

# Doing Business in PERU



# Content

<b>1. About Andersen Global</b>	<b>3</b>
<b>2. Country Highlights</b>	<b>4</b>
<b>3. Investment Opportunities</b>	<b>5</b>
<b>4. International Treaties</b>	<b>6</b>
a. Double Taxation Treaties	6
b. Andean Community (CAN)	6
<b>5. Peruvian Taxes Overview</b>	<b>7</b>
a. Income Tax	7
b. Value-Added Tax (VAT)	8
<b>6. Corporate Structures</b>	<b>9</b>
a. Corporations	9
b. Branch of a Foreign Company	9
c. Associative Contracts	9
d. Law No. 31112	9
<b>7. Employment Matters</b>	<b>10</b>
a. Employment Contracts	10
b. Working Terms and Conditions	10
<b>8. Termination of Employment</b>	<b>15</b>

# 1.

## About Andersen Global

### Andersen Global

**Andersen Global®** was established in 2013 as an association of legally separate, independent member firms, with a worldwide presence and comprised of professionals that share a common background and the same vision no matter the location where they are.

Our growth is a byproduct of the outstanding client service delivered by our people, the best professionals in the industry and our objective isn't to be the biggest firm, it is to provide best-in-class client services in seamless fashion across the globe.

Outstanding client service has and will continue to be our top priority.

Our professionals are selected based on quality, like-mindedness, and commitment to client service and each and every one of the professionals that are a part of Andersen Global share our core values.

Andersen Global was established to create an enduring place – ONE FIRM where clients across the globe are afforded the best, most comprehensive tax and legal services provided by skilled staff with the highest standards.

Outstanding client service has and will continue to be our top priority.





## 2.

# Country Highlights

The Republic of Peru is a South American country located in the western part of the region, next to the Pacific Ocean. It has three clearly differentiated natural regions which are the coastal region, mountain region and jungle region. This characteristic provides the country with the most varied climates in the world.

The Peruvian population borders 30 million inhabitants. 50% of such population lives and works in the coastal region. Its capital, the city of Lima, has 11 million inhabitants.

Peru is currently one of the most stable economies in the region. It is part of the Pacific Alliance, which includes Chile, Colombia and Mexico, and ranks in eighth place in the global economy. It is also a part of the Asia-Pacific Economic Cooperation (APEC), which holds 70% of the world's gross domestic product (GDP).

Peruvian external debt is small compared to its GDP, and the country's risk rating grade is on a sustainable investment level.

The Peruvian Central Bank is an autonomous organization. Its board of directors is elected by the Peruvian Congress. The exchange rate is determined by offer and demand, and the inflation rate is very low. There are no restrictions regarding investments or capital repatriation.

Peru is currently one of the most stable economies in the region.



# 3.

## Corporate Aspects

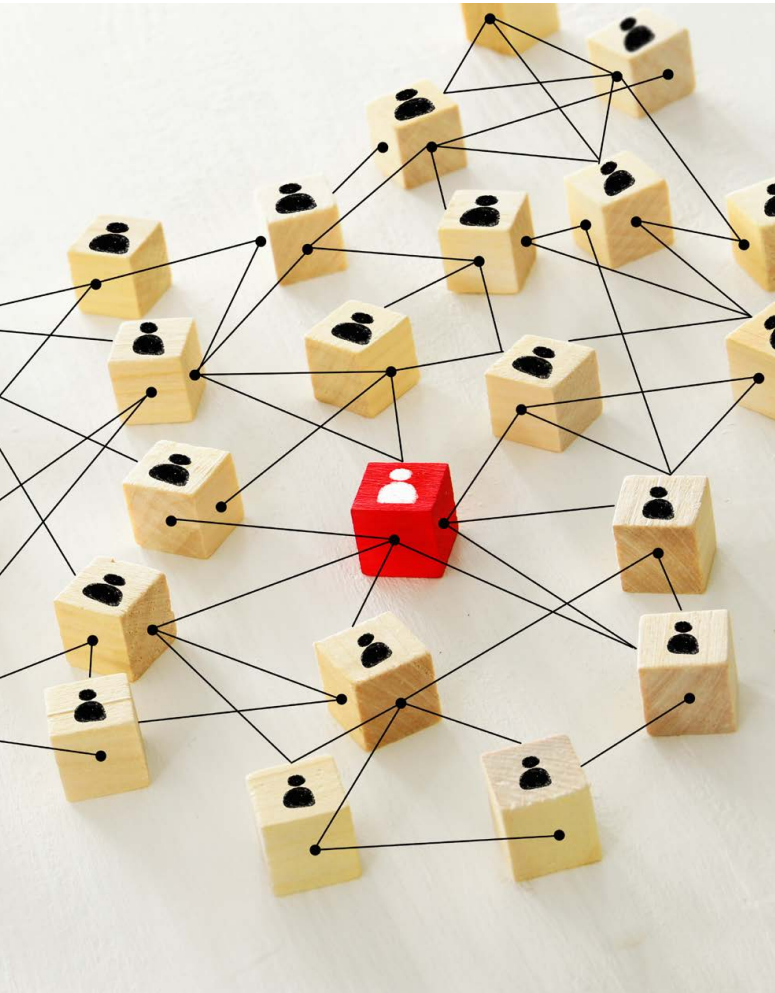
Peru offers investment opportunities in:

- Natural Resources (e.g., mining and oil & gas)
- Energy
- Water and Sanitation
- Telecommunications
- Development
- Construction
- Industry
- Agriculture (e.g., farming and livestock)
- Aquaculture
- Banking
- Investment Banking
- Stock Market
- Trusts
- Insurance
- Healthcare
- Education
- Commerce



# 4.

## International Treaties



Peru has certain treaties to ensure the flow of foreign investment in the country.

### Double Taxation Treaties

In order to avoid double taxation situations, countries resign to their tax jurisdictions over certain income agreeing that only one of the involved countries will tax such income or in any case, share its taxation by complementary tax rates.

Peru has certain treaties to ensure the flow of foreign investment in the country

Currently, Peru has Double Taxation Treaties with:

- Brazil
- Canada
- Chile
- South Korea
- Mexico
- Portugal
- Switzerland

It should be noted that as of January 1, 2022, the CDI with Japan will enter into force.

### Andean Community (CAN)

This treaty comprehends four countries including Peru, Ecuador, Colombia and Bolivia, regulating them as one. The CAN operates as a subregional integration mechanism and is governed by Decision No. 578, which avoids double taxation between the countries that have signed this agreement.



# 5.

## Peruvian Taxes Overview

In Peru, the most important taxes include the below.

### Income Tax

It is designed to tax the income of persons and corporations. Income generated in capital, labor or both will be taxed according to Peruvian legislation. Taxpayers are determined by using the residency criteria.

#### Resident Taxpayers

Residents are taxed on their worldwide source income. This tax will include:

- **Capital:** This is the income produced by capital such as interest and dividends and non-labor income including rent or other compensation for the use of goods. The tax rate, in this case, is 5%.
- **Labor:** This is the income produced by freelance workers and employees. The applicable rates go from 8% to 30% depending on the annual income obtained. This rate is accumulative.
- **Business:** This is the income produced by carrying out business, both personally or through a corporation. The applicable rate is 30% of the net income.

The resident taxpayers could deduct the foreign income taxes paid due to the foreign income. This concept cannot exceed the amount which results from applying the average rate of the taxpayer to the income obtained abroad or to the tax paid abroad.



#### Non-Resident Taxpayers

Non-resident taxpayers, such as branch offices and permanent establishments, are taxed on their Peruvian source income.

The most common activities that generate Peruvian source income are:

- Interests
- Dividends
- Technical assistance
- Digital services
- Royalties
- Other income such as trademarks, patents, among others indicated in the Income Tax Law

## Transfer Pricing

Transfer pricing norms are applicable in Peru since 2001, and they regulate the application of the arm's length principle in operations carried out between related parties or with residents in tax havens.

The arm's length price is determined by the comparison of the transactions carried out by the independent parties, under the same or similar conditions.

Regarding the provision of services between related parties, companies must comply with the base erosion and profit shifting (BEPS) related norms since 2017.

## Special Deduction Regime for Projects Related to Scientific Research, Technological Development and Technological Innovation

The Peruvian tax legislation has established a special deduction regime for taxpayers that invest in projects related to scientific research, technological development and technological innovation.

According to this, taxpayers will be able to deduct 150% or 175% of the expenses incurred in them.

## Value-Added Tax (VAT)

VAT is applicable to each operation in the supply chain. A credit and debit system ensures that the Peruvian VAT only burdens added value in transferred goods and services.

Companies in a preoperative stage with large projects in the process may apply for early recovery of VAT prior to commencing operations. An investment agreement with the government (the ministry of the sector involved) is required.

The general rate for VAT is 18%.

The taxable basis can include:

- Sale of goods in the country
- Services carried out in the country or used in the country when provided by a non-resident supplier
- Construction agreements
- The first sale of real estate carried out by the construction company
- Imports

## Amazon Regime

In order to promote the investment in the Amazon of Peru, the Peruvian tax law gives to the taxpayers certain benefits in relation to general sales tax (IGV) and income tax for the corporate structures who carry out activities such as agriculture, livestock, aquaculture, fishing, tourism, in addition to the activities linked to the processing, transformation and commercialization of primary products originated from the activities mentioned before.



Business activities can be carried out personally, through a corporative structure or associative contracts.

## Corporations

### Private Corporation

In a private corporation, stocks are freely transferable. The partner's liability is limited to their investment.

### Limited Liability Company

This is a kind of closed stock company in which the number of partners cannot exceed 20. Stock transfers are subject to restrictions.

### Collective Corporation

In this kind of corporation, the partner's contribution to the company is made in personal work. The liability of the partners is not limited.

### Limited Partnerships

This is a mix between the limited liability company and the collective corporation. In this case, there are two types of partners: the partners in which the contribution is the work and the partners who contribute mainly capital. The limited liability is reserved for capital partners.

## Branch of a Foreign Company

A branch does not have legal independence or a different legal status from its head office, but it is considered as an independent company for tax purposes. The business of the branch is directed by a permanent legal representative appointed by the head

office, whose powers of attorney must be registered at the Peruvian Public Registry (SUNARP).

## Associative Contracts

### Joint Venture

This is when two companies enter into business together, with one of them having complete control of the joint business and assuming responsibility before third parties. The other company only receives part of the result of the joint business in proportion to its contribution. The contract does not generate a different corporative entity.

### Consortium

This involves the agreement entered into to undertake an enterprise beyond the resources of any individual member. Companies retain their individual administration and autonomy. It is used to carry out specific activities within a set time frame.

## Law No. 31112

This law establishes a prior control regime for business concentration operations in order to promote effective competition and economic efficiency in the markets for the welfare of consumers. To start a merger or transference process that includes a Peruvian company or legal entity, it is advisable to take into consideration this new regulation. The procedure will be in charge of a governmental entity, the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI).

## Employment Contracts

In accordance with current labor regulations, the types of contracts that can be used by the employer to start an employment relationship are the following:

- Indefinite-Term Employment Contracts
- Temporary Contracts
  - Start or launch of a new activity contract
  - Business necessities
  - Business restructuring contract
  - Occasional contract
  - Substitution contract
  - Emergency contract
  - Contract for specific work or service
  - Intermittent contract
  - Season contract
- Part-Time Employment Contracts
- Trainee Contracts
  - Work-study agreement
  - Training contract
  - Internship
  - Update or job reintegration contract

## Working Terms and Conditions

The Peruvian labor system has defined the minimum rights that workers should receive.

### Trial Period

The trial period is usually three months; however, the parties may establish a period of more than six (in the case of trusted personnel) to 12 months (in the case of management personnel) provided that, due to their nature or degree of responsibility, such extension may be justified. Upon completion of this period of time, the worker reaches the right to protection against arbitrary dismissal.

### Minimum Wage

The employer must pay the employee compensation for the performance of his or her duties. This amount may not be less than the minimum wage – which is established by law – in cases where employees work a full workday of eight hours per day or 48 hours a week.



## **Profit Sharing**

Private activity workers have the right to participate in the profits of their employers, as long as these two characteristics are met:

- The third category or business income is generated.
- There must be more than 20 workers.

## **Compensation for Time of Services (CTS)**

Workers who will receive this benefit must meet requirements such as working more than four hours a day and have a current employment relationship for the CTS to be paid.

This benefit is calculated semiannually, every six months on April 30 and October 31 of each year. In addition, in order for the CTS to be paid, it must have reached the first month of initiating the employment link, in this way every fraction will be computed the CTS for 30.

## **Bonus**

The law establishes that annually, the worker will be paid the full amount of two additional salaries (the first on July 15 and the second on December 15) under the concepts of national holiday bonuses and Christmas bonus.

In order for the worker to acquire the bonus, he or she must have worked at the appropriate time to deliver it, or be in use of his vacation break, or leave with pay.

## **Family Allowance**

The family allowance is equivalent to the 10% of the minimum wage in effect at the time of receiving the benefit. However, if the employer, by way of liberality, decides to give a higher amount for this concept, he or she may do so.

This concept must be granted to all those workers who are in charge of one or more children under 18. However, the amount will not be awarded for each child, but will be granted regardless of the number of children the worker has.

This benefit has a remunerative nature.

## **Working Hours**

Workers must work a maximum of eight hours a day or 48 hours a week, which will be distributed depending on the Labor Regime to which the workers belong.

## **Mandatory Weekly Rest**

Every employee has the right at a minimum to 24 consecutive hours of rest each week, which will be granted, preferably, on Sunday. If employees work on their rest day without replacing it with another day in the same week, they are entitled to a 100% surcharge on their ordinary remuneration.

## **Holidays**

Employees have the right to not work without their salary being deducted from their compensation on the following days that are considered holidays:





- New Year Holiday (January 1)
- Easter (movable)
- Labor Day (May 1)
- Saint Peter and Saint Paul holiday (June 29)
- National Holidays (July 28 and 29)
- Santa Rosa de Lima holiday (August 30)
- Angamos Combat Holiday (October 8)
- All Saints Holiday (November 1)
- Immaculate Conception Holiday (December 8)
- Christmas Holiday (December 25)

If the employee carries out his work normally on those days, without having a replacement break, a 100% remuneration fee must be paid. In addition, keep in mind that, if this work is carried out on the holiday corresponding to Labor Day, it could receive up to three times the daily value of their remuneration.

## **Vacations**

The employee has the right to receive 30 calendar days of paid vacation rest for each full year of services. This period of time may vary depending on the regime under which the employer belongs.

In the event that the employee does not enjoy the vacation break within the year following that in which they acquire the right to enjoy them, they will receive the following:

- The ordinary remuneration for the work done
- Remuneration for vacation rest acquired and not enjoyed
- Compensation for not having enjoyed the rest; not subject to payment or withholding of any contribution, contribution or tax

The amount of the remuneration indicated will be the one that the worker is receiving at the time the payment is made.

## **Social Security Benefits**

The employer must comply to the following concepts when hiring the employee:

- Healthcare: Companies that employ workers under a dependency relationship must contribute 9% to EsSalud or to a Health Benefits Company that is the private sector.
- Life Insurance: From the beginning of the employment relationship, the employer must offer the worker a life insurance policy, which will be paid by the employer.
- Complimentary Risk Work Insurance (CRWI): CRWI provides health and economic benefits for accidents at work and occupational diseases to workers, (dependent or independent employees and workers) who have the condition of regular members of the Social Security of Health and that work in a work center in which they develop risk activities foreseen by law.

The maternity allowance is that amount granted in cash to the workers affiliated with the insurance on the occasion of their birth.

## Licenses and Subsidies

### Maternity Leave:

The maternity allowance is that amount granted in cash to the workers affiliated with the insurance on the occasion of their birth. It is delivered for a period of 98 days which may be totally or partially enjoyed.

Ideally, this license is granted 49 days before the probable date of delivery; however, the mother may decide the date of the beginning of the rest, with the prior authorization of her treating physician.

In addition, the subsidy may be extended for an additional 30 days if it is a case of multiple births or a child with a disability.

### Lactation Leave:

In the case of pregnant women, the law grants a maternity allowance, which is the amount in money to which the EsSalud insured is entitled, in order to compensate the losses of their earnings as a result of the birth and the needs of newborn care.

Law No. 27240 grants the working mother, at the end of her postnatal period, the right to a daily hour of breastfeeding leave until her child reaches one year of age.

### Paternity Leave:

Employees who become parents are entitled to 10 consecutive days of leave, which, in special cases, may be up to 30 days.

In special cases, the leave will be ruled as the following:

- 20 consecutive calendar days for premature births and multiple births
- 30 consecutive calendar days by birth with terminal congenital disease or severe disability
- 30 consecutive calendar days due to serious complications in the mother's health

If the mother dies during childbirth or while enjoying her maternity leave, the father may be benefited by said leave with the benefit of having, that is, both benefits accrued.

Leave for Injuries or Temporary Disability:

If the worker suffers an accident or comes to an occupational disease that disqualifies him for a certain period, the employer will be obliged to continue paying the worker's compensation until he recovers.

The employer is obliged to pay the first 20 days off, and as of day 21, EsSalud covers it until the date on which the worker recovers (maximum 340 days).

Burial Leave: In relation to the subsidy for this concept, the beneficiary is the direct family member of the deceased insured, spouse of concubine, child of legal age, father or mother or brother of age.

In relation to the subsidy for this concept, the beneficiary is the direct family member of the deceased insured, that is, spouse or concubine, child of legal age, father or mother or brother or brother of age.

## **Pension System**

The Pension System is mainly made up of the Private Pension Fund Administrators (PPFA) and the Pension Standardization Office (PSO), among which the worker to whom to contribute must choose.

Private Pension System:

The Pension Fund Administrators (PFA) are private financial institutions whose

sole purpose is the administration of pension funds under the modality of personal accounts. They grant pensions for retirement, disability, survival and provide burial expenses.

In order to receive these benefits, workers must contribute 11.74% of their monthly salary.

National Pension System:

The National Pension System is responsible for administering a common fund to all members; being that he or she gives the contributors a monetary benefit once he or she has reached 65 years of age and at the end of his or her working life, for having contributed monthly 13% of his remuneration for a period not less than 20 years.



# Termination of Employment

The labor relationship may culminate in the following causes:

## Permanent Absolute Disability

In accordance with current regulations, permanent absolute disability terminates the employment contract since this disability is declared by EsSalud.

## Waiver or Voluntary Withdrawal

It is the worker's right to terminate the employment contract at the time he or she wishes.

## Expiration of the Term of the Temporary Contracts

The modal or fixed-term contracts are previously agreed upon with a termination date, which can be extended until reaching the limit indicated in the law (LPCL) for each type of modal contract.

Once this deadline has elapsed, the contract will be terminated. If the worker continues to provide his or her services without a prior extension, it will be considered as an indefinite term contract.

## Compliance with the Resolutive Condition

Both temporary and indefinite term contracts may agree with clauses that contain a resolutive condition. Once said condition is met, the contract will be deemed terminated without the need for prior notice.

## Mutual Dissent

This is a bilateral act through which the parties of mutual and common agreement terminate the employment contract.

## Retirement

Retirement is that condition of the worker in which he or she goes from a state of work activity to a state of permanent inactivity or retirement. Retirement is mandatory and automatic if the worker turns 70 years of age unless otherwise agreed.

## Dismissal

Dismissal is the unilateral decision of the employer to terminate the employment relationship. That is why Peruvian regulations require that this culmination of work must be justified in any of the causes indicated in the law (LPCL):

Just causes of dismissal related to the employee's capacity

- The detriment of the physical or mental faculty or the resulting ineptitude, determinant for the performance of their tasks



- The poor performance in relation to the capacity of the worker and the average performance in work and under similar conditions
- The unjustified refusal of the employee to undergo medical examination previously agreed or established by law

Fair causes of dismissal related to the worker's behavior

- The commission of a serious offense
- A criminal conviction for a criminal offense
- The employee's disqualification

If the dismissal cannot be justified in the causes indicated or the dismissal procedure is not respected, it will be considered null, arbitrary, fraudulent or uncaused, as appropriate.

When the dismissal is deemed null, fraudulent or uncaused, an employee can claim between:

- Demand reincorporation in its employment
- Demand a severance payment, with the amount limits established in the law; that is, one and a half remuneration per year worked with a maximum of 12 remunerations

Upon declaring the claim for nullity of dismissal founded, the judge will order the payment of the remuneration no longer received from the date it occurred, with deduction of the periods of procedural inactivity not attributable to the parties, plus interest.

Where the dismissal is deemed arbitrary, an employee can claim the severance payment.



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