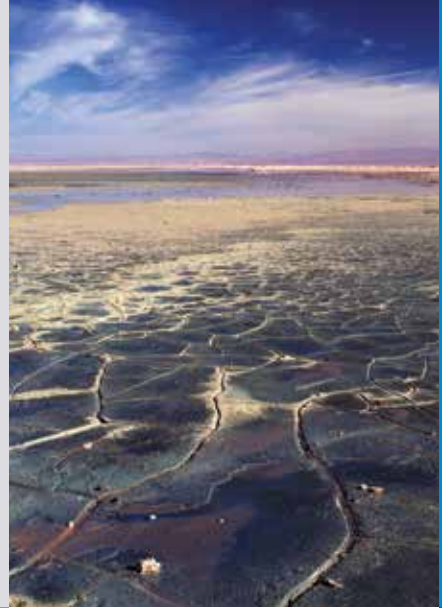
# Chile

## Legal restrictions or considerations for exploitation of lithium

Since 1979, lithium has been constitutionally declared to be of “National Interest” and a non-concessional mineral reserved primarily for the State.

As per the current regulations, lithium can be explored or exploited only by the State, directly or through its companies (i.e., CODELCO, Enami, CORFO, etc.) or by civilians or non-governmental companies in two scenarios:

- 1-By means of an administrative concession; and
- 2-By a special operating agreement.



## Corporate income tax

27%



## Tax incentives

R&D **35%** tax credit over expenditure in R&D projects certified by a Chilean Agency called CORFO), VAT exemption applicable to the import of capital goods.

VAT exemptions applicable to investments to start up a project.



## Mining tax or royalty

No.

However, there is an ongoing debate at the judicial level regarding the potential application of the Special Tax for the Mining Industry to lithium concessions that were granted before 1979, given that at that time, lithium was still classified as a concessional mineral.



## Government or State lithium strategy

In 2023, the government has introduced the "National Lithium Strategy," which assumes the responsibility of advancing the industry sustainably across economic, environmental, and social dimensions. During 2024, the government provided details of the strategy announcing the so called "strategic salt flats" (Atacama and Maricunga), a network of 27 protected salt flats and a public process to grant special lithium operation contracts (+80 expressions of interest received, from more than 50 companies, from 10 countries).



## Main producers

Current producers in Chile are SQM and Albemarle. CODELCO and Enami (stated owned companies are running exploration in Chile under the special category recognized in the Chilean Lithium Strategy). Clean Tech Lithium, Quiborax, Lithium Chile, Grupo Errázuriz, Wealth Minerals and Eramet are other public or private companies developing potential productive projects in Chile.

## Value added tax

Sales are subject to **19% VAT**, and exports are exempt from VAT.



## Dividend withholding

**35% WHT** / Foreign investors residing in a DTT jurisdiction can claim full CIT credits, while investors resident in non-DTT countries can claim only a **65%**, meaning that: (i) foreign investors resident in DTT countries would be subject to an overall tax burden of **35%** in Chile, while (ii) non-DTT investors might be subject to a **44.45%** overall burden.



## Export duty or tax

No



## Depreciation

Tangible property (except land), such as buildings, machinery, vehicles, furniture, and equipment are subject to tax depreciation.

According to the Income Tax Law, taxpayers are entitled to opt for an accelerated depreciation regime.



## IFRS compliance

The adoption of IFRS in Chile is applicable to all processes that began in 2009 and ended in 2015 with smaller companies. Following its implementation, the primary challenges stem from the ongoing necessity to align the mandates of the local regulatory body with the stipulations set forth by the International Accounting Standards Board (IASB).



# Mexico

## Legal restrictions or considerations for exploitation of lithium

Exploitation of lithium is reserved for the State as of 2022.

There is no clarity regarding the impact of the lithium reform on ongoing projects.



## Mining tax or royalty

**7.5%** Special Mining Duty on extractive operating profits.



## Tax incentives

**30%** CIT credit on research and development investments.

Small mining companies may credit SMD from CIT.

Government announced tax incentives to lithium industry in the state of Sonora (not yet published).



## Government or State lithium strategy

Lithium exploration, exploitation and trading is managed by state-owned company LitióMx (Litio para México).

No concessions are granted to private companies. While legal provisions allow for partnerships with private companies for specific tasks, there is a lack of clear regulations defining the scope of their involvement.



## Corporate income tax

**30%** corporate income tax rate (plus **10%** employee profit sharing, capped at 3 months of the employee's salary).



## Value added tax

Sales are subject to **16%** VAT.  
Most exports are subject to **0%**.



## Dividend withholding

No WHT on local-to-local dividend.  
**10%** WHT for individuals and non-resident shareholders, that may seek for reduced WHT (0, 5, 8%) available under certain tax treaties.



## Depreciation

Depreciation for tangible fixed assets and amortization for intangible goods, based on the following annual percentages:

- Buildings: **5%**
- M&E: **10%**
- Mining M&E: **12%**
- Metallurgical M&E: **6%**
- Exploration expenses: **10%**
- Concessions: life of concession title.



## IFRS compliance

Not mandatory for tax purposes.  
Only listed companies are required to produce accounting information under IFRS pursuant to regulations issued by the National Banking and Securities Commission.



# PERU

## Legal restrictions or considerations for exploitation of lithium

Since lithium exploitation has no specific rules or regulations, the general mining regime is applicable.

The right to explore, extract, process, and/or produce minerals in Peru is granted in the form of mining and processing concessions.

The mining concessions have an indefinite term provided that (i) a minimum annual level of production or investment is met and (ii) an annual concession fee ("derecho de vigencia") is paid.

Additionally, securing a social license is a critical factor for the operation of a mining project.



## Corporate income tax

**29.5%:** Corporate Income Tax Rate

If the company has entered into a stability agreement, an additional surcharge of **+2%** will be applied. In this case, the final CIT rate is **31.5%**.



## Mining tax or royalty

The tax on operating mining income ranges from **1%** to **12%**, which must not be less than **1%** of sales and is payable quarterly.



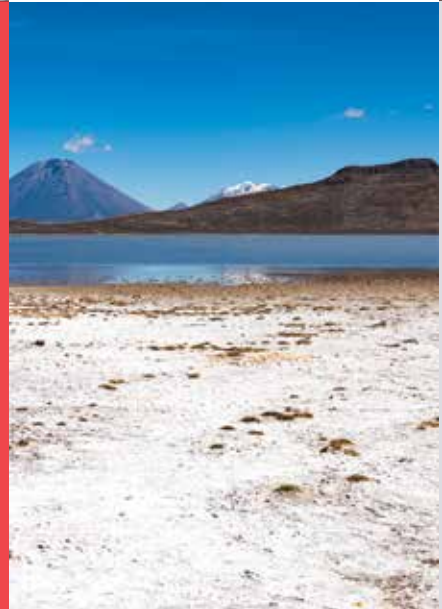
## Tax incentives

Two tax stability regimes:

Under the General Mining Law: Stability covers principally CIT, up to 10, 12 or 15 years.

Under Proinversion regulations: Stability covers CIT and the rate of tax on distributions of profits.

Another incentive is the special regime for the refund of VAT credit of pre-operative stage acquisitions.





## Government or State lithium strategy

Law 31283 published on July 16, 2021 states that exploration and exploitation of lithium is considered public priority.



## Main producers

Currently, there is only one lithium exploration project in Puno-Peru carried out by Macusani Yellowcake S.A.C.



## Value added tax

Sales are subject to **18% VAT**, and exports are exempt from VAT. Exporters are entitled to request the refund of the VAT paid on the acquisition of goods and services.



## Dividend withholding

No WHT on local-to-local dividend.

**5% WHT** for individuals and non-resident shareholders.

**4.1% and 6.8% WHT** applies to profits earned up to December 31, 2014 and from 2015 to 2016, respectively.



## Depreciation

A depreciation rate of **20%** for mining and processing equipment and **5%** for real estate is granted to mining investors who have stability agreements.

Otherwise, the general tax rules provide that tax depreciation must match accounting depreciation on the same basis (except for buildings and construction).



## IFRS compliance

The financial statements must be prepared in accordance with International Accounting Standards (IAS), which includes IFRS, as they have been made official in Peru.



# 3 IMPORTANCE OF LITHIUM IN LATAM

Lithium plays an opportunity in the Latin American economy, especially within the “Lithium Triangle,” which encompasses Argentina, Chile, and Bolivia. These nations are home to over half of the world’s lithium resources. With some of the largest lithium deposits globally, they hold a strategic position in the international lithium market as companies worldwide aim to secure lithium supplies for manufacturing lithium-ion batteries, pivotal to the burgeoning global energy transition.

Chile stands within the top global lithium producers, making it a significant contributor to its national economy. The expansive lithium brine reserves in the Salar de Atacama have drawn substantial investment from multinational corporations.

Argentina is witnessing a surge in foreign investment in its lithium sector, with the development of major lithium deposits primarily located in the Puna region, Salta province, Jujuy, and Catamarca.

Bolivia boasts the world’s largest lithium reserves in the Salar de Uyuni. Despite keen interest in cultivating







its lithium industry, the country faces hurdles related to infrastructure and the technical expertise required for large-scale production.

The significance of lithium in Latam goes beyond economic prospects, as it also plays a pivotal role in supporting local communities through job creation and economic growth. However, lithium extraction presents challenges, including the sustainable management of natural resources, environmental conservation, and respecting the rights of indigenous populations.

In conclusion, lithium presents a valuable opportunity for Latin America to enhance economic development and engage in the clean energy and electric mobility sectors. Nonetheless, these opportunities come with challenges that must be managed responsibly and sustainably.

# 4 SPECIFIC CONSIDERATIONS IN LATAM COUNTRIES

## Argentina

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Argentina has the third-largest lithium resources. Lithium is concentrated in high proportions in the salt flats of Argentina's Puna region. In 2023, Argentina nearly doubled its lithium production to 51.1 thousand tons of lithium (LCE) and has a pipeline of projects which will potentially see it rise to second place in global lithium production by 2030, overtaking Chile and China.

Mining activity in Argentina is governed by both federal and provincial regulations, because the provinces have original dominion over the natural resources in their territories. The National Mining Code establishes the guidelines for mining activity and classifies mines into three categories, considering lithium as a first-class mineral, whose exploitation can only take place under a legal concession granted by a competent authority.

At the beginning of 2021, the National Lithium Board was

created between the National Government and the Provinces of Jujuy, Catamarca, and Salta, with the aim of coordinating provincial policies related to lithium production. In October 2021, an interprovincial treaty was signed establishing the creation of the lithium mining region and a Regional Lithium Committee.

There are a number of bills in the National Congress that seek to declare lithium as a strategic mineral and create a national company to participate in lithium activity, although it is unknown if these will become law anytime soon. In addition, agreements have been promoted between the national government and several provinces for the promotion of local mining activity.

## Bolivia

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Bolivia has the largest lithium resources, accounting for approximately 25% of known global resources. The resources are mainly concentrated in the Salar de Uyuni, the Salar de

Coipasa, and the Salar de Pastos Grandes.

However, the commercial exploitation of lithium in Bolivia has faced significant challenges due to technical, financial, and political issues. Despite the Bolivian Government's efforts to develop the lithium industry, including the creation of a state-owned company, Yacimientos de Litio Bolivianos (YLB), and the search for foreign partners, such as Chinese and German companies, progress has been slow.

In 2020, the Bolivian Government announced the signing of an agreement with the German company ACI-Systems to develop lithium production, but the agreement was later cancelled due to local protests and political tensions. Since then, further efforts have been made to revive Bolivia's lithium industry.

## Brazil

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Brazil's main lithium reserves are concentrated in several states, with the Jequitinhonha Valley in Minas Gerais being the richest one, housing 85% of these reserves. The Ministry of Mines and Energy carried out projects to assess the potential of lithium in Brazil, highlighting new areas for lithium extraction. In light of growing demand, the Brazilian Government is promoting the development of lithium projects

by private companies, particularly given the high purity of Brazilian lithium.

In 2022, the lithium market in Brazil grew by 436% compared to 2021, and in 2023 lithium moved from 11th to 3rd in terms of revenue in Minas Gerais, Brazil's top mineral-producing state. This growth places Brazil as a major player in the global lithium market.

As of September 2023, Brazil has had a significant increase in investments in research for lithium exploration with 1,596 processes underway for exploration authorization and mining concession. More than 200 companies in the country are actively developing lithium projects, in addition to the two companies already operating in Minas Gerais, highlighting the presence of the Brazilian industry in the global demand for lithium.

## Chile

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Chile is the world's second-largest producer of lithium, with resources contained in the pre-Andean and Andean salt flats. The extraction of lithium from salt pit brines is currently the most common. In terms of reserves, Chile has the most with 36% of the world's lithium reserves. In 2023, lithium production in Chile was approximately 234.2 thousand metric tons of LCE, a 16% increase year-over-year.



Lithium in Chile is mined by the companies SQM Salar and Albemarle, generating around US\$5 billion in lithium taxes in 2022. Globally, lithium consumption has also increased, registering a level of 134,000 tons in 2022, a 41% increase over 2021.

According to the Budget Directorate of the Ministry of Finance, this increase in revenues may represent a challenge for fiscal sustainability, which is why a study has been carried out to determine the prudential adjustment and ensure long-term fiscal stability.

Starting in 2023, Chile has launched different initiatives in lithium through the National Lithium Strategy. This state policy is a set of measures to incorporate capital, technology, sustainability, and value addition in the productive sector, in harmony with local communities.

Recent developments in Chile include the incorporation of the State in the productive activity of the Salar de Atacama (through the negotiation of a joint venture between CODELCO and SQM until 2060); the creation of a Protected Salt Flats Network; the creation of a Public Technological and Research Institute of Lithium and Salt Flats; the initiation of a public process for companies to express interest in different salt flats in

Chile (+80 expressions of interest provided before the Ministry of Mining, from more than 50 companies and consortia, from 10 countries); bills of law seeking to modernize the institutional and permits framework; a second call for applications to select specialized lithium producers to develop value-added initiatives in Chile, among other initiatives.

## Mexico

Mexico has the 9th largest lithium resources at 1.7 million tons according to the USGS, although there is currently no commercial lithium mining. The Mexican Chamber of Mining reports 24 domestic exploration projects. However, lithium extraction in Mexico is difficult and expensive because the reserves are in clay deposits.

In 2022, the Mexican Congress approved amendments to the Mining Law to declare lithium a strategic mineral and property of the nation. With this reform, the exploration, exploitation, and commercialization of lithium will be the responsibility of a government entity called Lithium for Mexico, not allowing concessions to private companies.

This reform creates uncertainty about the future of ongoing private projects, including the most advanced in Sonora, given that the government recently canceled 9 lithium concessions.





Likewise, it is unknown to what extent private companies will be able to participate in this market, although the 2022 Reform seems to open the door for partnerships between Litio Mexico and private companies in lithium by-product projects.

## Peru

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Peru is in a favorable position in the lithium industry with potential extraction areas and deposits across the country.

The Falchani mining project stands out, whose extraction is expected to begin in the next years and with studies that estimate the existence of approximately 5.5 million tons of lithium carbonate. Falchani is projected to produce over 85,000 tons per year of lithium carbonate and the development of this

project will place Peru among the world's leading producers.

Likewise, the legislation shows an interest of the Peruvian government in the development of the lithium industry. In 2021, the Congress of the Republic has declared the exploration, exploitation, and industrialization of lithium as of public necessity and national interest, which facilitates future investments and projects in this sector.

A history and experience in the development of large mining projects, significant deposits, legal security for investors and macroeconomic stability are key points that will soon make Peru an important player in the global lithium industry.



# Argentina

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## LEGAL FRAMEWORK

Preliminarily, it should be noted that the Argentine mining regulatory framework consists of both federal (national) and provincial (local) regulations. Additionally, some matters fall under the concurrent jurisdiction of the federal government and the provinces. Therefore, unlike other activities, provincial regulations are significant when conducting mining operations. This specificity is largely because the provinces hold original ownership over the natural resources within their territories. Consequently, in addition to a general understanding of the applicable national regulations, each of the 24 jurisdictions (provinces) has its own individual regulations that complement and operate in conjunction with the national provisions. Regarding lithium mining reserves, Salta,



Catamarca, and Jujuy are the most prominent provinces.

At the federal level, mining activity is governed by the Argentine National Mining Code, as supplemented and amended (hereinafter referred to as the "Mining Code"). The Mining Code was enacted by the National Congress, as per the authority granted by the National Constitution, and applies nationwide. Depending on the minerals and the location of the mine, the mines may be the private property of the Nation or the Provinces. The exploitation by private parties is provided for in cases of legal concession for an indefinite period (i.e., discovered and/or expired and vacant mines), while the State may only exploit or dispose of the mines in exceptional cases.

The Mining Code categorizes mines into three (three) groups, as detailed below:

- ▶ **First category:** This category pertains to mines where the soil is incidental, which belong exclusively to the State, and can only be exploited through a legal concession granted by a competent authority. Notably, lithium is considered a first category mineral.
- ▶ **Second category:** This category includes mines which, due to their significance, are preferentially granted to the landowner; and mines that, due to the conditions of their deposits, are designated for common use.

- ▶ **Third category:** This category encompasses mines that belong solely to the landowner, and that no one can exploit without his or her consent, except for reasons of public utility. While it is widely accepted in legal doctrine that the exploitation of these minerals does not require authorization from the State, it is common for Provinces to also mandate some form of registration in specific registries to conduct such activities.

The Mining Code also outlines the process that individuals or entities must follow to engage in mining activities within Argentine territory, beginning with a request for authorization from the competent authority. Depending on the stage of the activity (e.g., exploration or exploitation), various requirements must be fulfilled. Mines are acquired through concessions granted by the competent authority in accordance with the Mining Code's stipulations, with concessions applicable to: (i) discoveries and (ii) expired and vacant mines.

It is crucial to emphasize that, as per section 11 of the Mining Code, mines are considered separate property from the land on which they are situated. According to section 18, mining concessions are granted for an indefinite period. Additionally, section 323 of the Mining Code specifies that mines can be sold and transferred. As a result, the discoverer of a mineral deposit (mine) can sell and transfer the rights obtained through the discovery.

# TAX CONSIDERATIONS

The Argentine taxation system is divided into three levels: federal, provincial, and municipal. The Federal Public Revenue Agency (Administración Federal de Ingresos Públicos, AFIP), a decentralized agency, is responsible for the administration, collection, and auditing of federal taxes. Under the supervision of the Under Department of Government Finance within the Ministry of Economy, AFIP administers federal taxes such as income tax, value-added tax (VAT), personal assets tax for substitute taxpayers, and taxes on bank account transactions and other similar activities.

At the provincial level, tax authorities are known as Direcciones Generales de Rentas (DGR). These entities handle the implementation, collection, and control of provincial taxes, which mainly include turnover tax, stamp tax, and royalties.

Municipal taxes, on the other hand, are managed by individual municipalities. Local governments have the power to apply, collect, and audit their own resources, primarily through rates and assessments.

## 1. Income Tax

The lithium industry in Argentina is subject to the general tax regulations applicable to all taxpayers and does not benefit from any special tax treatment. However, it is worth

noting that the Mining Investment Law offers several tax incentives, which will be discussed in section 4.2.

Income tax is imposed on income generated from Argentine sources by individuals or legal entities, irrespective of their nationality, residence, or domicile. Additionally, Argentine residents are taxed on their worldwide income.

The Income Tax Law sets progressive rates for companies ranging from 25% to 35%, depending on the taxable profit amount. The tax amount consists of a fixed tax plus a variable tax on the remaining profit, and it is adjusted annually for inflation. The current rates for fiscal years starting from January 1, 2024, to December 31, 2024, are as follows:

Accumulated net taxable income <sup>1</sup>		Will pay USD	Plus %	On the surplus of USD
From USD	To USD			
USD 0.00	USD 34,703,523.08	USD 0.00	25%	USD 0.00
USD 34,703,523.08	USD 347,035,230.79	USD 8,675,880.77	30%	USD 34,703,523.08
USD 347,035,230.79	Onwards	USD 102,375,393.08	35%	USD 347,035,230.79

Additionally, a 7% dividend withholding tax rate is applied to dividends distributed from profits accrued in fiscal years beginning

on or after January 1, 2018. This rate is applicable to distributions made to both resident individuals and foreign investors,

<sup>1</sup> The exchange rate as of January 1, 2024 was 1 USD = 810.70 ARS.



while distributions to resident corporate taxpayers are exempt from withholding. Dividends paid from profits accrued in fiscal years that started before January 1, 2018, are generally subject to a 0% dividend withholding tax rate. However, in these instances, a 35% withholding tax, known as the “equalization tax,” is imposed if the distribution exceeds the taxpayer’s after-tax accumulated taxable income.

Transactions with foreign related parties, entities located in “tax havens,” and “non-cooperative countries” are governed by transfer pricing rules. These rules mandate that transactions be conducted as though they were between independent entities, adhering to the arm’s length principle. Furthermore, regulations require the submission of transfer pricing (TP) returns and a comprehensive transfer pricing report.

## 1.1 Inflationary adjustment

Adjustment for inflation is permitted in accordance with the following rules:

- ▶ Inflation adjustment for new acquisitions and investments related to fixed assets, intangible assets, shares, and other securities made from January 1, 2018, onwards.
- ▶ Implementation of a comprehensive inflation adjustment mechanism

for fiscal years starting on or after January 1, 2018: This adjustment is required if the variation in the Consumer Price Index provided by the National Institute of Statistics and Censuses exceeds 100% during the 36-month period preceding the end of the fiscal period.<sup>2</sup>

Nonresidents are subject to income tax solely on their Argentine-source income. In such instances, the law conclusively presumes a certain percentage of the income derived from activities conducted in Argentina to be the taxable income. A 35% income tax rate is then applied to these presumed percentages of net income.

## 1.2 Deductions permitted for stock corporations and other companies

The general rule is that expenses incurred to generate, maintain, and preserve taxable income are deductible. Specific rules apply to certain deductions:

- ▶ Reserves are deductible for tax purposes only if explicitly permitted by law (e.g., allowance for doubtful accounts receivable, subject to certain conditions). Other allowances, provisions, or reserves are generally not deductible.
- ▶ Taxes levied on assets that generate income, with the exception of

<sup>2</sup> According to Laws N° 27,430 and N° 27,468 the comprehensive inflation adjustment is triggered when the variation of the Consumer Price Index, exceeds 55%, 30% and 15%, for tax years beginning on or after 1 January 2018, 2019 and 2020, respectively.

income tax itself, are deductible for income tax purposes.

- ▶ Start-up expenses incurred in establishing a business can be deducted in the year they are incurred or amortized over a maximum period of five years.
- ▶ Donations are deductible when made directly to the federal, provincial, or municipal government; the FPP (permanent funds for political parties); religious or charitable institutions; or exempt private organizations with specific objectives. The deductible amount is capped at 5% of the net income for the year.
- ▶ Deductibility of expenses related to loans, such as interest and negative exchange rate differences, is subject to limitations. The law sets a cap on the deduction of expenses from financial loans at 30% of earnings before interest, taxes, depreciation, and amortization (EBITDA) or ARS 1 million, whichever is greater. This cap can be increased annually by any unused amount from the previous three years. Additionally, if certain interest expenses are not deductible in a given year due to this limitation, they may be carried forward for five fiscal years. "Interest" includes negative foreign exchange differences. The law provides exemptions from the deduction limit in certain cases (e.g., when the interest recipient has been taxed on such income in accordance with Argentine income tax law, or when the Argentine

company is subject to income tax inflation adjustment rules, among other situations).

- ▶ Payments to foreign affiliates or related parties, companies located in "tax havens," and "non-cooperative countries" that represent Argentine source income for such entities are tax deductible in the year accrued, provided that the payment is made before the deadline for filing the income tax return; otherwise, it is deductible in the year of payment.

In addition to the specific deductions mentioned previously, other allowable deductions may include salaries, wages, commissions, director's fees, technical service fees, contributions to pension funds, and travel expenses. These deductions are subject to certain limitations and conditions.

### 1.3 Tax Losses

A net operating loss (NOL) incurred in a particular year can be carried forward and deducted from taxable income in the following five years. However, tax losses cannot be carried back to offset taxable income from previous years. NOLs resulting from the sale of shares or equity interests can only be used to offset income of the same nature. Similarly, NOLs from activities not considered Argentine source income and from transactions involving derivative agreements are restricted to offsetting income from the same type of activities, with the exception of hedging transactions.



## 1.4 Double taxation agreements

- ▶ Argentina has entered into double taxation treaties with numerous European and American countries to prevent double international taxation and to encourage mutual investment and trade.
- ▶ As a result, reduced withholding tax rates may apply when the foreign beneficiary is located in a country with which Argentina has established a treaty. However, specific formal requirements must be satisfied for these lower rates to be applicable.
- ▶ Argentina has double taxation agreements with the following

countries: Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Mexico, Netherlands, Norway, Qatar, Russia, Spain, Sweden, Switzerland, United Arab Emirates, United Kingdom, and Uruguay.

## 2. Value Added Tax

Regarding Value Added Tax (VAT), the lithium industry is subject to taxation under the general VAT rules.

VAT is applied to the following activities:

- ▶ Sale of personal property located or delivered within Argentina.

- ▶ Construction works, service contracts, and service provisions in Argentina.
- ▶ Construction works, service contracts, and services provided from abroad when their actual use or exploitation takes place in Argentina, provided that the service recipient is a registered VAT taxpayer.
- ▶ Construction works, service contracts, and service provisions performed by foreign entities in Argentina when contracted by local entities.
- ▶ Definitive imports of personal property.
- ▶ Digital services provided by foreign entities when their effective use or exploitation occurs within the country.

## 2.1 Credit and Debit System

The VAT that a company levies on its sales or service provisions is referred to as “VAT debit.” Conversely, the VAT that companies incur on their purchases of goods or services is termed “VAT credit.” Typically, companies offset their VAT credit against their VAT debit each month, submit a VAT return, and pay any resulting balance. If the VAT credit exceeds the VAT debit in a particular month, the surplus can be carried forward as a VAT credit for the subsequent month.

## 2.2 Rates

The standard VAT rate is 21%. However, this rate is increased to 27% for certain types of taxable events and reduced to 10.5% for others.

## 2.3 Export Treatment

Exports of goods and services are exempt from VAT. Exporters are permitted to counterbalance any VAT charged to them for goods or services against VAT due on other taxable transactions. Should a VAT credit result from this offset, the taxpayer may request that the corresponding amount be credited against other taxes administered by the AFIP, refunded, or transferred to other taxpayers.

## 2.4 VAT Reimbursement for Fixed Asset Investment

To qualify for reimbursement, taxpayers must possess VAT credits originating from the purchase, manufacture, preparation, or import of fixed assets (excluding automobiles), and these VAT credits must persist beyond six months. The reimbursement is contingent on the expectation that the VAT credits would have been normally utilized within a 60-month timeframe, either through VAT due on domestic transactions or through VAT refunds associated with exports. If this condition is not satisfied, the





taxpayer must return to the tax authorities the amount that did not fulfill the condition, along with any applicable interest and penalties.

## 2.5 VAT specific transactions

- ▶ Local companies are obligated to pay VAT on services provided by foreign entities when such services are economically utilized in Argentina. The VAT paid on these services can be claimed as a tax credit in the subsequent month (this is known as the reverse charge method).
- ▶ Local companies must also pay VAT on services rendered within Argentina by foreign parties. The VAT paid on these services is eligible to be claimed as a tax credit.

## 3. Stamp Tax

Stamp tax is a provincial tax levied by each of the 24 jurisdictions (including provinces and the city of Buenos Aires). It applies to acts documented in public or private instruments, such as contracts, mining concessions, deeds, acknowledged invoices, promissory notes, and securities. Additionally, it is imposed on acts documented through correspondence.

Each jurisdiction enacts its own stamp tax legislation, which is applicable within its respective territory. Instances of double taxation can occur, and currently, there is no legal remedy available to address this issue.

The tax rates differ based on the jurisdiction and the nature of the agreements executed. Below is a list of the stamp tax rates applicable in the principal lithium jurisdictions in Argentina:

Jurisdiction	Stamp tax rate FY 2024 <sup>3</sup>
Catamarca	0.00%
Jujuy	Exempt <sup>4</sup>
Salta	1.20%

<sup>3</sup> This is the general stamp tax rate since there is no specific rate or exemption aimed to the mining industry. However, different rates may apply, depending on each specific act or contract.

<sup>4</sup> General exemption granted to the mining industry if the acts directly affect the production process cost. Art 236 inc 31 Fiscal Law. Otherwise, a rate of 0.25% applies.

## 4. Mining Taxes

According to Mining Investments Law No. 24,196, jurisdictions implementing a royalty system may not charge more than 3% of the pithead price of the mined ore.

Pithead ore refers to ore that has been extracted, transported, and/or accumulated prior to any processing.

The pithead price is the value of the ore and/or metals as declared by the mining producer, representing the amount obtained from the initial stage of commercialization, after deducting direct and/or operating costs required to bring the pithead ore to that stage, excluding direct or indirect expenses and/or costs related to the extraction process.

The following costs are deductible, as applicable:

- ▶ Transport, freight, and insurance costs until the product is delivered, excluding costs associated with the ore extraction process up to the pithead
- ▶ Crushing and grinding costs, as well as processing that enhances the saleability of the final product from the mining operation
- ▶ Costs related to the commercialization of the end product
- ▶ Administrative costs associated with the delivery of the end product, excluding extraction costs
- ▶ Smelting and refining costs

All amounts related to depreciation are excluded from the deductible costs. In every instance, if the price used as the basis for calculating the pithead price is lower than the market price of the product, either locally or internationally, the higher market price shall be used as the basis for calculation.

It is crucial to note that some provinces may enter into specific agreements with mining companies, allowing deviations from the general mining regime.

## 5. Other Taxes

### 5.1 Personal assets – substitute taxpayer

The personal assets tax typically applies to assets held by individuals as of December 31 each year. For residents, it encompasses assets within and outside Argentina, while for non-residents, it only pertains to assets within Argentina.

Since 2002, there's an irrefutable presumption that shares, quotas, and other interests in the capital of Argentine companies owned by non-resident entities are indirectly held by foreign individuals, making them subject to this tax.

Argentine companies annually remit this tax on behalf of Argentine individuals and foreign shareholders (both individuals and entities). These companies may then reclaim the tax from their shareholders or partners.



The tax rate is 0.50%, based on the net equity value as of December 31 each year, according to the company's financial statement.

## 5.2 Tax on bank account transactions and other similar transactions

This tax is imposed on debits and credits in bank accounts under the Financial Institutions Law. Additionally, it applies to all cash transactions or payments made through organized payment systems as an alternative to bank accounts.

The standard rate is 0.6% for both debits and credits in bank accounts, and 1.2% for fund movements outside of bank accounts. Certain transactions may qualify for differential rates or exemptions.

The federal executive has the authority to determine if this tax can offset other taxes (either in full or in part). As of May 2018, 33% of the tax paid on bank account credits and debits can be credited against income tax.

Export collections are exempt from this tax.

## 5.3 Turnover Tax

Turnover tax is a provincial tax charged by tax authorities in each of the 24 jurisdictions (including provinces and the city of Buenos Aires). This tax is applied on revenues from the usual activities carried out for profit in business, industry, the

professions and contracts for work or services, regardless of the result of such activities, the nature of the service provider or the place where the activities are performed.

Turnover tax rates vary according to the jurisdiction and the activity involved. The general rate (applicable to commerce and services) ranges from 3% to 5%.

The rate on production activities is generally 0.75%. Higher differential rates are applied to other activities, such as loans and commissions. In case the taxpayers carry out activities in more than one jurisdiction, the company's revenues should be distributed among the different jurisdictions to pay this tax, according to the rules laid out in the Multilateral Agreement signed by the Argentine provinces.

In most jurisdictions, exports are exempt from this tax.

As mentioned in previous sections, the lithium available in Argentina is mainly concentrated in three provinces: Catamarca, Jujuy and Salta.

The rates vary according to the jurisdiction and the activity involved. It is therefore necessary to review each jurisdiction specifically. The following table lists the rates applicable to mining activities in the mentioned jurisdictions.

Export of goods in the Provinces of Catamarca, Jujuy and Salta are tax exempt.



Jurisdiction	Turnover tax rate FY 2024
Catamarca	0.75%
Jujuy	Exempt <sup>5</sup>
Salta	0.75%

## CUSTOMS CONSIDERATIONS

### 1. Tax General treatment for imports

The tax treatment for imports for consumption into Argentina includes the payment of Import Duties, Statistical Rate, Excise Tax, Value Added Tax (VAT), "PAIS" tax, and withholdings for Income Tax, VAT, and Turnover Tax.

Import duties in Argentina are assessed on an ad-valorem basis on the customs value of the goods (CIF value) and range from 0% to 35%, depending on the imported goods. Merchandise from MERCOSUR member countries (Argentina, Uruguay, Paraguay, Brazil, and other LATAM countries), with a Certificate of Origin, is exempt from import duties.

Additionally, certain goods from ALADI member countries (Latin American Integration Association), with a Certificate of Origin, may receive a duty reduction or exemption, varying by the type of good and country of origin.

The Statistical Rate is an ad-valorem rate of 3% (subject to a maximum amount) calculated on the CIF

value used for import duties. Goods from MERCOSUR countries, with a Certificate of Origin, are exempt from this rate.

VAT is an ad-valorem tax on imports for consumption, calculated on the CIF value of the imported goods, plus Import Duties and Statistical Rate. The general VAT rate in Argentina is 21%, or 10.5% for certain capital goods.

Regarding tax withholdings, VAT and Income Tax withholdings are 20% (or 10% for certain capital goods) and 6%, respectively, for imported goods intended for resale. For goods imported for company use, such as spare parts, Income Tax Withholding is 11%. Generally, fixed assets are not subject to these withholdings.

<sup>5</sup> General exemption granted to the mining industry. Art 284 inc 11 Fiscal Law.

Additionally, there is an extra provincial tax withholding for Turnover Tax, which is 2.5%.

Lastly, imports of goods are subject to a PAIS tax at a rate of 17.5% (refer to section 3.1.A.).

## 1.A Tax for an Inclusive and Solidary Argentina (“Impuesto PAIS” in Spanish)

On December 23, 2019, the Argentine Government enacted Law No. 27,541. This tax reform law introduced a new tax on certain foreign currency transactions (Impuesto PAIS), including the purchase of foreign currency for acquiring specific goods and services from abroad.

Decree No. 29/2023 (Official Gazette 12/13/2023) increased the Impuesto PAIS rate applicable to certain transactions as follows:

- ▶ The acquisition abroad of freight services and other transportation services for the import or export of goods, or their acquisition in Argentina when provided by non-residents, will be subject to a 17.5% Impuesto PAIS (previously the rate was 7.5%).
- ▶ The import of goods will be subject to a 17.5% Impuesto PAIS (previously the rate was 7.5%). It should be noted that the following imports continue to be exempt from the tax:
  - Certain goods related to the oil industry (fuels, lubricants, etc.);





- Certain goods related to the basic food basket, as established by the Ministry of Economy;
- Other goods related to energy generation.

These measures will take effect for foreign currency purchases made on or after December 13, 2023, including those intended to settle the aforementioned transactions.

In accordance with these changes, the Federal Administration of Public Revenues (Administración Federal de Ingresos Públicos or AFIP, in Spanish), through General Resolution No. 5464 (Official Gazette 12/13/2023), increased to 16.625% (previously the rate was 7.125%) the prepayment on Impuesto PAIS for the importation of goods now subject to the 17.5% tax, as per the amendment of Decree No. 29/2023.

The increase in the prepayment will apply to import declarations formalized from December 13, 2023, onwards.

It is important to mention that the rates applicable to payments for services, generally at 25%, and for imports of luxury goods at 30%, remain unchanged.

## 2. Tax General treatment for exports

An exporter in Argentina can be a company, branch, or individual

registered with Customs, and it is under this entity's name that goods are exported. Local law does not mandate that the exporter of record be the owner, seller, or buyer of the goods being exported.

In Argentina, it is permissible to conduct export transactions on behalf of third parties.

Export duties are calculated based on the free on board (FOB) value of goods as valued under the Argentine Customs Code standards. Taxes and charges imposed on exports and the CIF value of materials imported temporarily are not included in the taxable value.

Exporters of goods manufactured in Argentina that are new, unused, and sold for valuable consideration are eligible for full or partial reimbursement of any internal taxes paid during the production and selling stages.

### 2.1 Tax Treatment Applicable to the Exportation of Lithium and Lithium Carbonate

For Lithium, the Tariff Code is 2805.19.90.100C, and for Lithium Carbonate, it is 2836.91.00.000G.

Export Duties: The rate is 4.5% on the FOB value.

Export Rebate: 0% for Lithium and 1.5% for Lithium Carbonate.

# INCENTIVES

The following incentives exist in Argentina:

## 1. National Decree No. 234/2021 and National Decree N° 836/2021. “Investment Promotion Regime for Exports”

This regime encompasses investments directed towards initiating new productive projects in mining activities, among others, as well as the expansion of existing operations.

To be eligible for this regime, an “Investment Project for Export” must be presented to the application authority, requiring a direct investment in foreign currency of no less than USD 100,000,000, valued at the time of project submission.

Beneficiaries of the regime are entitled to freely use foreign currency from exports of goods associated with the project for the payment of principal and interest on commercial or financial obligations overseas, and/or for profits and dividends from closed and audited financial statements.

Additionally, enhanced benefits are available for Investment Projects that amount to USD 500,000,000.

## 2. Mining Investments Law No. 24,196, regulated by Administrative Order No. 2,686/93

This law establishes a range of benefits for companies engaged in

mining activities, excluding oil and gas, that are registered with the Mining Investment Registry. These benefits include the following:

### 2.1 Total tax burden stability for 30 years, which is determined upon presentation of the feasibility study

Investments in new mining projects and expansions of existing ones, under Law No. 24,196, are granted tax stability for a term of 30 years from the date the feasibility study is submitted.

Tax stability ensures that the tax burden of companies, as determined at the time of submitting the feasibility study, will not increase due to changes in federal, provincial, or municipal taxes and rates. This regime applies to all taxes that registered companies are subject to, including duties, tariffs, or other charges on imports or exports.

The total tax burden in each tax-related area may increase due to





the following factors, provided their effects are not offset within the same jurisdiction by the elimination or reduction of other taxes or by amendments to tax regulations that are favorable to the taxpayer:

- ▶ Introduction of new taxes
- ▶ Increases in rates or amounts
- ▶ Changes in the methodology or procedures for determining a specific tax base, establishing different guidelines or conditions than those in place when the beneficiary submitted its feasibility study, resulting in an increased tax base.

However, the following circumstances are not protected by tax stability and do not constitute a breach of such:

- ▶ Changes in the valuation of assets, when such valuation serves as the basis for the application and assessment of the tax

- ▶ Temporary extensions of existing regulations that are in effect at the time of obtaining tax stability
- ▶ Termination of exemptions, exceptions, or other measures that are applicable for a specified period and expire naturally
- ▶ Contributions by employers and employees to the Unified Social Security System and indirect taxes.

## 2.2 Double income tax deduction for exploration expenses

All amounts invested in prospecting, exploration, special studies, mineralogical and metallurgical assays, pilot plants, and other activities aimed at determining the technical and economic feasibility of projects are eligible for a double income tax deduction; however, exploration fees are not included as a deductible expense.





Exploration activities related to new mineral reserves initiated after the start of production also qualify for this benefit.

### 2.3 System for requesting VAT credits resulting from imports and purchases of goods and services for mining exploration activities

Law No. 24,196 and its administrative order stipulate that VAT credits resulting from the import of goods and services by companies engaged in mining exploration activities, which remain after 12 tax periods from the one in which they were first computed, can be refunded, subject to certain conditions.

To qualify for this benefit, among other requirements, the following must be met:

- ▶ The mining exploration activities must be conducted by taxpayers registered with the Mining Investment Registry.
- ▶ The imports and purchases of goods and services must be for use in mining activities, such as prospecting, exploration, metallurgical assays, and applied research.

### 2.4 Accelerated amortization system for income tax purposes of capital investments incurred in executing new mining projects and expanding the existing ones

Exploration expenditures, mine development expenditures, and mining acquisition costs should be capitalized and amortized.

An accelerated depreciation system applies to capital expenditures incurred in initiating new mining projects or expanding existing ones. The law prescribes the following:

- ▶ Investments related to equipment, civil construction, and infrastructure necessary for operations can be depreciated over three years as follows:
  - Sixty percent (60%) of the total amount of the infrastructure unit in the fiscal year when the facilities begin operation
  - The remaining 40% in equal parts over the next two years
- ▶ Investments in machinery, equipment, vehicles, and facilities can be depreciated over three years starting from the startup of operations.

The annual tax depreciation allowable cannot exceed the taxable income for each tax period before accounting for said depreciation and, where applicable, after factoring in net operating losses from previous years.

Any excess depreciation not accounted for in a given tax period may be carried forward to subsequent years, subject to the aforementioned limit for each year.

The duration for tax depreciation of assets must not surpass their respective useful lives.

The residual value remaining at the end of the year in which the useful life of the assets concludes may be fully deducted for tax purposes in that tax period.

## **2.5 Exemption from customs duties**

Mining companies registered with the Mining Investment Registry are exempt from paying import duties and taxes on the import of capital goods, special equipment or spare parts for such goods, and inputs considered

necessary for mining activities by the enforcement authorities. Due to this benefit, there are certain restrictions on the sale of goods imported under this system.

## **2.6 Provision for environmental expenses**

Companies must allocate a provision for environmental expenses, which is deductible from the Income Tax calculation. This provision cannot exceed 5% of the operating costs of extraction and processing.

## **2.7 Income tax exemption on income from mining contributions and rights**

There is an income tax exemption on the capital gains derived from the contribution of mines and mining rights as capital contributions in companies that carry out activities regulated by this system. Certain requirements must be met.



# FOREIGN EXCHANGE CONTROL REGULATIONS

On September 1st, 2019, the Argentine government issued Decree No. 609/2019, which mandates the entry and conversion into Argentine pesos of export proceeds in the Foreign Exchange Market ("FX Market") and directs the Argentine Central Bank ("BCRA") to establish regulations for access to the FX Market for corporations domiciled in Argentina, individuals, and non-residents. Concurrently with the decree, the BCRA published Communication "A" 6,770, introducing new rules applicable to the FX Market (the "FX Regulations"). Since that date, the BCRA has issued a series of additional communications. Below is a summary of the most relevant FX Regulations currently in effect.

## 1. Exports of goods and services

Exports of goods formalized from September 2nd, 2019, must be collected and foreign currency sold in the FX Market within i) 30 calendar days, ii) 60 calendar days (in the case of intercompany transactions regardless of the Tariff Codes of the goods exported), iii) 180 calendar days, and iv) 365 calendar days (in the case of the "Exporta Simple" Regime).

Exports of services must be sold in the FX Market within 5 business days from the collection in the country or abroad, or the deposit of the amounts in foreign bank accounts.

## 2. Intercompany loans

Financial debts received from abroad disbursed as from September 1st 2019, must be entered and settled in the FX Market if the debt (capital and interest) will be in turn paid through the FX Market. Compliance with this

requirement must be proved before the commercial bank.

The Argentine Company which receives the loan will be able to keep in its foreign account the amounts received, but it will not have access to the FX Market to cancel the debt, since the loan funds will not be entered and settled into the local foreign exchange market at the time of the disbursement.

In addition, certain restrictions were progressively introduced in order to access to the exchange markets to make payments to foreign parties. In this context, on May 28, 2020, the Central Bank issued Communiqué "A" 7,030 (as amended), which established that no payment can be made through the official exchange market if the entity holds funds over USD 100,000 abroad (for instance, in foreign bank accounts or other available funds) or if it holds locally foreign currency out of the banking system.

Additionally, the debt should be reported in terms of the Communiqué "A" 6,401.



### 3. Capital contribution

There is no obligation to enter and convert the funds in the FX Market. That is to say, the Company is entitled to keep the funds in foreign currency, hence, it is enabled to enter them into our country and credit them in local accounts in foreign currency or keep them abroad.

Therefore, if the Company maintains the deposited funds in an offshore bank account, they can be used to make payments abroad.

It is worth mentioning that if the Company does not settle the funds in the local foreign exchange market, when making a future capital reduction, the BCRA will not authorize the operation, considering that since there has been no entry of foreign currency through the FX Market, there should be no outflow of funds through such market.

It is important to note that the capital contribution should be duly registered before the Public Registry of Commerce.

### 4. Payments for imports of goods and services

Imports of goods


A "SIRA declaration" (an electronic procedure for managing the importation of goods involving AFIP, Customs, BCRA, and the Secretary of Commerce) will not be required, nor will validation in the "Single

Foreign Trade Current Account" ("Cuenta Corriente Unica de Comercio Exterior" or "CCUCE" in Spanish) be necessary.

Access to the foreign exchange market may be granted, without BCRA's prior approval, to make deferred payments for new imports of goods with customs entry registration since December 13, 2023, according to the following schedule:

- a. From the date of the customs entry registration: applicable to petroleum oils or bituminous minerals, their preparations, and their residues; petroleum gases and other gaseous hydrocarbons; unagglomerated bituminous coal; and electrical energy.
- b. From 30 days after customs entry registration: applicable to pharmaceutical products and/or inputs used in their local production, other goods related to health care or food for human consumption; and fertilizers and/or phytosanitary products and/or inputs that can be used for local production.
- c. From 180 days after customs entry registration: applicable to finished automobiles; among others.
- d. The payment schedule for the remaining assets not included in the previous points is as follows (counted from the date of the importation):
  - i. 25% from 30 calendar days.
  - ii. An additional 25% from 60 calendar days.



- 
- iii. Another additional 25% from 90 calendar days.
  - iv. The remaining 25% from 120 calendar days.
  - e. Freight and insurance: When they are part of the purchase conditions agreed upon with the seller, they may be paid in full from the first date on which the importer has access to the FFEM for the related goods.

The rule allows for earlier access to the foreign exchange market than the schedule provided in points a) to d) above in cases where the importer has some type of import financing or enters and settles foreign currency from a financial debt or advance collections/prefinancing of exports.

#### Import of services

A "SIRASE declaration" (an electronic procedure to request authorization for making payments for services abroad) will not be required, nor will validation of the operation in the CCUCE system be necessary.

Payments for services rendered by unrelated parties since December 13, 2023 (with certain exceptions) may be made after a period of 30 calendar days from the date of service provision or accrual.

Payments for services rendered by related parties since December 13, 2023 (with certain exceptions) may be made after a period of 180 calendar days from the date of service provision or accrual.

### **BOPREAL**

The BCRA has issued U.S. dollar-denominated bonds with a redemption option exclusively for importers of goods and services with outstanding debts to foreign suppliers until December 13, 2023.

Subscriptions are made in Argentine pesos at the BCRA's reference exchange rate from the business day before the subscription date, with payment in U.S. dollars upon amortization (either in full at maturity or partially) and/or with an option for

early redemption by the bondholders. The exercise of this early redemption option can only be settled in pesos linked to the U.S. dollar value.

Interest is accrued at a maximum annual rate of 5%, payable quarterly or semiannually in U.S. dollars.

There are three series of these bonds, known as BOPREALs: Series 1, 2, and 3. Series 1 and 2 have been fully subscribed, and the issuance of Series 3 is anticipated, pending BCRA's decision, to fulfill the proposed amounts.





# STATE POLICIES AND MARKET OPPORTUNITIES

At the beginning of 2021, the National Government and the Provinces of Jujuy, Catamarca, and Salta established the National Lithium Roundtable (“Mesa Nacional del Lito”). Its primary goal is to coordinate provincial policies related to lithium production, mining competitiveness, legal security, legislation, environmental impact, processes, and enforcement controls. This initiative aims to foster the development of the lithium sector.

Following the roundtable discussions, on October 5th, 2021, an interprovincial treaty was signed to create a lithium mining region within these provinces. This treaty anticipates the establishment of a Regional Lithium Committee (“Comité Regional del Lito”), consisting of the top mining authorities from the involved provinces. Additionally, the National Ministries of Internal Affairs, Productive Development (“Ministerio de Desarrollo Productivo”), and Science and Technology (“Ministerio de Ciencia y Tecnología”) were invited to participate in this committee. Its purpose is to serve as a collaborative platform between the national and provincial governments on issues such as research, production, industrialization, and commercialization of lithium.

Concurrently, various bills are under consideration at the National Congress, with many proposing the designation of lithium as a strategic resource and the establishment of a national company to engage in lithium activities. As of now, the future of these bills becoming law remains uncertain. It is also improbable that lithium will be exclusively reserved for exploitation by the national government in the near term.

Several provinces offer mining promotional regimes, which include tax incentives, among other benefits.

Through Law No. 24,228, the National Congress ratified the Federal Mining Agreement (“Acuerdo Federal Minero”), signed by the National and Provincial governments. This agreement outlines a framework for enhancing local mining activities.

In 2017, a new agreement was signed by the national government and various provinces to further this objective, incorporating additional provisions concerning mining activities. Key issues addressed include the establishment of a Mining Federal Council (“Consejo Federal Minero”), the necessity of creating special environmental funds or guarantees in the Provinces, and government investment in mining infrastructure.

The effectiveness of this new federal mining agreement is contingent upon legislative endorsement or ratification by the National Congress and each provincial legislature. To date, the agreement has not been enacted into national law by the National Congress.



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## LEGAL FRAMEWORK

Bolivia is known for producing and exporting raw materials such as ore concentrates. The primary minerals exploited include gold, zinc, silver, tin, lead, ulexite, antimony, tungsten, and copper.

Currently, Bolivia lacks a detailed legal framework for regulating the lithium industry. However, the general rules applicable to lithium exploitation in Bolivia are as follows:

- a) The Political Constitution of the State, dated February 9, 2009, outlines the management of strategic natural resources, mandating State control. While concessions to private companies are prohibited, the development of projects through contracts with private entities or the formation of joint ventures is permitted.
- b) Law N° 535 (Mining and Metallurgy Law) of May 28, 2014, classifies lithium and potassium as strategic resources. Consequently, the entire production



process for these resources is directed and controlled by the State through public, cooperative, or community entities, which may engage private companies and establish public-private enterprises.

- c) Law N° 928, enacted on April 27, 2017, established YLB to manage the lithium production chain, or at least its initial stages (basic chemistry). In subsequent phases, such as semi-industrialization and

industrialization, private companies may form alliance contracts with the State.

YLB is an entity that operates under the Ministry of Hydrocarbons and Energy.

Up to date of this document, the Bolivian government is allowing the lithium business through accidental association agreements and service contracts with private entities.

## TAX CONSIDERATIONS

### 1. Income Tax

To date, there is no specific regulatory framework for taxation on income derived from the lithium industry, so the general regime is expected to apply, which includes:

#### a) Corporate Income Tax (CIT)

Resident Bolivian companies are taxed at a rate of 25%, following the source principle. Non-resident income is also taxed at 25% on an estimated tax base (50% of the total amount).

Taxable income is the difference between gross income and allowable deductions, encompassing both ordinary and extraordinary income. Deductions are expenses incurred in generating taxable income or in conducting business to produce such income.

In general, capital gains in Bolivia are subject to CIT.

#### b) Additional rate to extraordinary profits from extractive activities

#### of non-renewable natural resources (SURTAX)

An additional 25% tax is levied on income from extractive industries. This tax is calculated after deductions of up to 33% of accumulated investment since 1991 and 45% of the gross income from each extractive operation, with a threshold of BOB 250 million per operation.

#### c) Additional Aliquot of CIT

If lithium exploitation is classified as a mining operation, an additional 12.5% is applied to CIT taxable income for exploitation activities, or 7.5% for manufacturing activities that add value.

#### d) Use of losses

Losses incurred by a Bolivian

source in one year can be carried forward to offset taxable income over the next three years. Loss carry-forwards are not adjusted for inflation.

The carry-forward period of the first year of operations can be extended to five years for projects with a minimum capital of BOB1 million. In company reorganizations, the period is four years.

**e) Other considerations regarding income taxes**

Profits from company reorganizations (e.g., mergers, divisions, or transformations) are not taxable.

**f) Double taxation treaties**

Bolivia has double taxation treaties with Argentina, France, Germany, Spain, Sweden, and the United Kingdom. It is also part of the Andean Pact, which includes a fiscal treaty with Colombia, Ecuador, and Peru.

## 2. Value Added Tax (VAT)

Local sales are subject to a 13% VAT, applied to the price inclusive of VAT. Bolivia operates a VAT output and input system. Exports are free of VAT (0% rate). VAT inputs related to exported goods can be reimbursed to exporters.

## 3. Stamp tax

Unlike some countries, Bolivia does not have a stamp duty.

## 4. Mining Taxes

Royalties in the mining sector range from 1% to 7%, depending on the operation and assets exploited, calculated on the gross sale value. The Ministry of Mining and Metallurgy sets official quotations based on the London Metal Exchange. For lithium, the royalty is set at 3% of the gross sale value.

## 5. Other taxes

**5.1 Transaction Tax (IT)** taxes gross income from economic or commercial activities at a rate of 3% monthly. Exceptions exist for investment sales and sales of minerals, oil, and gas intended for export.

Corporations pay either CIT or transaction tax, whichever is higher. CIT is an advanced payment of transaction tax, due annually, while transaction tax is due monthly. If cumulative monthly transaction tax exceeds CIT prepayments, the taxpayer is subject to monthly transaction tax until the year's end.

**5.2 Withholding taxation** applies a 12.5% tax on dividends remitted abroad, covering income repatriation and services contracted from abroad.

**5.3 Property Taxes** are levied annually on real estate and vehicles at progressive rates. Tax bands and property values are set by each municipal government, so real estate taxes vary by location.



# CUSTOMS CONSIDERATIONS

## 1. Import duties

All foreign goods, equipment, and materials entering Bolivia are subject to import taxes (VAT: 14.94%) and customs duties (0%-40%). However, there are exemptions for import duties under certain free trade agreements.

Additionally, it is possible to import certain equipment on a temporary basis, deferring and, in some

cases, avoiding duties and VAT on importation, provided the equipment is returned within a specified period.

## 2. Export duties

In general, the export of goods is not subject to duties, and it is subject to VAT at a 0% rate (which allows the refund of input VAT inputs).

# INCENTIVES

No specific incentives for lithium business. There are general, general incentives for new industries established in regions such as Oruro and Potosí, which hold the main lithium reserves in Bolivia. The legal framework for getting the benefits is:

1. Law N° 876, 25<sup>th</sup> April of 1986, describing tax exemption for any industry established in Oruro.
2. Law N° 877, 2<sup>nd</sup> May of 1986, describing tax exemption for any industry established in Potosi.
3. Law N° 967, January 26<sup>th</sup> of 1988, amending Law N° 876.
4. Law N° 2809, August 27<sup>th</sup> of 2004: amending Law N° 876.

In this regard, the following exemptions can be obtained:

1. Import taxes and custom duties related to the importation of machinery to be exclusively used for the installation and operation of the new industry. The exemption can be enjoyed during the

organization stage (two years from the date of issuance of the Tax ID

2. Import taxes and custom duties related to the importation of material. The exemption can be enjoyed for ten years and it can be used for raw material subject to a physical or chemical transformation process, as long as the said materials are not produced in Bolivia.
3. Transaction Tax on the sales. The exemption can be enjoyed during ten years during the production stage.
4. Corporate Income Tax on the incomes. The exemption can be enjoyed during ten years during the production stage, provided that

the amount of the tax released is reinvested in capital goods and creation of sources of work.

5. Property taxes. Exemption for the constructions and buildings

carried out for the operation for a period not exceeding three years, at the discretion of the respective Municipal Government and from the beginning of production stage.

## FOREIGN-EXCHANGE CONTROL REGULATIONS

Bolivia currently does not have foreign-exchange controls.

## STATE POLICIES AND MARKET OPPORTUNITIES

Lithium is an alkali metal, the lightest on Earth, and due to its high reactivity, it is not found in nature in its elemental form but only within chemical compounds.

According to some reports of United States Geological Institute, Bolivia, Argentina, Chile, Mexico, and Peru hold 67% of the world's lithium reserves. The leading global reserves of lithium in millions of tons are in Bolivia (21), Argentina (19.3), Chile (9.6), Australia (6.4), China (5.1), Canada (2.9), Germany (2.7), and Mexico (1.7). The term "lithium triangle" is commonly used to describe the lithium brine deposits beneath the salt flats in Bolivia, Chile, and Argentina. Notably, Bolivia has the largest estimated lithium resources but lacks certified reserves.

In 2017, Yacimientos de Litio Bolivianos (YLB) was established to develop advanced energy technologies. In 2018, YLB formed a joint venture with the German company ACI

Systems. However, concerns in Potosí about the partnership's duration, board composition, royalties, and contract terms led to conflict and the eventual annulment of the said joint venture.

In 2021 YLB invited international companies to participate in sustainable lithium extraction projects in the Uyuni, Coipasa, and Pastos Grandes salt flats, aiming to attract investment and expertise. Specifically, YLB invited to international companies to propose their extraction plans, sustainability commitments, and community benefits. Chinese, Russian, and American companies showed interest.

Recently, on September 11<sup>th</sup>, 2024, YLB signed an accidental association agreement with Uranium One Group (Russia) for the development of a Direct



Lithium Extraction project in Salar de Uyuni - Potosí. YLB announced that the contract should be approved by the

Congress and the estimated investment is USD976 million.





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## LEGAL FRAMEWORK

Mining legislation in Brazil is based on the Federal Constitution and the Mining Code. The Mining Code sets out the legal framework for authorizations, permits, concessions and licenses.

### Main Licenses

There are two main licenses issued by ANM: authorization for exploration and concession for mining. A description is provided below:

### Mineral Rights Licensing

#### 1. Exploration Authorization

- ▶ This authorization is to locate and define minerals deposits, also to determine economic viability of its exploration.
- ▶ Applications are made to the ANM and must include an exploration plan. Once granted, authorizations are valid for up to three years, with a possibility of extension, and an annual fee per hectare must be paid.





- ▶ By the end of the exploration work, a report must be submitted to ANM, enabling the authorization holder to request for a mining concession.
- ▶ May require a contextual EIA RIMA study, depending on how the exploration impacts the local environment.

**ANM approval**

**2. Mining Concession**

- ▶ The concession gives the rights to the holder to develop its mining operations in the mining lease subject.
- ▶ Mining concessions are issued either by MME or ANM, depending on the mineral and have an indefinite duration, valid through the total depletion of the mine.
- ▶ The rights holder must, once a year, report to ANM about the mine conditions and production status, as well as pay royalties to the federal government (CFEM).
- ▶ Requires an operating license.

**Other permits and licenses**

Environmental licensing is regulated either by the state environment agency or by IBAMA.

Mining companies that hold a mining concession must submit a plan of

retirement of the mine, which must be updated every 5 years.

Federal police and the army are responsible for certifying the importation, storage and handling of controlled explosives and chemical products.

**Environmental licensing process**

The environmental licensing process consists of three consecutive phases, each one unlocking a set of permissions for the company.

**Environmental licensing process**

**1. Preliminary license ("PL")**

- ▶ At this stage must be prepared a Social and Environment Impact Assessment ("EIA RIMA") and a plan for the restoration of degraded areas. Usually there are public hearings to present the EIA RIMA to communities and authorities;
- ▶ Environmental authority will set the environmental compensation, which is a minimum of 0.5% of the projected development investment.

**SEMAS approval**

**2. Installation license ("IL")**

- ▶ During this stage, the company must elaborate an Environmental Control Plan



(*Plan de Control Ambiental, PCA*) and other documents;

- ▶ Once the PCA is approved the IL is granted;
- ▶ With the IL the company may start the construction of the mine, plant and infrastructure. Also, the IL is a requirement to obtain the mining concession from the Minister of Mines.

IL granted

### 3. Operating license ("OL")

- ▶ Once the development and construction are ready, in

accordance with the IL and PCA, through the OL the company is authorized to mine, process and sell their production, from the environmental perspective.

### Dam safety law

ANM also regulates the dams in mining operations. Currently, the regulation prohibits upstream dams where the containment dikes are supported by the deposited tailings itself.

The mining company also must have a safety plan for the dam, which must contain, among other items, an emergency plan in the event of a disaster.





# TAX CONSIDERATIONS

Preliminarily, it is important to note that the lithium industry, similar to other mining sectors, does not possess a specialized regulatory framework and is subject to the same general tax regulations applicable to any other industry from a Brazilian tax perspective.

With this in mind, the key considerations concerning income tax, VAT, and other taxes will be discussed below. Subsequently, we will briefly examine specific taxes or regulatory frameworks that directly pertain to the lithium industry.

## 1. Income Tax

### 1.1 Corporate Income Tax (CIT) and Social Contribution Tax (SCT)

Brazilian resident companies are subject to CIT on their worldwide income. Companies resident in Brazil are those incorporated under Brazilian laws. Foreign branches, agencies, or representative offices of Brazilian companies are also subject to Brazilian tax on their income earned overseas. Generally, foreign-source losses may not offset Brazilian-source income. A foreign tax credit is available<sup>6</sup>.

The basic rate of CIT is 15%, increased by a surtax of 10% on annual taxable profits exceeding BRL 240,000 (approximately USD 48,000). Tax losses may be carried forward indefinitely but can only offset up to

30% of the company's taxable income for a tax period. No carryback is allowed. The same rules apply to SCT. Exemptions from, or reductions of, CIT are granted to businesses in certain underdeveloped areas.

In addition to CIT, SCT is imposed on worldwide income. SCT is levied at a general rate of 9%.

CIT and SCT are due on a company's taxable income, which is the net book income, as adjusted by tax law. In general, operating expenses are deductible if they are necessary, usual, and common to the company's activity; they are actually incurred; and they are supported by proper documentation.

### 1.2 Transfer Pricing Rules (Alignment towards OECD standards)

Brazilian transfer pricing rules apply only to cross-border transactions between Brazilian companies and foreign related parties. Transactions between a Brazilian company and a resident of a low-tax jurisdiction or a privileged tax regime are also subject to transfer pricing rules, even if the parties are not related.

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<sup>6</sup> A foreign tax credit is available to Brazilian companies on income taxes paid overseas. In general, the foreign tax credit is limited to the amount of Brazilian CIT and SCT on the foreign-source income. Compliance with certain formalities is required to support the foreign tax credit.



Until recently, Brazilian transfer pricing rules did not follow the OECD Model Convention or US rules. However, a new law, published in the Brazilian Federal Official Gazette on June 15, 2023, establishes a transfer pricing framework in Brazil aligned with OECD guidelines.

Law No. 14,596 of June 14, 2023 (Law 14,596/23) aims to integrate Brazil into global value chains and mitigate double taxation and double non-taxation scenarios. This new TP system will likely remove obstacles associated with tax-credit recognition in the United States (i.e., foreign tax credits) from income tax paid and/or withheld in cross-border transactions involving Brazil.

Brazilian taxpayers may opt to adopt the new TP system aligned with OECD guidelines in 2023. To do so, taxpayers must inform the Brazilian Tax Authorities (RFB) between September 1st and December 31st, 2023. The new TP system will be mandatory for all taxpayers as of January 1st, 2024.

On September 29th, 2023, the Brazilian Internal Revenue Authority (RFB) published Normative Instruction no. 2,161 that regulates Law No. 14,596/23, which deals with the new transfer pricing rules in Brazil based on the Arm's Length principle ("ALP").

The Normative Instruction ratified that the OECD guidelines ("OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration 2022") will serve as a subsidiary source for applying local transfer pricing standards and can be used by taxpayers as a reference for applying the ALP.

The publication of Law 14,596/23 and its Normative Instruction 2,161/23 are milestones for Brazil and represent a new chapter in the country's international operations. It is expected that the TP framework will attract new foreign direct investments and help integrate Brazil into global value chains. This change affects the operating models of multinationals with a presence in Brazil.

Regarding the transfer pricing specific analysis for commodities, the new model indicates that the Comparable Uncontrolled Price (CUP/"PIC") method would be the most appropriate according to Brazilian Law 14596/2023 and the Brazilian Normative Instruction 2161/2023. When discussing the application of the PIC method, the Normative Instruction paid special attention to transactions involving commodities, providing definitions of the products that fall into this category, as well as the quotation price that can be used to apply the method. It indicated that prices from recognized and reliable global sources, such as commodity exchanges, research agencies, or government agencies, and which are widely and routinely used in pricing by unrelated parties, will be accepted as a reference.

If there is reliable information, whether from external comparables (stock exchange quotes, publications, or agencies) or internal, the IN indicates that the PIC method will be considered the most appropriate, which will not happen when the taxpayer can demonstrate that another method would present a result more in line with the Arm's Length principle. A good example of this situation occurs when





public prices are not appropriate for transfer pricing control, as in the case of quotes from stock exchanges with low liquidity.

This aspect is particularly relevant to the mining industry since minerals (such as lithium) are commonly classified as commodities under the transfer pricing perspective. However, it is not quite clear if lithium follows the commodity definition since it can be traded in different stages of industrialization, so a deeper analysis would need to be done. Thus, if lithium is stated as a commodity, the PIC method will be most appropriate to be applied.

## 2. Value Added Tax (VAT)

Currently, there are five types of value-added tax in effect in Brazil: Social Integration Program (“PIS”), Social Security Financing Contribution (“COFINS”), State value-added tax (“ICMS”), Federal value-added tax (“IPI”), and Municipal Tax on Services (“ISSQN”).

The Gross Receipt Contributions (PIS/COFINS) are social contributions based on turnover, levied on companies’ gross revenue monthly. Exports are not subject to PIS/COFINS.

Social Integration Program (PIS) tax is levied on gross income at a rate of 1.65%. The tax is non-cumulative<sup>7</sup> (VAT-type) for certain taxpayers. Certain companies are subject to the cumulative regime and make the contribution at a 0.65% rate. The tax is also levied on imports of goods at a rate of 2.1% and on services at a rate of 1.65%, in most cases. However, for certain imported goods, different effective rates apply. In certain cases, the rate might be reduced to 0%.

Social Security Financing Contribution (COFINS) is levied on gross income at a rate of 7.6%. The tax is non-cumulative (VAT-type) for certain taxpayers. Certain companies are subject to the cumulative regime and make the contribution at a 3% rate. The tax is also levied on imports of goods at a rate of 9.65% and on services at a rate of 7.6%, in most cases. However, for certain imported goods, different effective rates apply. In certain cases, the rate is reduced to 0%.

State value-added tax (ICMS) is managed by individual states in Brazil. The states set the level of taxation, but the Brazilian federal government may set the minimum rate (rates ranging from 0 to 35% for supplies in the same state - the standard rate in the Southeast states is 18% - and 4%, 7%, or 12%, for supplies made to a taxable person in a different state). ICMS applies to the following transactions carried out in Brazil,

even if the transaction begins abroad: (i) the circulation of goods, (ii) the importation of goods, (iii) the supply of transportation between states and between municipalities, (iv) the supply of communication services, and (v) the supply of electricity. Exports of manufactured goods and raw materials are exempt from ICMS.

Federal excise tax (IPI) is charged by Brazil's federal government on national and foreign "finished goods" (rates ranging from 0% to 300% depending on the IPI tariff table classification for goods). "Finished goods" are goods produced as a result of an industrial process, even if the process is incomplete, partial, or intermediary. The mere extraction of minerals is not subject to IPI, once it is considered a raw material and not a finished good.

Municipal Tax on Services (ISSQN) is a form of sales tax payable to municipalities in Brazil (rates ranging from 0% to 5% depending on the municipality and nature of service). It applies to the supply of any service that is not otherwise taxable by state authorities (ICMS). The general list of taxable services is outlined in federal law (complementary law). A foreign company providing services outside Brazil in full for the benefit of a Brazilian recipient may be subject to ISSQN (withheld by the Brazilian entity) even if a nonresident pays for the services.

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<sup>7</sup> PIS/COFINS taxpayers who use the noncumulative system are entitled to calculate PIS/COFINS credits to offset PIS/COFINS payments.

## 2.1 VAT credits recovery

PIS and COFINS taxpayers who adopt the noncumulative system are entitled to calculate PIS and COFINS credits to offset PIS and COFINS payments. Credits are limited to certain costs<sup>8</sup>. For PIS/COFINS, the company can keep the whole amount of credits that were recovered when the inputs were purchased and certain services taken. However, for IPI and ICMS, when selling a product that is exempt, the company must reverse the amount of credits related to such items (except when exporting). To measure the value of credits that can be accounted for, the company must calculate the percentage of taxable revenues over the total revenue.

An ICMS taxpayer may also recover the tax levied on inputs (that is, obtain a credit) for VAT charged on goods and services supplied to it that were subject to another taxable transaction. An ICMS taxpayer generally recovers the tax levied on inputs by deducting it from the one levied on outputs.

IPI taxpayers deduct IPI levied on inputs from the IPI charged on outputs. The rules are similar to those that apply to ICMS.

For ICMS and IPI purposes, taxes levied on inputs may not be recovered on purchases of goods and services that are not used for business purposes (for example, goods acquired for private

use by an entrepreneur or general overhead costs) or on goods acquired before registration as a regular taxpayer.

If the amount of the recoverable tax levied on inputs exceeds the amount of tax levied on outputs, the excess is generally not refunded. However, the excess may be used to offset tax payments in the following months or may be transferred in certain cases to a third party in exchange for payment. This transfer, though, is only allowed for ICMS purposes.

ICMS tax refunds are a special concern for the mining industry since the export of raw materials is exempt or not subject to taxation. Once the majority of the sector's operations are destined abroad and considering that ICMS credits can be maintained by taxpayers in case of exportation, the downside is that credit volumes accumulate without being able to be adequately compensated. In this regard, the only alternative that arises is the transfer of credit to a third party, usually applying a discount. However, not every federal state allows this kind of transfer. Those that do present certain legal restrictions and bureaucratic procedures.

In the case of PIS and COFINS, the credit accumulation is usually mitigated by the fact that there is a legal provision for compensation with other federal taxes (such as CIT and SCT).

<sup>8</sup> PIS and COFINS legislation allow taxpayers to deduct credits on certain expenses, such as the purchase of raw materials. The concept of raw materials has been discussed over a number of years, but in 2017 a court decision ruled that all expenses that are connected to the production process and are considered relevant or essential to perform the manufacturing process shall be considered as expenses with the right to deduct the credits of PIS and COFINS.





## 2.2 VAT tax reform

Notoriously ranked as one of the most complex tax systems in the world, Brazil's legislative framework for indirect taxes will undergo significant amendments in the coming months.

Although the expectation is that this change will bring major simplifications compared to the current system, the new tax system will promote a wide range of changes in the market, with changes in tax burden and product pricing with a potential decrease in the "weight" of tax factors on allocation decisions and productive investments.

As proposed in PEC 45, the new tax model will work by replacing the current five VAT taxes (PIS, COFINS, ICMS, IPI, and ISSQN) with only two (IBS and CBS) followed by an excise tax.

One of the major aspects that affect the mining industry is the change in the credits accumulation that will be addressed by a prompt refund granted by a Federal Council.

The PEC 45 has already been approved by the House of Representatives and Senate. Although the legislation provides for the premises, main pillars, and an 8-year timeframe for the reform to be fully implemented, it is still pending regulation, which is expected to be carried out within the next 6 months.

## 3. Stamp Tax

There is no Stamp Tax in force in Brazil.

## 4. Mining Taxes

Financial compensation for Mineral exploration (CFEM) was created by the 1988 Federal Constitution, in article 20, §1<sup>o</sup>, as a way of guaranteeing the state restitution for the exploited resources.

Payment of this compensation is due by every mineral rights holder, which carries out mining activities and will

be collected on the occasions listed as follows:

- (1) The first exit due to the sale of mineral assets;
- (2) The act of auction, in cases of mineral assets acquired at public auction;
- (3) The act of first acquisition of a mineral asset extracted under the mining permit regime; and
- (4) The consumption of mineral goods.

The rates applicable to CFEM are set in the Annex of Law 13.540/2017. In the specific case of lithium mineral exploration, the appropriate rate is 2% (two percent) according to the following table<sup>10</sup>:

Rate	Mineral Substance
1% (one percent)	Rocks, sand, gravel, gravel and other mineral substances when intended for immediate use in civil construction; ornamental rocks; mineral and thermal waters
1.5% (one whole and five tenths of a percent)	Gold
<b>2% (two percent)</b>	<b>Diamond and other mineral substances</b>
3% (three percent)	Bauxite, manganese, niobium and rock salt
3.5% (three whole and five tenths percent)	Iron, observing letters b and c of this Annex

Finally, it is worth mentioning Bill No. 4367/2023, which is currently under consideration in the House of Representatives. This bill aims to

authorize the union to establish the lithium social fund and proposes to increase the applicable CFEM rate to 4%. However, it should be noted that

<sup>9</sup> Furthermore, the aforementioned 2% rate will apply to the following operations:  
 (1) In the sale, on the gross revenue from the sale, deducting the taxes levied on its commercialization;  
 (2) In consumption, on the calculated gross revenue, considering the current price of the mineral good, or its similar, in the local, regional, national or international market, as the case may be, or the reference value, defined based on the value of the final product obtained after completion of the respective processing process;  
 (3) In exports, on the calculated revenue, considered as a calculation basis, at least, the parameter price defined by the Brazilian Federal Revenue Secretariat of the Ministry of Finance, based on article 19-A of Law No. 9,430, of December 27, 1996, and in the complementary legislation, or, in the event of no parameter price, the reference value will be considered, observing the provisions of §§ 10 and 14 of this article;  
 (4) In the case of mineral assets acquired at public auction, on the auction value; or  
 (5) In the event of extraction under the mining permit regime, on the value of the first acquisition of the mineral asset.



the bill has not yet been scheduled to complete the legislative process.

In addition to CFEM, it is also important to note that in some states, such as Minas Gerais, Mato Grosso, Pará, and Amapá, there is a fee charged by state governments for the monitoring and auditing of mining activities. This fee is not levied for the extraction itself but for the oversight of the mining operations.

Created based on article 23, XI, of the Federal Constitution, the TRFM has had its constitutionality affirmed by the Supreme Court in ADI 4785, and its calculation basis is the volume of ore extracted.

However, the revenue generated from the TRFM is generally minimal

compared to the scale of the operations. For instance, in the state of Minas Gerais, article 7th of Decree No. 45,936/2012 specifies that the rate will be 1 (one) UFEMG (Federative Unit) per ton extracted, which equates to approximately R\$ 5.04 per ton in 2023, according to resolution 5,630/2022.

Lastly, the TFRM is directly related to the choice of the State where the operation is located, and the calculation basis, rate, incidence, and triggering event may differ.

## 5. Other Taxes

There are no other applicable taxes in Brazil.

# CUSTOMS CONSIDERATIONS

## 1. Capital Expenditure (CAPEX)

- ▶ **Ex-Tarifário** - This regime consists of a temporary reduction in the import tax rate for capital goods, as well as computer and telecommunications goods, classified under the Mercosur Common External Tariff (TEC) as BK or BIT. This reduction applies when there is no national equivalent production. Standard BK or BIT rates are typically 14% (though they can vary from 12% to 18%), and the benefit may reduce the rate to 0%, representing a significant cost saving in transactions. The concession of this regime is regulated by Ministry of Economy Ordinance No. 512/2023. The Import Tax reduction granted will be valid for a set period, determined at the Government's discretion (usually up to 2 years), and is subject to renewal. Once granted for specific equipment, any company can import said equipment with the benefit, regardless of which company initiated the Ex-Tarifário request, as the benefit is tied to the equipment, not the requester. Imported products must match the exact configuration described in the Ex-Tarifário. Generally, Ex-Tarifários are approved within 3 to 4 months.





- ▶ **Special Regime of Capital Assets Acquisition for Exporting Companies (RECAP) -** Established by Law 11,196/2005 and regulated by Decree No. 5.649/05 and Normative Instruction No. 1.911/2019 from the Federal Revenue Service, this regime ensures that primarily exporting taxpayers are granted a suspension of PIS/COFINS taxes on the import and domestic acquisition of new Capital Assets, as specified (by NCM) in the Single Annex of Decree No. 5.789/06.
  - ▶ **Special Tax Regime for the Renewal and Expansion of Port Structures (REPORTO) -** This regime permits the suspension of Import Tax, Tax on Industrialized Products, PIS/PASEP-Import, and COFINS-Import on the importation of machinery, equipment, spare parts, and other goods. Beneficiaries of the regime must use these items exclusively in their fixed assets for services related to: I - loading, unloading, storage, and movement of goods and products; II - supplementary operational support systems; III - environmental protection; IV - security and monitoring systems; V - dredging; VI - worker training, including the establishment of Professional Training Centers. After 5 years from the event generating the suspension, the Import Tax and Tax on Industrialized Products are exempted (per art. 473 of the Customs Regulation and art. 3 of IN RFB No. 1,370/2013).
  - ▶ **CONFAZ Agreement No. 52/1991 -** Through this agreement, Brazilian states have consented to grant a fiscal benefit of ICMS tax base reduction for transactions involving the acquisition of industrial machinery, devices, and equipment listed in Annex I of the Agreement. The benefit effectively reduces the ICMS tax base to an 8.80% tax burden (dependent on the NCM/HS Code). For internal transactions and imports, the tax burden will be 8.80% or 5.14%. This tax advantage can be automatically applied by the taxpayer without prior authorization from the Tax Authorities, provided the good's NCM code is included in the agreement. However, the CONFAZ Agreement No. 52/1991 must be cited in the "additional information" field of the invoices related to this type of transaction.
- ## 2. Operational Expenditure (OPEX)
- ▶ **Drawback -** As stipulated in article 383 of Decree 6.759/09 and regulated by SECEX Ordinance No. 208/2022 and the RFB/SECEX Joint Ordinance No. 467/10, this regime offers the possibility of exemption or suspension of federal taxes on the import and domestic acquisition of inputs used entirely in manufacturing or packing materials for products destined for export. The suspended taxes



for imported inputs include Import Duty, PIS, COFINS, and IPI, and for domestic acquisitions, PIS, COFINS, and IPI. AFRMM is also suspended for input imports under this regime. Upon granting the regime, the Foreign Trade Office - SECEX will issue a Concession Act, indicating the approved imports, domestic acquisitions, and export balances to be adhered to within one year, extendable by another year. ICMS suspension is also permitted on imports under the “integrated suspension” modality, by virtue of ICMS Agreement 27/1990.

- ▶ **Industrial Warehouse Under Computerized Customs Control**  
- RECOF SPED: This special customs regime allows companies to import or acquire domestically with suspended taxes (Import Duty [II], IPI, PIS, COFINS, AFRMM, and ICMS [only in the states of São Paulo (SP), Rio de Janeiro (RJ), and Parana (PR)]) goods for use in the industrial process, whether for export or domestic sale.
- ▶ **Mainly Exporting Company**  
- “EPE”: This tax incentive from the Brazilian government allows companies to apply for classification as a Mainly Exporting Company. This status suspends PIS, COFINS, and IPI on the import and domestic acquisition of raw materials, intermediate products, and packing materials that will be part of the manufacturing process for

future exports. PIS and COFINS are also suspended on the freight for transporting these materials and the final products for export by companies registered under the Special Regime. To qualify, a company must derive at least 50% of its gross revenue from export activities in the preceding calendar year, excluding taxes and contributions on sales.

### 3. CAPEX & OPEX

- ▶ **Export Processing Zones (ZPE)** - Created by Decree Law No. 2,452/1988, superseded by Law No. 11,508/2007, and amended by Law No. 14,184/2021, which established the new Legal Framework for Export Processing Zones aimed at reducing regional disparities and promoting economic and social development. ZPEs are free trade areas with foreign countries, intended for companies producing goods for export. Under article 6 of the aforementioned Decree, companies in these zones benefit from the suspension of Import Duty (II), Federal VAT (IPI), Social Contributions (PIS/COFINS, as well as PIS Import and COFINS Import), and AFRMM on local acquisitions of goods and services, as well as imports. These benefits are valid for 20 years from the authorization of the company's installation in the ZPE, with the possibility of an equal extension period.



## INCENTIVES

The Brazilian government has enacted legislation offering tax incentives to encourage research and development (R&D) activities and boost investments within the country. The main programs applicable to R&D expenses, as well as the acquisition of CAPEX (machinery, apparatus, instruments, and equipment) and OPEX (operating expenses or expenditures), are outlined below. Additionally, local state incentives are detailed, along with a new tax framework currently under discussion in the state of Minas Gerais.

### 1. R&D deduction (Law 11,196/2005)

Taxpayers in Brazil can benefit from a super deduction ranging from 160% to 200% on eligible R&D expenses. The “standard” super deduction allows

for 160% of qualifying R&D expenses. If a company increases its number of contracted researchers within a calendar year compared to the average number in the previous year, the super deduction rate increases accordingly. An increase of up to 5% in contracted researchers grants an additional 10%

deduction (totaling 170%), while an increase above 5% provides an extra 20% deduction (totaling 180%). Furthermore, registering intellectual property (IP) in Brazil entitles the company to an additional 20% deduction.

The R&D deduction applies to expenses incurred by Brazilian entities. Contract research or greenfield investments typically do not qualify. Unused R&D deductions are not eligible for carryforward or carryback. Taxpayers must present tax clearance certificates to the authorities to receive the R&D deduction, but no preapproval process is necessary.

Eligibility for the R&D deduction extends across all industries. As defined under Law No. 11.196/2005, technological innovation encompasses the creation of new products or manufacturing processes, as well as enhancements that add new features or characteristics to existing products or processes, leading to quality improvements, productivity gains, or increased market competitiveness.

In general, innovation activities that qualify for tax benefits relate to scientific and technological efforts undertaken by taxpayers in the development and execution of products and/or processes that result in productivity enhancements and incremental improvements. Qualifying expenses include payroll, materials, machinery, equipment, raw materials for testing, and certain local costs directly associated with R&D activities in Brazil. Third-party costs are also eligible, subject to specific regulations for obtaining the incentive.







Additionally, taxpayers may receive a reduction in the federal excise tax (IPI) for eligible R&D activities. The IPI reduction offers a 50% discount on the tax levied on imported instruments, equipment, machinery, apparatus, and tools used by Brazilian companies for R&D activities in Brazil. To benefit from the IPI reduction, taxpayers must claim the incentive at the time of acquisition.

Legislation also allows for a super deduction of up to 250% for eligible expenses on innovation projects carried out by Scientific and Technological Institutions (ICT)<sup>10</sup>, as further detailed in the enactment of Decree No. 9.283 in February 2018.

## 2. Accelerated depreciation (Law 11.196/05)

R&D legislation permits companies to accelerate depreciation for tax purposes on R&D assets. A 100% depreciation rate is available for eligible R&D assets in the same year of acquisition.

Accelerated depreciation applies to current investments. The R&D deduction is claimed through the income tax return filed in July of the following year.

## 3. ICMS Special Regime

State VAT (ICMS) is levied on the circulation of goods and the provision of certain services. Since ICMS is a state tax, each state enacts its own legislation to define applicable rates and criteria for charging ICMS. Consequently, states can establish special regimes based on their legislation. From our experience with previous cases, we have assisted companies in successfully obtaining deferral, suspension, or exemption of ICMS on their acquisitions across various Brazilian states. The feasibility of securing a special regime varies according to the tax authorities. It is noteworthy that EY maintains strong relationships with State Secretaries and can guide companies in securing these benefits.

## 4. Lithium Mining and Industrial Hub in the Jequitinhonha and Mucuri Valleys

In Minas Gerais, a bill is under consideration that proposes the establishment of a lithium mining and industrial hub in the Jequitinhonha and Mucuri valleys. This is bill No. 1,992/2020, which aims to bolster the

<sup>10</sup> Scientific and Technological Institutions are entities of the direct or indirect public administration, or private nonprofit legal entities legally constituted under Brazilian laws, aiming to use the basic or applied scientific or technological research for the development of new products, services and processes. Innovation projects must be previously authorized by a permanent committee formed by members of the Ministry of Science, Technology and Innovations; Ministry of Development, Industry, Global Trade and Services; and the Ministry of Education. This tax incentive cannot be cumulated with the "standard" super deduction of 160% to 180% mentioned above.

lithium mining and industrial production chain and promote the exploration, processing, and commercialization of industrialized products derived from lithium.

The bill includes provisions for awarding a special tax regime to companies establishing processing and production

facilities in the municipalities of the region.

The proposal is currently under review by the environment and sustainable development committee and is awaiting an opinion, with no immediate expectation for a vote or approval.

## FOREIGN EXCHANGE CONTROL REGULATIONS

As a general rule, all foreign investments, including equity and debt investments, must be registered with the Central Bank of Brazil (BACEN) to ensure the payment of dividends, principal, interest, or the repatriation of capital. Nonresidents who hold assets and rights in Brazil, such as equity investments, portfolio investments, and debt investments, are required to register with the Brazilian tax authorities. Upon registration, nonresidents receive a tax identification number (CNPJ for entities or CPF for individuals). Noncompliance with foreign-exchange regulations and associated requirements can result in significant penalties, particularly in cases of evasion, false statements, and unauthorized offsetting transactions.

Contracts involving the supply of technology and technical services with technology transfer, as well as the use of trademarks and patents between residents and nonresidents, must be registered with the National Institute of Industrial Property (INPI). Additionally, for Brazilian companies to pay and

deduct royalties up to the legally prescribed amounts, registration under the Financial Operations Registration - ROF module of the Electronic Declaratory Registration (RDE) within BACEN's electronic system (SISBACEN) is also required.



# STATE POLICIES AND MARKET CONSIDERATIONS

## 1. Lithium Regulatory Overview and Current Situation

Since 2021, in response to the growing demand for lithium and other minerals critical to the energy transition, the Ministry of Mines and Energy has designated lithium as a strategic mineral through the enactment of Decree 10,657/21. This decree supported the development of the National Mining Plan 2050 and facilitated a reduction in the bureaucratic processes associated with the extraction and trading of minerals. Previously, the industrialization, import, and export activities of such minerals were regulated by the guidelines of the National Nuclear Energy Commission.

Subsequent regulatory measures over the following years have continued to alter the landscape of the lithium regulatory market, as detailed below:

This area holds most of the country's lithium reserves, and the anticipated lithium production is expected to create more than 7,000 direct jobs in mining, along with over 84,000 direct and indirect jobs throughout the production chains.

## 2. Decree 11,120

On July 6, 2022, Decree 11,120 was published, marking an important milestone for the Brazilian lithium market. This decree authorizes foreign trade operations involving lithium minerals, ores, and their derivatives.

Its main objective is to boost the opening and development of the national lithium market, aiming to make Brazil more competitive globally and to attract investment in research, mineral production, beneficiation, and the production of components and batteries, encompassing the entire lithium value chain.

As a result, the Ministry of Mines and Energy expects investments exceeding USD 2.9 billion in the Jequitinhonha Valley region of Minas Gerais by 2030.

## 3. Lithium Mining and Industrial Cluster - Bill 1,992/20

Despite its potential for lithium extraction, the Jequitinhonha and Mucuri Valleys house approximately 49% of the population living in poverty or extreme poverty, according to data from the Brazilian Institute of Geography and Statistics (IBGE). The area suffers from limited investments, a low Human Development Index (HDI), and a lack of economic diversification.

Measures are being studied by the state of Minas Gerais. Bill 1,992/20 aims to establish the Lithium Mining and Industrial Cluster in the Jequitinhonha



and Mucuri Valleys, creating a conducive environment for investment and sustainable growth. The bill proposes the creation of an industrial cluster to strengthen the lithium value chain, a special tax regime, and a set of government guidelines to further incentivize and fund initiatives.

## 4. Lithium Valley

In May 2023, Brazil launched the Lithium Valley Brazil initiative, marking its entry into the global lithium market race. Led by the government of Minas Gerais state and the Ministry of Mines and Energy, this initiative aims to attract international investments for lithium exploration in the state's northern region, which holds Brazil's largest lithium reserve. Several mining companies, including Sigma Lithium, Atlas Lithium, Lithium Ionic, and Latin Resources, are already active in the region. This development is expected to boost the Brazilian automotive industry and reduce reliance on imported lithium.

## 5. Brazilian National Bank for Economic and Social Development

Additionally, government policies are being considered to support

the sustainable development of the lithium supply chain. The Brazilian National Bank for Economic and Social Development (BNDES) announced the launch of a USD billion green bond fund to support the exploration of strategic minerals in Brazil. The fund will raise money abroad and invest in projects that enhance the mining industry and help Brazil achieve its goal of becoming a global leader in the production of critical minerals.

## 6. Expected investments

According to IBRAM, the Brazilian mining industry plans to invest around USD 50 billion in the next five years (2023 to 2027), in a range of initiatives, including ESG, strategic minerals, logistics, and others.

## 7. Bills

It is also relevant to mention that certain tax reform bills are being discussed in Brazil. The most advanced bill, approved by the House of Representatives but still pending in the Senate, proposes reducing the CIT from 34% to 26% (potentially 27%, depending on other factors under discussion). The likelihood of this bill's approval in 2023 is uncertain.



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## LEGAL FRAMEWORK

Currently, in Chile, there are two distinct legal regimes applicable to lithium mining.

Initially, under Decree Law No. 488 published on August 27, 1932, which approved the Mining Code of 1932 (currently repealed by the current Mining Code of 1983), Article 3 of this code allowed any interested party to apply for and obtain the right to explore and exploit various minerals, including lithium.

However, in 1979, lithium was constitutionally declared of national interest and categorized as a non-concessional mineral reserved primarily for the State of Chile. This significant shift was reinforced under Article 19 No. 24 of the Political Constitution of the Republic of Chile of 1980, which asserts the State's absolute, exclusive, inalienable, and imprescriptible ownership of all mines. This provision also mandates that the law shall regulate methods for exploring, exploiting, and deriving benefits from these mines.



Then, the current Mining Code of 1983 (Law 18.248 of 1983) (“Código Minero” or “CM”), specifically in Articles 7 and 8, establishes that lithium is a mineral not subject to mining concessions and may be explored and exploited directly by the State or its companies, or through administrative concessions or special operating contracts. Consequently, the current lithium statute in Chile (after 1979) outlines three primary methods for lithium exploitation:

- ▶ By the State or its companies;
- ▶ Through an administrative concession; and
- ▶ By a special operating agreement (*Contratos Especiales de Operación del Litio*, CEOL).

CEOLs are special contracts in which the State of Chile, represented by the Ministry of Mining, authorizes a third party to explore, exploit, and benefit from lithium deposits. These contracts are granted based on conditions and requirements established by the

President of the Republic on a case-by-case basis.

The latter, in accordance with article 5 letter i) of Decree with Force of Law No. 302 of 1960, which provides the responsibility of the Ministry of Mining to sign on behalf of the State, following a favorable report from the Council of the Chilean Copper Commission, with the requirements and under the conditions that the President of Chile establishes by supreme decree, the CEOLs.

Considering all of the above, in Chile, there exist two parallel regimes for lithium exploitation: the concessions granted before 1979 and the concessions and contracts granted after that date.

Furthermore, it is important to note that since 1976, lithium was declared as of “nuclear interest.” Consequently, the sale of the mineral is subject to the control and authorization of the Chilean Commission of Nuclear Energy (*Comisión Chilena de Energía Nuclear*, CCHEN).

## TAX CONSIDERATIONS

### 1. Income Tax

#### 1.1 Corporate Income Tax

In general, a Corporate Income Tax (CIT) rate of 27% is applied to annual net income earned. Under the Partially Integrated Regime, shareholders, owners, or partners of entities subject to CIT will be taxed only on the effective distribution of dividends or profits. Such shareholders, owners, or partners will be subject to the final taxes, i.e., the Additional Tax (AT) at a 35% rate, in the case of foreign residents; or the Global Complementary Tax (GCT) at progressive rates up to 40%, in the case of Chilean resident individuals.



## 1.2 Dividend Taxation

In Chile, the distribution of dividends or profits among Corporate Income Tax (CIT) taxpayers does not attract additional CIT. For dividends or profits distributed to foreign shareholders, owners, or partners of Chilean entities subject to CIT, an AT with a rate of 35% is generally applied. On the other hand, distributions to Chilean resident shareholders, owners, or partners are subject to Global Complementary Tax (GCT).

Under the CIT regime, the CIT paid by the entity distributing the dividends or profits can be credited by those liable for AT or GCT. Typically, 65% of the CIT paid by the distributing entity is creditable against the AT or GCT due. As a result, the overall tax burden on such income would be 44.45%.

However, in the case of foreign shareholders, owners, or partners resident in a country that has a double taxation treaty in force with Chile (DTT Country), 100% of the CIT paid over the distributed dividends or profits would be available as a CIT credit if: (i) they qualify as a tax resident in a DTT Country and can obtain a tax residence certificate from the tax authorities; (ii) they are not considered a fiscally transparent entity; and (iii) they are the beneficial owner of the dividends.

## 1.3 Tax Losses

Losses derived from the commercial activities of the Chilean entity in the relevant commercial year may be deducted as an expense for tax purposes. Accumulated tax losses,

duly adjusted by inflation, may be carried forward indefinitely. If there is a qualified change of ownership, the accumulated tax losses may not be deducted from income generated after the ownership change unless certain conditions are met. No qualified change of ownership occurs between entities belonging to the same economic group. The Chilean Tax Authority (Servicio de Impuestos Internos, SII) and Supreme Court rulings have also established that tax loss audit faculties to be exercised by the SII are not subject to any statute of limitations.

## 2. Value Added Tax

In general, VAT is levied on the recurrent sale of movable property, certain fixed assets, or even real estate assets (excluding land), services regardless of their recurrence, imports, and other transactions, at a 19% rate.

Starting January 1, 2023, VAT on services has been expanded to include all types of services, unless they are expressly exempt.

The acquisition of goods, services, and imports that are subject to VAT entitles the buyer or recipient to a VAT credit, provided they are involved in selling goods or providing VAT-liable services. This VAT credit is equivalent to the VAT detailed in invoices for goods acquired, services utilized, imports, or other VAT-liable transactions.

When such a taxpayer sells VAT-liable goods or services, the VAT charged on these sales is recorded as a VAT debit. This debit can be offset against any accumulated VAT credit. According to





VAT methodology, VAT credits are used to offset VAT debits. If there's a positive difference, it represents the VAT payable. Any remaining VAT credits after this offset can be carried forward indefinitely.

### 3. Stamp Tax

In general terms, all documents evidencing monetary credit operations are subject to Stamp Tax (ST) at the time of their issuance. Monetary credit operations consist of the delivery or commitment to deliver an amount of cash, and the commitment by

the recipient to reimburse it at a different time. Foreign monetary credit operations, even if there is no document, are subject to ST.

ST is levied on the principal amount established in the corresponding documents. The rates are: (i) 0.066% of the principal for each month or fraction thereof between the issuance of the loan and its maturity, capped at 0.8%; (ii) 0.332% on the principal in the case of loans repayable on demand or without a specific maturity date. ST is paid once per loan, in general.

Stamp Tax is an allowed expense for CIT purposes.



## 4. Mining Taxes

### 4.1 Mining Patent

An annual fee is required to keep the mining properties in good standing.

In the case of exploration concessions, the amount of such patent for each full hectare will be equivalent to three fiftieths (3/50) of a monthly tax unit (approx. USD 4) for each year the concession is granted.

In the case of the exploitation concession, the amount of the patent for each hectare consists of a progressive scale that increases according to the course of the years of the concession. It starts with fourth tenths (4/10) of a monthly tax unit (approx. USD 27) for the first five (5) years and goes up to twelve (12) monthly tax unit from its thirty-first (31) year and beyond.

However, there are certain exceptions to the standard annual patent value for mining exploitation concessions. These exceptions involve a reduced patent fee, calculated as one-tenth (1/10) of a monthly tax unit (approx. USD 4) per hectare. This reduced fee aims to support mining operations that contribute to the public interest. To qualify, concessionaires must demonstrate their involvement in ongoing and permanent mining activities annually, in compliance with the requirements of Law No. 20,551, which addresses the closure of mining works and facilities.

Furthermore, this reduced patent fee also extends to exploitation concessions that are part of mining

development projects, even if they have not commenced mining operations. This includes projects that have either received an Environmental License (RCA) or are undergoing evaluation in the Environmental Impact Assessment System as mandated by Law No. 19,300. Additionally, properties engaged in projects that are processing permits under the Mining Safety Regulation but are not required to enter the environmental system are also eligible.

The scope of this exception encompasses properties within a designated mining production unit and its potential expansions. If a single property under the same ownership and included in the same measurement act meets these criteria, it is presumed that all related properties do as well.

From a reporting and compliance perspective, mining patents are due in March of each year by means of Form 40.

It must be noted that when the exploitation of the mine begins, Mining Patents are not deductible for tax purposes but can be treated as monthly provisional tax payments (i.e., as a credit), and also can be imputed against some specific tax obligations, provided that some legal requirements are met.

### 4.2 Mining Royalty

Effective January 1, 2024, as established by Law No. 21,591, mining exploiters are now under the purview of a new annual Mining Royalty. The Specific Tax on the Mining Activity, stated in Articles 64 bis and 64 ter of



the ITL (from 2006), has been repealed as of the same date on which the new Mining Royalty came into force.

This Mining Royalty comprises two components: (i) the Ad-Valorem Component and (ii) the Mining Margin Component. These are calculated based on the sales volume and the type of minerals extracted.

The sum of these components forms the Mining Royalty. However, it's important to note that this amount is subject to a cap due to a maximum taxation threshold, which takes into account the Mining Royalty, corporate income taxes, and final taxes.

#### **Ad Valorem Component**

Mining exploiters with annual copper sales exceeding 50,000 metric tons of fine copper (MTFC) are subject to a 1% rate on their sales. This rate applies specifically to revenues derived solely from copper sales, excluding those from other minerals such as molybdenum, silver, gold, etc.

When the 'Adjusted Mining Operational Taxable Income' (*Renta imponible operacional minera ajustada*, RIOMA) of the taxpayer is negative in a commercial year, this deficit should be deducted first from the Ad-Valorem Component.

The term "sales" considers the average of annual sales over the last six commercial years, for which taxpayers must include the total sales value of mining products, including those from related parties, as long as those related parties can also be considered "mining exploiters." Related parties are as defined in number 17 of Article No. 8 of the Chilean Tax Code (TC).



If the taxpayer has records of sales for fewer than six years, the average will consider the years starting from the first year the taxpayer registers actual sales.

### Margin Component

Mining exploiters shall apply the respective tax rates over the RIOMA, which considers the CIT's taxable base of the taxpayer subject to certain adjustments included in Law No. 21,591.

**Mining exploiters whose income derives 50% or more from copper sales and whose sales are equivalent to more than 50,000 MTFC** will be subject to a progressive and marginal tax rate ranging from 8% to 26%. The applicable rate within this range will be determined based on the Mining Operating Margin (MOM) of the taxpayer.

However, this component shall not be applicable in case the RIOMA is negative.

**Mining exploiters whose income derives less than 50%** from copper sales will be subject to the following tax rates depending on their annual sales and always applied over the RIOMA:

- ▶ Less than the equivalent of 12,000 MTFC: Exempt.
- ▶ More than the equivalent of 12,000 MTFC but less than 50,000: Tax rate fluctuates between 0.4% and 4.4%.

- ▶ More than the equivalent of 50,000 MTFC: Progressive tax rates ranging between 5% and 14% depending on the MOM.

Mining exploiters shall apply the respective tax rates over the RIOMA, which considers the CIT's taxable base of the taxpayer subject to certain adjustments included in Law No. 21,591 (to reflect the mining operational taxable income only).

### RIOMA

It must be noted that for the application of the Mining Royalty, including both the ad-valorem and margin components, the "Adjusted Mining Operational Taxable Income" (*Renta Imponible Operacional Minera Ajustada*, RIOMA) will be the one resulting from making the following adjustments to the calculation of taxable net income determined in accordance with the ITL<sup>11</sup>:

- i. Add to the taxable base the margin component, as appropriate.
- ii. Deduct all those incomes that do not come directly from the sale of mining products.
- iii. Add the expenses and costs necessary to produce the income referred to in the preceding number.
- iv. Add, in case they have been deducted, the following concepts included in Article 31 of the ITL:
  - a. Interests

<sup>11</sup> Article 6 of Law No. 21,591.



- b. Carry forward losses from prior years
- c. Charges for accelerated depreciation of fixed assets
- d. The difference, if any, that arises between the deduction of organization and start-up expenses, amortized in a period shorter than six years, and the proportion that should have been deducted for the amortization of such expenses over a period of six years.
- e. The consideration paid under a loan agreement, sale of minerals, lease or usufruct of a mining property, or any other that originates from the delivery of the exploitation of a mining deposit to a third party. In addition, the part of the sale price of a mining property that has been agreed as a percentage of the sales of mining products or of the buyer's profits must be added.
- v. Deduct the annual quota for the depreciation of fixed assets that would have corresponded (given that accelerated depreciation would not apply).

#### **Maximum potential tax burden**

Mining Royalty considers a cap on the combined tax burden of CIT, the Mining Royalty, and shareholder taxation.

Should the maximum potential tax burden exceed this cap, the Mining Royalty will be reduced accordingly. The cap is set at 46.5% for exploiters with annual sales equal to or greater than the equivalent of 80,000 TFC, and at

45.5% for those with annual sales less than 80,000 TFC.

It is important to note that in Chile, the Royalty Law taxes the operational income of mining exploiters. The law defines a "mining exploiter" as "any natural or legal entity that extracts substances of a concessive mining character and sells them in any state of production." This definition has sparked debate in the lithium industry regarding the tax's applicability to lithium exploiters under the Royalty Law. One view holds that the Mining Royalty should not apply to lithium exploiters, as lithium does not meet the definition of a "concessive mineral" according to the Chilean Political Constitution and Mining Code regulations. Conversely, for activities on assets granted before 1979, the Mining Royalty should apply because lithium was considered a concessive mineral at that time.

#### **Declaration, payment, and obligatory provisional monthly payments.**

The Mining Royalty must be declared annually (in April of the year following the respective commercial year) and is subject to the TC for any matters not regulated in Law No. 21,591.

Mining exploiters obligated to pay the Mining Royalty must make mandatory provisional monthly payments based on a percentage of the gross income from their monthly sales of mining products, whether received or accrued. This requirement stands regardless of the components constituting the Mining Royalty, be it the Ad Valorem Component, the Mining Margin Component, or a combination thereof.

Mining exploiters are also required





to submit their annual financial statements (both individual and consolidated) to the Chilean Financial Market Commission, including a note on the company's upstream ownership.

The financial statements must undergo an audit by an external audit firm registered under Law No. 18,045 (Stock Markets Law). Quarterly financials must also be reported.

Non-compliance with reporting obligations will result in fines and penalties.

## 5. Mining-specific expenditures

Mining companies, like other businesses, are subject to general and specific tax deduction requirements but encounter unique scenarios inherent to the mining industry. These scenarios, which differ across the mining lifecycle stages, are critical in determining how expenses are deducted. The most significant situations for the mining industry are briefly outlined below.

### 5.1 Prospecting and Exploration expenses

Typically, during this phase, only mining license fees and sometimes land taxes are paid. These outlays are deductible from a CIT perspective. Costs incurred in this stage are always treated as organization and start-up expenses, which may be amortized over up to

six years, starting from the date the expenses were incurred or when the mining company begins earning income from its main activity, whichever is later.

### 5.2 Infrastructure and construction

This stage's primary expenditures include constructing the mine, the processing plant, and associated infrastructure such as water systems, concentrate pipelines, and ports. These will encompass measures for protecting the area's biodiversity and mitigating the project's environmental impact.

Mine infrastructure expenditures should be classified as investments in fixed assets eligible for depreciation according to ITL rules, even if incurred before operation.

Other infrastructure costs on third-party properties, per tax authority guidelines, may be considered organization and start-up expenses in certain cases, amortizable over up to 6 years from the date of incurrence or when the mining company starts earning income from its main activity, whichever is later.

Special attention should be given to the tax treatment of Engineering, Procurement, and Construction (EPC) and Engineering, Procurement, Construction and Management (EPCM) contracts, as well as the deduction of interest related to investment financing.



## 5.3 Exploitation and Expansion expenses

Exploitation costs associated with preparing the units or sectors for mining, along with direct exploitation costs such as labor, raw materials, and supplies directly tied to production, are considered part of the mineral costs as regulated in the ITL. Thus, the cost of minerals impacts the company's results upon their sale or export.

Pre-stripping costs are treated as organization and start-up expenses, amortizable over up to six years from the date of incurrence or when the mining company begins earning income from its main activity, whichever is later.

Expenditures that enhance infrastructure, production capacity, or asset lifespan are viewed as investments in fixed assets subject to depreciation tax rules. Maintenance costs are recognized as expenses in the year they occur, following general deduction requirements from a tax perspective. Repairs that extend an asset's life are treated as investments in fixed assets, also subject to depreciation tax rules.

## 6. Other Taxes

### 6.1 Property tax

Per Law No. 17,235, a Property Tax is levied annually at rates between 1% and 1.4%, depending on whether the property is classified as agricultural or non-agricultural. The rate is calculated on the property's fiscal value. The Property Tax Law stipulates the following surtaxes:

**Global surtax:** Applied to the total fiscal values of all properties owned by the same taxpayer, with progressive rates from 0% (for a total fiscal value under USD 616,000) to 0.425% (for a total fiscal value of USD 1.3 million or more).

**Non-agricultural real estate surtax:** Imposed on non-agricultural properties located in urban areas that are undeveloped, abandoned, or used as ballast wells.

Chilean law allows certain taxpayers to credit Property Tax payments against CIT. If the criteria to use Property Tax as credit are not met, the tax may be deductible for income tax purposes.

Additionally, benefits and exemptions are available for qualified taxpayers or properties.

### 6.2 Contribution for Regional Development

Law 21,210 introduces a Contribution for Regional Development (CRD) with a 1% rate on the acquisition value of physical fixed assets exceeding USD 10 million.

It applies to CIT taxpayers who:

- ▶ Acquire, construct, or import physical fixed assets for a total value of USD 10 million or more; and
- ▶ Must submit their projects to the environmental impact assessment system as per article 10 of Law 19,300.

The CRD is accrued from the first fiscal year in which the project generates operational income, provided that the





definitive reception of work has been obtained from the respective Municipal Works Directorate, or if not applicable, that the Superintendence of the Environment has been notified by the management.

The CRD must be declared and paid to the Chilean Treasury in April of the year following the accrual, or in up to 5 annual installments from the time of accrual.

### 6.3 Green Tax on Fixed Sources

Effective January 1st, 2023, the Green Tax on Fixed Sources will be imposed on emissions of Particulate Matter (PM), NO<sub>x</sub>, SO<sub>2</sub>, and CO<sub>2</sub> by establishments whose sources emit 100 or more tons of PM per year, or 25,000 or more tons of CO<sub>2</sub> per year. Exemptions include emissions from hot

water boilers exclusively for personnel and generators under 500 kWt.

From February 25, 2023, taxpayers can offset taxable emissions with emission reduction projects, provided the reductions are additional, measurable, verifiable, and permanent.

## 7. Tax incentives

### 7.1 Tax credit for investment in R&D

Tax credit imputable to the CIT, corresponding to 35% of the total disbursements in R&D projects duly certified by the Production Development Agency (*Corporación de Fomento de la Producción*, CORFO) (in-house) or for payments to certified research centers. The maximum amount of the credit, per year and per taxpayer, cannot exceed 15,000



monthly tax units (approximately USD 1.2 million). This tax credit is non-refundable; however, it can be carried forward indefinitely.

Additionally, a deduction as a tax expense of the remaining 65% of the R&D disbursements certified by CORFO for in-house activities or associated with R&D certified contracts entered with a registered research center is allowed, even if such disbursements are not necessary to produce income for the respective business (deductible over up to 10 years).

## 7.2 VAT exemption applicable to the importation of capital goods

The VAT Law establishes an exemption for imported capital goods destined for the development, exploration, or exploitation in Chile of mining, industrial, forestry, energy, infrastructure, telecommunications, research or technological, medical, or scientific development projects, among others, provided that the project involves an investment of an amount equal to or greater than five million United States dollars.

The primary requirement for the application of the exemption is the use of the capital goods in an investment project. Therefore, the importer does not have to be the entity developing the project; it can be developed either by the importer or by a third party.

The project must involve an investment of USD 5 million as of the filing date of the application before the Ministry of Finance (MoF).





The MoF will verify compliance with the requirements. If compliant, the MoF will issue a resolution granting the exemption and notify the Chilean tax administration.

### **7.3 Tax benefits applicable to investments to start up a project**

#### **7.3.1 Accelerated depreciation as an expense deduction for CIT purposes**

According to the ITL, taxpayers are entitled to opt for an accelerated depreciation regime, defined as the establishment of a useful life for new or imported fixed assets, equivalent to one third (1/3) of the useful life established by the SII.

Accelerated depreciation is only applicable when computing taxable income for CIT purposes. The excess depreciation, corresponding to the difference between the accelerated depreciation allowance and a notional normal depreciation allowance, is recaptured for purposes of GIT or WHT applied to dividends or profits distributed to shareholders, owners, or partners.

Fixed assets that become unusable before the end of their expected useful life may be depreciated at twice the rate originally contemplated under their applicable regime.

#### **7.3.2 Operating and start-up expenses for CIT purposes**

Organization and start-up expenses may be amortized over up to 6 years starting from the date on which the expenses were incurred or from when the mining company generates income from its main activity, whichever is later.

### **7.4 Credit refund for investments in fixed assets for VAT purposes**

VAT taxpayers that maintain a VAT credit for at least 2 months, arising from the acquisition of fixed assets or services considered part of the cost of such fixed assets, can either offset it against any tax liability or request a cash refund.

## **CUSTOMS CONSIDERATIONS**

### **1. Valuation and rates**

Imported goods are subject to customs duties based on their CIF value or ad valorem customs taxes. Specific duties in US dollars per unit of weight or measure apply to certain items.



The general customs duty rate is 6%. However, due to numerous trade agreements (with over 60 countries), the effective rate is typically below 1%.

Customs duties on imported capital goods for export production can be deferred for up to seven years, provided the importer guarantees payment with a promissory note. Additionally, some capital goods are exempt from customs duties.

## 2. Free-trade zones

Chile's free-trade zones, established in 1975 in Iquique and Punta Arenas, offer various benefits.

Goods in free-trade zones are exempt from VAT and customs duties while stored for purposes like storage, display, packing, sales, manufacturing, and assembly.

Transactions in free-trade zones are VAT-exempt, and profits are CIT-exempt. However, there are no reductions or exemptions for final taxes. Benefits have also been extended to Arica and Tocopilla.

## 3. Temporary admission and bonded warehouses

Temporary admission for specific goods, including vehicles, machinery, containers, and films, is permitted under customs authority conditions, typically requiring a customs duty guarantee.

Foreign goods can be stored in bonded warehouses duty-free

until formal importation. Customs authorities oversee these warehouses and may designate national factories or industrial establishments as bonded warehouses for raw materials and manufacturing components.

## 4. International trade agreements

- ▶ Andean Community (*Comunidad Andina* or CAN): Chile benefits from the free-trade zone established by this agreement for its member countries (Bolivia, Peru, Colombia, and Ecuador).
- ▶ Chile is a member of the Latin American Integration Association (Asociación Latinoamericana de Integración or ALADI in Spanish), which promotes the economic and social development of the region with a view toward establishing a Latin American common market. ALADI has preferential regional tariffs, regional agreements, and agreements between particular member countries. Other members of ALADI include Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela.
- ▶ The European Free Trade Association (EFTA): In 2004, Chile signed a free-trade agreement (FTA) with this association, which includes Norway, Switzerland, Liechtenstein, and Iceland.



- ▶ In 1976, Chile withdrew from the Cartagena Agreement (Andean Pact) but continues to comply with certain decisions of the pact.
- ▶ Chile is a member of the General Agreement on Tariffs and Trade (GATT) and the Asia Pacific Economic Cooperation (APEC).
- ▶ Chile is associated with the Common Market of the South (*Mercado Común del Sur* or Mercosur).
- ▶ Chile has signed an association agreement with the European Union. Additionally, as of January 1st, 2021, there is an association agreement with the United Kingdom.

The purpose of this convention is to benefit from the financial environment, which generally translates into placing

90% of Chilean exports to the European market at zero rates within eight years at most. It also aims to progressively open the country's economic relations through a free-trade zone for industrial and agricultural products, an investment agreement, competition rules, industrial property, etc.

- ▶ Chile has an association agreement as part of the P4 group, formed by New Zealand, Singapore, and Brunei Darussalam.
- ▶ Chile signed an FTA with South Korea in 2003, eliminating customs duties on vehicles, television sets, cellular phones, and computers manufactured in South Korea. Similarly, tariffs on vehicle parts and spare parts will also be eliminated within five years.
- ▶ Chile signed an FTA with the US in January 2004, allowing for 87%



of national products to enter that country at zero rates.

- ▶ An FTA was signed with China in 2005, with terms of 1, 5, and 10 years to eliminate custom tariffs on many products exported to Chile. Likewise, many Chilean exports to China will see tariffs eliminated within 1, 2, 5, and 10 years.
- ▶ An FTA was signed with Japan in 2007, eliminating 90% of tariffs on bilateral trade between both nations.

Chile also has FTAs with the following places: Hong Kong, Vietnam, Malaysia, Turkey, Australia, Panama, Japan, China, Canada, Mexico, South Korea, Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua), Peru, Colombia, Argentina, Uruguay, and Brazil.

## 5. Intelligent System for Permits and Evaluation 2.0 Bills

The Chilean government, led by President Gabriel Boric, has introduced two legislative initiatives aimed at streamlining the process for obtaining sectorial authorizations and improving environmental evaluations. These efforts are part of a broader strategy to boost public and private investment, enhance regulatory quality, and support economic growth.

The intelligent system bill focuses on non-environmental permits required for various projects and activities in regulated areas. This initiative aims to simplify and accelerate the approval

process while maintaining technical standards and ensuring the safety of people, health, and the environment. Specifically, the bill streamlines authorizations managed by 37 different public services, encompassing 16 ministries. This reform addresses long-standing challenges that have hindered investment development.

The bill covers a wide range of projects, from large-scale ventures like mining and energy projects to smaller initiatives like setting up a store. In particular, the bill involves authorizations processed by 37 types of public services, associated with 16 ministries, and aims to simplify processes, reduce timelines, and provide greater certainty to investors.

Key measures of the initiative include:

1. **Minimum Processing Standards for Sectorial Permits:** This involves establishing an admissibility examination for all processes, setting maximum deadlines for procedures that currently lack them, and potentially using administrative silence as an exceptional final instance.
2. **Proportional Processing and Regulatory Improvement:** Procedures will be introduced to periodically rationalize regulation, potentially replacing some authorizations with sworn declarations by project owners or other techniques, depending on the project's risk. This will lead to simplified processing routes.
3. **Digital Single Window:** The platform "SUPER" will serve as the digital single window of the State for



sectorial permit processing and for presenting sworn declarations and notices by project owners. This will allow constant access to the status of authorization requests.

4. Governance for the System of Regulation and Sectorial Evaluation: A public body will be created to ensure compliance with processing norms and coordinate and guide services in both their processing processes and continual

improvement of the regulatory framework for sectorial permits.

The reform is expected to provide greater legal certainty through clear and precise norms and optimize the traceability of associated permits. Additionally, it ensures that processing procedures are appropriate and safeguard the protection objects of each sector, such as health, personal safety, and the environment.

## FOREIGN EXCHANGE CONTROL REGULATIONS

Under the provisions of Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile (Chapter XIV), foreign investors may bring capital into Chile under the terms and conditions applicable to foreign loans, deposits, investments, and capital contributions.

For fund inflows from external credits, processing through an entity of the Formal Exchange Market (*Mercado Cambiario Formal*, MCF) is required. In the case of external credits more than one million dollars, the debtor must also report to the Central Bank, either directly or via an MCF entity.

Similarly, for the entry of foreign currency from deposits, investments, and capital contributions, the involved party must do it through an MCF entity. Additionally, when capital contributions in Chilean pesos from abroad are received, the investment recipient also

must report the transaction to the Central Bank, either directly or via an MCF entity. This reporting requirement for the recipient of the investment applies specifically to capital contributions in Chilean pesos when the foreign investor acquires or holds at least a 10% stake in the rights or shares of the recipient entity.

It should be noted that most reporting obligations are carried out by the bank or financial company assisting in the transfer of funds through the Formal Exchange Market.





# STATE POLICIES AND MARKET CONSIDERATIONS

## 1. National Lithium Strategy

In April 2023, the president of Chile, Gabriel Boric Font, presented the National Lithium Strategy, outlining various objectives and measures that this policy would entail.

The main objectives are:

Increase wealth for Chile;

- ▶ Develop a sustainable industry for the country and the world;
- ▶ Foster technology and productive linkages;
- ▶ Establish Chile's world leadership in the lithium industry;
- ▶ Strengthen social and environmental sustainability;
- ▶ Ensure fiscal sustainability; and
- ▶ Contribute to productive diversification and regional growth potential.

This plan encompasses several stages:

- i. **Initiate a process of dialogue and participation with various stakeholders:** Aurora Williams, the Minister of Mining, announced that on October 13, 2023, a dialogue process will begin in five regions of the country. This will involve four dialogue spaces on the National Lithium Strategy, two with civil society and two with indigenous communities, conducted by the Citizen Participation team of the

Ministry of Mining and the Regional Secretaries of the Ministry.

- ii. **Create the National Lithium**

**Company:** President Mr. Gabriel Boric, in the first half of 2023, announced the establishment of the National Lithium Company. This entity will act as a public-private partnership with the State holding a majority stake, aiming to exploit lithium natural resources and to attract new players to expand the industry through collaborative initiatives.

Notwithstanding the above, in December 2022, a subsidiary of the National Mining Enterprise (Empresa Nacional de Minería, ENAMI), "ENAMI Litio SpA," was incorporated to develop lithium mining projects while the National Lithium Company is being established. Currently, ENAMI Litio SpA is developing a project in a collection of salt flats known as "Salares Altoandino" (La Isla, Aguilar, Infieles, Las Parinas, Grandes), with a projected engineering profile date of 2025. In May 2024, ENAMI initiated an open call for Chilean and international investors to express interest in partnering with the company to



develop, operate, and finance the Salares Altoandinos lithium project.

- iii. Create a Network of Protected Salt Flats and protect those under exploitation.**
- iv. Modernize the institutional framework.**
- v. Establish a Public Technological and Research Institute for Lithium and Salt Flats.**
- vi. Involve the State in the productive activities of the Salar de Atacama: Currently, negotiations are underway between SQM and CORFO to jointly exploit the Atacama Salt Flat.**
- vii. Prospect other salt flats.**

Announcements within the first semester of 2024:

- i. Strategic sites:**
  - ▶ The government has announced that the Atacama and Maricunga Salt Flats will be designated as strategic sites. Investments in these flats will need to be structured under a public-private partnership, with the State of Chile maintaining control over such investments. For all intents and purposes, the Chilean government has appointed CODELCO to lead the negotiations in both salt flats.
- ii. Protected sites:**
  - ▶ In a decisive move towards environmental conservation, the Council of Ministers for Sustainability and Climate





- Change has initiated a research program with the objective of formulating the Protected Salt Flats Network.
- ▶ A total of 27 sites have been selected to compose the protected zones, which include 14 Salt Flats and 13 Salty Lakes. Over these sites, no business activity will be permitted.
  - ▶ This network will encompass all salt flats and lakes currently designated as National Parks, National Reserves, and Natural Monuments, as well as those meeting the criteria for being declared Protected Areas under Law 21,600.
  - ▶ The goal is to protect areas covering more than the 25% required by the aforementioned Law, also considering Chile's commitments to global biodiversity agreements.
- iii. Call to express interest in the execution of projects related to the exploration, exploitation, and processing of lithium (RFI) (Exempt Resolution No. 907 of April 5th, 2024)
- ▶ The call is an invitation to express interest in participating in projects related to the exploration, exploitation, and downstream processing of lithium from salt flats or other deposits in Chile to design processes for granting CEOLs.
  - ▶ The information gathered from this process will be used by the Ministry of Mining to define the lithium deposits for which the State will initiate the process of entering into new CEOLs with local or foreign investors, prioritizing those deposits that have garnered expressed interest. Note that participation in the process does not obligate the authority to any commitment with the interested parties.
  - ▶ The following areas of the national territory will be excluded from the interest process: 1) Atacama and Maricunga salt flats (due to their strategic nature); 2) Alto Andino (which includes Pedernales, Grande, Los Infieles, La Isla, and Aguilar salt flats); 3) geographic areas categorized as "National Park," "Natural Monument," and "National Reserve"; and 4) the high Andean salt flats and saline lakes or geographic areas within them, the study of which the Council of Ministers for Sustainability and Climate Change, in its session of March 26, 2024, has entrusted to the Environment Ministry to gather necessary background information for determining their protection.
  - ▶ Chilean or foreign companies, or partnerships of companies (Consortium, joint venture, or other forms of association), may participate in the process.
  - ▶ Expressions of interest, along with the required technical and legal information, must

be submitted through the electronic system created by the Ministry of Mining.

- ▶ Deadline for submission of expressions of interest: June 17th, 2024.

After the 60 days period to express interest in developing lithium exploration and extraction projects in Chile, the process was closed with more than 80 expressions of interest made by more than 50 companies and consortia from 10 countries.

Based on the information publicly available from the Ministry of Mining, a background information stage will now begin (August 2024), in which the areas that will be prioritized for the execution of projects and the mechanisms for assigning Special Lithium Operation Contracts will begin to be defined. An indigenous consultation process will be previously carried out in case there is susceptibility to direct impact.

## 2. The Chilean Government will allocate CLP 6 billion for lithium and salt flats

In relation to the National Lithium Strategy, the 'Research Rings in Specific Thematic Areas' competition of the National Research and Development Agency (Agencia Nacional de Investigación y Desarrollo,

ANID) will allocate six billion Chilean pesos in July 2024 to fund up to 10 projects over three years to address productive, environmental, and social issues related to lithium and salt flats.

The research topics defined for this competition are designed to contribute to the pillars of the National Lithium Strategy, including understanding the biodiversity of the salt flats. Universities, research institutions, and Public Technological and Research Institutes were eligible to apply, within three predefined lines:

- ▶ Engineering and Geology in Lithium and Salt Flats.
- ▶ Ecology and biodiversity in salt flats and their connection with lithium production.
- ▶ Social, Cultural, and Territorial Development of the Lithium Industry and the Salt Flats.

This funding will support research on productive issues such as new methods for extracting brine and obtaining lithium, special uses in batteries beyond traditional applications, recovery and reuse of materials associated with the lithium value chain, biodiversity associated with salt flats, modeling the impact of salt flat exploitation processes, efficient monitoring of ecosystems, social and environmental conflicts in different basins, the relationship between lithium mining and territorial development, and the balance between emerging technologies and their potential socio-environmental effects and impacts.



### 3. CODELCO's lithium subsidiary - Salar de Maricunga SpA

In 2018, the Ministry of Mining signed a CEOL with a subsidiary of CODELCO (Salar de Maricunga SpA) for the exploitation of the Maricunga salt flat. The project is currently in the exploration phase and has not yet

obtained an environmental permit. It is important to note that, to date, this is the only CEOL signed in Chile.

However, owners of lithium mining properties declared before 1979 can freely exploit the lithium from these properties, subject to compliance with current environmental regulations and authorization from the Chilean Nuclear Energy Commission for the sale and storage of lithium.

**Chart No. 6: Mining properties declared prior to 1979**

Owner	Salt flat	% Ownership of the area
CORFO	Atacama	54.6%
CODELCO	Pedernales and Maricunga	100% and 18%
ENAMI	Aguilar	4%
Privates <sup>12</sup>	Maricunga	25%

Source: 2018 Chile Ministry of Mining presentation.

Currently, there are two main players developing and exploiting lithium projects in Chile: Albemarle Chile Limitada ("Albemarle") and Sociedad Química y Minera de Chile ("SQM"). Both companies are authorized to exploit lithium under contracts with CORFO over their lithium concessions at the Atacama Salt Flats. The contracts that CORFO has with both entities differ (establishing the payment of rental fees plus a commission based on a percentage of lithium sales for SQM, and a commission-only payment for Albemarle).

The current contract between CORFO and Albemarle has been in effect since 2017 (until 2043), while the contract between CORFO and SQM has been in force since 2018 (until 2030).

Additionally, a new company called Minera Salar Blanco has been developing a project at the Maricunga salt flat for the last seven years. It has already invested USD 71 million and announced this year the intention to invest an additional USD 700 million.

After obtaining an approved Environmental Qualification

<sup>12</sup> Minera Salar Blanco, controlled by the Australian junior Lithium Power International, and the alliance between Cominor, of the group led by Francisco Javier Errázuriz Ovalle, and the Singaporean Simbalik, called Simco.



Resolution and a favorable indigenous consultation, at the beginning of 2023, it announced the commencement of work to produce lithium in “Proyecto Blanco” in the coming years.

#### 4. CODELCO and SQM joint venture

Following a directive from the Chilean government through CORFO in May 2023, CODELCO and SQM agreed to jointly exploit lithium in the Salar de Atacama. A Memorandum of Understanding, effective from January 1, 2025, was reached to combine CODELCO’s mining experience with SQM’s lithium extraction expertise, with

a focus on sustainable and community-inclusive practices. The predominantly state-owned public-private partnership is set to operate until 2060. It incorporates advanced, eco-friendly technologies for lithium extraction and includes a governance structure, profit-sharing, and operational guidelines, focusing on the “Future Salar Project.” This strategic initiative reflects Chile’s commitment to optimizing lithium resources while considering environmental, social, and economic factors.

The partnership is structured in two phases. The first, from January 1, 2025, to December 31, 2030, will see the public-private agreement take over



the current contracts between CORFO and SQM, valid until 2030. During this phase, SQM and CODELCO will each appoint an equal number of board members, with CODELCO nominating the board president.

The second phase, from January 1, 2031, to December 31, 2060, will involve new contracts between CORFO and Minera Tarar (a wholly-owned subsidiary of CODELCO) that will be contributed to the partnership. The economic benefits will be divided according to each party's stake, with CODELCO holding a majority on the board and the presidency. At the end of this period, SQM is required to transfer the assets to the state.

As a result, the State of Chile will increase the benefits it receives since, in addition to taxes and lease payments (which CORFO receives), it will also receive profits as a shareholder from 2025.

The agreement between both parties was signed on May 31st, 2024. It details all the steps, stages, rights, obligations, terms, and conditions of the public-private partnership responsible for producing refined lithium in the Salar de Atacama from 2025 to 2060.

The partnership, consisting of CODELCO through its subsidiary Minera Tarar, and SQM through SQM Salar, will become effective once all legal, regulatory, technical, and environmental requirements, as well as the respective indigenous consultation process, have been completed, which is expected to be in the early months of 2025.

The two companies have set up the website <https://acuerdocodelcosqm.cl/> for the public to learn the details about the public-private partnership.

## 5. CORFO announces call to specialized lithium producers to acquire Albemarle Chile's quota at a preferential price

The government announced that at the beginning of the second half of 2024, CORFO will make a second call to select specialized lithium producers that develop value-added projects in Chile to acquire part of Albemarle Chile's quota at a preferential price.

CORFO's call will grant access to an initial quota of 9,500 tons/year of lithium carbonate, equivalent to 15% of Albemarle's current production, which will be increased annually by 2.5% until reaching the maximum 25% that will be extended until 2043.

## 6. Lithium and Salt Flats Committee

The "Lithium and Salt Flats Committee" aims to collaborate with the achievement of the objectives of the National Lithium Strategy in areas where CORFO has competencies or attributions, or where it can serve as a technical advisory body. It recently discussed proposed measures for the reorganization and strengthening of the Lithium Unit of the Ministry of Mining, which includes the incorporation of new

professionals from associated portfolios and services.

## 7. Collaboration Agreement with the European Union

On December 9th, 2022, the European Union and Chile concluded negotiations on the modernization of the EU-Chile Association Agreement, now named the Advanced Framework Agreement. The EU-Chile Advanced Framework Agreement ensures that the EU will have access to lithium while also securing the highest sustainability standards.

## 8. ESG Tax Reporting

ESG reporting standards cover various voluntary standards related to economic, social, and environmental issues that companies implement as a mechanism to demonstrate transparency, commitment, and accountability on several topics of social relevance. Within the industry, three major standards stand out: GRI, IRMA, and EITI.

GRI (Global Reporting Initiative): The GRI Standards represent global best practices for reporting publicly on a range of economic, environmental, and social impacts. Sustainability reporting based on the Standards provides information about an organization's positive or negative contributions to sustainable development.

IRMA Standard (Initiative for Responsible Mining Assurance):

IRMA's Standard for Responsible Mining defines best practices for what responsible mining should look like at the industrial scale. In Chile, Albemarle and SQM are certified by this standard, being worldwide pioneers in lithium matters.

EITI (Extractive Industries Transparency Initiative): The Government of Chile has confirmed its intention to become an EITI implementing country as part of the National Lithium Strategy. The EITI is an international, non-treaty bound organization where state and non-state actors work together to create and implement policies and regulations that promote transparency and accountability in the natural resource sector. Currently, SQM supports the EITI standard.

## 9. Development of new lithium extraction mechanisms

Lithium extraction mechanisms from salt flats have advanced from an evaporation mechanism, which allows a recovery of about 50%, to a direct extraction mechanism (DLE), which allows a recovery of about 90%. Additionally, DLE technology optimizes water use, its reinjection, and significantly reduces extraction time. Currently, DLE technology is being developed, tested, and implemented at several sites in Chile. Promoting it is important to increase current production levels without negatively impacting the environment.





## 10. Intelligent System for Permits and Evaluation 2.0 Bills

The Chilean government, led by President Gabriel Boric, has introduced two legislative initiatives aimed at streamlining the process for obtaining sectorial authorizations and improving environmental evaluations. These efforts are part of a broader strategy to boost public and private investment, enhance regulatory quality, and support economic growth.

The intelligent system bill focuses on non-environmental permits required for various projects and activities in regulated areas. This initiative aims to simplify and accelerate the approval process while maintaining technical standards and ensuring the safety of people, health, and the environment. Specifically, the bill streamlines authorizations managed by 37 different public services, encompassing 16 ministries. This reform addresses long-standing challenges that have hindered investment development.

This bill covers a wide range of projects, from large-scale ventures like mining and energy projects to smaller initiatives like setting up a store. In particular, the bill involves authorizations processed by 37 types of public services, associated with 16 ministries, and aims to simplify processes, reduce timelines, and provide greater certainty to investors.

Key measures of the initiative include:

1. **Minimum Processing Standards for Sectorial Permits:** This involves establishing an admissibility

examination for all processes, setting maximum deadlines for procedures that currently lack them, and potentially using administrative silence as an exceptional final instance.

2. **Proportional Processing and Regulatory Improvement:** Procedures will be introduced to periodically rationalize regulation, potentially replacing some authorizations with sworn declarations by project owners or other techniques, depending on the project's risk. This will lead to simplified processing routes.
3. **Digital Single Window:** The platform "SUPER" will serve as the digital single window of the State for sectorial permit processing and for presenting sworn declarations and notices by project owners. This will allow constant access to the status of authorization requests.
4. **Governance for the System of Regulation and Sectorial Evaluation:** A public body will be created to ensure compliance with processing norms and coordinate and guide services in both their processing procedures and continual improvement of the regulatory framework for sectorial permits.

The reform is expected to provide greater legal certainty through clear and precise norms and optimize the traceability of associated permits. Additionally, it ensures that processing procedures are appropriate and safeguard the protection objects of each sector, such as health, personal safety, and the environment.



# Mexico

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## LEGAL FRAMEWORK

The sector is governed by the Mining Law, first enacted in 1992 and amended several times since then. The law establishes the concepts of concessions and a corresponding national registry where these are recorded. During the current administration (2018-2024), the Mining Law has been amended twice, for the purposes of nationalizing lithium (2022 Reform) and changing regulatory aspects of mining and water concessions (2023 Reform).

Although the 2023 Reform introduced significant changes to the concessions, these changes may not affect current concessions due to the non-retroactivity principle, which stipulates that changes to the law cannot be applied retroactively.

Concessions can be granted to private individuals, companies, villages, indigenous communities, the Mexican Geological Service, and other State-owned companies. The former includes both exploration and production for 30 years, renewable for an additional 25 years



(with a further extension of 25 years, subject to a bidding process). The latter are granted to State-owned companies for the exploration and exploitation of strategic minerals and those reserved for the Mexican State, such as lithium. The Mexican Geological Service will conduct exploration activities through Exploration Orders to identify prospective areas that may attract private investors' interest.

The Mining Law does not specify the size of concessions, nor does it distinguish between the various types of metals and minerals or between onshore and offshore locations of the concessions. Concessions granted under new provisions will specify the metals and minerals that can be exploited and are no longer granted on a "first-come, first-served" basis but are subject to a bidding process and awarded to the applicant with the best proposal, including economic terms. All concessions are recorded in the Public

Mining Registry to ensure transparency, along with the Mining Map. However, the law does not mandate nor impede the publication of a concession's real beneficiaries.

Contrary to the other extractive industry—oil & gas—mining in Mexico is not overseen by a ministry but by the General Mining Coordination, which depends on the Ministry of Economy. Despite its long history, mining has been overshadowed by oil & gas over the past century in terms of symbolism and economic weight. Nevertheless, the government is taking steps to grant the industry more visibility within the cabinet.

Although the 2022 and 2023 reforms have created uncertainty within the Mexican mining sector, it is expected that the forthcoming Regulations to the Mining Law will provide some clarity regarding some of those concerns.

## TAX CONSIDERATIONS

Mining companies are subject to all federal and local taxes under the general regime applicable to legal entities in any economic sector. There is no specific tax regime for mining companies, although some specific rules may apply, such as the deduction of exploration expenses, mining equipment, and mining concessions. In addition, mining companies are subject to royalties or mining duties.

The main federal taxes are: (i) corporate income tax; (ii) VAT; (iii) Excise Tax; and (iv) Social Security Taxes. The main local taxes are: (i) Payroll Tax; (ii) Property Tax; and (iii) Tax on Acquisition of Real Estate. Green Taxes are applicable in some mining states, such as Zacatecas.

### 1. Income Tax

#### 1.1 Corporate income tax and profit sharing.

Mexico taxes resident companies at a rate of 30% on their worldwide income. In addition, employers must pay

profit sharing to employees each year equal to 10% of the adjusted taxable income (subject to a cap of the sum of 3-months of salary of each employee). The profit-sharing base is similar to the taxable income for income tax purposes with certain adjustments.

## 1.2 Dividends

Dividends paid by Mexican companies to nonresident shareholders are subject to withholding tax at a 10% rate. However, Mexico has a broad network of double tax treaties in place, under which withholding tax on dividends may be reduced to 5% or 0%.

## 1.3 Exploration expenses

Exploration expenses must be capitalized and amortized on a straight-line basis over a 10-year period. Mexico does not provide for tax incentives for exploration activities.

## 1.4 Tax losses

Net operating losses (NOLs) may be carried forward for 10 years (restated by inflation); no carryback is allowed.

## 2. Value Added Tax

VAT is imposed on legal entities and individuals that engage in any of the following activities in Mexico: (i) selling goods and property, (ii) rendering independent services, (iii) granting the temporary use or enjoyment of goods (e.g., leasing), and (iv) importing goods or services. The general VAT rate is

16%, applicable to most transactions. Additionally, a 0% rate applies to certain transactions, such as exports.

Taxpayers are required to add VAT to the sales price of their products or services, collect it from their customers, and pay VAT to their suppliers. The VAT paid to suppliers (input VAT) is deductible from the VAT charged to customers (output VAT). As a result, the amount companies must remit to the tax authorities is the excess of the total VAT collected from customers over the VAT paid to suppliers during the tax period. If VAT credits exceed the VAT collected from customers in a given period, the surplus may be carried forward to the next tax period, or the taxpayer may request a refund for such excess.

Domestic sales of mineral concentrate or doré bars are subject to a 16% VAT unless the sale is classified as an export sale (subject to the 0% rate). For mining companies, input VAT typically exceeds output VAT due to their sales being subject to the 0% rate (as export sales). Consequently, VAT should be recoverable through VAT refunds.

## 3. Stamp Tax

There are no stamp taxes in Mexico.

## 4. Mining Taxes

### 4.1 General Mining Duty

Mining concession holders must pay the general mining duty semiannually per assigned hectare. The general mining duty varies depending on the size and timing of the concession.



## 4.2 Special Mining Duty

The special mining duty must be paid by mining concession holders no later than the last business day of March of the following year (with the option to make advance payments), by applying a rate of 7.5% on the profits derived from the extractive activity. Mining concession holders are permitted to deduct authorized expenses for income tax purposes, except for depreciation of investments (with the exception of mining prospecting and exploration investments), interest expenses, and inflationary adjustments. It is important to note that tax loss carryforwards are not applicable for special mining duty purposes.

As an incentive for small mining companies (i.e., those with annual mineral sales of less than MXN\$50 million), the Federal Budget Law for 2023 allows them to credit the special mining duty against their income tax.

## 4.3 Extraordinary Mining Duty

The extraordinary mining duty is applicable to the gross value of sales of gold, silver and platinum, without any deductions, at a rate of 0.5%. This duty is payable by no later than the last business day of March of the following year, but there is an option to make advanced payments.





#### 4.4 Additional mining duty

The additional mining duty is imposed as a penalty when a concession has not been developed. The additional mining duty is calculated by taking 50% of the general mining duty (based on the size of the property) if a concession holder does not perform any exploration or exploitation works for two consecutive

years during the first 11-year period of the concession. From year 12 onwards, the penalty increases to 100% of the general mining duty. This duty must be paid semiannually, in January and July.

### 5. Other Taxes

There are no additional taxes in Mexico applicable to the mining sector.

## CUSTOM CONSIDERATIONS

### 1. Import Duties

All foreign goods, equipment, and materials entering Mexico are subject to customs and import duties, as well as VAT. However, there are exemptions for import duties under certain free trade agreements. Special preferential rates are available under Mexico's free trade agreements, such as the United States-Mexico-Canada Agreement (USMCA). To qualify for these preferential rates, the importer must present a certificate of origin during customs clearance.

Additionally, it is possible to import certain equipment on a temporary basis, deferring and, in some cases, avoiding duties and VAT on importation, provided the equipment is returned within a specified period.

### 2. Export Duties

In general, the export of goods is not subject to duties, and it is subject to VAT at a 0% rate (which allows the refund of input VAT credits).

## INCENTIVES

### 1. Tax incentives

Generally, there are no tax incentives applicable to the mining sector. However, Mexican officials have recently announced that tax incentives will be granted to promote the lithium value chain in Sonora. Local governments may offer incentives related to payroll and property taxes to encourage new businesses. These incentives must be negotiated locally on a case-by-case basis.

## 2. Research and development (R&D)

For promoting research and development of technologies, a tax

incentive will be granted, consisting of a 30% credit on expenses and investments made in research and development of technologies applicable against corporate income tax payable in the fiscal year.

# FOREIGN-EXCHANGE CONTROL REGULATIONS

Mexico currently does not have foreign-exchange controls.

# STATE POLICIES AND MARKET OPPORTUNITIES

Mexico possesses a number of attributes that distinguish it from other countries in Latin America and beyond. The country's significant and diverse resources offer opportunities for a wide range of companies. Additionally, Mexico has a strong mining tradition that spans centuries, resulting in an abundance of qualified staff and local populations that are generally accustomed to mining activities. This familiarity helps mitigate potential conflicts, which tend to arise mostly in "new" areas without previous mining exposure. In practice, some of the largest companies finance social and environmental projects in the regions where they operate, building trust and preventing conflicts, especially in areas with significant indigenous populations. It remains to be seen how private investors will participate in the lithium value chain.

Mexico's membership in the USMCA has also facilitated the channeling of financial resources. The Toronto Stock Exchange has become a key source of funding for mining projects in Mexico, due to the presence of numerous Canadian mining companies, which account for about two-thirds of all foreign firms operating in the country.

Like any other country, Mexico has its risks. Some are intrinsic to the

industry—global prices, financing, strategic focus, cost control, project execution, productivity gains, access to energy, etc. Other challenges are local, such as land tenure, social responsibility, and security issues. Access to land is particularly complex, especially in self-proclaimed indigenous communities, due to the prevailing regime of communal ownership in large parts of Mexico. Companies often





engage in delicate negotiations when initiating a project. Security can also be a concern, particularly in remote areas.

Lastly, the Mexican tax authorities (SAT) have begun to recognize the mining industry's economic and tax significance. This does not necessarily imply an increase in royalties but indicates that the SAT will exercise greater oversight, extending beyond large companies and focusing on areas such as transfer pricing to ensure proper taxation of industry participants. Consequently, new entrants will require comprehensive fiscal advice to navigate the complex regulations governing Mexico's mining industry.



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## LEGAL FRAMEWORK

Peru has a comprehensive legal framework that clearly defines rights, obligations, and responsibilities for all stages of the mineral resource development process.

Mining operations are conducted under a resource regime based on an administrative act, where the grant of a mining right depends on strict compliance with the procedure outlined in the law for the grant of that title and not on administrative discretion. The absence of administrative discretion ensures the right to mine is more firmly secured within Peru's mining legal framework than under other regimes.

The right to explore, extract, process, and/or produce minerals in Peru is granted by the Peruvian government in the form of mining and processing concessions. Requirements for obtaining them are determined by law, and the application and granting process are relatively simple and clear. The rights and obligations of holders of mining concessions and processing



concessions are currently set forth in the General Mining Law. This law clearly determines the terms and conditions under which mining activities are allowed in Peru, including how mining rights can be obtained and maintained, how they can be lost, the obligations of their holders, etc. The law also provides for contracts permitting options over mineral rights, assignments, and mortgages.

Mining concessions may be granted separately for metallic and non-metallic minerals. The same mining concession is valid for both exploration and exploitation operations; hence, there is no complicated “conversion” procedure. Mining concessions are granted on a “first come, first served” basis, with provision for an auction if simultaneous claims are made. A separate processing concession is available, granting the right to concentrate, smelt, or refine mined minerals. No concession is required to trade in minerals, and exports by producers are not restricted.

To obtain a mining concession, the law requires that the area is free of restrictions, that the applicant is clearly identified, capable of carrying out the proposed activities, and pays application and license fees. The application process is managed by INGEMMET, the mining and geology institute. The terms and conditions, rights, and obligations of mining concessions are not subject to any discretionary decision or negotiation. Applications are publicly disclosed and processed in the order they are filed. Successful awards are disclosed to the public in the mining cadaster, which is available online. This

system guarantees both openness and transparency of the allocation process. Mining concessions can also be obtained through the assignment of concessions previously granted to independent or related parties.

## 1. Security of tenure

The constitutional protection of property rights and the clarity and completeness of the General Mining Law in Peru give mining and metals companies the ability to obtain a clear and secure title for mining development.

Under Peru’s current legal and regulatory regime, mining concessions have an indefinite term, provided that (i) a minimum annual level of production or investment is met and (ii) an annual concession fee is paid. The irrevocability of mining rights, subject to the fulfillment of these obligations, provides security of tenure within the mining regime in Peru and reasonably assures the transition between exploration and mining phases.

Failure to meet the minimum production requirement results in a progressive penalty from the eleventh year following the year in which the concession was granted. The loss of the mining concession and the penalty may be avoided by demonstrating investments in the mining rights of amounts at least ten times greater than the penalty to be paid. However, the mining concession will be lost if the minimum production requirement is not met by the thirtieth year.

To calculate production and investment for each mining concession, the



titleholder may create an “Unidad Económica Administrativa” (economic administrative unit), provided the mining rights are all within a radius of five, ten, or twenty kilometers, depending on the type of mineral produced.

The annual concession fee or good standing fee must be paid from the year the mining concession application is filed. This payment is calculated based on the area of the relevant mining concession:

- ▶ USD 3/ha/yr for medium and large-scale mining producers.
- ▶ USD 1/ha/yr for small mining producers; and
- ▶ USD 0.5/ha/yr for artisanal mining producers.

Processing concessions have the same duration and tenure as mining concessions, subject to the payment of a fee based on nominal capacity for the processing plant or level of production. Failure to pay processing fees or fines for two years could result in the loss of the processing concession.

## 2. Mineral and surface land ownership

In Peru, as in many other countries, the state retains ownership of all subsurface land and mineral resources. However, ownership of extracted mineral resources is vested in the titleholders of mining concessions.

Peruvian law differentiates between surface land property and natural resource ownership. Often, titleholders

of mining concessions (which confer the right to explore and mine underground ore reserves in the claim area) are not the owners of the surface land.

Clear administrative procedures for holders of mining concessions to gain access to privately owned land for mining activities are established in the General Mining Law to avoid potential conflicts with third parties after a mineral deposit has been discovered. According to Peruvian regulations, all operators of mining areas in Peru are required to have an agreement with the owners of the land surface above the mining rights or to establish an easement upon such surface for mining purposes. Expropriation procedures are considered for cases where landowners are reluctant to allow mining companies access to a mineral deposit. The administrative decision from these procedures can only be judicially appealed by the original landowner regarding the compensation amount.

## 3. Right to transfer mining rights

Mining rights can be transferred by their private holders with no restrictions or requirements other than to register the transaction with the Public Mining Register. The Mining Law clearly defines the rules for the transfer of a mining concession and regulates other mining contracts, such as option contracts, concession assignment agreements, mortgages, joint venture agreements, among others. These legal definitions benefit “junior” mining companies specialized in obtaining exploration and mining rights to sell



them to medium and large-sized mining companies and are also convenient for mining holders who, for one reason or another, are no longer interested in maintaining a mining right in Peru.

#### **4. Size of exploration blocks / duration of exploration rights**

Concessions for exploration and exploitation of mineral resources are classified into metallic and non-metallic and are granted in areas ranging from 100 hectares to 1,000 hectares per concession, except in marine zones, where the concession could extend up to 10,000 hectares.

As mentioned before, a concession is irrevocable as long as its holder complies with all obligations imposed by the Law. Among these obligations is the requirement to reach a minimum production within a ten-year term. However, if the required minimum production is not achieved on time, the mining holder has the opportunity to pay a penalty to maintain the mining right. The flexibility of these terms gives the concession holder ample freedom to plan the magnitude and timing of investments in the concession and to decide whether or not to put the property into production.



## 5. Availability of mineral agreements

In Peru, mining companies may enter into agreements with the government to obtain a series of guarantees and benefits. However, these contracts do not intend to supplement or replace the Mining Law. They are not related to the terms and conditions under which a mining concession is obtained, maintained, or terminated but rather to investment promotion issues such as obtaining judicial, tax, foreign exchange, and commercial stability.

## 6. Options to acquire an equity participation

The Peruvian policy towards government participation in mining ventures aligns with current global trends. Instead of participating directly as a partner in mineral operations, Peru benefits through fiscal mechanisms.

## 7. Government policies on the sale of mineral products

The sale of mineral products is unrestricted, both domestically and internationally. Mining operators are not obligated to satisfy the internal market before exporting their mining products nor to sell them at “official” prices or terms.





# TAX CONSIDERATIONS

## 1. Overview

The economic attractiveness of exploring in a country is strongly influenced by the fiscal system applied to deposits that are discovered and subsequently developed. If tailored properly, fiscal terms can achieve the overall objective of collecting an adequate share of the economic benefit generated by the mining industry for the government while maintaining high levels of exploration and production activities. However, it has proven extremely difficult for mining countries to implement fiscal packages that satisfy the interests of both host governments and mining companies.

The Peruvian legal framework clearly defines the fiscal regime applying to the mining sector, including restrictions for modifying tax provisions through fiscal stabilization agreements. As designed, Peru's mineral sector fiscal system tends to be progressive once the mine reaches a certain level of profit.

Fiscal systems that are progressive come closest to creating the flexible conditions needed to achieve the dual objective of collecting an adequate share of the economic benefit generated by the mining industry for the government while encouraging the exploration and development of valuable resources.

Progressive fiscal systems adjust to the actual profitability of each project and,

therefore, enable a fair and reasonable allocation of economic benefits and risks between the mining investor and the host government, regardless of the cost, price, and risk scenario. Under such schemes, the host government's cut, in percentage terms, is higher on large and profitable mines than on small and marginal deposits.

If the profitability of a project increases due to favorable price or cost conditions, then the host government's share of the mineral rent also increases. Conversely, if profitability decreases due to a downward movement in mineral prices or an unexpected increase in costs, the government's take decreases. For this reason, this kind of fiscal system is generally preferred by mining companies.



## At a glance

<b>Income Tax rate (1)(2)</b>	29.5%
<b>Dividends</b>	5.0%
<b>Mining Royalties</b>	1% to 12% imposed on operating mining income. A minimum royalty of 1% of sales is applicable.
<b>Special Mining Tax</b>	2% to 8.4% imposed on operating mining income
<b>Special Mining Burden</b>	4% to 13.12% imposed on operating income (3)
<b>Good standing fee</b>	USD 3 ha/yr.
<b>Capital allowances</b>	Accelerated depreciation, exploration write-offs
<b>Investment incentives</b>	Tax losses can be carried forward for 4 years or indefinitely (two different systems are applicable); stabilization agreements; VAT recovery

(1) Mining companies with tax stabilization agreements are subject to a 2% premium.

(2) In addition, they must pay an 8% employee profit sharing.

(3) Is intended only for mining companies with tax stabilization agreements in place prior to October 1, 2011.

## 2. Fiscal regime

### Corporate income tax

Companies that are tax residents in Peru are subject to corporation tax on their worldwide taxable income.

Tax resident companies are those incorporated in Peru. Nonresident entities, as well as branches and permanent establishments of foreign companies, are taxed only on income from Peruvian sources.

The corporate income tax rate is 29.5%. Additionally, a Dividend Tax at a rate of 5% is imposed on distributions of profits to nonresidents and individuals by resident companies and by branches, permanent establishments, and agencies of foreign companies.

Mining companies in Peru are subject to the general corporate income tax regime. However, if the taxpayer has signed a Stabilization Agreement,

an additional 2 percentage points are applied, meaning the combined corporate income tax rate becomes 31.5%. Companies find tax stabilization very attractive and are generally willing to pay the premium.

Taxable income is generally computed by reducing gross revenue by the cost of goods sold and all expenses necessary to produce the income or maintain the source of income. However, certain types of revenue must be computed as specified in the tax law, and some expenses are not fully deductible for tax purposes.

Business transactions must be recorded in legally authorized books of account that are in full compliance with the International Financial Reporting Standards ("IFRS"). The books must be kept in Spanish and must be expressed in Peruvian currency. However, accounting records may be kept in foreign currency (i.e., US dollars) where





a stability agreement has been entered into.

50% of income tax paid by a mine to the Central Government is to be remitted as "Canon" by the Central Government back to the regional and local authorities of the area where the mine is located.

### **Tax loss relief**

Taxpayers may choose to carry forward their Peruvian tax losses in accordance with system (a) or (b) below. If a particular system is not chosen by the taxpayer, the Tax Administration applies system (a):

- (a)** Losses incurred in a year may be carried forward and set off against profits arising in the following 4 years; or
- (b)** Losses incurred in a year may be carried forward and set off against 50% of future profits of the following years indefinitely.

Generally, losses from Peruvian source income may be offset against any Peruvian source income (except for losses from certain derivative financial instruments). Foreign source losses may only be offset against foreign source income and may not be carried forward.

There is no loss carryback system in Peru.

### **Administration**

There is a mandatory year-end of 31 December. Tax returns must be filed by the end of March or the beginning of April the following year, depending on the taxpayer identification number.

Companies and branches must make monthly advance payments of their annual corporate income tax, based on the company's monthly net income. Monthly advance payments are due on the 9th to the 15th business day, according to a schedule.

### **No project-by-project ring-fencing**

The accounts for income tax purposes of different mining projects owned by the same company may be consolidated. Losses from one project or concession can be set against profits from another project or concession. There is thus no ring fence between projects or concessions, only between companies, even when they are members of the same group.

Stability agreements are drafted on a project-by-project basis, so it is possible for different projects within the same company to be subject to different tax rates and calculation rules.

### **Capital gains tax**

Capital gains derived by Peru tax resident entities are taxed at the normal corporate income tax rate of 29.5%. This rate does not increase where a stability agreement is in place.

Capital gains obtained by non-resident entities from Peruvian sources, including the sale of unlisted shares of a Peruvian company, are generally subject to tax at a rate of 30%. The applicable domestic tax result may be overridden by the provisions of an applicable Tax Treaty.

An indirect transfer of Peruvian shares by non-resident companies is subject to tax at 30% in Peru. An indirect transfer



is deemed to occur if the following conditions are met:

1. At any time during the 12 months prior to the transfer, 50% or more of the fair market value of the shares in the overseas holding company transferred directly or indirectly derives from the fair market value of Peruvian shares (the “50% Market Value Test”) and at least 10% of the overseas holding company’s shares are transferred (itself or together with its related parties); or
2. The “value” of the Peruvian shares being indirectly transferred is at least 40,000 Peruvian Tax Units (approximately USD 55.5 million). The value should be determined by multiplying the percentage obtained in the 50% Market Value Test by the value agreed in the Transaction.

The tax is paid directly by the non-resident seller, along with filing the relevant form. However, if 10% or more of the Peruvian company is owned directly or indirectly by the non-resident seller, the Peruvian company may be jointly responsible.

### 3. Capital allowances

#### Trade or business expenses

Corporate expenses incurred in the generation of taxable income are generally deductible for corporate income tax purposes, subject to certain exceptions and limitations.

#### Tax depreciation

Companies are permitted to depreciate the acquisition cost of fixed assets for corporate income tax purposes.

A depreciation rate of 20% for mining and processing equipment and 5% for real estate is granted to mining investors who have stability agreements in place with the Peruvian government. In the absence of a stability agreement, the general tax rules stipulate that, apart from buildings and constructions, tax depreciation must align with accounting depreciation and be calculated on the same basis (straight-line, production units, or another method).

The maximum annual depreciation rates allowed for tax purposes under the general tax rules are restricted, as summarized in the table below.

<b>Buildings and constructions*</b>	5%
<b>Vehicles</b>	20%
<b>Machinery and equipment for construction, mining and oil activities</b>	20%
<b>Machinery and equipment for other activities</b>	10%
<b>Data processing equipment</b>	25%
<b>Other fixed assets</b>	10%

\*This is a fixed rate rather than a maximum rate





### **Pre-operative expenses**

- General: Pre-operative expenses are those incurred before a company starts generating income from mineral sales. There are various types of pre-operative expenses with different treatments. General pre-operative expenses (e.g., administrative expenses) may either be expensed in the year production commences or amortized evenly over a period of up to ten years from the year in which production commences.
- Exploration expenses: For pre-operative exploration expenses (e.g., drilling and surveys), taxpayers can choose to either expense these costs in the year

they are incurred or amortize the costs evenly over the useful life of the mine from the year minimum production is achieved. This is an annual choice with respect to the costs incurred in each year. In one year, taxpayers may elect to capitalize their exploration costs for subsequent amortization, and the next year they may claim a deduction. The annual election is irrevocable.

### **Mineral properties**

Costs incurred in acquiring mining concessions and investments in prospecting and/or exploration work up to the date the legally required minimum production is achieved



should be capitalized and subsequently amortized by an annual percentage based on the life of the deposit.

This percentage is calculated by dividing the total estimated proven and probable reserves by the minimum production requirement according to law.

A literal approach has resulted in the period of amortization being calculated by reference to the number of hectares of the mining site rather than the productive life of the deposit.

Accordingly, this interpretation could create situations in which the life of the deposit determined by the above formula has no correlation with the productive life of the deposit measured in real terms.

The amortization period established by the mining company must be notified to the tax administration with the first annual income tax return in which the amortization begins.

The mine operator can choose to deduct from its income the prospecting and/or exploration work during the fiscal year in which these expenditures are incurred. Expenditure for exploration incurred after the concession has reached the minimum mandatory production stage can be deducted in the fiscal year it is incurred or amortized at an annual rate based on the estimated life of the mine.

### **Feasibility studies and other evaluation expenses**

Depending on the nature and timing, feasibility studies and other evaluation expenses may either be classified as

development costs or as pre-operative expenses.

Development costs are costs that relate to access to mines (e.g., roads, ramps, and ventilation systems) before a company starts generating income from mines. Preoperative expenses are other general costs relating to the period before a company starts generating income.

Where feasibility studies and other evaluation expenses are treated as development costs, these may be:

- i)** expensed in the year they are incurred, or
- ii)** amortized evenly over a period of three years from the year they were incurred.

Where feasibility studies and other evaluation expenses are treated as preoperative expenses, these may be:

- i)** expensed in the year production commences, or
- ii)** amortized evenly over a period of up to ten years from the year in which production commences.

### **Mine site development costs**

Taxpayers have an annual choice of electing to deduct development costs in the year they were incurred or amortize them evenly over a period of up to three years from the year they were incurred. Taxpayers may not change their election with respect to the development costs incurred in the year concerned.



### **Public service infrastructure costs**

Costs incurred by mining companies in infrastructure for public use, such as ports, airports, energy plants, schools, hospitals, roads, or recreational facilities, can be expensed as incurred if approved by the government after complying with specific requirements.

### **Other investments in communities**

Many companies make other investments in communities impacted by mining for the purpose of their sustainable development, so that when the mine closes, the affected communities will be able to carry on with social and alternative economic activities. These investments are often characterized as Corporate Social Responsibility (“CSR”) expenditure.

Where CSR expenditure relates to public infrastructure such as schools, roads, or hospital building, the mining law grants a deduction, subject to compliance with specific requirements and approval from the government. There are no specific provisions in Peru’s tax law that grant a deduction for other CSR expenditure. The tax authorities generally treat CSR expenditure as non-deductible donations or charitable contributions. To reduce should be derived from a contractual or legal obligation, such as to comply with the obligations assumed under the Environmental Impact Assessment required by law.

### **Rehabilitation and closure costs**

Rehabilitation costs can only be expensed in the year they are incurred. This means that accruing for the expenditure is not deductible. Payments or bonds into a fund are not deductible. Payments to a third party

are arguably not deductible until the rehabilitation has been performed. Thus, single mine companies may receive no effective tax deduction for this expenditure, given that it is generally incurred at the end of the life of the mine, at a time when often there is insufficient income to offset the deduction against. Under current tax law, Peru does not have a loss carryback system. Therefore, in cases where decommissioning activities are carried out at the end of a company’s lifecycle, the costs may not obtain effective tax relief.

## **4. Mining taxes, duties and royalties**

Mining producers may also be subject to the Mining Royalty (“MR”) and Special Mining Tax (“SMT”).

Each of these mining levies is calculated on operating income as determined for book purposes instead of for income tax purposes. Operating income is defined as revenues generated from the sale of mineral resources less (i) cost of goods sold (“COGS”) and (ii) operating expenditures. “Book” refers to Peruvian statutory reporting and is required to be prepared under IFRS. To calculate tax base for the new levies, companies begin with statutory book operating income and make certain adjustments, such as to disallow interest expense (whether booked as part of COGS or operating expenses) and to prorate exploration expenditure over the life of the mine.

Generally, depreciation and amortization taken into account for the purposes of these levies is equal to



the amount of book depreciation and amortization. However, in particular situations there are differences between book value and tax value related to assets subject to depreciation and amortization. Such differences are due to the fact that the MR and SMT do not allow depreciation and amortization related to accounting revaluations.

### **Mining Royalty (“MR”)**

In 2004, Peru implemented a mining royalty based on sales. This regime was substituted in 2011 by the MR that is currently in force.

The MR now applies to operating income, rather than sales. The MR is payable on a quarterly basis with marginal rates ranging from 1% to 12%. The royalty rate increases as the operating margin increases.

Companies must pay at least the minimum royalty rate of 1% of sales, regardless of profitability. The payments are due quarterly and are deductible for corporate income tax purposes.

### **Special Mining Tax (“SMT”)**

The SMT is a tax imposed in parallel to the MR and applies to the operating profit derived from sales of metallic mineral resources. The SMT is applied to operating mining income based on a sliding scale, with progressive marginal rates ranging from 2% to 8.40%. The payments are due quarterly and are deductible for corporate income tax purposes.

## 5. Indirect taxes

An 18% Value Added Tax (VAT) applies to the following transactions:

- ▶ Sale of goods within Peru
- ▶ Services performed or utilized within Peru
- ▶ Construction contracts executed within Peru
- ▶ First sale of real estate by the builder
- ▶ Importation of goods from outside Peru, regardless of the importer's status
- ▶ Financing payments where the recipient entity is not a financial entity

Items not subject to VAT in Peru include salaries, local taxes, services provided free of charge, and transfers of land.

VAT paid upon the acquisition of goods or services can be deducted from VAT related to the sale of finished products or services.

Exporters are reimbursed for any VAT paid on the acquisition of goods and services. Exporters can apply such reimbursement as a credit to offset VAT or corporate income tax liabilities.

## 6. Withholding taxes

### Dividends

A 5% Dividend Tax applies to profits distributed to nonresidents and individuals from January 1, 2017. A 4.1% rate applies to profits earned up to December 31, 2014, and a 6.8% rate applies to profits earned from January 1, 2015, to December 31, 2016, regardless of when the profits are distributed. For these purposes, the first-in, first-out (FIFO) rules will apply.

The Dividend Tax applies to distributions by Peruvian companies







and Peruvian branches, permanent establishments, and agencies of foreign companies. This tax is generally withheld at the source.

Dividends received by one tax resident company from another tax resident company are currently not taxable.

### **Interest**

Interest paid to non-residents is generally subject to a withholding tax at a rate of 30% but may be reduced to 10% or 15% under a tax treaty. For interest paid to unaffiliated foreign lenders, the rate is reduced to 4.99% if all the following conditions are met:

- ▶ For cash loans, the proceeds of the loan are brought into Peru as foreign currency through local banks or are used to finance the import of goods;
- ▶ The proceeds of the loan are used for business purposes in Peru;
- ▶ The participation of the foreign bank is not primarily intended to avoid the tax treatment applicable to transactions between related parties (i.e., the use of back-to-back loans is precluded); and
- ▶ The interest rate does not exceed the SOFR rate plus 7 percentage points.

### **Technical assistance services**

Payments for technical assistance services used within Peru are subject to withholding tax at a rate of 15%, regardless of the country where the services are rendered. To ensure the application of the 15% rate, the local service recipient must obtain and

present to the Tax Authorities upon request a report issued by an audit firm certifying that the technical assistance was effectively provided. Otherwise, a withholding tax rate of 30% applies. This is only required, however, when the fees under the corresponding agreement for the technical assistance exceed 140 tax units (each tax unit is equivalent to PEN 5,150 in 2024).

### **Royalties**

Peruvian source royalties paid for the use of intangible property (e.g., know-how, patents, trademarks, designs, models, plans, secret formulas, or processes) are subject to withholding tax at an effective rate of 30% but may be reduced under a tax treaty.

## **7. Financing considerations**

### **Interest Deductibility**

Generally, interest is deductible for corporate income tax purposes (at 29.5%, or 31.5% under a stability agreement) when the operational stage begins. Interest accrued before this time is treated as a general pre-operative cost. As such, it may either be expensed in the year production commences or may be capitalized (increasing the cost basis of the relevant asset) and then amortized over a period of up to ten years from the year in which production commences (effective relief being subject to any loss limitation). Interest owed to non-resident lenders is only deductible when paid.

Once the production stage commences, expenses should be recognized on an



accrual basis. The Peruvian Income Tax Law establishes a definition for the accrual basis. However, interest owed to non-resident lenders will only be deductible when paid.

### **Rules that Limit the Level of Interest Expense**

In Peru, there are rules to prevent base erosion and profit shifting using interest and other financial payments economically equivalent to interest, irrespective of whether the lender is resident or related to the borrower.

Under these rules, interest that exceeds 30% of Earnings before Interest, Taxes, Depreciation, and Amortization (EBITDA) of the preceding year will not be deductible. For these purposes, the term “earnings” is defined as “taxable income after offsetting losses carried forward, plus net interest, depreciation, and amortization”.

The limitation applies to the entity’s net interest expense after offsetting interest income. Interest that is not deducted may be carried forward for up to four years but will always be subject to the 30% of EBITDA limitation.

The rule also applies to other expenses incurred in connection with the raising of finance, including arrangement fees and similar costs related to the borrowing of funds.

## **8. Worker’s Profit Sharing**

Mining Companies are obliged to pay a worker’s participation of 8% on the net profits of the Company. The total sum received by the worker must amount

to up to 18 times their monthly salary, and the balance must go to a special educational, social, and recreational fund. Disbursements are decided by a Board comprised of representatives of Mining Companies, the Peruvian government, and the workers.

The amount paid is allowed as a tax deduction for corporate income tax purposes. However, not all foreign governments recognize this as a creditable tax, and double taxation can thus occur.

## **9. Other tax aspects**

### **Good standing fee**

This is also known as a Validity Tax and is calculated based on the area in the mining concession from the moment the claim is filed. The fee is USD 3/ha/yr and is deductible for corporate income tax purposes.

Reduced fees are applicable for small mining producers (USD 1/ha/yr) and for artisanal mining producers (USD 0.5/ha/yr).

### **Temporary Net Assets Tax**

The Temporary Net Assets Tax (“ITAN”) is levied at 0.4% on a company’s net assets with a value in excess of PEN 1 million (approximately USD 0.27 million). It must be paid only by taxpayers that have already started “productive operations” as of December 31 of the preceding year. This means that entities in a pre-operative stage are tax-exempt until their first year of operations. They will only be subject to ITAN the following year.



Taxpayers are allowed to use ITAN payments as a credit to offset income tax liabilities. If, at the end of a fiscal year, the ITAN paid exceeds the annual income tax due, taxpayers can request a refund of the excess.

#### **Tax on Financial Transactions**

The financial transaction tax is charged at a rate of 0.005% on deposits and withdrawals from Peruvian bank accounts, including checking accounts.

#### **Complementary Mining Pension Fund**

Employers (i.e., mining companies) are required to contribute 0.5% of their annual income before tax to the Complementary Mining Pension Fund, while mining workers contribute 0.5% of their monthly gross salaries during their employment to receive defined benefits upon retirement. Contributions made by the employing company are deductible for corporate income tax purposes.

#### **Regulatory Fees**

Regulatory fees are imposed and collected in Peru from specific categories of regulated entities, including those operating in the mining sector. Mining companies pay these fees based on a percentage of their monthly revenues to the Supervisory Agency for Investment in Energy and Mining of Peru - OSINERMIN (0.12%) and the Environmental Monitoring Agency of Peru - OEFA (0.7%) to recover the regulatory costs associated with enforcement activities, policy, and rulemaking. Non-payment of regulatory fees in a timely manner may result in penalties and interest. Such fees are deductible for corporate income tax purposes.





Although the amount of regulatory fees collected during each fiscal year should reasonably equal the amount appropriated for that fiscal year for the performance of the activities described above, in practice, the amount collected could be higher due to the structure of the regulatory fees.

### **Social Security Contribution**

The Peruvian Health Social Security Office (EsSalud) administers the National Health System (NHS). The employer contributes 9% of the total payroll to the NHS. EsSalud provides employees with disability, illness, maternity, and death benefits, as well as medical care.

According to the Health Care Law, the NHS will be complemented by the health programs and plans that employers may grant to their workers with their particular health services or with private Health Care Companies (Empresas Prestadoras de Salud - EPS) authorized to carry out such activities.

Employers may elect the healthcare plan or program for their employees; however, they must previously submit it to their vote. Employees who wish to remain in the NHS may do so.

Employers that provide healthcare through complementary plans and programs are also obliged to pay the 9% contribution to the NHS. However, employers may use a portion of the expenses incurred in healthcare as credit against the 9% contribution.

The Health Care Law and regulations also provide for complementary insurance for workers engaged in activities deemed to involve a

significant level of risk, such as mining activities. This insurance coverage must be provided by the employer.

Employees are also required to elect either to contribute to the National Pension System (NPS) or to the Private Pension System (PPS). The contribution rate averages 13% of salary in the NPS and 12.75% in the PPS and is withheld from payments made to employees.

For mining employers, an additional 4% must be contributed to the PPS, with 2% payable by the employee and 2% by the employer. Both pension systems provide employees with retirement, disability pensions, and funeral costs. Employers are responsible for withholding employees' contributions from monthly salaries.

### **Transfer Pricing Rules**

Peru has adopted transfer pricing rules largely based on the OECD guidelines. These rules also apply to transactions with unrelated entities in non-cooperative and low-tax jurisdictions or whose revenues, profits, or income are subject to a preferential tax regime. Transfer pricing documentation requirements follow the three-tiered approach set out by the OECD in the final reports under Action 13 of the BEPS Action Plan, consisting of a local file, a master file, and a Country-by-Country report (CbCR).

In line with guidance issued in OECD BEPS Action 10, Peru has implemented rules on the treatment of import and export transactions involving products for which a quoted price is used by independent parties to set prices (i.e., commodities such as copper, gold, silver, and zinc). These rules

establish that the arm's-length price for Peruvian income tax purposes must be determined under the CUP method by reference to the price quoted on a public exchange.

The actual pricing date or period of pricing dates should be used as a reference to determine the price for the transaction, as long as independent parties in comparable circumstances would have relied upon the same pricing date. The taxpayer must provide the Peruvian tax authority (SUNAT), prior to or on the date of shipment or disembarkation, full disclosure of the key terms and conditions of the transaction, including the actual pricing date or period of pricing dates used to determine the price for the commodity being transferred.

If this information is not presented, is incomplete, or is inconsistent with other facts of the case, SUNAT may determine the price for the commodity transaction by reference to the quoted price on: (i) the shipment date of the commodities exported; or (ii) the disembarkation date of the commodities imported.

If the selected transfer pricing method differs from the CUP, the taxpayer needs to provide the local tax authority with supporting documentation that explains the economic, financial, and technical reasons why the selected transfer pricing method is the most appropriate.

### **Tax Treaties**

Peru has entered into a multilateral tax treaty with the other members of the Andean Community (Bolivia, Colombia,

and Ecuador), which calls for exclusive taxation at the source, and bilateral tax treaties with Brazil, Canada, Chile, South Korea, Mexico, Portugal, Switzerland, and Japan.

The principal purpose of this still reduced income tax treaty network is to prevent taxes from interfering with the free flow of international trade and investment by mitigating international double taxation with respect to certain income items. However, this is not a static list. Some existing tax treaties are being renegotiated, and others are in various stages of negotiation with countries such as Spain and the UK.

Except for the tax treaty with the other Andean Community countries, tax treaties entered into by Peru generally follow the OECD Model, although they incorporate provisions derived from the UN Model, giving more weight to the source principle than does the OECD Model.

Each of the treaties currently in force between Peru and other countries deals with the same matters. Many of the treaties contain common provisions addressing the same issue. However, it should be noted that Peru's tax treaties show a remarkable degree of individuality, considering that almost every treaty is different in at least some respects. For that reason, it is essential to analyze the specific treaty that may apply to a particular tax issue.

### **Stamp Tax**

None.

### **Exchange controls**

None.



# CUSTOMS CONSIDERATIONS

## 1. Rates and Tax bases

The applicable customs duties and taxes are summarized below:

Tax	Rate	Tax bases
Custom duties*	0%, 6% and 11%	Customs Value*
VAT	18%	Customs Value + Customs duties

\* Customs duties rates depend on the kind of items imported. Capital goods are generally subject to a 0% rate.

\*\* The World Trade Organization (WTO) rules are applicable to arrive at customs value.

## 2. International Trade Agreements

Peru's development strategy is based on an economy open to the world and competitive in its export offerings. It has been a successful strategy that has enabled the country to consolidate its foreign trade as an instrument for economic development and poverty reduction.

International trade negotiations, benefiting from rigorous macroeconomic management and consequent stability, have allowed the Peruvian economy to gradually tackle and reduce its external vulnerability during times of crisis, such as the current international situation. In recent years, Peru has negotiated Free Trade Agreements (FTAs) with large and medium-sized markets.

Peru has a total of 22 FTAs and Economic Integration Agreements (EIAs) in force with the Andean

Community, Mercosur, the Pacific Alliance, the European Free Trade Association (EFTA), Australia, Canada, Chile, China, South Korea, Costa Rica, Cuba, the United States, Honduras, Japan, Mexico, Panama, the United Kingdom, Singapore, Thailand, the European Union, Venezuela, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). With the CPTPP, Peru has gained preferential access to four countries with which it did not previously have a trade agreement, including New Zealand, Vietnam, Brunei, and Malaysia.

This market openness and the trade agreements that Peru has signed have led to an increase in the number of exported products and exporting companies, particularly in non-traditional exports.

Despite the fact that exports of traditional products still represent 71% of the country's total exports, it is evident that the trade agreements have

enabled the country to diversify its offerings of non-traditional goods.

Additionally, these trade agreements are a valuable tool for attracting direct foreign investment and fostering increased productivity in companies, as well as the transfer of technology through the lower cost of imports of capital goods and quality inputs. Trade agreements incentivize the convergence of international standards, enabling more Peruvian companies to improve their management and logistics practices.

### 3. Other Considerations

Mining companies are not exempt from import duties, but under certain circumstances, they can benefit from

temporary import privileges that effectively defer duties. Customs legislation allows the temporary import, for an 18-month period, of certain capital goods without the payment of customs duties and import taxes (e.g., machinery and equipment). For these purposes, it is necessary to provide a guarantee for the unpaid taxes (and compensatory interest), and the referred goods must be re-exported before the end of the aforementioned term.

This regime is applicable provided that the goods are identifiable and intended for a specific purpose at a specific location. They also need to be re-exported within a specified period without having undergone any changes except for normal depreciation arising from their use.







# INCENTIVES

## 1. Early recovery VAT system

An early recovery VAT system allows for the recovery of VAT credit in relation to acquisitions of goods and services, construction contracts, importations, and other transactions if the entity requesting the refund is in the pre-operative stage and, consequently, has not begun to make any sales or exports that would enable them to offset the input VAT against output VAT.

VAT filings are made on a monthly basis, and the recovery of VAT occurs through these filings. It is common for tax authorities to audit the refund application, which typically takes around six months. As such, on average, the refund can take about seven months from the date of filing the application.

Depending on the quantum of the expenditure to which this system applies, this can have a significant favorable effect on cash flows and consequently on the net present value of the project.

The early recovery system is restricted to companies that:

- i) Have obtained a Resolution from the Ministry of Energy and Mines approving the application of the regime, and
- ii) Make a minimum investment commitment of USD 5 million on projects with a preoperative stage of at least two years.

The early recovery of VAT is available for purchases of goods and services made after the date of submission of the application. VAT incurred on expenditure prior to that time cannot

be recovered under this regime but can be recovered under the normal regime.

There is also an early recovery VAT system for the acquisition of goods and services required for mining exploration. Under this regime, the VAT paid is refunded without having to wait until a commercial discovery is made or production begins. This regime includes a final waiver of VAT if the exploration is unsuccessful.

For this purpose, certain administrative requirements must be fully met. For example, mining companies must enter into the so-called "Exploration Investment Agreement" with the Peruvian government, making a minimum investment commitment of USD 0.5 million in mining exploration. In this case, VAT recovery is restricted to the VAT paid after the Agreement is signed.

## 2. Stability Regime

Mining companies may enter into several types of Stabilization Agreements that assure that a given set of rules, mainly about aspects of the tax regime, will remain unchanged for a certain number of years. Such stability agreements are commonly

entered into by mining companies. They use standard terms and are not specifically negotiated with individual taxpayers.

Entering into stability agreements carries a price for mining companies - they come with a corporate income tax rate surcharge of 2 percentage points, resulting in a corporate income tax rate of 31.5%.

### **Stability under the Foreign and Private Investment Legislation**

Stability contracts entered into with “ProInversión” (Private Investment Promotion Agency) are generally available to (i) qualified foreign and national investors and (ii) the company that received the investment. Such a stability contract ensures stability with respect to the corporate income tax regime and the rate of tax on distributions of profits to the parent investor.

They also guarantee the unrestricted right to remit profits abroad, free availability of foreign currency, stability of the labor hiring regime, and non-discrimination between foreign and national investors. The contract is effective for 10 years. To qualify, the mining investor must invest a minimum of USD 10 million within two years of entering the contract.

### **Stability under the General Mining Law**

Mining concession holders can be entitled to a broader range of stability benefits, which can be effective for 10, 12, or 15 years depending on investment size and mine production capacity. These stability agreements cover tax rates and methods to

calculate tax based on all major government taxes, duties, royalties, and other similar payments.

They maintain free marketing of mineral products for export or domestic sale; no foreign exchange controls concerning foreign currency generated by exports; free convertibility into foreign exchange of local currency generated by mineral sales; and non-discrimination on exchange matters.

Stability is important to investors as it reduces fiscal uncertainty. The main requirements are as follows:

- 10 years - the investment must be at least USD 20 million and be allocated to start up an operation with a production capacity of 350 to 5,000 metric tonnes per day (MTPD).
- 12 years - this agreement targets production of at least 5,000 MTPD and requires an investment of USD 100 million for a start-up operation, or USD 250 million to capitalize an existing operation.
- 15 years - for mining concessions with an initial capacity of no less than 15,000 MTPD or capacity expansion plans to achieve a capacity of no less than 20,000 MTPD that require an investment program of no less than USD 500 million.

Benefits under stability agreements are limited to the investment defined in the feasibility study on which the stability agreement was signed. However, companies entering into 15-year stability agreements can include subsequent investments of at least USD 25 million, provided that those



investments are pre-approved by the Ministry of Energy and Mines.

Entering into a 15-year stability agreement allows a taxpayer to apply an annual tax depreciation rate of up to 20% (straight-line) for most mining and processing equipment, other than mine buildings and constructions, which are still subject to a 5% depreciation rate. The 20% tax depreciation benefit is not limited to the amount of depreciation recorded for accounting purposes. This can reduce the present value of taxes owed, thereby increasing the overall net present value of the project.

The maximum depreciation rate of 20% needs to be approved by the General Mining Bureau. The taxpayer can elect to use a different depreciation rate each year by simply notifying the National Superintendence of Tax Administration (“SUNAT”), as long as the 20% limit is not exceeded.

The 12 and 15-year agreements also carry the right to keep accounts for tax purposes in U.S. dollars.

Following the signing of a stability agreement, there is a pre-operative phase, and once this phase is complete (and the mine is able to start producing), it must be approved by the Ministry of Energy and Mines.

The term of a 15-year stability agreement commences at the beginning of the first fiscal year in which the pre-operative phase is complete and approved. However, taxpayers may choose to take advantage of the agreement during the pre-operative phase up to 8 fiscal years before approval.

## FOREIGN EXCHANGE CONTROL REGULATIONS

Peruvian and foreign investments are subject to the same conditions. Due to this constitutional provision, none of the laws, regulations, or practices currently in force in Peru discriminate between Peruvian and foreign corporations.

The Peruvian Government guarantees the free possession and disposal of foreign currencies. Consequently, there are no restrictions on the remittance of profits, international capital transfers, or foreign exchange practices.

Peru offers a favorable and attractive legal framework that protects the interests of foreign investors by providing them with equal, non-discriminatory treatment, unrestricted access to most economic sectors, and free capital movement. Additionally, Peruvian and foreign investors enjoy:

- ▶ Simplicity in most transactions, whether in local currency (Sol) or United States dollars, without exchange controls.
- ▶ The ability to transfer profits from their investments in Peru abroad and to pay royalties to non-domiciled entities.
- ▶ The freedom to access both internal and external credit.
- ▶ The freedom to acquire shares in Peruvian corporations.

## STATE POLICIES AND MARKET CONSIDERATIONS

The so-called “lithium triangle” formed by Chile, Argentina, and Bolivia, which accounts for more than half of the world’s reserves of the white metal, may soon become the “lithium square” with the inclusion of Peru.

Peru is eager to capitalize on the opportunities presented by the green energy transition and is taking a more active role in promoting lithium mining investments. Unlike some of its Andean neighbors, Peru imposes no state controls or restrictions on the development of new lithium mining projects within the country.

While Peru does not currently produce lithium, it is believed to possess one of

the world’s largest lithium resources. The Puno region in the south is known to contain the country’s richest deposits of the soft metal. However, according to Peru’s geological, mining, and metallurgical institute (Ingemmet), there are also significant resources along its central mountains and parts of the northern coast.

Given the increasing demand for lithium, a key component in



rechargeable batteries for electric vehicles and other clean energy technologies, there has been a surge in interest in exploring Peru's lithium deposits in recent years. Peru benefits from a strategic location, one of the lowest operating costs in the world, and a large pool of trained and qualified geologists, mining engineers, and field technicians.

#### Environmental Matters

Peru has enacted a new regime of environmental laws that establishes the main environmental guidelines and principles applicable in the country. Pursuant to these laws, the Ministry of Energy and Mines (MEM) and the Environmental Ministry have issued regulations mandating environmental standards for the mining industry and review and approve environmental studies for mining operations. These laws and related regulations have significantly increased the level of environmental regulation previously in effect in Peru and established a number of environmental management standards, as well as guidelines with respect to particulate emissions in air, water quality, exploration, tailings,

and water discharge, among other requirements.

Under these environmental regulations, new mining development and production activities are required to file and obtain approval for an Environmental Impact Study (EIS), which incorporates technical, environmental, and social considerations, before being authorized to commence operations. The Environmental Evaluation and Oversight Agency (OEFA) monitors environmental compliance. OEFA has the authority to conduct unexpected audits and impose fines on mining companies that fail to comply with prescribed environmental standards.

In addition, mining companies must prepare, submit, and execute plans for the closure of mines, or Closure Plans, and provide environmental guarantees to ensure compliance with Closure Plans throughout the life of the concession. The guarantee must cover the estimated cost of the Closure Plan and may be in the form of cash, trusts, or any other guarantee contemplated in the Banking Law.

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