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GLOBAL TAX BRIEFING

Latin America

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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

Voluntary Disclosure and Tax Amnesty Program Moving Forward

The Argentine Executive Power and the Argentine Revenue Service ("ARS") have issued regulations for the Voluntary Disclosure and Tax Amnesty Program, enacted by Law No. 27,260 (the "Program"). Additional regulations clarifying operational matters are expected in the near future.

The Program has been strongly promoted by the administration of President Macri, as a way to gather revenue to pay for reforms in the Social Security system and align the country with the trends set by the OECD.

Among other issues, Decree No. 895/16 allows taxpayers to declare assets that are registered under the name of a third party with no tax costs attached, an option that has been considered as a valuable tool for tax planning purposes. However, ARS officers have issued a warning about the misuse of this option, expressing that the substance over form principle may be applicable (tax savings could be significant).

This decree was complemented with two resolutions issued by the ARS, regulating in detail both the Voluntary Disclosure and Tax Amnesty chapters.

On one hand, General Resolution 3919/2006 (amended by General Resolution 3934/16) regulates the Voluntary Disclosure chapter. The resolution modifies the December 31, 2015 threshold set for purposes of determining the residence and eligibility for the Program, and establish that taxpayers that acquire residency before July 22 (date at which the Law becomes effective) will also be covered by the benefits of the Regime.

In addition to that, General Resolution No. 3919 includes within the concept of real estate improvements to existing real estate or constructions that are still not completed, establishing that they qualify as assets that can be disclosed.

This resolution also regulates in detail the valuation methods applicable to each of the disclosed assets (real estate, liquid funds, cars, shares,

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Managing Editor
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Editors
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Carolyn Schiess

Production
Bhanupriya SG

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participations in foreign entities, etc.), and the steps to be followed for purposes of determining and cancelling the special tax applicable to disclosed assets. The ARS is considering the possibility of creating an additional mechanism for paying the taxes on foreign jurisdictions.

On the other hand, General Resolution No. 3920 (amended by General Resolution 3935/16) regulates the Tax Amnesty Program and confirms that the Regime is applicable to tax obligations due as of May 31, 2016, and that applications should be submitted between August 1, 2016 and March 31, 2017. General Resolution No. 3920 also regulates the procedure to cancel outstanding taxes connected with tax assessments that are being contested with the ARS or a Court.

Another highlight is the regulation issued by the Securities and Exchange Commission, regarding investment funds. Resolution No. 672/2016 establishes requirements that should be followed by open and closed investment funds created for purposes of capturing the funds disclosed under Section 42.b. of Law No. 27,260 (that is, funds that are destined to specified activities such as infrastructure projects, real estate, renewable energies or any type of investment destined to promote the real economy). While the details of the funds are still being discussed by the Government and local operators, it is expected that the acquisition of quotas in such funds will start to be offered in the near future.

Local jurisdictions, such as the City of Buenos Aires and the Province of Buenos Aires, have expressed their intention to enact their own voluntary disclosure and amnesty regimes, focused on provincial taxes. These regimes would exempt the taxpayer from paying local taxes associated with the assets disclosed under the Program, such as Turnover Tax and Gift Tax. The assistance of local jurisdictions in this regard is becoming a very important matter, since paying local taxes for undisclosed assets would deter taxpayers from joining the Program.

Possible Amendments to Income Tax Law

As a part of its efforts to update the Argentine Tax system, the Government is working on a bill to update the amounts of the Income Tax Law brackets, in an attempt to reflect real values and avoid the taxation of nominal earnings created by inflation. Although the inflation has been very high, the nominal amounts of the brackets have not been updated during the last 15 years.

Local media has informed that the Government intends to review the existing bracket values, and increase the maximum Income Tax rate from 35% to 40%, a decision that has caused concern among local commentators and could be considered as a confiscatory rate.

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While the details of the bill are still unknown, it is expected to be discussed in the near future along with the 2017 Budget Bill.

Argentina-Chile Double Tax Treaty Approved

The Argentine Senate has recently approved the Double Taxation Treaty ("DTT") celebrated with Chile on April, 2015. The new DTT replaced the treaty denounced on 2012, limiting many of the tax benefits that were granted under the text of the old treaty (i.e., use of holding companies).

The new DTT will be effective upon its publication on the Official Gazette, which is expected to take place in the near future. ◆

BOLIVIA

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

Certainty Obtained Regarding the Applicable Statute of Limitations Regime and Rulings Issued by the Constitutional Tribunal Supporting Such Assurance.

As mentioned in previous publications, pursuant to article 59.I. of the Bolivian Tax Code (Law No. 2492), before it was amended in the year 2012, the Tax Administration's statute of limitation to control, investigate, verify and assess taxes ended in a term of four (4) years.

Later, in the year 2012, Law 291, dated September 22, 2012, was issued in order to amend the previous article 59.I. of the Bolivian Tax Code (Law No. 2492) as follows: "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 that same year, specifically on December 11, 2012, Law 317 was issued and inexplicably eliminated the last part of the previous article. With that exclusion, a doubt was generated as to determine if the statute of limitations regime would increase in time beginning on the year 2012 and forward regarding those tax obligations and contraventions that had occurred in the year 2012, 2013, and so on.

On June 30, 2016, Law 812 was issued in order to once again amend the statute of limitations regime specifying that the Tax Administration's actions to control, investigate, verify and assess taxes is of eight (8) years. Such term could be increased two (2) years in case the taxpayer fails to register in the corresponding registries, incurs in tax crimes and/or carries out businesses or commercial relations with countries with low or non-tax rates. Pursuant to this modification, the Tax Administration´s competence to asses taxes was increased to eight (8) years and it is no longer progressive as once determined by Law 291. As no specific wording was introduced pursuant to its application, based on constitutional and legal principles, said term would be applicable beginning on the year 2016 and may not be applied retroactively.

That was not the case with rulings issued by both the regional and the national tax courts (Autoridades de Impugnación Tributaria) that ruled in favor of the Tax Administration´s understanding that laws 291 and 317 could be applied retroactively.

Fortunately, on the year 2016, rulings were issued by the Supreme Tribunal ratifying the impossibility to apply laws retroactively sustaining the principle 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 the principle of "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, taxpayers in Bolivia have finally obtained some clarity with respect to the application of the statute of limitations relevant to the Tax Administration´s power to assess taxes. In that regard, as of 2016 the tax authorities have the possibility to assess taxes for eight years and before 2016, the tax authorities have to abide by the existing statute of limitations existing at the moment, without being able to apply laws retroactively and always taking in consideration that any favorable law issued after could be applied retroactively in case it benefits the taxpayer. ◆

CHILE

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

Internal Revenue Service Presented to the OECD Next Steps to Control Use of Tax Havens

The Internal Revenue Service of Chile, presented in the last meeting of the Force Network International Joint Working Shared Intelligence and Collaboration (JITSIC) of the OECD, the techniques used to analyze databases published by the International Association of Journalism research, under the case known as "Panama Papers"

The meeting was attended by representatives of the Tax Administrations of over 30 countries. The purpose of this meeting was to share findings, identify opportunities for multilateral actions and to establish a collaborative framework for the interpretation of the information.

The Chilean agency was one of the exhibitors, along with other tax administrations as Italy and Canada.

Among the actions taken by the Chilean tax authorities we can find the following: risk analysis, subpoenas to more than a hundred taxpayers to investigate investments related to Panama Papers and sworn affidavits with the same purpose. Actions to be carried out during the second half of 2016 were also announced, which include intermediaries who facilitate such transactions and taxpayers who fail to comply with their tax obligations related with assets located abroad or income foreign source.

In this sense, a new meeting for the second half of the current year was agreed in order to continue the development of tax intelligence, and to continue efforts for multilateral action was agreed.

It should be noted that all these actions are mainly intended to strengthen fiscal intelligence for the prevention, detection and treatment of this type of international operations that are often implemented in territories or jurisdictions that are characterized by opacity in the delivery of information.

The Publication of All Circulars Related to the Tax Reform and Simplification Act was Completed

The Internal Revenue Service completed the preparation and publication of all regulations related to the operation of the law of adaptation and simplification of the Tax Reform. The process considered the issue of 20 new circulars –among new ones and modifications of existing ones- with instructions, explanations and practical examples to facilitate the proper implementation of the new legislation and its correct application and assimilation by taxpayers.

In this way and with the enactment of the legislation that addresses the choice between regimes semi integrated and attributed income, all the information required is now available for taxpayers for them to make a decision.

This resulted in the issuance of 50 circulars related to the

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Tax Reform (Law 20.780) between 2014 and 2015, and another 20 circulars directly related to the Simplification Law (Law 20.899), between February and July, 2016.

Regarding the latter, to facilitate the understanding of these circulars issued a call was made for taxpayers who have to choose a taxation regime until December 31 of the current year, to analyze in due course all the available information and to take the earliest decision as possible about the system which is best suited to its structure and needs.

Of the 20 circulars issued, two are new and 18 replace or modify other published last year in the context of the implementation of the Tax Reform.

One of the objectives of the Law of Simplification of the Tax Reform, was to improve the tax systems: 14ter, Attributed Income and the Semi integrated system.

The two new circulars establish a clear framework on taxation systems available for companies with requirements and deadlines for the adoption and retention in the regimes; associated tax records; Interaction between the systems; Application of standards for mergers and practical examples.

In this context, it is enhancing the facilities that deliver information technologies to simplify tax compliance of taxpayers. This is available on the website of the Service.

Taxes Applied to the Sale of Houses

According to major changes introduced by Law No. 20.780 on tax reform, regarding Income Tax, it is reported that the new tax regime on the sale of properties governed will rule from January 1, 2017.

Therefore, property disposals verified before January 1, 2017 and property disposals acquired until December 31, 2003, whatever their date of disposal is, are ruled by current regulations. This is generally speaking, unearned income, ie there is no payable income tax on the highest value obtained by individuals or partnerships formed exclusively by natural persons on the sale of real estate to the extent that it is not the result of negotiations or activities usually performed, that the properties do not form part of the companies that declare their actual income in the first category tax, through full accounting, and disposal is not made to a company or company related to the transferor.

In case the sale is made since January 1, 2017 by a natural personal not obligued to declare the first category tax on effective income, and excluding the cases of disposals between related parties, the higher value that results from the alienation of the property is not taxed if between the date of acquisition and disposal of property elapses less than one year. However, this release only applies regarding that part of the greater value that does not exceed UF 8,000 or USD 317,393, regardless the number of sales or properties that the taxpayer has.

Thus, if the highest value obtained in the sale of one or more properties, as a whole, exceeds the specified amount, the excess over 8,000 UF will be subject to tax in the year in which the excess occurs. In such an event, and according to the new text of the fourth paragraph of the letter b) of No. 8 of article 17 of the Law on Income Tax, the excess is taxed in the year in which the excess occurs in the manner prescribed in paragraphs iii) and iv) letter a) of No. 8 ° Article 17 cited above, or, in the case of natural persons domiciled or resident in Chile with a single and substitute tax-rate 10%, at the option of the taxpayer. In the latter case, the tax shall be declared and paid on the basis of income received in accordance to what is stated in Articles 65, Number 1, and 69 of the Law on Income Tax.

That is, it is possible:

a) Taxing the highest value, that is determined with global complementary tax or additional tax, as appropriate, on the basis of perceived or accrued income, at the option of the taxpayer, in accordance with paragraph iii), letter a), No. 8 ° Article 17 of the Law on Income Tax. Meanwhile according to paragraph iv), for the calculation of global complementary tax, taxpayers may choose

to apply the rules that are treated thereupon the same rule, as long as they declare on the basis of accrued income.

b) Alternatively, the application of the Single Tax of 10% on the amount received, in case of natural persons domiciled or resident in Chile.

Notwithstanding that the greatest value is generally determined by the difference between the value of acquisition and disposal of the real estate, the rule in comment can be considered as part of the acquisition value (thereby decreasing the highest value obtained on the disposal) the disbursements incurred because of improvements that have increased the value of the property, to the extent that they are declared and readjusted in the manner required by law.

Meanwhile, the third transitory article, paragraph XVI of Law No. 20.780, establishes special rules for the determination of the acquisition value of properties located in Chile acquired before the date of publication of the aforementioned law (that is, before September 29, 2014) and alienated since January 1, 2017, in case of natural persons that are not taxpayers of the first category tax that declare actual income.

The same transitional rule provides that alienations made by the aforementioned taxpayers subject to the rules of the Law on Income Tax (unearned income) in force since December 31, 2014 regarding the greater value that they obtain from the disposal of properties located in Chile that have been acquired until December 31, 2003.

A set of instructions relating to the taxation on the sale of real estate have been given through Circular No. 13 of 2014 and No. 70 of 2015, as well as Exempt Resolutions No. 127 of 2014 and No. 80 of 2015. A new Circular will be issued instructing on amendments introduced by Law No. 20.899.

Finally, and concerning the special rules for the determination of the acquisition value established in the third transitory article, paragraph XVI of Law No. 20.780, it should be noted that the deadline for communicating to the Service the appraisal of the market according to paragraph iii) of that transitional provision quoted, has been extended.

The original deadline, which expired on December 31, 2015, was extended until June 30, 2016, according to Article 8, No. 5, letter f., paragraph ii., of Law No. 20.899. This simplifies the taxation system on income tax and improves other tax provisions published by its inclusion in the Official Newspaper on February 8, 2016. ◆

COLOMBIA

By Cristina Stiefken and Federico Lewin; Lewin & Wills Abogados, Bogotá, Colombia

Tax Treatment of Interest Paid to State-Owned Funds Resident in Spain

Under the Treaty to Avoid Double Taxation between Colombia and Spain, interest arising in a contracting State and paid to a resident of the other contracting State may be taxed both in the State of residence of the payee and in the State where the interest arises. However, taxation in the Country of source is limited to 10%, provided that the beneficial owner of the interest is a resident in the other contracting State.

This Treaty also provides that if the beneficial owner of the interest is, amongst others, one of the contracting States, only the Country of residence has taxing rights in connection to the interest paid.

According to ruling No. 18557 issued on July 14, 2016 by the Colombian Tax Administration ("DIAN"), interest paid by a Colombian tax resident to a state-owned fund resident in Spain qualifies for the tax-free treatment in the Country of source and should, thus, only be subject to taxation in Spain. According to this

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interpretation, even if it the state-owned funds are not expressly mentioned in article 11 of the Treaty, interest paid to these funds should be free from taxation in the Country of source, as the effective owner of such funds is one of the contracting States (Spain).

Will the Tax Reform be a Long-Term Structural Tax Reform?

In 2014, the Congress of Colombia ordered the creation of a specialist group called "Tax Experts Commission", to prepare recommendations for a structural tax reform. At the beginning of 2016, Tax Experts Commission's recommendations were publicly discussed, focusing on the convenience or inconvenience of adopting them.

Although the new Tax Reform Bill is currently being prepared by the Government, it is not clear whether the recommendations of the Tax Experts Commission will, either completely or partially, be included in the Tax Reform Project or not.

The issue is that the Government will present the Tax Reform Project, right after the plebiscite for the approval of the peace agreements, which will take place on October 2, 2016. Furthermore, it must be added that the Government was forced to cut back on the projected economic growth, must lash back to a rising unemployment digits and faces a high cumulative inflation during 2016.

All these economical factors will probably be considered by the Government when weighing in reforms to VAT, elimination of the remaining welfare charges and reforming to the corporate income tax, among others. It is uncertain, but very likely, that the Government will use the upcoming Tax Reform as a mechanism to impact fiscal policy as a remedy to the short-term economic environment, probably affecting the original intention to adopt a long-term structural tax reform.

Simplification of Offshore Free Trade Zone Authorization

The eligibility requirements for a place to be authorized as a Free Trade Zone in Colombia include, among others, a previous concept of DIAN (to be issued within a 75-day term) and a previous concept of the National Planning Department –DNP (to be issued within a 1-month term).

Decree 1275 issued on August 4, 2016 removed the need of the previous concepts of DIAN and DNP as eligibility requirements for the authorization of Offshore Free Trade Zones. The removal of this requirement is only applicable for projects of Free Trade Zones that comprehend exclusively offshore areas and remains, therefore, in place for projects involving continental Free Trade Zones.

This measure aims to facilitate, simplify and expedite the process of authorization of Offshore Free Trade Zones.

Prohibition to Credit Balance of CREE Against Other Taxes Due, Declared Contrary to the Constitution

According to article 26-1 of Law 1607/2012, neither (i) the balance of Income Based Equality Tax ("CREE") could be credited against other taxes, advanced payments, withholdings, interest or sanctions owed; nor (ii) the balance of other taxes could be credited against CREE owed.

However, the Constitutional Court, in its ruling C-339/16 issued on July 28, 2016, declared that the prohibition to credit the balance of CREE against other taxes, advanced payments, withholdings, interest or penalties is contrary to the Constitution. Please bear in mind that the prohibition to credit the balance of other taxes against the CREE owed remains in force.

The particular requirements for crediting the CREE balance, according to this ruling are still uncertain, as only a press release has been published and the complete text of the ruling is still unknown.

Tax Treatment of Voluntary Alienation of Properties for Public Utility Projects

As a general rule, under Colombian Law, the alienation of property is taxed either as ordinary income

(subject to 25% corporate income tax plus 9% CREE), or as a capital gain (subject to 10% capital gains tax), depending on whether the asset sold is a fixed asset and has been owned for a minimum 2-yr. holding period or not. However, in order to ease the acquisition of properties for public utility projects, article 67 of Law 388/1997 established that the consideration paid for the voluntary alienation of such properties should not be considered as taxable income.

However, according to ruling No. 78977 issued by the DIAN on July 19, 2016, the special tax treatment for voluntary alienation of properties for public utility projects is only applicable for the part of the consideration that corresponds to emerging damage. Following this interpretation, the compensations for voluntary alienation of properties in the part that corresponds to a loss of future profits should be considered taxable income.

Although rulings issued by DIAN are only binding for DIAN officials and not for taxpayers, we recommend assessing the potential impact of this ruling when determining the tax treatment applicable to a voluntary alienation of properties for public utility projects on a case-by-case basis. ◆

ECUADOR

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

1. RULING FOR APPLICATION OF THE ORGANIC LAW OF SOLIDARITY AND CIVIC CO-RESPONSIBILITY TO THE RECONSTRUCTION AND REACTIVATION OF THE AREAS AFFECTED BY THE EARTHQUAKE OF APRIL, 2016

Decree 1073 (Second Supplement of the Official Registry No. 774, Monday June 13, 2016)

Solidary Contribution on the Remuneration

For paying this contribution, the validity will start from June 1, 2016 up to January 31, 2017, i.e., contributions will apply 8 months.

The taxable matter will be considered the remuneration of any employee who receives an income equal or greater than USD 1,000 per month.

- **Exemptions**
  - Individuals who provide their services or who are domiciled in the province of Manabí and Esmeraldas.
  - People who have been economically affected according to the conditions defined through resolution of the IRS.
- **Contribution Calculation**
  The calculation of the solidary contribution will be a 3.33% of the taxable matter equal or greater than USD 1,000 according to the number of months stated in the table provided by Law.

  (A) Fixed Remuneration
  Provided that the contribution to the IESS (by its acronym in Spanish) continues during the validity period (8 months) and it is equal or greater than USD 1,000, which will be multiplied by 3.33% and will be applied by the number of months stated in the table provided by Law.
  Withholding - Calculation.- The employee may request to use any value reported as a donation, as tax credit (TC) according to resolution issued by the IRS and such TC could not be greater than the total donation.

  (B) Variable Remuneration
  If the contributed value increases or decreases due to the variable remuneration, the following will be considered:

  (a) In order to calculate the contribution corresponding to the first month, the taxable matter will be multiplied by 3.33% whether it is equal or greater

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than USD 1,000 and the provision of the second subparagraph of the literal A previously mentioned regarding to cash donations will be considered.

(b) From the second month onwards, in order to determine the value to be withheld, the calculation should be made as follows:
1. The accrued monthly average income will be calculated from June, 2016 or the starting month of the contractual relationship up to the month in which the calculation is carried out.
2. The result of numeral 1 will be compared to the table established by Law, in order to determine the range of income and define the number of months to contribute.
3. Except for the adjustment established in the literal c) (further on) a withholding or payment is not applicable in the month in which the calculation is being made if the accrued monthly average income does not exceed the minimum base.
4. The result of numeral 1 will be multiplied by 3.33% and the number of rate of contribution (number of times that the contribution has been paid, whether consecutive or not).
5. It will be subtracted the amount of the paid contribution, accrued in previous periods to the result of the numeral 4 and it will be considered the provision of the second subparagraph of the literal A.

(c) The employer will verify in January, 2017 that the monthly average of the contribution during the validity period (8 months up to January, 2017) multiplied by the rate of 3.33% and by the number of months of the contribution according to the table established by Law whether it is equal or greater than the amount of contributions withhold and actually paid.

Solidary Contribution on Equity

(a) Residence
For the purpose of this contribution it will be considered as resident the individual who as of December 31, 2015 complies with the residence criteria established in the Art. 4.1 and 4.2 of the Internal Tax Regime Law.

(b) Exclusion of Assets
Assets which are not in attributable conditions, which subsequently to the natural disaster were not under conditions to be considered habitable or usable.

(c) Valuation
For valuation of assets it is necessary to consider the contents in the Resolution of the Internal Revenue Services No. NAC-DGER2008-1510.

For purposes of this contribution calculated on the basis of the value of capital representative rights, the proportional equity value (VPP in Spanish) will be considered even though the same are quoted on the stock exchange.

In the event of individuals who directly or indirectly have rights to receive contributions in non-for profit entities, such right will be considered part of the equity for calculation of this contribution.

(d) Substitute
The resident companies shall act as substitutes of the contribution on equity corresponding to the representative rights of its capital regarding to non-resident holders.

Solidary Contribution on Real Estate and Representative Rights of Capital Existing in Ecuador which are Owned by Entities with Residence in Tax Havens or Other Jurisdictions Abroad

This contribution will be made by every non-resident entity that owns real state and/or representative rights of capital in Ecuador.

- **Contribution of 1.8% on real estate or equity on Companies that directly belong to taxpayers domiciled in tax havens, or lower taxation juris-**

dictions, or when their residence is unknown.
- Real estate existing in Ecuador (cadastral valuation); and,
- Average equity value of representative rights of capital of companies with Ecuadorian residence.

- **Contribution of 0.9% on real estate or equity on Companies which do not directly belong to tax havens or lower taxation jurisdiction**
  - Real estate existing in Ecuador; and,
  - Representative rights of capital of companies with Ecuadorian residence.
  - This contribution will not be charged if the real estate is part of the declared equity of an Ecuadorian resident.
- **Exemptions**
  - The companies domiciled abroad which last level of property corresponds to an individual or it is included in the tax base for the solidary contribution on equity.
  - The individual who is the beneficial owner should have included in the solidary contribution return on equity information corresponding to assets and liabilities of intermediate companies located abroad.
- **Tax Base**
  The amount of cadastral valuations of 2016 of every real estate and proportional equity value of representative rights of capital corresponding to companies calculated as of December 31, 2015 will be considered to calculate this contribution.
- **Rights Valuation in Non-for Profit Companies**
  The companies that have right by any legal figure, direct or indirectly to receive their contributions in non-for profit entities, such right will be valued according to the amount that would have returned to the non-resident company under the assumption of liquidation of the non-for profit company as of December 31, 2015.

Solidary Contribution on Profits

- **Taxpayer**
  - The companies and individuals that pay income tax as well as mercantile trusts that generated profits during the tax period 2015 will pay this solidary contribution.
  - The companies which at the effective date of the law would have recorded in the Mercantile Registry the company's liquidation process will not be considered taxpayers of this contribution.
  - The individuals who would have obtained dividends, profits in the disposal of shares, financial yields or other similar shall pay this contribution whether they have or not a TIN.
- **Tax Base**
  - **Companies,** shall consider as tax base the taxable income before the reinvestment.
  - **Individuals,** the contribution will be declared and paid provided that the tax base is greater than USD 12,000.
  - In this case, in order to establish the tax base it will be discounted:
    - El The net income for remunerations under dependency relationship; and,
    - Income received by employees' profit sharing, of the taxable base of income tax of the tax period 2015.
  - **Legal representatives, leaders and administrators** will not calculate the contribution on income that have been taxed with the contribution on the remuneration.
  - **Trusts** exempt of income tax payment will calculate the contribution on profit of the period, once the employees' profit sharing of the tax period 2015 has been discounted.
  - **Taxpayers subject to single income tax for activities of the banana sector,** the tax base will be the accounting earnings generated in the tax period 2015 once the employees' profit sharing has been discounted, and in the case of individuals no subject to keep accounting records the profit will be obtained from the difference between income subject to the single income tax less expenses chargeable to such income.
  - **Taxpayers subject to special regimes of income tax,** the calculation basis of the con-

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tribution will be the taxable base registered in the income tax return of the tax period 2015.

General Rules Applicable to Solidary Contributions

- **Domicile**
  It will be understood as the place where the main economic activity is carried out, registered in the TIN, as establishment from April 16, 2016.
  If there is no a TIN, it will be considered the domicile registered in the National Electoral Council in the last electoral process.
- **Impact**
  The existence of impact will be considered in any of the following cases:
  (a) Impact on assets
  Provided that their value represents at least 10% of the total amount of assets.
  (b) Impact on the economic activity
  To the taxpayers with domicile in the provinces of Manabí and Esmeraldas as of April 16, 2016, when:
  1. The sales or net income of taxpayers obtained in May, 2016 that have presented a decrease of at least 10% regarding the monthly average of its income.
  2. Condone at least 25% of the portfolio to their clients who have been affected according to this norm.
  3. This benefit does not apply to employees who are related parties to the employer

Value Added Tax (VAT)

- **Discount of 2 percentage points of VAT**
  The taxpayers that transfer goods or provide services from establishments located in the provinces of Manabí and Esmeraldas to individuals who are final consumers.
- **Compensation for purchases and imports with 14% and sales with 12%**
  The taxpayers who have establishment located in Manabí and Esmeraldas may use as tax credit the discount of tax granted on its sales.

Reformatory Provisions

(1) **First.-** Following you will find the Fifth General Provision of the Application Ruling to the Internal Tax Regime Law:
Sixth General Provision.- Individuals who being obliged to file the equity return from 2009 or subsequently did not do it, or filed it wrongfully or incomplete, may file such return or a substitute return, if necessary, up to December 31, 2016, without generating for those taxpayers another penalty additional to the minimum fine corresponding to the late filing per each year, which will be paid at the time of filing the corresponding return.

(2) **Second.-** In the Ruling of Sale Vouchers, Withholding and Complementary Documentation that substitutes the penultimate paragraph of the article 6 by the following:

"If the taxpayer would have not filed and paid any return when corresponds, the Internal Revenue Services, will authorize to print the documents with a validity term of three (3) months, time in which the taxpayer shall comply with all pending obligations. Such term could be extended until twelve (12) months, in cases duly justified according to the conditions established by the Internal Revenue Services."

2. LIMITS TO THE APPLICATION OF AGREEMENTS TO AVOID DOUBLE TAXATION (CDI's)

(Official Registry No. 775, 14-VI-2016 / Internal Revenue Services - Resolution No. NAC-DGERCGC16-00000204)

(1) The maximum amount for automatic application of benefits of the CDI will be 20 basic non-taxed fractions of income tax for individuals, i.e. for 2016 would amount to USD 223,400 (USD 11,170 x 20), this amount is applied on the total payments or credits in accounts to the same supplier in the event that exceeds such

base, the rate of 22% of income tax should be withhold without considering the expected benefits in the CDI's.

(2) The requirements for deductibility and expense support and no withholding at source of income tax for the application of CDI's are maintained.
  (a) Certificate of Tax Residence duly translated into the Spanish language, legalized and updated each year.
  (b) Certificate of Expense Appropriateness.
  (c) To issue a purchase liquidation of goods and service provision per each sale voucher from abroad and this should be charged with the value added tax of 12%.
  (d) To issue a withholding voucher at source of income tax and value added tax.

(3) The penalty for not acting as withholding agent will be equivalent to the total amount of withholdings that should have been made plus interest caused by delay.

(4) In the case of operations made from January 1, up to June 30, 2016 and they would have exceed the 20 non-taxable basic fractions, the withholding will be applied to the transaction of July 1, 2016

July

(1) EXEMPTION TO TAX PAYMENT FOR ALL THE ECONOMIC SECTORS OF THE CANTONS OF THE PROVINCE OF MANABÍ
(Official Registry No. 788, 01-VII-2016 / Presidency of the Republic – Circular No. 1044)

All the economic sectors of the following cantons of the province of Manabí: Bolívar, Chone, El Carmen, Flavio Alfaro, Jama, Jaramijó, Junín, Manta, Montecristi, Pedernales, Pichincha, Portoviejo, Rocafuerte, San Vicente, Santa Ana, Sucre and Tosagua; and the province of Esmeraldas to the canton Muisne are exempted of the 100% of the value of advance payment of income tax prepayment for the tax period 2016.

(2) EXEMPTION TO TAX PAYMENT FOR THE DISTRIBUTORS OF CIGARETTES AND TOBACCO PRODUCTS
(Official Registry No. 788, 01-VII-2016 / Presidency of the Republic– Circular No. 1045)

Exonerate the payment of one hundred percent (100%) of the value of advance payment of income tax for the tax period 2013, to the distributors of cigarettes and tobacco products.

(3) **TO THE TAXPAYERS OF VALUE ADDED TAX IN THE LOCAL TRANSFER OF TANGIBLE REAL ESTATE AND THE SERVICE PROVISION**
(Supplement of the Official Registry No. 792, 01-VII-2016 / Internal Revenue Services – Circular No. NAC-DGECCGC16-00000011)

The following aspects need to be considered by the taxpayers of value added tax:

(1) In the local transfers of ownership of goods and services, the VAT taxable event is verified at the time of delivering the good or in the total or partial payment of the price or crediting in account, if the taxable event takes place from June, 2016, the collection agent will issue the corresponding sale voucher with 14% rate of VAT.

(2) Whereby, when the option selected by the collection agent in relation to the taxable event in the service provision happens from June 1, 2016, the agent will mandatorily issue the corresponding sale voucher with 14% rate of VAT, while in the event that the taxable event would have happened prior to June 1, 2016, the taxpayer shall issue the sale voucher registering the rate of 12%) of VAT.

(3) In the case of the service provision for work progress or stages, the taxable event is verified with the delivery of each certificate of work progress or stage, whereby

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the VAT rate effective at the delivery date of such certificate will be applied.

(4) In the transfer of goods or service provision under the figure of continual performance, the VAT rate in effect at the time of complying the conditions per each period will be applied.

(4) AMENDMENT TO THE NORMS FOR PREPARATION AND FILING OF THE TAX COMPLIANCE REPORT

(Supplement of the Official Registry No. 792, 01-VII-2016 / Internal Revenue Services – Circular No. NAC-DGERCGC16-00000282)

Resolution No. NAC-DGERCGC15-00003218 published in the Supplement of the Official Registry No. 660 of December 31, 2015 was amended and the norms to prepare and file the tax compliance report and its appendixes were established.

(1) The external auditors at the time of carrying out the aforementioned report shall comply by oath the fact of including in the opinions on the financial statements of the audited companies, an opinion regarding the compliance of these obligations as taxpayers. The inaccurate or groundless opinion will make them responsible and will cause that the General Director of the Internal Revenue Services requests to the control organisms as corresponds the application of the corresponding penalty due to lack of competence on their functions, without detriment of other applicable penalties according to the Organic Code of Criminal Procedure.

(2) The taxpayers who have not filed the tax compliance report corresponding to previous tax periods as of 2015 shall file such report according to the provisions of the present Resolution

(5) THE "FORM 107 A IS APPROVED – WITHHOLDING VOUCHER OF SOLIDARY CONTRIBUTION ON THE REMUNERATIONS"

(Supplement of the Official Registry No. 794, 11-VII-2016 / Internal Revenue Services – Circular No. NAC-DGERCGC16-00000276)

The Form 107 A will be generated by the withholding agent of this contribution (company or individual), once ended the contribution of the validity, through the Appendix of Dependency Relationship (Appendix RDEP).

The withholding agents shall report to this tax management even in those cases in which no withholding has been generated including every single data of the withholding voucher.

The release of information regarding the withholdings made by income tax under dependency relationship of the period between January 1 and December 31, 2016 and due to the solidary contribution on remunerations of the period between June 1, 2016 through January 1, 2017 will be made through the Appendix RDEP, the following schedule need to be considered according to the ninth digit of the TIN:

NINTH DIGIT OF THE TIN	DEADLINE
1 and 2	February 6, 2017
3 and 4	February 7, 2017
5 and 6	February 8, 2017
7 and 8	February 9, 2017
9 and 0	February 10, 2017

(6) THE FILING OF THE SIMPLIFIED TRANSACTIONAL APPENDIX IS AMENDED (ATS in Spanish)

(Supplement of the Official Registry No. 794, 11-VII-2016 / Internal Revenue Services– Circular No. NAC-DGERCGC16-00000278)

The simplified transactional appendixes (ATS) corresponding to information between June and December, 2016 will be filed by the taxpayers according to the following table:

PERIODS FROM 2016	FILING MONTH
June and July	Until October 28, 2016
August and September	November, 2016
October	December, 2016
November	January, 2017
December	February, 2017

The aforementioned will be filed up to the corresponding date in accordance with the ninth digit of the TIN, except information related to June and July.

NINTH DIGIT OF THE TIN	DAY OF THE SUBSEQUENT MONTH TO WHICH THE INFORMATION CORRESPONDS
1	10
2	12
3	14
4	15
5	18
6	20
7	22
8	24
9	26
0	28

In the event that taxpayers would have filed this appendix in the present form, prior to the effective date of this Resolution, the registered information will be accepted and will not require to apply any amendment to the appendix.

(7) THE NORM THAT ESTABLISHES THE TERM FOR FILING AND PAYING TAXES IS AMENDED

(Supplement of the Official Registry No. 794, 11-VII-2016 / Internal Revenue Services – Circular No. NAC-DGERCGC16-00000286)

(1) The filing of the Simplified Transactional Appendix for the periods March, April, and May up to September, 2016.

(2) Filing of the Equity Return up to October, 2016.

(3) Filing of the Tax Compliance Report up to November, 2016.

The presentation of information stated in numerals 2 and 3 will be made according to the ninth digit of the Taxpayers Identification Number (RUC in Spanish) or identity card, in the corresponding months as follows:

ACCORDING TO THE NINTH DIGIT OF THE TIN	DEADLINE (UNTIL THE DAY)
1	10
2	12
3	14
4	15
5	18
6	20
7	22
8	24
9	26
0	28

When a deadline coincides with holidays, it will be transferred to the following working day.

(8) TO THE ENTITITES WITH DOMICILE OR PERMANENT ESTABLISHMENT IN ECUADOR THAT ACT AS SUBSTITUTES IN THE PAYMENT OF TAX OBLIGATIONS

(Second Supplement of the Official Registry) No. 804, 25-VII-2016 / Internal Revenue Services – Circular No. NAC-DGERCGC16-00000012)

The Internal Revenue Services reminds to the companies and permanent establishments that act as substitutes in the payment of tax obligations the following:

The payment of the tax obligation, interest, fines and extra charges by the resident Company that acts as substitute due to legal mandate according to the provisions of the

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Organic Law of Solidarity and the Civic Co responsibility to the Reconstruction and Reactivation of the areas affected by the earthquake of April 16, 2016, do not constitute loan or advance payment of dividends being taxpayer of the contribution as responsible according to the provision of the articles 24 and 29 of the Tax Code.

Information contained in the present document is intended to spread information published in the Official Registry and it does not constitute an opinion and / or advisory. ◆

EL SALVADOR

By Romero Pineda & Asociados, San Salvador, El Salvador

This article will make reference to any tributary of fiscal change in force or to be in force in El Salvador, either through approval of a new law, unconstitutional case law, or amendment of a current tax frame in our country during the period up to September, 2016.

New Tributary Laws

The Congress has not approved a new tax law or made any amendments since our last report.

Unconstitutional Case Law

The Supreme Court of Justice has not issued any resolution with tributary effects to the general public since the last report.

Other News

According to the Ministry of Treasury the income tax collection has increased around 4%.

The Ministry of Treasury has submitted to Congress a fiscal collection law which will allow the Ministry of Treasury to collect taxes within the offices of the Ministry of Treasury without the need to initiate a judicial proceeding.

In July the Ministry of Treasury issued a notice to all authorized printing house authorized to print invoices and CCF´s as well to update the list printing houses authorized to perform such activity and the term for executing the same. ◆

GUATEMALA

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

During the last year, our jurisdiction has gained international attention as a place where corruption cases have been brought to justice and measures are being taken to fight these kinds of crimes. One of these corruption cases was directly related with the tax administration, reaching even its director, who is being prosecuted as a result. Because of that, one of the first changes implemented by the new government, besides the designation of a new head of the tax administration, was the proposal of a bill which would modify the Tax Code and the Tax Administration law. This bill was finally approved by Congress last August, and has been already published in the national Gazette, stating that it will enter into force gradually.

Among the changes that will enter into force in February, 2017, are those related with the restructuring of the tax administration (which is why the bill was passed under the umbrella of the law for strengthening the tax and governance transparency of the tax administration). One of these changes affects how the chief and board of directors of the tax administration are

designated, until the creation of a new administrative tax and customs court. Although these are important and relevant changes in our jurisdiction, we would like to highlight other changes, which we think are even more relevant because they are related to civil rights.

In the purview of civil rights, this law is a watershed because it finally demolishes a wall that used to be seen as indestructible; that of eliminating banking secrecy for tax purposes.

Indeed, before this law was approved, Guatemala was part of the jurisdictions in which the tax administration couldn't solicit taxpayers' financial information from financial institutions for tax purposes. To make this possible, the new law, among others, has modified the Tax Code and the Commercial Code, establishing that the tax administration is able to ask for Court authorization to obtain taxpayer financial information from financial institutions, when it has reasonable doubt regarding the activities or operations of the taxpayers and when it is for tax purposes, including tax control and audits. This request is without prejudice to any constitutional limitations taxpayers may bring regarding the use of private information.

Although we strongly agree that this information is vital in order to develop realistic tax audits, we find a couple of gaps in this regulation that we would like to point out:

(i) The law does not state with enough certainty the moment when the tax administration may ask for this information. For example, must the tax administration exhaust control or audit measures against the taxpayer before asking a judge for the authorization to obtain their financial information from a bank? Or, can it ask for this information without trying any audit measures first against the taxpayer, including trying to obtain taxpayer information held by third parties?

(ii) Along the same lines, the law does not regulate if the reasonable doubt formed in the audit of a particular taxpayer (if the previous audit was mandatory), can trigger reasonable doubt sufficient to ask for financial information of third parties that are not being audited. For example, if while auditing taxpayer "A", the tax administration forms reasonable doubt against taxpayer "B", can it still use these grounds to ask for financial information regarding taxpayer "B", despite not being the taxpayer formally audited?

These thoughts and questions are crucial because, according to the new law, the taxpayer (actually audited or a third party) is not part of a judicial process, and is only notified once it has finished, either to face criminal charges or administrative fines. In any case, we believe that reasonable doubt could only emerge after an audit is finished, or at least while it is ongoing. Otherwise, the reasonable doubt control measure could be abused because, due the nature of tax compliance, the tax administration could only detect a wrong compliance or a reasonable doubt once an audit is complete.

The law also modified the Commercial Code, establishing that all banks accounts must be registered in the taxpayer's accounting records, whether opened abroad or in Guatemala.

Noncompliance with this new obligation, according to the Tax Code, is now considered a resistance against the tax administration, and hence, could trigger criminal charges.

Lastly, another item we believe is not clear in the new law is the fiscal year from which the tax administration will be able to use this new control measure. In fact, the new law only establishes that their content must follow Article 15 of the Constitution, which establishes that the law cannot be applied retroactively. Therefore, it's not clear if the tax administration can use this new measure to request information for audits within the four year lookback period before February, 2017, or if it can only use it to audit subsequent fiscal years after the law's approval. Due to this lack of certainty, we think that the most probable scenario would be that the tax administration will use this new measure to audit fiscal years only within the four-year lookback period from the law's passage and not any time before that. ◆

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HONDURAS

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

Rental Housing Schedular Tax

The Presidential Commissioner of Tax Administration to all persons owning real estate intended for rental housing and whose amount exceeds fifteen thousand (15,000.00) monthly lempiras notifies that:

In accordance to Article 5 of Decree 17-2010, they are all required to pay the schedular tax of 10% of total income earned in the period 2015. The DEI-387 form found in DET Live must be used, with 106 tax code and concept of payment 1.

Failure to comply with this obligation generates fines and a monthly fee or fraction of a month three percent (3%), calculated on the tax payable, monthly accumulate up to 36%, subject to administrative action as appropriate.

Generate the Activation Tax to Taxpayer Documents

The Tax Administration informed taxpayers and printers that the query option is available on the website http://deienlinea.cpat.gob.hn, therefore they can view the information of printing authorizations of Tax Documents in the CPAT-924 and 927 forms.

Notification of the Non-Used Tax Documents.

The Presidential Commissioner of the Tax Administration informs all individuals, independent professionals, who to date have their tax documents expired, proceed to notify the non-use of the same, otherwise, will be considered as documents issued and that income was perceived. That will make the tax payer subject to the provisions of the Tax Code and other laws. In this regard the Presidential Commissioner of the Tax Administration advised to proceed to make such notification.

Also, it is in their knowledge that the tax authorities will be monitoring compliance of what is stated above.

The Presidential Commissioner of the Tax Administration is Hiring

Since the suppression and liquidation of the Revenue Executive Direction, a large amount of employees were dismissed, this was on February, 2016 and the decision was made as different reports were made in which the result of interventions ordered by the Executive Branch, became apparent that the Revenue Executive Direction showed deficiencies that prevented the entity from fulfilling its primary function of administering the tax system in order to maximize voluntary compliance by taxpayers.

Today, six months later, the Presidential Commissioner of the Tax Administration, has issued the announcement that they are hiring staff who will be working at the Presidential Commissioner of the Tax Administration which in a future will be called Service of Revenue Customs.

There are 800 job openings and whoever is chosen, will be subject to Psychometric and values tests, also before being hired, a reliability test will be applied.

The personnel they are looking for includes:

- Bachelor of Business Administration
- Bachelor of Business Management
- Bachelor of Economics
- Bachelor of Finance
- Bachelor of Public Accounting
- Computer Systems Engineers
- Industrial Engineers
- Bachelor of Services Market
- Bachelor of Psychology
- Bachelor of Pedagogy
- Bachelor in Science Communication
- Civil Engineers

- Architects
- Lawyers
- College interns with 80% of the approved materials

Those with degree and with fluent English will be positively evaluated. Nevertheless, this will not be exclusive. ◆

MEXICO

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

During the second quarter of 2016, the most relevant developments in Mexican tax regulations were the following: (1) the change in reporting duties regarding tax havens (preferential tax regimes); (2) the new jurisprudential criteria for subcontracting and outsourcing enterprises within Mexican territory; and, (3) the imminent start of electronic audits.

(1) Variation to the Reporting Duties on Tax Havens

According to Mexican applicable regulations, any income generated by a Mexican tax resident through a foreign legal figure or entity which is either not subject to tax or its effective taxation is less than 75% of the income tax due in terms of the Mexican Income Tax Law, should be deemed as a tax haven.

Having a tax haven entails: (i) the payment of income tax in advance, that is, before the actual distribution of income; and, (ii) the annual filing of an informative return before the tax authorities.

Until recently, taxpayers generating income from "black listed" countries with exchange of information agreement or through fiscally transparent legal entities or figures resident in countries with an exchange of information agreement and as long as income was recognized when received and not when distributed, were exempt from filing the aforementioned informative return.

As of August 1, 2016 and derived from the several facts surrounding the worldwide exchange of information, the exemption to file the above referred informative return was deleted from the applicable regulations.

From now on, they are liable for the filing of the informative return ordered by the law. It shall be done through electronic media, explicitly by the filing of Official Form 63 "Informative Return on Preferential Regimes", in which they will be required to disclose, at least, the following data:

(a) Total income generated by the foreign entity or vehicle.
(b) Tax profits or losses declared by such.
(c) Assets and kinds of assets used for the activities of the referred vehicles.
(d) Transactions performed with Mexican tax residents.

It is worth mentioning that the non-filing of the referred informative return may entail the commission of a criminal conduct.

(2) New Jurisprudential Criteria on Subcontracting (Outsourcing Services)

A federal court has stated through several court decisions that subcontracting personal services should not be considered as a VAT triggering activity. This conclusion was drawn by the application of labor law and the concept of "subordination" developed in such dispositions. This is a binding decision for all courts within the state of Jalisco.

From a tax perspective, one of the main effects derived from this criterion should be that the company rendering services would not be entitled to credit the VAT transferred to it as consequence of its services and as well the operative company receiving services

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would not be complying with the withholding tax of its employees.

From a labor stand point, the operative company receiving the services would not be complying with several labor law provisions derived from having this fictitious labor relationship with the employees of its services provider legal entity.

Another federal court (Puebla) has recently upheld a different criterion while settling a similar case. Consequently, the final decision on this issue will correspond to the Second Chamber of the Mexican Supreme Court, nowadays pending to be solved as a criteria contradiction.

(3) Beginning of Electronic Tax Audits

Given the general constitutional validation of electronic accounting as well as the electronic tax audit procedure issued by the Supreme Court in July, tax authorities have reported that the beginning of a set of electronic audits is bound to begin within the next few days.

This electronic tax audits will focus on very specific points, opposite to the tax audit procedures which have been conducted on a general review of the companies.

Some of the particularities of these electronic tax review are yet to be defined through practice. ◆

URUGUAY

By Flavia Silvestro and Maria Victoria Suarez; Ferrere, Montevideo, Uruguay

The following tax changes are currently being discussed in parliament, with the aim of containing the fiscal deficit, complying with international standards in terms of exchange of information, and maintaining the country's investment grade:

Intensification of Information Exchange with Tax Purposes

The bill is aimed at regulating the automatic submission of information to the Tax Authority by financial entities residing or with branches in the country. This way, the bill seeks to force such entities to submit on a yearly basis information about financial balances and income of holders of duly identified accounts as well as such account holders' tax residence.

Financial entities that fail to comply with these duties to provide information will be exposed to the payment of significant fines (up to approximately USD 220,000).

Identification of Final Beneficiaries

According to the regulation discussed, the identification of the final beneficiary of resident entities and non-resident entities with sufficient links with the country (who have permanent establishment or who have their actual management center for the development of business activities in Uruguay) will be mandatory. Such identification will also apply to those individuals who, directly or indirectly, have a minimum of 15% of the capital, of voting rights or who exercise final control over an entity (legal entity, trust, investment fund, or other patrimony of affectation or legal structure).

Non-compliance with these identification obligations may result in fines of up to USD 220,000 approximately, as well other penalties.

Disincentive to the Use of Companies with Low or No Taxation

The regulation proposed is aimed at discouraging the use of entities residing, domiciled, incorporated

or located in countries or jurisdictions with low or no taxation. In this sense, the system applied to the income from economic activities (IRAE), personal income (IRPF) and non-residents income (IRNR) is changed, as explained below:

Income resulting from the transfer of shares and other interest in entities with low or no taxation, when more than 50% of such entities' assets are directly or indirectly located in Uruguay, will be affected by new rates depending on whether the sale is carried out by a Uruguayan entity (25% over income obtained), an individual (an effective rate of 2.4% of the value of the transfer, whether the individual is a resident or not), or an entity with low or no taxation (effective rate of 7.5% over the value of the transfer).

Income obtained by entities with low or no taxation will be affected by a 25% rate. This increase does not apply to dividends paid by IRAE taxpayers, for whom the rate remains at 7%.

If the bill is passed, interests on deposits, obligations and other public debt securities, as well as income from participation certificates issued by financial trusts through public subscription and stock-exchange listing at terms of over 3 years will also be taxed at a 7% rate.

In addition, income resulting from import and export activities with related entities with low or no taxation will be considered Uruguayan income, and therefore will be affected by a 12% rate. Furthermore, income obtained will be presumed to be equivalent to 50% of the price and the transaction will be presumed to be celebrated between related companies, unless the taxpayer proves otherwise or submits the corresponding sworn statement.

On the other hand, rates applicable to income arising from real estate property located within the national territory obtained by companies with low or no taxation will be changed and such income will be affected by a global rate of 30.25%.

Entities with low or no taxation will start paying Property Tax at a 3% rate (the current rate is 1.5%) and the Corporations Control Tax.

Finally, the bill encourages the dissolution of entities with low or no taxation by exempting those carrying out their transfer before June 30, 2017 from the payment of income tax and property transfer tax, provided that the purchaser is not an entity with low or no taxation and that the closing of the registration before tax bodies is requested within the following 30 days.

Changes to the Transfer Prices System

Within the framework of the BEPS plan, the bill proposes the preparation of reports including information about multinational groups, such as: their structure, activities and functions carried out, assets used, source of funding, risks, intangible assets and financial and fiscal situation of the group.

International Tax Agreements

Following this trend, and within the framework of Uruguay's adherence to international standards, the country signed new international agreements related to the exchange of information and the avoidance of double taxation.

Double Taxation Avoidance Agreement with the Kingdom of Belgium (Belgium)

As per Law Nº 19.403, an agreement was celebrated with Belgium to avoid double taxation and prevent tax evasion in terms of property and income taxes.

The agreement follows the OECD model, being applicable to individuals or legal entities residing in one or both countries, and covers income and property taxes affecting income or capital wholly or in part.

Double Taxation Avoidance Agreement with the Socialist Republic of Vietnam (Vietnam)

As per Law Nº 19.404, an agreement was celebrated with Vietnam to avoid double taxation and prevent

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tax evasion. The OECD model was also followed. This agreement applies to individuals residing in one or both countries and covers income and property taxes.

Convention on Mutual Administrative Assistance on Tax Matters

Law Nº 19.428 approved the Convention on Mutual Administrative Assistance on Tax Matters, signed by Uruguay in Paris, France, on June 1, 2016, with the Reservations and Declarations made by Uruguay at the time of signing.

This Convention enables the automatic exchange of information between countries adhered to the convention, requiring the existence of a specific agreement in this sense.

According to reservations made by Uruguay, no assistance will be provided for the collection of tax debts or for precautionary measures, and no tax audits by foreign officers will be allowed.

International Tax Agreements

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VENEZUELA

By Juan Carlos Garantón-Blanco and Valmy Diaz Ibarra; Torres, Plaz & Araujo, Caracas, Venezuela

The following tax changes are currently being discussed in parliament, with the aim of containing the fiscal deficit, complying with international standards in terms of exchange of information, and maintaining the country's investment grade:

Our report for Venezuela includes the most relevant developments for the last three months (June-August, 2016), being the highlights (1) rules governing accounting of assets and liabilities in foreign currency for banks, (2) the exoneration of Value Added Tax for goods and services in connection with public transportation, and (3) recent developments in case-law with regards to the taxation of salaries and wages.

(1) Accounting of Assets and Liabilities in Foreign Currency for Banks

Order N° 074.16 issued by the Superintendence of Banking Institutions (the "Regulator") was published in Official Gazette N° 40.918, dated June 3, 2016, which set forth rules to be observed by banks for accounting of their assets and liabilities denominated in foreign currency. Pursuant to Order N° 074.16, profits resulting from assets and liabilities in foreign currency may only be offset by regulated banking institutions in Venezuela against losses derived from bonds issued by the Venezuelan Federal Government and other public institutions. The Regulator must previously approve said offset of losses, and may also approve incorporation of any remaining balance to the operational profits of the banks.

Order N° 074.16 came into force upon publication in the Official Gazette.

(2) VAT Exoneration for Public Transport Projects

Decree N° 2.448 issued by the President of Venezuela under which certain sales of goods and services to underground public transport projects are exonerated of Value Added Tax ("VAT") for five (5) years (hereinafter the "Decree") was published in Official Gazette N° 40,980 dated September 2, 2016. The Decree exonerates from VAT sales and services, as defined in the Decree, made and/or rendered to governmental agencies or public companies engaged in the administration, design, construction, installation, operation, maintenance, refurbishment and/or expansion of systems of public transport for persons such as subway, railroads, and buses.

Exonerated sales and services are as follows: (i) Services and materials for the construction of facilities; (ii) Carts and trains and their parts; (iii) Rails and all their parts; (iv) Parts and equipment required to provide electric energy; (v) Parts and equipment for control and communications; (vi) Parts and equipment for ticketing, and (vii) Parts and equipment for cooling and water pumping systems.

Vendors must include in their invoices reference to the Decree and the phrase "Exonerated Transaction", whereas purchasers must report each trimester to the Tax Administration all the exonerated purchases made. Purchasers that fail to report the exonerated transactions shall not be allowed to claim the exoneration in further purchases.

(3) Recent Case Law Developments Regarding Taxation of Salaries and Wages

- On June 30, 2016, the Constitutional Chamber of the Supreme Tribunal of Justice (TSJ) published Decision N° 499 (case: SINTRALCASA), ruling on the petition for interpretation of constitutional provisions submitted by the Union of Workers of Aluminio del Caroni, S.A., and on August 2, 2016 published Decision N° 673 (case: Reinaldo Guilarte), both dealing with the taxation of salaries and wages under Article 31 of the Income Tax Law.
- In 2014 Article 31 of the Income Tax Law ("ITL") was amended in order to expand taxation to any and all salaries and wages, irrespective of its nature and frequency of payment. The new wording of the provision was repeated in the amendment of the ITL in 2015.
- In both decisions the TSJ confirmed that only salaries paid on a regular basis (salario normal) are subject to income tax, whereas non-regular payments made by employers (e.g. production bonuses) shall not be reported as taxable income by employees nor be subject to income tax withholding by employers, as was the case prior to enactment of the ITL of 2014. TSJ expressly stated that the above had been already ruled by the tribunal on decision N° 301 dated February 27, 2007, case: Adriana Vigilanza, on the grounds of breach of constitutional provisions and principles of income taxation, which stands as the leading case regarding taxation of salaries. ◆

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ABOUT US

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

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

OUR MISSION

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

OUR VISION

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

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