Wolters Kluwer

VOL. 18, ISSUE NO. 4, APRIL 20, 2016

GLOBAL TAX BRIEFING

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LATIN AMERICA

This month's issue of *Global Tax Briefing* is written entirely by members of the Latin American Tax and Legal Network (LATAXNET). LATAXNET, headed up by Miguel Valdés, of Valdés, Machado & Associates, LLC., is a network of top tax and legal specialists all over Latin America, Puerto Rico, the Caribbean and the United States. See back cover for more information about LATAXNET.

ARGENTINA

By Rosso Alba, Francia & Asociados, Buenos Aires, Argentina

First Quarter Tax Highlights

Upon its inauguration, the new Administration has been actively working on different amendments to the Argentine Tax system.

Amendments to Income Tax Law

Under the terms of Decree 394/16, the Federal Government amended the deductible amounts and increased the Income Tax minimum threshold to AR$18,800 (approximately USD1,207.45, for single natural persons) and AR$25,000 (approximately USD1,605.65, for married natural persons with kids). The Decree also derogates Decree 1242/13 which exempted from Income Tax all natural persons that earned less than AR$15,000 per month between January and August, 2013, disregarding their current level of income.

In general, the values of Income Tax Law (brackets, deductions, etc.) have not been properly updated during the last years in order to reflect the consequences of the accumulated inflation. As of today, there are talks between political parties regarding a new bill for an integral revision of Income Tax Law (amending both brackets and deductible amounts), but this will be subject to the decision of the Argentine Congress.

According to local media and government officers, these measures would be of a temporary nature, as first steps towards a comprehensive tax reform to reflect the adverse tax effects of inflation.

Repeal of Export Taxes

The Government has repealed all export taxes applicable to commodities, with the exception of soybeans (reduced to 30%), soybean oil and soybean flour (reduced to 27%).

During the last years, the Argentine Government taxed the export of commodities, a decision that sparkled a significant political turmoil

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back in 2008. The commodities were taxed with rates in the vicinity of 30%, depending on the type of product.

As a result of Decrees 133/2015 and 349/16, taxes to wheat, corn, sunflower, meat, sorghum and mining exports have been repealed. The Government intends to boost exports with this decision, which represent one of the main sources of foreign currency for the country.

Reduction of Excise Tax Applicable to Vehicles

By Decree 11/2016, the new government substantially reduced the excise tax on vehicles. The 30 percent tax rate for low- and medium-cost vehicles (value between $22,480 and $51,380) was reduced to 10 percent, while the tax on premium vehicles (value over $51,380) was reduced from between 30 and 50 percent to a flat rate of 20 percent. The tax on motorcycles, previously between 30 and 50 percent, was reduced to 10 percent. The tax will not be applicable to cars whose value is below $51,380, and to motorcycles valued below $4,174.

This decision reverses the tax increase ordered by the previous Administration on 2014. The decision intends to aid car manufacturers and boost the sale of vehicles as a way to reactivate the economy.

Argentine Revenue Service Adopts the Common Reporting Standard as a Local Regulation.

The Argentine Revenue Service has issued Resolution 3826/2015 (published on the Official Gazette by the end of December 2015), adopting the Common Reporting Standard as a local regulation. As a result of this, Argentine financial entities are now under the obligation of gathering information from their account holders, in line with the due diligence procedure established by the model CRS provisions.

The information to be reported is in accordance with the CRS provisions, and includes the balance of the account, payments made during the year, and all relevant information from the beneficial owners of the accounts. The burden of reporting this information will lie on financial institutions or entities that qualify as such.

Taking into consideration that the first reporting period is 2016; the initial exchange of information should take place on September 2017. Argentina is a CRS Early Adopter, a signatory of the Multilateral Competent Authority Agreement ("MCCA") and has been actively involved in the celebration of Exchange of Information Treaties with other nations. Furthermore, Local Media has reported that the Government intends to join the OECD in the near future.

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This is the first resolution issued to implement the CRS in the country, and enrolls Argentina in the global trend for tax transparency. The consequences of this regulation are still to be seen, but it will certainly represent a significant flux of information for the ARS. While initial exchanges of information are expected for the end of this year, the ARS has not formally announced any bilateral notices (under the terms of Section 7 of the MCAA) with other signatories.

Update to Tax Havens White List

Last January, the Argentine Revenue Service (" ARS ") issued a new list updating the countries that are considered as cooperative jurisdictions for tax purposes. Under the terms of Decree 589/13, the ARS is supposed to constantly update the White List including those countries that are considered cooperative for tax purposes. Since the faculty of determining which country should be included in the list is now granted to the ARS, the system implied a swift from the previous system, where the countries considered as tax havens were defined by a law.

Barbados, Belarus, Bulgaria, Cameroon, Cyprus, Gabon, Gibraltar, Hong Kong, Niue, Senegal, Seychelles, and Uganda have been added to the White List, while Angola, Haiti, Kenya, Kuwait, Montenegro, Nicaragua, Qatar, the United Arab Emirates, and Vietnam have been excluded. ◆

BRAZIL

By Júlio M. de Oliveira, Rosiene S. Nunes, Mauro Takahashi Mori, Gabriel Caldiron Rezende and Rogério Gaspari Coelho; and Machado Associados Advogados e Consultores, São Paulo, Brazil

Regularization of Funds, Assets or Rights Held Abroad

Law No. 13,254 was published on January 14, 2016 creating a special tax regime named RERCT (Regime Especial de Regularização Cambial e Tributária). The RERCT aims at the voluntary regularization of funds, assets or rights with elicit origin remitted to or held abroad or repatriated to Brazil, but not declared to Brazilian public authorities or declared with omission or incorrectness in relation to essential data.

Funds, assets and rights with elicit origin are those acquired with resources from activities allowed or not forbidden by law, such as bank deposits, financial investments, insurance policies, credit card deposits, retirement or pension funds, credits from loans to individuals or legal entities, payment of shares issued by foreign entities, brands, patents, software, properties, vehicles, aircrafts, vessels etc. It is important to mention that jewelry, gemstones and metals, works of art, antiques with historical or archeological value, animals and genetic materials for animal reproduction are not subject to regularization.

Individuals or legal entities domiciled in Brazil on December 31, 2014 (even if currently not residing in Brazil) who held undeclared or incorrectly declared assets up to that date may adhere to the RERCT, even if they no longer held these assets on December 31, 2014. The estate under a succession procedure in course on December 31, 2014 may also be included in the RERCT. Individuals sentenced in a criminal lawsuit for forgery, fraudulent misrepresentation, non-authorized foreign currency exchange transaction, among other crimes, cannot adhere to the RERCT, and neither can those who, on January 14, 2016, held office in directive or elective public positions, as well as their spouses and relatives related by blood or marriage up to the second degree or by adoption.

In order to adhere to the RERCT, the individual or legal entity shall file a unified declaration of

regularization of assets with the Brazilian Federal Revenue Service (" RFB "), with copy to the Central Bank of Brazil. In addition to the declaration, the individual/entity shall rectify (i) the annual income tax return (DIRPF) of the calendar year 2014 (individuals); (ii) the Brazilian Capital Abroad Statement (DCBE) related to the calendar year 2014 (individuals and legal entities, as applicable); and (iii) the accounting records of the calendar year of adherence to the regime and subsequent years (legal entities).

The assets shall be reported based on their market value on December 31, 2014, and the amounts in foreign currency shall be converted into Reais by the exchange rate of the last business day of December 2014. The individual/entity shall be subject to the payment of Income Tax, as capital gain, at the rate of 15% over the market value of the reported assets (deductions of the tax basis and discounts to the acquisition cost are not allowed), and of a penalty of 100% of the tax due. It is important to mention that the payment in installments of the tax and of the penalty due are not allowed, although initially permitted in the bill of the Law. The penalty shall not be due in case the individual/entity held available amounts deposited in accounts held abroad up to the limit of R$ 10,000 per individual/entity, converted into US dollars on December 31, 2014.

The income earned in the calendar year 2015 deriving from the declared assets shall be included in the statements related to the calendar year of adherence to the regime and the following years. The voluntary disclosure principle shall apply (thus, dismissing the payment of penalties) in case the necessary corrections are made up to the last day of the deadline for the adherence to the RERCT.

The individual/entity that adheres to the RERCT may opt to repatriate or not the funds. In case they do, the transfer shall be made by an authorized financial institution upon delivery of the filing certificate of the unified declaration. Whenever the balance of financial assets is above US$ 100,000, the individual/entity shall request and authorize the financial institution abroad to remit this information to an authorized financial institution in Brazil, which shall provide said information to the RFB.

The filing of the declaration, and the full payment of the tax and penalty will result (i) in the extinction of criminal liability in relation to tax crimes, tax evasion, forgery of public or private documents, fraudulent misrepresentation, concealment of assets, among other crimes, provided that such measures are adopted prior to the final criminal decision; (ii) in the release of tax liabilities related to the non-compliance of tax obligations and in the reduction of 100% of penalties and legal charges related to taxable events up to December 31, 2014; (iii) in the release of the penalty for the late or non-filing of the Declaration of Brazilian Capitals Abroad; and (iv) in the release of penalties applied by the Securities and Exchange Commission of Brazil and other regulatory agencies. The extinction of liability will also be applicable to intermediary individuals/entities holding the assets.

The taxpayer who presents forged declaration or documents shall be excluded from the RERCT. In this case, all amounts related to tax, penalties, and interests shall be due and charged, without prejudice to civil, criminal, and administrative liabilities.

The adherence to the RERCT shall be made within 210 days as of the act of the RFB, which shall regulate Law No. 13,254/2016. A draft of the Normative Instruction that will regulate such law was under public consultation until March 3, 2016.

New ICMS (State VAT) Regime on Interstate Transactions - Constitutional Amendment 87/15

Since its enactment and until December 31, 2015, the Brazilian Federal Constitution had specific rules for the levy of ICMS (State VAT) on interstate transactions destined to end consumers.

When the purchaser was an ICMS taxpayer acquiring fixed assets or goods for its own consumption, the sender had to pay the ICMS to the State where it was located (State of origin), calculated at the rate applicable for

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interstate transactions (4%, 7% or 12%). The recipient of the goods had to pay the ICMS to the State where it is located (State of destination), calculated on the difference between the internal rate (usually ranging from 17% to 19%) and the interstate rate. When the purchaser, although an end consumer, was not an ICMS taxpayer, the sender had to pay the ICMS to the State of origin, calculated at the rate applicable for internal transactions and no tax was paid to the State of destination.

However, with the growth of e-commerce sales, under which a company remotely sells goods from one location to any point of the Brazilian territory, in substitution for the traditional in-store sales, many States began to experience a reduction of ICMS revenues in transactions to non-ICMS taxpayers end consumers.

That happened mainly because the majority of e-commerce companies operate by means of distribution centers established in the Southern and Southeastern regions of Brazil, selling its products online to consumers throughout Brazil. Accordingly, by doing so, such transactions were subject to the ICMS only in the State of origin, where the e-commerce company is established.

To this effect, as e-commerce transactions surged, in-store transactions that used to be carried out in the State where the end consumers were established (and that generated ICMS for those States) felt a significant reduction. ICMS revenues of such States plummeted.

The States that were negatively affected argued that, as the ICMS is a tax on consumption, the distribution of the revenues it generates should observe such nature and thus be paid to the State where the goods are consumed. In this sense, the tax levied on sales to non-taxpayers end consumers should be paid to the State of destination, as it happens in transactions with ICMS taxpayer end consumers.

Considering this, some States gathered and enacted ICMS Protocol 21/11, which established an additional ICMS payment to the States of destination on virtual transactions (internet, telemarketing or showrooms) to non-ICMS taxpayer end consumers.

However, the Supreme Court declared the unconstitutionality of the Protocol (mainly an agreement between States), as it disciplined issues reserved to constitutional amendment and to law.

Nevertheless, the demands of States persisted, and eventually Constitutional Amendment 87/15 was enacted, adopting new payment and distribution methods for ICMS.

The Constitutional Amendment, which is in force since January 1, 2016, changed the wording of article 155, paragraph 2, VII and VII, of the Brazilian Constitution. It determines that all interstate transactions with end consumers will be taxed by the interstate rate (the internal rate of the State of origin will no longer be applied), whether the purchaser is an ICMS taxpayer or not. If the end consumer is not an ICMS-taxpayer, the State of destination should receive a differential of rates, with the seller responsible to pay the difference.

In other words, by the new regime, the State of origin receives the interstate rate from the seller; the State of destination receives the difference between its internal rate and the interstate rate. If the end consumer is an ICMS taxpayer, it pays the ICMS in the State of destination; if not, the seller pays the ICMS to the State of origin and also to the State of destination.

Pursuant to article 99 of the Brazilian Temporary Constitution Provisions Act (ADCT), that differential of rates will not be immediately fully owed to the State of destination, but gradually, as follows: (i) 40% in 2016; (ii) 60% in 2017; (iii) 80% in 2018; and (iv) finally, 100% in 2019.

ICMS Agreement 93/2015, which regulates Constitutional Amendment 87/2015, was challenged by unconstitutionality lawsuits. However, in spite of its partial suspension (in what respects to companies adhering to a certain simplified tax regime, due to the excess of ancillary tax obligations the new regime gives cause to), the rules related to the payment of ICMS on interstate transactions remain in full force.

CHILE

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

Changes by Law No. 20.899 to Tax Regulations

On February 16, 2016 the IRS (Internal Revenue Service) announced that the compared texts which include details of the modifications of Law No. 20.899 are available.

This law complements the amendments introduced by Law No. 20.780 Law in 2014, and focuses primarily on adjustments to the VAT Law. It specifically approaches the situation of real estates; simplifies the Income Tax system regarding the use of Attributed Income and the Semi Integrated System and the interaction between them; improves the effectiveness of the general anti avoidance rule and establishes new benefits in terms of Income, including the extension of the application of Substitute Tax of FUT until April, 2017.

Chile Signed an Agreement to Exchange Information on Global Operations of Multinational Companies

Chile signed on January 27, in Paris, the first Multilateral Agreement between Competent Authorities for Reports Exchange "Country by Country" on global operations of multinational companies. This agreement will allow getting for the first time an overview of the operations of these companies, the territorial distribution of their income, economic activities and taxes paid in different jurisdictions.

The agreement was signed by the tax authorities of 34 countries, including the Director of the Chilean Internal Revenue Service, at the headquarters of the Organization for Economic Co-operation and Development. Its realization is part of the implementation of the Action Plan measures against erosion of the tax base and Benefit transfer-BEPS, an initiative of the OECD and the G-20 that identifies actions to address the erosion of the tax base and the transfer of benefits.

In Chile, the signature of this agreement complements a series of structural measures that the IRS has been implementing in order to protect the national tax basis. The changes that stand out are the new rules of international fiscal control of the Tax Reform, the new Affidavit of Global Taxes Characterization to be submitted in April by large enterprises, the strengthening of risk analysis methodologies in international affairs, and the creation since last December of the Office of analysis Circumvention.

New Regimes of Income Tax in Chile

The last tax reform established two alternative systems of income tax of individuals. The first one on the basis of what is called "Attributed Income", which considers that the profits accrued or perceived by enterprises are understood as "attributed", that is to say, distributed or received by the owners, partners or shareholders that are individuals, in the same year in which they were obtained by the company that generated them. Accordingly, with this first taxation alternative, individuals resident or domiciled in Chile should consider annually on their personal tax, (Global Complementary Tax), the mentioned income, whether they were actually received from the company that generated them. In this alternative, as the tax system of income tax is integrated, against the payable personal tax of individuals that are owners, partners or shareholders of companies, they can accredit the corporate tax, (First Category Tax), which payed the company that generated such income. (With a current rate of 24%, and from 2017 onwards with a rate of 25%).

The second alternative system of income tax is the application of the personal tax, which payment corresponds to the owners, partners or shareholders of companies, when in fact profits or dividends generated are effectively distributed to/or removed from the company, these owners, partners or shareholders. In this

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second alternative, the owner, partner or shareholder shall pay the personal tax on such income only in the year in which such income is withdrawn. However, in this alternative, two important differences from the first system occur: a) the corporate tax payable by the company that generates such income, increases from 2017 to 27% (instead of 25% of the first system) b) the owner, partner or shareholder that withdraws such income of the company that generates them, can credit against the corporate tax, only 65% of the amount of corporate tax paid on the same income. This means that in this second alternative, it can only be partially credited the corporate tax against the personal tax that must be paid on business income, generating an economic effect of a higher tax burden compared to the system of "Attributed Income" explained above.

Alternative systems previously explained will also apply from 2017 to taxpayers without residence or domicile in Chile, obtaining business income generated in Chile. But in such cases, the final tax payable is called "Additional Tax" which has a fixed rate of 35%. So, if a taxpayer nonresident or domiciled in Chile is hosting the first alternative system, the final tax burden will ultimately be 35%, which is the result of applying the corporate tax, with a rate of 25%, plus additional tax with 35% rate, but crediting against the latter, the corporate tax previously paid (25% + [35% - 25% = 10%] = 35).

However, for taxpayers not domiciled or resident in Chile that obtain business income generated in Chile, which choose the second alternative of taxation on income withdrawal base (not "attributed"), their effective tax burden will be higher. They only may credit against the additional tax a 65% of corporate tax (27% + [35% 100-65% of 27% on income withdrawal = 17,55] total burden = 44.55).

The reform of February, 2016 to the Law on Income Tax stated a special situation for taxpayers not domiciled or resident in Chile that obtain business income of a Chilean source, who choose as a system of income tax the second alternative (withdrawal method or "partially integrated"). This situation applies to those taxpayers from countries which have signed (until 2019) or have a remaining Double Taxation Agreement, so they may credit against tax additional levied to such income, 100% of corporate tax endured by that income and previously paid by the company that generated them. This means in practice that for these taxpayers, the final burden of income tax in Chile will remain at 35% as a total burden, rather than the 44.45% that will affect other taxpayers who come from countries without an agreement. Taxpayers that are currently in this situation are those not domiciled or resident in Chile, coming from the following countries: a) with treaties in force: Australia, Austria, Belgium, Brazil, Canada, Colombia, South Korea, Croatia, Denmark, Ecuador, Spain, France, Ireland, Malaysia, Mexico, Norway, New Zealand, Peru, Poland, Portugal, United Kingdom, Russia, Switzerland and Thailand; and b) treaties signed but not in force: Argentina, China, United States, Italy, Japan, Czech Republic and South Africa.

Payment for Global Brand Development

In Private Ruling No. 605 of February 26, 2015, the IRS states that payments made from a Chilean company to another resident in the UK for the concept of "Global Brand Development, Advertising, Promotion sponsorship and other costs" and equivalent to 2.5% of the total amount of net sales of products -because it is a payment for the use of brand- it is included in the royalties contained in Article 12, paragraph 2, letter b) of the Convention between the government of Chile and the UK government, and may be taxed in Chile. According to domestic law, with the limitation that the applicable tax may not exceed 10%, the definition of royalties included in the Article 12 is the following: "payments of any kind paid for the use, or the right to use, any (...) any patent, trademark ...". These payments are included in Article 59, paragraph 1 of the Chilean Income Law as amounts paid or credited by the use of trademarks, patents, formulas, consulting and other similar services, whether consisting royalties or any form of compensation, such payments are part of the "Global Marketing Contribution" and therefore are part of the remuneration for the use of the brand.

Colombian Specific Tax Credited Against Chilean Income Tax

Private Ruling No. 607 of February 26, 2015 states that the Colombian tax called "income tax for equity" meets for Chilean effects with the requirements and characteristics to credit against Income Tax of Chile. This is because it is a tax added to the current ones at the time of signing the Convention, and taxes the income of companies, legal and assimilated people, and the income of foreign companies and organizations that have branches and permanent establishments in Colombia, so that it fulfills all the requirements to apply to Article 2 of the Convention. ◆

COLOMBIA

By Adrián Rodríguez, Lewin & Wills Abogados, Bogotá, Colombia

Expert Commission's Proposed Overhaul of Colombian Corporate Income Taxation

In this article you will find a summary of the recent and main four (not all) recommendations in the area of corporate income taxation, from the Government appointed Tax Experts Commission for a core tax reform in Colombia. These recommendations come in a year in which the Government has already announced an upcoming tax reform, in a very distressed economic landscape and in the midst of the culmination of a Peace process that could put an end to the six-decade long internal conflict.

It is important to bear in mind that the Commissions recommendations go beyond the area of corporate income taxation, and cover individual income taxation, non-for-profit entities' taxation, VAT, sales tax, taxes on fuels, bank debits tax, royalties, local taxation, and certain aspects of the Colombian Tax Administration.

Whether the Government will adopt all of the recommendations of the Tax Experts Commission is uncertain, nonetheless anyone planning on, or currently doing business in Colombia should keep them in sight as part of the relevant information for short-term tax planning.

Background

Tax Act 1739 of 2014, the 2014 Tax Reform Act (the "2014TRA"), ordered the appointment of an Experts Commission to be entrusted with the duties to assess the current status of the Colombian tax system, and to recommend to the Government the necessary measures for a core tax reform driven by equity and competitiveness.

On February 25, 2015 nine tax experts joined the Commission. Ten months after their appointment they finalized their work and in early January, 2016 they tendered their report to the Government. Because the peace talks are the first priority of the Santos Administration, and despite the country's current fiscal situation, shortly after receiving the Experts Commission report the Government was quick in announcing that they did not intend to propose a tax reform any time soon; nonetheless, last week the Government confirmed that beginning the second half of 2016, they would be introducing in Congress a Tax Bill to be debated and adopted on or before year-end, case in which the new tax law would be enforceable, for the most part, as of January 1, 2017.

The current economic landscape is not the best after a landslide fall of the crude oil prices, little hope for a short-term recovery, and an approximate 40% devaluation of the Colombian peso in a little bit more than a year have compromised the Country's fiscal situation with its debt weighing more and its revenue expectations less, virtually overnight. This coupled with the short to mid-term social investment demands of the Peace process and the heavy dependence of the Country in crude oil related revenues, poses a

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challenge for a Government that needs to increase its revenue from tax collections in an already over-burdening tax system. Many interests are at stake and many sectors of society will be arm-wrestling their own in Congress; even the Inter-American Development Bank has shown its support for tax reform in Colombia and recently announced that the IDB too will be presenting to the Government a tax reform proposal of its own.

The scope and contents of the upcoming tax bill are currently unknown, as a matter of fact it is safe to assume that study and preparation is only in its early stages, if it has at all begun. The recommendations of the Experts Commission are not mandatory and whether the Government will adopt some or all of them is uncertain, and whether this time around the Government will commit to the long-term welfare of the Country and not cave to the short-term needs of this Administration, introducing the long-awaited core tax reform instead of a revenue-focused reform, is even more uncertain. Nonetheless, in the following sections we will summarize the main four (not all) recommendations from the Commission in the area of Colombian corporate income taxation, to be kept in sight as part of the relevant information for short-term tax planning.

Corporate Income Tax

The assessment of the Experts Commission in this matter is that the Colombian corporate income tax system is unjustifiably complex, and its taxable base has been over time eroded with the unorganized enactment of multiple deductions, exemptions and allowances. Additionally, the aggregated statutory tax rate on corporations is high above the average for Latin America; remember that since the 2012TRA the corporate income tax rate was reduced to 25% but the 8-point reduction was replaced with the new supplemental income-tax like Equity Contribution ("CREE") currently at 9%, and the tax burden later increased in the 2014TRA with a temporary surcharge on the Equity Contribution currently at 6%, for a currently aggregated 40% net taxable income based tax on corporations for FY2016, expected to increase in the following years under the current regime.

The Commission considers that these factors work against the efficiency, the equity, and the revenue collection level of the income taxation system for corporations. The Commission's proposal in this regard is the elimination of both the income based Equity Contribution and its surcharge, and replacing the current corporate income tax with an income tax mainly based on accounting business profits, with isolated tax adjustments when needed to guarantee equal treatment among taxpayers, and preserving specific anti-abuse provisions to prevent undue tax avoidance strategies. Depending on the country's budget forecast, the Commission's proposed statutory business profits tax rate would be between 30% and 35%.

Dividends Taxation

Currently the Colombian corporate tax system does not provide for additional shareholder taxation upon receiving dividends, provided that the originating profits were effectively taxed at the corporate level. In other words, only if originating profits are untaxed at the corporate level, the corresponding dividends will be taxed at the shareholder level upon distribution.

For the Commission, this feature of the Colombian corporate income tax system has contributed to its inequity, impairing progressive taxation on the basis of the taxpayer's contributing capacity, while affecting revenue collection.

The Commission's proposal in this regard is the elimination of the current shareholder exemption on dividend distributions originating from profits already taxed at the corporate level. In it's place, the Commission proposes a shareholder tax credit of the corporate income tax of up to 20% of the shareholder's income tax liability on the corresponding dividends distribution.

On the one hand, if we assume that the future statutory business profits tax rate is 30% and we also

assume further dividend taxation on dividends at the proposed top rate of 35%, the aggregated corporation-shareholder income tax would be 40.5%, after the new 20% shareholder level tax credit. On the other hand, if we assume that the future statutory business profits tax rate is 35% and we also assume further dividend taxation on dividends at the proposed top rate of 35%, the aggregated corporation-shareholder income tax would be 44.75%, after the 20% shareholder tax credit.

Wealth (Net-Worth) Taxation

For the last 20 years, approximately, corporations and individuals have been subject to taxation on their patrimony, under 4-yr. temporary versions of a net-worth tax that Congress keeps enacting as a short-term measure to provide the Government with revenue to mitigate budgetary deficits.

The Commission considers net-worth taxation imperfect and anti-technical, but is aware of the near-future budgetary challenges faced by this and upcoming Administrations; in this sense, it's recommendation is to stop re-enacting the net-worth taxation as a separate tax, and in its place increasing the net-worth based taxable base used to determine the Alternate Minimum Taxable Income ("AMTI") under the regular corporate income tax from 3% to 4%.

Remember that as part of the current corporate income tax assessment process, taxpayers must compute their taxable income using both the regular method and the AMTI method; the latter currently consist in multiplying the taxpayer's net-worth as of December 31 of the immediately preceding year times 3%.

Capital Gains

Lastly, the Tax Experts Commission considers that in the case of corporations, all capital gains should be treated as a regular item of income, therefore taxed at the statutory corporate income tax rate. Remember that since the 2012TRA the current general statutory rate for most capital gains realized by both corporations and individuals, is 10%; should Congress adopt the Commission's recommendation, the general statutory rate for capital gains realized by corporations would be between 30% and 35%.

Final Recommendation

Whether the Government decides to adopt part or all of the Commissions' recommendations in the area of corporate income taxation, the current fiscal crossroads of the Colombian Government impose the need for Tax Reform in the short-term horizon. Regardless of whether the Government will adopt a long-term core and corrective reform to privilege the Country's future welfare, or if it will cave to the immediate revenue-increase needs of the Santos Administration, the reality is that in this year corporate income taxpayers have to be vigilant to the direction that the upcoming reform will take and how the proposed changes will potentially impact their new or ongoing business activities in Colombia. ◆

MEXICO

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

Foreign Pension and Retirement Funds in the Mexican Real Estate Industry

Mexico has been receiving important investments from non-Mexican tax exempted pension funds which themselves, as well as the companies in which they invest, are exempted from Mexican income tax.

However, since January, 2016 a set of administrative rules impact the investments of these funds and their vehicles.

Below please find our comments in this respect.

Regarding real estate investment projects of foreign pension and retirement funds, there are strong arguments

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to uphold that the applicable provisions of the new Regulations of the Income Tax Law and of the Fiscal Miscellaneous Resolution for 2016 contravene and unjustifiably exceed the tax regime set forth in the Income Tax Law ("ITL") for these types of investments.

According to the Income Tax Law, legal entities in which foreign pension and retirement funds participate, and whose main source of income derives from real estate located in Mexico, are exempt of income tax. The Income Tax Law does not make any distinction regarding the type of participation that such funds shall hold in the relevant entity; therefore, in conformity with the Income Tax Law, such participation may be either direct (one corporate level) or indirect (two or more corporate levels).

With the purpose of eliminating indirect participation structures, the new Regulations of the Income Tax Law provide that the exemption on income tax applies to legal entities and foreign investment funds in which pension and retirement funds hold direct participation, as long as certain requirements are met. In addition, the Fiscal Miscellaneous Resolution for 2016 establishes a six-month term (expiring next June 30th, 2016) for corporate groups to carry out the necessary restructures to hold a direct participation scheme.

This requirement of direct participation of the tax exempted pension fund signifies that only (i) direct investments of the pensions and (ii) investments done by them through a single (one tier) corporate vehicle are tax exempted.

However, the ITL does not distinguish the levels (number of corporate tiers) through which the tax exempted funds and their vehicles enjoy their tax-exempted status.

Accordingly, these new set of administrative provisions may significantly affect some operational structures whose implementation in more than one level (indirect participation) relies on operational reasons, and even of a legal character abroad. Hence, we recommend to carefully review these new rules and the consequences that may arise in each particular case. ◆

URUGUAY

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

Elimination of Fiscal Inflation Adjustment in Computation or IRAE

Current Business Income Tax (IRAE) rules provide for an adjustment for taxpayers computing this tax under the sufficient accounting system, recognizing the economic result of variation in monetary unit value.

The law's adoption of this adjustment is simply a legal recognition of inflation and its impact on the different elements constituting this tax.

Also, the law authorizes the Executive Branch to eliminate this adjustment on IRAE computations provided the inflation rate is below 10%.

This authority had never been exercised until approval of Decree No. 359/015.

Impact of Inflation Adjustment Elimination

The Decree (dated December 30, 2015) eliminates the inflation adjustment for the fiscal years ended as of December 31, 2015.

The variation in the applicable index, IPPN (Index of Prices to Producers of Domestic Products) for the period was 6.59%, so that for that closing the adjustment was not applicable. This does not prevent considering this adjustment in the case of fiscal years ended prior to that date.

The change's impact on companies depends on the composition of their particular net worth. When a company has more assets than liabilities, the inflation adjustment provided a decrease in the amount of the tax payable. On the other hand, if liabilities are greater, the adjustment led to higher taxes. This is reverted under the new rules.

This has consequences not only for computation of IRAE but also on advance payments of this tax, since they are calculated based on the IRAE generated at the close of the previous year.

Payment Facilities Provided

The tax administration (Dirección General Impositiva - DGI) granted, in Resolution No. 477/2016, facilities for payment IRAE balances generated due to the effect of elimination of this adjustment.

This Resolution establishes that the portion of the IRAE balance generated by application of the new rule may be paid in six monthly, equal, consecutive installments.

National Budget Law 2015 – 2019: Tax Changes

The National Budget Law (No. 19,355) for the 2015—2019 period was published in the Official Gazette on December 30.

The Law establishes changes in tax matters, which took effect as of January 1, 2016.

The following are the most important changes:

Liability for Third-Party Tax Obligations

The Executive Branch was empowered to appoint new Persons Liable for Third-Party Tax Obligations (TTO) when they are directly or indirectly linked, by reason of their activity, occupation or profession, to payers of taxes collected by same, and provided it is possible for them to exercise the right of restitution following payments made on the account of third-party debt.

The Law likewise establishes their joint and several liability for obligations in which they should have taken action, and their sole liability in cases where they have been reimbursed for the respective amount.

The Law also extends to TTO a 100% penalty for delay, the presumption of intent to defraud, and the crime of misappropriation originally provided for withholding and collection agents in the case of taxes withheld and not paid in.

Extension of Uruguayan-Source Principle for IRAE, IRPF and IRNR Taxes

Following the regulatory trend of extension of the source principle in tax matters, income from advertising and publicity services provided from abroad is now included.

When such services are provided outside a dependent relationship to IRAE taxpayers, income will be considered Uruguayan-sourced both for Business Income Tax (IRAE) and for Individual Income Tax (IRPF) and Nonresident Income Tax (IRNR).

The same applies to income from lease, use, assignment of use, or alienation of federation, image and similar rights in connection with players on the roster of resident sports entities, as well as income from brokerage activities related to same.

As of effectiveness of the law this income will be considered Uruguayan-source in all cases, regardless of the length of stay in the country or length of time on the roster of a sports entity.

Deductibility of Expenses for IRAE Purposes

As for deduction of expenses for IRAE purposes, the law provides that only expenses fulfilling the formalities required for VAT purposes should be considered

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duly documented. This embodies in law a position held by Uruguayan tax authorities, which had been rejected on more than one occasion by the Administrative Claims Court as lacking in legal basis.

Changes in the Calculation Basis for IRPF – Employment Category

Taxed income includes provision of housing, special compensation and items related to technical training.

Joint and Several Liability for Companies Providing Lodging and Transport Services

Under the new rules, companies (residents or not) directly or indirectly involved in the supply or demand for: provision of passenger ground transport services, tourist lodging and lease of real properties, by individuals or legal entities not duly authorized to engage in the activity, shall be jointly and severally liable for applicable taxes and fines.

As drafted, the law's applicability is unclear. The Uruguayan government has announced that it is analyzing the situation in order to approve specific rules.

New Activities Under Investment Promotion Law

Manufacturing of Farm Equipment and Machinery

Decree 325/015 establishes IRAE exemptions on 90% of the Net Tax Income generated between 2009 and 2017, and on 50% of Net Tax Income generated between 2018 and 2022. For applicability, the income from manufacturing of these products must be more than 60% of total income from sales.

Film Activities

Decree 352/015 provides an exemption from all taxes generated by or upon importation (VAT, IMADUNI or single customs tax on imports, etc.) in the case of equipment directly related to exhibition of movies in theaters, provided the equipment does not compete with domestic products.

Uruguay – Luxemburg Convention

Law No. 19,354 approved the Convention for avoiding double taxation for income tax, net worth tax and social security contributions. This Convention also includes exchange of information between the two tax administrations.

Free Trade Treaty Between MERCOSUR and Egypt

In Law No. 19,356, Uruguay ratified the free trade treaty executed in 2011 by MERCOSUR and Egypt. The agreement covers trade in goods, notwithstanding the possibility of extending it to services and investments. It provides for gradual liberation of trade over periods from 4 to 10 years, depending on the product. Trade between Egypt and the block represents approximately 0.5% of total MERCOSUR trade flows. ◆

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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