ESTUDIO GAMARRA
& ASOCIADOS

Peru

Investment Opportunities - Peru

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ABOUT THE PRESENTER

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Experience
- Tax Partner for Globalaw Peru, Lozano & Cia, Attorneys at Law
- Tax Manager for EY Perù
- Tax Specialist for Telefònica in Perù
- Tax Attorney of Estudio Muñiz

Studies
- JD candidate in Tax Law - Universidad San Ignacio de Loyola (Peru)
- Masters Degree in Finance and Corporate Law – ESAN (Peru)
- Master Degree in International Taxation - International University of la Rioja (Spain)
- Postgraduate degree in International Taxation - Maastricht University (Netherlands)
- Law degree - UPC (Peru)

Memberships/other
- Lecturer for UPC
- Lecturer for Universidad Científica del Sur
- Member of International Fiscal Association

Peru's investment grade ratings (long-term debt in foreign currency)

Country	S&P	Fitch	Moody's
Chile	A	A-	A2
Peru	BBB	BBB	Baa1
Mexico	BBB	BBB-	Baa2
Colombia	BB+	BB+	Baa2
Uruguay	BBB	BBB-	Baa2
Paraguay	BB	BB+	Ba1
Brazil	BB-	BB	Ba2
Bolivia	B+	B	B2
Ecuador	B-	B-	Caa3
Argentina	CCC+	CCC-	Ca
Venezuela	N/A	RD	C

As of June 2023
Source: Standard & Poor's / Fitch Ratings / Moody's

Peru has one of the highest investment grade ratings in the region. The factors that support this rating are the solid economic prospects reflected by a 2.7% rise in the Gross Domestic Product (GDP) in 2022 and 2.2% in 2023. These economic forecasts are backed by the drop in tax and external vulnerabilities, thus attaining growth with low inflation rates and strong macroeconomic policies. As a result Peru has obtained the investment grade and attracted international attention.

Legislation and trends in foreign investment in Peru

Peru seeks to attract both domestic and foreign investment in all sectors of the economy. To achieve this, it has taken the necessary steps to establish a consistent investment policy that eliminates any barriers that foreign investors may face. As a result, Peru is considered a country with one of the most open investment systems in the world.

Peru has adopted a legal framework for investments that requires no previous authorization for foreign investment. In this regard, foreign investments are allowed without restrictions in the large majority of economic activities. Activities with restrictions are very specific, such as air transportation, sea transportation, private safety and surveillance and the manufacture of war weaponry.

Additionally, Peru has a legal framework to protect the economic stability of investors and to reduce government interference in economic activities. The Peruvian Government may guarantee legal stability to national and foreign investors with regard to the legislation governing income tax and specifically, distribution of dividends. Foreign investors with the right to request the execution of a legal stability agreement are those willing to invest in Peru for a period of no less than two years and for a minimum amount of USD10 million in the Mining and/or Hydrocarbons sectors, or USD5 million in any other economic activity.

Peru's legal provisions, regulations, and practices do not discriminate between domestic and foreign corporations. There are no restrictions on repatriation of profits, international transfers of capital, or foreign exchange practices. The remittance of interest and royalties is also not restricted in any way. Foreign currency may be allocated to acquire goods or cover financial obligations, provided the operator complies with Peruvian tax laws.

Favorable legal framework for foreign investors

Peru offers a legal framework[1] that protects foreign investors' interests by offering them:

- An equal and non-discriminatory treatment
- Unrestricted access to the majority of economic sectors
- Free capital transfer

Additionally, Peruvian and foreign investors are provided with:

- Right to free competition
- Guarantee of private property (no expropriations or nationalizations)
- Freedom to acquire shares in Peruvian corporations
- Freedom to access internal and external credit
- Freedom to transfer royalties and profits from their investment
- Simplicity for most operations, whether in local currency (Sol) or U.S. Dollars, without foreign exchange controls.
- A country with a vast network of investment agreements and membership in the Investment Committee of the Organization for Economic Co-operation and Development (OECD)

Direct foreign investments must be registered with the Private Investment Promotion Agency (ProInversión).

Foreign investors may remit abroad the net profits (without any restriction whatsoever) from their registered investments, as well as transferring their shares, ownership interests, or participatory rights, perform capital reductions, and dissolve or wind-up their companies.

INVESTMENT OPPORTUNITIES

Short- and Long-Term Infrastructure Gap (Millions)

Nº	Sector	Short-Term Gap		Long-Term Gap	
		PEN	USD	PEN	USD
1	Water	6,019	1,818	24,245	7,325
2	Sanitation	28,819	8,707	71,544	21,615
3	Telecommunications	12,151	3,671	20,377	6,156
4	Transportation	35,970	10,867	160,958	48,628
5	Electricity	-	-	7,059	2,133
6	Education	-	-	5,917	1,788
7	Health	27,545	8,322	58,727	17,742
8	Water	6,679	2,018	14,625	4,418
	Total	117,183	35,403	363,452	109,804

Source: 2019 National Infrastructure Plan for Competitiveness. Ministry of Economy and Finance (MEF)

Balance of Foreign Direct Investment by Sector 2022

Sector	USD Millions
Mining	6,917
Finance	6,583
Communications	5,521
Energy	3,501
Industry	3,442
Services	1,404
Trade	809
Oil	680
Other	1,335
Total	30,192

Source: Private Investment Promotion Agency (ProInversión)

Target project portfolio 2024

Nº	Project	Industry	in USD Millions
1	Peripheral ring road	Transportation and Communication	2,380
2	Longitudinal de la Sierra - Tranche 4	Transportation and Communication	914
3	Chimbote Port Terminal	Transportation and Communication	172
4 - 21	Electrical projects of the Transmission Plan	Electricity	870
22	Headworks	Water and Sanitation	330
23	Huancayo Wastewater treatment plant	Water and Sanitation	172
24	Chincha Wastewater treatment plant	Water and Sanitation	70
25	Cajamarca Wastewater treatment plant	Water and Sanitation	56
26	Cusco Wastewater treatment plant	Water and Sanitation	44
27	San Martín Wastewater treatment plant	Water and Sanitation	105
28	Trujillo Wastewater treatment plant	Water and Sanitation	312
29	Ilo Desalination plant	Water and Sanitation	106
30	Rural Sanitation Iquitos	Water and Sanitation	26
31	Villa El Salvador Hospital	Health	85
32	Comprehensive solid waste management in healthcare supplies	Health	24
33	Cajamarca Hospital	Health	176
34	At-risk schools: Lima Metropolitana	Education	255
35	At-risk schools: Villa María del Triunfo	Education	69
36	Lima Convention Center	Tourism	78
37	Cerro San Cristóbal	Tourism	16
38	Choquequirao project	Tourism	190
Total			6,450

Source: Private Investment Promotion Agency (ProInversión)

PERU AND THE OECD

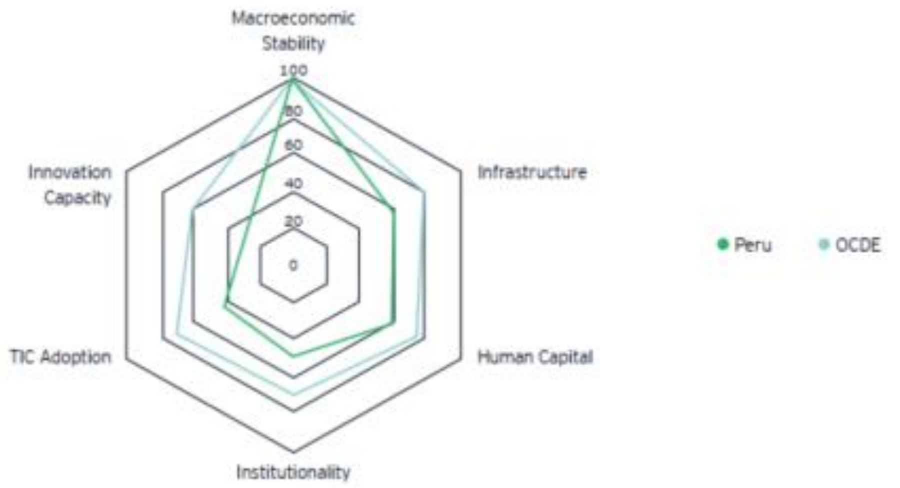
In view of Peru's great potential for economic consolidation, in December of 2014, Peru signed the "Country Program" agreement, aimed at working on strengthening the five required axes that would pave the way to form part of the OECD:

1. Identification of barriers to national growth and development
2. Public governance and improvement of institutional issues
3. Anti-corruption and transparency of the State
4. Improvements in human capital and productivity
5. Progress made in environmental matters

In January 2022, Peru was invited to become a member of the OECD. However, the accession process may take from three to five years, since the OECD will first conduct a rigorous, detailed evaluation of Peru and its compliance with international standards, as expressed in the decisions, recommendations, declarations, and international agreements promoted by the organization.

By 2023, Peru has created a permanent Multisectoral Commission in charge of following up on Peru's OECD accession actions, as well as incorporating the figure of Peru's High Representative in charge of coordinating with the Multisectoral Commission.

Gaps for Peru as a percentage of the OECD



Source: 2021-2024 Multiannual Macroeconomic Framework (MEF), Ministry of Economy and Finance (MEF)

The Tax System in Peru is governed by the principles of legal confidentiality and those of equality and respect for the basic rights of the person. The Constitution enshrines the principle of the non-confiscatory nature of taxes, as well as guaranteeing the right to tax confidentiality.

In Peru, the main taxes are levied on income, production and consumption, the circulation of money and equity. There are also other contributions to the Public Healthcare Service and the National Pension System.

The management and collection of taxes is the responsibility of the National Superintendency of Customs and Tax Administration (SUNAT) and, in some cases, the Municipalities or regulatory institutions.

SUNAT has the power to use all the methods of interpretation permitted by law, as well as to object to the economic purpose of taxpayers' acts, prioritizing content over the form of the acts. Analogy in tax matters is prohibited.

Starting on July 19, 2012, anti-evasion rules were stablished in the Tax Code regarding SUNAT's powers in situations considered to be tax evasion or simulated transactions.

In effect, in case of situations of tax evasion, SUNAT shall have the faculty to request the enforced payment of the tax debt, reduction of tax credits, tax losses, or the elimination of tax benefits (including the restitution of taxes unduly refunded). In order to implement this power, the Tax Administration shall prove that the taxpayer meets the following conditions:

a) The taxpayer—whether individually or jointly and severally with other taxpayers—has engaged in illegal or deceptive acts to obtain a specific tax result; and

b) The use of said deceptive or illegal act causes legal or economic effects other than tax savings or advantages equal or similar to those that would have been obtained through usual or legal acts.

Furthermore, Legislative Order (Decreto Legislativo) 1372 created a new obligation for companies, requiring them to have an internal procedure for identifying their final beneficiary, as well as to provide specific information on said beneficiary to the tax administration. The order also includes sanctions in case of failure to comply with said obligations, and the possibility of attributing joint and several liability for such failures to the company's legal representatives.

The following table shows the list of the main taxes in force according to their nature (direct, indirect, and municipal). Each one of these taxes is summarized below.

Direct Taxes	Indirect Taxes	Municipal Taxes
Income Tax (IR)	Value Added Tax (VAT)	Property Tax
Temporary Net Assets Tax (ITAN)	Selective Consumption Tax (ISC)	Property Transfer Tax
Tax on Financial Transactions (ITF)		Vehicle Property Tax

CORPORATE TAXATION (1)

Rates	
Corporate income tax rate	29.5% (in general)
Branch tax rate	29.5% (in general), plus 5% branch profits tax on deemed profit distributions
Capital gains tax rate	29.5% (in general)

Residence: An entity is considered resident for tax purposes if it is incorporated in Peru.

Basis: Resident corporations are taxed on worldwide income. Nonresident corporations and branches of foreign entities are taxed only on Peruvian-source income. Foreign-source income derived by residents is subject to corporate income tax in the same way as Peruvian-source income, but it is calculated separately. Branches are taxed at the corporate income tax rate, plus an annual branch profits tax on deemed profit distributions. Subsidiaries are taxed at the normal corporate income tax rate.

Taxation of dividends: Dividend distributions between resident entities are not taxed. Foreign dividends received by a Peruvian entity are included in taxable income and are subject to the normal corporate income tax rate, but with a tax credit for foreign tax paid on the dividends. Dividends and other profit distributions are subject to withholding tax when paid to resident and nonresident individuals and nonresident entities (see "Withholding tax," below).

Capital gains: Capital gains generally are included as income and taxed at the normal corporate income tax rate.

Losses: A taxpayer has the option to carry forward all (Peruvian-source) net operating losses for four years, or to carry the losses forward indefinitely but to offset only up to 50% of the taxpayer's taxable income for each subsequent year. Only net operating losses generated in 2020 may be carried forward for up to five years. The carryback of losses is not permitted.

CORPORATE TAXATION (2)

Foreign tax relief: A tax credit is available for income tax paid on foreign-source income and is equal to the lesser of the actual foreign tax paid or the Peruvian tax liability on the income. Excess credits may not be carried forward.

A special method applies for calculating the foreign tax credit for income tax paid abroad arising from dividends distributed by nonresident entities. In addition to the tax credit for the income tax paid or withheld abroad on dividends or profit distributions (a direct credit), a credit is available for the corporate income tax paid by the nonresident company distributing the dividends (an indirect credit). Certain conditions must be fulfilled to qualify for the indirect credit.

Participation exemption: There is no participation exemption.

Holding company regime: There is no holding company regime.

Incentives: Investors in large mining, oil, or gas operations may conclude tax stability agreements with the government for periods of 10 to 15 years.

Compliance for corporations

Tax year: The tax year is the calendar year (there are no exceptions).

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

Filing and payment: Companies are required to make 12 monthly advance payments of income tax based on monthly taxable income. An annual self-assessment tax return must be filed and final tax must be paid by the first week in April following the end of the tax year.

Penalties: Penalties apply for late filing or failure to file.

Rulings: A private binding ruling regime is available.

LEGAL STABILITY AGREEMENTS

The Private Investment Promotion Agency (ProInversión), as representative of the Peruvian Government, can enter into legal stability agreements guaranteeing the investors and companies receiving these investments, as applicable. For such purpose, it is necessary to make capital contributions to a company currently established or to be incorporated in Peru for an amount of no less than USD10 million in the mining and hydrocarbons sector, and USD5 million in any other economic sector. This investment may be made within a period of no more than two years. The term of the agreement is ten years, except for those investors who have entered into a concession agreement as established in Executive Order (Decreto Supremo) 059-96-PCM. In this case, stability governs for the term of the concession.

Starting on December 31, 2021, all Legal Stability Agreements entered into will stabilize the income tax rate in force at the time of signing plus two percentage points.

OTHER HIGHLIGHTS

Double-Taxation Treaties

Peru has currently signed and ratified treaties to avoid double taxation with the following countries: Brazil, Chile, Canada, Japan, Portugal, South Korea, Switzerland and Mexico.

Peru is also part of the Andean Community of Nations, along with Colombia, Ecuador, and Bolivia. As such, Decision 578 for the avoidance of double taxation between the countries referred to above applies. Unlike the OECD Model, Decision 578 prioritizes taxation at the source, using the exemption method.

Additionally, an agreement was signed with Spain and is currently pending ratification. There are also negotiations underway with Qatar, the United Arab Emirates, The Netherlands, Italy, France, Sweden, and the United Kingdom.

Transfer Pricing

Transfer pricing rules are based on the arm's length principle as interpreted by the Organization for Economic Co-operation and Development (OECD) and should be considered solely for income tax purposes.

In Peru, these rules not only apply to transactions between related parties, but also to transactions with non-cooperative countries or territories or tax heavens and entities subject to a preferential tax system. Note, however, that the value agreed to by the parties must only be adjusted when a lower tax payment has been generated in the country. Adjustments shall be permitted to reduce the taxable base of the tax in Peru solely for transactions with residents in countries with which Peru has an international double taxation avoidance treaty, provided such adjustment is permitted in accordance with said treaty and is accepted by the Peruvian Tax Administration.

The prices of the transactions subject to transfer pricing rules shall be determined in accordance with any of the internationally accepted methods, for which purpose the one found to best reflect the economic reality of the operation shall be taken into account. In the event that none of the referred methods is applicable, other methods may be used, on the condition that proper supporting information is provided.

Taxpayers subject to the scope of application of transfer pricing laws shall comply with submitting three annual informational tax returns, depending on the level of their turnover and the amount of the transactions: i) Local Report; ii) Master Report; and iii) Country-by-Country Report.

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