

Venezuela's Oil and Gas Tax Regime

委内瑞拉石油及天然气的税收制度

Despite possessing the world's largest proven oil reserves, Venezuela ranks eighth among oil exporters. This has led the government of Venezuela to call for additional investment to increase both output (estimates suggest that 300 billion barrels can be extracted from the Orinoco Oil Belt) and the quality of oil through upgrading technology.

The special tax regime described in this article is seen by the government of Venezuela as a mechanism to attract foreign investment to boost production, modernize gas and oil infrastructure and cover the country's needs in connection with engineering, construction, procurement and engineering-related services.

尽管拥有世界上已探明的最大石油储藏，委内瑞拉的石油出口在全球仅排名第八。为增加产量（估计表明奥里诺科石油带 300 十亿桶则可将提取出来）并且通过技术升级提高石油的质量，该国政府最近正加强提高投资。在这篇文章中描述的特殊税务制度是由委内瑞拉政府作为一个以吸引外国投资、提高产量、气体和石油基础设施的现代化并且覆盖国家需要的工程、施工、采购以及和工程有关的服务的机制。

Under Venezuela's Hydrocarbons Law, all activities relating to the exploration of hydrocarbon reservoirs, the extraction, collection and initial transportation and storage of the same are exclusively reserved for the government of Venezuela. However, private entities may undertake such activities through joint venture companies (*empresas mixtas*, or MCs) controlled by the government through an equity stake exceeding 50%.

MCs that carry out oil and gas related activities in Venezuela are subject to a royalty (*regalía*) levied at a 30% rate on the volume of extracted hydrocarbons, which must be paid in kind or in cash, at the option of the Venezuelan government. The Venezuelan government is entitled to reduce the 30% rate to 20% for mature reservoirs and extra-heavy crude oil originating from the Orinoco Belt. Venezuelan law caps the price for calculating the royalty at USD 70 per barrel. The terms and conditions of specific MCs contemplate an additional royalty of 3.33%.

MCs are also subject to a surface tax (*impuesto superficial*) calculated at an annual rate of 100 tax units per square kilometre or fraction thereof. This tax is determined based on the concession area not being operated, with an annual increase of 2% for five years and 5% in subsequent years.

MCs are subject to a tax on fuel consumption (*impuesto de consumo propio*) equivalent to 10% of the value of each cubic meter of hydrocarbon-derived product consumed in furtherance of their operations, calculated based on the final sale price to the end consumer. If the product is not sold in the domestic market, the price is calculated by the Ministry of Oil and Mining.

The Hydrocarbons Law establishes a general consumption tax levied at a rate ranging between 30% and 50% of the price paid by the end consumer for each liter of hydrocarbon-derived product sold in the domestic market. The tax rate is established annually and the tax is withheld at source.

MCs are subject to an extraction tax (*impuesto de extracción*) calculated at a rate of one third of the value of all liquid hydrocarbons extracted from an oil field (over the same tax base established for the purposes of the calculation of the royalty). The taxpayer may deduct the amount paid for the royalty from the taxable amount (or as an additional royalty or special advantage payable annually, but only for the periods subsequent to the payment of the annual special advantage). The royalty established under the Hydrocarbons Law and any additional royalties and special advantage payments that may be established in the MC's terms and conditions can be deducted from this tax. In specific cases, the Venezuelan government is entitled to reduce the tax up to a maximum lower limit of 20%. Article 14 of the windfall profits tax law caps the price for the calculation of the extraction tax at USD 70 per barrel.

Exporters are subject to an export registration tax calculated at a rate of 0.1% of the value of all hydrocarbons exported from a port in Venezuela (based on the sale price of the hydrocarbons). Venezuelan law caps the price used for calculating the export registration tax at USD 70 per barrel.

Pursuant to Venezuelan income tax law, companies engaged in the exploitation of hydrocarbons (excluding non-associated gas) and related activities, such as refining and transport, are subject to Venezuelan income tax (*impuesto sobre la renta*) at a flat rate of 50% of net income; however, companies engaged exclusively in the refining of hydrocarbons or the upgrading of heavy and extra-heavy crude oil are subject to the standard corporate tax rate (i.e., a maximum rate of 34% on net income). Given the existence of these two separate tax frameworks, the government and foreign companies are considering a potential restructuring of Orinoco Belt projects pursuant to a disintegrated business model (as opposed to a fully-integrated project) in order to improve the economic efficiency of the project by forming an MC for the production of extra-heavy crude (subject to the oil taxation regime at a rate of 50%) and an MC for refining and marketing products (subject to the ordinary tax regime at a rate of up to 34%). For specific projects in the Orinoco Belt, the government has agreed to a framework granting a favorable deduction, amortization, and carry-forward losses.

Venezuela also imposes a windfall profits tax for “extraordinary” and “exorbitant” prices, which are based on the difference between the prices established in the Venezuelan national budget and the monthly average of the international prices for the basket of Venezuelan hydrocarbons. This tax is levied on exporters of natural or upgraded liquid hydrocarbons and by-products as well as on MCs that sell natural or upgraded liquid hydrocarbons and by-products to State owned Petróleos de Venezuela S.A. (PDVSA) and its affiliates; however, the windfall profits tax law establishes specific exemptions for: (a) MCs that sell natural or upgraded liquid hydrocarbons and by-products to PDVSA and affiliates engaged in projects for the development of new oil fields

or increased production of exploitation plans for ongoing projects declared as such by the Ministry of Oil and Mining, provided that the MCs have not recovered their total investment in the project; and (b) exports falling under the scope of the international cooperation framework or financing agreements (which is an issue that may be relevant for Chinese companies).

The terms and conditions regulating MCs generally establish a social investment payment equal to 1% of earnings before taxes, and a “shadow tax” (*ventaja especial*) triggered in the event that the tax take does not reach at least 50% of gross profits after applying royalties, taxes and other levies. As such, the MCs must pay the difference between that threshold and the tax take. The “shadow tax” is payable annually; however, for certain Orinoco Belt projects, the government has agreed to accumulate the “shadow tax” from early production until the upgrader’s commencement of production.

In addition to the specific taxes and contributions applicable to the oil and gas industry, MCs are subject to the following special contributions: (a) science and technology contribution (1% of gross profits); (b) anti-drugs trafficking contribution (1% of net profits); and (c) sports contribution (1% of net profits).

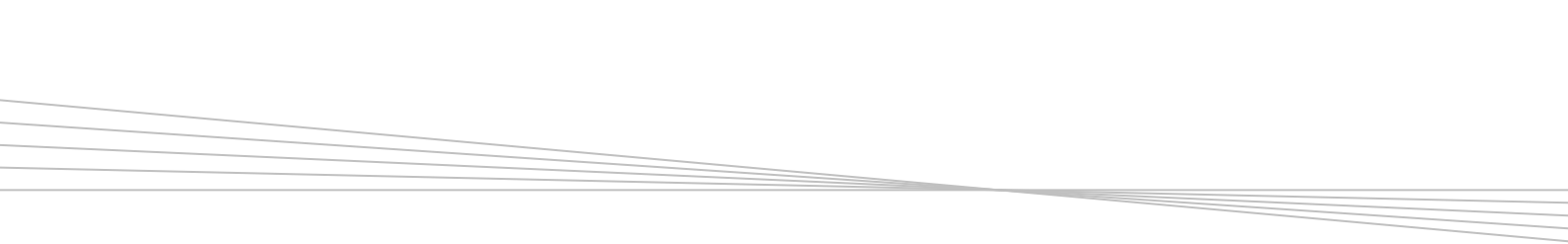
MCs may also be subject to value added tax (VAT) at a 12% rate on sales, services and imports. Exporters are entitled to a refund for a significant portion of VAT paid through the Venezuelan tax authorities’ issuance of tax recovery certificates which can be used to satisfy future tax liabilities. Sales of hydrocarbon by-products in Venezuela are exempt from VAT. Sales of crude oil made by MCs to PDVSA or its affiliates are subject to a 0% rate, which may lead to an accumulation of VAT tax credits (although the tax authorities generally delay the reimbursement of such credits). Companies carrying out pre-operational activities for industrial projects and whose products are destined for export or the generation of foreign currency may request a special VAT reimbursement plan or a deferral of the use of VAT tax credits generated during pre-operational activities (and a corresponding inflation adjustment for the VAT tax credits).

Oil and gas companies are not subject to municipal business taxes, although certain municipalities attempt to tax them from time to time.

Venezuelan companies are subject to stamp tax on capital contributions equal to 1% or 2% of the par value of the shares issued in connection with a contribution.

Venezuela levies a withholding tax on dividends declared by MCs performing upstream or primary activities at a flat rate of 50% of the difference between the MC’s financial earnings and its net taxable income. No withholding tax is levied on dividends paid out of previously paid income at the company level. A withholding tax is assessed on payments for interest, royalties and services, such as technical assistance services. Non-resident sellers are subject to a tax on capital gains realized on sales of stock. Venezuela has ratified tax treaties with over 30 countries, including China. Those tax treaties potentially reduce the applicable withholding taxes on dividends, capital gains, interest and royalties, among others.

Notwithstanding the above, certain aspects of the tax regime applicable to MCs as described may be subject to negotiation with the Venezuelan government. To the extent that a foreign company invests in a new MC, it may



benefit from a more favorable tax regime, as has been the case for foreign companies participating in the Carabobo and Junín Oil Belt projects, in which the Venezuelan government agreed, subject to specific terms and conditions, to reduce royalties and taxes and grant additional tax incentives.

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