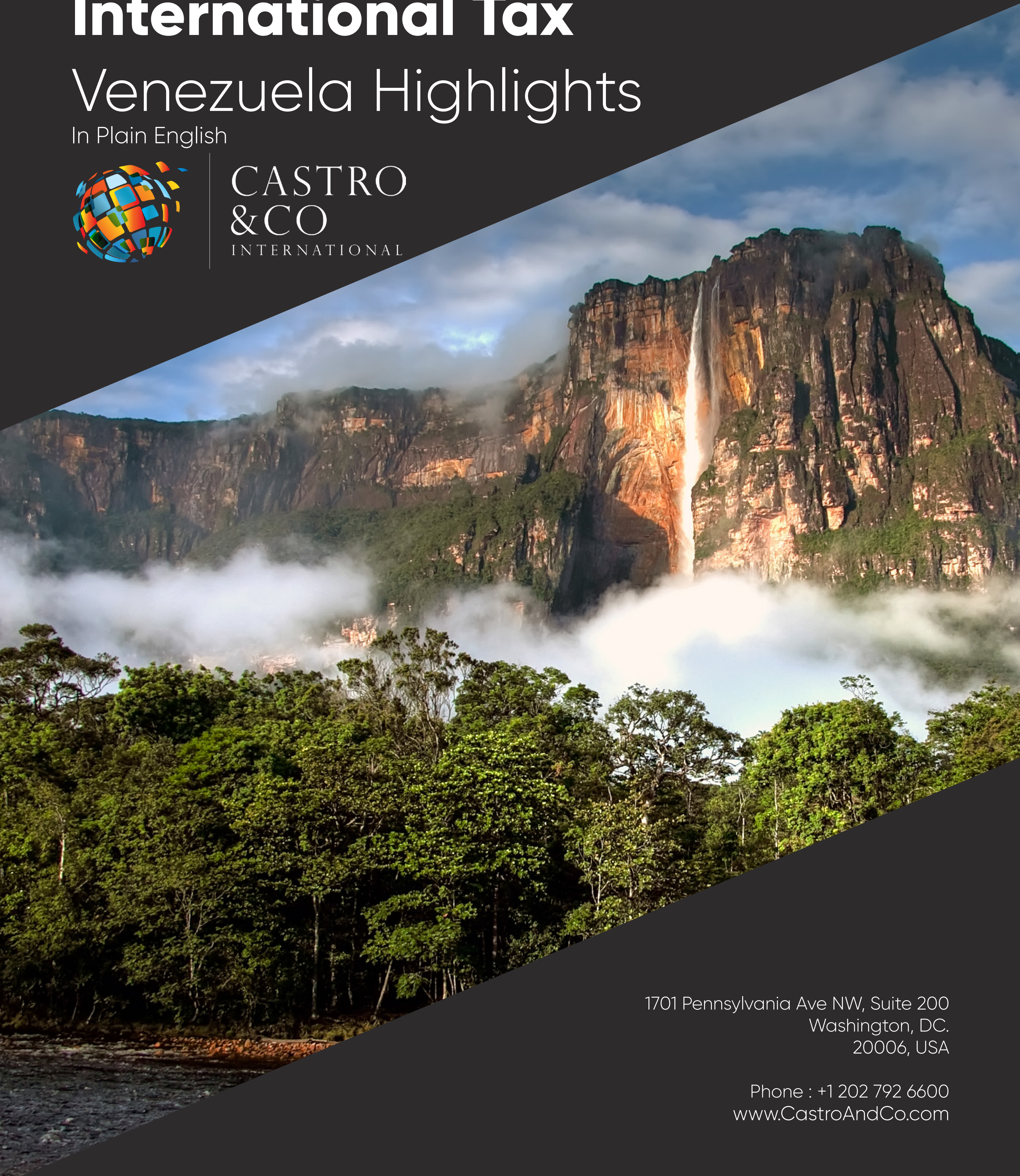
International Tax

Venezuela Highlights

In Plain English

CASTRO &CO INTERNATIONAL



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Investment basics:

Currency – Venezuelan Bolivar (VEB)

Foreign exchange control – Parties wishing to purchase or sell foreign currency must meet the guidelines and legal requirements established by the national government. There are three legal mechanisms to buy and sell foreign currency in Venezuela, namely (i) the purchase and sale of foreign currency denominated positions with financial institutions authorized by the Venezuelan Central Bank (BCV), (ii) retail exchange transactions up to the equivalent of EUR 8,500 through licensed exchange houses and banks, and (iii) the trading of foreign currency-denominated securities issued by the private sector. The BCV publishes an official exchange rate to be used as a reference for foreign currency-denominated transactions.

Exchange activity-related operations recently have been decriminalized.

The foreign exchange rules apply only to foreign currency transactions within Venezuelan territory; the government has no jurisdiction to regulate transactions carried out abroad involving Venezuelan residents.

Accounting principles/financial statements – Companies listed on the Venezuelan stock exchange are subject to the accounting principles set by the Venezuelan Securities and Exchange Superintendence. Financial institutions such as banks and insurance entities are required to comply with accounting principles set by the National Superintendence of Banks and the National Superintendence of Insurance Activities, respectively.

Other private companies generally must apply accepted accounting principles (VEN-NIF) issued by the Venezuelan Federation of Public Accountants, which are based on IFRS.

Principal business entities – These are the corporation, limited liability company, limited partnership and branch of a foreign corporation.

Corporate taxation:

Residence – A company is resident in Venezuela for tax purposes if it is incorporated or domiciled in Venezuela.

Basis – Resident companies are subject to tax on their worldwide taxable income; nonresidents are taxed only on Venezuela-source income. Foreign enterprises that conduct business in Venezuela through a permanent establishment (PE) are subject to income tax on foreign and Venezuela-source income attributable to the PE.

Taxable income – Taxable income is defined as income from worldwide sources and is calculated by deducting from gross receipts all "normal and necessary" expenses incurred in earning income. Business profits and capital gains are included in taxable income.

Tax accounting rules require certain taxpayers to make adjustments for inflation. Banks, financial institutions, insurance and reinsurance companies, and special taxpayers designated as such by the tax authorities are excluded from the inflation adjustments system and the tax authorities have the power to enact rules governing the accounting statements of such entities.

Taxation of dividends – Dividends paid out of profits that have been subject to tax are not subject to withholding tax and are exempt from tax in the hands of a Venezuelan resident recipient company. Dividends paid in excess of the payer company's taxable income are subject to a 34% final withholding tax.

Foreign dividend income received by resident companies is subject to tax at a rate of 34%.

Capital gains – Capital gains generally are taxed as part of the taxpayer's ordinary income. However, capital gains derived from the sale of shares registered on the Venezuelan stock exchange are subject to a 1% tax on the gross proceeds. Losses on sales of shares registered on the Venezuelan stock exchange may not be deducted from other income.

Losses – Net operating losses may be deducted in computing taxable income. Losses may be carried forward for up to three years, except for losses arising from inflation adjustments, which cannot be carried forward. Losses carried forward may not offset more than 25% of the taxable income for any year. Foreign-source losses may be offset only against foreign-source profits. Losses may not be carried back.

Rate – Rates are progressive at 15%, 22% and 34%. Oil companies pay a 50% tax rate on net income, except for specific projects considered by the government to be of national interest, which are taxed at the normal corporate rate.

A 34% rate applies to companies engaged in oil refining, or the exploration, exploitation, processing, transport, distribution, storage, marketing and export of natural gas. Oil companies also are charged a 30% tax or royalty on the amount of crude oil produced. The Ministry of Energy and Oil can reduce the royalty rate to 20% for heavy-oil projects or marginal fields, in special circumstances.

A 40% rate applies to financial institutions, including banks, insurance companies and reinsurance companies.

A 60% rate applies to royalties and other similar participation interests resulting from the exploitation of mines and income derived from the assignment of such royalties and interests.

Surtax – No

Alternative minimum tax – No

Foreign tax credit – Venezuela grants a tax credit for foreign taxes paid, up to the amount of Venezuelan tax payable on the income.

Participation exemption – No

Holding company regime – No

Incentives – Foreign investors are entitled to a range of investment incentives, including tax exemptions, special credit financing, export incentives and debt-to-equity swaps. The government provides tax incentives for investment in “strategic” sectors. Regional incentives include an exemption from income tax for companies operating in certain areas in five undeveloped states and 36 industrial parks. Venezuela also has several industrial, commercial and services free zones.

Withholding tax:

Dividends – Dividends paid to both resident and nonresident individuals and legal entities generally are exempt. However, if dividend distributions exceed the payer company’s net taxed income, a 34% withholding tax applies.

Interest – Interest paid to a nonresident legal entity is taxed at the standard corporate income tax rates (i.e. 15%, 22% and 34%) applied to 95% of the gross payment, resulting in effective rates of 14.7%, 20.9% and 32.3%, provided certain requirements are met. Interest paid to nonresident banks or financial institutions is subject to a 4.95%withholding tax. Interest paid to a nonresident individual is subject to a 34% withholding tax.

Royalties – Royalties paid to a nonresident company or a resident individual are subject to withholding tax at a maximum rate of 34% applied to 90% of the gross payment, resulting in an effective maximum rate of 30.6%.

Technical service fees – Technical assistance fees paid to a nonresident company or a resident individual are subject to withholding tax at a maximum rate of

34% applied to 30% of the gross payment, resulting in an effective maximum rate of 10.2%.

Branch remittance tax – A branch profits tax is levied on PEs of foreign enterprises at a rate of 34%. However, the tax will be deferred if amounts are reinvested in Venezuela for at least five years.

Other taxes on corporations:

Capital duty – Capital duty at 1% to 5% is levied on the incorporation of a company and on additional contributions to capital.

Payroll tax – A company that has more than five employees must contribute 2% of the company's total annual payroll to the National Institute of Socialist Training and Education contribution system.

Real property tax – Real property tax is levied by the municipalities; the rates and bases of assessment vary according to the location and use of the property. Some municipalities offer exemptions from real property taxes to manufacturing enterprises.

Social security – Employers must withhold special contributions from employee salaries and remit them to the relevant authorities on a monthly basis. Contributions for employers may be 10%, 11% or 12% of salary; the employee contribution is 4%. For additional social contributions paid by employers and employees, see "Other taxes on individuals," below.

Stamp duty – Stamp duty of 0.01 tax units (TUs) per VEB or fraction of a VEB is levied when the initial capital of a company is registered or increased. A "tax unit" is a measure of value used by the tax authorities (for 2019, 1 TU equals VEB 50 or approximately USD 0.0025).

Stamp duty also is levied on the registration of a branch in Venezuela. Companies in the Capital District must include stamp duty of 1 TU plus 0.5 TUs per page with an incorporation request or on modification of the incorporation documents.

Each state is entitled to regulate stamp duty within its jurisdiction. If no law is issued by the state, the national Stamp Duty Law applies until a corresponding state law is issued.

Transfer tax – There is no transfer tax, but where a document is issued for the transfer of goods or shares, the competent office or public notary will levy stamp tax for registration of the document at rates that vary by location and by transaction.

Other – A 2% tax on financial transactions applies to special taxpayers designated as such by the tax authorities.

Special taxpayers whose net equity exceeds 150 million TUs are subject to a wealth tax at 0.25% of total equity payable on 30 September annually as from 2019. The wealth tax cannot be deducted or credited against corporate income tax.

The municipalities levy an annual tax on economic activities that usually is based on gross receipts or sales and varies from 0.5% to 10%, depending on the district and type of business.

All enterprises that carry on economic activities in Venezuela and earn more than 100,000 TUs annually must make an annual contribution for science and technology. The contribution is 0.5%, 1% or 2% of gross income, depending on the activities of the company. The 0.5% rate applies to enterprises that conduct economic activities in Venezuela and to state-owned enterprises that conduct oil and mining activities in Venezuela. The 1% rate applies to enterprises that carry out oil and mining activities in Venezuela, and the 2% rate applies to enterprises that conduct activities related to alcohol and cigarettes, etc.

Public and private enterprises employing at least 50 employees must contribute 1% of "operating profits" to the National Antidrug Fund. The payment and related filing must be made within 60 calendar days after the fiscal year end.

Enterprises that carry on economic activities in Venezuela and whose annual accounting profits or net tax profits exceed 20,000 TUs must contribute 1% of accounting profits to the National Fund for the Development of Sports, Physical Activity and Physical Education.

Anti-avoidance rules:

Transfer pricing – Venezuela's transfer pricing rules generally follow the OECD guidelines, requiring income and expenses in respect of transactions between related parties to be on arm's length terms. The transfer pricing rules define related parties and specify the permitted methodologies. Taxpayers are required to verify the existence of arm's length pricing by conducting a transfer pricing study, and the tax authorities may adjust non- arm's length prices.

Thin capitalization – The thin capitalization rules provide for a debt-to-equity ratio of 1:1.

Controlled foreign companies – Venezuela does not have CFC rules, but the Income Tax Law contains fiscal transparency rules.

Under the fiscal transparency rules, taxpayers that invest directly or indirectly through another person (i.e. an agent or intermediary) in entities or funds located in a low-tax jurisdiction must report the income of the low-tax jurisdiction entity/ fund, regardless of whether the income is distributed. Such income is considered foreign-source gross income for purposes of Venezuelan income tax. To be subject to the fiscal transparency rules, however, the Venezuelan taxpayer must have the power to influence the distribution of profits or dividends of the low-tax jurisdiction entity or control, directly or indirectly, the administration of the entity.

A low-tax jurisdiction is one in which income is taxed at rates lower than 20%. The fiscal transparency rules generally do not apply if the Venezuelan taxpayer's income is derived from business activities and more than 50% of the total assets of the investment are used to carry on the business activities in the low-tax jurisdiction. However, if more than 20% of the total income derived from the investment in the low-tax jurisdiction comes from dividends, interest, royalties or income from the sale of movable or immovable property, the exception will not apply.

The investment in the low-tax jurisdiction entity must be reported in an additional return filed with the final income tax return for the corresponding taxable year.

Disclosure requirements – No, except the disclosure required under the fiscal transparency rules.

Compliance for corporations:

Tax year – Generally the calendar year, but taxpayers may choose their own fiscal year. Once approved, the fiscal year may not be changed without the approval of the tax authorities. A corporation's first fiscal year may be less than 12 months.

Consolidated returns – Consolidated returns are not permitted; each company must file a separate return.

Filing requirements – All companies (except mining and oil companies) that earned more than 1,500 TUs during the preceding fiscal year must file an estimated tax return by the end of the sixth month of the fiscal year. The amount of tax declared in the return must be calculated based on at least 80% of the preceding year's taxable income, unless the company can justify a lower estimate. The amount of estimated investments eligible for tax credits may not exceed 80% of the investments declared for the same purpose in the previous year's final tax return. All corporate taxpayers (except those involved in mining or oil activities) must make advance tax payments in six equal installments. For companies in the hydrocarbons industry, advance payments must be made in 12 equal monthly installments.

Mining and hydrocarbons companies must file estimated tax returns within the first 45 days of each year, and advance payments of 96% of the tax resulting from the estimate must be paid at that time.

Final income tax returns must be filed within three months of the close of the company's fiscal year and payment of tax liability must be made at that time. Special taxpayers must submit returns and pay the tax due in line with the dates on the special taxpayer calendar issued annually by the tax authorities.

Penalties – Penalties for late filing of returns are 10%- 300% of the amount due, plus flat fines and temporary closure of the establishment in certain cases. The monthly interest rate on outstanding payments is equal to the maximum commercial bank rate plus 20%.

Rulings – Taxpayers may request a ruling on the tax consequences of particular transactions.

Advance payments – Special taxpayers must make weekly income tax advance payments. For financial institutions, insurance and reinsurance companies, the rate for calculating the advance payment is 2% of the gross income for VAT purposes of the previous week. The rate is 1% for other taxpayers.

Personal taxation:

Basis – Residents are taxed on a worldwide basis. Resident expatriates are subject to tax on all income from Venezuelan and foreign sources, at the same rates applicable to Venezuelans. A tax credit is available for tax paid on foreign-source income, up to the amount of Venezuelan tax payable on such income. Nonresidents are taxed in Venezuela only on Venezuela-source income.

Residence – A resident is defined as an individual who is present in Venezuela for more than 183 days during the relevant calendar year or during the immediately preceding calendar year. An individual may be deemed to be tax resident in Venezuela if he/she has a habitual abode in the country unless the individual, in the same calendar year, spends more than 183 days in another country and can prove that tax residence status has been obtained in that country.

Filing status – Married couples must file a joint return.

Taxable income – Venezuelan residents are subject to income tax on income derived from all sources, whether in cash or in kind.

Capital gains – Capital gains are included in ordinary income and taxed at the normal rates, except for capital gains derived from the sale of shares listed on the stock market, which are subject to a 1% tax on the gross proceeds.

Deductions and allowances – Individuals are entitled to certain itemized deductions in computing taxable income, including school tuition and costs for dependents younger than age 25; health insurance premiums; medical, dental and hospitalization costs; interest of up to 1,000 TUs on loans for the purchase or extension of a residence; and payments of up to 800 TUs per annum for housing/mortgage costs. Otherwise, a standard deduction of 774 TUs may be taken. A taxpayer also may deduct 10 TUs for each family member younger than age 25, and an additional 10 TUs overall.

Rates – Progressive rates based on tax units apply, ranging from 6% to 34%.

Other taxes on individuals:

Capital duty – No

Stamp duty – No

Capital acquisitions tax – No

Real property tax – Real property tax is levied by the municipalities; the rates and bases of assessment vary according to the location and use of the property.

Inheritance/estate tax – Inheritance tax is levied at progressive rates up to 55%.

Net wealth/capital tax – Special taxpayers whose wealth exceeds 150 million TUs are subject to a wealth tax at 0.25% of total wealth, payable on 30 September annually as from 2019. The wealth tax cannot be deducted or credited against individual income tax.

Social security – Social security contributions must be made by both the employer and the employee, at amounts based on the employee's monthly salary. The employee's contribution is 4% of gross salary up to a maximum of five minimum wages per month.

Contributions to the employment system also are required. The employee pays 0.5% of gross salary, up to a maximum of 10 minimum wages per month, and the employer pays 2% of the employee's regular monthly normal salary (with a cap of 10 minimum salaries).

Under the housing and habitat payment system, the employer withholds 1% of the employee's monthly salary and also pays a 2% employer share of the employee's total monthly salary.

Under the National Institute of Socialist Training and Education contribution system, the employer pays 2% of the company's total annual payroll, and employees must contribute an amount equal to 0.5% of any profit-sharing amount they receive.

Other – Individuals that provide services to the national government regarding proprietary software must contribute 1.5% of the current year's net income from such services to the National Committee of Information Technology.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – A tax return must be filed if an individual's annual net income exceeds 1,000 TUs or gross income from self-employment exceeds 1,500 TUs. The return must be filed within three months following the end of the fiscal year.

Penalties – Penalties apply for late filing and failure to file. Also, certain offenses, such as fraud, can lead to imprisonment.

Value added tax:

Taxable transactions – VAT is based on the invoiced price for domestic and imported goods and the provision of services.

Rates – The standard VAT rate is 16% (increased from 12% as from 1 September 2018). A higher rate of 31% applies to certain goods and services considered as luxuries. A reduced rate of 8% applies to national passenger transport, services rendered to the government, and the import and sale of certain goods for human consumption. Exports are zero-rated and various exemptions exist for exporters and importers, specific industries, certain staple goods and some imports.

Registration – Taxpayers must obtain a tax number from the Tax Registry and update their information every three years. Nonresident enterprises carrying out a business or activities in Venezuela without a PE must obtain a tax ID number

Filing and payment – VAT returns must be filed (even if no tax is due for the period) and any VAT due paid within 15 calendar days following the end of the tax period.

Special taxpayers are required to file returns and make advance payments of VAT on a weekly basis. They also must withhold and submit on a weekly basis 75% or 100% of the VAT charged on all their purchases of goods and services from Venezuelan suppliers.

Source of tax law: Income Tax Law, Value-Added Tax Law, Master Tax Code, Labor Law, exchange control agreements, Foreign Exchange Regime Law.

Tax treaties: Venezuela has 28 tax treaties.

Tax authorities: Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT)