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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 Rosso Alba, Francia & Asociados, Buenos Aires, Argentina

Tax Disclosure and Amnesty Law, New Regulations Attempt to Boost Applications to the Regime

The Argentine Revenue Service ("ARS") enacted different regulations in order to clarify legal loops and entice taxpayers to join the Tax Disclosure and Amnesty Regime created by Law No. 27,260 (the "Regime").

In this regard, the following regulations should be considered:

(i) General Resolution 3944/2016 allows the taxpayer to disclose life insurance plans bought or paid in other countries, without paying any penalty that may be imposed by the Argentine Superintendency of Insurance.

(ii) General Resolution 3947/2016 extended the term to disclose undeclared cash until November 21. This decision allowed taxpayers to open a special account with an Argentine financial entity, and deposit undeclared cash paying the Regimen special tax (the "Special Tax"). The Government disclosed that the funds amounted to 21 billion USD. This was considered by the Government as the first milestone of the Regime.

(iii) General Resolution 3951/16 extended until March 31, 2017 the term to file the "data confirmation" affidavit. This is of great importance for taxpayers that are in good standing, since it allows them to use a Personal Assets Tax exemption and in principle, blocks the ARS from auditing past fiscal years.

(iv) As of today, the Government is analyzing the possibility of issuing an Executive Decree that would further regulate the Regime and allow taxpayers to deduct outstanding liabilities (such as loans, etc.) if the companies do not qualify as passive entities. For the time being, this Decree has not been published on the Official Gazette, and its final wording is unknown.

The next great wave of disclosure applications is expected to take place by the end of this year, a moment when the Special Tax will be increased

to 15%. As of today, over 10 provinces joined the Regime and enacted local regulations exempting the disclosed assets from outstanding provincial taxes.

Amendments to Income Tax Bill Introduced to Congress

The Argentine Government and opposition leaders initiated talks to amend the Income Tax Law.

The bill introduced to the Argentine Congress creates additional tax brackets (taxation will vary between 2.5% and 35%, in order to create a more progressive tax system), increases the non-taxable base in 15%, eliminates deductions (such as those created for the support of parents or grandparents, while setting an age limit of 18 years old for siblings deductions), and updates the deductible amounts for other deductions.

The bill not only proposes updates to the amounts of the tax brackets for FY2017, but it also proposes to update the tax brackets amounts that will be applicable as from FY2018 and FY2019, in an attempt to create predictability for the taxpayer. These amounts have not been updated since FY1999, and the effect of the inflation has caused serious distortions on the effectiveness of the Income Tax system.

Many of these issues are under discussion, and the final wording of the amendment will be decided after the debate in Congress. While the idea of creating a maximum 45% Income Tax rate appears to have been discarded, there are issues like inflation adjustment that seem to have been overlooked by the bill. As of today, the financial restraints suffered by the Argentine Government are an obstacle for its consideration.

Argentina and Switzerland Sign Bilateral Notice for the Exchange of Information Under CRS

On November 16, 2016, Argentina and Switzerland signed the bilateral notice required for purposes of exchanging information under the OECD Common Reporting Standard.

Switzerland has been a traditional destination for undeclared Argentine funds in the past, and the Government has been actively pushing agreements with different offshore centers in order to obtain information about accounts opened by Argentine taxpayers. Furthermore, Argentina intends to join the OECD, and is adopting different measures towards that end.

Under the terms of General Resolution 3286/2015, Argentine banking entities will begin to collect financial information as from January 1, 2017. Argentina was an early adopter of CRS and should begin to exchange information on September, 2017.

Tax Court Questions the Use of Secretary of Agriculture Export Prices as a Transfer Pricing Paradigm

In *"Vicentin SAIC s/apelación Ganancias"* (Chamber B, Tax Court, September, 2016), the Tax Court overturned an Income Tax assessment made to the taxpayer on the basis that the Secretary of Agriculture export prices could be used as reference prices, but did not necessarily replaced the prices agreed by the parties.

In this case, the Argentine Revenue Service ("ARS") assessed Income Tax to Vicentin for the FY, regarding the 2001/2002, on the basis that Vicentin´s export prices did not reflect "arm´s length" conditions because the operations under scrutiny did not follow the reference prices set by the Secretary of Agriculture ("SA").

The Tax Court overturned the assessment and concluded that the prices set by the company were agreed following standard market practices, in accordance with the arm's length standard. Furthermore, the Court opined that the SA´s prices were merely a reference price that could not be used to discredit operations celebrated under market conditions. ◆

Brazil

By Cristiane M. S. Magalhães and Stephanie Makin; Machado Associados Advogados e Consultores, São Paulo, Brazil

Implementation of BEPS in Brazil

As a member of the G20 and a key partner of the Organisation for Economic Co-operation and Development ("OECD"), Brazil has started to implement some of the 15 Actions identified by the Base Erosion and Profit Shifting ("BEPS") Project.

Out of the minimum standards to which G20 countries and OECD members have committed to implement[1], Brazil has regulated Action 14 – Dispute Resolution in November, 2016 and shown sure signs of implementing the Country-by-Country ("CbC") Report provided for under Action 13 – Transfer Pricing Documentation still in 2016.

Normative Instruction of the Brazilian Federal Revenue Service ("IN RFB") 1669, of November, 2016, provided for the application of the Mutual Agreement Procedure ("MAP") under the Double Tax Treaties ("DTTs") signed by Brazil. According to this regulation, individuals and legal entities residing in Brazil may request a MAP before the RFB in case Brazil or both Brazil and the other contracting State have taken measures that lead or may lead to improper taxation under the DTTs.

For the purposes of requesting a MAP, taxpayers must comply with several requirements, such as (i) provide information on the applicant, local and foreign tax authorities, tax period and taxes involved, the measures taken by tax authorities that lead to a different tax treatment than the one provided in the DTTs, administrative or judicial procedures discussing the same matter and any advance pricing arrangement (APA) and rulings; (ii) file all the documentation related to the taxpayer's request; and (iii) follow the MAP request deadlines (2 years for the DTTs with Argentina, Belgium, Ecuador and Portugal; 3 years for the DTTs with China and Finland and 5 years for the remaining DTTs).

Taxpayer's requests may be analyzed unilaterally by the RFB or bilaterally when the RFB acts together with the tax authorities of the other contracting State. The implementation of a resolution shall only occur after (i) the applicant and the foreign parties involved agree with the resolution; and (ii) the express and irrevocable withdrawal of any appeals under administrative or judicial procedures on the same matter addressed in the MAP request. IN RFB 1669 does not provide for any appeals under the MAP.

Regarding Action 13 – Transfer Pricing Documentation, in October, 2016, Brazil signed the Multilateral Competent Authority Agreement on the Exchange of Country-By-Country Reports (CbC MCAA).

According to the discussion draft of the IN RFB[2] that shall regulate the CbC Report obligation in Brazil, Brazilian ultimate parent entities of multinational groups[3], with consolidated revenues in the previous year higher than BRL 2,26 billion (approximately EUR 630 million[4]), must submit a large number of detailed information about the operations of the multinational group per jurisdiction (including financial information and number of employees) and identify the entities that compose the multinational group, among others.

The information relating to 2016 must be filed in the Tax Bookkeeping ("ECF") until June 30, 2017. Costly penalties are applicable in case the return is submitted after the deadline established by the regulation or submitted with incorrect, incomplete or omitted information. Although Action 13 of BEPS also comprises the implementation of Master File[5] and Local File[6] reports, Brazil has not yet committed to implement them.

Also in November, 2016, several countries, including Brazil, concluded negotiations on the Multilateral Instrument ("MLI") provided for under Action 15 – Multilateral Instrument. It is expected that this MLI will bring about changes to the DTTs in place to implement the measures provided for under Action 2 – Hybrids, Action 6 – Treaty Abuse, Action 7 – Permanent Establishment Status and Action 14 – Dispute Resolution.

Albeit unsuccessfully, Brazil attempted to implement Action 12 – Disclosure of Aggressive Tax Planning, in July, 2015, by means of Provisional Measure 685 ("MP 685"). MP 685, which demanded that taxpayers report to the RFB transactions implemented through unusual ways, transactions without relevant business purpose, among others, that could result in non-payment, reduction or deferral of taxes, was heavily criticized by the public and, consequently, its conversion into law was not approved by the National Congress. ◆

ENDNOTES

1 Action 5 – Harmful Tax Practices, Action 6 – Treaty Abuse, Country-by-Country Report of Action 13 – Transfer Pricing Documentation and Action 14 – Dispute Resolution.

2 The draft of the IN RFB was released for public consultation and is expected to be published before the end of 2016.

3 This obligation may be transferred to a reporting entity domiciled in Brazil in case (i) the ultimate parent entity is not obliged to file the CbC report in the jurisdiction in which it is domiciled, (ii) the jurisdiction in which the ultimate parent entity is domiciled has not signed a Competent Authority Agreement until the final deadline for the CbC report submission or (iii) when this jurisdiction has signed a Competent Authority Agreement, but has suspended the automatic information exchange or persistently failed to provide the CbC report to Brazilian authorities, the so-called systemic failure (Brazil is supposed to issue a list identifying the countries that present systemic failure). In case the ultimate parent entity is domiciled abroad, the CbC report must be filed if the consolidated revenues of the multinational group in the previous year exceed EUR 750 million.

4 Exchange rate on December 9, 2016.

5 The Master File is supposed to provide an overview of the multinational group's business, including the nature of the business operations, overall transfer pricing policies, allocation of income and economic activity.

6 The Local File is supposed to provide detailed information on specific intercompany transactions, relevant for the transfer pricing analysis.

Chile

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

Application of the New Article 41 G of the Income Tax Law, to the Taxation of Dividends Obtained by a Controlled Company Abroad from other Companies with Productive Activity, Indirectly Controlled by the Company Domiciled in Chile

The exception contained in No. 1, letter C.-, of article 41 G of the Income Tax Law establishes that the dividends of companies in which its principal activity is not the obtaining of passive income, obtained by a foreign controlled company will not be considered passive income. This applies both to the case where the dividends are received directly by a foreign controlled investment company, as well as in the case in which it receives them through an intermediate investment company.

Regarding the dividends received by a Foreign Investment Company from the intermediate investment company, they will not be considered passive income for the purposes of Article 41 G of the Income Tax Law, if their origin was generated by the Foreign Operational Companies. It should be noted that these will be verified to the extent that the dividends obtained by the controlled company actually come from companies whose principal activity is not the obtaining of passive income, bearing in mind that they apply, when applicable, the legal presumptions contained in subsection 3 of Article 41 G of the Income Tax Law, which indicates that all income obtained by entities constituted, domiciled or resident in a territory or jurisdiction referred to in Article 41 H of the Income Tax Law, are passive and it also indicates a presumed minimum income corresponding to this concept.

Finally, it should be noted that for the application of the exception rule, it is not necessary for the companies whose main activity is not to obtain the passive income to be controlled directly or indirectly by the taxpayer domiciled in Chile.

Loss of Domicile or Residence in Chile

The provisions of article 59 of the Civil Code, under which "the domicile consists in the residence, accompanied, actually or presumptively, of the intention to remain in it."

From the above definition, it is clear that the domicile is constituted by the copulative elements, residence and mood to remain in it. Therefore, the loss of any of the two elements should bring about the loss of the domicile. However, once the domicile is established, the loss of residence does not always entail that of the domicile.

Article 65 of the Civil Code prescribes that "the civil domicile is not changed by the fact that the individual resides for a long time in another place, voluntarily or forcefully, retaining his family and the main seat of his business in the previous domicile." Thus, two copulative requirements are mandated by this rule so that the lack of residence does not entail that of the domicile: that the family and the main seat of business in the previous address are preserved.

Article 4 of the Income Tax Law establishes that "The sole absence or lack of residence in the country is not a cause for determining the loss of residence in Chile for the purposes of this law. This rule shall also apply to persons who are absent from the country while retaining the principal place of business in Chile, either individually or through partnerships."

Accordingly, this Service has estimated that if a taxpayer, who has been domiciled in Chile, is no longer resident in the country in accordance with the provisions of Article 8 of Article 8 of the Tax Code and does not retain in Chile the main seat of its businesses, has lost its address in Chile.

In the event that the taxpayer loses his domicile or residence in Chile, in accordance with the provisions of the aforementioned regulations, before leaving the country, he must declare and pay the part of the Global Complementary Tax accrued corresponding to the calendar year in question before its absence from the country.

With regard to the taxpayer who has lost his or her domicile or resident status in Chile, in accordance with the rules set forth above and subsequently makes visits to Chile for periods longer than six months established in Article 8 No. 8 of the Tax Code, it should be noted that in such case nothing prevents the acquisition of the domicile or resident status again if the legal requirements for it are fulfilled, in accordance with the general rules set forth in its own presentation.

Return of Unique Second Category Tax by Application of the Social Security Agreement Signed Between Chile and Peru

Regarding the taxation of the refund of compulsory social security contributions under Law No. 18.156 of 1982, the IRS through Official Letter No. 384,

of 2014, indicated that the refund of compulsory social security contributions that foreign workers have registered in their name in an AFP according to the aforementioned law, constitute an income tax affected, taxed with the Unique Second Category Tax. This, since when they lose their social security, they must be affected by the tax from which they were temporarily exempt when they were perceived by the worker.

From the analysis of the rules of the Social Security Convention between Chile and Peru, it follows that this agreement applies exclusively to matters of a social security nature and does not affect the application of tax rules, as expressly stated in the agreement itself.

For the purposes of invoking the application of the Convention to avoid double taxation between Chile and Peru, it should have to prove that it had residence in that country in the terms that agreement defines it, in the periods that incomes were received in Chile. In the event that this happens, Chile could tax the rent without any limitation because the appellant would have remained in the country for a period exceeding 183 days, which would authorize to tax the income in our country, in accordance with the provisions of the agreement.

Deduction as Expenditure Required to Produce First Category Taxable Income, from Fees for Judicial Defense to a Litigation Processed Abroad

Disbursements that obey to normal market conditions that are incurred by the first category tax taxpayer in order to seek for legal defense in a foreign litigation against him, which is related to his business activity, and are decisive to preserve or continue with the activity that generates income to first category tax, are necessary to produce the income and can be deducted from the gross income, even if the lawsuit is pending judgment.

Said disbursements paid abroad, are in principle allocated to the Withholding Tax established in No. 2 of article 59 of the Income Tax Law. In this case, it could enjoy the exemption established in the same rule, insofar as the services of legal defense are strictly related to the export of goods or services produced in the country, and as longs as the other conditions set forth in the legal provision are also complied with. ◆

Costa Rica

By Modesto Vargas, attorney at law and tax adviser

Declarations of General Information Supply

Articles 41 and 42 of the Tax Procedure Regulations empower the Tax Administration to impose on certain persons and entities the obligation to provide, on a regular basis, any relevant information from their economic, financial and professional relations with other persons who may be current or potential taxpayers.

Thus, on October 14, 2015, came into force the general resolution No. DGT-R-042-2015, called "General provision of predictably relevant information arisen from economic, financial and professional relations between taxable subjects resolution"

The first article of this resolution states that for the provision of foreseeably relevant information, the compelled subjects must fulfill the following electronic declarations.

a. *D-150 "Monthly summary statement of withholdings payment on account income tax".*
b. *D-151 "Annual statement of customers, suppliers and specific expenses".*
c. *D-152 "Annual summary statement of single and definitive tax withholdings".*

d. *D-153 "Monthly summary statement of withholdings payment on account of VAT".*
e. *D-155 "Monthly summary statement of withholdings payment on VAT and income tax"*
f. *D-157 "Quarterly summary statement of departures tax".*
g. *D-158 "Annual declaration, purchases and sales on agricultural auctions".*
h. *D-160 "Quarterly summary statement printing invoices and other documents".*
i. *D-161 "Quarterly summary declaration of cash registers"*

Those required to submit such statements, must provide the information in the ways, means and deadlines established by the resolution.

1. About the Informants of the Electronic Model D-151

Article 4 of resolution No. DGT-R-042-2015 establishes that the informants who are obliged to present this model information declaration are:

a- Public or private persons, whether or not subject to income tax, including the State, the National Banking System, the National Insurance Institute and other autonomous and semi-autonomous institutions, municipalities,
b- Public, prívate, local o international universities,
c- cooperatives,
d- embassies, international organizations,
e- INCAE, CATIE,
f- companies,
g- Non-governmental organizations (NGO),
h- condominiums,
i- trusts,
j- boards of education,
k- administrative boards,
l- mutuals of savings and loan,
m- unions,
n- State educational institutions,
o- the Board of Social Protection,
p- the Costa Rican Red Cross,
q- Associations or foundations for social work, scientific or cultural ivestigation, civil and sports associations that have been declared of public utility by the Executive Power under the stipulation of article 32 of the Law of Associations,
r- The committees officially appointed by the General Director of Sports in the zones defined as rural, according to the regulation of the Income Tax law,
s- National Parks executive boards,
t- the Olympic Committee, the National Coast Guard,
u- political parties,
v- religious institutions,
w- Investment Funds,
x- any entity created by special law and others,

In these cases, which have made sales or purchases of goods or services, to the same person, for more than two million five hundred thousand colones.

All informants should provide the following details:

i. Identification of the informed:
ii. Amount of the transactions.
iii. Code of each concept as detailed:
V: Sales (costumers). For sales that exceed two million five hundred thousand colones annually
C: Purchases (suppliers). More than two million five hundred thousand colones annually.

In the case of purchases made to professional service providers, rentals, commissions or interests, in excess of fifty thousand colones annually made to the same person, they must be reported with the following code:

SP: Professional services
A: Rents
M: Commissions of all kinds
I: Interest (not those that have been subject to withholding or those paid to entities that make up the National Banking System)

The informants of the D-151 model should not include in this form the operations corresponding to imports and exports of goods.

The purchases of goods or services that must be reported are all those that are directly related to the economic activity developed by the informant. The amounts to be reported for sales or purchases should not include VAT and consumption taxes.

The informants should present the informative statements as follows:

- Major National Taxpayers will do so no later than December 10 of each year.
- The rest of the informants must present their informative statements no later than November 30 of each year.

2. Sanctions:

In case of non-compliance with the provision of information, Article 83 of the Tax Code establishes a penalty equivalent to a proportional pecuniary fine of two percent (2%) of the gross income of the sanctionable subject, with a minimum of ten basic salaries And a maximum of one hundred basic salaries. If there are errors in the information provided, the penalty will be one percent (1%) of the base salary for each incorrect information,

This sanction can be reduced up to 80% in those cases where the taxpayer repairs the offense without any intervention of the Tax Administration. ◆

Ecuador

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

REGULATIONS ON INDIRECT EXPENSES ALLOCATED BY THE RELATED PARTIES FROM ABROAD

(Supplement of the Official Register No. 816, 10-VIII-2016 / Internal Revenue Services – Circular Letter No. NAC-DGERCGC16-00000332)

SET FORTH THE NORMS THAT REGULATE THE IDENTIFICATION AND NOTIFICATION PROCEDURE OF THE COMPANIES CONSIDERED NON-EXISTENT OR SHELL COMPANIES FOR TAX PURPOSES, AS WELL AS INDIVIDUALS AND CORPORATIONS WITH SUPPOSED OR NON-EXISTENT ACTIVITIES

(Second Supplement of the Official Register No. 820, 17-VIII-2016 / Internal Revenue Services – Circular Letter No. NAC-DGERCGC16-00000356)

NORMS THAT REGULATE THE EXONERATON OF THE BALANCE PAYMENT OF INCOME TAX CORRESPONDING TO THE TAX PERIOD 2016

(Second Supplement of the Official Register No. 829, 30-VIII-2016 / Internal Revenue Services – Circular Letter No. NAC-DGERCGC16-00000366)

Are beneficiaries of the exoneration those taxpayers that have been directly affected on their assets or economic activity, as result of the natural disaster, whose domiciles are located in Manabí and Esmeraldas; as well as those companies that do not have their tax domicile in the mentioned constituencies, but their main economic activity is developed within such territorial jurisdictions and comply with the requirements.

NORMS, CONDITIONS AND LIMITS FOR THE APPLICATION OF THE EXONERATION BENEFIT OF CAPITAL OUFLOW TAX AND CUSTOMS DUTIES, PROVIDED IN THE ARTICLE 12 OF THE ORGANIC LAW OF SOLIDARYTY AND CIVIC CO-RESPONSIBILITY

TO THE RECONSTRUCTION AND REACTIVATION OF THE AREAS AFFECTED BY THE EARTHQUAKE OF APRIL 16, 2016

(Second Supplement of the Official Register No. 838, 12-IX-2016 / Internal Revenue Services – Circular Letter No. CPT-RES-2016-04)

Norms, conditions and limits for the benefit application of the exoneration of the Capital Outflow Tax and Customs Duties in the payment and process of clearance of goods, as corresponds to those imports of capital assets not produced in Ecuador to be used in productive processes for the provision of services carried out in the provinces of Manabí and Esmeraldas by the taxpayers whose productive assets have been economically affected by the earthquake of April 16, 2016, which are domiciled in such provinces.

PROCEDURE FOR THE REFUND OF AMOUNTS OF INCOME TAX WITHHOLDING MADE TO NON-RESIDENTS THROUGH THE APPLICATION OF TREATIES TO AVOID DOUBLE TAXATION

(Second Supplement of the Official Register No. 849, 27-IX-2016 / IRS – Circular Letter No. NAC-DGERCGC16-00000388)

NORMS FOR THE ACCOUNTING DIFFERENTIATION OF INCOME PROCEEDING FROM ACTIVITIES DEVELOPED WITHIN THE TERRITORY OF THE ZEDE (TAX FREE ZONE) AND OUT OF THIS BY THE OPERATORS OF THE ZEDES

(Supplement Official Register No. 852, 30-IX-2016 / Internal Revenue Services – Circular Letter No. NAC-DGERCGC16-00000396)

THE FORM 117 OF DECLARATION AND PAYMENT OF THE ANNUAL PATENT OF MINING CONSERVATION AND THE PROCEDURE FOR ITS SETTLEMENT WERE APPROVED

(Supplement Official Register No. 852, 30-IX-2016 / Internal Revenue Services– Circular Letter No. NAC-DGERCGC16-00000397)

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ECUADOR AND THE GOVERNMENT OF THE STATE OF QATAR

(Second Supplement of the Official Register No. 852, 30-IX-2016 / National Assembly – Circular Letter -without number)

The treaty between the governments of the Republic of Ecuador and the Government of the State of Qatar to avoid double taxation and prevent tax evasion on income tax is approved.

GUIDELINES FOR APPLYING THE INCENTIVES AND BENEFITS OF THE ORGANIC LAW OF INCENTIVES FOR PUBLIC-PRIVATE ASSOCIATIONS AND THE FOREIGN INVESTMENT

(Official Register No. 856, 06-X-2016 / Ministry for the Coordination of Production, Employment and Competitiveness – Circular Letter No. CIAPP-R-002-2016)

The projects processed under the Executive Decree No. 582, under any mode of Public-Private Association, in the contractual forms recognized by law might be eligible to receive those incentives and benefits set forth by the Organic Law of Incentives for Public-Private Associations and the Foreign Investment (herein after Law APP by its acronym in Spanish), provided that comply the requirements and procedures stated in the Organic Law of Incentives for Public-Private Associations and the Foreign Investment, the present Resolution and the corresponding contract has not been yet signed.

THERE ARE PRIORITIZED SECTORS FOR THE APPLICATION OF THE ARTICLE 9.3 OF THE ORGANIC LAW OF INTERNAL TAX REGIME LAW

(Official Register. 856, 06-X-2016 / / Ministry for the Coordination of Production, Employment and Competitiveness – Circular Letter No. CIAPP-R-003-2016)

The article 9.3 of the LORTI (Local IRS Law in Spanish) states that, the companies incorporated or created in Ecuador for developing public projects in public-private association ("APP") will be exonerated from the income tax payment during a ten-year term provided that the project takes place in one of the sectors prioritized by the Interinstitutional Committee of Public-Private Associations and comply with the legal requirements established for the application of incentives of the APP.

AMENDEMENT TO THE NORMS THAT ESTABLISH TAX HAVENS, PREFERENTIAL TAX REGIMES AND REGIMES OR JURISDICTIONS OF MINOR TAXATION

(Supplement Official Register No. 868, 24-X-2016 / Internal Revenue Services – Circular Letter No. NAC-DGERCGC16-00000440)

THE PARAMETERS TO BE APPLIED TO CONSIDER OTHER FACTORS IN RELATION TO THE INTEGRANTS OF THE ECONOMIC GROUPS

(Second Supplement Official Register No. 873, 31-X-2016 / Internal Revenue Services – Circular Letter No. NAC-DGERCGC16-00000450)

Information contained in the present document is intended to spread information published in the Official Registers and it does not constitute an opinion and/or advisory. If further information is required regarding the present report please do not hesitate to contact us. ◆

El Salvador

By Romero Pineda & Asociados, San Salvador, El Salvador

El Salvador Tributary Amendments and News, December, 2016

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 December, 2016.

New Tributary Laws

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

Unconstitutional Case Law

The 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 Treasure the income tax collection has increased around 4%.

The Ministry of Treasure issued a notice during November, 2016 indicating a term for accountants that provide services either as independent contractors or as employees of companies obligated to have fiscal auditors, to register before the Ministry of Treasure, in order for them to gain access to services provided in their website. This term expires on December 23, 2016. ◆

Guatemala

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

The Creation of the Administrative Tax and Customs Court

At last, one of the most important amendments made to the tax agency law, is about to be enforced. Indeed, this amendment creates a new entity inside the tax agency that will be in charge of solving all tax and customs disputes. In the past, this important function was served by the board of directors of the tax agency, whom now will be changed to the administrative tax and customs court. The conformation of this new important institution began several weeks ago, with a public contest for lawyers and CPA´s interested to become members of the administrative tax and customs court. This contest came to an end a couple days ago, when the names of the ten elected professionals were disclosed.

Once the new administrative court is officially in function, the actual board of directors of the tax agency will cease to exist, giving way to a new one. Although the board of directors will remain, their future functions will be different than the ones they had in the past. In fact, when the law was in its approval process in the Congress, it was very common to hear that with the amendment to the tax agency law, the board of directors would only hold "strategic functions and decisions", leaving the ones regarding tax and customs disputes to the administrative court. Among the strategic functions of the new board of directors of the tax agency, we can mention the designation and removal of the director of the tax agency; the designation and removal of the members of the administrative tax and customs court and the approval of the budget of the tax agency.

Although the administrative tax and customs court is named in the new law as a court of law, the reality is that it will remain as a part of the tax agency, making it difficult to actually consider it one. Nevertheless, we must recognize that from the administrative law perspective, it is very common to find in several jurisdictions administrative courts of law that sometimes are not even part of the tax agency, acting as independent administrative organizations. This is the case in jurisdictions such as Mexico and Spain. Whether or not the administrative tax and customs court is part of the tax agency, it will be acting as an administrative organization and hence, subject to administrative law and its principles.

From the tax disputes perspective, one of the more relevant issues that we should bring up regarding the creation of this new administrative court, is that it won't have more functions than those needed to solve tax disputes, preventing it from hearing and deciding any other tax issues, as it used to do in the past via the board of directors of the tax agency. The immediate consequence of this important modification is the elimination of the horizontal administrative appeals (*recurso de reposición o reconsideración*), leaving only the vertical ones (*recurso de alzada o revocatoria*). Therefore, the moment that the 10 designated professionals fully assume their functions as members of the administrative tax and customs court, the horizontal tax appeals avenue will cease to exist in Guatemala.

With everything else, the regulation of tax disputes remains the same. Therefore, the taxpayer will have 10 business days to appeal a tax assessment before the administrative tax and customs court, which will then have 30 business days to solve the dispute. Once the administrative tax and customs court has ruled, the taxpayer has 30 business days to bring the dispute to a judicial court of law. ◆

Honduras

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

Printing Office Regularization

The Tax Administration's Presidential Commissioner announced that all certified printing offices that provide the service of elaborating fiscal documents to natural or legal persons within the Honduran territory will be submitted to a special control program. This will be done to verify if they are complying with the Article 33.5 from the *Agreement 189-2014* which is related to the printing office's obligation of informing the Tax Administration whenever they hand in fiscal documents to taxpayers upon request.

A sanction will be applied upon the printing office if they dishonor the article previously mentioned. This sanction can be found on articles 36 and 37.1 located on the same agreement and refer to suspending or canceling the authorization given to the printing office by the Tax Administrator.

The Sectors Sign a Rough Draft on the New Tax Code

The government negotiators, the private enterprise and the social sector of the economy have signed a rough draft on the new tax code which was submitted to meetings and socializing for a period of seven months.

The new regulation will replace the current code which dates to the year 1997. It has been reduced to approximately 230 articles, including the transitional and general provisions and highlighting the creation of a single annual payment to be used by the informal sector (e.g. marketplaces) of the economy.

However, once it has been published, the Secretary of Finance along with the Customs Revenue Service (SAR) will work together on regulating it to set the parameters based on the income of the taxpayers.

Arturo Alvarado is the coordinator that handled the dialogue that was set to analyze the new Tax Code by the Honduran Council of Private Enterprises (COHEP). He explained that the document was ready to be sent to National Congress as it had already been fully analyzed by all three commissions this past Tuesday, December 6.

A delay was caused in reaching an agreement due to the inconsistencies in suspending the National Taxes Registration (RTN). When they finally entered an agreement, it resulted as a modification of the article that was later incorporated into the new code.

Luis Larach, the current President of COHEP, described the new code as a code that involves clear and defined rules that open the way to greater domestic and foreign investments and facilitates tax matters.

In Practice

Nothing has officially been written yet but there has been cases where foreign partners with companies that will be constituted in Honduras and the Notary requires that the attendants issue and print a National Taxes Registration (RTN). Many times, the attendants have obtained their National Taxes Registration (RTN) but it was never actually required for it to be printed and the printed one remains in disuse.

Therefore, the Presidential Commissioner of Tax Administration (CPAT) has modified this process into only issuing the registration but not printing it. Henceforth, if the data needs to be used again the system will show that a record has already been created for the foreigner.

Customs Upgrades

This past Thursday, December 8, the Presidential Advisor, Ebal Diaz, officially presented the three members of the Commission that are now in charge of innovating the Customs System in Honduras. The members that have been chosen for this task are: Eny Bautista, Marco Tulio Padilla, and Maria Antonia Rivera.

The elected professionals will oversee the implementation of the Customs Plan established by the current President of the Republic, Juan Orlando Hernandez; they will also be in charge of evaluating every member of the staff. It has also been set that for all legal advice they can refer to the professional Jorge Ricardo Brizuela Pavon.

The Executive Decree 083-2016 gives life and sets all the parameters involved in the creation of the Presidential Commission of the Integral Reform of the Customs System and Trade Operators (COPRISAO).

Officials have said that COPRISAO emerges from the need of converting the Honduran customs system into a more competitive system internationally.

In the exact words of Ebal Diaz, "These people are not going to do studies, nor diagnoses, they are going to implement a project of measure in a short, medium and long term. Obviously, adjustments will be needed, but the idea is to solve as quickly as possible the current situation in customs".

The Presidential Advisor indicated that as well as the government, the new commission has all the necessary support to carry out their tasks.

Some of the main responsibilities of the new commission will be:

1. Know and analyze customs problems, as well as the solutions and decision-making needed to solve them.
2. Hold sectoral meetings with stakeholders and all those who use the National Customs Service to analyze and solve problems.
3. Make visits to every custom office located in the Honduran territory to verify compliance with current legislation, operating manuals, resolutions and the application of instructions and orders issued by the commission.
4. Evaluate systems, processes, customs and administrative procedures and to elaborate the proposals for their modifications or the derogation in consideration of the Customs Service and the Central American Regulations contained in Central American Uniform Customs Code (CAUCA) and the Regulation of the Central American Uniform Customs Code (RECAUCA).
5. Render quarterly reports of the activities developed to the General Coordinating the Secretary of Government.
6. Appoint the technical subcommittees that might be responsible for work involving Presidential Decree matters.

   The technical subcommittees previously mentioned shall be composed of representatives of State Institutions that have a relationship or intervention in customs and port work, as well as, commercial operators who are invited by the Chairman of the Commission to participate.
7. Appoint teams of people, consultants and other specialists that are necessary for the fulfillment of their tasks and objectives.
8. Carry out the steps needed to certify the processes that are carried out in customs and ports.

This project will be commenced in the city of San Pedro Sula, Cortes. ◆

Mexico

By Turanzas, Bravo & Ambrosi, Mexico City, Mexico

During the third quarter of 2016, the most relevant developments in Mexican tax regulations were the following: (1) publication of the Mexican tax reforms effective as of 2017; (2) the closer rapprochement between Mexican and Swiss tax authorities; and, (3) the issuance by the Mexican Supreme Court of a decision that determines the unconstitutionality of the relevant transactions' return.

The following refers to the main aspects of these issues.

1. Mexican Tax Reform for Fiscal Year 2017 ("FY2017")

Changes effective as of FY2017:

- Income Tax ("IT") Law:
  - **Environmental Care Provisions:** Investments made in electric cars will be deductible up to an amount of MXN 250,000. Payments made for the rental of electric cars will be deductible up to an amount of MXN 285. Taxpayers investing in electric car charging equipment may credit 30% of the amount invested in the tax year against the annual IT.
  - **Subcontracted Labour:** Expenses will only be deductible for IT purposes if the client collects determined information and documents from the service provider, such as the salary invoices and the corresponding receipts.
  - **New Optional Regime:** Applicable for legal entities constituted by individuals for determining their IT on a cash-flow basis, provided that their annual income is lower than MXN 5 million and certain conditions are met.
  - **Investment Encouragement:** Taxpayers investing in infrastructure projects of high-performance sports, as well as in programs designed for the development, training and competition of Mexican high-performance athletes, may –within certain limits– credit against the annual IT the contributions made to those projects. Taxpayers investing in research and development of technology may credit against the annual IT an amount equal to 30% of the expenses incurred and the investments made for such purposes.
  - **Hydrocarbons:** Remuneration in kind received by certain contractors defined in the Hydrocarbons Law will not be taxable income for IT purposes, provided that such remuneration is not considered to be deductible cost of sales when the goods are alienated or transferred to a third party. Contractors and assignees defined under the Hydrocarbons Law must prepare and keep transfer pricing documentation, regardless of their income level.
- Value Added Tax ("VAT") Law:
  - **Subcontracted labour:** VAT paid for subcontracted labour may only be credited when the client collects determined documents and information form the service provider.
  - **Pre-operating expenses:** Procedure for crediting related VAT is modified.
  - **Technological services:** The ones listed in the VAT Law will be subject to the 0% VAT rate, provided that certain conditions are met, such as, the requirement that technological infrastructure, human resources and materials used are located in national territory, amongst others.

2. Closer Relationship between Mexican and Swiss tax authorities

This November, the Swiss Ambassador in Mexico, and the Head of the Mexican Tax Office ("SAT" for its acronym in Spanish), issued a Joint Statement that intends to enact both countries' intent to develop their automatic information exchange commitment –that comprises both financial and fiscal data– to the highest international standards, in order to avoid tax elusion. This Statement was issued during the commemoration of the 70th anniversary of the establishment of Mexican-Swiss Diplomatic Relationships.

This statement is supported in the Multilateral Treaty of Competent Authority, which implies the commitment to adopt the Common Reporting Standard for the Automatic Exchange of Information recently adopted by the Mexican tax authorities.

Also, during November, the Mexican Finance Minister received the President of the Swiss Confederation to discuss the bilateral cooperation mechanisms in financial matters, as well as the strengthening of the involvement between both countries to ensure appropriate investment conditions, and the efforts made by Mexico on this regard.

3. The Relevant Transactions' Return Unconstitutionality

On November 16, 2016, the Second Chamber of the Mexican Supreme Court issued a decision that determines the unconstitutionality of the provisions that establish the duty of filing the "Relevant Transactions' Return", also known as "Form 76", given that it was considered to infringe the fundamental rights to juridical security as well as legality in fiscal matters.

This return essentially has to be submitted before the tax authorities for transactions exceeding certain amounts and which might be deemed as fiscally sensitive.

Therefore, the taxpayers that filed *amparo* lawsuits against article 31-A of the Federal Tax Code –provision that contained the referred obligation– have been relieved of the duty of filing said return. Nevertheless, tax authorities have made public statements requesting a reform that suppresses the legislation deemed unconstitutional. ◆

Uruguay

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

Changes in Residency Criteria

As of the enactment of decree Nº 330, in October, 2016, individuals with no tax residency in other countries, shall be considered tax residents in Uruguay when they have real estate property, in Uruguay, exceeding the value of approximately USD 1,800,000, or a direct or indirect participation in a corporation valued in approximately USD 5,400,000.

Double Taxation Convention with the Kingdom of Great Britain and Northern Ireland

Law Nº 19.443, approved the convention entered between Uruguay and the Kingdom of Great Britain and Northern Ireland, to avoid double taxation and prevent tax evasion in terms of pro perty 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.

Tax Information Exchange Agreement with the Kingdom of Great Britain and Northern Ireland

Law Nº 19.429 approved the convention entered between Uruguay and the Kingdom of Great Britain and Northern Ireland, to exchange information for tax purposes.

The agreement follows the OECD model, being applicable in relation to all type of taxes leived in the referred countries.

Changes Introduced by the National Budget Act

According to the national budget act Nº 19.438, income obtained by entities located in low or no taxation jurisdiction shall be taxed at a rate of 25% (previously, the rate was 12%). Dividends paid to a foreign tax resident will continue to be taxed at a rate of 7%.

Up to this moment, income tax was applicable to dividends only when the company decided to distribute the corporate gains. Law Nº 19.438 eliminated this possibility to defer the payment of the income tax on the dividends. Now local law assumes that there is a notional dividend when the company has non-distributed accumulated profits for 3 years or more. ◆

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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