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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 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.

BEPS in Latin America: A Brand New Beginning

By: Miguel A. Valdes, Founding Partner, VD & T International LLC

On October 5th, 2015, the OECD released the final Base Erosion and Profit Shifting ("BEPS") Action Plan presumably to correct problems with the current international tax rules. This Action Plan should be approved shortly by the G-20 Countries.

In Latin America, a number of countries have already publicly stated that new laws and procedures will be implemented in the near future in a manner which is somewhat consistent with the recommendations of the BEPS Action Plan. To date, significant developments can be seen in Argentina, Brazil, Chile, Colombia and Mexico.

In addition, we believe that the release of the final BEPS Action Plan clearly marks a brand new beginning in the world of international taxation. Moreover, we also believe that we will soon be hearing: "Life before and after BEPS" as well as "Life before and after FATCA." There is no question that these main developments will affect significantly the manner in which multinational corporations will be doing business around the globe in the near future.

Furthermore, even though the BEPS recommendations call for a consistent approach by the various countries, the reality is that some jurisdictions, especially in Latin America, will probably introduce unilateral laws and pronouncements that will lead to higher costs for tax compliance and a lot more proposed audit adjustments and disputes.

Also, the Latin America tax authorities will certainly pay greater attention to the substance of a transaction, examine more carefully complex transactions and attack structures that do not reflect an underlying economic and commercial reality. This is, of course, contrary to the laws of the countries, which generally follow a more form-oriented approach.

Because of all of the above-mentioned uncertainties, multinational corporations will likely need to change their corporate structures and the

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way in which they must do business around the world. There is no question that for a vast majority of multinational corporations these new requirements will have a substantial impact on their bottom-line results.

It is also imperative that multinationals develop new structures and different ways to do business that will provide a much-needed flexibility to be able to react quickly to all the future changes coming from around the world.

We will be following the developments in Latin America and will be discussing them in a regular manner in the future in this publication. ◆

ARGENTINA

By Rosso Alba, Francia & Asociados Abogados

Argentina is going through an electoral year, and the activity of Congress and other legislative bodies has not been significant. However, local Courts have been prolific during the last quarter, analyzing different issues that are of interest for tax practitioners.

Intercompany Loans

In *Sofrecom Argentina* S.A. (06.09.2015), the Federal Tax Court revoked a decision of the Argentine Revenue Service ("ARS") and validated the deduction of exchange losses made by the taxpayer.

In this case, the company had entered into intercompany loans with its holding company. The characterization of these loans had been contested by the ARS, claiming that the amounts provided to the Argentine company were a capital contribution. This was not accepted by the Tax Court, who considered that the taxpayer had sufficiently proved its intention to enter into a loan with the lender.

In order to do that, the Court weighed on the existence of different indicia, such as (i) the registration of the loan in the company´s books, (ii) interest rates that reflect fair market conditions, (iii) the issuance of invoices and, (iv) the repayment of the loan through different installments. All of these, the Court said, are elements that prove the existence of a loan.

In view of the above, the Court criticized the abuse of the "substance over form" principle, admonishing the ARS to limit its application if that implies the expansion of the taxable base by analogical interpretation.

In *Lexmark International de Argentina* S.A. (08.11.2015), the Federal Administrative Court of Appeals confirmed a decision of the Federal Tax Court,

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validating the deduction of exchange losses made by the taxpayer.

The Court rejected the characterization of the operation as a capital contribution, considering that the losses (and the underlying liabilities) were the result of genuine commercial operations. In effect, the Court highlighted as a defining matter the fact that the company demonstrated that its liabilities were mostly originated in the import of technological goods (printers, etc.) that were closely related to its commercial activity.

Furthermore, the Court weighed on the fact that the company cancelled the loans. This was considered as proof that the amounts provided by the lender were not meant to be a capital contribution.

Finally, the Court reflected on the issue that the "substance over form" principle requires that the operation be classified as "manifestly inadequate" as a condition for its recharacterization. In this sense, the ruling concluded that the absence of certain contractual formalities (i.e., special terms for payment, payment of compensatory interest, bank bonds, etc.) is not a sufficient reason to contest the validity of intercompany operations.

Inflation Adjustment

Given the high inflation levels registered by the country over the past few years, the discussion about the application of inflation adjustments remains a current discussion topic. It should be noted that under the current regulations, the application of an inflation adjustment mechanism is prohibited for tax purposes.

In *Central Piedra Buena* (07.16.2015), the Federal Administrative Court of Appeals confirmed the lower court´s decision. The decision ordered the application of an inflation adjustment mechanism in order to reimburse all income tax paid in excess by the taxpayer.

The Court of Appeals based its decision on the guidelines set by the Federal Supreme Court in *Duggan Trocello* and *"Candy"* rulings, concluding that as long as the property rights of a taxpayer may be affected, the inflation adjustment mechanism should be applied. As a consequence of that, the Court sustained that a decision on this matter should consider whether a substantial portion of the company´s revenues are absorbed by taxes, and whether the net income determined by the application of tax regulations adequately reflects the effective revenues obtained by the company.

In Consolidar ART (08.11.2015), the Federal Supreme Court confirmed the previous decisions that ordered the reimbursement of income tax paid in excess by the taxpayer, following the guidelines set in *"Candy"*.

However, the Supreme Court partially revoked the ruling under discussion and expressly stated that any losses arising as a consequence of the application of the inflation adjustment mechanism cannot be carried forward to subsequent years.

In *Bodegas Esmeralda* (08.18.2015), the taxpayer filed a motion with the Federal Court of the Province of Cordoba, requesting the application of the inflation adjustment mechanism for its 2015 income tax returns.

After reviewing the case, the Court ordered the ARS to abstain from initiating any kind of claim against the company (whether administrative, judicial or criminal actions) and to allow the taxpayer to file its 2015 income tax returns adjusting its revenues by the application of the wholesale price index.

It should be mentioned that this decision makes reference to a recent fiscal year (as opposed to most of the rulings related to this issue, which analyzed the 2002 fiscal year). Although this is not a final decision, this case will be closely followed by commentators and practitioners, given its potential consequences. ◆

BOLIVIA

By BUEVARA & GUTIÉRREZ S.C.

Bolivia has issued transfer pricing rules by means of Law 549, dated July 21, 2014. In order to regulate the above-mentioned law, Supreme decree No. 2227 was issued on December 31, 2014. The Tax Administration also issued specific administrative regulations on April of 2015 (Board of Directors Resolution No. 10-0008-15) in order to normalize the previous regulations and therefore specifically determine the taxpayer's formal obligations with regard to the new regulations recently enacted such as: (1) determining the scope of the mandatory transfer pricing studies to be filed, (2) the filing of special tax returns, (3) additional information to be presented by taxpayers, (4) dates to be complied with and (5) penalties in the case of noncompliance.

The law basically provides that in order to readjust or revalue transaction's values between related parties, any of the following methods could be employed:

1) Comparable Uncontrolled Price Method.
2) Resale Price Method.
3) Cost Plus Method.
4) Profit Split Method.
5) Transactional Net Margin Method.
6) Publicly quoted Prices in Transparent Markets Method.

In a case where it is not possible to determine the value of the transaction using any of the previous methods, a different method may be applicable pursuant to the nature and economic reality of the operation.

Among other obligations, the recently issued regulations on transfer pricing rules provide that taxpayers that carry out commercial and/or financial operations with related parties are bound to file a transfer pricing report in Spanish and expressed in the local currency (Bolivianos). Transfer pricing reports have to minimally include:

(i) An Index;
(ii) an Executive Summary (detailing the related parties, the type of relationship, the operation or operations carried out and the chosen transfer pricing method);
(iii) a Functional Analysis (detailing the parties background, a description of the organizational and corporate structure of the group and the companies that comprise it, a detail of the type or relationship, a description of the economic activities, commercial strategies, detail of the transactions, agreements and contracts binding them, financial information);
(iv) An Economical Analysis (detailing and quantifying the operations carried out with related parties, description and justification of the method employed, selection and establishment of non-controlled comparables carrying out similar operations, establishment of value difference ranges and others); and, finally
(v) Conclusions.

The obligation to report transactions with related parties relies on those taxpayers that carry out operations with related parties:

(a) That amount to a sum equal to or higher than Bs. 15.000.000.-(approximately $us. 2.155.172) in a fiscal year. These taxpayers should file a specific tax return issued for this purpose and present a transfer pricing report.
(b) That amount to a sum equal to or higher than Bs. 7.5000.000 (approximately $us. 1.077.586) and lower than Bs. 15.000.000.- (approximately $us. 2.155.172) in a fiscal year. These taxpayers should file a specific tax return issued for this purpose.
(c) That amount to a sum lower than Bs. 7.5000.000 in a fiscal year, should preserve the necessary documentation required to dem-

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onstrate that the operations carried out with related parties were subject to market prices or subject to the necessary adjustments.

In light of the transfer pricing regulations issued in Bolivia, taxpayer concern and uncertainty associated with such regulations is evident and expected to increase in coming years as the newly enacted norms are perceived as a new mechanism to raise revenue in the country. In that regard, it is expected that the current government will direct tax authorities to order extensive transfer pricing audits in the future in order to take complete advantage of the norms. This increase in transfer pricing audits is supported by the fact that the tax administration has made a considerable investment in its transfer pricing resources, mainly by training its personnel with local and international courses in transfer pricing regulations. ◆

BRAZIL

By MACHADO ASSOCIADOS ADVOGADOS E CONSULTORES

AGREEMENT BETWEEN BRAZIL AND THE UNITED STATES IMPLEMENTATION OF FATCA

On September 23, 2014, Brazil entered into an agreement with the United States whereby both countries reciprocally undertook to work together in order to create an effective infrastructure for automatic sending of information on certain accounts maintained in financial institutions located in their territories and establish equivalent exchange levels.

The agreement is part of the measures adopted by the United States to fight against tax evasion by taxpayers (individuals and legal entities residing in or citizens of the United States) and discourage the use of accounts and investments abroad for the deposit of funds not reported in that country, by means of the Foreign Account Tax Compliance Act, known by the acronym FATCA.

In the context of FATCA, an information reporting system to be monitored by financial institutions was created in relation to certain accounts. According to this system, financial institutions should provide information to US tax authorities. With the execution of the agreement, account information must be provided to the Brazilian Federal Revenue Service (RFB), which must, in turn, pass it on to the US tax authorities.

The agreement was possible due to the existence of another Information Exchange Agreement previously executed with the United States (Tax Information Exchange Agreement – TIEA) for the exchange of tax-related information. However, it is important to note that the two types of agreements should not be confused, as they have different provisions and scopes.

According to the more recent agreement related to FATCA, each country must annually obtain and transfer to the other country the relevant information to the administration and enforcement of their respective internal laws.

The United States should report the following data concerning accounts held by residents in Brazil with the financial institutions resident or located in the US territory: (1) name, address and Individual or corporate taxpayers' registration number (CPF/CNPJ); (2) account number; (3) name and identification number of the financial institution; (4) gross amount of interest paid on current and savings accounts, bank deposit certificates (CDB) etc.; (5) gross amount of dividends paid by US source; and (6) gross amount of other income sources of the United States paid or credited into the account (with a few exceptions). The obligation covers data from 2014.

In return, for 2014, Brazil should, in general, obtain and report the following data to the United States: (1) name, address, tax identification number (US TIN) of the US taxpayer, individual or legal entity, holder

of the account; (2) account number; (3) name and identification number of the financial institution; and (4) account balance at the end of the calendar year (December 31, 2014) or on another date if appropriate (if the account has been closed during the year, the balance as of the time before the closing should be informed).

For 2015, Brazil must obtain and report the following information, in addition to that already listed above: (1) the total gross amount of interest paid or credited to current and savings accounts, CDBs etc.; (2) the total gross amount of interest, dividends and other revenues triggered by stocks, bonds, debentures etc.; and (3) information relating to any other account and investment, in addition to that already mentioned that the holder might have in its name.

As of 2016, in addition to the information already listed above, Brazil must obtain and report the total amount of gross revenues from the sale or redemption of investments, for example, which have been paid or credited in respect to the total investments made.

In principle, information will not be required regarding accounts held by individuals with a balance equal to or lower than US$ 50,000, or held by legal entities with a balance equal to or lower than US$ 250,000. However, the financial institution might choose to send information about all or a specific group of accounts, including accounts that are not required to be reported.

The RFB already collects such information, at least in part, by means of the DIRF (Withholding Income Tax Statement) and the DIMOF (Declaration of Information on Financial Transactions), which financial institutions located in Brazil must prepare and file.

Recently, the RFB also has regulated the obligation to provide information on financial transactions taking place from December 1, 2015, by certain financial institutions and other legal entities, by means of the e-Financeira, to be (i) generated, (ii) digitally signed and (iii) transmitted by these entities through the Public Digital Bookkeeping System (Known as SPED). Exceptionally, transactions for the months of July to December of 2014, concerning information and entities defined by the agreement between Brazil and United States regarding FATCA, must have already been reported.

The information required by the agreement will be exchanged within nine months after the end of the calendar year to which the information provided relates, and the RFB has already stated that the information for 2014 should be provided by the countries by September 30, 2015.

CHANGES TO THE ICMS TAXABLE BASIS IN TRANSACTIONS WITH SOFTWARE IN THE STATE OF SÃO PAULO

On September 30, 2015, State Decree 61522/2015 was published in the Official Gazette of the State of São Paulo revoking State Decree 51619/2007, which introduced a specific calculation of the State Value-Added Tax (ICMS) taxable basis in transactions with computer programs ("software").

In accordance with article 1 of Decree 51619/2007, the taxable basis of transactions with software corresponds to twice the price of the software package. With the repeal of this rule, the taxable basis in transactions with computer programs will become the transaction amount, pursuant to the general rule provided for in article 37 of the ICMS regulation in the State of São Paulo. In this case, the transaction amount will include the price of the software and of the computer support, and other amounts charged the purchaser.

The change, which will come into force in January 2016, will certainly affect the technological sector with the increase of the tax burden levied on the sale of software in the State, which will be caused not only by the increase in the amount of ICMS being paid by the companies in the sector, but also by the impact that this tax will have on the PIS/COFINS, in view of the fact that it is also part of such contributions taxable basis (this issue awaits judgment at the Supreme Federal Court – STF – as to its constitutionality).

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The impact of the change on the taxable basis in transactions with software will be even greater for companies that sell programs via download, because, currently, such transactions are not subject to the payment of the tax, due to the absence of a taxable basis.

According to the State Treasury Secretary found in the Official Letter sent to the State Government combined with Decree 61522/2015, the repeal aims to "adapt, as of January 1st, 2016, the ICMS taxation on such transactions to that adopted in other States".

The discussion regarding the classification of mass-produced software as goods –a standing accepted by the STF – has been going on for a long time, but with strong opposition of the courts, who tend to consider its selling as a clear "assignment for use". The issue of the legal classification of software becomes more and more important in view of the change to the ICMS taxable basis in the State of São Paulo.

State Decree 61522/2015 will enter into force on the date of its publication, but will become as of January 1, 2016. ◆

CHILE

By ESPINOSA & COMPAÑIA, ABOGADOS LIMITADA

Tax reform in Chile, passed in 2014, amended the regulations governing international taxation. Some of these amended regulations entered into force in 2015 while the rest of them will be in force in 2016. This article addresses two issues: (1) the new regulations that establish the circumstances in which a country or territory will be deemed as low or no tax country or territory; and (2) the introduction of regulations intended to control "passive income" triggered abroad, also known as controlled foreign corporation rules (CFC).

Article 41H

New article 41 H that entered into force in January 2015 introduced the criteria to determine which territories or jurisdictions are preferential tax regimes. To that end, those countries or territories should meet at least two of the following requirements:

(a) Whenever the effective tax rate on foreign source income is lower than 50% of the additional tax rate in Chile, which is currently 35%, i.e., when the effective taxation on foreign source income is less than 17.5%. For countries with progressive rates, the "average rate" should be used, which is the average of the minimum and maximum rate.

(b) Territories or jurisdictions that have not entered into an agreement with Chile for the exchange of information for tax purposes or whose agreements are not in full force and effect.

(c) Territories or jurisdictions lacking any legal rules or regulations enabling the tax authority to inspect transfer pricing transactions that substantially follow the OECD or UN guidelines.

(d) Those countries, territories or jurisdictions with limitations that prohibit their tax administrations from requesting information from taxpayers or using and providing such information to other countries.

(e) Countries, territories or jurisdictions considered by the OECD or UN as preferential tax regimes.

(f) Those taxing exclusively the income sourced, generated or produced in their territories.

The Internal Revenue Service is the agency in charge of determining which countries, territories or jurisdictions meet at least two of the above-referenced requirements to be included in the relevant list. Nonetheless, the newly introduced regulation expressly excludes OECD member countries.

The object of this regulation is to discourage Chilean taxpayers from carrying on transactions with people,

companies or entities resident or domiciled in territories or jurisdictions included in the list since their operations will be subject to even more and tighter restrictions than the controlled foreign corporation rules, excess indebtedness or thin capitalization rules, or the permanent information with respect to investments abroad rules. Likewise, withholding rates in Chile will increase as a result of payments on account of royalties and/or remunerations and payments abroad for professional or technical services.

Article 41G

Article 41 G of the Income Tax Law governs the new passive income control rules or controlled foreign corporation rules. According to the law, people or affected patrimony resident or domiciled in Chile that directly or indirectly control foreign corporations must consider as accrued or received in proportion to their equity interest the passive income received or accrued by those entities abroad.

Passive income is the income obtained without performing a commercial or productive activity, for example, income derived by an investment company from the profits generated by the companies or other instruments where it has investments. These are investment or holding companies situated abroad and controlled by a Chilean company. The purpose of the new law should be kept in mind, which is the recognition in Chile of such passive income received or accrued by foreign entities, as well as the imposition of the relevant taxes; these rules do not affect income from operating companies that have no passive Income. Therefore, new article 41 G will apply if the following two assumptions occur: (a) a Chilean taxpayer controls a foreign entity as explained below; and (b) the foreign entity obtains passive income directly or through a succession of controlled companies. In such a case, the Chilean taxpayer must consider the passive income as its own in order to calculate its taxable base for the income tax.

For these purposes, a Chilean taxpayer will be deemed to control a foreign company when alone or together with a group of people: (A) owns directly or indirectly 50% or more of the capital, is entitled to profits or has voting rights in the foreign company; (B) may appoint or have appointed or remove the majority of directors or administrators of the company abroad, or unilaterally amend its articles of association; (C) regardless of the percentage or attributes referred to above, the foreign company is a resident of or domiciled in a "low or no taxation" country, according to the Chilean regulations; and (D) the Chilean taxpayer has an option to purchase rights under the terms mentioned in letter (A) above.

The new law provides for a list of specific items that are to be considered passive income, some of which, in addition to profits or dividends, are the following: (1) interest and movable property, except those from regulated banks or financial institutions; (2) royalties; property or right investment income; and (3) income from the lease of immovable property, unless the foreign entity's line of business is, in fact, the leasing of such property. ◆

COLOMBIA

By Lewin & Wills ATTORNEYS AT LAW

VAT-Exclusion for Public Private Partnerships

On August 10, 2015, the Colombian tax authorities confirmed that contracts that are developed through a public private partnership ("PPP") mechanism are VAT-excluded (not taxed with VAT), as long as the contract developed qualifies as a public procurement contract.

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New Foreign Held Assets Return to be filed between October 8th and October 22nd

Between October 8th and October 22nd, Colombian tax residents (both natural persons and legal entities) who pay income tax in Colombia with respect to their worldwide income, had to file for the first time the yearly Return of Assets Held Abroad.

This filing does not entail the payment of a tax, but implies the disclosure of all assets held abroad by the taxpayer, providing information in connection to their value and the jurisdiction where they are located.

VAT Exempt Sales in cities close to the border with Venezuela

According to Decree 1818/2015, the sale of food, shoes, construction materials and appliances will be VAT-exempt (zero-rated) in 40 cities close to the border with Venezuela between September 15th and December 31st, 2015.

Treaties Update

The treaties to avoid double taxation between Colombia and both South Korea and India became fully in effect as of January 1st, 2015.

The treaties with Portugal and the Czech Republic entered into force this year, but will be in effect for the most part only as of January 1, 2016.

Additionally, it is worth highlighting that on June 25, 2015, Colombia and France signed a treaty to avoid double taxation. This treaty still has to be approved by the Colombian Congress and Constitutional Court in order for it to enter into force.

In summary:

DOUBLE TAX TREATIES	
Treaty	**State**
Decision 578 Andean Community (Bolivia, Ecuador, Peru, Colombia)	In force (2005)
Spain	In force (2008)
Chile	In force (2010)
Switzerland	In force (2012)
Canada	In force (2012)
Mexico	In force (2013)
South Korea	In force (2014)
India	In force (2014).
Portugal	In force (2015)
Czech Republic	In force (2015)
France	Signed (2015). Pending approval by the Congress and the Constitutional Court.

Lastly, it is important to note that this year Colombia and the US entered into an Intergovernmental Agreement (IGA) for the implementation of FATCA. This implies that Colombia and the US will automatically exchange tax information every year, on September 30th. ◆

EL SALVADOR

By ROMERO PINEDA & ASOCIADOS

NEW TRIBUTARY LAWS

There has been no new tax law yet approved by Congress. However, during the final weeks of September, there was a discussion in Congress on a bill introduced by the government through its Ministry of Treasure requesting enactment a new law, which creates a new tax contribution to support the government in

activities against crime. This tax contribution has the structure of a charge of a 10% tax rate applicable to telecommunication services and devices.

This initiative is not expected to be a single one, since this tax is part of a more complex structure to finance public activity against crime, and rehabilitation of criminals programs, which are intended to be implemented by the government with the funds from the new tax. Some ideas being discussed to fund these programs are a new tax to companies' profits and a real estate tax which was originally conceived some years ago, and has been revisited in public discussions recently. Tax initiatives are subject to close scrutiny, even within Congress, since the political opposition requires the government to reduce its expenditures before approving any new taxes.

The Public Security and Coexistence Decree, as the new tax on telecommunications is called, establishes as taxable activities the following:

(a) Payment of telecommunications services, landline and mobile
(b) Payment made for a lease or any other form of contract of cable TV subscriptions, either wired or wireless, or any other.
(c) Payments received for leased or any other form of contract of data transmission between two data points
(d) Transfer by any form, importation or final introduction of technologic devices, terminals or equipment and accessories that allow using the services referenced above, including but not limited to landlines, mobile services, tablets, equipment, SIM cards, and other accessories, either given in lease or use; excluding computers, servers and televisions
(e) The withdrawal or movement out of inventory of technological devices, terminals or equipment and accessories that allow the use the above-referenced services, whenever such devices are part of the assets of service providers, as well as self-transfers to be used by telecommunication companies, its partners, directors, executives and personnel of the company or their relatives.

Finally, according to this tax initiative, this tax, when paid, will not constitute a deductible expense for income tax purposes for the individuals affected by the contribution.

AMENDMENTS.

An amendment relating to customs has been approved in order to eliminate an existing charge for non-intruding inspections made at customs, which applied to packages or merchandises with a declared value below US$ 1,000. Although this decree was approved by Congress, it has not been approved by the President, nor published in the official gazette, and therefore, it has not yet entered into force (as of the time of this writing), but is expected to enter into force soon.

CONSTITUTIONAL CASE LAW

On June 10, 2015, a constitutional lawsuit was filed before the Constitutional Chamber of the Supreme Court of Justice, and it has been already admitted. The lawsuit is based on defects on the approval process for the tax reforms(Tributary Code) approved on July 31, 2014, based on a possible breach of constitutional provisions.

Some of the amendments included in the tax reforms being challenged before the Courts are methods of control over taxpayers to be applied by the Ministry of Treasure, such as regulation of POS devices, the use of OCED terms for review on transfer price issues, the power of tax authorities to exchange information with other jurisdictions, the statute of limitations to initiate tax reviews and inspections; and the legality of publications of the names of taxpayers, who are in default of their tax obligations.

OTHER NEWS

On June 1, 2015, El Salvador signed the Convention on Mutual Administrative Assistance in Tax Matters

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of the OECD; the most powerful single instrument for international tax cooperation within the International Community. El Salvador´s commitment to fight international tax evasion by increasing transparency is strengthened by this legal instrument. El Salvador is the third Central American country to sign the Convention, following Costa Rica and Guatemala. ◆

MEXICO

By Turanzas, Bravo & Ambrosi

During the third quarter of 2015, two tax matters of interest arose in Mexico: (1) a new tax treaty with Turkey and (2) reforms to the Regulations of the Tax Services Administration ("Servicio de Administración Tributaria").

Tax Treaty with Turkey

As of July 23, 2015, a tax treaty entered into force between Mexico and Turkey; it was published in the Official Gazette of the Federation on July 17, 2015.

Some salient features of the treat include:

Dividends May be taxed by the State in which the payer resides but will not exceed 5% in a case where the effective beneficiary is a company (other than a partnership) that has the direct ownership of at least 25% of the capital stock of the dividend paying company. It should be noted that under Mexican Income Tax Law ("ITL"), dividends are in general subject to a 10% withholding rate.

Interest. A maximum of 15% income tax withholding rate is provided whenever the effective beneficiary is a resident of the other contracting State. The ITL provides several tax rates that may go up to 40%.

Royalties. The treaty provides for a 10% income tax withholding rate, while the ITL specifies a 25% tax rate.

SAT Internal Regulations.

Energy reform (in effect since 2014 and several related regulations were published during 2015) marked a landmark in Mexico's governmental stance on this matter.

The energy reform allows the participation of private parties (and Mexican public companies) in upstream activities; these economic agents may organize in corporate vehicles as permitted by the applicable mercantile laws; hence, the associational legal mechanisms are broad and not specifically limited.

Notwithstanding the reform, the ownership of oil and solid, liquid and gas hydrocarbons in the subsoil remains exclusively with the country; the contracts' value for exploration and exploitation may be recorded for accounting and/or financial purposes.

The several types of contracts contemplated by the reform entail specific taxes and other consideration payments, creating obvious consequences for ascertaining the profitability of these agreements.

Accordingly, on August 24, 2015, it was published in the Official Gazette of the Federation the new Regulations of the Tax Administration Service ("Reglamento del Servicio de Administración Tributaria") through which was created the General Hydrocarbons Administration ("GHA"), which will overview the specific tax rules addressing this sector.

The GHA is empowered to review the activities of the taxpayers conducting the following activities: (a) Inspection and superficial exploration, (b) Exploration and extraction, and (c) Commercialization.

The powers that the GHA consist of:

- Issuance of regulations
- Issuance of rulings requested by taxpayers

- Tax audits
- Processing and resolving tax reimbursements and off-settings
- Communication with foreign (non Mexican) tax authorities for exchanging information ◆

PERU

By Rubio, Leguía, Normand & Asociados

New Exemptions to the Regulations of the Income Tax Law

On September 12, 2015, new regulations were published in the Official Gazette the Law N° 30341 through which cash flow and securities market integration are encouraged. All income arising from the transfer of equity interests, until December 30th, 2018, are exempted from income tax, as long as they are performed through a centralized negotiation mechanism overseen by the Securities Market Superintendency ("SMV" by its initials in Spanish).

This exemption will be allowed as long as some duly specified requirements are met. More regulatory detail is needed.

The Law will be effective on January 1st, 2016 ◆

URUGUAY

By FERRERE

Introduction of Primary School Tax for Rural Real Estate Owners

In August 2015, the Uruguayan Parliament enacted Law No. 19,333 introducing the annual primary school tax on rural properties. Revenue from the tax will be allocated to rural education.

This tax had been levied on rural real estate until 2002, when it was suspended due to the sector's low profitability caused by the economic crisis that hit Uruguay.

Owners of rural properties with over 300 acres, a Coneat 100 land productivity index, and in operation will be taxpayers. Farmers who are owners of land with less than 300 acres and a Coneat 100 index are exempt of payment of this tax.

The tax basis amount will be the value of the property as determined by the government, taxed at progressive rates ranging from 0.15% to 0.30% according to the property value. The properties having a value under UY$130,155 will not be taxed.

Revenue from this tax will be used to fund food provided to children in rural schools, school building repairs, security, cleaning and maintenance, school transport and didactic outings, among other items.

Tax Authorities Include New Companies in E-Invoicing

On July 30 Uruguayan tax authorities enacted resolution No. 3012/2015 establishing the progressive inclusion of taxpayers in the e-invoicing system. The tax administration created a calendar for including taxpayers in the system based on their net revenue computed in Indexed Units (Unidades Indexadas, or UI).

Since 2011, Uruguay has been implementing the regime for the documentation of transactions using Electronic Tax Receipts (CFE). This process facilitates

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the exchange of information between buyers and suppliers and replaces the paper and manual-based invoice with an electronic one.

Until now, taxpayers could join the e-invoicing system either upon notification by tax authorities via certified letter and e-mail or voluntarily applying for inclusion.

It is foreseen that at the end of 2019, all taxpayers with sales exceeding 305,000 UI will be included in the e-invoicing regime.

The Indexed Unit value to be used for calculating income is the value published on the first day of the calendar year in which the income was generated.

non-taxable minimum becomes subject to withholding in the specific month. To avoid this problem, Law No. 19,321 establishes that the IRPF applicable to vacation pay and the 13th month's salary are to be calculated on a separate basis.

National Budget Bill

Current provisions provide for a reduction of 18% in the real estate tax applicable to rural properties. The national budget bill proposes elimination of that reduction in the case of rural real estate exceeding 200 hectares with a Coneat 100 index. This elimination will mean a 20% increase in the burden of this tax for rural real properties.

Calendar year in which the fiscal year end occurs	Net Income (UI)	Net Income (USD)	Deadline to apply for e-invoicing
2015	More than 30,000,000 UI	More than 3,175,000 USD	01/06/2016
	More than 15,000,000 UI	More than 1,588,000 USD	01/12/2016
2016	More than 7,000,000 UI	More than 725,000 USD	01/06/2017
	More than 4,000,000 UI	More than 415,000 USD	01/12/2017
2017	More than 2,500,000 UI	More than 260,000 USD	01/06/2018
	More than 1,500,000 UI	More than 156,000 USD	01/12/2018
2018	More than 750,000 UI	More than 77,000 USD	01/06/2019
	More than 305,000 UI	More than 31,500 USD	01/12/2019

Through this system, tax authorities have real-time access to taxpayer transactions, obtaining more precise and complete information and also decreasing tax evasion.

Personal Income Tax for Workers

Personal Income Tax (IRPF) is an annual tax with progressive rates ranging from 0% to 30%. Under labor law, workers receive vacation pay and a 13th month salary bonus. Those payments may increase the applicable rate in a specific month. That could mean that a worker whose salary does not reach the

Tax on foreign advertising services

Technical services rendered abroad to local companies are subject to a 12% withholding. Uruguayan law refers to technical services without providing any type of definition. However, the bulk of tax professionals are of the opinion that providers of advertising and publicity services do not fall within the concept of technical services. The national budget bill includes a modification that expressly includes advertising and publicity as technical services.

Documentation of expenses

Costs and expenses can be deducted for corporate income tax purposes only if duly documented. There was much controversy as to the meaning of "duly documented" when referring to out-of-pocket expenses such as bus tickets and public transport costs. Tax authorities alleged that such expenses must be documented in an official invoice, while tax advisors claimed that out-of-pocket expenses are duly documented per commercial practice. The national budget bill includes a change that expressly states that out-of-pocket expenses must be documented in an official invoice, or otherwise cannot be deducted for corporate income tax purposes.

End to Untaxed Short-term Transfers

Current Uruguayan tax legislation permits transfer of federation rights (e.g., soccer players) without being subject to almost any local taxation; it is provided that the athlete is not a legal Uruguayan tax resident and only when his or her rights have not been registered for a period exceeding 60 days, enabling the player to represent the owner-entity in competitions.

This provision will be eliminated, however, if the National Budget Bill is finally approved. Under the bill of law, any income derived from the lease, usage, assignment of use or transfer of title to federative rights, image rights, and similar rights related to players registered with a local entity will be subject to taxation in Uruguay. Consequently, such transactions will be subject to income tax.

Taxation on Business Platforms

In accordance with the National Budget Bill, all entities directly or indirectly engaging in commercial operations involving transport or lodging services rendered in Uruguay, provided they are offered by non-authorized individuals or companies, will be jointly and severally liable with the service provider for all tax obligations and related penalties, when applicable. This liability will give rise to tighter control of the legal status of providers using different platforms to offer such services, with a view to preventing application of the shared liability regime. ◆

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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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