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The LATAM advantage: A look at the region's thriving Free Trade Zones

Latin America (Latam) Special Economic Areas (SEAs) – known as Free Trade Zones (FTZs), among other names – are more dynamic than ever, with more than 700 zones generating around 1.1 million direct jobs across the region.[1] Although we will focus on some of the most significant players in this article – Brazil, Colombia, Costa Rica, Panama, Mexico and Peru – it is important to recognize that these zones are widespread, contributing to a substantial part of Latam's exports.

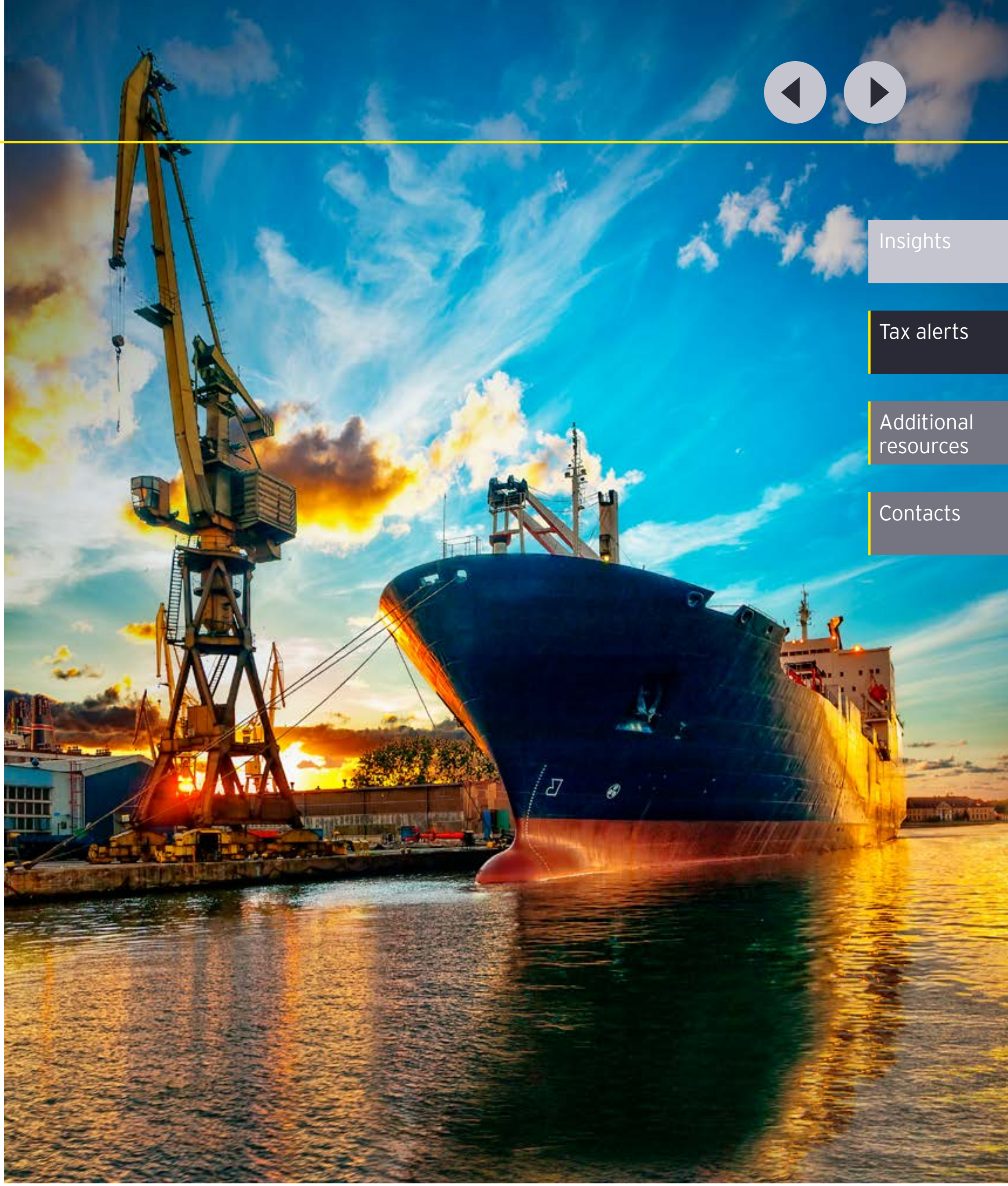
These selected countries potentially offer a compelling blend of tax incentives, compliance frameworks and untapped market opportunities. This article will cover each country's multifaceted appeal, revealing how they each leverage their SEAs for manufacturing and service sectors.

So, let's take a closer look at each of these countries to better understand the dynamic range of benefits and compliance requirements they offer.

Brazil

Brazil's Export Processing Zones (EPZs) are specialized free trade areas primarily focused on production and trading for foreign markets. EPZs are primary zones for controlling export customs clearance. Since the introduction of the first EPZ, 14 more zones have been established across Brazil, emphasizing the country's commitment to foreign trade and economic development.

Operating within an EPZ requires strict adherence to legal standards, including rules around export customs clearance and tax exemptions. They are monitored by the Brazilian Inland Revenue Service (IRS) with operators using specific software, providing full access to the authorities 24-7.



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1 Information obtained from the Association of Free Zones of the Americas (AZFA), accessed 4 October 2023. Find it here.

While EPZs eliminate the need for specific federal licenses and authorizations, businesses must still comply with regulatory standards, especially those concerning health and environmental protection. These compliance requirements help to ensure a quality and trustworthy business environment.

Companies operating in EPZs enjoy a wide range of financial benefits. Not only do they get tax exemptions on domestic acquisitions and exports, but they also benefit from specific exemptions from import tax and other indirect taxes.

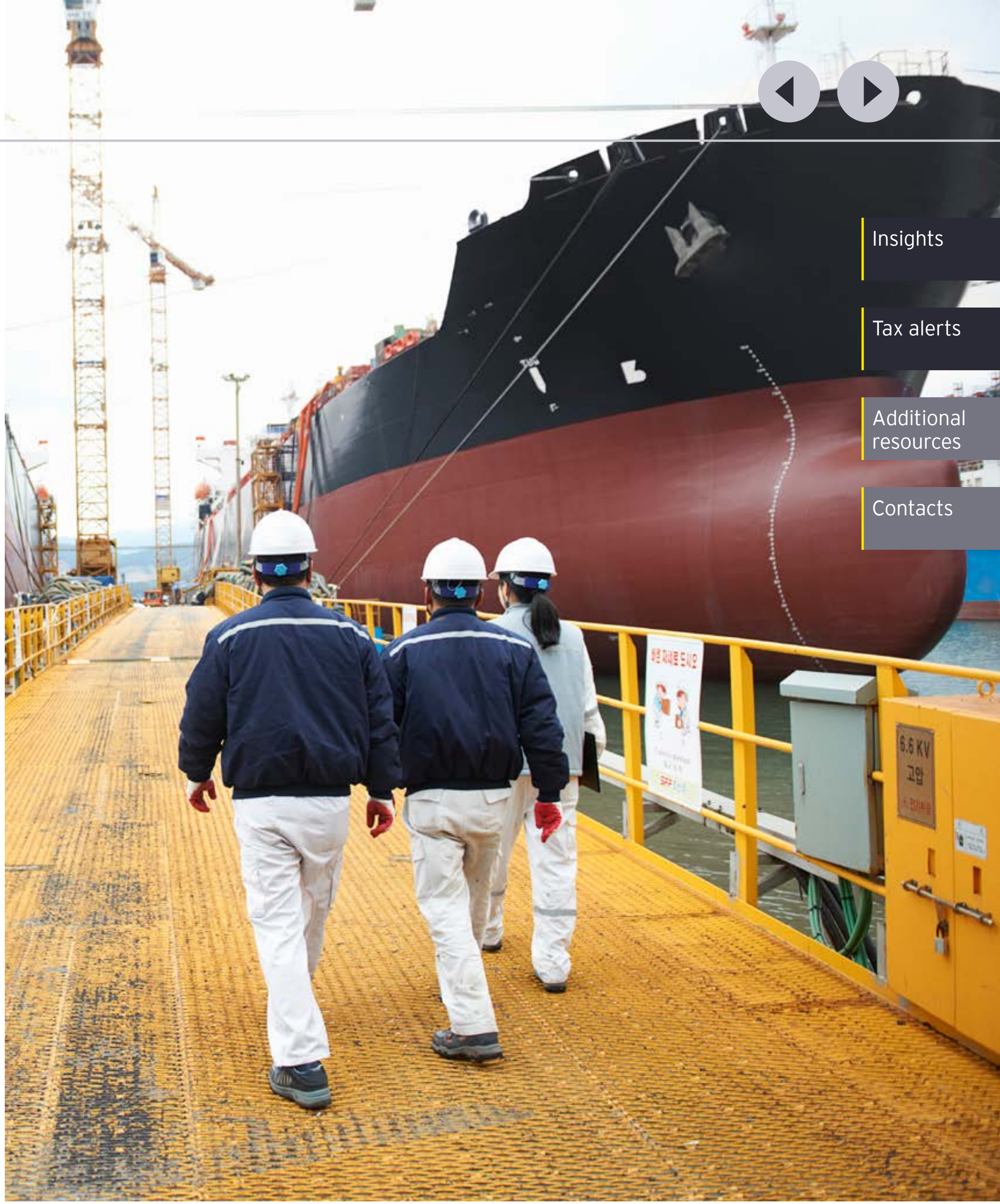
In addition to federal-level benefits, EPZs offer state-level tax advantages, including different tax treatments for ICMS (Tax on Circulation of Goods and Provision of Transportation and Communications Services). Furthermore, companies in EPZs can keep 100% of their export-generated currency overseas, offering significant financial flexibility and cost-reduction advantages; however, it is important to note that this last benefit is not guaranteed by law but by a resolution provided by the National Monetary Council.

Colombia

Colombia is home to 124 FTZs, divided into 42 multicompany permanent zones and 82 special single-company permanent zones. These zones are spread across 20 departments and host over 1,000 companies.[2] Notably, 90% of these companies are "small and medium-sized enterprises" (SMEs) engaged in industrial goods and services sectors. Multicompany zones facilitate various enterprises to operate under shared infrastructure, while special single-company zones are tailored for specific, large-scale business endeavors.

On the compliance front, Colombia's FTZs operate under stringent regulations. Companies must adhere to comprehensive rules and procedures, ensuring that the zones remain reputable and well-organized.

From 2024, Colombia's FTZs will offer a specialized tax benefit structure. A favorable 20% income tax rate will apply only to income from the export of goods or services, certain logistical services, port services, and offshore and refining activities. This focused tax benefit compliments legal incentives, such as duty-free importation and exportation and value-added tax (VAT) exemptions, aiming to boost specific sectors and enhance overall business competitiveness.



2 Data obtained from *Diario la Republica*, dated 28 April 2023, based on information provided by Angelica Peña, the manager of the Free Zone Users Chamber of the Andi. Find it here.

Costa Rica

Costa Rica's FTZ regime currently benefits more than 494 companies.[3] This regime offers extensive benefits tailor-made for businesses, such as strategic service providers, park administrators, strategic manufacturing sectors, research and development, services, and trading companies. Activities such as mining and hydrocarbon exploration are excluded.

The compliance environment in Costa Rica's FTZs is designed to be both rigorous and supportive, aiming to build trust and quality. The authorities work closely with businesses to ensure regulations are met, fostering a smooth operational landscape.

The benefits granted to FTZs include duty exemptions on imported goods and the exception of other charges and taxes, such as VAT. There are also exemptions from real estate transfer taxes and municipal patents for several years, depending on the zone type. Companies are exempt from remittance taxes and all gross or net earnings, dividends, revenues or sales levies. Manufacturers can apply for tax credits if the gains are reinvested in fixed assets or training expenses. Companies also gain access to training and educational programs. The regime is limited to a period of several years, depending on the license type, but it can be extended, and companies may reapply if they meet the requirements.

Panama

Panama has 15 active FTZs,[4] with six more in the pipeline, making it an attractive location for a variety of business sectors. Due to its logistics facilities, it is a preferred location for establishing distribution and production hubs for Latam and the US. Regulatory audits in these zones are designed to foster trust and ease compliance for foreign and domestic investors. The zones can be privately owned, be state-owned or have mixed ownership, and they can be established almost anywhere in the country.

The zones cater to a range of activities, from manufacturing and high-tech sectors to logistics, environmental services, health care, higher education and research. Key benefits include direct tax and import duty exemptions on materials, goods and services.

Recent approvals by the Panamanian Council of Ministers include the establishment of the new FTZ known as Tech Valley. This zone plans an initial investment of around Panamanian Balboa (PAB) 50 million (USD50 million) and aims to generate over 1,140 direct and 3,570 indirect jobs.[5]

Another significant development is the authorizing of the largest data center with an initial investment of PAB11.5 million (USD11.5 million).[6] This center aims to host numerous companies and enhance Panama's strategy to become the digital hub of the region, offering cost-effective international traffic and low latency, thereby increasing Panama's competitive edge and connectivity.

Mexico

In Mexico, more than 6,000 companies across various industries take advantage of the unique Manufacturing, Maquila and Export Services Industries (IMMEX) program, which is not a traditional FTZ.[7] Designed to support manufacturing activities and services, such as shared services centers, the program is open to all sectors, as long as a specific portion of the products manufactured or the services provided are ultimately exported. These companies can temporarily import raw materials duty-free, with some exceptions, with the expectation of adding value to them before exporting the final products or providing the services.

Compliance is a crucial aspect of the IMMEX program, requiring rigorous adherence to Mexican tax laws. Special audits may be applied to participants to ensure they meet the program's compliance standards. Moreover, companies must have a bond or VAT certification to utilize the program's offerings fully.

The benefits of participating in IMMEX extend beyond mere tax advantages. Companies can apply for reduced customs processing fees and import VAT credits, provided a bond or VAT certification exists. Additionally, temporarily imported products can, in some instances, be sold in the Mexican market. This flexibility allows companies to diversify import sources and capitalize on nearshore manufacturing benefits.

3 Data obtained from PROCOMER (the Foreign Trade Promoter of Costa Rica) website. Find it here.

4 "Zonas Francas," Republic of Panama's National Government website. Find it here.

5 "Panamá invertirá 78.5 mdd para nuevas zonas francas," *Forbes Central America*, 13 February 2023. Find it here.

6 Ibid.

7 Data is based on the public directories of companies with an IMMEX program, provided for online consultation by the Ministry of Economy in Mexico. Find it here.

Peru

Peru's Special Economic Zones (ZEEs) are emerging as significant players in Latam for businesses interested in the region's diversified industrial landscape. With nine ZEEs, four of which are operational, these zones provide multiple avenues for international trade and production.

Compliance is eased through a regulatory framework that offers unique and flexible tax and customs legislation.

Regarding tax benefits, businesses operating in Peru's ZEEs that are involved in allowed activities, such as maquila activities, logistics, warehousing, telecommunications, information technology and research, are entitled to various exemptions. These include complete exoneration from income tax, general sales tax, municipal promotion tax and selective consumption (excise) tax. Such benefits are significantly favorable compared to standard tax rates outside the ZEEs, which can be up to 29.5% for income tax and range between 2% and 50% for other taxes, depending on the type of goods.

On the customs front, Peru's ZEEs offer substantial advantages. Companies can import machinery, raw materials and supplies without paying import duties and taxes. Goods can be stored indefinitely within the ZEEs and directly exported without undergoing a nationalization customs regime. Furthermore, these goods can enter the national territory under international agreements and conventions.

Conclusion

In summary, Latam's SEAs do not merely provide tax incentives and reduced tariffs. They are dynamic, multifaceted hubs that accommodate diverse activities, from manufacturing and logistics to technology and services. Whether leveraging Brazil's benefits for renewable energy companies or taking advantage of Colombia's burgeoning business process outsourcing sector, these zones offer a holistic ecosystem for products and services.

Each SEA provides unique benefits, which may make them launchpads for businesses aiming to enter or expand within the Latam market. These zones are also evolving, adapting to modern business needs while offering avenues for traditional industries. With the international business landscape growing increasingly complex, Latam's SEAs provide a strategic advantage for companies seeking a balance of tax benefits, streamlined compliance and market opportunities. It is not just about cutting costs – it is about finding new ways to innovate, grow and thrive.

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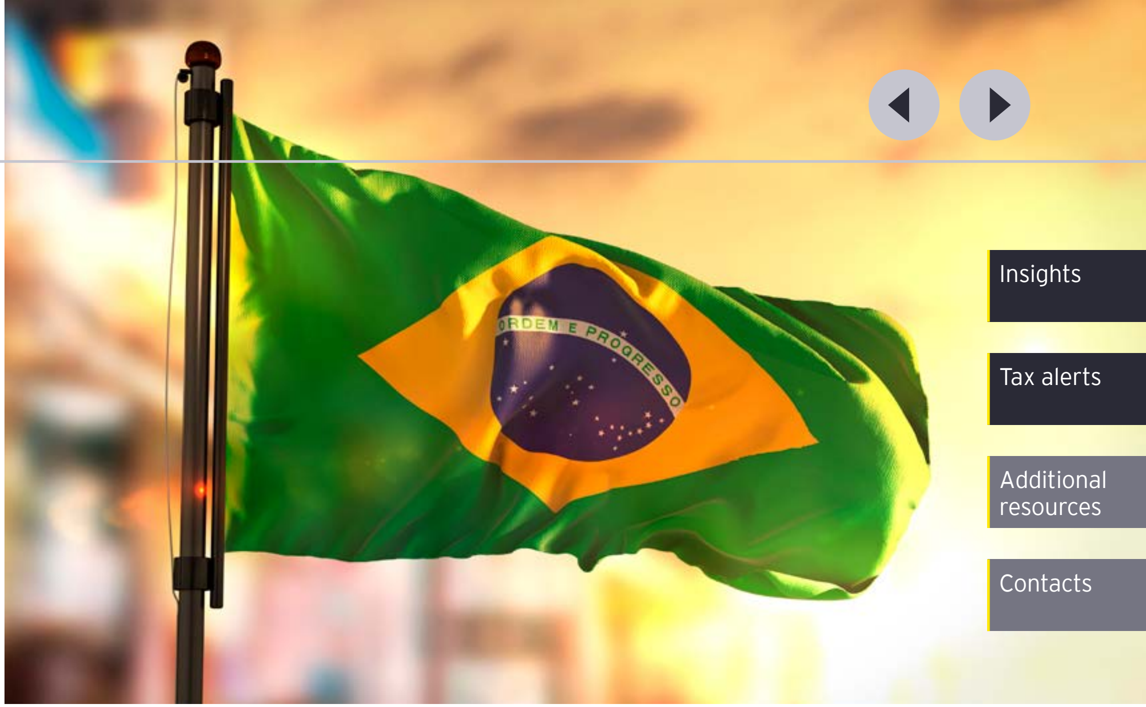
Brazil: A step toward continuous improvement with enhancement of the Authorized Economic Operator program



Authorized Economic Operator (AEO) certification program is the recognition by customs authorities that the levels of control and compliance of a company performing foreign trade operations are sufficient to consider it to be a low-risk operator. As such, it confers certain simplifications and privileges that can greatly enhance the speed and efficiency of international movements of goods.

Originating from the World Customs Organization (WCO), the AEO certification program was adapted for Brazil with many similarities to auditing standards used in Europe in granting AEO status. This gives the applicant the opportunity to make a self-assessment of the structure of its business, the level of existing controls, an analysis of risks, and documentation of corrective measures and action plans.

The AEO program in Brazil is attractive to many businesses, due to the many tangible benefits available for certified companies, coupled with the Brazilian Customs authority's objective that the program succeeds. The Brazilian authorities have bought into the global objectives of identifying low-risk operators and increasing trade facilitation, while offering greater agility and predictability in international trade flows.

The legal basis governing the AEO program in Brazil has now undergone a further review process, which sought to align the WCO's guidelines with the most recent international commitments signed by Brazil.

Public consultation period

The Brazilian Federal Revenue Services (Brazilian IRS) launched a public consultation in May 2023 to gather companies' opinions and suggestions for the AEO program in Brazil and the reorganization of its criteria. As a result of this consultation, updates to the new legislation were published in July and August 2023.

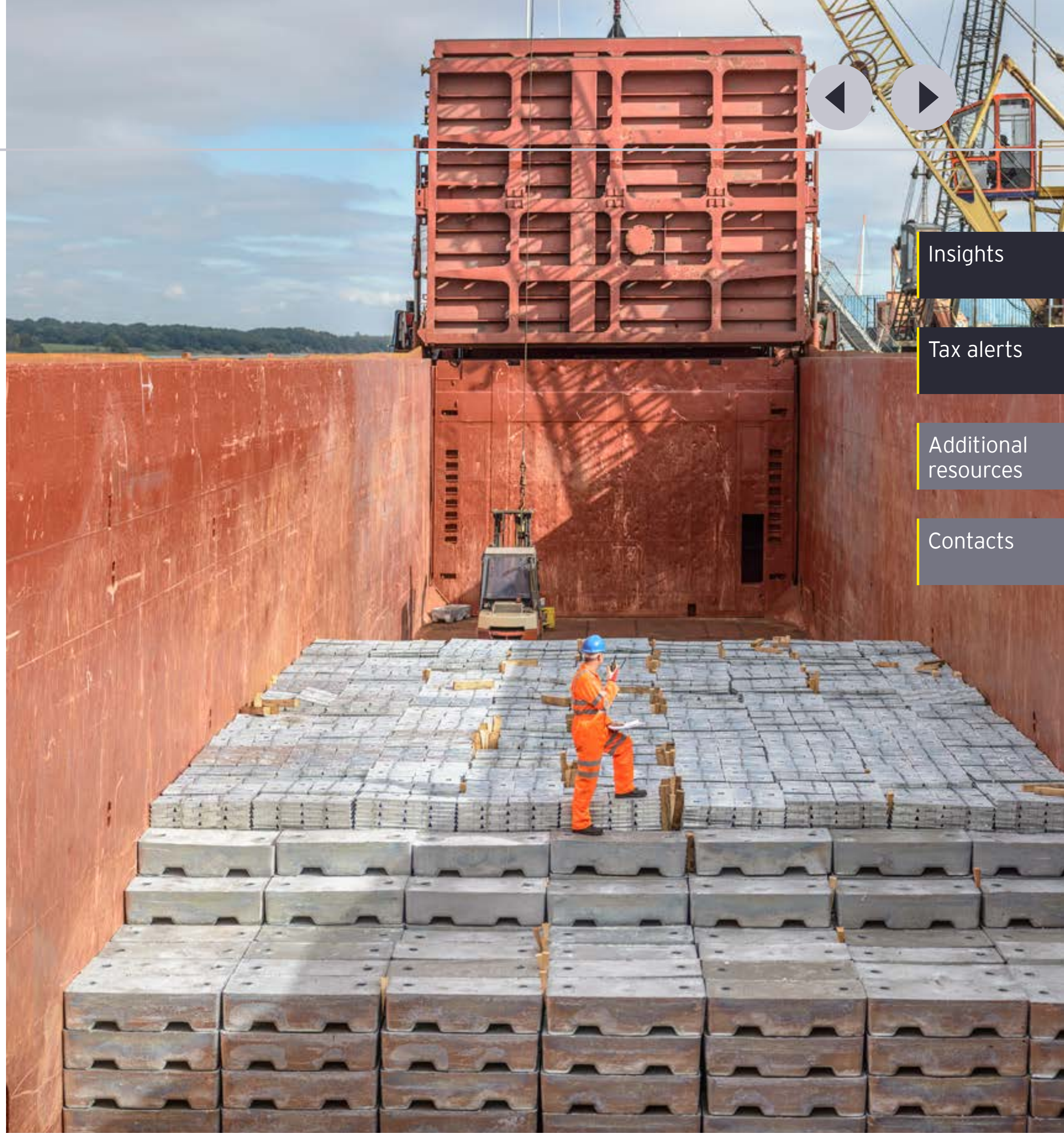
The legislation primarily aims to simplify the procedures and terminologies used regarding international supply chain security, adapting the requirements to make them compatible with those of the WCO SAFE Framework of Standards (WCO SAFE) and the US' Customs Trade Partnership Against Terrorism (CTPAT) program, including the adoption of some new criteria.

The changes bring Brazil's AEO certification process closer to the WCO SAFE standards and updates. They also clarify and improve concepts and review the minimum percentage of direct operations required to qualify, since, according to the previous legislation, companies would only be eligible for AEO status if at least 90% of their international operations were directly made.[1] The new legislation also expands the list of companies eligible for AEO certification, by incorporating maritime agents. This expansion aims to reach new players to further strengthen the security of international supply chains.

While some of the legislative changes unrelated to the technical certification criteria have already been adopted, most of the technical enhancements will come into effect in August 2024. This will give existing certified companies and new applicants a one-year transition period to adapt to the new requirements, allowing for a more gradual transition, which will have a lower cost impact than if the new criteria went into effect sooner.

Main objectives of the new legislation and enhancements

The adjustments made to the legislation demonstrate a strong commitment by the Brazilian authorities to maintaining alignment with international standards and to continuously enhancing the uptake and international success of the AEO program. This action may contribute to the negotiation of mutual recognition agreements (MRAs) and expand to new proposals for partnerships with customs authorities in other countries, consequently allowing "Brazilian certified operators" to benefit from AEO facilitation measures in partner countries.



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1 Direct operations are operations performed by the company itself. Indirect operations are those performed by third parties, such as trading companies, or on behalf of a third party. The Brazilian IRS understood that AEO-certified companies could not be the buyer of another importer nor import or export on behalf of another company, to make sure that companies without AEO standards do not benefit from the certification through another's certificate.

Colombia: Crypto assets cannot be used as a means of payment for foreign trade operations

Cryptocurrencies are challenging and reshaping financial norms around the globe, but Colombia has issued a clear decree: Crypto assets cannot be used as a means of payment for foreign trade operations.

This stance is deeply rooted in Colombia's history and how its foreign exchange regime, dating back to the 1930s, has continually adapted to navigate the challenges of a globalized world.

Foreign exchange regime in Colombia

The Colombian foreign exchange regime originated in the 1930s in response to the severe economic and monetary repercussions of the post-World War I period and the global Great Depression. The creation and evolution of the country's international exchange regime is particularly crucial because a medium-sized, open economy, such as Colombia's, is significantly influenced by various external factors and fluctuations in the international economy.

As a result, the Colombian legislature has needed to ensure an effective measurement, analysis and response to international movements and their consequences. Within this scope, Law 9 of 1991 established the general rules that the national government must follow to regulate international exchange. Both its explanatory statement and Article 2 of this law explicitly state that the purpose of the Colombian foreign exchange regime is to attain stable and balanced foreign trade. The regime aims to promote economic and social development through the internationalization of the economy, with the goal of enhancing its competitiveness. This is achieved by fostering and

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encouraging foreign trade operations, simplifying the execution of international transactions (while still maintaining control and oversight mechanisms), promoting capital investment, and coordinating foreign exchange policies and regulations with other macroeconomic policies.

Since the enactment of this law, the Colombian foreign exchange regime has undergone substantial strengthening and modifications to address the emerging challenges and complexities of the globalized world. This evolution has been so significant that the Colombian Constitutional Court has affirmed that "within the scope of the foreign exchange regime, the intention is to achieve a political purpose which consists, basically, in the protection of the economic public order."[1] As an example, the foreign exchange regime has served as a mechanism for preventing illegal activities, such as money laundering and the financing of terrorism.

Current state

Currently, the foreign exchange regime has embraced an informative and open approach to the international exchange market, allowing individuals to engage in a wide range of international transactions. However, based on the purposes of the regime in regulating and protecting the economy, a dual-nature foreign exchange regime has been established in Colombia. The regime that applies in any given situation depends on the nature of the exchange operation and whether it falls under a free exchange market where regulatory authorities have minimal intervention or a regulated exchange market where a set of guidelines, procedures and inspections are mandatory.

The foreign exchange regime defines the following:

- The operations subject to its regulations.
- The competent authorities responsible for legislation in this area (i.e., the Congress of the Republic, the Central Bank and the Board of Directors of the Central Bank).
- Those responsible for overseeing compliance with the foreign exchange regime (i.e., the Superintendence of Corporations, the Superintendence of Finance and the National Tax and Customs Directorate).
- The individuals or entities qualified as intermediaries in the exchange market.
- The administrative procedures established for compliance with the foreign exchange regulations and the applicable sanctions.

Operations

Article 4 of External Resolution 1 of 2018 outlines the operations subject to mandatory channeling through the regulated foreign exchange market, which include:

- Import and export of goods.
- External borrowing operations conducted by residents in Colombia, along with the associated financial costs.
- Foreign capital investments in Colombia and the returns generated from them.
- Colombian capital investments abroad and the returns generated from them.
- Financial investments in securities issued and in assets located abroad, along with the returns generated from them, except when the investments are made using foreign currency from operations that should not be channeled through the foreign exchange market.
- Foreign currency guarantees and collateral.
- Derivatives trading.

This regime applies to operations in which Colombian residents and nonresidents engage in currency exchange, involving either foreign currencies or, in some cases, Colombian legal currency. Individuals are obliged to conduct these transactions through authorized intermediaries or compensation accounts. This ensures that the authorities have direct access to the terms and details of such transactions.

Intermediaries

Intermediaries of the exchange market are institutions authorized and supervised by the Financial Superintendence of Colombia through which exchange operations are channeled either on a mandatory or a voluntary basis. According to Annex 2 of the External Regulatory Directive DCIP-83 of the Department of International Exchange and Payments, the intermediaries of the exchange market are:

- Authorized banking institutions
- Authorized financial corporations

1 Constitutional Court Plenary Session, Ruling C-010 of 23 January 2003. Presiding Judge Clara Ines Vargas Hernández

- Authorized financing companies
- Financiera de Desarrollo Nacional S. A. (FDN)
- Banco de Comercio Exterior de Colombia S. A. (Bancóldex)
- Authorized financial cooperatives
- Stock exchange brokers
- Foreign exchange brokers and special financial services companies (SICSFE)
- Companies specialized in electronic deposits and payments (SEDPE)

Compensation accounts

Compensation accounts refer to bank accounts held abroad that serve as conduits for conducting both operations subject to mandatory channeling into the exchange regime and those stemming from the fulfillment of obligations between residents (internal operations).

According to the provisions of Article 2.17.1.2 of Decree 1068 of 2015, residents who hold bank accounts in foreign currencies with financial entities abroad and are registered under the clearing mechanism of the Central Bank, as outlined in Section 8.2 of Chapter 8 of DCIP-83, are considered holders of compensation accounts.

In the case of autonomous patrimonies or collective investment funds, the compensation account is registered by the management company on behalf of the patrimony or collective investment fund, using the Tax Identification Number (NIT in Spanish) and the name of the autonomous patrimony or collective investment fund. This registration includes the business purpose of the management company.

In the case of consortiums, temporary unions or partnerships, the compensation account is registered on behalf of one of the resident participants, indicating the names of the other resident participants on the registration form.

To facilitate control over these transactions, individuals are required to submit their foreign exchange declarations at the time of the transaction. This document is mandatory, regardless of whether the transaction is conducted through intermediaries of the exchange market or via a compensation account. It must be retained, along with its supportive documents, for five years.

Crypto assets as a form of payment

The rise of crypto assets has presented one of the most significant challenges to the foreign exchange regulations in recent times. Their capacity to facilitate transfers without relying on a centralized system for issuance, registration, clearing, settlement and payment contradicts the principles of Colombia's foreign exchange regime. Furthermore, Colombian legislation currently lacks specific regulation relating to crypto assets.

As a result, the concept of crypto assets has been addressed through the interpretation of jurisprudence and the guidance provided by the financial authorities. These authorities include the Technical Council of Accounting, the Central Bank, the Financial Superintendence, the Unit of Normative Planning and Financial Regulation Studies, the Unit of Information and Financial Analysis, and the National Tax and Customs Directorate (DIAN). Their interpretation aligns with and adheres to international pronouncements and regulations related to this subject (specifically, the International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS)). They have concluded that crypto assets do not fully comply with the definitions stated in several international accounting and financial standards (including IAS 2, IAS 7, IAS 8, IAS 32, IFRS 9, IAS 38 and IAS 40).

The competent authorities (listed above) have determined that there is currently no appropriate asset category that can define crypto assets. For example, these assets do not meet the criteria for classification as money or money equivalents, financial instruments, noncash financial assets, investment properties or intangible assets. Consequently, since they do not fit into any of these definitions, the competent authorities have concluded that there is no obligation to accept them as a means of payment.

In lieu of payment and crypto assets

Under the foreign exchange regime, the authorized method for settling obligations is through payment in either legal or foreign currency. Exceptionally, an alternative method of payment is allowed known as "in lieu of payment." However, it is important to note that this method cannot be agreed upon as the initial or preferred mode of payment.

According to the Central Bank, this method must always be associated with the notification and submission of transactional information to the competent authorities. This approach ensures that the authorities can verify that cross-border exchanges of goods and services, as well as their corresponding values, are accurately reflected in income and expense statements. Given the uncertainties surrounding the nature of crypto assets, an emerging alternative method for their use as a means of payment has been to treat them as being "in lieu of payment."

The Supreme Court of Justice has interpreted this concept as an independent mechanism for settling obligations when both parties agree to provide a different asset than the one originally stipulated to satisfy the obligation. The primary intention of the parties is to discharge the initial obligation. According to the Financial Superintendence, one of the crucial elements of this method is the determination of the value or price. It is imperative that the value of the new asset corresponds to the value of the initial one.

However, determining the value poses a significant challenge when applying this concept to crypto assets. To ascertain the value of an asset, an active, recognized and traceable market is typically required.

In this context, the Central Bank has asserted that "in the crypto-assets market, there is a lack of certainty regarding the immediate availability of resources, the value at which crypto-assets can be exchanged, and the permanence of these assets in the market."[2] This uncertainty arises from the existence of multiple active markets for the same crypto asset, each with varying prices, and the difficulty of accessing these markets. Consequently, certifying the value and converting the price to local or foreign currencies is deemed to be technically impossible.

In view of this impossibility, DIAN has determined that using crypto assets does not meet the requirements of the "in lieu of payment" method established in the foreign exchange regime. Therefore, the use of crypto assets as a means of payment is not feasible.

What's next?

As the use of crypto assets continues to grow, their implications become increasingly significant for foreign trade. However, the absence of a dedicated legal framework applicable to these assets results in uncertainty regarding their use in various economic sectors, including the foreign exchange regime.

This situation is creating gray areas that may spark substantial debates and discussion on the matter.

Hence, it is anticipated that the Congress of the Republic, in the exercise of its legislative authority, will undertake the regulation of this subject. Furthermore, both the Central Bank and the Technical Council of Public Accounting have expressed their anticipation for international entities to issue further pronouncements concerning crypto assets and to establish regulations in this regard.

Crypto assets are a reality in the modern world in which financial and exchange operations are conducted. Consequently, the development of a legal framework is necessary. Furthermore, the Colombian legislature may await international developments and regulations related to crypto assets to ensure that legislation is coherent and consistent. ■

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2 Technical Concept SCD-000001230, Central Bank, 9 August 2023

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- El Salvador's Congress receives bills to amend International Services Law and the Law for Industrial and Commercial Free Zones
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- Global Tax Policy and Controversy Watch
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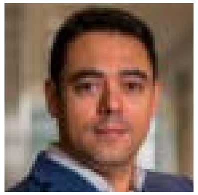

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