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GLOBAL TAX BRIEFING

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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

Fourth Quarter Tax Highlights
Tax Amnesty and Moratorium bill under discussion

The newly elected Argentine government is considering a new tax amnesty bill to encourage the disclosure of unreported assets and foreign currency (the "Disclosure Program") and a moratorium for unpaid taxes (the "Moratorium").

Under the proposed terms of the bill, taxpayers would be allowed to cancel tax obligations (due before December 31, 2015) in up to 60 installments. Late payment penalties would be waived and accrued interest would be limited to a maximum of 100% of the original tax debt. In addition, the bill establishes a 1.5% monthly interest rate.

The Moratorium would apply to tax and social security obligations, and enrollment in the plan would be conditioned on a 5-percent initial payment.

The Disclosure Program is an assets and foreign currency (the "Assets") voluntary disclosure regime, established for a term of two years. Under this regime, the Assets would be subject to a fixed tax rate that would be determined by the date of disclosure and the destination of the Assets. For Assets disclosed during the first year of the regime the applicable tax rate would be 8%, increasing to 10% during the second year. If the Assets are moved into Argentina, then rates would drop to 5% or 7%, respectively. Penalties and late payment interest would not be applicable.

In addition, where funds are set aside for acquisition of private bonds traded in stock markets, the bill establishes that the applicable tax rate would drop to 4%. However, the benefit is conditioned on the investment (either the bonds or the funds received on sale) remaining in the country for three years.

If the funds were used to purchase Argentine Government bonds, then the applicable tax rate would drop to 3%. As in the previous case, the investment (either the bonds or the funds received on sale) should remain in the country for three years in order to keep the benefits. The 3% rate would also apply to funds set aside for the purchase of new real estate, acquisition of capital goods, or capital investment in existing corporations.

As regards money laundering regulations, the Disclosure Program exempts banks from submitting a report to the Federal AML Unit when the disclosed assets or funds emanate from tax evasion. The Disclosure Program also provides a tax break with respect to all taxes owed by the taxpayer in connection with the disclosed funds (unless false invoices were used to evade taxes), exempting it from a Criminal Tax process.

Furthermore, the Disclosure Program provides for a 10% reduction of income tax owed by taxpayers that declare the existence of funds or assets abroad that are repatriated to Argentina. Additional tax credits may be granted if the assets or funds are allocated to specific activities, to be determined by applicable regulations.

Income Tax Law - Section 40 provisions operate as a penalty for withholding agents

In its "San Juan S.A." decision, the Federal Supreme Court clarified the scope of Income Tax Law – Section 40, confirming the punitive nature of the section and finding that all payment types (whether expenses or costs) fall within the provision.

In the case under analysis, the Argentine Revenue Service ("ARS") assessed income tax on the basis that the taxpayer did not act as a withholding agent upon making payments for the acquisition of inventories. As a consequence, the ARS contested the deduction of such payments as expenses for income tax purposes, claiming that the taxpayer had neither withheld the amounts nor proved that the tax had been effectively paid. In response, the taxpayer argued that the provision differentiated between the terms 'expenses' and 'costs'.

With its decision, the Court clearly established that the intention of the lawmaker was to punish the taxpayer who omitted to act as a withholding agent by prohibiting the deduction of those payments that should have been subject to withholding.

Accordingly, the Supreme Court confirmed the tax assessment made by the ARS.

Argentina-Switzerland treaty enters into force

On November 27th, 2015 the new Argentina-Switzerland Double Taxation Treaty ("DTT") entered into force. The Treaty was originally signed on March 20, 2014, replacing the one signed in 1997.

The DTT corrects issues that were controversial in the past, such as the lack of taxation at source on royalty payments made to Swiss companies, and the application of personal assets tax to Swiss shareholders owning equity in Argentine companies.

The DTT provides for reduced tax rates on dividends, interest, and royalty payments. We also note that under Article 25, concerning tax information exchange, the ARS will be allowed to obtain information regarding Argentine citizens´ financial investments in Switzerland and information related to Argentine exporters' foreign trade operations, which use Swiss companies as commercial traders.

New Double Taxation Treaty with Mexico

On November 4th, 2015 Argentina and Mexico entered into a Double Taxation Treaty ("DTT"); however, the DTT will not be effective until it is ratified by both countries.

This is the first DTT signed between Argentina and Mexico, and it follows the OECD Model Treaty structure. Under its provisions, dividends, interest, and royalty payments will be subject to reduced tax rates.

In addition, the DTT will regulate hydrocarbon activities, and includes a Limitation of Benefits clause consistent with the recent BEPS proposal elaborated by the OECD. ◆

BOLIVIA

By Mauricio Dalman

Wrongful Application of the Statute of Limitations regime by both the Tax Administration and the Tax Courts

Prior to 2012, under Article 59.I. of the Bolivian Tax Code (Law No. 2492), the Tax Administration's statute of limitation to control, investigate, verify, and assess taxes ended in four years.

However, on September 22, 2012 Article 59.I. (Law No. 2492) was amended by Law 291, which provided:

"Tax Administration's actions to control, investigate, verify and assess taxes ends: In four (4) years in the fiscal year 2012, five (5) years in the fiscal year 2013, six (6) years in the fiscal year 2014, seven (7) years in the fiscal year 2015, eight (8) years in the fiscal year 2016, nine (9) years in the fiscal year 2017 and ten (10) years in the fiscal year 2018. The statute of limitation for each year as determined in the previous paragraph will apply to those tax obligations and contraventions that had occurred in said year".

On December 11, 2012 Article 59.I. was amended yet again, this time on the issuance of Law 317, which provided for the elimination of the final sentence of Article 59.I. With that exclusion, a doubt was generated regarding how the statute of limitations regime would increase in time beginning with the year 2012 and forward regarding those tax obligations and contraventions that had occurred in the year 2012, 2013 and so on.

Unfortunately, as a result of the issuance of laws 291 and 317, both the regional and the national tax courts (Autoridades de Impugnación Tributaria) have agreed with the Tax Administration´s interpretation that such laws could be applied retroactively. Consequently, the courts have issued several subsequent resolutions since 2012 explaining that as a result of the removal of the last part of Article 59.I. of the Bolivian Tax Code (Law No. 2492) pursuant to Law 291, the statute of limitations applies as follows:

For the year 2013 is of five (5) years back (2008), for the year 2014 is of six (6) years back (2008), for the year 2015 is of seven (7) years back (2008), for the year 2016 is of eight (8) years back (2008), for the year 2017, is of nine (9) years back (2008) and finally for the year 2018 is of ten (10) years back (2008). With that interpretation, the statute of limitations for the year 2008 would end on January 1, 2019.

Regardless of the elimination of the last part of article 59.I. of the Bolivian Tax Code (Law No. 2492) pursuant to Law 317, which was formerly introduced by Law 291- providing some certainty regarding how the law was to be applied on certain fiscal years and ahead-the Court´s interpretation is contrary to the parameters as set forth in the Bolivian Constitution and the Tax Code (Law 2492). Article 123 of the Bolivian Constitution provides:

"The law may only regulate for the future and shall not have a retroactive effect, except in labor law, when it favors employees; in criminal law, when it benefits the accused; in corruption cases, in order to investigate, process and sanction crimes committed by public servants against the State and in other cases as set forth by the Constitution".

Likewise, article 150 of the Tax Code (Law 2492) specifies:

"Tax regulations shall not have a retroactive character unless those that eliminate tax crimes and or contraventions, set forth more favorable sanctions, those that shorten statute of limitations terms or that, in any manner, benefit taxpayers or responsible third parties".

On review of the Tax Court's decisions, it appears that the Court is applying laws 291 and 317 retroactively as they extending the statute of limitations term by allowing the Tax Administration to assess as far back as the fiscal year 2008 even today. Before the amendments introduced by laws 291 and 317, the statute of limitations for the year 2008 ended on the year 2012.

The impossibility to apply laws retroactively –regarding tax law and others- has been widely ratified by both the Bolivian Supreme Court and the Constitutional Tribunal in several judgments issued in time. Even the regional and the national tax courts (Autoridades de Impugnación Tributaria) have issued resolutions supporting such a stand and, as a result thereof, the judgments recently issued (mentioned above) are contradictory and cause damage to the existing administrative doctrine. In such rulings, both the regional and the national tax courts (Autoridades de Impugnación Tributaria) have upheld the principles of "tempus comici delicti" (applying the law existing at the moment of the taxable event or when a tax crime or contravention was committed) and "tempus regis actum" (where the applicable law is the one existing when an assessment procedure has begun), determining that when in presence of material or substantive norms, the principle of "tempus regit actum" (such as in the statute of limitations regime) should prevail.

In light of the previous, the retroactive application of article 59.I. of the Bolivian Tax Code (Law No. 2492) (as amended by Law 317) is null and hopefully judgments to be issued by the Supreme Court (Tribunal Supremo) will overturn the decisions of both the Tax Administration and the Tax Courts and, consequently, favor taxpayers when ruling in contencioso administrativo procedures brought by taxpayers to request the statute of limitations of those fiscal years that lapsed before Law 319 was applied retroactively. ◆

BRAZIL

By Fabio Medeiros and Rodrigo Gonzaga de Oliveira - Machado Associados Advogados e Consultores, São Paulo, Brazil

Changes On Cprb – Social Security Contribution on Gross Revenues

As of December, 2015, Law 12546, a special program created by the Federal Government in 2011 aiming to avoid payroll overtax of companies of more than 50 sectors, underwent significant revisions. Companies covered by the program are now able to reduce their tax burden by choosing between the fixed 20% payroll contribution and the Social Security Contribution on Gross Revenue ("CPRB"). Once made, the decision is effective for the entire year. The choice is renewed every January, or during the first month of each year with revenues subject to CPRB. This change was well received, as previously the CPRB was mandatory, even when the payroll contribution was lower.

In December 2015, the CPRB standard rates of 1% (in general for industries of specific products) and 2% (for service providers) were increased from 1.5% to 4.5%, respectively. While CPRB rates applicable to gross revenue of freight companies experienced an increase to 1.5%, many commercial companies experienced a 1% CPRB rate increase to 2.5%. The 2% CPRB rate applicable to hotels, IT companies, and infrastructure construction companies is now 4.5% of gross revenue.

These changes were announced by the Federal Government at the end of 2014, soon after the re-election of President Dilma. Company and congressional representatives reacted quickly against the proposed reforms, alleging that during the election campaign President Dilma had declared the CPRB system effective at reducing the payroll taxation burden, thereby creating new jobs. In August, 2015, after months of debate, the changes were approved by Congress, and entered into force December, 2015.

With these changes, companies subject to CPRB have been simulating the effects of the new regulations for 2016 by calculating the expected gross revenues for the next year (as basis for the CPRB), compared to the 20% rate on their expected payroll costs for the same period. Unfortunately, these analyses tend to be extremely complex and sometimes uncertain, because while the financial and political crises will certainly cause direct impacts on Brazilian companies' investments and revenues during the next year, forecasters project unemployment rates of 10% in 2016.

Superior Labor Court Changes Interest and Monetary Restatement of Social Security Contributions In Labor Lawsuits

In October, 2015 the Tribunal Superior do Trabalho ("TST"), which is the highest appeal court in Brazil for labor matters before the supreme court (Supremo Tribunal Federal – "STF"), decided that the interest and monetary restatement on social security contributions related to labor claims must be levied from the date when the services were provided, as of March 2009. Thus, the TST was decisive for the Constitutionality of Article 43, Paragraph 2 of Law 8212/1991, included by Law 11941/2009, as per the wording below:

"Article 43. In labor claims that trigger the payment of rights subject to social security contribution, the judge, under penalty of liability, will determine that amounts due to the Social Security be immediately paid. Paragraph 2. It is deemed that the triggering event of social security contributions has occurred on the date when the services were provided" (Included by Law 11941, of 2009 – our emphasis).

The financial impact of this change for employers and companies is significant. Previously, the TST understood that interest and monetary restatement on social security contributions of labor claims should be calculated only from the date the company was notified of a final unfavorable award. Such interpretation had been consolidated by Subsection I of the Section of Individual Disputes ("SBDI-1") of the TST.

Under the new rules, a company that was required in October 2015 to pay R$ 50 thousand in a proceeding whose service was provided in 2009, would be forced to pay R$ 11.5 thousand of social security contribution, and R$ 7.2 thousand of interest. Before the decision, the contribution would also be the same, but the interest would only have been R$ 583, a difference of more than 1000%.

Also in October, 2015, FEBRABAN (the Brazilian federation of banks) appealed to the STF, requesting an injunction against the decision of the TST alleging that the TST usurped the competence of the STF to decide disputes of constitutionality. The STF granted the request and suspended the decision rendered by the TST. Therefore, until the STF makes its final decision, labor debts are not yet subject to the new criteria decided by the TST.

We note the following well-founded arguments against the TST's new interpretation. First, Law 11941/2009, which amended Law 8212/1991 in violation of the Federal Constitution, is clearly unconstitutional. Second, it is established that matters regarding triggering event of taxes can only be addressed by supplementary law, and not by federal law such as Law 11941/2009.

If the new TST interpretation prevails, employers should be able to argue that the 5-year period related to the statute of limitations for social security contributions on labor lawsuits should be calculated as of the date of the provision of services. Accordingly, this would prevent charging social security contributions arising from a large number of labor lawsuits.

In any case, companies should now review their criteria to estimate and control labor contingencies to avoid unexpected accounting-financial impacts, that might draw the attention of in-house and external auditors. It would also be prudent to review potential litigation strategies to ensure defenses, from the beginning of the lawsuit are applicable to the current case law, by means of the coordinated work of external and in-house lawyers. ◆

COLOMBIA

By Cristina Stiefken - Lewin & Wills Abogados, Bogotá, Colombia

Colombia as an Early Adopter of the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters

Colombia was an early adopter of the OECD multilateral convention on mutual administrative assistance in tax matters. This means that Colombia adopted the OECD's Common Reporting Standard (the "CRS") providing for the automatic exchange of financial account information in tax matters.

According to the OECD, more than 90 jurisdictions have already committed to exchange tax information under the CRS. It is worth highlighting that other countries that have committed to exchange information under the CSR, including: the British Virgin Islands, the Cayman Islands, Curaçao, Ireland, the Isle of Man and Luxembourg, among others.

While Colombia does not expect to exchange information under the CSR until September 2017, the information to be exchanged will likely refer to FY 2016. On November 30th, 2015 the Colombian Tax Service issued a Resolution containing the guidelines for the exchange of information including a mandate requiring financial entities to report information to the Tax Authorities beginning in 2016.

New Unifying Decree on Tax Matters

The Colombian government has been working on a “Unifying Decree” that will contain all tax-related regulations that are currently in force, dispersed in various decrees and other pieces of regulation.

On December 3, 2015, a draft of the Decree was released for public consideration to allow taxpayers to provide additional commentary. Taxpayer comments will be received until January 15, 2016, and the final version of the Decree is expected to be published, and in force, early next year.

Settlement of Tax Debts Declared Contrary to the Constitution

According to Law 1739/2014, taxpayers who were in debt with the Tax Authorities with regards to taxes, interest and/or penalties, whose debts were due on 2012 or previously, had the possibility to settle such debts paying only a part of the liability.

However, on December 2, 2015 the Constitutional Court declared that this provision of Law 1739/2014 is contrary to the Constitution. The consequences that this ruling will have for taxpayers who had already paid the amount required to settle are still uncertain, especially as only a press release has been published and the complete text of the ruling is still unknown.

Special Contribution on Gasoline and Diesel Fuel Declared Contrary to the Constitution

The 2014 Tax Reform (Law 1739/2014) created a special contribution with the purpose of attenuating the effects derived from the fluctuations of gasoline and diesel fuel prices.

On November 25th, 2015 the Constitutional Court ruled that this contribution is contrary to the Constitution; accordingly, the special contribution is no longer in force. ◆

DOMINICAN REPUBLIC

By Norman De Castro, Milcíades Rodríguez, and Gary A. Herrera - DR & R Attorneys & Tax Consultants

Tax Outlook for the Year 2016

With the recent enactment of Law No. 260-15 on the General State Budget for 2016, framed in the context of the third year of implementation of Law No. 253-12 for Strengthening the Revenue Capacity of the State for Fiscal Sustainability and Sustainable Development and Law No. 1-12 (Organic Act of the National Development Strategy), the State conveyed the following measures of tax policy and administration:

(1) Increasing from 13% to 16% the VAT rate (tax on industrialized goods and services –ITBIS–) for certain primary products (yogurt, butter, coffee, animal or vegetable fats, edibles, sugar, cocoa and chocolate).

(2) Increasing amounts of specific excise tax applied to alcohol per liter of pure alcohol, according to the table set out in Paragraph I of Article 22 of Law No. 253-12.

(3) Continuing the application of transfer pricing rules and advance pricing agreements (APAs) with the hospitality industry, especially the all-inclusive sector.

(4) Continuing the application of the established rules of limitation of interest by thin capitalization and deductibility of interest on which taxes were paid in the Dominican Republic.

(5) Adjusting for inflation the income brackets for the application of income tax for natural persons.

(6) Maintaining at 18% the general rate of the VAT

and at 1% the rate of the wealth tax for the reason that the goal of tax revenue of 16.0% established in Law No. 1-12 (Organic Act of the National Development Strategy) was not reached. If said goal had been met, then the general VAT rate would have been reduced to 16% and the wealth tax would have been substituted for the real estate tax (IPI). For the year 2016, the tax revenue as percentage of GDP is estimated at 14.1%.

(7) Deciding not to apply the annual tax of DR$12,000 for operation levied against local retailers of goods, including bars and restaurants, which have a total of more than fifty thousand pesos (RD$50,000) of monthly purchases; nor will be applied the vehicle circulation tax (ICV) of 1% on the value of the vehicle.

(8) Adjusting for inflation the Selective Consumption Tax on hydrocarbons.

(9) Starting the implementation of electronic invoicing.

(10) New Double Taxation Avoidance Agreements and Tax information Exchange Agreements.

(11) Exercising fiscal control over income of foreign source taxed under the principle of worldwide income.

(12) Continuing with the installation of fiscal printers; and

(13) Other administrative measures (such as, use of information with the General Directorate of Customs, collections, audits, property, controlling tax exemptions, among others). ◆

EL SALVADOR

By Romero Pineda & Asociados

This article references any tributary of fiscal change in force or coming into force as a new law, unconstitutional case law, or an amendment to a current tax law in El Salvador during the 4th quarter of 2015.

New Tributary Laws

As described below, the Congress has approved two new tax contributions in support of El Salvador's security activities.

(1) **PUBLIC SECURITY AND COEXISTENCE DECREE**

This new law will impose a 5% tax rate on all applicable telecommunication services and devices as described below:

(a) Payment of telecommunications services, landline and mobile;

(b) Payment made for lease or any other form of contract of cable television subscriptions, either wired or wireless or any other;

(c) Payments received for leased or any other form of contract of data transmission between two data points;

(d) Transfer by any form, importation or final introduction of technologic devices, terminals or equipment and accessories that utilize the services described above, including but not limited to landlines, mobile services, tablets, equipment, SIM cards, and other accessories, either given in lease or use excluding computers, servers and televisions; and,

(e) The withdraw or movement from inventory of technologic devices, terminals or equipment and accessories that utilize the above mentioned services, being those part of the assets of service providers, as well as self-transfers to be used by telecommunication companies, its partners, directors, executives, and personnel of the company or their relatives.

Furthermore, according to the tax initiative, when paid this tax will not be a deductible expense for purposes of income tax to the individuals affected by the contribution. Lastly, this tax will be in force for a period of five years.

(2) **SPECIAL CONTRIBUTION LAW TO MAJOR TAXPAYERS TO PARTICIPATE IN THE PUBLIC SECURITY PLAN**
Under this new law, a 5% tax will be imposed on the net income of taxpayers with net profits greater than US$ 500,000 in a fiscal year.
This tax contribution will be in force for a term of 5 years.

Unconstitutional Case Law

The Constitutional Chamber of the Supreme Court of Justice is considering five actions filed against the New Tributary contributions laws as unconstitutional; however, we note that none of the actions filed have been accepted by the Court for review yet.

Other News

In December, a legislative decree was issued declaring Christmas bonuses received by public and private employees to be tax exempt. This is a transitory decree applicable for this year, and only up to the amount of two minimum wages (approximately US$ 503.40) for the commerce and service sector. For those employees who receive more than two minimum wages, the taxable amount will be equal to the difference between the two minimum wages and the total amount received. ◆

MEXICO

By Mauricio Bravo, Partner and Martha Ruelas, Associate -Turanzas, Bravo & Ambrosi

Tax reforms for 2016

On November 18, 2015, a series of amendments to the Mexican tax legislation were published in the Federal Official Gazette. These amendments will enter into full force and effect as of January 1, 2016; the salient changes are as follows:

Income Tax Law

Mexican individuals - Personal deductions: Deduction of resources contributed by Mexican-resident individuals to instruments of long-term savings will not be subject to the "global limit" applicable to personal deductions. These resources include: (i) deposits to special savings accounts, (ii) premium payments of insurances based on pension plans, (iii) acquisitions of shares of authorized investment corporations, (iv) contributions to personal retirement plans, and (v) complementary or voluntary contributions to retirement accounts according to the applicable social security provisions.

The following concepts derived from labor incapacity or disability determined by the competent public health authorities, are added as personal deductions for Mexican-resident individuals: (i) payments for medical, dental or nursing-care fees, (ii) payments for analysis, clinical studies or prostheses, (iii) payments for hospital expenses, (iv) payments for the purchase or rental of equipment for the establishment or rehabilitation of the patient. These concepts will not be subject to the "global limit" applicable to personal deductions.

The new "global limit" applicable to personal deductions will be of an amount that results lower between the equivalent to 5 annual minimum salaries, and the equivalent to 15% of the total income of the taxpayer in the corresponding fiscal year (including income exempt from tax).

Renewable energy investments – Adjusted Profit Account: With respect to the deduction of investments for the generation of energy from renewable sources or from co-generation systems of efficient electricity (100% deductible in the fiscal year in which they are carried out), a complementary regulation is included to reduce corporate tax paid on profit distributions by Mexican-resident corporations dedicated to said activities, through the creation of a "profit account for investments in renewable energy" (or "Adjusted CUFIN") that will be calculated considering a straight-line deduction of said investments.

Thin capitalization for electric industry: Debts incurred for the construction, operation or maintenance of productive infrastructure related to the strategic areas of the country or for the generation of electric energy will be not be considered to determine the deduction limit of interest derived from excessive debt incurred with related parties abroad (debt exceeding three times the net equity of the taxpayer).

This rule will be applicable as of January 1, 2014. Therefore, taxpayers who have paid income tax for tax year 2014 as a consequence of considering debts incurred for the concepts previously mentioned will be allowed to compensate any positive balance resulting from recalculation of the limit of deductible interest in accordance with the new terms of said rule.

Real estate and risk capital investments: Mexican brokerage houses will be allowed to act as fiduciary institutions in real estate investment trusts and risk capital investment trusts.

Risk capital investment trusts will not be subject to a maximum duration term.

Small-scale, transportation infrastructure and energy investments - Accelerated deduction: A tax incentive consisting in the accelerated deduction of fixed asset investments is granted to Mexican-resident individuals and corporations who qualify as "small-scale enterprises" (those whose annual income does not exceed 100 million pesos), as well as to taxpayers involved in the transportation infrastructure and energy industries.

The tax incentive will apply in fiscal years 2016 and 2017. However, investments carried out between September 1 and December 31 of 2015 may be deducted in an accelerated fashion for purposes of the annual tax return of 2015.

Reinvestment of distributed profits – Credit against additional tax on dividends: A tax incentive consisting in a credit against the additional 10% tax on dividends is granted to Mexican-resident individuals for dividends distributed by Mexican-resident corporations derived from profits generated from January 1, 2014 to December 31, 2016, as long as said income is reinvested in the productive unit, and the distributing entity complies with certain formal obligations. The tax credit will be determined according to the following chart, and will not be considered as accruable income for tax purposes:

Fiscal year	**Amount of Tax Credit**
2017	1% of distributed dividend
2018	2% of distributed dividend
2019 onwards	5% of distributed dividend

Capital repatriation program: Mexican-resident individuals and corporations, as well as foreign residents with a permanent establishment in Mexico, will have the option to pay the corresponding tax on the income obtained from direct and indirect investments held abroad until December 31, 2014 (including income from investment vehicles in low tax jurisdictions) under certain beneficial conditions: all formal obligations will be deemed fulfilled, penalties and surcharges will not be triggered, income tax paid abroad may be credited.

This option will be subject to specific terms, such as (i) the return of income and investments within the first semester of 2016, (ii) updated payment of the corresponding tax within the 15 days following the capital repatriation, (iii) investment in Mexico during 2016 of the income returned, either in fixed assets (without the possibility of transfer in a period of 3 years after the date of acquisition), or in investigation and technology development projects, or in the payment of liabilities incurred with independent parties before 2016.

Primary industry: Mexican-resident individuals that obtain income from agricultural, livestock, forestry or fishing activities will be tax exempt on said income up to an amount equivalent to 1 annual minimum salary, as long as such income represents at least 25% of their total income and the latter does not exceed 8 annual minimum wages.

Ejidos and communities will be tax exempt on income obtained from agricultural, livestock, forestry or fishing activities up to an amount equivalent to 20 annual minimum wages for each member, without being required for such benefit that the income does not exceed 200 annual minimum wages. The exemption benefit will be applicable as of January 1, 2014; therefore, universal compensation of any positive balance will be allowed to these taxpayers.

Payments that in turn are considered as items of income of taxpayers dedicated to agricultural, livestock, forestry or fishing activities will be deductible when effectively disbursed in the applicable fiscal year.

Tax Incorporation Regime (RIF, per its acronym in Spanish): The applicable rates to determine income tax of Mexican-resident individuals subject to this special regime will be updated when accumulated inflation exceeds a 10% margin.

The following taxpayers will also be allowed to pay income tax under RIF: (i) individuals that, in addition to any income from entrepreneurial activities, transfer of goods, or personal services, obtain income from wages, assimilated concepts, interest, rental income, or income from the use or enjoyment of immovable property; (ii) partners or members of non-profit organizations, as long as they do not obtain distributions from such entities; (iii) partners or members of non-profit organizations dedicated to the management of savings funds, or of savings and credit unions, even when they receive interest from such legal entities; (iv) partners or members of sports associations subject to the general tax regime, as long as they do not obtain income from said entities; and (iv) individuals that have a kinship link with taxpayers who are currently subject to this special regime. The election to pay income tax under this regime will not exempt taxpayers from complying with the obligations prescribed in other tax regimes, if applicable.

Payments for purchases and investments shall be made through electronic transfer of funds, nominative check, services card, debit or credit card, or authorized electronic purse, only when the corresponding expense exceeds from $5,000 pesos. Payments for the acquisition of fuels for maritime, air and land vehicles shall be made through any of the referred payment methods, regardless of their amount.

In order for Mexican-resident individuals that acquire the business of a RIF taxpayer to be allowed to pay income tax under this special regime, a notice informing the date of acquisition of the business and the years in which the transferor paid income tax under RIF shall be filed before the competent tax authority, within 15 days after the date of the transaction.

Transport industry: It is clarified that Mexican-resident corporations that are dedicated exclusively to transportation activities of freight and passengers will be allowed to pay tax as "coordination entities" when income derived from said activities represents at least 90% of their total revenue, without including income from the transfer of fixed assets and land used in the course of the business.

Interest paid to foreign banks: It is established through transitory provision of the Income Tax Law that interest paid to foreign banks (including investment banks) will be subject to a 4.9% tax rate, as long as the beneficial owner of the income resides in a country with which Mexico has executed a treaty to avoid double taxation, and the applicable requirements in terms of said treaty are duly complied.

Informative obligations regarding transfer pricing: Derived from the recent international standards set forth by the OECD to avoid tax evasion, additional reporting obligations are included for certain taxpayers (large taxpayers, Mexican-resident corporations subject to the "integrated entities regime", State-owned entities of the Federal Public Administration, and foreign residents with a permanent establishment in Mexico) regarding transactions carried out with related parties residing in Mexico and abroad.

The relevant informative returns must be filed on December 31 of the applicable fiscal year, at the latest: (i) master informative return of related parties in a multinational business group, (ii) local informative return of related parties, and (iii) country-by-country informative return of the multinational business group (only applicable to multinational entities that generate annual consolidated income equal or greater than 12 million pesos).

Deduction of social benefits: In accordance with the prevailing criteria of the Federal Courts, the deduction of social expenses in benefit of employees that are not part of labor unions will not be subject to a specific limit. The foregoing without prejudice to the limit on the deduction of payments that in turn are considered as items of income exempt from taxation for employees.

Deductible interest for regulated SOFOM: Deduction of interest accrued on capital taken in loan by multiple-purpose financial institutions that are regulated (Regulated SOFOM) will not be capped when said taxpayers extend loans to third parties, to its employees or officers, or to its partners or shareholders, within the scope of their ordinary activities.

Tax deconsolidation: With the purpose of facilitating the mechanism to revert the effects of income tax deferred by corporate groups in the process of deconsolidation, the following rules will apply: (i) income tax paid in the distribution of dividends may be credited against deferred tax, (ii) deferred tax derived from tax losses, including losses from share transfer, must be reverted, and (iii) losses used in tax consolidation and returned to the entities of the group may only be set off against future profits at a 50% of their value (in addition, this mechanism may only be used up to an amount equivalent to the 50% of deferred tax derived from tax losses resulting from tax deconsolidation).

Federal Tax Code

Fiscal lottery: The Mexican Tax Administration will carry out fiscal lottery draws (aleatory assignment of prizes in money and in kind) in benefit of Mexican-resident individuals that do not develop commercial activities and are duly registered before the Federal Taxpayers Registry. Participation in fiscal lotteries will require the acquisition of goods and services paid for by electronic means and supported by the corresponding tax receipts.

Prizes obtained by Mexican-resident individuals derived from such lottery draws will not trigger income tax nor special tax on production and services. These prizes will be granted as long as the winners are up to date with the fulfillment of their respective tax obligations.

Exchange of financial information - Common Reporting Standard: As of 2017, financial institutions in Mexico (either Mexican residents or branch offices of foreign residents) will be obliged to file annual reports before the Mexican tax authority regarding financial information of account holders.

The report will be prepared according to the Common Reporting Standard approved by the OECD (CRS, per its acronym in English), which provides: (i) the financial information to be reported, (ii) the institutions obliged to report, (iii) the bank accounts and the taxpayers that must be included in such reports, and (iv) the formalities that must be observed by the relevant financial institutions.

Information of high value accounts (a type of preexisting individual accounts) and new accounts shall be filed, for the first time, on June 30, 2017, at the latest, while information of low value accounts (a type of preexisting individual accounts) and preexisting entity accounts shall be filed, for the first time, on June 30, 2018, at the latest. However, if low value accounts (a type of preexisting individual accounts) or preexisting entity accounts are identified on December 31, 2016, at the latest, the corresponding information shall be filed, for the first time, on June 30, 2017, at the latest.

Preexisting accounts will be those maintained as of December 31, 2015, while new accounts will be those opened as of January 1, 2016.

Reporting obligations regarding transfer pricing: Failure to comply with the new reporting obligations for transfer pricing purposes will derive in penalty payments and the prohibition to contract with the Federal Public Administration and the office of Mexico's attorney general.

Credit program for PYMES: With the purpose of facilitating access to financial credits for small and medium enterprises known as "PYMES", Nacional Financiera, S.N.C. (NAFINSA), a Development Banking Institution, will implement a program to evaluate the financial capacity of said entities based on information provided by the Mexican tax authority, and provide guarantees requested by the respective financial institutions.

Production and Services Tax Law

Gasoline and diesel – Tax treatment: Sales and imports of automotive fuels, including fossil fuels such as gasoline and diesel, as well as non-fossil fuels such as anhydrous ethanol used in internal combustion engines, will be subject to a tax treatment of fixed-rate by liter. Different rates will apply to gasoline with less than 92 octane, gasolines with 92 or more octanes, non-fossil fuels, and diesel. These rates will be annually updated.

Sales of gasoline and diesel carried out before January 1st, 2016, where the corresponding consideration is collected on January 16, 2016, at the latest, will be subject to the tax treatment in force until December 31, 2015.

Prices on automotive fuels will be partially liberalized as of 2016. For such purpose, the Ministry of Finance will establish a bracket of minimum and maximum values for the maximum prices of these fuels, in order to enable an ordered transition to full market opening in 2018.

Exports of non-basic food. Exportation of non-basic food with high caloric density will be subject to a 0% tax rate in order for producers to credit any tax paid for the acquisition or import of goods of the same kind, as well as to allow compensation of any positive balance against the tax to be paid in subsequent months (except in certain specific cases).

Incorporation Tax Regime – Reporting obligations: Taxpayers subject to the Incorporation Regime for purposes of income tax will have to comply with the following reporting obligations, if applicable: (i) annual report (during January) regarding the production, distillation, packing and storage of alcohol, denatured alcohol, non-crystallized honey, and alcoholic beverages; and (ii) bimonthly report regarding tags and seals used on alcoholic beverages.

Public Fees Law

Contributions regarding telecommunications: A public fee in charge of authorized licensees that make use of radio spectrum frequencies is established according to frequency ranks prescribed by tax brackets under the Public Fees Federal Law.

Federal Revenue Law for 2016

Interest paid by financial institutions: Regarding interest paid by the financial system, the annual withholding tax rate to be applied to the amount of capital on which interest is paid will be 0.50%.

Tax benefits and incentives: The following tax incentives will not be considered as accruable revenue for income tax purposes: (i) reduction of the tax base for purposes of provisional payments of income tax by subtracting PTU payments (workers participation in profits) from monthly tax profit, (ii) additional 5% deduction over the cost of acquisition of basic products for human subsistence when donated to non-profit institutions, (iii) additional 25% deduction calculated over wages paid to physically disabled employees, and (iv) application of tax credit derived from investing in the film industry for purposes of provisional payments of income tax. ◆

NICARAGUA

By Carlos Fernando Navarro A. - Alvarado y Asociados

Transfer Pricing in Nicaragua

The topic of transfer pricing was a fairly obscure topic in Nicaragua until 2012. Up until that time, there were very few laws covering the topic and almost none that regulated the area.

The transfer tax landscape in Nicaragua changed significantly in December, 2012 after the Tax Agreement Law (Ley de Concertación Tributaria) was published (published in the Official Gazette N° 241 of December 17, 2012). After the Tax Agreement Law was issued, transfer pricing and related topics became an important aspect of Nicaraguan tax law.

In general, Nicaragua follows the OECD Model and guidelines regarding operations carried out between related parties, including the free transmissions or acquisitions, which is valuated according to the free competition principle.

Under Nicaragua's Tax Agreement Law, two persons are considered to be related parties when any of the following criteria is met:

(1) When one of them directs or controls the other one, or has, directly or indirectly, at least 40% of its societal capital or voting rights;
(2) When five or less persons direct or control these two persons;
(3) When they are societies that belong to the same decision unit; or,
(4) When an individual holds an ownership in the societal capital or voting rights when the direct or indirect main ownership corresponds to the spouse or a person related by kinship, in the direct or collateral line, by consanguinity up to the fourth degree or by affinity up to the second degree.

Further, the Tax Agreement Law defines the following as related parties:

(1) When in an entrepreneurial collaboration agreement or association in participation, one of the contracting or associated parties participates, directly or indirectly, in more than 40% in the results or profits of the agreement or of the activities resulting from the association;
(2) A person residing in the country and an exclusive agent or distributor of it residing abroad;
(3) An exclusive agent or distributor residing in the country of an entity residing abroad;
(4) A person residing in the country and their permanent establishments abroad; and,
(5) An establishment in the country and its headquarters residing abroad or another permanent establishment of it or a person related to it.

Under the Tax Agreement Law it is established that the free competition principle values the price or amount that independent parties would have agreed in comparable operations under free competition conditions. The determined value has to be reflected as such in the accounting records of the taxpayer.

The comparability analysis is performed by comparing the conditions of the operations between related persons with other comparable operations carried out between independent parties.

The Law also provides us with alternative methods of applying the competition principle, including:

(1) Non-controlled Comparable Price Method,
(2) Additional Cost Method, and the
(3) Resale Price Method.

If due to the complexity of the operations or lack of information, none of the methods above could have been properly applied, then the tax payer shall use one of the following methods:

(1) Profit Partition Method, or
(2) Net Margin of the Transaction Method.

There are also provisions related to advance pricing agreements by which the Tax Authorities are able to establish a procedure to request an Agreement of Prices in following the general rules stated in article 102 and 103 of the law.

Although the rules and regulations for transfer pricing and related parties topic were established by the Tax Agreement law in 2012 (articles 93 to 106), it is important to note pursuant to Article 303 these rules are still not in use, and will only go into full force and effect starting on January 2016.

Last, on December 10, 2015, a new law was approved by the National Assembly which reformed Article 303. As amended, Article 303 provides for the Transfer Pricing Rules in the tax Agreement law to take effect on January 1, 2017. It is notable that this new reform law to Tax Agreement Law still hasn´t been published in the Official Gazette (La Gaceta Diario Oficial); however, it was expected to be on full application before January first, 2016. ◆

URUGUAY

By Juan Pablo Comas and Martin Soca

New tax incentives for investments

Uruguay's Investment Law No. 16,906 establishes a general tax incentives regime and declares promotion and protection of investments made by national and foreign investors to be in the nation's interest. The law seeks to promote job creation, decentralization, increase in exports, use of clean technologies and/or increase in research, development and innovation (R+D+I), among its leading purposes. For investors, the possibility of obtaining a Business Income Tax (IRAE) exemption on projects meeting the objectives set is a significant attractions.

Due to the slight downturn in economic agent participation, Uruguay's Executive Branch approved Decree No. 299/015 in order to foster new investments in the short term and incentivize effective execution of currently financed projects. The new regulations provide for a broadening of investment law benefits over the next two years.

General regime

Decree No. 299/015 establishes three variables to be taken into account as benefit limits: (i) a maximum exemption amount, deriving from assessment of fulfillment of the law's objectives; (ii) the amount effectively invested during a year; and (iii) a ceiling of up to 60% of IRAE payable in the tax year.

New incentives

Companies seeking the benefits of the new regime must submit their project to the Investment Law Application Commission (COMAP) between December 1, 2015 and December 31, 2016.

During this period an additional 10% (x 1.1) of the total exemption amount will apply, depending on the project assessment outcome. Investments made during the year 2016 will be computed at 120% for purposes of the IRAE exemption.

For 2017, the additional 10% will be maintained, and for IRAE purposes the effective investment amount will not be taken at 120%. We note that the additional 10% is subject to effectively making a minimum of 75% of the total investment by December 31, 2017.

Based on the above, it appears that the purpose of the new law is to encourage investments during 2016, as investments made during that period are favored. In addition, we note that the new regime also applies to requests for increased benefits on projects that have already been approved, i.e., projects having obtained the general benefit can request an expansion of the exemption.

Tax benefits for sports promotion

Background

Uruguay's current tax rules are structured to encourage investment in the development of national sports related activities.

Individuals and companies seeking to contribute money to projects promoted by sports entities before the Sports Projects Commission (COMPRODE) can benefit from tax savings between 55% and 81% of the investment amount. Savings cannot exceed 5% of net tax earnings for the previous fiscal year.

In the light of experience in the application of this regime in previous years, the Executive Branch approved Decree No. 308/015 to facilitate the process for obtaining the benefits provided for such investments.

New Decree

Under the new rules, the timeframe for sports entities to obtain a Sports Project promotion declaration cannot exceed 100 days, whereas under the old rules the process could take up to 200 days.

The new rules also establish that the sports entity cannot contract for services or acquire assets from individuals and/or companies making the donation for five years following the year in which the entity begins receiving the funds. ◆

TAX MORALE

By Fabian Birnbaum, FERRERE

Taxes: Corporate Social Responsibility?

Recently there has been considerable focus and public debate concerning the tax strategies utilized by major multinational companies to reduce their tax burden. In some countries, public discontent has led to the formation of organizations seeking to boycott products and services offered by certain companies perceived as not "paying enough" taxes.

Against this backdrop, to avoid economic and reputation damage, many companies have been forced to review their policies regarding concepts such as tax morality, corporate responsibility, and social spending. Accordingly, in the developed countries tax debates are taking place in the sphere of morals and ethics, rather than in the field of law.

A little bit of history…

In the wake of the recent economic crisis, governments worldwide have suffered significant drops in tax revenues. Consequently, government spending on social, health, and education programs has been significantly reduced, and at a very high political cost. Inevitably, reduced government spending on important social and health programs results in heightened public scrutiny of tax policy and concern that large companies are not paying 'their fair share of tax' to contribute to the functioning of society.

As a recent example, in the United Kingdom, Starbucks faced a popular boycott initiative as a result of its publicly perceived meager tax contributions. Consequently, Starbucks announced that it would be increasing its tax payments the following years, and while the legality of the business structures was acknowledged, the company Director appeared before British Parliament to address accusations of tax avoidance and the immorality of such behavior in a country where Starbucks generates considerable revenue.

Historical vision of companies

From a business perspective, reducing a company's tax burden in order to maximize profits seems reasonable. In general, most multinational companies are able to pursue such a policy in full compliance with local tax laws. However, in the context of global business operations, the interaction of multiple independent tax jurisdictions presents 'loopholes' which corporate tax departments in tandem with third party tax consultants are able to navigate to their advantage. Currently, at the G-20's request, the OECD has this issue under study.

Although corporate tax avoidance is legal, decreases in government spending for public social and health programs has caused portions of society to question why it has to pay high taxes while the big companies do not. In this regard, we find it important to address the following considerations:

(1) The developed countries' legal systems have made it possible for multinational companies to implement these tax strategies, and they were not repealed for fear of those companies moving to other jurisdictions. This was because countries always put their national interests before any global interest.

(2) The chief challenges have arisen as a result of the economic crisis, so that it would seem that arguments of equity and multinational corporate immorality are being used by governments to justify budget restrictions rather than to solve the underlying problem of fairness among taxpayers.

Important difference between taxes and Corporate Social Responsibility (CSR)

There is a substantial difference between taxes and CSR that has to do with obligation, which can be seen in the definitions of those concepts themselves. According to the European Commission, CSR is a voluntary contribution by a company, while taxes are defined in most jurisdictions as a mandatory payment.

In line with this we see that the allocation of amounts used in CSR is decided based on company priorities, while taxes are allocated depending on each country's budget.

Final thoughts

From an idealistic standpoint, we understand that the arguments of fairness and equity put forth by governments must be embodied in the regulatory framework of the respective countries, and not simply in public debates, so as to ensure a consistent rule of law. As for the international aspects, we hope that tax matters will be discussed and resolved by consensus in order to create a fair international tax system.

Notwithstanding the above, and from a more realistic point of view, in the current international environment companies must pay special attention to their tax strategies in order to address the social and reputation impacts they may have. ◆

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.

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