

# Estudio Ehecopar.

Member Firm of Baker & McKenzie International



## Rolando Ramirez-Gaston

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Partner

Lima, Peru

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### Local Practice

Tax

### Related Expertise

Tax Dispute Resolution

Tax for M&A and Reorganizations

Tax Planning

VAT / Indirect Tax

Wealth Management

### Languages

Spanish

English

### Biography

Rolando regularly advises corporate and institutional clients on commercial and financial tax planning as well as on the tax aspects of mergers and acquisitions. He advises local and foreign clients on tax audits and tax proceedings on a regular basis before the Peruvian National Tax Administration, the Fiscal Court, the Municipal Tax Administration and the judiciary. Rolando's practice focuses on the tax issues related to corporate deals, including mergers and acquisitions. He also counsels on tax matters for stock market transactions and financial derivatives, and on complex deals carried out by joint ventures and consortia on the construction sector.

### Practice focus

Rolando is experienced in advising corporate and institutional clients on tax solutions for their business and financial transactions and on tax matters of major company mergers and takeover processes. He advises on Wealth Planning matters, tax procedures with the National Tax Administration, the Municipal Tax Administration and the Judiciary. He acts as consultant on tax matters related to capital markets transactions, and to the mining, oil and gas, retail and construction industries.

### Education

- New York University, Master in Law (LL.M.), New York, 2000.
- Pontificia Universidad Catolica del Peru, Law Degree, Lima, 1996.
- School of Graduate Business Administration – ESAN, Course on Accounts and Finance for Non-Specialists, Lima, 1995.

### Memberships

- President of the Committee of Tax Affairs of the Association of Capital Market Promoters – Procapitales.
- Procapitales – Member, Tax Committee.
- Sociedad Nacional de Minería, Petróleo y Energía - Member, Tax Committee.
- American Chamber of Commerce - Member, Tax Committee.
- Association for the Fostering of the National Infrastructure (AFIN) - Member, Tax Committee.

### Estudio Ehecopar

Av. La Floresta 497

Piso 5 San Borja

Lima 41

Peru

- International Fiscal Association (IFA) – Member, Peruvian Group.
- Peruvian Institute for Tax Law (IPDT) – Member.

### Admission

- Lima Bar Association, 1997.

### Experience

- Partner at Estudio Echeopar law firm since 2007.

### Representative legal matters

- Advised Invepar on the tax planning for the sale of its Peruvian subsidiary Linea Amarilla S.A.C. (a toll road company) worth USD 1.6 billion to optimize the shareholder's benefit.
- Advised Milpo on the Peruvian legal and tax implications and the UK tax considerations, associated with the implementation of a certain silver streaming financing structure, pursuant to which Milpo Peru would incorporate a subsidiary in the United Kingdom (Milpo UK) and the last one would enter into a silver streaming agreement to fund a loan to Milpo Peru.
- Advised on the tax framework for Pagos Digitales Peruanos' mobile banking platform that allows for its use by all major Peruvian financial institutions and telecoms providers.
- Advised in a loan portfolio comprised of mortgage loans from a local bank to a foreign bank. This mandate involved the creation of an investment fund to minimize the possible tax consequences and mainly to avoid the loss and the initiation of various tax-based certification procedures before the Peruvian Tax Administration.
- Advised Peru's leading university on the acquisition of 25.1 hectares of public land from the Public Goods State Agency (Superintendencia de Bienes Estatales) for the building of a Science and Technology Park.
- Assisted in the defense of a multi-level sale company before the Peruvian Tax Authority who challenged the conference call services provided by a non-domiciled company to the client (and all the client's entities around the world) arguing that they qualified as digital services (subject to 30% withholding tax), because it implied the use of the Public Telephone Switch Network - PTSN which at the same time uses a digital switching and thus is provided through the Internet.
- The defense was successful at an audit level. The tax team proved that such net is not similar to the Internet and thus one of the necessary requirements for a digital service to qualify as such was not met.
- Our tax team successfully represented the Joint Venture comprised of 3 large engineering and construction corporations in a tax claim procedure against the Peruvian Tax Authorities' assessment of USD

10.5 million dollars of taxable income allegedly not recognized by our client, which ended in the Peruvian Tax Court's reversal of the aforementioned Peruvian Tax Authorities' decision, as well as any penalties derived therefrom.

- As a consequence of a dispute originated in a construction agreement between our client (the contractor) and an electricity generating company, owner of a certain project, an arbitration panel decided that the latter company should pay USD 10.5 million to our client, in addition to the contract price originally agreed upon. At the time, applicable Peruvian Income Tax Law provisions set forth that otherwise taxable income derived from construction contracts could be deferred until such time when the construction was finalized. Accordingly, our client deferred the "additional contract price" of USD 10.5 million determined by the aforementioned arbitration panel. The Peruvian Tax Authorities, however, recharacterized the additional ordinary income as "compensatory damages"—an extraordinary income—not subject to the income deferral provisions mentioned above. Consequently, our company was charged with the 30% income tax rate applicable to the USD 10.5 million allegedly incorrectly deferred, plus applicable penalties (i.e., 50% of the undeclared income tax).
- Our client—represented by our firm—filed a tax claim against the Peruvian Tax Authorities' assessment and obtained a reversal on appeal before the Peruvian Tax Court.
- Assisted Invepar with the tax planning for the sale of its Peruvian subsidiary Linea Amarilla S.A.C. (a toll road company) to optimize the shareholder's benefit.
- Advised Commscope Inc determining the proper structure which involved tax consequences for the acquisition of the business line developed by Tyco Electronics del Peru S.A.C., the structure involved different assets (real estate, Intellectual Property, fixed assets, among others) and liabilities.
- Assisted Arrendamiento Operativo CIB in the elaboration of the tax structure for the most efficient way to transfer more than 400 heavy-duty trucks (under the property of an investment fund) in favor of a Peruvian company involved in the Renting industry, entrusted with the continuance of the client's renting business.
- Assisted a leading global investment banking, securities and investment management firm, in the advisory of the transfer of a loan portfolio comprised of mortgage loans from a local bank to a foreign bank which involved the creation of a securitization trust in order to minimize the possible tax consequences and mainly avoiding the loss and the initiation of various tax basis certification procedures before the Peruvian Tax Administration. This project implied an innovative tax solution and was highly significant for our client as it will save the company money in taxes and in tax administrative procedures.

- Advised a Brazilian investment fund with the tax planning of the frustrated acquisition of Duke Energy subsidiary in Peru, under the regional acquisition of other of its subsidiaries.
- Assisted an important company of direct sales, in a tax contentious procedure case involving a great amount of tax expenses (mainly intercompany services) challenged by the Tax Authorities which would have determined a high tax liability for our client. The case was resolved in favor of the client and its importance lies on the tax defense designed by the tax team which included the gathering and argumentation of the proper proofs to question the tax assessments made by the Tax Authorities.
- Assisted a Brazilian Oil & Gas company with the planning of the most effective way in which the company could engage in the private tender offer made by a Spanish Oil & Gas company for the exploitation of oil wells in Peru.
- In the context of a global corporate reorganization, we provided the tax planning analysis and strategy for the separation of Alstom Peru's transport and renewable energy line of business, which included evaluating the options for transferring assets and liabilities of significant amount.
- Advice Petroperu on tax matters related to the sale of an interest in one oil block to GeoPark.
- Provided legal tax advise in connection with the Peruvian tax consequences associated with the purchase of receivables by Deutsche Bank from Peruvian companies.
- Advice on the tax matters related to the sale of the trust's assets that guaranteed the payment of a syndicated loan by Maple Gas. The sale of the trusts' assets were made by the Trustee.

## News, Events & Publications

### Publications

- "Sumas y restas tributarias," Newspaper El Comercio, 2016.
- "Una Razon Social Basta," SEMANAeconomica, 2016.
- "La Amenaza Fantasma," SEMANAeconomica, 2016.
- "La Certificacion de Costo en Enajenaciones Indirectas," Newspaper Gestion, 2015.
- "Taxes, exonerations, and clear rules," Reply to the editorial in Gestion, 2009.
- Co-author, "Dividends," Athina magazine of Universidad de Lima, 2008.
- Co-author, "Tax Implications in the Income Tax in the Cession of a Credit in favor of a NonResident Individual," Paper presented at the X National Days of Tax Law at the Peruvian Institute of Tax Law - IPDT, 2008.

- Co-author, "Application of the 4.99 per cent rate," Diario Oficial El Peruano, April 2007.
- Co-author, "Social Expenses in Mining Companies: Difficulties for its execution," Derecho & Sociedad Law Review of the Law School of Pontificia Universidad Catolica del Peru, December 2006.
- Co-author, "Liability of Directors and Officers," The Willis Worldwide Directory, 2005.
- "The Peruvian Tax System," Aspatore, USA, 2004.
- "Taxation on the investments of insurance companies," Invertir N° 4, December 2004.
- "Tax Issues on the Securitization of Trusts," Diario Oficial El Peruano, January 2003.

### Presentations

- Speaker, "17th LA Tax Conference," Miami, 2016.
- Speaker, "Expenditure on Research and Development & Other Intangibles," XI Annual Congress of Business Taxation (CATE), 2016.
- Speaker, "Derivative Financial Instruments Taxation," VI Annual Congress of Business Tax Cate, 2011.
- Speaker, "Mining Industry: Inbound & Outbound Investment," fourth Annual US – Latin American Tax Planning Strategies, Miami, USA, 2011.
- Speaker, "Project of law over the new regulation of the participation of utility workers," Human Resources Committee of the National Society of Mining, 2011.
- Speaker, "Indirect Disposal of Shares," Universidad Peruana de Ciencias Aplicadas for the Asociacion Juridica magazine, 2011.
- Presenter, "Course on Income Tax on Capital Gains," Conference in the Center for Stock Exchange Studies at the Lima Stock Exchange, 2010.
- Lecturer, "Course on Income Tax on Capital Gains," Themis magazine of the Pontificia Univesidad Catolica, 2010.
- Presenter, "Mining tax regime in the course of Mining and Energy Law," Law School of the Pontificia Universidad Catolica del Peru, 2009.
- Lecturer, "Anticipated Recovery of the General Sales Tax with Reference to Mining Taxation," Seminar regarding business tax organized by the Association of Tax Law Vectigalia, 2008.
- Lecturer, "The Certificate of Fiscal Residence and some Configuration Assumptions of Permanent Establishments," seminar organized by the International Fiscal Association (IFA) Peruvian Group, 2008.

- Lecturer, "Anticipated Recovery of the IGV," seminar regarding mining taxation organized by Derecho y Sociedad at the PUCP, 2008.
- Lecturer, "Major changes to the Income Tax Law as of the year 2008, specifically regarding the subject of derivative financial instruments," workshop organized by the French Chamber of Commerce, 2008.
- Lecturer, "Tax Regime of Mining Activities in Peru," conference organized by the International Bar Association – IBA, Miami, USA, 2005.
- Lecturer, "Modification to the Income Tax Law, the Financial Transactions Tax and Banking," interactive workshop organized by the Peruvian - British Chamber of Commerce, 2004.
- Lecturer, "Modification to the Income Tax Law, the Financial Transactions Tax and Banking," seminar organized by Ehecopar Law Firm, 2004.
- Lecturer, "Taxation aspects in income tax applicable to Mutual Investment Funds direct," Association of Administrative Societies of Mutual Invest Funds, 2003.
- Lecturer, "Legal aspects of a tax amnesty approved by Congress," workshop, 2002.
- Lecturer, "Tax aspect applicable to cooperatives in Peru," the National Federation of Savings and Credit Cooperatives of Peru, 1997.