



The Legal 500 Country Comparative Guides

Peru

PRIVATE CLIENT

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This country-specific Q&A provides an overview of private client laws and regulations applicable in Peru.

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PERU PRIVATE CLIENT



1. Which factors bring an individual within the scope of tax on income and capital gains?

Peruvian tax resident individuals are subject to Peruvian income tax on ordinary income and capital gains on their world source income, whereas non-Peruvian income tax resident individuals are subject to the aforementioned Peruvian income tax exclusively on Peruvian source income.

Peruvian Income Tax Law provides a broad definition of Peruvian source income, based primarily on criteria such as; country of incorporation of the securities issued (in case of capital gains and dividend income), tax residence of the payor (in case of interest income), situs of the assets (in case of rental income and capital gains from real estate and movable goods), and situs of the services rendered (in case of consideration for services income). Foreign source income is by default any income not defined as Peruvian source income.

Generally speaking, Peruvian nationals are deemed to be tax residents to the extent they do not leave the country for more than 183 days within any 12 month period. Foreign individuals shall be considered Peruvian tax residents following the calendar year in which they have accumulated more than 183 days in Peru within any 12 month period. Peruvian nationals may exceptionally—and automatically—lose their Peruvian tax residence if they effectively leave the country and acquire residence status in a foreign jurisdiction.

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

Peruvian tax resident individuals are subject to an effective 5% income tax rate on Peruvian source dividend, interest, and rental income, as well as from

capital gains derived from the sale of securities and real estate.

Rental income is deemed no lower than 6% of the value of the real estate or 8% of the value of the movable asset (e.g., a vehicle). Interest income is deemed no lower than (i) the average monthly active interest rate published by the Peruvian Bank Regulator (for loans in Peruvian national currency) or (ii) average 6-month LIBOR rate of the previous calendar year (for loans in foreign currency). The aforementioned deemed interest income rules may be defeated with the lending company's accounting as evidence.

Personal services income, employment income and foreign source income are all subject a progressive income tax rate ranging from 8% to 30%, applicable to the tax brackets discussed in section 3 below. The first 7 tax units are income tax exempt.^[1]

Provided that certain requirements are met, individuals may deduct up to three tax units on expenses related to the lease of immovable property, independent professional services, hotels, and restaurants, among others.

Resident individuals are required to submit an Annual Income Tax Return and pay the corresponding Income Tax, unless they only receive income derived from employment in which case such tax return submission is not required. Income tax on capital gains is subject to advanced monthly payments if the capital gain was not subject to withholding tax.

The Peruvian fiscal year is based only on a regular calendar year (It begins on January 1st and ends on December 31st of each year).

As previously noted, Peruvian non tax resident individuals are subject to Peruvian income tax exclusively on their Peruvian source income, subject to the general 30% income tax rate. Reduced income tax rates are available for dividend income (5%), certain interest income (4.99%) and capital gains (5%) as indicated in section 3 below.

[1] Tax Unit: PEN 4,400 = US\$ 1,100

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

Individuals are subject to withholding taxes on the following Peruvian source income, when the payor of such services is a Peruvian company.

Peruvian tax resident individuals:

- **Interest:** 5% WHT in the month of payment.
- **Dividend:** 5% WHT in the month of distribution or distribution agreement, whatever occurs first.
- **Royalty:** 5% WHT in the month of payment.
- **Independent Services and Employment Services income (annual taxation):**

Bracket	PEN	Dollars**	Rate
7UIT*	30,100	8,600	0%
0 - 5 UIT	21,500	6,143	8%
5 UIT - 20 UIT	64,500	18,429	14%
20 UIT - 35 UIT	64,500	18,429	17%
35 UIT - 45 UIT	43,000	12,286	20%
45 UIT and beyond	Beyond 193,500	Beyond 55,286	30%

(*) UIT (2021): PEN 4,400

(**) Exchange rate: 1 Dollar = S/ 4.00

- **Capital gain derived from:**
 - Immovable property: 5%
 - Shares and other securities: 0%^[2] or 5% in the other cases

Employers are required to withhold and pay the resulting income tax on a monthly basis, based on a formula provided in Peruvian Income Tax Law, which shall be creditable towards the employee's annual income tax.

Companies are required to withhold 8% of the consideration paid for independent services, if such consideration exceeds USD 325, which shall be creditable towards the service provider's annual income tax. Independent personal service providers are allowed an additional 20% general expense deduction.

Non-Peruvian tax resident individuals:

- **Interest:** 99% as long as i) the lender does not qualify as a related party ii) the transaction does not involve as tax haven in which case the applicable rate would be 30%.

- **Dividend:** 5% in the month where the dividend distribution agreement or the payment takes place, whatever occurs first.
- **Royalty:** 30% in the month the payment takes place.
- **Employment income:** 30%
- **Independent services income:** 24%
- **Capital gain derived from:**
 - Immovable property: 5%
 - Shares and other securities: 0%^[3] / 5%^[4] / 30%^[5]

[2] There are some transactions that are exempt such as the ones made through the Lima Stock Exchange (LSE) if some requirements are met, meaning i) 10% or more of shares cannot be transferred within a period of 12 months by the transferor and its related parties and ii) the shares have market liquidity.

[3] Idem.

[4] A rate of 5% would apply whereby the person does not fulfill the conditions contained in footnote No. 2 but the transaction is made through the Lima Stock Exchange.

[5] In the other cases.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

On June 2018, Peru has signed the Multilateral Convention Implement Tax Treaty Related Measures. However, it has not yet entered into force due to the lack of the deposit of de instrument of ratification/acceptance/approval.

Pursuant to domestic legislation, resident tax payers are allowed to get a tax credit related to paid foreign taxes that is subject to certain limits.

Peru has also signed double tax treaties that aim to eliminate the double taxation that may arise in two jurisdictions.

Peru has signed Model OECD Double Tax Treaties with the following countries, generally eliminating double taxation through foreign tax credit (and also providing reduced withholding rates on certain income at source, such as on royalties, interest, dividends, and capital gains):

- Brazil
- Canada
- Chile
- Japan^[6]
- Mexico
- South Korea
- Switzerland
- Portugal

Peru has also signed a double tax treaty with the Member States of the Andean Community (*Bolivia, Colombia Ecuador and Peru - Decisió*

[6] In force since 2022

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

There is currently no wealth tax in force in Peru. However, there are currently 3 wealth tax bills in Congress, which are expected to be debated in the following 2-3 years.

Peru does apply the following taxes on property:

- **Real Estate Tax**

Real estate tax is levied on the value of urban and rustic properties, assessed by the local government, at progressive rates.^[7] The property owner is liable to pay on an annual basis.

The Tax Unit is used to determine the Real Estate Tax.

To this regard, the real property tax is applied with the following rates:

Tax base	Tax rate
Up to 15 Tax Units (USD 18,330)	0.2%
15 Tax Units (USD 18,330) - 60 Tax Units (USD 73,320)	0.6% on band over 15 Tax Units
Over 60 Tax Units (USD 73,320)	1% on band over 60 Tax Units

- **Tax on recreational vessels**

This 5% tax rate is applicable to the original acquisition value of the vessel, which in no case may be less than the reference adjusted values published annually by the Ministry of Economy and Finance.

- **Tax on vehicles**

This 1% tax rate applies to the value of any vehicle, such as automobiles, vans, station wagons, trucks, and buses, which are not older than three (3) years.

A tax reform currently underway may result in an increase of effective tax rates and the addition of certain vehicles to the vehicle ownership tax.

[7] There might be changes in this field under the current tax reform.

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

There is no tax triggered on the transfer of assets upon death of an individual or otherwise a gratuitous transfer between individuals. However, the cost basis of the assets so transferred shall be equal to zero for income tax purposes, unless the acquirer is able to demonstrate transferred basis from the previous owner.

Gifts of real property between unrelated parties will generally be subject to a 3% property transfer tax, a local tax in charge of the acquirer.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

No tax reliefs apply, as gifts are generally not subject to income tax in Peru.

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

Taxpayers are allowed to deduct from its income derived from work activities donations done to i) public entities or ii) foundations, civil associations involved in activities such as charity, social assistance, education, culture, sports, science, arts, literature, health, public, historical Indian heritage and similar, as long as the deduction does not exceed 10% of their net income.

9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

Location of real property is given by the situs thereof, regardless of the tax residence of the owner.

Tax resident and non-tax resident individual owners of Peruvian situs real property are subject to real estate tax in the corresponding municipal jurisdiction as referred to in section 5. Rental income derived by said individuals from real property located in Peru is subject to an effective tax rate of 5%.

10. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

No other taxes applicable to individuals.

11. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

There are no advantageous tax regimes available for individuals who have recently arrived in or are only partially connected with Peru.

12. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

Provided tax resident individuals are subject to income tax on their world source income, an individual migrating to Peru may wish to identify any income generating assets held in foreign jurisdictions, as these would be subject to the progressive income tax rates on foreign source income described above. Such foreign passive income would also be attributed to the aforementioned individual on December 31st of each year, if received previously by an offshore company that qualifies as a Controlled Foreign Corporation (i.e., generally, any foreign entity or vehicle considered under the control of the individual tax resident).

Conversely, said individual may wish to transfer any Peruvian situs assets owned by a foreign offshore entity

directly to his name, as passive income derived therefrom may generally be subject to a 5% income tax rate, as opposed to an additional 30% income tax on the ultimate distribution of said income from the aforementioned offshore entity to the individual.[8]

[8] Such distributions would be subject to the progressive 8% to 30% income tax rate on foreign source income.

13. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

In Peru, the rule of forced inheritance is applied, according to which the estate of the deceased belongs in equal parts to all their forced heirs; which are: (i) first order, the children and other descendants; (ii) second order, parents and other ancestors; and, (iii) third order, the spouse.

The succession orders indicated above are excluding, except for the spouse who concurs with the members of the first or second order, as the case may be. Likewise, within each succession order, the existence of people with a degree of kinship closest to the deceased, excludes those with the most distant kinship. As an example, if a person dies and has grandparents, parents, children, grandchildren and a spouse, the heirs will be their children (first order) and their spouse (third order).

Through a will, an individual can freely dispose of: (i) a third of their estate, if they have children, other descendants or a spouse; (ii) half of their estate, if they only have parents or other ascendants; and, (iii) of their entire estate, if they have no forced heirs.

14. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

Assets acquired during the marriage have the status of matrimonial assets, except those acquired by each spouse for free (for example, inheritances, bequests or donations), which have the status of personal assets. The Peruvian Civil Code allows future spouses, prior to marriage, to opt for the patrimonial regime of personal assets by means of an agreement executed by public deed before a Notary Public and registering it in the Personal Registry. After marriage, it is also possible to replace the matrimonial property regime for the personal property regime following the same formality.

Upon the death of a person, 50% of the matrimonial assets correspond to the other spouse due to the liquidation of their matrimonial property regime. The remaining 50% of matrimonial assets and the deceased's personal assets correspond in equal parts to his/her forced heirs (including the surviving spouse).

15. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

In application of article 2100 of the Civil Code, the determining factor for the application of the Peruvian inheritance law is that the last domicile of the deceased is Peru, understanding said last domicile as their usual place of residence, regardless of the place where their goods are located.

Peruvian Inheritance law will also apply with respect to assets located in Peru, even if the deceased's last domicile was not Peru but the law of said last domicile stipulates that the assets included in the estate must be transferred to the foreign State or its institutions.

16. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

The Peruvian Civil Code has been clear in assuming an integral and not fragmented conception of the inheritance; with which, if the last domicile of the deceased is Peru, the Peruvian law will apply this rule for both formal and material purposes.

17. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

The main consequence of dying without having granted a will is the need to follow a non-contentious procedure before a Notary Public in order it to issue the Declaration of Heirs. However, if any opposition arises within this notarial procedure, the Declaration of Heirs will have to be requested in court with an uncertain date of issuing and, therefore, delaying the possibility that the heirs can exercise rights over the estate of the deceased.

In this sense, our recommendation is always to grant a will, even if it is only granted to recognize the forced

heirs according to law and to appoint an executor, who is the person in charge of executing the will of the testator. In this way, it will not be necessary to follow the procedures indicated in the previous paragraph, there will be certainty regarding who the heirs are and they will be entitled to exercise their rights over the estate of the deceased in less time.

As indicated above, the testator can use the will to dispose of its percentage of free disposition, benefiting certain heirs or third parties with a percentage of the estate or with bequests on specific assets. On the other hand, our recommendation for foreigners not domiciled in Peru who are owners of assets located in this country is that, when granting a will in accordance with the applicable law of their domicile, they indicate their full names, their identity documents (including the traceability if they have changed), a detailed description of the goods that allows their proper identification and to appoint an executor duly identified who should be expressly authorized to act in Peru or delegate its powers of attorney.

18. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

The administration of the deceased's estate corresponds to the executor, hence the importance of granting a will in which one is appointed. In the case of intestate successions, the declaration of heirs must be awaited, so that they can agree on the appointment of a common representative or the division and partition of the estate. The heirs are co-owners of the assets integrating the estate and are able to dispose of their partition percentages as they are their personal assets.

19. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

Peruvian regulation allows the deceased to create an administration trust during their lifetime, with a maximum term of thirty (30) years, to which they contribute assets for the purposes of their possession and administration and whose beneficiaries are usually the heirs of the deceased. This trust has been used

mainly for the contribution of shares issued by holding companies of high-net-worth families, as well as real estate assets generating cash flows. Another common form of succession planning in life supposes that the individual transfers (as means a donation) the “empty” ownership of the same type of assets (shares or real estate) to their successors, retaining the usufruct over them, that is, whole the economic rights corresponding to said assets.

The figure of the testamentary trust is regulated but is not used by the perception of risk of the fiduciary entities that provide the service. The foundation is also regulated, but in our jurisdiction, it is not understood as a succession planning vehicle, but as an entity that owns an estate affected by the fulfilment of a philanthropic purpose. Its use is not recommended due to the limitations to the autonomy of the founder to decide on the estate, as well as the supervision by the Ministry of Justice. On the other hand, there is no a specific corporate form for family companies which can set up under anyone of the corporate forms established in the Peruvian Corporate Law.

20. How is any such structure constituted, what are the main rules that govern it, and what requirements are there for registration with or disclosure to any authority or regulator?

When a trust is constituted, the contributed assets acquire the status of independent estate, different from that of the settlor, the fiduciary company and the beneficiaries themselves. The trust is entered into by public deed and is registered both in the Contract Registry and in the Real Estate Registry, if it was the case. It is temporary and usually irrevocable, considering that the maximum legal term is thirty (30) years. The contract may include the creation of an Administration Board, as well as the approval of a regulation that establishes rules on the number of members, the requirements for their entry and the reasons for leaving, powers, quorum and majorities, whether simple. and / or qualified, depending on the issues that are submitted for approval. Finally, the contract must include rules regarding the restitution and / or destination of the assets contributed at the expiration of the contract. The recommendation is that future forced heirs, who are usually the beneficiaries, participate in order to express their consent.

21. What information is required to be made available to the public regarding

such structures and the ultimate beneficial ownership or control of such structures or of private assets generally?

There is currently no obligation to publicly disclose ultimate beneficial ownership (“UBO”) information. However, domestic beneficial ownership legislation in force since 2019 imposes a gradual UBO reporting obligation on different entities, including local and foreign trusts, foundations, investment funds, and corporations, based on certain triggering events (e.g., local trustees/administrators are obligated to report settlors, trustees, and beneficiaries; local investment fund managers are obligated to report beneficiaries of investment funds; Peruvian companies and foreign companies with Peruvian permanent establishments are obligated to report their ultimate shareholders).

The Peruvian Tax Authorities have only regulated procedures and subsequently enforced UBO reporting by local companies categorized as “principal taxpayers”. Additional reporting regulations and subsequent enforceability for other reporting entities mentioned above are expected in the following years.

22. What is the jurisdiction's approach to information sharing with other jurisdictions?

Peru is a signatory and an effective party to the OECD's Convention On Mutual Administrative Assistance in Tax Matters since September 9th, 2018. It has since become a fully compliant Common Reporting Standard jurisdiction, with Multilateral Competent Authority Agreements on Automatic Exchange of Financial Account Information activated with more than 50 jurisdictions, including Belgium, Cayman Islands—which have already effectively reported financial information to the Peruvian Tax Authorities—Isle of Man, Luxembourg, Portugal, UK, and Switzerland.

23. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Foreign vehicles such as corporations, trusts, private foundations, and partnerships shall be considered entities with separate (independent) legal existence from their members, and shall be deemed “controlled foreign corporations” (“CFC”) for Peruvian Income Tax purposes, if on December 31st of each year, they are: (i) located in a non-cooperant or low-tax jurisdiction and (ii) owned by Peruvian individual tax residents.

For such purposes, ownership is defined as direct, indirect, or constructive ownership on more than 50% of the shares, voting rights, or proceeds of the aforementioned vehicles.

Foreign passive income derived by CFCs shall be attributed to their owners (i.e., Peruvian individual tax residents in control thereof) on December 31st of each year and subject to the progressive 8% to 30% income tax rate on foreign source income, indicated in sections above.

Although no clear and specific guidance has been provided by the Peruvian Tax Authorities on the application of the CFC Regime to foreign trusts, based on the control criteria discussed above, revocable trusts should generally be considered a CFC of individual tax resident settlors, and thus attribute foreign passive income derived by December 31st of each year to said settlors. In some cases, irrevocable trusts may be considered a CFC of individual tax resident beneficiaries who are directly, indirectly or constructively entitled to more than 50% of the trust's proceeds, thus triggering the aforementioned taxable income attribution. A similar analysis is applicable to private foundations and funds.

24. Are foreign trusts, private foundations, etc recognised?

Foreign trusts, foundations and similar offshore vehicles are not expressly recognized and regulated by Peruvian legislation. However, as noted above, all foreign vehicles are subject to the Peruvian CFC Test discussed in section 23, regardless of their lack of regulations under Peruvian domestic law. To the extent that Peruvian individual tax residents are deemed to be in control of such vehicles on December 31st of each year, the aforementioned attribution rules shall kick-in and trigger the Peruvian income tax consequences previously described.

25. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Please refer to section 23 and 24.

26. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

In the case of trusts, the regulation expressly establishes that the contributed assets constitute an independent

estate, which is not liable for the obligations of the settlor or the fiduciary entity; but with respect to the beneficiaries, only the fruits and benefits derived from the trust in their favour and available to them are liable for their obligations.

27. What provision can be made to hold and manage assets for minor children and grandchildren?

The surviving spouse has parental authority over the minor children and, additionally, a legal usufruct over their assets. Therefore, said surviving parent can hold and exploit the assets corresponding to a minor child, using the resources derived from that exploitation in the benefit of their child, for the purpose of maintenance, education, recreation and others.

However, the surviving parent cannot transfer the ownership of the assets of their minor children or create guarantees over them, unless they have a prior specific judicial authorization for such purposes.

28. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

At the end of 2018, the Legislative Decree No. 1384 was published; which represented a paradigm shift in Peru regarding the regulation of the capacity of individuals, by establishing that all individuals over 18 years of age have the capacity to exercise their rights, even those with mental impairment, as well as individuals suffering other mental disabilities that prevents them from expressing their will.

Those individuals won't have the status of incapables anymore and, therefore, won't be subject to interdiction (judicial restriction for rights exercise) nor do they require the judicial appointment of a curator. However, they will be entitled to appoint a person called "support" by a public deed before a Public Notary, in order to help them express their will and, if necessary, also grant the power to act on their behalf.

Consequently, any individual, in view of their possible future mental disability, can appoint in advance the person (or persons) who will act as supports, as well as be able to grant powers to represent them. We suggest detailing as broadly as possible the spectrum of collaboration of the person designated as support, as well as the powers conferred, so that third parties have

no doubt of that scope.

29. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

Usually, philanthropy activities in Peru are structured through a type of non-profit legal entity called "civil association", which can access to income tax exemption and status of a donation-receiving entity, through a prior process followed before the Peruvian tax administration. Civil associations are constituted by public deed before a Notary Public and have an Assembly of Associates and a Board of Directors, as well as other legal representatives.

30. Have any specific tax policies or approaches been implemented, on a temporary or permanent basis, to take account of the Covid 19 pandemic?

- The due date for the submission of Annual Income Tax Return for 2020 was delayed.
- The monthly rate of moratorium interest

applicable for tax debt was reduced from 1.2% to 0.90%.

- Automatic refund of taxes paid or withheld in excess during 2019.
- Virtual procedure for registration in the RUC (Taxpayer's Registry) and other paperwork before the tax authorities.

31. What important legislative changes do you anticipate so far as they affect your advice to private clients?

The Peruvian Government is planning a tax reform focused on: (i) increase income tax rates on Peruvian source ordinary income and capital gains, (ii) increase income tax rates on foreign source income, (iii) increase on income tax rate on employment income and personal services income, (iv) amendment of FMV adjustment rules no the transfer of shares, among other aspects. Congress has denied legislative powers to the Executive Branch, necessary to carry out such reform, but the Executive Branch is expected to insist via itemized tax bills to be passed by Congress.

Such bills are expected to be discussed by Congress during the first half of 2022.

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