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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 Recent Tax Developments

By Jean Anton, Rosso Alba, Francia y Asociados, Buenos Aires, Argentina

The ARS recently introduced a new income tax advance collection mechanism, applicable to the purchase of goods and services performed abroad by Argentinian residents, by means of credit and/or debit cards. Online purchases, international transportation tickets and travel packages are included in the scope of the provision as well. Additionally, a regularization program for tax, customs and Social Security debts was launched last March, aimed at increasing tax collection and reducing default and late payment ratios.

Meanwhile, the National Tax Court issued an outstanding decision on the deductibility of expenses incurred in the execution of a cost-plus based contract. Relevant Supreme Court rulings on the deductibility of bad debts, undocumented disbursements, and the conditions for the application of income tax "grossing up" were also made public during the period.

Advance Collection Mechanism for Income Tax

On March 18, 2013, ARS Resolution 3450 was published in the Official Gazette, immediately coming into force. Devised in order to replace Resolution 3378, which enforced a 15% perception rate, Resolution 3450 establishes a 20% advance collection mechanism on foreign currency operations performed abroad by Argentinian residents by means of credit, debit and/or purchase cards managed by local companies. International e-commerce is also subject to advance tax collection. The scope of the Resolution was broadened so as to comprise the purchase of international transportation tickets as well as of foreign services included in travel packages sold by travel agencies, whether wholesalers or retailers. In the case of the latter, both cash and card payments are reached.

Resolution 3450 regards travel agencies, credit cards and transportation companies as collection agents. Sums paid on advance can be taken on account for Income Tax and Personal Assets Tax while balances are

allowed to be offset with other fiscal debts. Individuals who are not subject to such taxes are allowed to file an administrative claim for the devolution of the perceived amounts.

Tax, Customs and Social Security Debts Regularization Program

Resolution 3451, published in the Official Gazette on March 25, 2013, creates a special mechanism of payment arrangements for most pending tax, customs and Social Security debts (including interests and fines) in existence prior to February 28, 2013.

Payment facilities are to be granted even to debts which are currently being discussed, either before the ARS or the Courts as well as to those which are already part of previous plans. On the contrary, certain fiscal obligations are expressly excluded from the benefits by Sections 3 and 4 of the Resolution, including the much debated custom charges emerging from law 26,351.

It is relevant to state that, unlike previous ones, the current Resolution does not contemplate any interests' or penalties' reduction or condonation, but merely secures the taxpayer supplementary terms and installments (up to 120) for the cancellation of their debts, at a monthly interest rate of 1,35%. The time to apply for the mechanism expires on July 31, 2013.

Special attention shall be drawn to the fact that Section 27 of Resolution 3451 abrogates ARS Resolution 2774/2010, which regulated a permanent facilities' plan for tax and social security debts.

Relevant Court Decisions

On October 23, 2012, the National Tax Court issued a decisive ruling, admitting the deductibility of expenses incurred abroad by an Argentine resident company in the frame of a services provision agreement with its foreign parent company. In Cisco Systems Argentina S.A.,[1] the ARS had questioned the deduction of certain expenses incurred by Cisco Argentina in order to fulfill its contractual obligations with Cisco Systems Inc. Considering the existence of a written contract documenting the services invoiced by the local company, the Tax Court took into account that the price of the services was based on the expenses incurred plus a 5% margin, for example, a "cost-plus" scheme. Although the decision does not specifically elaborate as to the relation between the expenses incurred and the transfer pricing method used, it clearly conforms that income arising from a cost-plus based contract constitutes a deductible expense for an Argentine taxpayer.

The Supreme Court has shown a prolific first quarter, dealing with several tax issues, mostly by ratifying standards set in previous rulings.

As regards undocumented disbursements, the Court heard the case Bolland y Cia. (TF 21.122-I) c/ DGI), in which it followed the criterion set in the precedent Red Hotelera Iberoamericana c/ DGI (2003): a disbursement is to be considered as undocumented not only when there are not any documents referring to it, but also when the documents are unsuitable to prove its cause and individualize its true beneficiary. In this particular case, the taxpayer was able to demonstrate to the Court who were the actual payees of the disposed sums—to whom the ARS had been able to file tax claims—as well as the cause of the disbursement. Thus, the elements required for the provisions of Section 37 of the Income Tax Law to be enforced were not met in the case.

On the deductibility of bad debts, the Court in Sullair Argentina S.A. c/DGI, awarded special importance to the practice and customs of each particular industry, introducing a proper distinction between "bad" and "non-recoverable" debts. In the former case, the poor quality is only presumptive, derived from the expiration of the due term without proper payment. Sullair was able to demonstrate the existence of multiple collection and recovery efforts—in line with the practice of its industry—which, however, remained unsuccessful. Remitting to the standard put forward in Telefonica de Argentina SA c/DGI, the Court ruled that taxpayers cannot be obliged to exhaust all available means of collection in order to deduct "bad" debts from income tax, as such a requirement would imply charging the taxpayer with a financial cost impossible to bear and denaturalizing the principle of taxation over net income.

Finally, further precisions on the "grossing up" institute were provided by the Supreme Court, in Ciccone Calcografica S.A (TF 19.236-I) c. DGI. Only the existence of either an express clause in the agreement in which the payment is based or an unequivocal behavior in such sense by a relevant party entitles the ARS to interpret that the payment of income tax has been assumed by the local payer, an indispensable requisite for the application of "grossing up" (according to Section 145 of the Income Tax Law regulatory decree). As a conclusion, the mere lack of withholding by the local taxpayer cannot be alleged in order to apply the "grossing up," unless the effective assumption required by the decree is verified. ◆

ENDNOTE

[1] National Tax Court, chamber A; 10/23/2012, "Cisco Systems Argentina S.A. s/recurso de apelación-Impuesto a las Ganancias"

Brazilian Tax Update

By Cristiane Magalhães, Tatiana Villani, Juliana Alioti, Fernanda Fiasco and Stephanie Makin, Machado Associados Advogados e Consultores, São Paulo, Brazil

Supreme Court's position on taxation of profits earned overseas still undefined

By Cristiane Magalhães and Tatiana Villani

Three cases involving the taxation of profits earned overseas have been recently taken to a Brazilian Supreme Court's (local acronym STF) plenary session, but, despite the high expectation of taxpayers of having a final position on such important matter, it remains unsettled.

The first case submitted to STF's appreciation was Direct Action of Unconstitutionality 2588 (ADI 2588), filed by the National Confederation of Industry more than 11 years ago, seeking the declaration (with binding effects to all) of the unconstitutionality of a law provision which states that profits generated by foreign controlled and/or affiliated companies shall be taxed in Brazil on an accrual basis (on every December 31), irrespectively of the actual dividend distribution. ADI 2588's plead is mainly based on the argument that the Constitution does not allow the taxation of fictitious income.

Along the last 11 years, the analysis of ADI 2588 was initiated and interrupted several times. Almost all STF's judges that were part of the trial had already voted on it (only current STF's President vote was missing), but the score was still undefined: there were 4 votes against taxpayers, 4 votes in favor of taxpayers, and 1 vote partially in favor of taxpayers in what concerned profits from foreign affiliated companies.

In the recent plenary session, STF's President finally issued his decision on ADI 2588, and he surprisingly brought a new interpretation to the Brazilian rule, influenced by international standards (mostly, by controlled foreign companies -CFC — rules). In his view, the accrual basis taxation is compatible with the Constitution only for profits generated by foreign invested companies domiciled in tax havens. The publication of such vote is pending, and, thus, there are still doubts about several aspects of it, including the concept of tax haven used therein.

There are also on-going debates about the impossibility of a decision issued by STF introducing concepts of CFC rules (as the tax haven criteria adopted in the President's vote is not currently set out by the Brazilian laws and regulation that govern the matter), as well as on the fact that this decision does not represent the opinion of STF's current composition, as votes from former judges have been considered..

In any case, adding up all votes issued in ADI 2588, the conclusion of STF on profits earned overseas was the following:

(i) affiliatedcompanies located outside tax haven jurisdictions: unconstitutionally of accrual basis taxation;
(ii) affiliated companies located in tax haven jurisdictions: no majority was reached, and, thus, the taxation is still undefined;
(iii) controlled companies located outside tax haven jurisdictions: no majority was reached, and, thus, the taxation is still undefined; and
(iv) controlled companies located in tax haven jurisdictions: constitutionally of accrual basis taxation.

The second and third cases submitted to STF in the same plenary session were extraordinary appeals filed by different taxpayers, in different situations, with different outcomes:

(a) Coamo's case (RE 611586) related to profits earned by a controlled company based in a tax haven jurisdiction (Aruba), in which the court applied the conclusion of ADI 2588 (item iv above), and, thus, ruled against the taxpayer; and
(b) Embraco's case (RE 541090), related to profits earned by controlled companies based in treaty countries (China and Italy), which was suspended due to some procedural aspects, and respective files were sent back to the lower court for the analysis of tax treaties' issues.

As can be seen, the decisions reached in ADI 2588, Coamo's and Embraco's cases have limited practical effects, as they do not completely solve all the situations and issues related to the taxation of profits earned overseas, including tax treaty aspects. There are other pending cases before the STF on this matter, and more developments are expected.

Income tax exemption on dividends — new opinion on its extent

By Cristiane Magalhães and Fernanda Fiasco

Brazilian accounting rules were significantly modified as of January 1, 2008 to converge with the Financial Reporting Standards (IFRS). Simultaneously, a Transitory Taxation System (local acronym — RTT) was also introduced, aiming at neutralizing the tax effects of such new accounting rules.

According to RTT, which is mandatory as of 2010, the taxation shall apply on the results (costs, revenues, and expenses) registered according to the (old) accounting rules in force in December 31, 2007. Thus, generally speaking, modifications introduced by new accounting rules shall be disregarded for tax purposes. Such system, however, does not provide any specific

rule for the exemption applicable to distribution of profits, which is granted since 1996 by article 10 of Law 9249.

In view of the lack of a specific provision in RTT, doubts were raised in relation to the profit distribution's exemption extent, most especially if the exemption would reach the portion of profits distributed to the shareholders derived from the positive difference between profits calculated according to the new accounting rules, and profits calculated according to the rules in force in December 31, 2007 ("excess profits").

Federal Revenue Service authorities then formally requested the opinion of the Attorney General of the National Treasury (local acronym — PGFN) on the matter. When doing so, they exposed to PGFN their understanding in the sense that the excess profits should be subject to the withholding income tax, as they would be out of the scope of article 10 of Law 9249.

The PGFN agreed with tax authorities and issued a formal opinion that the exemption applicable to dividends distributed out of profits ascertained as of January 1, 1996 is only applicable to the amount of profits equivalent to those that would be ascertained in case the criteria and accounting methods in force on December 31, 2007 were applied. Under this awkward view, taxpayers would be compelled to pay a kind of "equalization tax" with no legal grounds.

Taxpayers were surprised by such opinion that disregards the legality in which all the taxation system is based and that gives an extensive interpretation to create taxation, which is not allowed by our tax system. Moreover, this opinion does not clarify how this taxation should be implemented since the rules in force do not contain the basic rules necessary for the charging (taxpayer, taxable basis, etc.).

Presently, the opinion is binding only to the members of the PGFN. However, if the conclusion of the opinion is approved by the Finance Minister, a Declaratory ACT shall be published and its term will then bind Federal Revenue Service's authorities.

Deemed Profit System Limit Increased

By Cristiane M. S. Magalhães and Stephanie Makin

After several alteration attempts throughout the years, Provisional Measure No. 612, published on April 4, 2013, increased the limit of revenues that allow some Brazilian legal entities to opt for a simplified system of taxation: the Deemed Profit System.

Under this system, the taxable basis of the Corporate Income Tax (local acronym IRPJ) and Social Contribution on Net Profit (local acronym CSLL) results from the application of specific percentages on the company's gross revenues. Said percentages vary according to the activity that generates the revenues (e.g. 32% for services, 8% for sales of merchandise and products).

For the last ten years and for the current year, companies that accrued BRL 48 million (approximately USD 24 million) or less of revenues in the previous year were allowed to adopt the Deemed Profit System of taxation, if not mandatorily subject by law to the Actual Profit System.

As of 2014, if Provisional Measure No. 612 is approved by the National Congress and passed into Law, such revenue limit will be of BRL 72 million (approximately USD 36 million) per year or BRL 6 million (approximately USD 3 million) per month if the company does not have activities during the whole year (e.g. beginning or closing).

Companies that use the Deemed Profit System are taxed by Social Contributions on Revenues (local acronyms PIS and COFINS) according to the cumulative system, in which the rates are of 0.65% and 3%, respectively, whilst companies that adopt the Actual Profit System are generally subject to these contributions on the non-cumulative system, which establishes rates of 1.65% and 7.6%, respectively.

Supreme Court's position on the taxation of imports

By Juliana Alioti

The Brazilian Supreme Court reached a final and unanimous decision on Extraordinary Appeal (RE) 599,937, filed by a national importer who challenged the inclusion of the State Value-Added Tax (local acronym ICMS), and PIS and COFINS in the calculation basis of these same social security contributions levied on imports of goods as set out in Article 7, I of Law 10865/04.

The judges of the Supreme Court understood that the law had overstepped the limits provided for by art. 149, paragraph 2, III, 'a', of the Federal Constitution, as defined by Amendment 33/2001, which establishes the "customs value" as the calculation basis for social security contributions, without any other additions. In accordance with Brazilian Law, the concept of "customs value" shall be determined under the provisions of Article VII of the General Agreement on Tariffs and Trade-GATT 1994.

In practical terms, the customs value in Brazil corresponds to the price plus international insurance and freight (Incoterm CIF). Despite that, Brazilian tax law tends to overtax imported products so that the tax burden of goods produced in the country and that applied to imported goods is made even, which was the case of the Article considered unconstitutional by the Supreme Court.

With this decision, the Supreme Court signaled its understanding that giving equal treatment to imported and domestic goods would disregard the context of each of them, as the customs value of the imported goods already includes shipping, Additional Freight charge for the renewal of the Merchant Navy (AFRMM), insurance, Tax on Financial Transactions (local acronym IOF) on exchange, and other charges. Therefore, imported goods are burdened by taxes that are not levied on domestic goods.

Since the decision above was made on an Appeal, its effects are only applicable to the national importer who filed the action. This taxpayer will have the right to collect PIS and COFINS due on imports of goods based only on the customs value of the goods. He will be, furthermore, authorized to claim compensation overpayment on the five years preceding the filing of the suit, amount that will be updated by the Selic (federal interest).

Other taxpayers who wish to discuss the matter shall file their own actions seeking their legal right to exclude ICMS, PIS and COFINS in the calculation of these social security contributions basis levied on imports of goods, as well as to compensate their overpayment from the last five years. ◆

Chilean Tax Update

By Diego Riquelme Ruiz, Espinosa y Asociados, Abogados y Consultores, Santiago, Chile

Sworn statement to be filed annually with transfer pricing information.

The Internal Revenue Service has issued Exempt Resolution No. 14 of January 1, 2013, addressing the obligation to file a sworn statement with transfer pricing information on a yearly basis. The new element here is the obligation to file the Statement with regard to transactions carried out by related parties as of December 31, 2012, a scenario that was not expected, as all the signs were that the first Sworn Statements would be filed in 2014. The new Statement has the following characteristics:

(a) This regime applies first to taxpayers that as of December 31 of the reporting year belong to the Medium-sized or Large Companies sector and over the referred year have not carried out transactions with third parties not residents or domiciled in Chile, pursuant to the provisions

set forth in articles 38 and 41 E of the Income Tax Law. Also, those taxpayers outside the prior segments that have carried out transactions with persons residents or domiciled in a country or territory included in the list of countries or territories considered tax havens or preferential tax regimes issued by the Treasury Ministry.

(b) Taxpayers not included in the above mentioned segments, that over the reporting period have carried out transactions with related parties not residents or domiciled in Chile involving amounts greater than $ 500,000,000 (five hundred million Chilean pesos), or the equivalent in foreign currency.

(c) The term provided to file this sworn statement is the last business day of June for transactions carried out the immediately prior commercial year. This sworn statement is to be firstly file in fiscal year 2013 for the transactions carried out in 2012, therefore this sworn statement shall be filed by Friday June 28th.

(d) Failure to file this sworn statement as and when stated will be subject to a fine in cash that may range from US$ 205 to US$ 50,000 up to 15% of the owner's tax equity or 5% of its effective capital, whichever is higher.

If the sworn statement is deemed to be false, a fine ranging from fifty per cent to three hundred per cent of the unpaid tax will be applied, as well as ordinary imprisonment of a minimum to medium term (581 days to 3 years).

Clarification of the scope of article 15 of the Income Tax Law in light of Proposed Amendments Under Law No. 20.630

Law 20630, enacted in September 2012 establishes a new treatment applicable to goodwill and badwill resulting from the merger of two or more companies. In general terms, this law establishes the following treatment:

(i) *Goodwill:* The difference between the acquisition value of corporate rights or stocks paid by the purchaser and the owner's equity of the absorbed entity must be distributed proportionally among those non-monetary assets received, increasing their value up to their market value or the values normally charged or that would be normally charged in transactions of a similar nature, taking into account the circumstances of the market transaction. If there is a difference, the same will be deemed deferred expenses deductible over a period of up to ten consecutive years.

(ii) *Badwill:* The difference between the acquisition value of corporate rights or stocks paid by the purchaser and the owner's equity of the absorbed entity must be distributed proportionally among those non-monetary assets received, decreasing their value up to their market value or the values normally charged or that would be normally charged in transactions of a similar nature, taking into account the circumstances of the market transaction. If such difference is not completely used, the same will be deemed deferred income that must be recognized over the next ten commercial years.

This new regulation raised some questions of whether this new treatment applied to all types of mergers, i.e. proper or perfect merger, whereby the equities of two or more companies are transferred to the surviving entity and all assets and liabilities are contributed by the absorbed entity to the absorbing entity; and the so called improper merger, where the total corporate rights or stocks are held by a single person; or if this new regulation only affected those processes involving an improper merger.

In Ruling No. 075 of January 15, 2013, the Internal Revenue Service pointed out the requirements that need to be met for such goodwill - badwill value difference to occur:

(a) It must be a company merger, and

(b) The absorbing company must have made an investment in corporate rights or stocks in the absorbed entity. The total value of such investment must be lower than the total or proportional value, as appropriate, of the absorbed entity's owner's tax equity.

For the first requirement, the Law does not exclude proper mergers, therefore no mention is necessary. In addition, the second requirement is unlikely to occur due to the nature of those mergers.

For mergers by incorporation, however, the absorbing entity acquires all the assets and liabilities of one or more companies that are dissolved, and the former may have invested in corporate rights or stocks in one or more of those absorbed companies. Consequently, the Internal Revenue Service has concluded that such provisions regulating the effects known as goodwill and badwill apply to all types of mergers, regardless of their nature. ◆

The Investment Agreements and Tax Incentives through the Organic Code for Production, Commerce and Investments (COPCI)

By Cesar R. Holguin, Lawnetworker S.A. Asesores Legales, Ecuador

The COPCI grants several tax incentives and other tax benefits for new investments and new corporations.. Among them, the exception of income tax during the first 5 years, the deferral of the advanced payment of income tax during the first 5 years, custom duties reductions and other tax deductions.

To apply for these tax incentives and exemptions, the following requirements must be met:

(a) The Company or enterprise beneficiary of the tax benefits must have been incorporated AFTER the enactment of the law (January 2011) Existing companies before the enactment of the law do not qualify for the benefits.
(b) The investment must be made in any location in Ecuador, minus in Quito, (the Capital) and Guayaquil, (the largest city)
(c) Investors residing in Tax Haven countries do not qualify for these incentives.

The Government has released a list of the areas of activity and economic sectors considered as a priority for these type of investments:

(a) Production of fresh food, frozen and industrialized,
(b) Forest and Agroforestry and elaborated products
(c) Metal and Metallurgist sector
(d) Petrochemistry
(e) Pharmaceutical
(f) Tourism
(g) Renewable energies, including bioenergy
(h) Logistic and external trade services.
(i) Biotechnical and applied software.
(j) Sector of substitution of imports and development of exports.

An investor may opt for subscribing an INVESTMEN AGREEMENT with the Ecuadorian Government, whereby the clauses and stipulations of the treatment to be granted to the investment shall be detailed, mainly the tax stability for the term of the Agreement.

CONTENTS: The Ecuadorian Government will establish the general guarantees to the investment, as acknowledged in the Constitution, in the COPCI and its Regulations and the International Treaties ratified by Ecuador.

These guarantees to be included in the Agreement shall be honored by the Government during all the term of the Agreement.

The INVESTMENT AGREEMENTS must contain, at least, the following information:

(a) Description of the investors, their personal data and the origin of the resources to be invested,
(b) Description of the local enterprise beneficiary of the investment,
(c) Modality of the investment,
(d) Description of the project, with indication of the amounts of each investment, terms, and other useful information,
(e) Specific guarantees and rights granted to the investors and to the enterprise recipient of the investment, their commitments and obligations the assume.
(f) General guarantees granted to investors and the recipient of the investment pursuant the COPCI, the Constitutions and the International Treaties Ecuador has subscribed,
(g) Term of the Agreement and term for the tax stability and its scope,
(h) Specific treatment in the manner of incentives to be granted to investors and/or the company beneficiary of the investment,
(i) Details regarding the registration of the investment,
(j) Legal resources granted to investors and recipient of the investment, in case the Government defaults or fails, in any way, to comply with its obligations agreed therein.
(k) Procedure for the settlement of conflicts,
(l) Options and revocation process, suspension, or anticipated termination in case non compliance.

Terms and conditions of the Investments Agreements may be modified in writing only by mutual agreement of the parties.

TERM: Investment Agreements will have a duration of up to 15 years, with the option to be renewed for the same term, upon termination.

PROCEDURE FOR APPROVAL: Individual or Corporation interested in entering in an Investment Agreement, must file a petition to the Technical Secretary of the Production Sectorial Council, with the following information:

(1) Name, nationality, domicile and address of the investor,
(2) Name and relevant information of the Investor´s Attorney in Fact in Ecuador, or name of the Legal Representative, in case of juridical persons,
(3) Estimated amount and purpose of the projected investment, indicating the source of the economic resources and the investment plan in estimated or real amounts and terms. Also the estimated duration of the investment,

Any change with respect to the original amounts and estimated terms of the investment or of the project, will not affect the tax stability in any manner, unless it is proven that the information provided was false or simulated.

(4) Name, nationality, domicile and address of the recipient of the investment, with indication of its capital stock,
(5) A brief description of the projected investment,

The application shall be analyzed and evaluated by the Technical Secretary of the Production Sectorial Council, and within the term of 30 days will submit the project for approval to the Sectorial Council. After approval, the Investment Agreement shall be signed as a public deed before Notary. A copy of the Agreement shall be sent to the Central Bank.

SETTLEMENT OF DISPUTES: The Investment Agreement may include alternative methods for the settlement of conflicts, such as mediation and arbitration, to resolve the disputes between the Government and the investors. The drafting of the SETTLEMENT OF DISPUTES clause, shall abide by the applicable clauses of the Ecuadorian Constitution, the Mediation and Arbitration Law and the International Treaties duly ratified by Ecuador.

The stability of the tax incentives, guarantees and other rights and privileges granted by the Government to the investors shall be valid and in force for all the investors that signed the document, but also for those who later on adhered to it. ◆

Tax Reforms in Mexico

By Ignacio Sosa, Ortiz, Sosa, Ysusi y Cía, S.C., México D.F., México

The purpose of this article is to describe the most relevant tax matters contained in the tax reform approved for fiscal year 2013 to the Miscellaneous Tax Resolution and the Tax Code for the Federal District. On January 1 the Miscellaneous Tax Resolution for 2013 came into effect, underlining the clear intention of the tax authorities to continue legislating through this legal instrument to increase tax collections. There are significant amendments in the Tax Code for the Federal District in relation to refunds, which directly affect the net worth of taxpayers.

MISCELLANEOUS TAX RESOLUTION

Tariffs for Individuals

Tariffs are published to determine the income tax payable by individuals for the year 2013, but they have not been restated in relation to those published for the previous Miscellaneous Tax Resolution, which produces adverse economic effect for taxpayers, because the increase due to wage inflation is affected even more with the payment of tax.

Pursuant to the Income Tax Law, such tax should be restated when inflation exceeds 10% since the last restatement performed, which occurred in the year 2012..

Even though the tariffs published are not restated, based on the mechanism established in the Income Tax Law, we believe that there are sufficient grounds to apply the respective restatement, in compliance with the obligations expressly set forth in such law.

Securities Listed among the Investing Public

The concept of credit instruments which are considered as placed among investing public for purposes of the Income Tax Law and its regulations is modified to now establish that they will be those registered in the National Securities Registry and those listed on the International Quotations System of the Mexican Stock Exchange.

Consequently, the reference to the listing of securities of Exhibit 7 of the Miscellaneous Tax Resolution (commonly known as “Bursatómetro”) is eliminated, because its duration was not extended, and it was not included in the current Miscellaneous Tax Resolution.

Nevertheless, the reference to Exhibit 7 is still included in the rules related to the "Calculation of nominal interest for institutions engaged in the financial system” and “Shares of investment funds which are considered for purposes of personal savings accounts”; for this reason, we hope that such omission is cleared up by the tax authorities, because the application of these two rules is questionable.

Business Activities in Joint Ventures and Trusts

Since the 2011 Miscellaneous Tax Resolution, it has been established that business activities are not deemed to be performed through a trust or joint venture (Spanish acronym AenP), when the passive income is equal to or in excess of 90% of the total income earned by either of such figures.

The gain from the sale of participation certificates or securitized trust certificates issued under a trust for the acquisition or construction of real state (Spanish acronym FIBRA), as well as the gain on the sale of securitized trust certificates issued by trusts whose assets are fully invested in participation certificates issued by FIBRAS, are added as constituent items of passive income.

Furthermore, as of the year 2013 the option is established for taxpayers to consider that business activities are not performed through these figures subject to compliance with the requirements established for such purposes.

It is questionable the fact that the revenue used to determine the percentage of passive income should be the profit earned on the sale of the certificates, and not their selling price, because this reduces the percentage of passive income.

Royalties from Software Use

For the application of double taxation treaties, it is established that the software known as "commercial off the shelf" (COTS) is considered as a standardized or standard application, whose payments for their temporary use or enjoyment will not be considered as royalties, provided that such use is granted universally on a wide scale in the market.

It is established that standardized applications do not include those considered special or specific, which are understood to be those adapted in some way for the acquirer or user, or those designed, developed or manufactured for a user or a group of users, by the creator or by the person responsible for the respective design, development or manufacture.

It is also established that a standardized or standard application loses such status when it is subsequently adapted in some way by the acquirer or user, to be converted into a parameterizable application. This restriction is not applicable when the software is incorporated with another standardized or standard application.

Receipts for Installment Payments

Pursuant to the Federal Tax Code, in those transactions which are settled by means of installment payments, taxpayers are required to issue a tax receipt for the total amount and one for each installment payment received in relation to the consideration in question.

Now the taxpayers may elect to issue a single tax receipt which expressly states that the payment of the consideration will be made in installments, provided that it contains the total value of the transaction in question and the amount of the withheld and transferred taxes, while also itemizing, as the case may be, each of the respective tax rates.

A transitory provision establishes that such system will also be applicable to tax receipts issued as of January 1, 2012, without establishing a specific mechanism for such purpose.

Account Statements as CFD's

A transitory provision eliminates as of July 1, 2013 the administrative rule whereby account statements that fulfill the requirements to be considered as Digital Tax Receipts (CFD's) may be used as tax receipts.

This rule applied to account statements issued by credit institutions, securities firms, investment fund operators, distributors of shares of investment funds, regulated multiple purpose finance entities, retirement fund administrators, budget finance companies authorized to operate as savings and loans in accordance with the Popular Savings and Credit Law, as well as non-commercial companies that issue service cards.

For this reason, as of July 1, 2013 the account statements must fulfill the requirements applicable to Internet Digital Tax Receipts (CFDI's).

Receipts for Used Vehicles

Taxpayers may consider that they fulfill the requirement related to obtaining evidentiary documentation that supports the acquisition of used vehicles from individuals that are not taxed under the general or intermediate regime of business activities or that of professional activities, when they comply with the following:

(1) They enter into a written contract of purchase and sale;
(2) They indicate in the contract the domicile of the seller and obtain a copy of the identification of the seller of the vehicle; and,
(3) They keep a copy of the tax receipt issued by the person who sold the vehicle for the first time.

Information Requirements for SIBRAS

A new obligation is added for business corporations that fulfill the requirements to be considered as real estate construction or acquisition companies (Spanish acronym SIBRAS), whose shareholders intend to apply the tax incentive whereby they may defer the accrual of any gain generated from the contribution of real estate properties to such companies.

This obligation consists of filing a writ with the Tax Administration Service (Spanish acronym SAT) for each contribution, in which they indicate that the aforementioned incentive is being applied.

Such writ must be accompanied by different documentation and information related to the company that receives the contribution of the real estate property, and the shareholder who makes the contribution, and must be filed at the latest on the 17th day of the month immediately after that in which the contribution is received.

If the aforementioned letter is not filed, duly accompanied by the required documentation and information, or the filing requirement is not totally fulfilled, it will be understood that the aforementioned tax incentive was not applied.

In our opinion, the filing of the documentation required in accordance with this rule is practically impossible to carry out within the deadlines granted for such purposes, which thus discourages the use of the SIBRAS as a tax incentive.

Auditor's Tax Report of Holding Companies

The requirement is included to indicate in the report on the review of the tax situation of the holding company for 2012, whether the holding company reduced its equity percentage in a controlled company, a controlled company withdrew from tax consolidation, or the group ceased to consolidate for tax purposes, while also indicating any omission or noncompliance regarding the income tax deferred under the tax consolidation regime, in relation to those commonly known as Net Profits Account (Spanish acronym CUFIN) differentials.

The above is relevant if we bear in mind that under applicable tax provisions the amount that should be paid for the deferred tax is not clearly indicated, when the holding company fulfills one of the aforementioned assumptions, because the rule allowing for the deferral of tax derived from the CUFIN differentials does not establish whether such amount refers to the total amount of deferred tax or only that portion corresponding to the equity that was decreased of the controlled company or the portion of the controlled company, that withdrew from the tax consolidation group.

Auditor's Tax Report of Financial Statements

Filing dates are established for the auditor's tax report for 2012 through the SAT Internet webpage, by considering the first letter of the RFC (Tax ID number) of the taxpayer, based on the calendar indicated below:

LETTERS OF THE RFC CODE NO.	FILING DATE
From A to F	From June 14 to 19, 2013
From G to O	From June 20 to 25, 2013
From P to Z and &	From June 26 to July 1, 2013

It is established that when taxpayer files the auditor's tax report after the respective filing date, as established in the above calendar, it will not be considered as having been filed late as long as such report is sent at the latest on July 1, 2013.

Furthermore, it is established that companies which consolidate for tax purposes must file the auditor's tax report containing the respective information and documentation at the latest on July 15, 2013.

Option to Not File the Auditor's Tax Report

The form in which the taxpayers serve notice that they elect not to have their financial statements audited for

tax purposes is hereby modified. Now, such notice will be contained in the normal income tax return for the year in which such option is exercised, which must be filed within the deadlines established in applicable tax provisions.

Please bear in mind that filing the annual return after the legal deadline established will mean that the authorities consider that the aforementioned option was not exercised.

For the year 2011, taxpayers had to serve notice to the tax authorities by means of a writ, which was filed with the SAT at the latest on April 30, 2012.

The dates on which taxpayers will have to file the information other than the auditor's tax report, because they exercised the option, will be the same as those applicable to the filing of the aforementioned report.

RFC for the Financial System

The obligation is added for financial institutions to provide their RFC to other institutions in the financial system in which they have accounts opened or when they open accounts, so that the latter can confirm with the SAT that effectively the account-holding institutions are exempt from the payment of the IDE (cash deposit tax), for any cash deposits that they make in their own accounts, as a result of their financial brokerage or the purchase and sale of foreign currency.

TAX CODE FOR THE FEDERAL DISTRICT

Vehicle Possession Tax

The tariff is restated for the calculation of the vehicle use and possession tax in the specific case of new automobiles intended for the transportation of up to 15 persons, resulting in an increase of approximately 3% compared to the 2012 tax.

Subsidy for Vehicle Use and Possession Tax

The maximum value of vehicles is reduced from $350,000 to $250,000, so that individuals and nonprofit business corporations can enjoy the subsidy granted by the Federal District Government in the vehicle use and possession tax.

Tax Refunds

Up to July 23, 2012 the tax authorities were required to refund to taxpayers only the restated amount of the amounts unduly paid, when the latter had obtained a final favorable ruling in any legal action.

As a result of the reforms to the Tax Code for the Federal District in effect as of July 24, 2012, the tax authorities were required to refund taxpayers the amount of taxes unduly paid, as well as the amount of interest incurred from the date on which the payment was made.

As of January 1, 2013, the tax authorities are no longer obligated to pay the interest incurred on amounts paid unduly by taxpayers, when the latter obtained a favorable final ruling in any legal action. For this reason, currently the tax authorities are obligated to refund only the restated amount of the aforementioned amounts to taxpayers, without the payment of any interest.

We believe that the aforementioned reform constitutes a step backward in this regard, because it disavows the compensatory function of the surcharges, thus resulting in an adverse effect on the net worth of those persons who paid a tax that they did not actually owe.

It is questionable that taxpayers are obligated to pay surcharges for the untimely payment of their taxes or, as the case may be, for those invalid refunds.

We believe that the reform analyzed herein is unfair, because the taxpayers do not have the right to obtain the refund of a payment that was not owed, plus the respective surcharges, whereas the tax authorities are indeed authorized to determine the amount of the unpaid tax, plus the respective restatements and surcharges.

Please be advised that there is no transitory provision for those cases where a favorable verdict was obtained before the enactment of the reform and the undue payment was not refunded. ◆

Uruguayan Tax Developments

By Isabel Laventure, Ferrere, Montevideo, Uruguay

ICIR replaced by Agricultural Net Worth Tax

In February 2013, the Supreme Court of Justice declared unconstitutional the Tax on Concentration of Holdings of Rural Real Estate (ICIR) created in 2011. The Government reacted by sending two new bills to Parliament. The first bill derogates the ICIR retroactively and establishes reimbursement of amounts paid through credit certificates that can be used to pay other taxes. The second bill creates a Net Worth Tax on agricultural operations.

With this new tax, small land owners will continue to be exempt, others will start to pay and others will pay more than twice as much. Although the tax intends to levy rural real property in fact it affects all assets intended for agricultural activity.

Individuals or companies whose partners or shareholders are individuals will pay Net Worth Tax when the value of their rural real property surpasses US$ 1,164,000. They will also have to pay a surplus when the land registration value exceeds US$ 2,900,000. In sum, the Tax will have a rate of 1.5% but for bigger rural properties there will be a surcharge of 0.70% to 1.5%. Note that at the end of the day there will be taxpayers who will pay at a rate of 3%.

Several companies will pay as a single company

The rule establishes that two companies with rural real properties used for agricultural activities comprise an economic and administrative unit when same have a common interest regarding those activities. It requires several companies or individuals owning different rural real properties but handling same as a single operation to consolidate their properties fictitiously so as to determine whether same must pay the new Net Worth Tax and what the applicable surtax is. Then, each company will pay independently but taking into account the surtax applicable in view of the consolidated net worth amount.

New bill on Free Trade Zones

The bill establishes that new free trade zones (which would be called Special Economic Zones) for engaging in industrial activities may only be created outside the Metropolitan Area (40 kilometers away from Montevideo's center). Same must imply major investments, equal to or higher than approximately US$ 940,000,000, and investments equal to or higher than approximately US$ 135,000,000 that are intended to develop high technology content processes in the country.

The project also establishes limitations on performing new industrial activities in the existing free trade zones, restricting same to:

- Extension of industrial activities by existing users;
- Industrial activities that are complementary to the existing ones;
- Industrial activities in free trade zones whose authorization provides for specialized industrial production in predetermined areas.
- Industrial activities in free trade zones outside the Metropolitan Area established by the Executive.

As a novelty, the bill provides for the creation of a Special Economic Zone with theme areas classified by services. The theme areas by services, as well as the industrial areas, must be located outside the

Metropolitan Area and may provide health, entertainment and audiovisual services.

The bill prohibits Special Economic Zone's users engaging in substantive business activities outside the zones, for instance, sale, promotion, exhibition, delivery or goods and similar activities, and collections related to such operations associated with goods that are intended for the rest of national territory.

As another novelty, the bill establishes that when the prices agreed with Corporate Income Tax (IRAE) taxpayers located outside the area are different from those agreed as per standard market practices under the transfer prices regime, such difference may be attributed to the special economic zone user as levied income. In said event, the resulting tax obligations will not be included in the tax exemption established in favor of direct and indirect users of special economic zones.

Tax benefits for hydrocarbon exploration activities

Contractors under hydrocarbon exploration and operation agreements will enjoy the following benefits:

Tax credit for Value Added Tax (VAT) included in acquisitions of goods and services used for the activities in question. Exemption from Non Resident Income Tax (IRNR) for interest on loans granted to Contractors by entities abroad. Exemption from VAT, Tax on Transfer of Assets (ITP), Corporate Income Tax (IRAE) and Non Resident Income Tax (IRNR) on sale transactions regarding all or part of their equity (assets, rights and obligations) and exemption from all taxes on sale of capital partitions. Exemption from customs taxes on the importation and exportation of machinery, equipment, materials, tools, vehicles and other elements necessary for engaging in covered activities.

Subcontractors have the following tax benefits:

Exemption from IRAE and IRNR on income deriving from the covered activities. Exemption from VAT on the sale of goods and rendering of services related to the pertinent activities. Granting of credits for VAT included in acquisitions of goods and services intended to be a part of the cost of the activities included, provided the Subcontractors are IRAE or IRNR taxpayers. This credit is granted under the same terms for both subcontractors and exporters. Exemption from Net Worth Tax and rights allocated to the pertinent activities. Exemption from customs taxes on importation and exportation of machinery, equipment, materials, tools, vehicles and other elements needed for engaging in covered activities.

Tax benefits for the Biotechnological Industry

The Government resolved to grant tax benefits to the biotechnology industry. Biotechnology consists of technological applications that use biological systems and living organisms or their derivatives to create or modify products or processes for specific uses. The company must meet the following requirements in order to obtain the benefits:

Implementation of a development program for suppliers of biotechnological products and services, improvement of local input and enhancement of the commercial base, development of a supplier for the company with skills for exportation, technical collaboration for product development, financing of the supplier's investment and/or guarantee for bank loans and/or supply guarantee agreements that provide support for financing through appropriate mechanisms, financing of research projects applied to production, business training for the supplier, certification of quality.

The company must be a micro, small or medium enterprise (MIPYME), producer of biotechnological products and/or services, and not have engaged in any previous activity prior to submitting the application.

Exemption from IRAE is established for income deriving from promoted activities. ◆

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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