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# Corporate Tax 2024

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## **Honduras: Law & Practice**

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# HONDURAS



## Law and Practice

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tance in multiple practice areas. Mayora & Mayora has been the exclusive member for Guatemala of the largest network of private law firms in the world, Lex Mundi, since its inception in the early 1980s. The firm and its attorneys have been recommended by the most reputable and renowned legal ranking agencies.

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## 1. Types of Business Entities, Their Residence and Basic Tax Treatment

### 1.1 Corporate Structures and Tax Treatment

Businesses generally adopt a corporate form. Regardless of the corporate form adopted by the business, each entity is taxed as a separate legal entity from its members, partners or shareholders. The Honduran Commercial Code regulates six basic types of corporate entity, as follows:

- general partnership (*Sociedad Colectiva*);
- limited liability company or LLC (*Sociedad de Responsabilidad Limitada*);
- limited partnership (*Sociedad en Comandita Simple*);
- stock corporation (*Sociedad Anónima*);
- corporation by stocks (*Sociedad Comandita por Acciones*); and
- co-operative business (*Sociedad cooperativa*).

Foreign corporations may organise branches.

The most used corporate form is the stock corporation (*Sociedad Anónima* or SA). American

corporations often adopt the corporate form of a limited liability company (*Sociedad de Responsabilidad Limitada* or SRL) for their subsidiaries, to achieve a look-through tax treatment through US law.

As mentioned above, the corporate entity is taxed separately and must obtain a separate taxpayer number.

There is also the option to organise the corporation (by stocks or the limited liability company) through a simplified form that can be signed online or physically at the Commercial Registry. By relying on a special law, corporations of any kind can be organised as a “one-person company”, according to the characteristics of each corporation.

However, the following companies cannot be organised through the process mentioned:

- companies supervised by the National Banking and Insurance Commission;
- companies dedicated to mining, forestry, or other exploitation of natural resources;

- special-purpose companies created for the execution of projects of Public Private Alliance; and
- companies dedicated to providing security services.

## 1.2 Transparent Entities

Under local law, there are no transparent entities for tax purposes. However, the Honduran LLC is commonly used by US corporations to achieve transparency before the US tax authorities.

## 1.3 Determining Residence of Incorporated Businesses

There are no double taxation treaties in Honduras.

Honduran tax law sets certain standards regarding residence in corporations. A corporation will be considered a “resident” for tax purposes if: (i) it has been organised under Honduran law; and (ii) it has been incorporated in Honduras.

A company is regarded as having a permanent establishment if it:

- maintains fixed places or centres of economic activity, such as –
  - (a) any activity management centre;
  - (b) any branch, agency or office that acts in the name and on behalf of a foreign company;
  - (c) factories, workshops, real estate, or other analogous installations;
  - (d) mines, mineral deposits, quarries, forests, factories and other exploitation centres for the extraction of natural resources; and
  - (e) warehouses for merchandise deposits intended for internal trade and not just demonstrations or exhibitions;
- has an office for –

- (a) the practice of technical, financial, or consulting of any nature to develop projects related to contracts or agreements made inside or outside the country; and
- (b) the provision of services useable by people who work in public entertainment, such as the theatre, film, television, the arts and radio, as well as musicians, athletes, salesmen of air tickets and maritime navigation or transportation, to be used in Honduras or outside of it.

It is also considered as a permanent establishment in Honduras if a person or entity acting on behalf of said company, holds or habitually practises some economic activity in the country.

Non-resident natural or legal persons domiciled in Honduras who obtain income from Honduran sources through permanent establishments in Honduras are taxed according to the following rates:

- income from movable or immovable property – 25%;
- royalties from mining operations, quarries, or other natural resources – 25%;
- payments, salaries, or other monetary compensation for provided services – 25%;
- income or earnings obtained by foreign enterprises through branches, subsidiaries, affiliate offices, agencies, legal representatives, and others that operate in Honduras – 10%;
- income, earnings, dividends, or other participation in profits or reserves, of natural or legal persons – 10%;
- royalties and other monetary compensation provided using patents, designs, and processes, trade secrets, trade marks, and copyrights – 25%;

- interests in commercial operations, bonuses, securities, or other types of obligations – 10%;
- income from aircraft operations, boats, and cars – 10%;
- income from communication enterprises operations, software use, computing solutions, telematics, and other forms of telecommunications – 10%;
- insurance and bond premiums or any other type of subscribed policies – 10%;
- income coming from public shows – 25%;
- movies and videotapes for cinemas, television, video clubs, and rights for cable television – 25%; and
- any other income not mentioned above – 10%.

Those who make the payments are responsible for withholding and paying the corresponding tax.

## 1.4 Tax Rates

Legal entities will pay a rate of 25% on the total of their net taxable income.

Honduras has a progressive income tax rate for resident or domiciled natural persons of 15%, 20% or 25% depending on the amount of the individual's taxable income. Sole traders pay taxes according to natural person's rates.

Natural or legal persons with a gross income greater than HNL1 billion in the previous fiscal period must pay 1.0% of their gross income if the 25% rate on their net taxable income is less than 1.0% of their declared gross income. This rate will be reduced to 0.5% for certain sectors.

## 2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

### 2.1 Calculation for Taxable Profits

As a rule, profits are taxed based on the accounting profits subject to some adjustments; the most common tax adjustments are certain limits to deductible expenses. Profits are taxed on an accrual basis.

### 2.2 Special Incentives for Technology Investments

Presently, there are no incentives directly applicable to technology investments in Honduras.

### 2.3 Other Special Incentives

Currently, there are tax incentives for the following industries:

- power generation using clean energy technology (renewable energy);
- industrial processing areas for exports ("ZIP") as qualified by the Secretary of Economic Development;
- BPO and/or call centre services online for local and/or foreign clients/users;
- free trade zone ("ZOLI"), qualified by the Secretary of Economic Development;
- tourism industry, qualified by the Honduran Tourism Institute;
- tourism industry in the Bay Islands as qualified by the "ZOLITUR";
- medium and small businesses ("MYPIME"), as qualified by the Secretary of Economic Development; and
- a temporary import regime ("RIT"), as qualified by the Secretary of Economic Development.

Generally, the tax incentives are:

- income tax, solidarity tax and net assets exemption for five, ten or 20 years depending on the type of incentive;
- exemption from or suspension of (as applicable) customs duties on the importation of machinery and capital goods related to the activity;
- exemption from or suspension of (as applicable) VAT (*Impuesto Sobre Ventas*) on the importation of machinery and capital goods related to the activity;
- domestic VAT on machinery and capital goods related to the activity; and
- exemption from payment of taxes and municipal contributions.

## 2.4 Basic Rules on Loss Relief

As a rule, there is no relief for losses within the same fiscal year. However, taxpayers in the business of agriculture, agribusiness, manufacturing, mining, and tourism can apply to the Tax Administration for a carry forward of past losses of any fiscal year for up to three fiscal years. Loss relief is limited to a maximum of 50% of the net taxable income for the corresponding fiscal year.

In the case of taxpayers who carry out specific activities, any loss relief can only be compensated against profits in the same activity.

Regarding capital gains tax, if the set of operations yields a loss, this cannot under any circumstances be deducted from the gross income of the taxpayer.

## 2.5 Imposed Limits on Deduction of Interest

Interest is deductible if incurred to generate taxable income, without any limit.

## 2.6 Basic Rules on Consolidated Tax Grouping

Group consolidation is not permitted for tax purposes. Each entity is considered a separate taxpayer.

## 2.7 Capital Gains Taxation

Capital gains of residents are taxed at a rate of 10%. As a general rule, the taxable gain is the difference between the book value or cost of acquisition (as applicable) and the sale price.

Capital gains of non-residents are initially subject to a 4% withholding tax on the total value of the transaction. The taxpayer must proceed to a settlement before the Tax Administration thereafter, and pay and/or claim any difference between the tax withheld and the 10% on the difference between the book value or cost of acquisition (as applicable) and the sale price.

Capital gains as a consequence of mergers, acquisitions, or spin-offs among related entities are exempt.

## 2.8 Other Taxes Payable by an Incorporated Business

Transactions are subject to VAT depending on their nature. In general, goods, services, and merchandise transacted on commercial markets are subject to VAT at a rate of 15%.

Real estate transactions are subject to a real estate transfer tax of 1.5% on the transaction price. Banking transactions are subject to a “security tax” at a rate of HNL2.00 per thousand or any additional fraction.

Generally, transactions with securities are exempt from VAT.



## 2.9 Incorporated Businesses and Notable Taxes

### Solidarity Tax

This is an additional 5% charge on the taxpayer's net income if the taxpayer's net income is greater than approximately HNL993,000 and is not otherwise exempt.

### Net Assets Tax

This is a 1% charge on the taxpayer's net assets as of 31 December of the previous fiscal year, if the taxpayer is not otherwise exempt.

### Interest Tax

Interest charged on securities, sight deposits, saving deposits, and term deposits, accrued by individuals or corporations, is taxed at a rate of 10%. Said tax will be retained, at the time of carrying out any of these operations, by banks or other financial intermediaries. Interest from savings accounts that have an annual average not exceeding HNL50,000 are not taxed.

### Municipal Gross Income Tax

Each municipality charges a tax on gross income generated within its jurisdiction at a rate approved by each municipal government every year.

## 3. Division of Tax Base Between Corporations and Non-corporate Businesses

### 3.1 Closely Held Local Businesses

Honduran law does not include a formal concept equivalent to closely held corporations.

### 3.2 Individual Rates and Corporate Rates

Corporate rates are the same as individual rates from a net annual income approximately equiva-

lent to HNL744,750. The rates applicable to individuals are lower on a lower annual income.

It is important to mention that deductible expenses available to individuals are less than those available to corporations.

Although not specifically related to this issue, fees charged by individual professionals are not subject to VAT. Professionals are not subject to solidarity tax or to net assets tax and, therefore, they generally prefer not to adopt a corporate structure.

### 3.3 Accumulating Earnings for Investment Purposes

There are no rules preventing closely held corporations from accumulating earnings for investment purposes. It is mandatory to create a 5% reserve every year, but when it surpasses one fifth of the corporation's capital it can be capitalised. Thereafter, the obligation to make a 5% reserve on earnings continues.

### 3.4 Sales of Shares by Individuals in Closely Held Corporations

Dividends are taxed at a final 10% withholding tax, independently of the beneficiary's residence. Gains on the sale of shares are taxed at 10%. If the seller is a non-resident, the buyer must withhold 4% on the total value of the transaction, subject to a final settlement before the Tax Administration. The taxable gain is determined by the difference between the book value or purchase value (as applicable) and the price at which the shares are sold.

### 3.5 Sales of Shares by Individuals in Publicly Traded Corporations

There are no differences between closely or publicly held corporations.

## 4. Key Features of Taxation of Inbound Investments

### 4.1 Withholding Taxes

Withholding taxes applicable to non-residents are as follows:

- dividends and profit distributions – 10%;
- interest – 10%; and
- royalties – 25%.

No reliefs are available.

### 4.2 Primary Tax Treaty Countries

Honduras has no tax treaties in force.

### 4.3 Use of Treaty Country Entities by Non-treaty Country Residents

Currently, there are no tax treaties in force.

### 4.4 Transfer Pricing Issues

Transfer pricing rules in Honduras have been in force since 2014. There are no particular issues specifically affecting inbound investors. On a general level, the biggest issue concerns financial and commercial transactions between related entities.

### 4.5 Related-Party Limited Risk Distribution Arrangements

Limited risk distribution arrangements have not yet surfaced as a focus of the Tax Administration. However, any related-party arrangement that does not comply with transfer pricing rules could be challenged by the tax authorities.

### 4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

The main differences between local transfer pricing rules and OECD standards concern:

- the adoption of a criterion of “related party” based on the parties to the transaction being relatives within certain degrees;
- the additional alternative methodology for valuing commercial and financial transactions, to address complexities; and
- the fact that double taxation is commendable but incomplete, especially regarding transparency standards and tax intelligence exchange with foreign jurisdictions.

### 4.7 International Transfer Pricing Disputes

Since Honduras has not ratified any double tax treaty, no MAPs have been used to resolve international transfer pricing disputes.

## 5. Key Features of Taxation of Non-local Corporations

### 5.1 Compensating Adjustments When Transfer Pricing Claims Are Settled

Where the settlement calls for compensating adjustments, Tax Administration officials have reported that the taxpayer proceeds with the compensating adjustments.

### 5.2 Taxation Differences Between Local Branches and Local Subsidiaries of Non-local Corporations

Local branches of non-local corporations and local subsidiaries of non-local corporations are not taxed differently.

### 5.3 Capital Gains of Non-residents

Non-residents’ sale of stock in local corporations is taxable under capital gains tax. The capital gains of non-residents are initially subject to a 4% withholding tax on the total value of the transaction. The taxpayer must proceed to a settlement before the Tax Administration and

pay and/or claim any difference between the tax withheld and the 10% on the difference between the book value or cost of acquisition (as applicable) and the sale price.

Honduras has not subscribed to any tax treaty.

## 5.4 Change of Control Provisions

The indirect sale of local corporations, including those involving upper holding companies, are taxable under capital gains tax. The economic reality principle establishes that if holding companies do not have any economic substance, the final sale will affect the local company and must be taxed under non-residents' capital gains tax.

## 5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates

On a general level, there are no formulas for determining the income of foreign-owned local affiliates. The tax applied to land, maritime and air transportation services of local affiliates is calculated as 10% of the gross income at a 25% rate.

## 5.6 Deductions for Payments by Local Affiliates

Local affiliates are allowed a deduction for payments for management and administrative expenses by a non-local affiliate on condition that:

- the payment is duly supported;
- the expense is necessary to generate taxable income;
- where applicable, the withholding tax has been charged to the non-local affiliate; and
- the applicable international financial reporting standards allow for the expense to be recognised as such by the taxpayer.

## 5.7 Constraints on Related-Party Borrowing

Besides transfer pricing rules and 10% withholding tax, interest paid to a non-local affiliate is deductible, if incurred to generate taxable income.

# 6. Key Features of Taxation of Foreign Income of Local Corporations

## 6.1 Foreign Income of Local Corporations

The foreign income of local corporations is exempt from corporate tax. The Honduran system is based on domestic-sourced income.

## 6.2 Non-deductible Local Expenses

If the company has incurred any costs or expenses to generate foreign income, these will not be deductible because it is required by law that any costs or expenses need to generate “taxable” income in order to be deductible.

## 6.3 Taxation on Dividends From Foreign Subsidiaries

Dividends from foreign subsidiaries of local corporations are not taxed.

## 6.4 Use of Intangibles by Non-local Subsidiaries

Under transfer pricing regulations, intangibles developed by a local company (as its main source of business) cannot be used by non-resident related parties without incurring local corporate tax.

## 6.5 Taxation of Income of Non-local Subsidiaries Under Controlled Foreign Corporation-Type Rules

Local corporations are not taxed on the income of their non-local subsidiaries or non-local branches under CFC-type rules. There are no CFC-type rules in Honduras.

## 6.6 Rules Related to the Substance of Non-local Affiliates

There are no substance-related rules applicable to non-local affiliates.

## 6.7 Taxation on Gain on the Sale of Shares in Non-local Affiliates

Provided the sale takes place in a jurisdiction other than Honduras, capital gains on the sale of shares in non-local affiliates will not be taxed.

## 7. Anti-avoidance

### 7.1 Overarching Anti-avoidance Provisions

Honduras has the Income Tax Anti-avoidance Measure Act, whereby businesses with operational losses over two consecutive or alternating years avoid income tax payment.

In addition, the Honduran Criminal Code contemplates tax evasion as a crime.

Finally, Honduras also includes legislation related to tax assessments to characterise the taxable base.

## 8. Audit Cycles

### 8.1 Regular Routine Audit Cycle

Honduras does not have a regular routine audit cycle; however, it is contemplated in Honduran

legislation that the Tax Authority may audit when necessary.

## 9. BEPS

### 9.1 Recommended Changes

Honduras joined the Inclusive Framework on BEPS on 11 December 2019. The Transfer Pricing Act and its regulations include a provision that may be considered as influenced by BEPS action points eight to ten. In addition, a Tax Justice Bill is being discussed at the Honduran National Congress that will incorporate BEPS action points three and five.

### 9.2 Government Attitudes

The Tax Administration usually tries to implement BEPS guidelines in Honduras, even though many of these require legislative and/or executive action. Although no official policy is being followed to adopt and implement BEPS, if the Tax Justice Bill is finally approved, some BEPS recommendations will be implemented.

### 9.3 Profile of International Tax

The Honduran domestic-sourced income system does not presently reflect many of the BEPS recommendations; however, as mentioned above, if the Tax Justice Bill is finally approved, some BEPS recommendations will be implemented.

### 9.4 Competitive Tax Policy Objective

The government is seeking to create a competitive tax policy with the Tax Justice Bill. However, the private sector does not share this conclusion and continues to lobby on a casuistic basis in favour of a competitive tax policy, as they see it.

## 9.5 Features of the Competitive Tax System

Although not intended to be a feature of a “competitive” tax system, the Honduran corporate tax law is relatively simple and it is domestic source based.

## 9.6 Proposals for Dealing With Hybrid Instruments

Although Honduras recently joined the Inclusive Framework on BEPS, it has not yet implemented the BEPS process for hybrid instruments.

## 9.7 Territorial Tax Regime

Honduras has a territorial tax regime. Interest is deductible regardless of whether the beneficiary is a resident or not. The only condition is that the interest must be connected to the generation of taxable income. It is not likely that the interest deductibility proposals will affect people investing in and from the jurisdiction of Honduras.

## 9.8 Controlled Foreign Corporation Proposals

Honduras follows a strict territorial tax system and foreign-sourced income is not relevant to the local authorities. Therefore, no CFC provisions have yet been implemented in the country. This might change if the above-mentioned Tax Justice Bill is approved.

## 9.9 Anti-avoidance Rules

Honduran tax law does not grant any DTC to outbound investors. If other jurisdictions create limitations on any DTC allowed to inbound investors, however, this is likely to have some impact on direct foreign investments into Honduras.

## 9.10 Transfer Pricing Changes

Transfer pricing rules have been in force since 2014 and have led to greater control between related companies by the Tax Administration. Nevertheless, the taxation of profit from intellectual property is not a particular source of controversy in Honduras.

## 9.11 Transparency and Country-by-Country Reporting

A major tax bill is presently being discussed, which incorporates transparency measures. Country-by-country reporting is not yet in force in Honduras.

## 9.12 Taxation of Digital Economy Businesses

The Honduran Tax Authority seeks to regulate digital economy businesses; however, no proposal has been approved. Nonetheless, if the Tax Justice Bill is passed it is expected that some of its regulations would apply to businesses in the digital economy.

## 9.13 Digital Taxation

Honduras has not presented any proposal regarding digital taxation. However, the government has on several occasions expressed the importance of incorporating electronic commerce into the tax system.

## 9.14 Taxation of Offshore IP

Payments to non-residents for intellectual property deployed in Honduras are taxed by 25% withholding tax. No distinction is made between tax havens and other countries.

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