



## A New Tax for an Economy in Crisis

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The National Constituent Assembly (ANC) on July 2, 2019, issued the constitutional law that created the Wealth Tax (Impuestos a los Grandes Patrimonios). The creation of this tax reopens the debate on the constitutionality of the acts enforced by the ANC, considering: 1) the call to elect the ANC was issued by the president of the Republic without the participation and the consultation of the Venezuelan citizens, and 2) the membership selection process to join the ANC violated constitutional rights of citizen participation. On the other hand, the ANC, elected by citizens through a popular vote, is the only unicameral branch entitled and empowered to issue tax laws.

Many have reflected on the unconstitutionality of this regulatory instrument, and this article examines the essential aspects established in the draft law approved by the ANC, which is pending publication in the *Official Gazette*. This report does not constitute an in-depth examination of this tax law but is for informational purposes. The aforementioned considerations could change if the official text published in the *Official Gazette* differs from the draft law circulated unofficially.

### Taxable Event

Ownership of net worth and equity – pursuant to the law itself – equal to or greater than 36 million tax units (equivalent to \$260,000 at the official exchange rate) for natural persons, and 100 million tax units (equivalent to \$722,543 at the official exchange rate) for legal entities.

### Taxpayers

A category of taxpayers called "special taxpayers" are required to pay this tax. These taxpayers are categorized by the Tax Administration based on certain objective elements (i.e., income generated, connection with other special taxpayers that carry out activities in the hydrocarbons sector, among others).

### Taxable Basis

This tax does not levy the equity in accounting terms (the difference between assets and liabilities), but rather uses its own definition: The total value of the assets and duties, excluding the value of the burdens and encumbrances that apply to the assets, as well as the exempt or exonerated assets and duties.

### Evaluation Criteria

As for real estate located in Venezuela, its value will be the highest that results from the application of any of the following parameters: 1) the value assigned in the municipal cadastre, 2) the market value, and 3) the value resulting from the update of the purchase price, in accordance with the regulations enforced by the Tax Administration. With respect to assets located abroad, the highest value between the tax regulations of the country wherein said assets are located will be used, or the current market price at the end of each tax period.



The shares listed in the stock exchanges will be valued according to their closing rate at the end of each tax period. The value of the shares that are not listed in the stock exchange will result from the division of the amount of capital (that is, the equity plus reserves, reflected in the last balance approved at the end of the tax period of the income tax, divided by the number of shares).

## **Location of the Assets Subject to Tax**

The equity of special taxpayers domiciled in Venezuela will be constituted by assets, duties and liabilities, located in Venezuela or outside the country. The equity of special taxpayers not domiciled in the country will be constituted by assets, duties and liabilities located only in Venezuela. As for natural persons of Venezuelan nationality that qualify as taxpayers, but are domiciled abroad, the equity will be constituted by the assets and charges related to such assets located in the country.

## **Regulations in Relation to the Proprietor Ownership of Said Assets**

Proprietary ownership of the assets subject to registration will correspond to the person who appears as proprietor in the respective documents. This includes the tenant in the cases of financial leasing, the beneficiaries in the case of trusts, and the shareholders in the case of assets owned by the company, but are used personally by said shareholders. It is presumed that the taxpayer maintains proprietary ownership of the declared assets in relation to the subsequent fiscal years.

## **Aliquot and Its Exercise**

The aliquot will be between 0.25 percent and 1.5 percent. The officer will be able to establish progressive tax rates and modify the alícuota stipulated by law. The initial aliquot is 0.25 percent. This tax is applied annually.

## **No Deductibility**

This tax will not be deductible for purposes of the assessment of income tax.

## **Effective Date**

This law will be enforced and effective as of its publication in the *Official Gazette*.

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Information contained in this alert is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel.

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