

Latin America: Argentina, Brazil, Chile, and Peru

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Agenda

LATAM business environment

Entity selection and holding structure

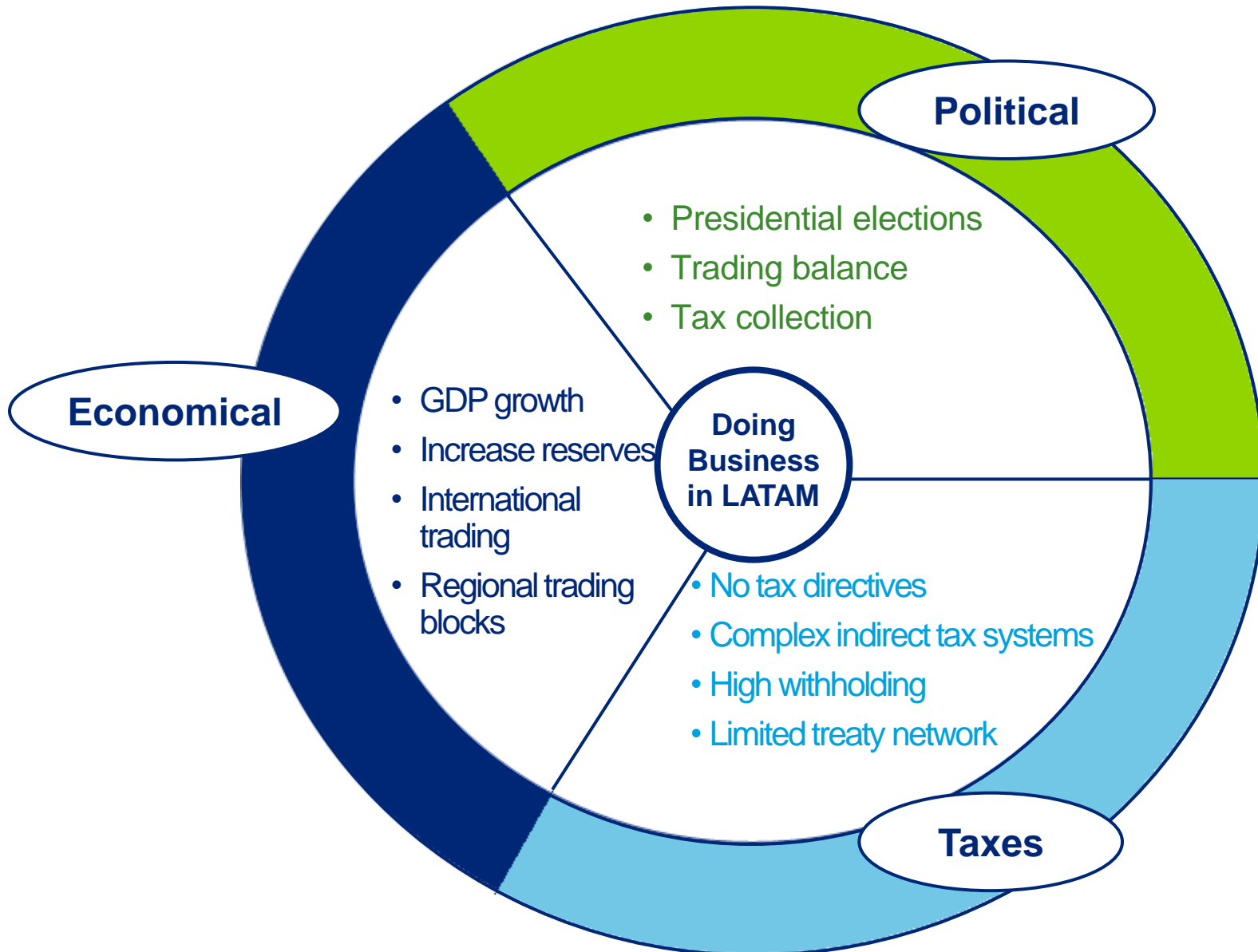
Financing

Transfer Pricing











Cash repatriation

LATAM business environment























LATAM business environment



LATAM – European countries treaties

	Austria	Belgium	Czech Rep.	Denmark	Finland	France	Germany	Hungary	Ireland	Italy	Luxembourg	Netherlands	Norway	Poland	Portugal	Russia	Spain	Sweden	Switzerland	Ukraine	UK
 Argentina (15)		●		●	●	●	●			●		●	●			●	●	●			●
 Brazil (29)	●	●	●	●	●	●		●		●	●	●	●		●		●	●		●	
 Chile (25)		●		●		●			●				●	●	●	●	●	●	●		●
 Colombia (7)																	●		●		
 Costa Rica (1)																	●				
 Mexico (49)	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
 Panama (11)						●			●		●	●			●		●				
 Peru (6)																					
 Uruguay (10)					●		●	●							●		●		●		
 Venezuela (31)	●	●	●	●		●	●			●		●	●		●	●	●	●	●		●
Totals	3	5	3	5	4	6	4	3	3	4	3	5	5	2	6	4	9	5	5	2	4

LATAM treaties within the Americas region

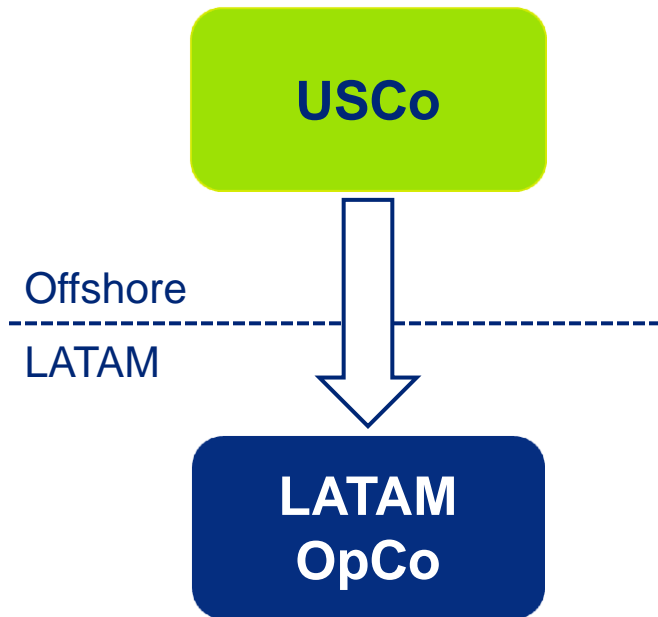
	 Argentina	 Brazil	 Chile	 Colombia	 Costa Rica	 Mexico	 Panama	 Peru	 Uruguay	 Venezuela	 United States	 Canada
 Argentina		●										●
 Brazil	●		●			●		●				●
 Chile		●		●		●		●				●
 Colombia			●					●				●
 Costa Rica												
 Mexico		●	●				●	●			●	●
 Panama												
 Peru		●	●	●		●						●
 Uruguay												
 Venezuela		●									●	●
Totals	1	5	4	2	-	3	1	4	-	-	2	7

Entity election and holding structure

Most used investment vehicles

- Branch
 - A registered Permanent Establishment may be an option in some jurisdictions
 - Costs to set-up and maintain
- Legal entity
 - Legal forms available vary per jurisdiction
 - Corporation (SA)
 - LLC (SRL/LTDA)

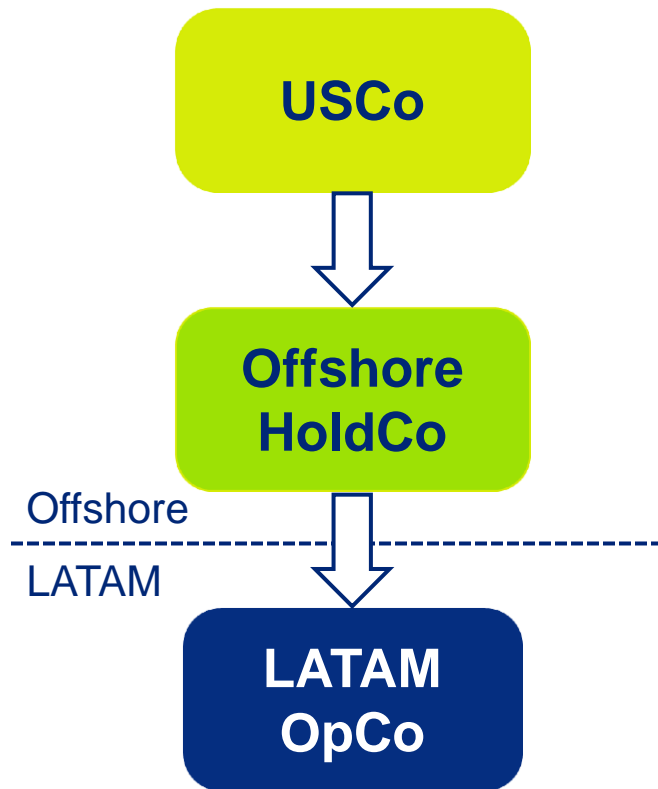
Direct ownership of LATAM company



Considerations

- Dividend repatriated from LATAM OpCo may be subject to withholding tax
- Disposition of shares in LATAM OpCo eventually subject to a capital gains tax in LATAM country
- Change in shareholder may require notification to LATAM tax authorities

Ownership through a holding company



Why use a holding company?

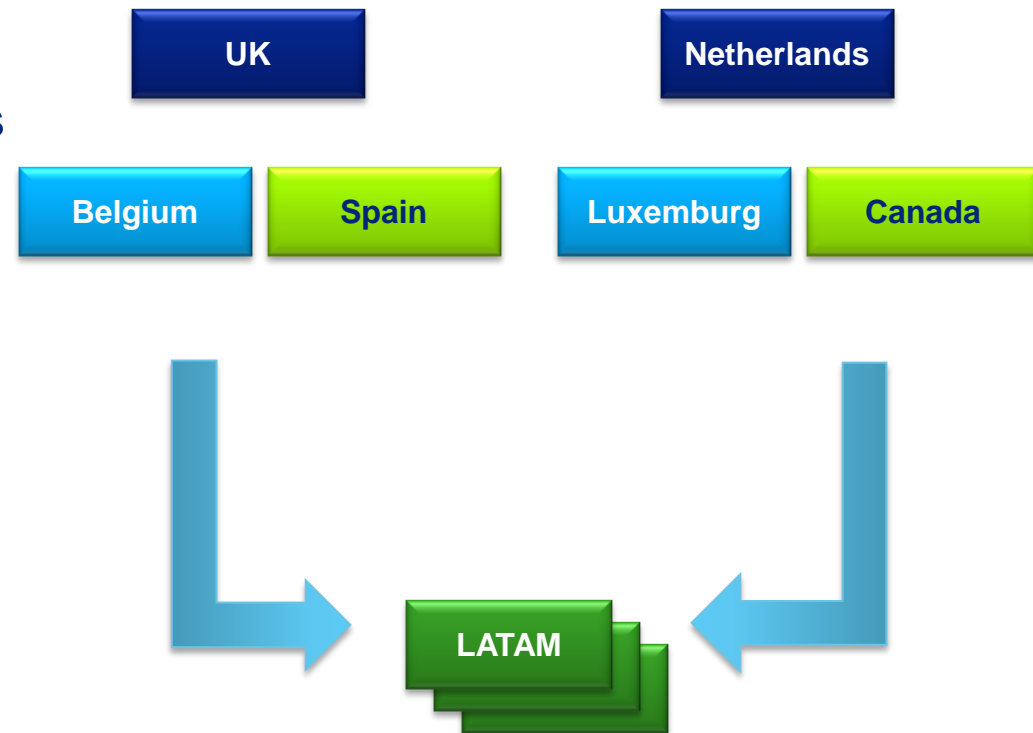
- Shares in HoldCo can be transferred without affecting tax attributes at LATAM Opco level
- Shares in HoldCo may be transferred without LATAM capital gains tax
- Potential treaty exemption from capital gains tax (CGT); access to reduced dividend withholding tax rate
- Factors to consider
 - General anti-avoidance rules (GAAR)
 - Beneficial owner
 - Cost to set-up and maintain
 - Risk factors associated with CGT on indirect disposals of LATAM OpCo

New!

Most commonly used holding structures in Latin America

Main drivers

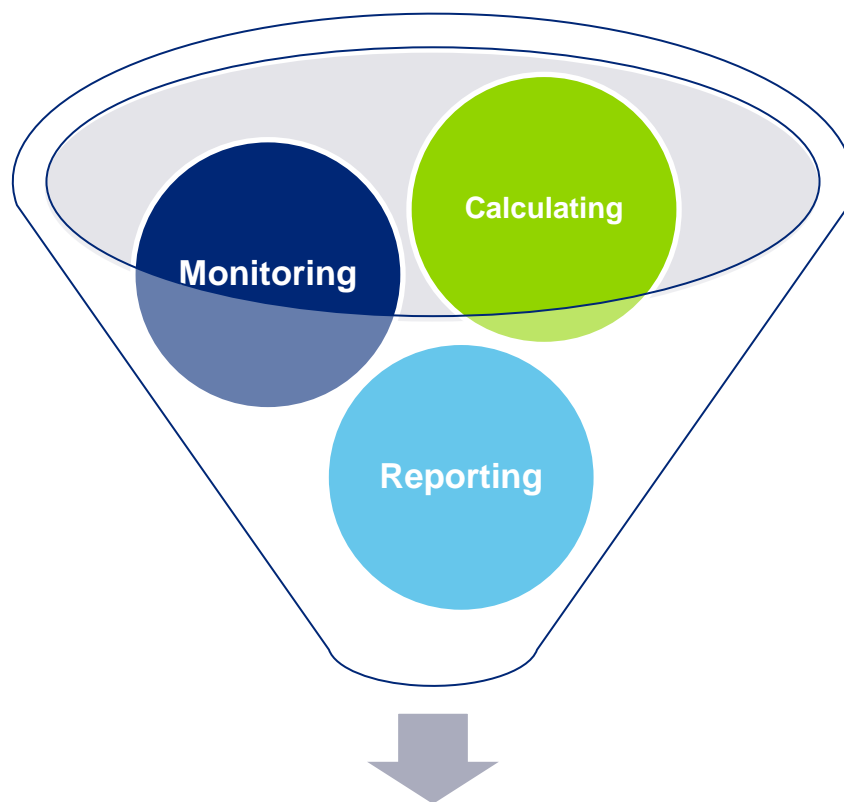
- Narrow treaty network
- GAAR
- Tax Haven adverse consequences
- CGT on indirect transferences, including foreign reorganizations



Capital Gains Tax (“CGT”) on stock transactions

Country	Direct transfer	Indirect transfer
Argentina	13.5% or 15% rate New!	Non taxable event
Brazil	15% or 25% (if the shareholder is resident in a tax haven) rate	Non taxable event
Chile	35% or 20% (only in certain circumstances)	Taxable event provided certain requirements and thresholds are met New!
Peru	5% (Lima Stock Exchange) or 30% rate	Taxable event provided certain requirements and thresholds are met New! Risk of having a transaction in scope increases when the stock transferred is issued by a tax haven

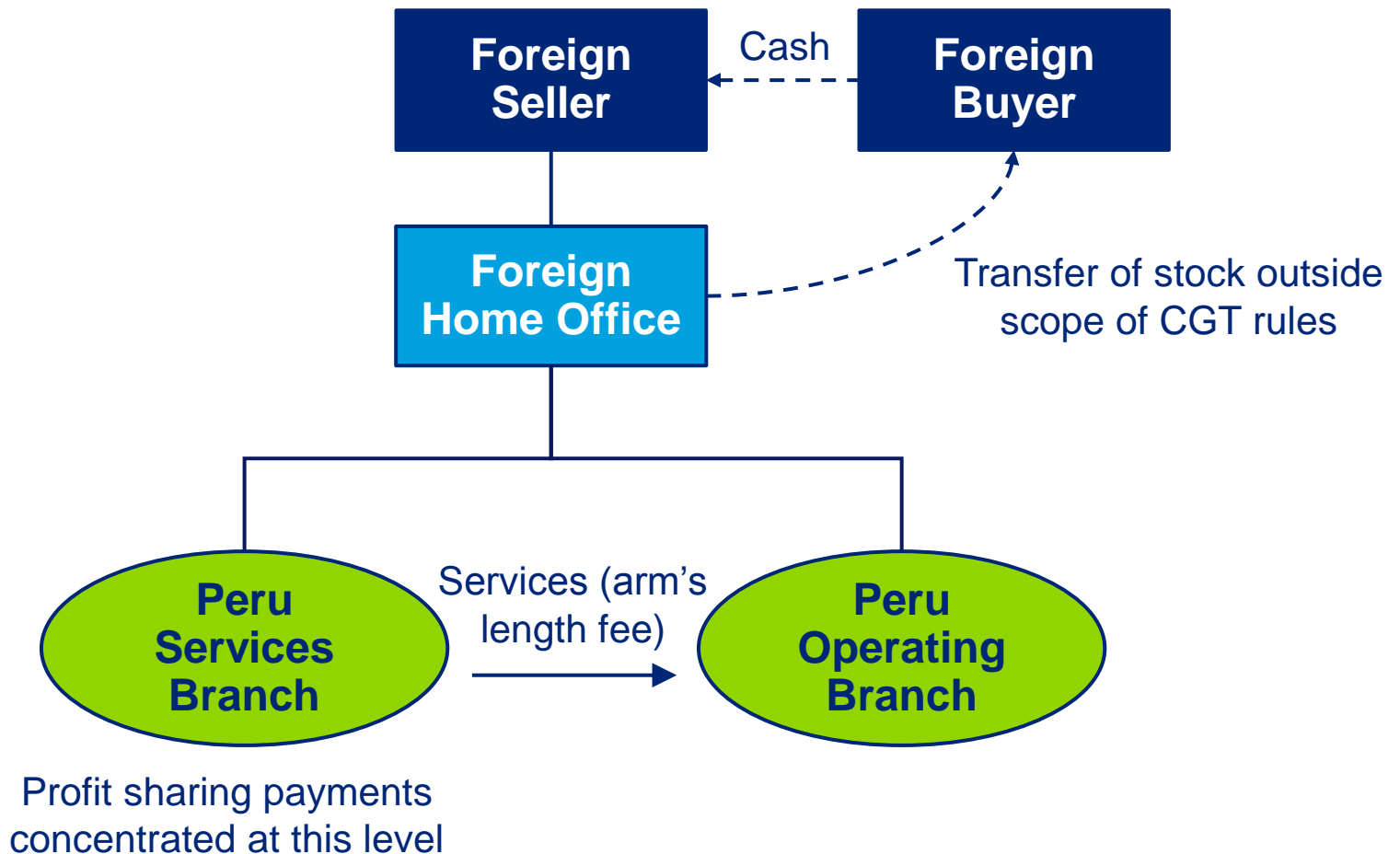
Peru hot Issue: Managing risk factors associated with CGT rules on indirect transfers



Managing the risk of a potential
assessment/FIN 48 analysis

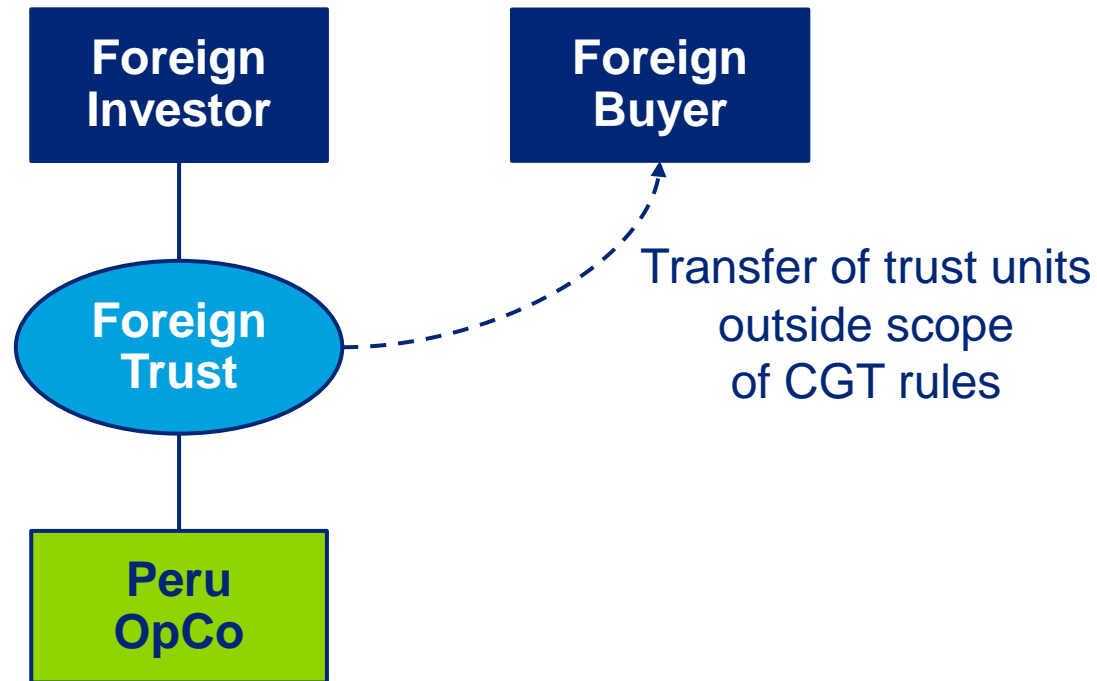
Peru: Alternative investment vehicles

Taking into account the CGT consequences and profit-sharing implications



Peru: Alternative investment vehicles (cont'd)

Taking into account the CGT consequences



Financing

Financing

- Every business typically prefers a balance between equity and debt
- Properly structured debt in Latin American subsidiaries can provide various benefits
 - Well balanced debt and equity makes good business sense
 - The interest shield reduces taxable income and cash taxes
 - Typically a cheaper and easier form of repatriation
- Thin capitalization rules
- Transfer Pricing (OECD models?)
- Black or gray listed countries (increased withholding tax rates, deductibility, etc.)
- Inflationary adjustments (tax treatment)
- Number of limitations and structures to consider
- Foreign exchange gains and losses taxation

Financing – general tax info and WHT tax rates

	Argentina	Brazil	Chile	Peru
Thin cap/Safe Harbor rules?	Yes 2:1 ratio	Yes 2:1 ratio (general)/ 0.3:1 ratio (black and grey lists)	No deductibility rule 3:1 thin cap limits WHT benefit	Yes 3:1 ratio
Arm's Length on deductibility?	Yes	Yes	Yes	Yes
Hybrid instruments available and accepted?	Yes	Yes	No	As from January 1, 2011, in limited situations
Is back-to-back financing possible	Not specifically prohibited, but substance over form principle would not allow it	Yes, but subject to thin cap	Yes, but thin cap rules kick-in if interest are subject to the 4% reduced tax rate	The tax consequences would depend on the specific fact pattern
Are there legal restrictions on related party borrowing/ payments?	Yes	Yes	No	No
Domestic rate of withholding tax on interest	15.05% or 35%	15% (general) or 25% (tax havens)	4% (foreign bank, foreign financial institutions, foreign supplier credit) -35%	4.99% if specific requirements are met. For related party borrowing, 30% rate

Foreign exchange control

Argentina: Recent changes

Import of goods and services

Early filing required to get formal approval to import
Preapproval needed to purchase foreign currency to make payments

Exports

Obligation to surrender foreign exchange by a specified deadline, depending on the type of exported goods

Increase in administrative burden

Formal compliance is required to import products and services

Review of business model and cash policies

Exports are affected by the new foreign exchange control regulations. The terms and conditions of transactions with related parties must be reviewed with respect to collection. Proceeds must be entered and exchanged in Argentina within 30 business days

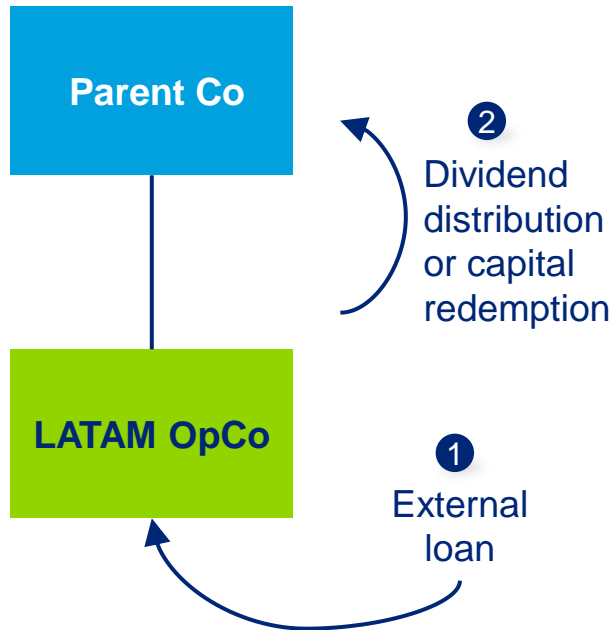
Distribution models could be required to be redesigned

Potential tax increase

Fees paid for services provided by foreign related parties are deductible upon payment provided the relevant tax has been withheld

Direct effect on global tax burden if expense is not paid in a given fiscal year

Financing – equity to debt structure



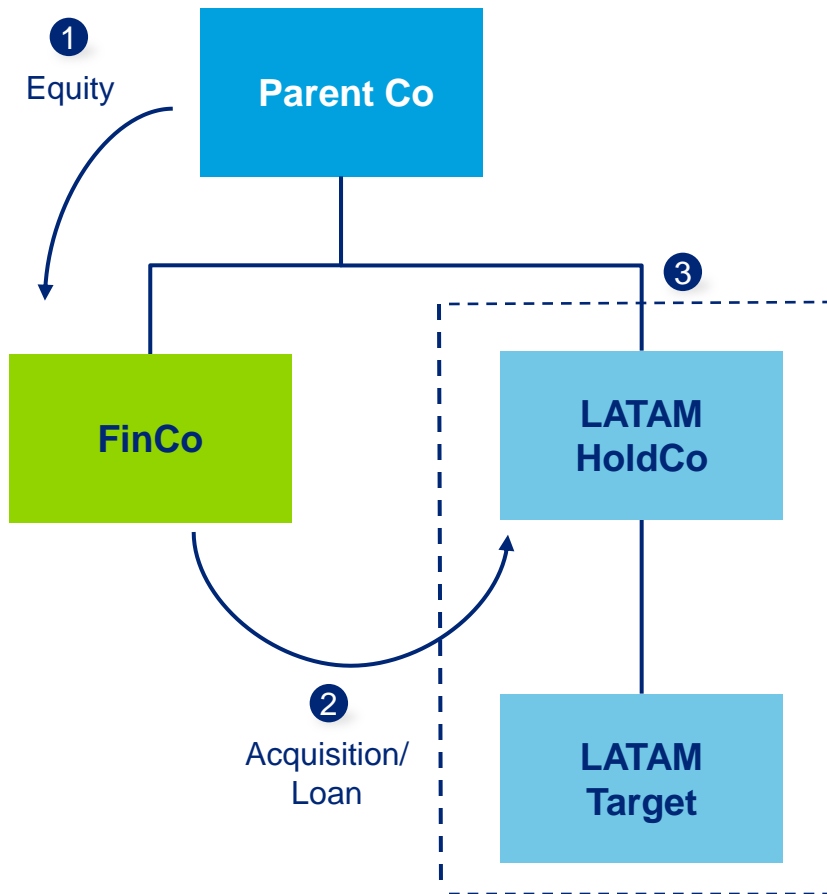
Steps

- LATAM OpCo receives a third party loan
- LATAM OpCo distributes dividends to Parent Co

Benefits

- The loan provides the financial means to distribute cash to Parent Co through either a dividend distribution or a capital redemption
- Need to confirm local country tax deductibility

Financing – acquisition and merger structure



Steps

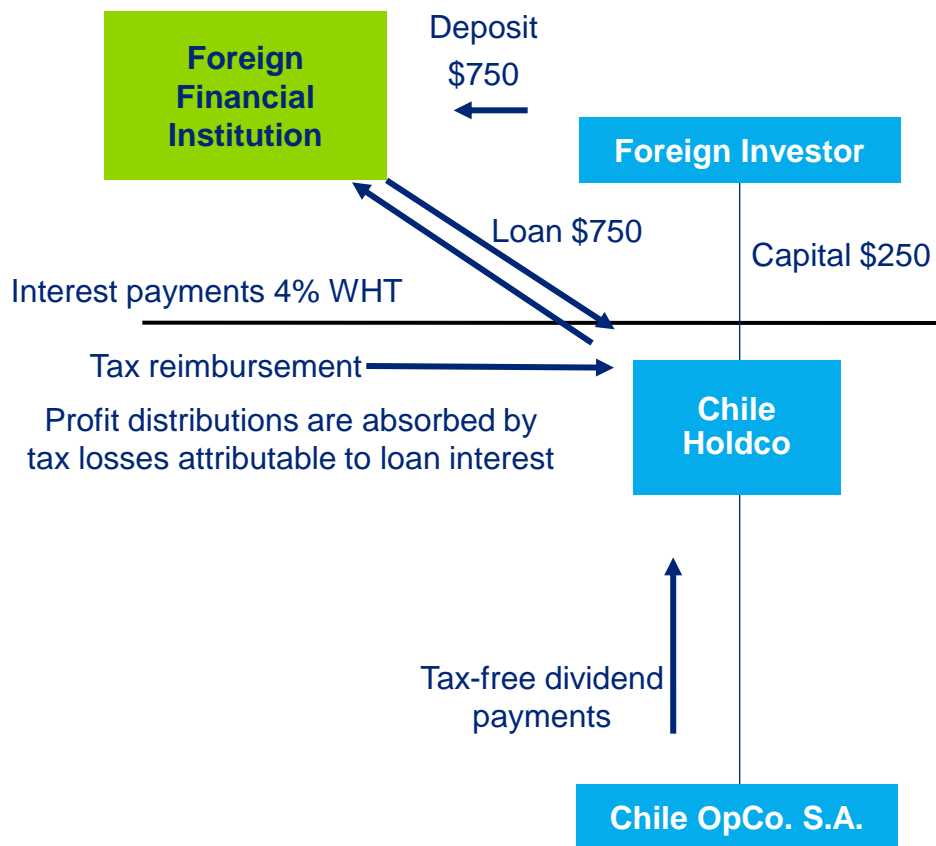
- Parent Co contributes to FinCo located in a third jurisdiction
- FinCo lends to LATAM HoldCo
- Upstream/Downstream merger

Benefits

- Interest would be deductible at the level of the borrower
 - Should be confirmed on a country-by-country basis
- This set-up could create the possibility of offsetting interest payments at the level of the LATAM HoldCo with revenues of the LATAM subsidiary
- Revenues could be offset against interest payments after a merger of both LATAM companies (upstream or downstream)

Financing structure with foreign bank or foreign financial institution (FFI)

Investment structure with back-to-back loan from bank or financial institution



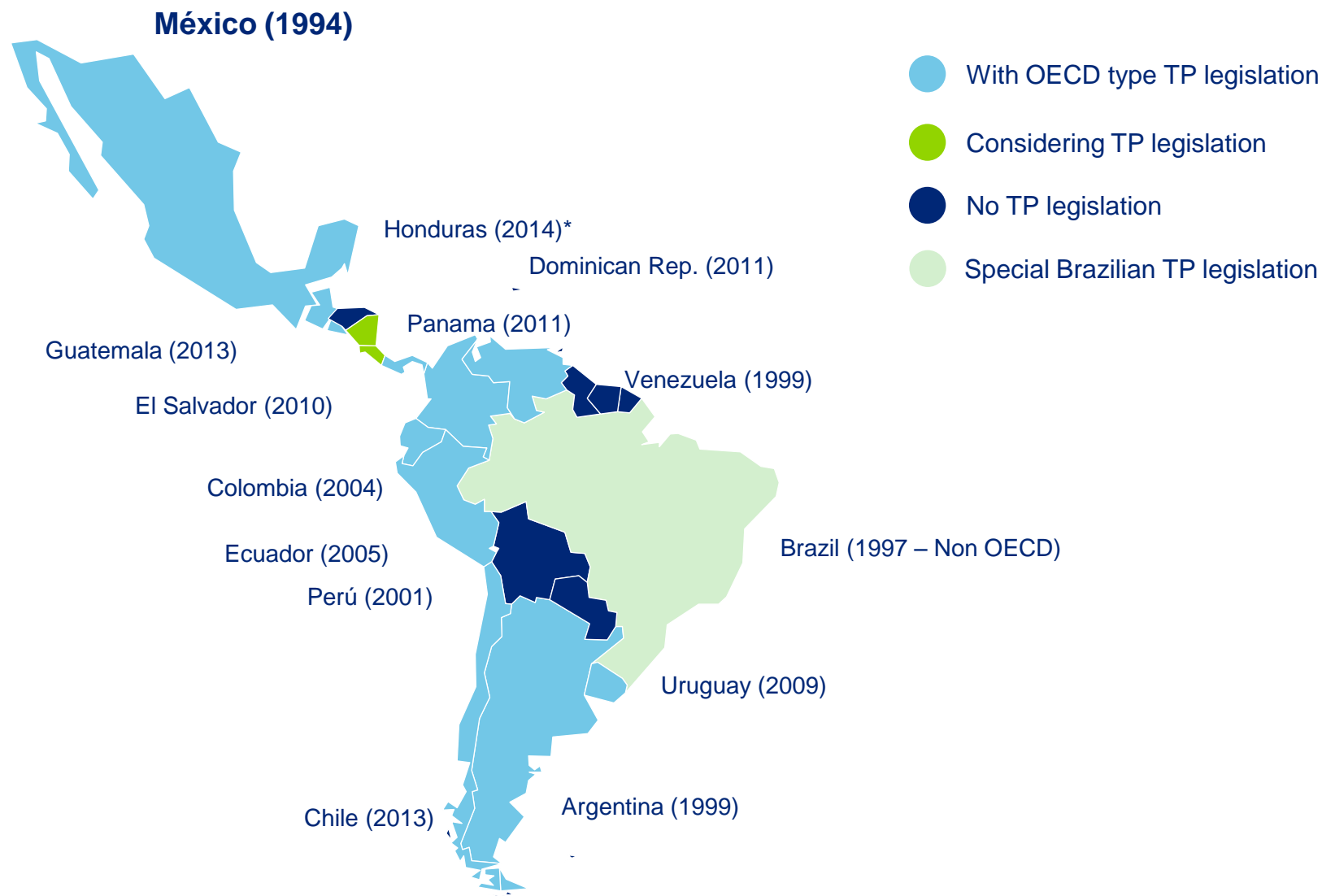
Base case: Chile Holdco funded with equity	Investment structure with back to back loan:
Profit Chile Opco: \$100	Profit Chile Opco: \$100
Cash remitted abroad via: • Dividend	Cash remitted abroad via: • Loan interest • Loan principal
Chilean income taxes including WHT: \$35	Chilean income taxes including tax refund ad WHT: \$10
Available to investor: \$65	Available to investor: \$90 (less fee bank)

All numbers assumed. For illustration purposes only.
Consider stamp tax and thin cap rule.

Transfer Pricing

Transfer Pricing in LATAM

Latin American countries with TP regulations



Transfer Pricing update

New countries incorporated transfer pricing rules (OECD-type)

- Chile (2013)
- Guatemala (2013)
- Nicaragua (2016)
- Costa Rica (project)

Developing existing transfer pricing rules

- Peru
- Brazil

Brazil: Transfer Pricing legislation

Imports	Statutory margin	OECD equivalent
PIC – independent compared prices	Not applicable	CUP
PRL – resale price less profits (New!)	20%, 30% or 40%	Resale minus
CPL – production cost plus	20%	Cost plus
PCI – stock exchange import price (New!)	Commodities exchange market	No equivalent

Exports	Statutory margin	OECD equivalent
PVEx – export sales price	Not applicable	CUP
PVA – wholesale price in the destination country, less profit	15%	Resale price
PVV – retail price in the destination country, less profit	30%	Resale price
CAP – acquisition or production cost, plus taxes and profit	15%	Cost plus
PECEX – stock exchange export price (New!)	Commodities exchange market	No equivalent

Brazil: Transfer Pricing legislation (cont'd)

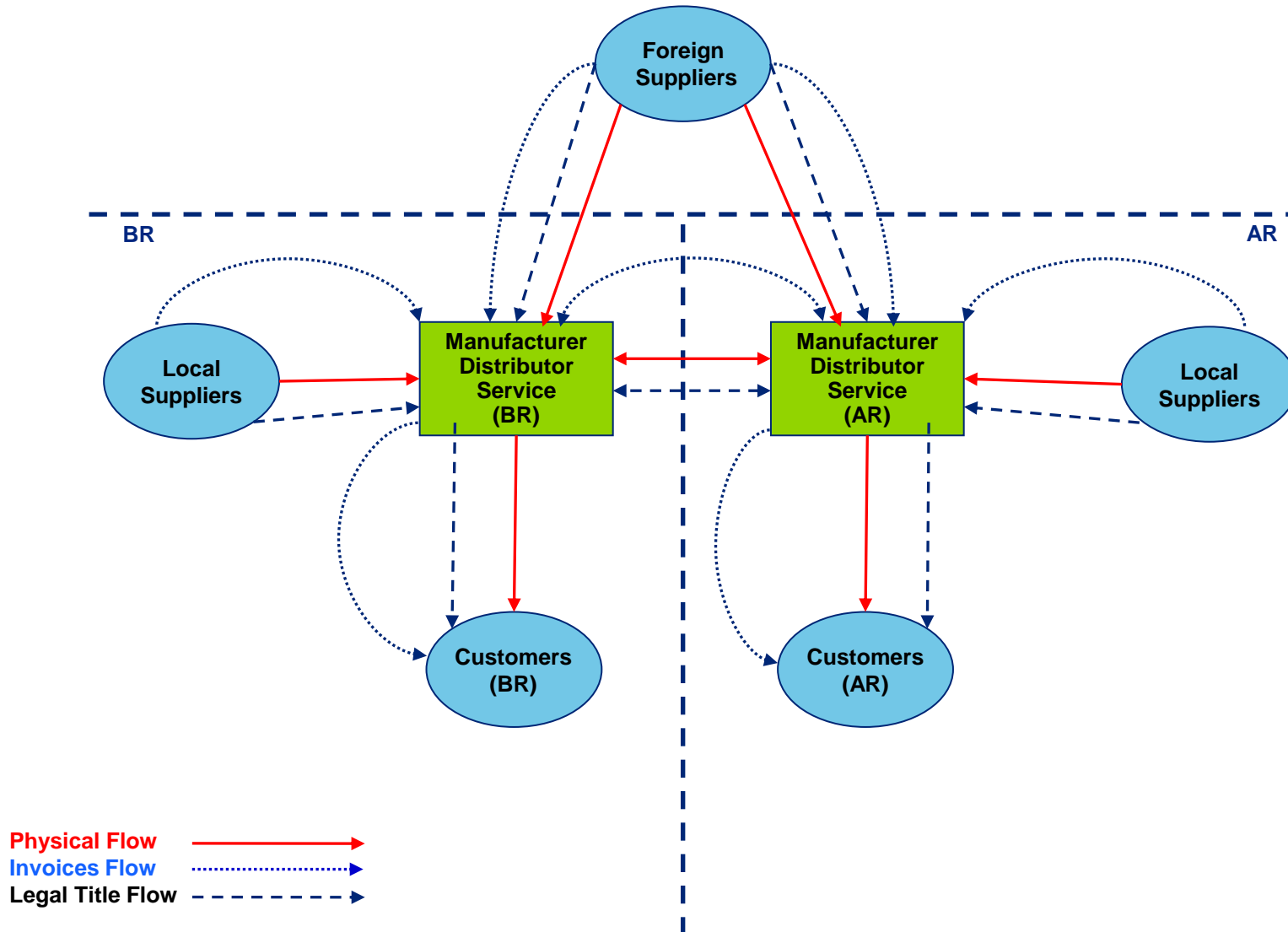
Agreements not registered with the central bank: Interest expense will not be deductible if the rate exceeds the six-month LIBOR US, plus a 3% spread

NEW

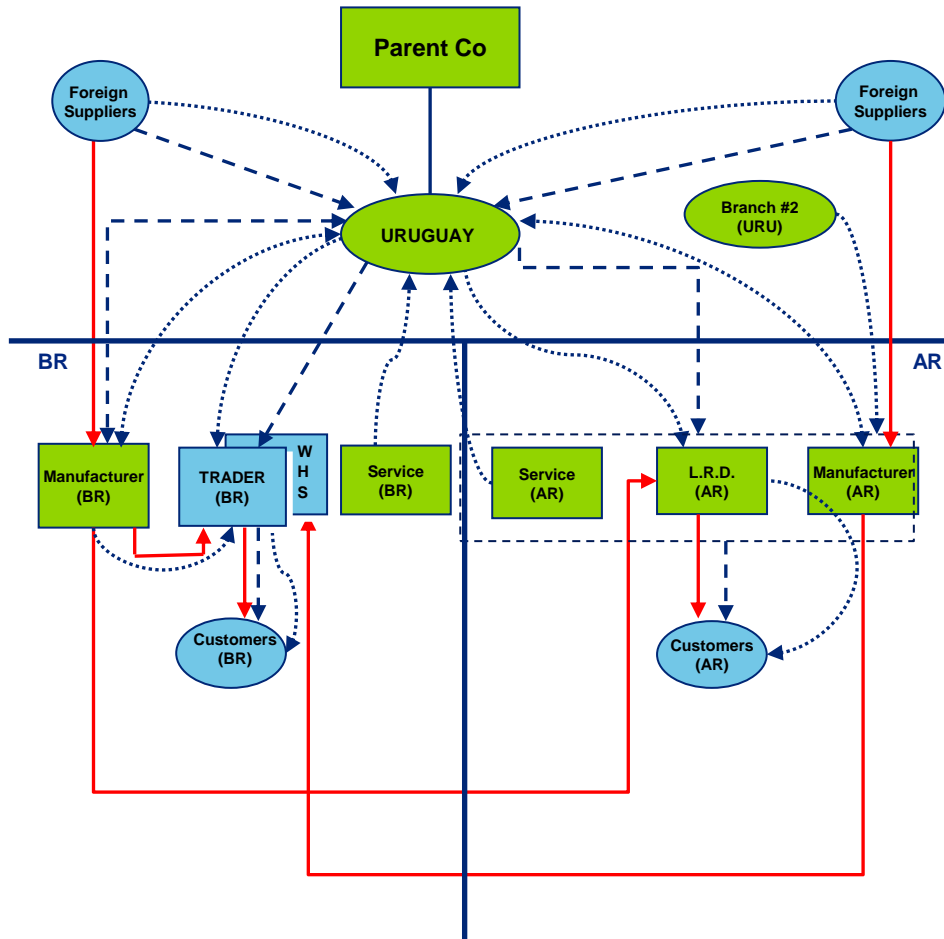
Combination of a “rate,” plus a spread
Different rates are provided, depending on the type of transaction, the currency used and other factors
The interest rate is based on the market rate of Brazilian sovereign bonds
The spread is 3.5% for payments out of Brazil and 2.5% when Brazil is receiving interests

Currency	Market	Type	Rate limit
USD	Foreign	Fixed rate predetermined	Market rate of sovereign bonds of Brazil, issued in USD, in foreign markets
Real	Foreign	Fixed rate predetermined	Market rate of sovereign bonds of Brazil, issued in Reais, in foreign markets
Any	Any	Any	LIBOR for six months for the relevant currency adopted
Real	Foreign	Variable	May be determined by the Minister of Finance

LATAM – typical current business model structure



LATAM – alternative business model structure



Objectives

- Reduced custom duties impact on goods being imported to Mercosur countries
- Uruguay Trading Company regime
- Mitigate indirect taxes impacts
- Tax burden reduction

Repatriation

Local WHT rates

- High withholding taxes over passive income are commonly applied
- Tax treaties may help reduce impact, local formal requirements can apply
- Restrictive regulation to allow full credit of taxes paid in other jurisdictions
- Tax costs on a global perspective



Withholding rates summary

	Argentina	Brazil	Chile	Peru
Dividends WHT tax	10% & 35%, only if it exceeds accumulated taxable income	N/A	35%, with the CIT creditable.	4.1%
Interests	15.05%, 35%	15%, 25%	4%, 35%	4.99%, 30%
Royalties: Trademarks, know how and technical assistance (*)	21%, 28%	15% or 25% (tax havens)	15%-20%-30%	30%, 15%
Other charges: Management fees and professional service (*)	31.5%	15% or 25%	15%-20%-35%	30%

(*) Other indirect Taxes apply

Brazil – cash repatriation

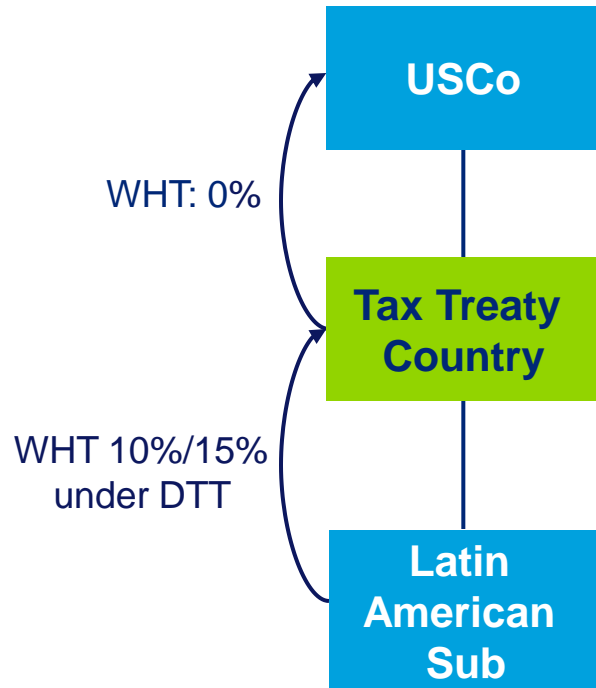
Services, software and royalty remittances

Brazilian tax consequences

Description	Burden	Acronym	Software license	Services	Royalties
Withholding Tax	Payee	IRRF	15% (a)	15% (a)	15% (a)
Service Tax on imports	Payee	ISS-Import	2%-5% (b)	2%-5%(b)	2%-5% (b)
Contribution to the Social Integration Program	Payor (not withholding)	PIS	(c)	1.65% (d)	(c)
Contribution for social security financing	Payor (not withholding)	Cofins	(c)	7.6% (d)	(c)
Contribution on the intervention on economic domain	Payor (not withholding)	CIDE	N/A (e)	10%	10%
Financial Tax IOF	Payor (not withholding)	IOF	0.38%	0.38%	0.38%
Combined tax rate			17% - 21%	37% - 40%	27% - 31%

- a) Increased to 25% if paid to a tax haven jurisdiction
- b) The ISS is a municipal tax. Rates varies upon type of service and location of the service provider
- c) Currently, there are current administrative decisions (Private Letter Rulings) in favor to taxpayers that the PIS and Cofins do not apply to royalty outbound remittances. Detailed legal assessment is required
- d) Not a lump sum. There is a formula to apply in order to determine the final PIS/Cofins due
- e) Not applicable to the extent that there is no transfer of technology and source code

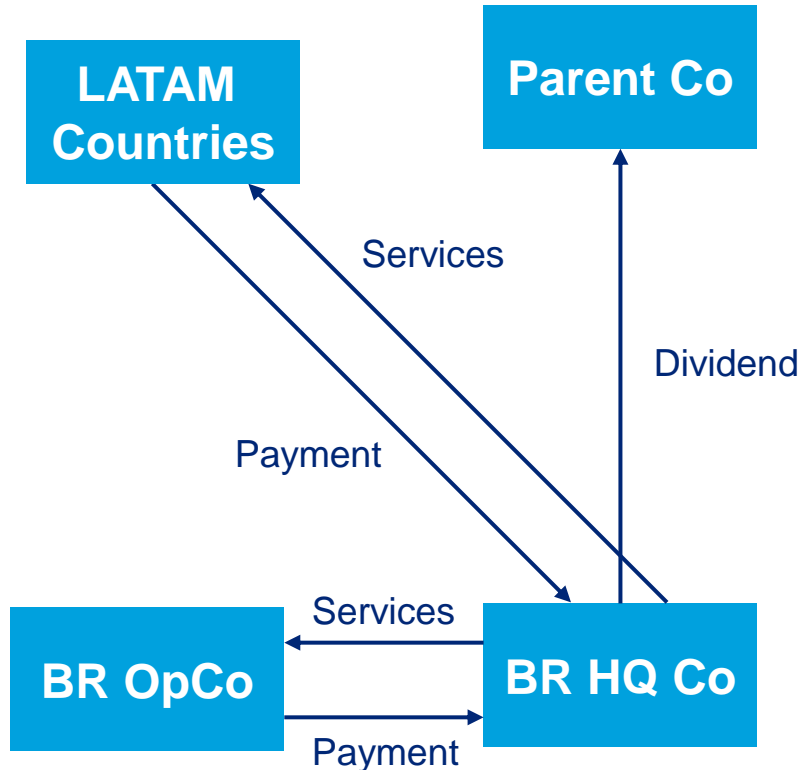
Cash repatriation technique with a withholding tax reduction



Considerations

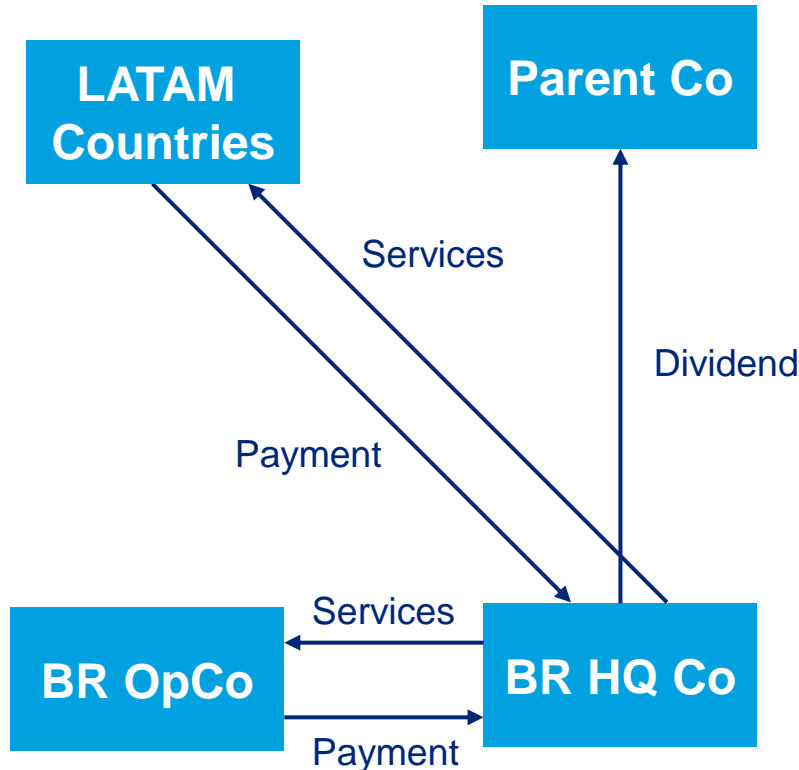
- Based on recent precedents, substance and business purpose is required in the IP company for application of the beneficial ownership concept
- An advanced tax ruling is recommended to address possible substance issues
- Transfer pricing regulations should be considered
- Consider Belgium, The Netherlands and UK as possible IP company jurisdictions

Brazil cash repatriation – deemed profit regime



- Payments for services out of Brazil are subject to WHT and other several taxes
- When Brazil is the service provider, it is possible to pay dividends abroad instead of services
- Dividends are tax exempt
- Substance at BR HQ Co. is critical
- BR HQ Co. elects the “deemed profit regime” to the extent it has no direct investment abroad (CFC)
- Potential tax arbitrage in Brazil: Deduction at 34%, income taxation at 10.88%. Indirect taxes also apply for domestic services

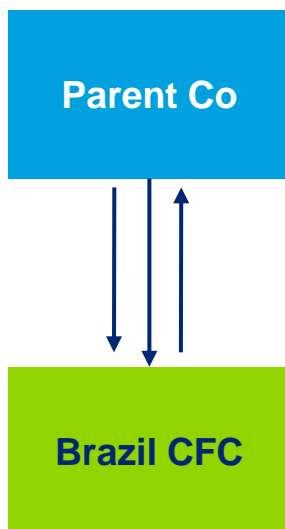
Brazil cash repatriation – deemed profit regime (cont'd)



- BR HQ Co. gross revenue is limited to R\$ 78 million per calendar year
- For in country charges, significant mark-up on the services may be feasible as TP rules do not apply
- BR HQ Co. can use FTC from withholding taxes from LATAM countries, regardless of whether a treaty exists or not
- Can be integrated into other planning ideas as well

Interest on Net Equity

Interest on net equity – INE



Example

Prior-year net equity	1,000
Brazilian taxable income before INE deduction	100
INE deduction (6% rate of return * equity)	(60)
Taxable income	40
Corporate income tax @ 34% by Brazil	14
Withholding tax @ 15% by Parent	9
Effective tax rate (14+9)/100	23%

Objectives

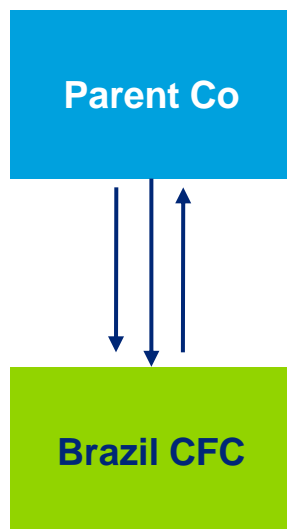
- Decrease taxable income of profitable Brazilian entities by the deduction

Considerations

- It is optional with annual election, subject to shareholder approval
- INE is not subject to thin cap or transfer pricing limitation
- Maximum amount of deductible INE is limited to 50% of the larger of current year profit or 50% of prior year retained earnings
- It is subject to 15% withholding tax and is deductible for Brazilian income tax purposes as a financial expense at 34%

Interest on Net Equity (cont'd)

Interest on net equity – INE



Example

Prior-year net equity	1,000
Brazilian taxable income before INE deduction	100
INE deduction (6% rate of return * equity)	(60)
Taxable income	40
Corporate income tax @ 34% by Brazil	14
Withholding tax @ 15% by Parent	9
Effective tax rate (14+9)/100	23%

Considerations (cont'd)

- Results in 19% rate arbitrage
- Return of capital vs. dividend distribution from Brazilian company generally are subject to same procedures, i.e. shareholder approval through board meeting, notification to the central bank regarding distribution, etc.
- Payment on INE enhances ability to distribute cash from Brazil, although payment is not required
- Ability to capitalize interest after the withholding tax is paid

Please Remember to
Complete Your Evaluation

Speaker bios

Ana Luz Bandini is a member of the Peru desk in the International Core of Excellence (“ICE”) program for Deloitte Tax LLP in New York. She is a director from our Peru office with more than 11 years’ experience in providing services to multinational clients, mainly in the Energy and Resources industry. She has assisted clients on a wide range of issues including cross-border taxation topics, the use of double tax treaties, corporate restructuring, as well as supervising tax compliance reviews and tax due diligence teams. She has also supported clients during tax authorities’ audit procedures and provided advice in preparation of claims filed against unlawful collection of taxes.

Ana Luz has also performed as professor of International Tax Law in the LL.B Program at Universidad Peruana de Ciencias Aplicadas (2007) and in the Tax LL.M. Program at Universidad de Lima (2009).

Ana Luz graduated as class valedictorian with a Bachelor of Laws Degree from Universidad de Lima (Lima, Peru) in 1999. She was subsequently admitted to the Lima Bar Association, and holds a Master of Laws degree specializing in taxation from Georgetown University, Law Center (Washington, D.C.). In addition, she is member of the Instituto Peruano de Derecho Tributario – IPDT (Peruvian Institute of Tax Law) and of the International Fiscal Association – IFA.

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David Cordova is a tax partner in Deloitte Tax LLP with more than 25 years of experience specializing in providing international tax services to multinational companies ranging from startups to Fortune 100 companies. He has extensive cross-border tax experience as well as in international mergers and acquisitions, structuring foreign operations and negotiations with tax authorities. He is one of our global specialists in international accounting for income tax. David also serves as a member of our Business Model Optimization leadership team, and has many years of practical experience working with clients in intangible oriented industries such as technology and consumer businesses. David recently returned to the U.S. after having served as our Clients and Markets leader for our Asia Pacific tax practice, where he was based in Tokyo.

David is a graduate of the University of Washington, where he holds a BA in Accounting, as well as the Denver University Graduate Tax Program. He is a member of the American Institute of Certified Public Accountants.

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Speaker bios

Gaston Quignon is an Argentinean Tax Partner with Deloitte LATCO Regional Service Limited in Buenos Aires. He is the coordinator of the LATCO (Latin American Countries Organization) desk within Deloitte Tax LLP's International Core of Excellence program ("ICE"). Gaston is a member of the International Tax Service Line of the Latin American Countries Organization. As a member of the Latin American International Tax Group in Argentina, Gaston assists in the service of Deloitte's multinational clients, and acts as the main Latin American contact on selected client engagements. He has developed extensive experience in international and local tax planning, transfer pricing, cross-border transactions, structuring merger, acquisitions and indirect taxation. Gaston has more than 16 years of experience in the international tax field. He has worked with clients in many industries including technology, pharmaceuticals, consumer business, manufacturing sectors, and life science.

Gaston is a regular lecturer at business institutions and professional entities on international tax matters. He has authored training materials and lectured at local and international office seminars. He has been professor of tax at the University of CEMA, Buenos Aires Catholic University and Professor of Finance at Buenos Aires University.

Gaston obtained his degree as a Certified Public Accountant at the Economic Sciences University of Buenos Aires.

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Karina Roiuk is a Brazilian Tax Senior Manager with Deloitte Tax LLP in the New York Office. She is a member of the Brazilian Tax Desk within our International Tax/International Core of Excellence ("ICE") Program.

Originally from Deloitte Brazil in Campinas-SP office, Karina has over 16 years of Brazilian and International experience on foreign capital law, corporate law, VAT and customs, corporate reorganization, tax planning, transfer pricing and merger and acquisitions. Karina has advised a wide range of Brazilian and multinational companies on issues related to Brazilian taxes.

Karina graduated in Law School from Pontificia Universidade Catolica de Campinas (PUC), where she also received her Post Graduation degree in Tax Laws.

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Speaker bios

Regina Scherzer is a Director with the Chilean member firm and currently heads the Chilean tax desk within Deloitte Tax LLP's International Core of Excellence Program ("ICE"). Regina advises both U.S. and Chilean clients on a wide variety of Chile related international tax issues, including in and outbound Chilean investment structuring, exit strategies as well as on corporate acquisitions/disposals and restructurings and earnings repatriation.

Regina has professional experience in Chile and Europe. She has been in the tax area for 18 years 14 of which have been in Chile. She has provided tax advice in the areas of corporate transactions, M&A and tax structuring.

Regina graduated in law and tax law from the Sorbonne University in Paris, earned a Master's degree in Taxation from the University Adolfo Ibañez in Chile and is a post graduate of other higher education institutions in Chile and Europe. Regina is a member of the IFA, Chile and speaks four languages: English, Spanish, German and French.

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