



## ISSUES RELATING TO COMMERCIAL LEASING

### PERU Estudio Olaechea

#### CONTACT INFORMATION

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**1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.**

In Peru, no transfer taxes levy the creation or assignment of a lease related to real estate property.

Notwithstanding the above, if the assignment of the lease also implies the transfer of title to property, a tax on real estate property transfers (“alcabala”) will apply.

This tax on real estate property transfer applies on the transfer value exceeding 10 Peruvian taxable units (during 2009, 1 taxable unit equals to S/. 3,550.00, three thousand five hundred and fifty Peruvian soles) at a rate of 3%. This is a local tax borne by the buyer and is payable within the month following the transfer/assignment.

**2. Describe any legal restrictions limiting the maximum term of a lease (including renewals).**

The Peruvian Civil Code pursuant Article 1688 establishes that a lease can not be exceeded more than ten years.

As an exception, in case of the real estate owns to a public entity or disabled person the term of the lease cannot be exceeded more than 6 years.

**3. Describe any laws requiring landlords to allow a tenant to renew its lease.**

Article 1701 of the Peruvian Civil Code establishes that if a lease allows enforced terms for both parties and voluntary terms stated by one of the parties, these last ones terms will be became into enforced terms if the corresponding party does not notice that the lease will terminate on the last enforced term.

**4. Describe any restrictions on rent that may be charged for to a tenant.**

Article 1676 of the Peruvian Civil Code establishes that the rent may be agreed whether for due or prior terms.

**5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.**

The Peruvian Civil Code, pursuant Article 1697, number 5, allows the tenants to terminate a lease prior to its stated expiration date if the landlord does not comply with his/her obligations.

On the other hand, it is a commercial use in Peru that when a tenant decides to return the real estate to the landlord prior to the termination of the lease, the tenant shall pay a penalty to the landlord.

**6. Describe any laws allowing tenants to assign or sublease without landlord's consent.**

There is not any law in this sense. However, in Perú, if the tenant wants to assign or sublease, he/she must have necessarily the previous written consent of the landlord.

**7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.**

The Peruvian Civil Code, pursuant Article 1681, number 9, establishes that the tenant can not sublease partially or at all the real estate nor assign the lease without the previous written consent of the landlord.

**8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?**

A summary and urgent eviction proceeding. This kind of proceeding takes approximately between 6 months to a year and a half.

**9. Are there any legal restrictions on pledging a leasehold interest as security for a financing?**

No. Pursuant to Peruvian Law it is possible to incorporate a mortgage over chattel regarding the leasehold rights on the lease contract.

**10. Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.**

There is no regulation regarding obligations to hold securities deposits in specific accounts. Our Civil Code just establishes the obligation of diligent custody.

**11. Describe any required statutory or other legal disclosures to be made to all tenants.**

The Peruvian Civil Code, pursuant Lease Section, under articles from 1666 to 1712, rules this kind of contract.

**12. Describe all taxes on rent or other taxes that landlord are required to collect from tenants.**

The income obtained by a Landlord for the lease of real estate property located in Peruvian territory is subject to the Peruvian Income Tax in the following way:

The income obtained by domiciled individuals will be levied with a 5% Income Tax over the gross income obtained. Since said income qualifies as first category income, individuals must comply with making an income tax payment in advance (5% of the gross income obtained from the lease).

The income obtained by domiciled legal entities for the leases will be levied with a 30% Income Tax, which will be part of the domiciled legal entity's annual income.

Finally, the income obtained by non domiciled individuals or legal entities are subject to an effective 24% withholding tax rate on the rent.

On the other hand, if the real estate property is leased by a domiciled legal entity the Peruvian General Sales Tax ("Value added tax") will apply at a 19% rate on the rent amount. In the case of domiciled individuals, this tax will not apply. If the real estate property located in Peru is leased by a non domiciled legal entity, the lease will be subject to the Peruvian General Sales Tax hence a 19% rate will apply on the rent.

**13. Describe any limitations on the ability of landlords to exercise self-help.**

Pursuant to Peruvian Law, any action regarding the repossession of the real estate property should emanate from a judicial ruling.

**14. Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.**

Sometime, due to the commercial use, it is possible to enter into a lease, and therefore the rents can be paid in advanced.

In example, a home is leased by a year and the tenant at the beginning of the lease pays all the rent to the landlord (an amount equivalent to 12 months of rent).

**15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.**

In case of tenant default, the landlord may begin an eviction judicial proceeding (before commented) as well as a remedy of precautionary measure, in order to request to the corresponding judge the immediate return of the real estate.

**16. Describe any formal requirements for the execution of a lease.**

Peruvian Civil Code does not demand specific formal requirements for a lease. However, and taking into account that the matter is a real estate, it is advisable to enter into a lease by a Public Deed, then it shall be necessary to register it in the Records of Real Estates of the Public Registry.

On the other hand, it shall be required to pay a monthly tax over the rent of lease.

**17. Describe whether a memorandum of lease or other document would need to be recorded for the lease to be enforceable against third parties.**

In order to the lease be enforceable against third parties, it is important that it becomes into a public deed and then records it before the Public Registry.

**18. Describe any restrictions on the transfer of ownership of real properties subject to a lease. Does such a transfer affect the tenant's rights or obligations?**

In this respect, Articles 1708 and 1709 of the Peruvian Civil Code establishes as follows:  
-If the lease is recorded, the buyer shall respect the lease and he/she will substitute the prior landlord in all his/her rights and/or obligations.  
-If the lease has not been recorded, the buyer may decide the termination of the lease. Exceptionally, the buyer is compelled to respect the lease just in case he/she assumed that obligation.  
-If the lease has been terminated, the landlord is compelled to pay the possible damages incurred against the tenant.