Wolters Kluwer

VOL. 18, ISSUE NO. 7, JULY 20, 2016

GLOBAL TAX BRIEFING

Latin America

INSIDE

LATIN AMERICA

This month's issue of *Global Tax Briefing* is written entirely by members of the Latin American Tax and Legal Network (LATAXNET). LATAXNET, headed up by Miguel Valdés, of Valdés, Machado & Associates, LLC., is a network of top tax and legal specialists all over Latin America, Puerto Rico, the Caribbean and the United States. See back cover for more information about LATAXNET.

ARGENTINA

By Manuel Iturrioz; Rosso Alba, Francia & Asociados, Buenos Aires, Argentina

Argentine Government launches Voluntary Disclosure and Tax Amnesty Bill

On May 31, 2016, the Argentine Government sent a bill to Congress for purposes of launching a major Voluntary Disclosure and Tax Amnesty Program. The bill also encompasses tax reforms and an overhaul of the payment system for outstanding Social Security obligations.

The Bill is discussed in the context of the upcoming automatic exchange of information under the Common Reporting Standard ("CRS"), to begin on January, 2017. Argentina is an Early Adopter of the Standard.

I. Voluntary Disclosure Program

Under the terms of the Bill, individuals, legal entities, and estates are allowed to disclose undeclared assets (held within Argentina or abroad), whether they are cash, real estate, or any type of movable assets. The terms of the Program establish that the assets must exist as of January 1, 2016.

The applicable tax rates for disclosure will be as follow:

CONCEPT	2016 RATE	2017 RATE
Real Estate	5%	
Assets valued below AR$305,000/USD20,000	0%	
Assets valued over AR$800,000/USD53,000	10%	15%, if disclosed between Jan-Mar 2017
Assets valued over AR$800,000 (USD53,000), paid with BONAR 17 or Global 17 bonds	12%	

If the disclosed assets are destined to a special category of investments, the applicable tax will be zero percent (0%). Among such investments, the Bill mentions a 3 year USD bond with a zero percent (0%) interest coupon, a 6 year USD bond with a zero percent (0%) interest coupon, increased to 5 percent after the first two years (to be issued by the Argentine

Government) and the acquisition of quotas of investment funds that invest on: infrastructure projects, productive investments, renewable energies, small and medium enterprises, mortgage loans updated by the UVI (Housing Unit) index, development of regional economies, etc.

The fine print of these requirements is going to be regulated by the Argentine Securities and Exchange Commission ("SEC"), but they represent an important tax savings opportunity. In principle, the cost of disclosing assets under this provision would be zero percent (0%), a fact that turns this option into a very convenient alternative.

Assets must be disclosed by completing a sworn affidavit (to be created by the Argentine Revenue Service ("ARS")) regulations, or depositing funds (when the taxpayer is disclosing cash located within Argentina) on a financial entity authorized by the Argentine Central Bank. Cash or securities deposited on financial entities or custody agents located in High Risk or non-cooperative countries (as defined by the Financial Action Task Force, "FATF") are excluded from the Program.

Taxpayers that apply to this Program will be exempted from civil, criminal, customs and foreign exchange charges that could be applicable as a result of the non-fulfillment of tax obligations related to the disclosed assets.

In this regard, it should be noted that all the tax benefits granted by the disclosure will be maintained as long as the taxpayer includes on the Disclosure affidavit all undeclared assets as of December 31, 2015. If the ARS discovers the existence of any asset not included on the affidavit, benefits will be revoked and the taxpayer will be subject to the corresponding investigation and penalties.

II. Tax Amnesty Program

The Bill also includes a comprehensive Tax Amnesty, which allows all taxpayers to pay in up to 60 installments all outstanding tax as of March 31, 2016 (including tax, social security obligations, previously negotiated payment plans, withholding and collection agent obligations and legal, administrative and criminal tax claims in progress). The deadline to apply is March 31, 2017.

The outstanding obligations can be cancelled in cash or in up to 60 installments (paying an additional 1.5 percent monthly interest rate). A 15 percent discount will be applicable when such taxes are paid through cash payments made in advance.

The interesting thing about this Amnesty is that penalties and interest originated on payment plans will be exempted, while the interest applicable to the renegotiated taxes will be reduced between 10 percent and 75

percent (depending on the FY of the original debt). The extent of this Program is certainly unique, and is probably justified by the implementation of the CRS.

It remains to be seen if the Argentine Congress will accept these provisions, or if it will introduce amendments destined to limit the benefits granted to recalcitrant taxpayers.

III. Personal Assets Tax

The Bill also proposes the repeal of the Personal Assets Tax as from 2019.

In the meantime, the Bill proposes a progressive reduction of the applicable tax rate (from 0.75% to 0.25% during FY 2016-2018) and a progressive increase of the minimum non-taxable base (from AR$800,000/USD53,000 to AR$1,050,000/USD70,000, during FY 2016-2018).

In addition to that, all taxpayers that are in good standing with the ARS (excepting those that apply to the Voluntary Disclosure of Assets or the Tax Amnesty) will be exempted from Personal Assets Tax during the FY 2016-2018.

The structure of the Personal Assets Tax has been heavily criticized during the last years, since its minimum nontaxable base was not properly updated to reflect the effects of inflation. It should be noted that as of today, the minimum non-taxable amount is AR$305,000/USD20,000, and most of the taxpayers are subject to the Tax.

IV. Income Tax Amendments

The Bill also proposes a reform of Income Tax provisions, repealing the 10 percent Dividend Tax created by Law No. 26,893, and establishing that foreign securities listed in foreign Stock Markets are also included within the exemption granted to the trading of securities listed on Argentine Stock Markets (section 20, paragraph w of Income Tax Law).

The reform enacted by Law No. 26,893, taxing capital gains, left many issues unresolved. In this sense, the idea of clarifying the fact that foreign securities are also included within the exemption must be welcomed, as well as the initiative to repeal the dividend tax. Practical experience proved that the benefits created by this measure were not significant.

V. Minimum Deemed Income Tax

Under the terms of the Bill, Minimum Deemed Income Tax is repealed as from January 1, 2019. This is in line with the case law set by the Argentine Supreme Court on Hermitage (Fallos 333:993) where it was established that it was illegal to consider that all assets would necessarily produce profits.

This tax was very criticized by local scholars, who not only attacked the legal presumption, but also the fact that the taxable base only considered the assets ignoring the liabilities of the entity. In this regard, many scholars noted that a tax based on the net worth would have been more equitable.

Local media has mentioned that the Minimum Deemed Income Tax and Personal Assets Tax would be replaced by a Gift and Estate Tax. Although the bill creates a Bilateral Commission for Tax Reform, this issue still has to be confirmed.

VI. Foreign Passive Entities Registry

The Bill creates a Foreign Passive Entities Registry, under the control of the ARS.

Under the terms of the Bill, individuals that own over 50 percent of a controlling instrument on corporations, trusts or foundations, as well as directors, managers, attorneys-in-fact, or syndics have a duty to report to the ARS the name of the entity and its position or capacity.

Along with the information obtained as a result of the CRS, this provision will provide a powerful tool to the ARS to detect any undisclosed structures incorporated offshore.

VII. Final words

This initiative has been widely discussed on local media, given its connection with Social Security matters.

As we can see, the scope of the Bill is wide. It not only intends to reactivate the economy and comply with the OECD mandate, but also to promote an important tax reform.

The repeal of Personal Assets Tax and Minimum Deemed Income Tax, as well as the exemption for taxpayers that are in good standing, are a breath of fresh air for local corporations, especially small and medium companies. Furthermore, the Bill also repeals dividend tax, a tax that increased the effective tax rate suffered by the Argentine companies on its day-to-day operations.

In addition, it should be mentioned that the Bill promotes the investment of the disclosed assets on the Argentine economy, listing a number of investments that would be exempted from tax or penalties. The success of this provision will largely be determined by the regulations issued by the Argentine SEC, which is an issue to keep an eye on.

If passed, the international context will certainly contribute to the Program. But the final success of this initiative will be determined by the Government´s success to promote economic reform and a more stable economic climate, lowering the tax burden over Argentine taxpayers. ◆

BOLIVIA

By Mauricio Dalman, Buevara & Gutiérrez S.C., La Paz, Bolivia

Possible changes to the calculation of the Tax Debt

Bolivia's Legislative Assembly is currently reviewing a bill which would, amongst other things, modify Article 47 of the Tax Code in order to establish a new formula in order to determine the calculation of a tax debt.

Although Bolivia´s taxation system appears to be in theory quite simple and attractive, in practice an important portion of taxpayers [especially those identified as great contributors (Grandes Contribuyentes)] are constantly under the scrutiny of the Tax Administration and subject to continuous assessments. As a result of such examinations, in the majority of the cases, tax authorities have determined enormous tax debts after having reached the conclusion that the taxes actually paid by taxpayers were erroneously determined, calculated or estimated pursuant to current tax laws and regulations. In most cases, the observations are linked with the Value Added Tax ("IVA", by its acronym in Spanish), Transactions Tax ("IT", by its acronym in Spanish) and the Corporate Income Tax ("IUE", by its acronym in Spanish), in general regarding the correct appropriation of IVA fiscal credits and deductions made for purposes of determining the tax base of the IUE tax.

The tax debt is currently calculated by the tax administrations pursuant to article 47 of Law 2492 (Tax Code). Consequently, the Tax Debt ("TD") consists of the total amount to be paid by the taxpayer after the term to pay the tax obligation has elapsed and it includes: the Omitted Tax ("OT"), the Fines ("F"), when applicable, expressed in "Unidades de Fomento a la Vivienda" [1] ("UFVs"), and the interests (r), according to the following formula:

$$TD = OT \times (1 + r/360)\, n + F$$

The Omitted Tax (OT), expressed in UFVs, is the result of dividing the omitted tax, expressed in Bolivian currency, by the UFVs in the date the tax obligation was due. The UFVs used for the computation are

officially published by the Bolivian Central Bank. The interests (r) consist in the average active annual interest rate for operations carried out in UFVs, published by the Bolivian Central Bank, and increased in three (3) points. The number of days delinquent (n) shall be computed from the date after the end of the term the tax obligation was due until the date of payment. The Fine (F) [2] is set with one hundred percent (100%) of the omitted tax for Payment Omission.

In case a tax debt is determined by the tax authorities in the form of an administrative resolution notified to the taxpayer, and the latter decides to challenge said resolution by means of filing an administrative or judicial proceeding, the actual implementation (collection) of the resolution determining the tax debt is deferred until a definitive ruling is finally issued. Consequently, although the filing of a challenge halts the execution of the resolution, the tax debt continues to increase in time (pursuant to the formula detailed above) and, considering that definitive rulings are reached in approximately seven to eight years, the tax debt increases exponentially in about one hundred percent (100%) per year. In that regard, when a final ruling is eventually obtained and it is not favorable to the taxpayer, the original TD has increased about five to six times.

Bolivia's Legislative Assembly is currently reviewing a bill which would, amongst other things, modify article 47 of the Tax Code specifying a new formula to determine the TD, where the TD merely consists of the Omitted Tax ("OT") plus interests (I) [3], as follows:

TD = OT + I

One justification for amending the law is supported by the fact that current interests applied to tax debts range from 3 percent to 18 percent on an annual basis. The proposed legislation would differentiate the interest rate based on the amount of time the debt is outstanding; also, the fine would be omitted from the formula based on the fact that it is not part of the tax debt but a mere sanction that may result from the taxpayer´s conduct. Such an understanding, along with the fact that the fine reduction regime set forth in article 156 of Law No. 2492 (Tax Code) would also be broadened in order for taxpayers to take advantage from said regime, may seem to support the idea that the proposed legislation is quite beneficial to taxpayers.

Unfortunately, and although the projected regulations appear to be drafted in the taxpayer´s benefit, the amendments proposed merely diminish but not eliminate the confiscatory nature of the TD calculation. Even with the suggested changes, there is an immense increase in the TD through time making tax debts either unpayable for taxpayers, or uncollectable for the tax authorities. The proposed changes do not take in consideration, for example, the fact that legal proceedings take a lot of time as courts in the country are overwhelmed with procedures not only of a tax nature. Also, the fact that the tax administration always seeks to employ every possible legal instance, procedures usually end up in the last instance tribunal. The previous, plus the fact that regional and the national tax courts construe that the statute of limitations (as amended by laws 291 and 317 in the year 2012) may be applied retroactively, therefore allowing tax authorities the possibility to assess taxpayers including the year 2008, weakens the projected laws purpose as the new regulations would not solve more structural obstacles that result in the uncontrollable growth of a TD. ◆

ENDNOTES

1 The UFV is a referential index that shows the daily evolution of prices and it is calculated on the base of Price Consumer Index (IPC, by its acronym in Spanish) published by the National Institute of Statistics (INE, by its acronym in Spanish).

2 The Fine (F) is set with one hundred percent (100%) of the omitted tax for Payment Omission. The Bolivian Tax Code (Law No. 2492) stipulates a sanctions reduction regime (emerging from fines set on tax contraventions) which may reduce the sanction when the taxpayer pays the entire tax debt before any action is filed by the Tax Administration Office. If that is not the case, there is still the possibility to reduce the sanction by eighty percent (80%) to twenty percent (20%), depending on the moment when the tax debt is paid

3 Where I = OT * ((1+ r/360)n -1; the interest rate (r) may vary pursuant to delinquent days (n, n1, n2, n3, n4) of: n1) 4% annually upon payment date until year 4; n2) 6% annually, beginning the first day of the fifth year until year 6; n3) 8% annually, beginning the first day of the seventh year until year 8; 10% annually, beginning the first day of the ninth year until date of payment

BRAZIL

By Cristiane M. S. Magalhães, Stephanie Makin, Renata Almeida Pisaneschi, and Paloma Yumi de Oliveira; Machado Associados Advogados e Consultores, São Paulo, Brazil

PIS-Import and COFINS-Import on International Cost-Sharing and Reimbursement Agreements – New Interpretation by Tax Authorities

In a recently published ruling (Ruling 50, of May 5, 2016), tax authorities understood that remittances abroad related to cost-sharing agreements are subject to the levy of Social Contributions on Imports ("PIS-Import and COFINS-Import") [1]. Pursuant to the facts described in such Ruling, the case examined by the tax authorities involves agreements entered into by Brazilian legal entities with foreign companies belonging to the same economic group entitled as "general service" agreements (comprising corporate management, financial services, engineering and technical assistance, human resources, insurance, international tax and legal matters, product development, quality control and monitoring of purchase orders). According to the taxpayer, the expenses with these "services" are considered as non-deductible for Corporate Income Tax ("IRPJ") purposes and the PIS-Import and COFINS-Import paid on the "provision of services" are not considered as tax credits.

Despite the taxpayer's argument that the agreements do not involve the provision of services per se and that no benefits arise to the company from such "services" (which typically characterizes a cost sharing agreement), in the understanding of the tax authorities, all types of agreements for the reimbursement of expenses (cost sharing, provision of services between companies belonging to the same economic group and cost contribution arrangements) are subject to PIS-Import and COFINS-Import if:

(i) there is a remittance abroad for the service provision, "irrespective of the legal nature of the transaction giving rise to the import and of the effects of such transaction on the net equity of the Brazilian or foreign entity"; and

(ii) the service is performed or its outcome is verified in Brazil. The tax authorities pointed out that the analysis should be made individually for each service (which was considered impossible in the case, due to the vague description of the services).

The tax authorities also expressed the understanding that transfer pricing rules should also be observed in this case, seemingly contradicting the stance adopted in Ruling 8 [2], of November 1, 2012.

Despite the position of the tax authorities in Ruling 50/16, we still understand it is possible to defend that the mere reimbursement of expenses:

(i) to the coordinating company (whose business purpose must not comprise any form of service rendering related to the ones provided for in the agreement), without any mark up;
(ii) formalized by means of an agreement entered into between companies belonging to the same economic group;
(iii) which splits the costs among the beneficiary companies under reasonable and objective criteria that take into account the expected benefits for each participant; and
(iv) that complies with other requirements,

should not be subject to PIS-Import and COFINS-Import, as it is not characterized as an actual service rendering, but rather as a mere cost/expense reimbursement.

However, we must point out that, lately, administrative discussions – especially in the highest level (Superior Court of Tax Appeals) – have been mostly unfavorable to the taxpayer when discussing tax theses, as the one herein.

Finally, it should be noted that, currently, rulings are decided in a single instance, not subject to appeal or request for reconsideration, and have a binding effect within the Brazilian Federal Revenue Service ("RFB"). In this sense, once a Ruling is edited by the tax authorities (Taxation General Coordination – "COSIT"), ruling requests on the same issue or whose solution has the same legal basis will be answered by the RFB Regional Superintendents according to the understanding expressed in the case previously analyzed by COSIT. Thus, it is possible that the understanding of the tax authorities described above may be adopted in future ruling requests of other taxpayers in similar cases.

Obligation to Inform the Final Beneficiary to the Brazilian Federal Revenue Service

Normative Instruction of the Brazilian Federal Revenue Service ("RFB") 1634 ("IN 1634/2016"), published on May 9, 2016, brought several changes to the Brazilian Corporate Taxpayers' Register (CNPJ) as of June 1, 2016.

The main innovation brought by IN 1634/2016 is the requirement to identify the final beneficiary in the enrollment of entities that must have a CNPJ, so that the ownership chain is informed up to the individuals characterized as final beneficiaries, when applicable.

In general, IN 1634/2016 defines as final beneficiary the individual who, ultimately, directly or indirectly, owns, controls or significantly influences an entity, or the individual on whose behalf a transaction is conducted.

IN 1634/2016 deems that such significant influence occurs when the individual, directly or indirectly, holds more than 25 percent of the entity's corporate capital or has preponderance in the corporate resolutions and the power to elect the majority of the entity's administrators.

The entities that have to inform their final beneficiary, when applicable, are (i) companies, (ii) investment clubs and funds, (iii) non-resident investors who have certain assets and/or rights in Brazil (real estate, vehicles, vessels, aircrafts, bank accounts, investments in the financial and capital markets, equity interest), (iv) non-residents who carry out certain transactions in Brazil (leasing, chartering of vessels, equipment rental, lease, and import of goods for capital contribution in Brazilian companies), (v) foreign banking institutions carrying out transactions for the purchase and sale of foreign currency with banks in Brazil, receiving and delivering foreign currency in cash and (vi) silent partnerships.

Publicly-held corporations in Brazil or in countries where public disclosure of relevant shareholders is mandatory, as long as they are not incorporated in tax havens [3] or are subject to a privileged tax regime [4], are not obliged to provide information about their final beneficiary.

The obligation to inform the final beneficiary and deliver the documents defined in IN 1634/2016 begins on January 1, 2017 to entities that enroll in the CNPJ as of such date. For entities enrolled in the CNPJ before January 1, 2017, the obligation begins when they, as from the same date, inform any change to the enrollment. The deadline of December 31, 2018 applies to the latter case.

Failure by the foreign investors to comply with the obligation to inform and present documents to the RFB will result in the suspension of the CNPJ enrollment and the restriction to negotiate with banks, including as regards the handling of bank accounts, carrying out investments and obtaining loans.

Additionally, IN 1634/2016 provided for the inclusion of the Legal Entity Identifier ("LEI") in the CNPJ enrollment of entities that already have such identifier. The LEI is an international code that allows accurately identifying entities that are parties to financial transactions, including entities that do not typify as financial institutions, and often contains in its database information about their final beneficiary.

In conclusion, the RFB is working to address international concerns regarding the complete identification of the individuals who own investments aiming at preventing tax evasion, money laundering and corruption. ◆

ENDNOTES

1 Such contributions are generally levied on the import of goods, at the general rate of 11.75% (exceptions apply), and on the imports of services, at the general rate of 9.25%.

2 "(...) SUBJECT: TRANSFER PRICING. APPLICABILITY. SERVICE RENDERING. The Comparable Independent Prices Method (PIC) or the Production Cost Plus Profit Method (CPL) are applicable if the provisions of the agreement are inconsistent with the characteristics of cost sharing agreements. The following are characteristics of cost sharing agreements: a) the division of costs and risks inherent to the development, production or acquisition of goods, services or rights; b) the contribution of each company is consistent with the individual benefits effectively expected or received; c) the identification of the specific benefit for each group company. If it is not possible to assume that the company can expect any benefit from the activity developed, this company should not be considered as a party to the agreement; d) the reimbursement is agreed upon, without any additional profit; e) the collective nature of the benefit offered to all group companies; f) the remuneration of activities is due, regardless of their actual use. The "availability" of activities for the benefit of other group companies is sufficient; g) the establishment of conditions under which any company, in the same circumstances, would be interested in hiring. (...)"

3 The concept of tax haven encompasses countries or locations (i) that do not tax income or tax it at rates lower than 20% or 17%, in case the international tax transparency standards set out by RFB are met; (ii) that ensure the secrecy regarding the shareholding structure or ownership of legal entities; and/or (iii) whose legislation does not allow the identification of the actual beneficiary of the income paid or credited to a non-resident.

4 The privileged tax regimes are those that meet one or more of the following requirements: (i) do not tax income or tax it at rates lower than 20% or 17%, in case the international tax transparency standards set out by RFB are met; (ii) grant tax advantages to non-residents without requiring the performance of substantial economic activities in the relevant jurisdiction or conditioned to the non-performance of substantial economic activities in the relevant jurisdiction; (iii) do not tax the income earned outside the relevant territory, or tax it at rates lower than 20% or 17% (compliance with international tax transparency standards required); and/or (iv) do not allow access to information about the shareholding structure of legal entities, ownership of assets and rights or economic transactions performed.

CHILE

By Jorge Espinosa; Espinosa & Compañia, Abogados Limitada, Santiago, Chile

The Chilean IRS Adheres to the Implementation of Mechanisms for Cooperation and Will Implement Actions Agreed in International Coordination Meeting Regarding the 'Panama Papers' Case

In April of 2016, under the initiative and coordination of the JITSIC Group (Joint International Tax Shelter Information), officers and delegates of the tax administrations of the member countries of the OECD and the G20, analyzed global equities and collaborative actions related to the case known as 'Panama Papers'.

The Internal Revenue Service of Chile participated in this analysis by holders of the Sub directions of Supervision and Regulation, and as a result, the Chilean Audit Entity adhere to the actions agreed by the tax administrations of the OECD and the G20, aimed at improving transparency cooperation and exchange of relevant information to identify risks of tax fraud.

Considering the 'Panama Papers' case, it showed the urgent need to implement effective actions to share the best tax practices and create synergies between tax administrations, for operational resolution of cases that could be considered as evasive or elusive.

In this context, to the list of control activities, information exchange and fiscal transparency promoted by the Internal Revenue Service, the ones agreed at the meeting of delegates from the OECD and the G20 will be added. This will be implemented within the framework of current regulations and the provisions of agreements to avoid international double taxation in matters of prevention of tax evasion and elusion:

Among these actions, we note the following:

- Supervise those cases in which knowledge is taken because of the different sources of information available,
- Share information about the different patterns observed in each country, in an innominate way,
- Gather and share information about the roles that are observed for tax intermediaries who facilitate such schemes,
- Prioritize information exchanges, relieving the resources needed for a successful collaboration, and using the existing legal mechanisms and instruments.

Tax Effects in Chile When a Change of Address of a Foreign Company with Underlying Assets in Chile is Executed Abroad

The IRS issued the Private Ruling No. 1385 of May 17, 2016, in answer to this matter, in the sense outlined below:

a) In the Chilean tax law, there is no rule to put an end to the legal personality of a company incorporated abroad, by the mere fact that it changes its domicile to another country located also abroad, whether it counts or not with underlying assets in Chile.

b) A modification produced by the change of domicile, which may take place under foreign law, does not represent in the facts the sale of the underlying assets located in Chile, including shares and/or rights in Chilean companies. This, because such goods, which belong to the assets of the company that modifies its domicile, do not become part of a different heritage, as it would be a single legal entity.

c) That the modification of the registered domicile of a foreign company to another one located also abroad, is not in itself an act subject to taxation in Chile, notwithstanding any tax effects it may have on the future implementation of standards law on Income Tax or other rules whose budget or requirement refers to the domicile.

Tax Reform: IRS Shall Issue a Ruling about the New Systems of Income Tax in Chile

The Internal Revenue Service should issue until June 30, 2016, the final edition of the Ruling containing the criteria for application of Law 20899 enacted in February this year, which simplified the tax reform of 2014. This reform aims that taxpayers and tax advisers have clarity on the new systems of income tax that will govern Chile from next year. The Chilean Ministry of Finance indicated this time limit.

Such Ruling is relevant because for taxpayers it has been complex to understand this duality of systems, and they need to guide their decisions to choose whether to pay taxes for the next five years in the integrated or imputed income system.

In the first, of partial integration, corporations, or companies whose shareholders include another legal person will compulsorily tax. Taxpayers will be assigned to a rate of 27 percent corporate tax with a maximum tax on a personal level up to 44.45 percent.

Chilean taxpayers may use as a credit up to 65 percent of the First Category against the final tax. However, taxpayers resident of a country with which Chile has signed a double taxation agreement, can chose the 100 percent of their credit, in which case it's Complementary Tax will have a maximum of 35 percent.

In the second one, of Attributed Income, taxpayers will pay a corporate tax of 25 percent and a maximum level of 35 percent in personal tax. Only companies with partners, owners or community members who are taxpayers of final taxes, i.e. natural persons domiciled in Chile may benefit with this system. Income will tax regardless of whether they are withdrawn or not.

It is expected that the issuance of this Ruling will not be delayed, because taxpayers and tax advisors need to become acquainted of the criteria required that will be established, to arrange tax planning and adopt definitions from July 1, 2016. ◆

ECUADOR

By Walter A. Tumbaco and George MacKay; LAWNETWORKER S.A., Quito, Ecuador

Tax Outlook for the Year 2016

1. **New Regulations for Tax Havens**
(Published in the Official Registry No. 661, Monday 04-I-2016 / Internal Revenue Services, Circular No. NAC-DGERCGC15-00003185).

   A jurisdiction of lower tax rates or preferential tax regime will not be considered a tax haven when the holder of representative rights of capital of a company or permanent establishment in Ecuador incorporated or located in this type of jurisdictions or regimes fulfills with the following conditions when the fact that involves a different tax treatment occurs:
   - That the holder of the representative rights of capital is issuer or securities listed on a stock exchange that is not located in a tax haven or jurisdiction of lower tax rates;
   - That every beneficial owner tax resident of Ecuador has been identified.

2. **Within the Annex of Stockholders, Stakeholders, Partners, Board Members and Administrators (AAPSMD), Information of Holders or Beneficiaries of Representative Rights of Capital Shall Be Disclosed**
(Published in the Official Registry No. 665, Friday 08-I-2016 / Internal Revenue Services, Circular No. No. NAC-DGERCGC15-00003236)

3. **Payment of Tax Liabilities Administered by the Internal Revenue Services by Means of Securities of The Central Bank (TBC)**
(Published in the Supplement of the Official Registry No. 674, Thursday 21-I-2016 / Internal Revenue Services, Circular No. NAC-DGERCGC16-00000010)

4. **Issuance of the General Ratios for Determining the Presumptive Income Tax for the Sectors of the Economic Activities, for the Fiscal Year 2016**
(Published in the Supplement of the Official Gazette No. 674, Thursday 21-I-2016 / Internal Revenue Services, Circular Letter No. NAC-DGERCGC16-00000016)

   The ratios published in the Circular Letter No. NAC-DGERCGC16-00000016 will be applied multiplying them by the total items of assets, income, costs and expenses, as may correspond, and the higher of the results will be selected for the presumptive determination.

   If the information provided by the taxpayer to the Internal Revenue Service, or that obtained from third parties, does not refer to the total of any of the items previously mentioned but only in a partial manner, the Tax Authority will verify in its databases and will apply to the corresponding economic activity the proportion representing the information obtained regarding the total of assets, income, costs and expenses and will calculate the total presumptive amount of the item for which information was obtained. Once said result is obtained, the corresponding ratio will be applied on said result.

   The resulting outcome will become the taxable base on which the income tax rate will be calculated.

5. **Exemption of Income Tax Advance Payment for Taxpayers Registered before the Internal Revenue Service with CIIU of Code of Economic Activity Level 6 No. A012702,**

Corresponding to the Cultivation of Cocoa and to the Exporters Exclusively Involved in the Commercialization of Cocoa Beans

6. **Refund to the Value Added Tax (VAT) for Suppliers of Goods Being Exported**
(Published in the Official Gazette No. 661, Monday 04-I-2016 Internal Revenue Service, Circular Letter No. NAC-DGERC-GC15-00003185).

7. **Calculation of Income Tax Advance for the Regime of Commission Agents and Similar**
(Published in the Supplement of the Official Gazette No. 709, Thursday 10-III-2016 / Internal Revenue Service, Circular Letter No. NAC-DGERCGC16-00000126)

8. **Internal Revenue Service Rules the Delivery of Information Through Magnetic Means**
(Published in the Supplement of the Official Gazette No. 733, Thursday April 14, 2016 / Internal Revenue Service, Circular Letter No. NAC-DGERCGC16-00000152)

9. **Operation of Royalties, Technical, Administrative and Consulting Services with Related Parties**
(Published in the Supplement of the Official Gazette No. 733, Thursday April 14, 2016 / Internal Revenue Service, Circular Letter No. NAC-DGERCGC16-00000007)

Internal Revenue Service defines that the phrase "main application of a knowledge, experience or skill of specialized nature" refers only to services that generate an outcome of intellectual or intangible nature.

Therefore, it excludes the following activities:
- The operating execution of the promotional and/or advertising plans, rather than the design of said plans.
- The preservation, transformation, delivery and packaging of goods.
- The execution of farming activities such as sowing, irrigation or fumigation of plantations and implementation of construction contracts.
- Notwithstanding, the activities carried out for the management, planning, direction, oversight, assessment, control, documentation, training or improvement of this or another type of activities, while the established definitions are met, are subject to the limit for deductibility established for this type of operations when they are carried out with related parties.

The term "similar" which is contemplated under item 16 of article 28 to Ruling for the Application of the Internal Tax Regime Law, is applicable only to the situations that are comprised in the existing definitions regarding royalties, technical, administrative or consulting services,

The deductibility of indirect expenses locally allocated by related parties is not subject to established limits regarding indirect expenses nor limits to technical, administrative and consulting services and royalties.

The operations of royalties, technical, administrative or consulting services with domestic related parties are not subject to deductibility limitations, provided that the same taxable rate is applicable in relation to inter-company transactions.

10. **Ruling to the Law for Public-Private Alliance (RLAPP for its Acronyms in Spanish)**
(Published in Supplement to Official Gazette No. 736 of April 19, 2016)

Special Economic Development Zones (ZEDES for its Acronyms in Spanish)
To separate in their accounting records the income deriving from their operation in the ZEDE from that obtained outside the territory of a ZEDE.

Financial Returns
Equivalent to interest, and comprise income on credits of any nature, with or without a clause related to participation in the debtor's profits.

It also comprises any cost or expenses which is economically equivalent to interest in relation to financing obtained from third parties

Dividends from PPA
Exemption of income tax payment during 10 years on dividends paid by entities established for PPA projects upon generation of operational income.

Deductible Expenses for Advertisement
The limit for deductibility of advertisement is not applicable to advertise:
- Publicize the use of e-money issued by the Central Bank of Ecuador (BCE for its acronym in Spanish).
- Commercialization of electric vehicles, electric stoves for household use and those operating exclusively through electric induction mechanism and electric systems for water heating for household use.

Royalties
The 20 percent limit for deductibility of the expense will not be applicable when payments on royalties are made to an individual, who is a tax resident in Ecuador.

Interest on Credits Abroad
It clarifies that total debts contracted with individuals and entities abroad should be considered as foreign indebtedness with related parties.

Policies for deductibility by Law remain in force.

Specialized Non-Financial Entities
The qualification of specialized non-financial entities may be made before the financing operation or during the period of its amortization and payment.

For purposes of the tax exemption will only apply for those payments abroad made after said qualification.

Auditors' Certificates
It will be necessary the issuance of the Auditor's certificate to substantiate the appropriateness of expenditures abroad when:
- The transaction exceeds 10 basic tax fractions (US$ 11,170x10= US$ 111.700,00 for 2016).
- This limit will be extended to 20 basic tax fractions (US$ 11,170x20= US$ 223.400,00 for 2016), in which case said amounts do not exceed 1 percent of taxable income.

Methods to Apply the Arm's Length Principle
The Residual Method for Profit Distribution is eliminated; the remaining methods remain in force, which is 5 Methods.

Measures to Prevent Transfer Pricing Abuse
The Internal Revenue Service may establish technical and methodological measures to prevent transfer pricing abuse, considering among others: the method to apply the arms' length principle; the existence of reference prices for tax purposes; identification of information sources for prices or margins; availability of information on quotation periods; and participation of intermediaries.

Exemption of VAT Withholding
No VAT withholdings shall be made from companies created for the development of public projects under the PPA model provided that this benefit is contemplated, fully or partially, in the economic bases and in the economic-financial plan awarded.

Redeemable Tax on Plastic Bottles (IRBP for its acronym in Spanish)
The requirements to be met for refunding the amount corresponding to the redeemable tax on plastic bottles have been amended.

20% Surcharge Imposed on Tax Determination
The 20 percent surcharge imposed on amounts

contained in a draft determination minute, totally or partially accepted, will not be applicable.

Audit Independence
Tax Compliance Reports cannot be prepared by individuals or corporations that during the prior fiscal year and that corresponding to the issuance date of said report, render tax assistance services, representation or sponsorship services, prepare financial statements, or by persons who act as the taxpayer's experts in tax litigations against the SRI; either directly or through its related parties, who share the same franchise, trade name or trademark, or by strategic allies.

The aforementioned tax assistance services will include, among other things, tax planning, preparation of transfer pricing reports, and other certificates and reports required by the law and this ruling.

Taxpayers' reports, certificates and other documents that do not comply with this norm, will be considered as not submitted before the Tax Authority.

11. Organic Law for the Equilibrium of the Public Finances (LOREFP for its acronym in Spanish).

(Published in Supplement to Official Gazette No. 744, Friday April 29, 2016)

E-money
- Refund of 1 percent and 2 percent of VAT is exclusively applicable for individuals in their transactions as final consumer.
- Will not be part of the calculation of the Income Tax Advance of Sales and Purchases made using e-money from 2017 to 2019.

Exemptions of Income Tax (IT)
- Individuals over 65 years old are exempted up to for an amount of USD 11,170 for 2016.
- Income perceived by disabled persons is exempted up to for an amount equivalent to **USD 22,340.**
- Another person replacing the disabled person may benefit from the aforementioned amount, which is **USD 22,340.**

Limitation in the Application of Tax Treaties to Avoid Double Taxation
- The Internal Revenue Service will establish through Resolution the maximum amounts and other formal requirements for the automatic application of the benefits in the "Treaties to Avoid Double Taxation".

Redeemable Tax on Plastic Bottles (IRBP for its acronym in Spanish)
- For purposes of the IRBP settlement, recovered bottles cannot be longer deducted.

Capital Outflow Tax (ISD for its acronym in Spanish)

Exemption
- The application of the amounts of USD 1,098 and USD 5,000 will apply for the month of May 2016.

Special Excise Tax (ICE for its Acronym in Spanish)

GROUP V	SPECIFIC RATE	AD VALOREM RATE
Cigarettes	0,16 USD per unit	N/A
Alcoholic drinks, including artisanal beer	7,24 USD per liter of pure alcohol	75%
Industrial beer	12 USD per liter of pure alcohol	75%
Non-alcoholic drinks with sugar content not exceeding or equal to 25 grams per liter of drink. **Energy drinks**	N/A	10%
Non-alcoholic drinks and carbonated drinks with sugar content exceeding 25 grams per liter of drink, except energy drinks	0,18 USD per 100 grams of sugar	N/A

ICE Exemptions
Are exempted from ICE the following products:
- Mineral water; and,
- Juices with more than 50 percent of natural content (if the content is lesser than 50 percent ICE will apply).

– Acquisitions and donations of domestic and imported goods donated to public sector entities are exempted from ICE.

Label

– The content of sugar must be detailed on the container, if not made or made incorrectly, the tax will be calculated over **150 grams of sugar per liter.**

12. Internal Revenue Service Creates the Annex for Reporting of Transactions with Credit, Debit, Prepayment Cards, and E-Money which should be Delivered Every 8 Days by the Financial Institutions on Transactions Made Within the Ecuadorian Territory

(Published in the Supplement of the Official Gazette No. 751, Tuesday, May 10, 2016 / Internal Revenue Service, Circular No. NAC-DGERCGC16-00000187).

13. Organic Law for Solidarity and Citizenship Co-Responsibility for the Reconstruction and Reactivation of the Zones Affected by the Earthquake of April 16, 2016

(Published in the Supplement of the Official Gazette No. 759, Friday May 20, 2016)

Solidarity Contribution over Remuneration

Those individuals under dependence relationship receiving a monthly remuneration equal or greater than US$1,000 will pay the contribution equal to 1 working day, according to the following table:

REMUNERATION USD		MONTHLY RATE	EQUIVALENT IN DAYS OF MONTHLY REMUNERATION	NUMBER OF MONTHS OF CONTRIBUTION
Greater or Equal to	Lesser Than			
1.000	2.000	3,33%	1	1
2.000	3.000	3,33%	1	2
3.000	4.000	3,33%	1	3
4.000	5.000	3,33%	1	4
5.000	7.500	3,33%	1	5
7.500	12.000	3,33%	1	6
12.000	20.000	3,33%	1	7
20.000	OVER	3,33%	1	8

Solidarity Contribution over Equity

Those individuals which as of January 1, 2016 own an individual equity greater than USD1,000,000 will pay a contribution of 0.90 percent, according to the following:

(a) **Residents in Ecuador**

The contribution will be calculated over wealth located within and outside the country.

(b) **Non-residents in Ecuador**

The contribution will be calculated over wealth located in the country.

– **Composition of Equity**

Will be formed by assets minus liabilities that are directly or indirectly owned by the taxpayer through any act, contract or juridical figure including rights in:

  – Entities;
  – Non-for-profit entities;
  – Real usufruct rights;
  – Use or room in real estates; and,
  – Trust rights and similar.

– **Will not be considered as assets:**

Or the value of shares attributable to them, which after the natural disaster was not in living conditions or for usufruct.

– **Will not be considered as liabilities:**

Those accounts payable or loans that had been granted by the related parties of the taxpayer.

For the establishment of the wealth for **non-residents** the liabilities that are not directly related to the acquisition of the asset in Ecuador will not be considered.

Solidarity Contribution over Real Estate and Rights Representative of Capital Existing in Ecuador Owned by Companies Residing in Tax Havens or Other Foreign Jurisdictions

– **Contribution of 1.8%, for entities belonging directly to Tax Havens or Lower Tax Burden Jurisdictions or the residence is unknown.**

- Real estate existing in Ecuador (cadastral appraisal); and,
- Proportional equity value of rights representative of capital of entities residing in Ecuador.

- **Contribution of 0.9%, for entities not belonging directly to Tax Havens or Lower Tax Burden Jurisdictions**
  - Real estate existing in Ecuador (cadastral appraisal); and,
  - Proportional equity value of rights representative of capital of entities residing in Ecuador.
- **Exemptions**
  Entities domiciled abroad which final level of ownership corresponds to an individual that has included in his/her taxable basis for filing purposes of the solidarity contribution over equity.

Solidarity Contribution over Profits

- Companies will pay a contribution **of 3 percent over profits** which will be calculated having as reference the taxable basis corresponding to the **2015 fiscal period.**
- Individuals will pay this contribution having as reference the taxable basis corresponding to the 2015 fiscal period, provided that this exceeds USD $12,000, excluding:
  - Income under dependence relationship; and,
  - Employees' profit sharing over the companies' profits.
- Mercantile trusts that generated income in the **2015 fiscal period,** independently if these are or not required to the Income Tax payment.

Deductibility

- The precipitated contributions *could not be deductible of income tax of individuals and entities.*
- In the cases where the amount of said contributions exceeds the value of the taxable income corresponding to 2016, *the difference will be deductible for the following fiscal periods,* in accordance with limits and conditions established in the Ruling.
- **Productive Investments**

Exemptions

Are exempted from the payment of Income Tax during **5 years,** from the first year when generated income which is only attributable to those productive investments carried out in the following **3 years** from the enactment of this Law, in the province of Manabí, Muisne parish and other areas affected in the province of Esmeraldas, defined through Decree and citizens of other areas economically affected, through Decree.

Tourism Sector

For this case, the Tax Policy Committee may extend this incentive up to the double of the time established, (**10 years**) for the non-payment of Income Tax.

Other Rulings

- **Obligation to Obtain the Taxpayer Identification Number (TIN) by Foreign Entities Owners of Real Estate in Ecuador Although These Do Not Generate Taxable Income in Ecuador**
- **Notaries and Property Registrars, Shall not Conclude Public Instruments or Make Registrations, Without First Being in Compliance with this Requirement**
- **Value Added Tax (VAT)**
  - Increase in the VAT from 12 percent to 14 percent from June 2016 until May 2017.
  - 2 percent discount of VAT (12%) for the province of Manabí, Muisne Parish and in the other areas of the province of Esmeraldas, for individuals that are final consumers.
- **External Auditors**
  External auditors are required, under oath, to include in their reports issued on the financial statements of entities being audited,

a report regarding the compliance with tax obligations as taxpayers. An inaccurate or baseless opinion will make them liable for and will give rise for the General Director of the Internal Revenue Service to request from regulators, as may correspond, the enforcement of the corresponding sanction because of the lack of suitability to carry out their functions, without prejudice of other applicable sanctions under the provisions of the Organic Integral Criminal Code.

– **Developers, Advisors, Consultants and Law Firms**
Are required to report, under oath, to the Tax Authority according to the conditions and terms which through general resolution are issued for said purposes, a report on the creation, use and ownership of the companies located in tax havens or lower burden jurisdictions of the Ecuadorian beneficial owners. Each non-compliance of this norm will be subject to sanctions with a penalty of up to 10 basic fractions not subject to income tax (for 2016 would be US$ 111,700), without prejudice of the criminal responsibilities that may be applicable.

14. **Clarification of the Tax on Special Consumptions (ICE) for Fixed Telephony Services and Plans that Exclusively Trade Data, Voice and SMS and Non-Alcoholic Beverages**
(Published in the Official Registry No. 764, Monday 30-V-2016 / Internal Revenue Services, Circular No. NAC-DGECCGC16-00000008)

15. **Agreement Between the Government of the Republic of Ecuador and the Government of the Republic of Belarus to Avoid Double Taxation and Prevent Tax Evasion Regarding Income and Property Tax (Equity)**
(Published in the Official Registry No. 764, Monday 30-V-2016 / Constitutional Court No. 004-16-TI)

Information of the present document has the purpose of spreading information published in the Official Registries and does not constitute an opinion or advice. ◆

EL SALVADOR

By Romero Pineda & Asociados, San Salvador, El Salvador

Tributary Amendments and News

This article will make reference to any tributary of fiscal change in force or to be in force in

El Salvador, either through approval of a new law, unconstitutional case law or amendment of a current tax frame in our country during the period up to June 2016.

New Tributary Laws

The Congress has not approved a new Tax Law or has made any amendments from our last report until this date.

Unconstitutional Case Law

The Constitutional Chamber of the Supreme Court of Justice is studying unconstitutional actions filed against the New Tributary contributions laws, although none of this actions has been admitted up to this date. On April 16, 2016, the Constitutional Chamber of the Supreme Court of Justice enacted a resolution in an Amparo proceeding declaring unconstitutional the municipal taxes collected by the San Salvador Mayor´s Office to the companies located in San Salvador. Although this proceeding of Amparo is only applicable to the citizen who files the petition of Amparo, the resolution states a general applicable provision as

follows: "It is concluded that the Municipality of San Salvador, through its administrative units, as well, cannot collect or make any administrative or judicial actions to request payment for any amount on the tax that in this proceeding has been declared unconstitutional, or interest or fines for its non-payment, to any entity or individual obligated to pay municipal taxes….."".

Other News

According to the Ministry of Treasure the income tax collection has increased around 4 percent. The Ministry of Treasure is preparing a Fiscal Collection Law which will allow the Ministry of Treasure to collect taxes within the offices of the Ministry of Treasure without the need to initiate a judicial proceeding. ◆

GUATEMALA

By Juan Carlos Casellas Gálvez, PhD in Tax Law; Mayora & Mayora, S.C., Guatemala

Transfer Pricing Rules are Applied for the First Time in Guatemala

For the first instance, the transfer pricing rules were in force for a complete fiscal year. As we pointed out before, in December of 2013, the Guatemalan Congress passed an act establishing that these rules were not enforceable until January of 2015. Therefore, It wasn´t until the payment of the income tax of 2015, that the residents that had commercial transactions with a nonresident related party, should have applied the transfer pricing regulations and requirements.

The most visible requirement of these rules is the duty that taxpayers have to justify the prices applied to their transactions with a related party. In other words, taxpayers are now obligated to perform a transfer price study. Although this study doesn´t have to be filed with the tax return, according to the Guatemalan income tax act, it must be ready at that moment. In fact, the act requires that by the tax filing deadline, the study must be at the tax authority disposition. Once the tax authority has required the delivery of the study for audit purposes, the taxpayer has only 20 days to present it because, as stated, it must be ready when the income tax return is filed.

The consequences of not complying with this obligation are not quite clear in the act and, because of that, it is difficult to predict how the tax authority may act. One possibility is that it would impose payment of a fine and another could be considering failure to prepare the report as a tax crime against the tax authority.

Unfortunately, the act does not regulate clearly these situations, allowing the tax authority discretion to act in one way or another. To avoid this uncertainty, the best to comply with the obligation is to have the transfer pricing study ready at the moment of filing the income tax return.

To these scenarios, we must add something related to tax payment, because the lack of a transfer pricing study would lead the tax authority to object to the income declared or the costs and expenses used as deductions for income tax purposes. Compared with the possibility to face criminal charges, this consequence is the softer one.

On the other hand, although the act clearly establishes that the study need not be presented with the income tax return, the tax authority has found a way to obtain this information in advance. Indeed, a disposition was incorporated into the income tax regulation, establishing that a complementary tax return should be presented jointly with the income tax return. In this complementary tax return, the taxpayer should essentially summarize the content of the transfer pricing study, allowing the tax authority to obtain in advance, the information regarding commercial

transactions with related parties. From a practical point of view, complying with this obligation means that the transfer pricing study is indeed presented jointly with the income tax return.

Finally, we must take note of the corruption cases that the District Attorney brought in Criminal Courts—several of them involving different heads of the tax agency. It's fair to say that the tax agency and related authorities are in the worst of times, having more issues to deal with when considering audit compliance with the transfer pricing rules. Nevertheless, these regulations are a new collection measure that the law has provided the tax authority and surely, even with the internal problems they are dealing with, they will manage to apply them. The existence of the complementary return that we have referred to earlier, signals that disputes regarding the application of transfer pricing rules are our near future. ◆

HONDURAS

By Mauricio Villeda; Gutiérrez Falla & Associates, Tegucigalpa, Honduras

Executive Decree No. PCM-082-2015 Ascribed by Ministry of Finance, Division of Customs Deputy Income Department (DIRECCIÓN ADJUNTA DE RENTAS ADUANERAS, DARA)

Given the decision taken by the President of Honduras, the resources allocated in the General Budget of Revenues and Expenditures of the Republic for all actions and rights that correspond to the Dirección Adjunta de Rentas Aduaneras (DARA) were transferred to the Ministry of Finance indefinitely. Therefore, the Ministry of Finance is responsible for personnel management and heritage of the Deputy Directorate of Customs Income (DARA). These provisions came into force on March 14, 2016.

The purpose of ascribing the Directorate of Customs Income (DARA) to the Ministry of Finance is to maintain fluency in the mechanical work that emerges from the activity of international trades.

Because of this, an announced was made to all the personnel working in the Directorate. It established to stay efficient, ethical and to maintain high professionalism for the operation of the customs system. The Tax Payer Office is working full time to provide services as normal as possible. This was since Thursday March 17, 2016 and so all taxpayers who wish to receive tax guidance or do any paperwork without affecting the operation of the economic and commercial activity can assist to such office.

Executive Decree Number PCM-083-2015 Suppression and Liquidation of the Income Executive Direction (DIRECCIÓN EJECUTIVA DE INGRESOS, DEI)

By means of Executive Decree number PCM-083-2015 published in the official journal La Gaceta on February 10, 2016 was decreed to suppress and liquidate the Income Executive Direction (DEI), created through Legislative Executive Decree number 17 – 2010, dated March 28, 2010 and published in the official journal La Gaceta on April 22, 2010.

This decision was made by the President-in-Council of Secretaries of State since by decree PCM 001-2014 published in the official journal La Gaceta on February 22, 2014 the Income Executive Direction was assigned to the Presidency of the Republic and the President according to what the law of Public Administration establishes, he has the authority to remove entities in Council of Secretaries of State.

The decision was made as different reports were made in which the result of interventions ordered by the Executive Branch, became apparent that the DEI showed deficiencies that prevented the entity from

fulfilling its primary function of administering the tax system in order to maximize voluntary compliance by taxpayers.

The budget allocated in the General Budget of Revenues and Expenditures of the Republic plus all the assets, shares and rights that corresponded and constituted heritage of DEI, were transferred to the Ministry of Finance through the National Directorate of National State Assets.

Agreement Number 11-C-2016 Appointment of Commissioner

The Executive Decree PCM-083-2015 in which the President of the Republic in Council of Secretaries of State decrees to suppress and liquidate the Income Executive Direction and that Article 7 of the related Executive Decree orders that all functions and applications inherent to tax liabilities that arise and files that are being processed or enforced in that institution will be under the responsibility of an appointed Commissioner elected by the President of the Republic. ANGELA MARIA MADRID LOPEZ was the one elected by the Agreement No. 11-C-2016 published in the Official Journal La Gaceta as of February 27, 2016. She was named as Presidential Commissioner to proceed to comply with the provisions of the aforementioned article.

Executive Decree PCM-084-2015 Creation of Management Service of Revenue Customs

Through the Executive Decree PCM-084-2015 published in the Official Journal La Gaceta as of February 27, 2016, the Revenue Management Service (Servicio de Rentas Aduaneras, SAR) was established as a decentralized entity which replaces the Income Executive Direction. Its structure will be implemented by regulations that have not been issued.

Currently, the entity that was Income Executive Direction is now the Presidential Commissioner for Tax Administration and it is understood that in August 2016 will be known as the Management Service of Revenue Customs (SAR).

Tax Code Revocation

Around January, President Juan Orlando Hernández issued a statement indicating that the Tax Code would be repealed in its totality and that a new one was going to be issued. Its draft was sent for review and socializations were made to capture comments and ideas of the Honduran population.

It has not been published.

Reform Article 22 of Income Tax Law by the Decree Number 20-2016

Article 22 of the Income Tax law created by Decree number 20-2016 published in the Official Journal La Gaceta as of March 30, 2016, sets out how the income tax will be charged to natural persons domiciled in the country.

The following table for natural persons domiciled in Honduras was issued, for Fiscal Year 2016, and it is as follows:

From L. 0.01 a L. 141,000.00 ..... Exempt
From L. 141,000.01 to L. 215,000.00..... 15%
From L. 215,000.01 to L. 500,000.00..... 20%
From L. 500,000.01 and on 25%

This scale of progressive rates will be automatically adjusted annually from 2017 and it will be made by applying the variation of the Consumer Price Index (CPI) published by the Central Bank of Honduras (BCH) for the immediately preceding year.

Tax Exemption for Public Private Partnership to Build Palmerola International Airport and Governmental Civic Center Decree Number 30-2016

The government of Honduras exonerated from paying taxes indefinitely to companies created by a Public Private Partnership (PPP). This partnership will build Palmerola international airport and the Governmental Civic Center by Decree No. 30-2016 published in the Official Journal La Gaceta dated April 16, 2016.

Also tax purchase of supplies, goods, materials, equipment and services for the construction, equipment and operation of the project. This includes the design, financing, construction, operation, lease state entities, until achievement of all stages of construction, operation, maintenance, repair, replacement of equipment related to the property and its appurtenances and services provided to State institutions throughout the life of the project.

In the wide chain of beneficiaries, it was not included contractors from public institutions that are part of the project.

The international airport concession Palmerola was awarded to a Honduran company identified as Inversiones EMCO S.A. de C.V., allied to an operator in Germany linked to Munich Airport.

The company will benefit from the concession of 28 years.

Meanwhile the Governmental Civic Center was awarded by a 30 year concession to Mexican company named Constructora and Edificadora GIA + A S.A. de C.V.

Both concessions will be handled through the Commission for the Promotion of Public Private Partnership (Comisión para la Promoción de la Alianza Público Privada, COALIANZA).

Besides exonerating the aforementioned projects, this decree by Article 5 states that all parties, both public and private, within a model of public-private partnership can be organized as a joint venture partnerships, legal persons with or without profit, participation contracts, management contracts, trusts or any other shape or form, legally typical or atypical, make it suitable for the execution of works and / or services required, and any forms of organization within the regime of Public Private Partnership will perform all their efforts under the rules of private law. This is without prejudice to be giving up the reports requested by the Ministry of Finance, the Commission for the Promotion of Public-Private Partnership (COALIANZA) and the Superintendent of Public Private Partnership (SAPP), regarding the management of public assets and resources provided by the state or municipalities.

Article 7 states that the projects organized under the system of public-private partnership, pursuant to Article 5 above, shall enjoy the following tax incentives:

(1) Exemption, throughout the life of the project, Internal Revenue and Customs, Sales Tax, Excise Tax and Customs Duties and other fees, taxes, surcharges, fees, general and special contributions, administrative services charged by the State on the importation and local purchase of supplies, goods, equipment, materials, rights and services that are used in the design, research, financing, development, installation, construction, equipment, management, repair, replacement and maintenance of the said projects;
(2) Exemption from Income Tax (Decree No.25 of December 20, 1963 and its amendments) Net Asset Tax and Temporary Solidarity Contribution contained in the Legislative Decree 51-2003 (Tax Equity Act) of 3 April 2003; the Advance payment of one percent (1%) in respect of income tax contained in Decree No.96-2012 dated June 20, 2012 (Act Anti-evasión Measure on Income Tax); the mode of Income Tax corresponding to 1.5 percent of gross income declared contained in Article 22-A of the Law on Income Tax; as well as those related to income tax exemption to be granted only once for the life of the project and counted from the date of commencement of operation;
(3) Exoneration rates created under Decree No.105-2011 of June 24, 2011 and its amendments (Law of Population Security) throughout the life of the project;
(4) Contribution Tax Exemption for Social Care and Conservation of Heritage Road (Aporte Para la Atención a Programas Sociales y Conservación del Patrimonio Vial, ACPV) Programs;
(5) Exemption from income tax and any of the withholding on payments of services or fees contracted with natural or legal persons for-

eign, necessary or indispensable for studies, installation or implementation, engineering, management and construction and monitoring of the partnership project private or public, for the life of the project, except for the retention by way of advance contained in Article 19 of Decree No.17-2010 dated March 28, 2010 Enhancement Act Income, Social Equity and rationalization of Public expenditure;

(6) Exemption from the application of the provisions of the Regulation Law Transfer Pricing and its Regulations; and

(7) The projects shall enjoy all the benefits under the Customs Act regarding the import of machinery and equipment needed for the construction, service and maintenance over the life of the project. Such machinery and equipment and will be used only for public-private partnership project exclusively. They are not covered by this exemption, the tax on capital gains, the tax on dividends or any other form of profit sharing, the Single Tax 10 percent interest on income contained in Decree No.110-93 and its reforms; and 1 percent for Payment of Income Tax or assets, whichever is greater, to retain national suppliers and contractors and foreign, under Article 19 of Decree No.17-2010 of 28 March 2010 (Act Strengthening Income, Social Equity and Rationalization of Public expenditure).

Decree 25-2016 Law of Fiscal Responsibility

This Act aims to establish guidelines for better management of public finances ensuring consistency over time of fiscal policy and ensure fiscal consolidation, debt sustainability, and poverty reduction with responsibility, prudence and fiscal transparency.

This law will be applied to the central government and the None Financial Public Sector.

For this law, multi-year fiscal performance rules are established, macro tax for non-financial public sector (NFPS) on tax expenditures.

The law aims to improve the transparency of governance and achieve sustainable fiscal solvency over time. The legislation provides clear rules because there is awareness of the growing need worldwide that public finances need a commitment medium- and long-term fiscal discipline.

The law is aimed to prevent the country from falling back into situations of high deficit in current spending, as between 2009 and 2013, when the fiscal deficit rose to 7.9 percent and debt increased to current levels in the order of 46 percent of gross domestic product (GDP).

Through this legislation, the budgetary principles of accountability, transparency and stability were consistent with international best practices.

In the legal establishment the General Direction of Macro Fiscal Policy (Dirección General de Política Macro Fiscal, DGPMF), was created and it was responsible for defining macro-fiscal systems, monitor public finances and the economy, develop economic and fiscal projections for the decision of the above, in order to achieve a sustainable fiscal policy for the benefit of Honduran society authorities.

The DGPMF shall be a unit attached to the Ministry of Finance and will be headed by a director and a deputy director.

Also, the Macro Fiscal Framework Medium Term (Marco Fiscal de Mediano Plazo, MMFMP) is established as an instrument of financial planning nonfinancial public sector (NFPS), for a given period. It is based on the assessment of the behavior of the different economic and fiscal variables and constitutes the fundamental tool for formulating fiscal policy, as embodied in the Budget of Revenues and Expenditures of government.

The fundamental purpose of developing a MMFMP is to have an instrument for making strategic decisions about the stance of fiscal policy, the way it should contribute to achieving the objectives of the government

and its impact on the country's macroeconomic performance; generating a forecast that supports the early formulation of economic policy in general.

A new feature is that a limit on the public sector deficit and a restriction on the growth rate of current expenditure will be established. A transitional clause that defines the path to achieve the goals set scheduled until 2019.

The objectives shall be consistent with the fiscal targets of the economic program of the Honduran government. The project includes topics such as putting a ceiling on current spending, public debt, staffing and establishes sanctions, among other issues.

On the issue of exemptions, in the case of state institutions that generate them, they must have a favorable opinion of the Ministry of Finance and detail the amount of the tax sacrifice which must register with that agency.

This new law stipulates that only legal persons can enjoy a type of exemption to avoid a duplication of that tax benefit that goes to the detriment of natural persons. ◆

MEXICO

By Mauricio Ambrosi Herrera; Turanzas, Bravo & Ambrosi, Mexico City, Mexico

Transfer Pricing Rules are Applied for the First Time in Guatemala

During the second quarter of 2016 some of the most relevant developments in Mexican tax regulations have been the following: (1) the upcoming end of the capital repatriation regime and (2) the modifications to the reporting duty deadlines for FATCA and CRS purposes. Following we refer to the main aspects of these matters.

1. Imminent end of the capital repatriation regime

As of 2016, a beneficial regime entered into effect with the purpose of promoting the return of capitals –direct or indirect investments and the profits generated by them– kept offshore by Mexican tax residents and permanent establishments ("PE"), up to December 31, 2014.

The main advantage of these regulations is the possibility to hand in the corresponding income tax payment with no penalties and surcharges, including the opportunity of crediting the taxes paid abroad. However, the lapse to invoke such treatment ends with the last day of June.

General requirements: For taxpayers to apply this scheme several conditions have to be met:

(a) The investments and their profits must return to Mexican territory before June 30, 2016.
(b) The corresponding income tax must be paid within the next 15 days to the effective repatriation date. Nevertheless, if the total income tax due is not paid by June 30, 2016 the full amount could be legally required by the tax authorities.
(c) The returned capitals must be invested within Mexican territory for the following 3 years, and if the amounts are brought back by companies, there are further requirements: the amounts should be invested in fixed assets, technology research and development or the repayment of debts with independent parties.
(d) The repatriation cannot be made as a consequence of an audit procedure.
(e) If there are any legal disputes pending with regard to such capitals, the taxpayers must cease and desist from their lawsuits.
(f) Information of all taxpayers that submit to this regime will be published in the tax authority's web page.

2. Changes in reporting duties regulations

The Second Modification to the Miscellaneous Tax Resolution for 2016 modified the time lapses to fulfill the reporting obligations established in the Agreements derived from FATCA (Foreign Account Tax Compliance Act), as well as those regarding the CRS (Common Reporting Standard). The limit for the submission on the information was set until July 31, of the following year to the disclosure obligation was produced. Before such change, the due date for the report was June 30.

Therefore, financial institutions in Mexico can send the Informative Report regarding 2015 until July 31, 2016 for FATCA purposes. The first CRS report must be filed until 2017.

Several documents have been published containing the criteria for the standardization of the information regarding the yearly FATCA disclosure report, as well as a procedure for the filing of such when there are no reportable accounts ("Zero Balance Report"). ◆

URUGUAY

By Martin Soca and Nicolas Barbani; Ferrere, Montevideo, Uruguay

Proposal for "Fiscal Adjustment" in Next Budget Law

In May of this year the government announced a series of actions geared to containing the fiscal deficit and maintaining the country's investment grade rating. The Minister of Economy, Danilo Astori, called its bill of law a necessary and timely "fiscal consolidation" seeking to improve the situation of public accounts in the Uruguayan economy.

In the debate on the 2016 Budget Adjustment Law, the Executive Branch argued that the changes aim to increase revenue from certain taxes on earned, investment and business income.

Following are the most important changes.

Change in Personal Income Tax (IRPF)

a. Earned income

This tax is levied on income earned by resident individuals in employment relationships or independently. The tax payable is determined by applying progressive rates on the taxable amount. At present taxpayers pay between 0 percent and 30 percent, per six income tranches. The government proposed modifying tax rates and how deductions are computed.

The adjustment will create an additional tranche: it divides the fourth tranche in two. It also increases the tax burden as of the new tranche by 4 points, from 20 percent to24 percent. The following tranches will increase from 20 percent to 25 percent, from 22 percent to 27 percent, and from 25 percent to 31 percent, reaching a maximum rate that will increase from the current 30 percent to 36 percent.

Deductions available for the tax are currently progressive and range from 10 percent to 30 percent. Under the bill they will be cut to a fixed rate of 8 percent and 10 percent.

b. Investment income

Changes are planned regarding taxability of certain yields on investments. Interest income on deposits in local currency at over one year with local institutions as well as similar financial instruments will be taxed at a 3 percent to 7 percent rate.

Changes in Business Income Tax

a. Business Income Tax (IRAE)

i. Limit on computation of tax losses from previous years

At present, tax losses for up to five previous fiscal years can be deducted in full from the taxable income generated in the year.

The changes planned will only permit deduction of up to 50 percent of the positive tax result for the year as previous years' tax losses accrued over the last five periods. This modification has a direct impact on IRAE, since companies will have to pay at least 50 percent of the tax generated on income each year even if they have previous tax losses.

ii. Elimination of deduction of notional employer wages

Partnerships can currently deduct as expense the social security contributions made on their partners' notional wages, provided they actually render services to the company.

The planned change will only permit deduction for those who actually collect a salary for provision of their services. This requirement would only apply to companies with annual income in excess of USD 450,000 and an adequate accounting system.

iii. Payment of IRPF on notional distribution at three years following generation of earnings

The profits shareholders currently receive on their stakes in companies are taxed at 7 percent upon formal approval of their distribution by the regular shareholders meeting.

The change proposes to presume profits to have been distributed upon lapsing of three years from their generation. The only exception is if they are reinvested in line with the conditions set forth in the rules.

iv. Elimination of personal and professional service companies

These companies currently have a tax exemption on distributions to partners of profits deriving from provision of personal services. The exemption is applicable to companies with an adequate accounting system and income in excess of USD 450,000.

The change implies taxing distributions of such profits at 7 percent. A clear example of the organizations that would be affected by this provision are professional partnerships organized by individuals.

Changes in Value Added Tax (VAT)

Debit card purchases currently have a reduction of 3 points of VAT, which will be cut to 2 points as of August 1, 2016.

The proposed change would reduce VAT on debit card or e-money purchases made by final consumers by 2 points. With this step, the total VAT reduction would be 4 percent as of January 1, 2017.

Uruguay and Tax Treaties

In the past three months Uruguay has had a significant number of additions in terms of international tax information exchange and double taxation agreements. Following is a summary of the contents of the agreements recently approved or under consideration by Parliament for final approval.

I. Double Taxation Agreement with United Arab Emirates

Uruguay and the United Arab Emirates (UAE) signed a Double Taxation Agreement applicable to persons residing in one or both countries with respect to income and net worth taxes in each of the contracting states, their political subdivisions or local authorities.

Income and net worth taxes are considered to be those levied on total or any part of income or net worth, including taxes on earnings deriving from alienation of movable or real property and taxes on the total amounts of wages or salaries paid by companies. In particular, (i) in the case of UAE: income tax and

corporate tax; (ii) in the case of Uruguay: the Business Income Tax (IRAE), Individual Income Tax (IRPF), Nonresident Income Tax (IRNR), Social Security Assistance Tax (IASS), and Net Worth Tax (IP).

The agreement will also apply to similar taxes established by the states in the future and additional to or substituting the current ones. The competent authorities of the contracting parties will inform one another of any significant changes introduced in their respective tax legislations.

The agreement follows the OECD Model Double Taxation Agreement.

II. Tax Information Exchange with Kingdom of the Netherlands

The Legislature also voted on Law No. 19,375, approving the Tax Information Exchange Agreement between Uruguay and the Kingdom of the Netherlands, signed on September 12, 2014.

The agreement establishes exchange of information of interest for determination, computation, implementation, control and collection of taxes or for the investigation or prosecution of tax cases. It will apply to taxes of any nature applied by the two countries.

The agreement will also apply to taxes created in the future or substituting existing ones, as well as substantially similar taxes when so agreed by the parties. The competent authority of each party will notify the other of any substantive change in the laws that may affect obligations under the agreement.

The treaty follows the OECD Model Tax Information Exchange Agreement.

III. Tax Information Exchange with Chile

The Uruguayan Parliament approved Law No. 19,391, approving the Tax Information Exchange Agreement between Uruguay and Chile, signed on September 12, 2014.

The agreement establishes exchange of information of interest for determination, computation, implementation, control and collection of taxes or for the investigation or prosecution of tax cases. It will apply to the following taxes: (i) in Chile: the taxes established in the Income Tax Law, in the Sales and Services Tax Law, and in the Inheritances, Benefits and Donations Tax Law; and (ii) in Uruguay: all existing national taxes of any nature.

The agreement will also apply to similar taxes established by the states in the future and additional to or substituting the current ones. The competent authorities of the contracting parties will inform one another of any significant changes introduced in their respective tax legislations.

The treaty follows the OECD Model Tax Information Exchange Agreement.

IV. Bill of Law to Approve the Tax Information Exchange Agreement with Guernsey

The Executive branch submitted a bill of law to Parliament for approval of the Tax Information Exchange Agreement between Uruguay and Guernsey, signed on July 2, 2014.

The agreement establishes exchange of information of interest for determination, computation, implementation, control and collection of taxes or for the investigation or prosecution of tax cases. It will apply to the following taxes: (i) in the case of Uruguay, all taxes applied or administered by the government; and (ii) in the case of Guernsey, income tax and dwellings profits tax.

The agreement will also apply to similar taxes established by the states in the future and additional to or substituting the current ones. The competent authorities of the contracting parties will inform one another of any significant changes introduced in their respective tax legislations.

In this case as well, the provisions follow the OECD Model Tax Information Exchange Agreement. ◆

LATAXNET®
LATIN AMERICAN TAX & LEGAL NETWORK

ABOUT US

We are a network of advisors composed of Latin American, Caribbean, U.S. and Canadian professional firms. The network was formed with the goal of offering the highest level advisory services in participating countries, with special emphasis on keeping our clients up to date on the latest developments.

Our organizational structure allows us to share experiences and professional know-how, always keeping in mind the perspective and reality of each individual country. Our experience with laws and tax cases at the Hemispheric level, along with constant information sharing regarding the latest tax trends, ensure that our clients are well informed and prepared to deal with their tax issues.

OUR MISSION

The Network's objective is to contribute to the investigation and analysis of tax policies and strategies, and share such information in both the public and private spheres. We will always seek to propose solutions that will improve the position of the business communities in Latin America, the Caribbean, the United States and Canada.

OUR VISION

We will continue to establish ourselves on a regional basis as the premier professional tax and legal organization, working in accordance with the highest standards of quality, integrity, and corporate efficiency.

NAME	COUNTRY	PHONE	E-MAIL
Mike Valdés (Director Emeritus)	USA/Brazil	(786) 391 0481 or 1-312-560-3187	mvaldes@ vdtinternational.com
Cristian Rosso Alba (President)	Argentina	5411 48777000	crossoalba@rafyalaw.com
Fabián Birnbaum	Lataxnet	+59899298911	fbirnbaum@lataxnet.net
Ramiro Guevara	Bolivia	5912 2770808	rguevara@gg-lex.com
Luis Rogério Farinelli	Brasil	5511 30934855	lfarinelli@machadoassociados.com.br
Jorge Espinosa	Chile	562 365 1415	jespinosa@espinosayasociados.cl
Alfredo Lewin	Colombia	5713 125577	alewin@lewinywills.com
Adrian Torrealba	Costa Rica	506 2565555	atorrealba@fayca.com
Norman Decastro	Dominican Republic	809 508 7100	n.decastro@drr-law.com
Walter Tumbaco	Ecuador	5934 2562908	wtumbaco@lawnetworker.com
Antonio Mendez	El Salvador	503 25055555	amendez@romeropineda.com
Eduardo Mayora	Guatemala	502 23662531	emayora@mayora-mayora.com
Mauricio Villeda	Honduras	(504) 2238-2455	mauricio.villeda@gufalaw.com
Mauricio Bravo Fortoul	Mexico	(55) 5081 4590	mbravo@turanzas.com.mx
Gloria Alvarado	Nicaragua	505 2278 7708	gmaivara@alvaradoyasociados.com.ni
Said Acuña	Panama	507 397 3000	said.acuna@rbc.com.pa
Nestor Loizaga	Paraguay	595 21 227066	nloizaga@ferrere.com
Cesar Luna-Victoria	Peru	511 208 3000	clunavictoria@rubio.pe
Fernando Goyco-Covas	Puerto Rico	787 756 9000	goyco@amgprlaw.com
Gianni Gutierrez	Uruguay	+(598) 26230000	ggutierrez@ferrere.com
Federico Araujo / Juan Carlos Garantón Blanco	Venezuela	5821 29050293	faraujo@tpa.com.ve