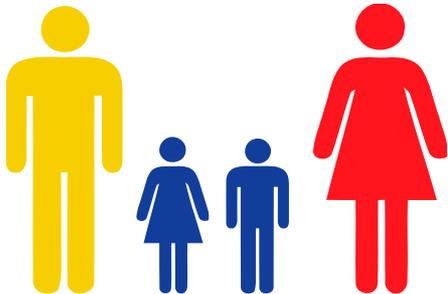


# *Treatment of capital gains in mining projects in Ecuador*



September 2015

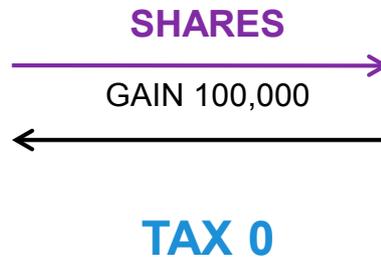
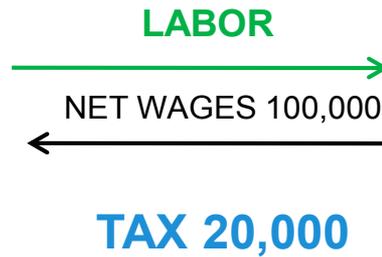
## CAPITAL GAINS TAX IN LATIN AMERICA

### Is the indirect disposal of shares taxed?

Country	Taxes	Does not tax
Brazil	X	
Argentina		X
Chile	X	
Colombia	X	
Mexico	X	
Ecuador		X
Panama	X	
Peru	X	
Uruguay	X	
Venezuela	X	
Dominican Rep.	X	

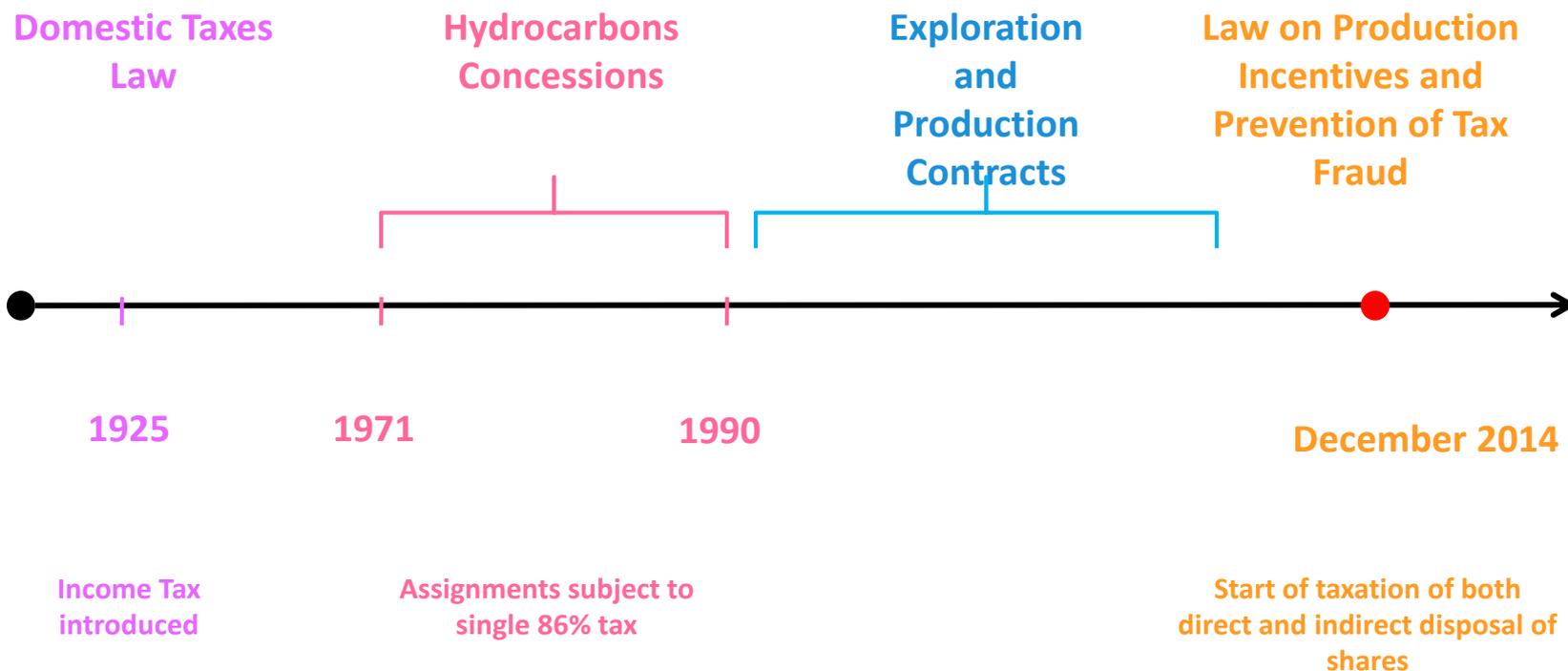
SOURCE: Study by the Inter-American Center of Tax Administrations (CIAT), "Income and Capital gains Taxation, Tax Treatment and Control of Financial Institutions in Latin America"

# IF INCOME FROM LABOR IS TAXED, WHY SHOULDN'T INCOME FROM CAPITAL BE TAXED?



*"Human beings take precedence over capital"*

## CAPITAL GAINS TAX IN ECUADOR





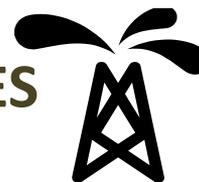
## MINING SECTOR EXAMPLES

(US\$ millions)

Date	Case	Sale value	Investment	Profit	Tax 25%
Aug. 2008	gold	1,200	84	1,116	279
Dec. 2009	copper	680	40	640	160
<b>Total</b>					<b>439</b>

# OIL SECTOR EXAMPLES

(US\$ millions)



Date	Case	Sale value	Investment	Profit	Tax 25%
2001	Transfer of a percentage of stakes in a concession in Ecuador (abroad)	?	480	?	?
2003	Sale of shares of a company with stakes in several concessions and a pipeline (abroad)	?	2,000	?	?

## TRANSFERS OF CLAIMS UNDER SPECIALIZED LAWS



Penalty for not having this authorization may be termination of contract.

The State receives a premium for the transfer and could request renegotiation of the contract on more favorable financial terms.



Penalty for not having this authorization may be termination of contract.

## RULES IN FORCE AS OF 2015

### Domestic Tax Regime Law (LRTI)

**Article 8.- Income from an Ecuadorian source.-** The following categories of income are deemed to be from an Ecuadorian source:

3.1. The **profits** obtained by companies, regardless of whether they are domiciled in Ecuador or not, and Ecuadorian or foreign individuals, regardless of whether they are resident in the country or not, derived from the disposal, be it **direct or indirect**, of shares, equity participations, other claims to capital or other rights permitting exploration, production, concession or similar activities, of companies that are domiciled or permanent establishments in Ecuador.

# **RULES IN FORCE AS OF 2015**

## **Domestic Tax Regime Law (LRTI)**

Article 9: For purposes of determining and paying income tax, only the following categories of income are exempt:

14: Income generated by the occasional sale of immovable property. For the purposes of this Law, “occasional sale” shall be construed to mean sale that is not part of the taxpayer’s normal line of business or habitual activities;

## **RULES IN FORCE AS OF 2015**

### **Domestic Tax Regime Law (LRTI)**

- **Income of nonresidents**

Profits from the direct or indirect disposal of shares or equity participations shall be liable to payment of the general rate established for corporate taxable income.

The corporation whose shares are disposed of substitutes for the taxpayer.

- **Obligation to report and declare the disposal of shares, equity participations and other claims to capital**

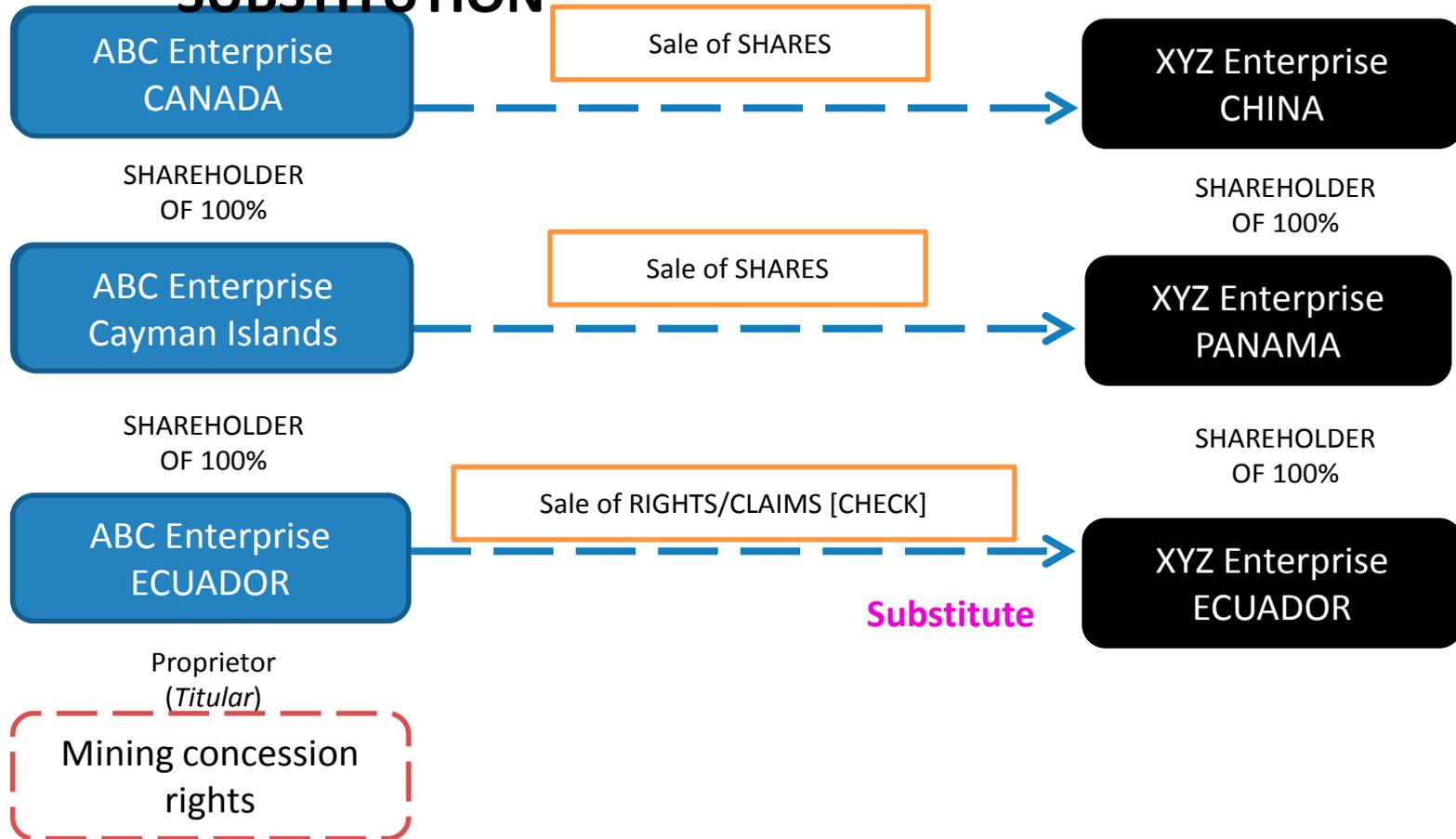
Failure to submit this information shall be punished with a fine equal to 5% of the actual value of the transaction.

## CALCULATION METHOD AND RATE

Taxpayer	Calculation method:	Rate
Resident individuals	Total income	Art. 36 of the LRTI 0% - 35%
Resident corporations or permanent establishments	Total income	Art. 37 of the LRTI 22% - 25%
Nonresidents	Single Tax	General rate for corporations Art. 39 of the LRTI 22%

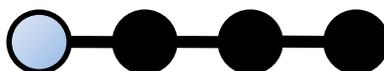
\* Losses among related parties are non-deductible

# DIRECT AND INDIRECT DISPOSAL AND SUBSTITUTION



## INDIRECT DISPOSAL

Transfer or assignment, free of charge or for payment, of claims to the capital of an entity that, through any consecutive number of entities, results in the disposal of claims to capital or other rights indicated in the Law



Negotiations of securities, financial instruments, or any other operation that results in the transfer or assignment, free of charge or for payment, of claims to capital or other rights indicated in the Law



## INDIRECT DISPOSAL IN THE CASE OF SALES OF SHARES OF NON-RESIDENT CORPORATIONS

Indirect disposal shall be deemed to exist when:

1. The value of the shares of the resident corporation account, directly or indirectly, for 10% or more of the value of all the shares of the nonresident corporation

a  
n  
d

2. The disposal of the nonresident corporation (by the disposing party) exceeds 300 non- [income] taxable allowances [*fracciones básicas desgravadas impuesto a la renta*] for individuals (US\$3.24 million in 2015)

In the case of Double Taxation Agreements, the provisions of the respective agreement shall apply.

## TREATMENT OF CAPITAL GAINS IN AVOIDANCE OF DOUBLE TAXATION AGREEMENTS TO WHICH ECUADOR IS PARTY

Shares in corporations (source)		Residence (source only in the case of real estate)
No conditions	Subject to conditions	
GERMANY	CANADA: 1. "Mainly" immovable property 2. No "regular transfer" except rental	FRANCE, CANADA, MEXICO, SOUTH KOREA, CHINA: 1. Domestic law 2. Always includes natural resources
BRAZIL	FRANCE 1. "Mainly" immovable property 2. Not if it is own production [CHECK]	SPAIN Domestic law
CHILE	MEXICO: Transaction > 25% shares	GERMANY Domestic law
URUGUAY	[CAN: 1. Shares: place of issuance 2. Natural resources: location	ITALY, ROMANIA, SWITZERLAND, BELGIUM 1. Domestic law 2. Always includes natural resources
	SOUTH KOREA, CHINA Immovable property > 50% shares	

