CCH a Wolters Kluwer business

VOL. 14, ISSUE NO. 8, AUGUST 29, 2012

GLOBAL TAX BRIEFING

Latin America

INSIDE

LATIN AMERICA

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

Report on Transfer Pricing in Chile

by Karina Ormaza Velásquez, Espinosa & Asociados, Santiago, Chile

At present, article 38[1] of the Income Tax Law regulates Transfer Pricing matters relating to transactions performed by a Branch in Chile and its Parent company, which are now performed by all kinds of companies. In its turn, the Internal Revenue Service has dealt with this matter in Circulars Nos. 3 and 57 of 1998 and No. 72 of 2002.

This legal provision is not very clear, however, it follows the Arm's Length principle although not in the exact same way as provided by the OECD[2]. As for the methods, this legal provision provides for at least three methods, namely:

(1) Reasonable profit;
(2) Cost plus
(3) Resale price

The OECD recommends the last two, highlighting certain characteristics. On the other hand, article 38 establishes the different types of relationships, which include the following:

(1) A Branch and its Parent;
(2) Companies incorporated overseas that have direct or indirect involvement in the direction, control or capital of a company established in Chile or vice versa;
(3) When the same people are involved in the direction, control or capital of a company established in Chile and a company established abroad.

In addition to those relationships, article 38 presumes a relationship exists when transactions include exclusive contracts, joint ventures, preferential treatments, financial or economic dependency or trust deposits. Finally, a relationship will also be deemed to exist when transactions are performed with companies incorporated in countries or territories listed by the OECD as tax havens or preferential tax regimes.

CCH, a Wolters Kluwer business, has been a leader in topical law reporting since 1913. Today, CCH offers more than 300 print, on-line, and CD-ROM tax and business products across the globe from its offices in the United States, Canada, Europe, Australia, New Zealand and Asia. CCH also offers an extensive tax research library on the internet, at www.CCHGroup.com.

CCH welcomes articles submitted by outside authors for possible publication. Manuscripts and inquiries may be directed to the Editor, Global Tax Briefing, International Taxation, CCH Incorporated, 2700 Lake Cook Road, Riverwoods, IL 60015.

Pursuant to the law, adjustments can be made when prices are not "regular market prices" either charged or paid in similar transactions carried out by independent companies. It also allows adjustments to be made when prices paid or owed to the parent are not similar to "market prices" agreed by unrelated parties.

Likewise, the law authorizes the Internal Revenue Service not to accept expense interest, commissions paid in excess and any other expenses derived from credit or financial operations. In addition to those relationships, article 38 presumes a relationship exists when transactions include exclusive contracts, joint ventures, preferential treatments, financial or economic dependency or trust deposits. Finally, a relationship will also be deemed to exist when transactions are performed with companies incorporated in countries or territories listed by the OECD as tax havens or preferential tax regimes.

The amendment resulted in the Tax Law Reform Bill sent by the Government at the end of April proposing to repeal the current article and include a new article 41 E with the provisions that will regulate Transfer Pricing matters in conformity to the OECD Guidelines included in the comments issued in July 2010.

In consideration to the fact this legal provision is rather inaccurate and not very likely to be applied in practice (only a few audits have been performed by the authorities with regard to this matter), there is an urgent need to reform the law considering the great number of operations between related parties that are nowadays performed in Chile. Chile joined the OECD in October 2010, giving a new impulse and strengthening the possibility to follow the OECD Transfer Pricing Guidelines.

The amendment resulted in the Tax Law Reform Bill sent by the Government at the end of April proposing to repeal the current article and include a new article 41 E with the provisions that will regulate Transfer Pricing matters in conformity to the OECD Guidelines included in the comments issued in July 2010.

In the paragraphs below we explain in detail the characteristics of this new legal provision and the procedures taxpayers will be facing in a Transfer Pricing audit procedure as well as the obligations they will need to fulfill.

Transactions Subject to Transfer Pricing Analysis

Article 41 E states:

For the purposes of this law, the IRS[3] has the authority to challenge the prices, values or profit that have been determined, or otherwise determine such prices, values or profit, when cross-border transactions and transactions involving entrepreneurial or business reorganizations or restructurings are carried out by taxpayers that are residents, or domiciled, or established in Chile with related parties abroad or those carried out at prices, values or profits other than market prices.

In this regard we have the following comments:

(1) Taxes subject to Transfer Pricing: The Transfer Pricing rules apply only for purposes of the Income Tax Law (ITL); therefore the Internal Revenue Service has no authority to challenge these transactions on occasion of a different tax audit.
(2) Range of Application: Under the general Transfer Pricing rules, they only apply to international transactions between related parties, thus excluding transactions performed within the national territory.
(3) Arm's length: The law itself defines the term "market prices, values, or profit" as "those agreed or obtained by independent parties in comparable transactions and circumstances" in accordance with the Arm's length principle.
(4) Entrepreneurial reorganizations: According to the law, entrepreneurial reorganizations or restructurings may be challenged if, on occasion of these transactions, goods or activities likely to derive incomes taxable in Chile are transferred abroad to any of the countries or territories included in the OECD list of tax havens or preferential tax regimes and if according to the IRS such transactions were not performed at market prices, values, or profit.
(5) Relationship Rules: Having established that transactions under the Transfer Pricing rules are those performed by related parties, the law defines for these purposes only, when the parties are deemed to be related:

    (i) When one of the parties participates directly or indirectly in the direction, control, capital, profit, or revenues of the other party;
    (ii) When the same person or persons participate directly or indirectly in the direction, control, capital, profit, or revenues of both parties, where all the parties are related.

In addition to the above, the law describes certain transactions that are always considered as performed by related parties:

(1) Transactions between a branch, subsidiary or any other kind of permanent establishment and its parent company;
(2) Transactions performed by the parent's permanent establishments;
(3) Transactions with related parties of the parent and permanent establishments of the former;
(4) Transactions with parties that are residents, domiciled, established or incorporated in a country or territory listed by the OECD[4] as tax havens or preferential tax regimes. The foregoing shall not apply when Chile and the relevant country have entered into an agreement allowing for the exchange of relevant information for the application of tax regulations.

Transfer Pricing Methods

The Bill proposes the methods that should be used by the Internal Revenue Service and taxpayers. Unlike the prior law, the bill includes the OECD methods, which are briefly described below.

(1) *Comparable Uncontrolled Price Method:* Under this method, the market price or value of the goods or services is determined taking account of the price or value agreed or that would have been agreed by independent parties in comparable transactions and circumstances.

(2) *Resale Price Method:* Under this method the market price or value of the goods or services is determined taking account of the price or value at which those goods or services are subsequently sold or provided by the acquirer to independent parties. For these purposes, the gross profit margin that is or would have been obtained by a reseller or provider in comparable transactions and circumstances between independent parties, is deducted from the resale or provision price or value.

(3) *Cost Plus Method:* The market price or value of the goods or services transferred by a provider to a third party is determined by adding to the direct and indirect production costs incurred by such provider, excluding general and operational expenses, a profit margin on those costs that had been obtained or would have been obtained by independent parties in comparable transactions and circumstances.

As provided in the bill, taxpayers domiciled, or residents, or established in Chile that carry out transactions with related parties should file an annual sworn statement.

(4) *Profit Split Method:* The profit allocable to each of the parties to a transaction is determined by allocating to the same the total profit derived from such transaction on the basis of the distribution of profits that have been agreed or would have been agreed by independent parties in comparable transactions.

(5) *Transactional Net Margin Method:* Under this method, the net profit margin of each party to the transaction is determined on the basis of the transactions performed by independent parties and using profit level indicators or net profit margins based on the asset performance, margins over costs or sales revenues or any other methods that are reasonable.

(6) *Other Methods:* Taxpayers may use any other method in addition to those described above taking into account the characteristics and circumstances of their transactions. Taxpayers are required to prove that the methods explained above cannot be applied to those transactions in consideration to the special characteristics and circumstances of the same.

Burden of Proof

The bill does not contemplate the obligation to present a transfer pricing study, which is a matter of the taxpayers own discretion. Therefore, we may say the burden of proof is firstly on the regulating authority (as it will be confirmed in number 4 below).

Notwithstanding, taxpayers are required to keep and put at the disposal of the Internal Revenue Service all the information and documentation supporting the application of the methods or the preparation of the pricing studies. The foregoing translates in the obligation for taxpayers to have all the relevant information and documentation to support the prices, values or profit involved in their transactions with related parties and even with third unrelated parties.

Procedures

Annual Sworn Statement— As provided in the bill, taxpayers domiciled, or residents, or established in Chile that carry out transactions with related parties should file an annual sworn statement as and when determined by the Internal Revenue Service. The sworn statement may contain the following information:

(1) Characteristics of the transactions with related and unrelated parties;
(2) The methods used to determine the transaction prices and values;
(3) Information concerning their related parties abroad and the entrepreneurial group to which they belong.

Taxpayers that fail to file this Sworn Statement, file an incomplete sworn statement or with errors or after the due date are subject to a fine that goes from 10 to 50 monthly tax units (MTU) up to a ceiling equivalent to the maximum amount resulting from 15% of the taxpayer's tax owner's equity and 5% of the its effective capital.

According to the law this fine is applied directly by the competent authorities.

In the event the Sworn Statement is deemed to be false by the competent authorities, a fine that goes from 50% to 300% of the evaded sum may be applied and the taxpayer may be punished by imprisonment of 541 days to 5 years as provided in No. 4, article 97, Tax Code.

In any case, taxpayers may apply for a time extension once only –up to 3 months- to file the sworn statement, as a result of which the inspection term is also extended accordingly.

Inspection—The procedure followed by the Internal Revenue Service with regard to a transfer pricing audit is as follows: as provided in article 63 of the Tax Code, the IRS sends notice to the relevant taxpayer requesting the same to produce the information and documentation in order to evidence its transactions with related parties where performed at market prices, values, or profit according to any of the methods set forth in the law, for which purpose the inspected taxpayer has a one month term.

Under the law, taxpayers are free to decide the method they will apply, assuming the best method principle suggested by the OECD in 2010 Guidelines will be followed. In this regard, taxpayers must apply the most adequate method, in consideration to the following:

(1) The advantages and disadvantages of each method;
(2) The applicability of the methods in relation to their transactions and circumstances;
(3) The availability of relevant information;
(4) The existence of comparable transactions.

In turn, when the Internal Revenue Service considers that a taxpayer has failed to prove its transactions with related parties were performed at market prices, values, or profit, the IRS has the authority to adjust the prices, values or profit using the information provided by the taxpayer or any other information or documentation available to the IRS. This is a relevant issue as the law allows for using the so called "hidden comparables", that is to say, information about comparable goods or services the IRS has access to in its position as Regulatory Agency which may not be shared with the taxpayer as this agency must safeguard the information it has collected. Nevertheless, the Internal Revenue Service may only use the methods stated in the law and no other.

The Bill enables taxpayers and the Internal Revenue Service to enter into a price pre-agreement where taxpayers request and propose the determination of the prices, values, or profit involved in their transactions for a specified period of time.

Having made the relevant adjustments, the taxing authority will prepare the tax assessment, plus interest and fines, as follows:

(1) If an adjustment is required, the resulting difference will be taxed the relevant year and applied the sole tax of article 21, i.e. a 35% rate;
(2) In addition to the tax mentioned in (i) above, a fine equivalent to 5% of the difference will be imposed.

Taxpayers have the right to file a tax claim against the tax assessment within a 60 business day period as a result of which a tax trial will begin in accordance with the general regulations.

In conclusion, taxpayers have two main obligations, i.e. filing the Annual Sworn Statement and prove to the IRS that transactions with related parties were carried out at market prices, values, or profit.

The Correlative Adjustment—Correlative adjustments are the possibility given to taxpayers, prior authorization from the IRS, to make adjustments to their transactions with related parties when adjustments have been made in the other State provided that Chile and that other State have entered into a Convention for the avoidance of double taxation where adjustments are not forbidden and provided that no appeals or legal or administrative actions have been brought against or are pending in connection with the resolution.

Taxpayers must file their requests as follows:

(1) As determined by the Internal Revenue Service;
(2) Include the supporting documentation;
(3) File the results to which the adjustments were made within 5 years following the expiration of the legal term provided in Chile.

Price Pre-Agreements

The Bill enables taxpayers and the Internal Revenue Service to enter into a price pre-agreement where taxpayers request and propose the determination of the prices, values, or profit involved in their transactions for a specified period of time. Likewise, the Bill provides for the possibility to enter into multilateral agreements, that is, those entered into with more than one Tax Administration. The request must contain at least the following information:

(1) Description of the transactions;
(2) The market prices, values, or profit;
(3) The term of the agreement that may not exceed 3 years;
(4) The request supporting documents;
(5) The transfer pricing study that is the basis of this application.

According to the Bill, when the Agreement involves the import of goods, the Price Pre-Agreement must also be entered into with the National Customs Agency.

The Internal Revenue Service may accept or not the request within a six month period for which purpose it will issue a resolution. No claim or appeal may be filed against such resolution. If no resolution is issued by the IRS within the above mentioned period of time, the request must be deemed to have been rejected, however, taxpayers may apply again. If the request is accepted, a Minutes subscribed by the Internal Revenue Service and the taxpayer will be prepared.

The agreement's effective date is the commercial year in which the request is made and up to three consecutive commercial years. This term may be extended prior assessment by the relevant authority. During the Price Pre-Agreement term, the IRS may not assess any transfer pricing tax differences in relation to the transactions specified in the Agreement, provided that prices, values, or profit used are determined by the taxpayer in accordance with the referred Agreement.

The IRS has the power to cancel the Pre-Agreement if the request filed by the taxpayer contained errors, false information or the circumstances have substantially changed. No appeals or claims may be filed against the IRS resolution that shall be effective from the notice date, unless the resolution is based on the false information presented by the taxpayer, in which case it will be effective from the agreement execution date and the taxpayer will also be subject to a fine that ranges from 50% to 300% of the eluded amounts and punished by imprisonment of 541 days to 5 years.

In turn, taxpayers may request to cancel the agreement if a substantial change in the essential circumstances has occurred, by sending written notice to the competent authority. The agreement will be deemed cancelled from the notice date.

The IRS must keep all executed agreements in strict reserve; however, taxpayers may authorize the disclosure of some criteria, reasons and methods used in the agreement to be included in the public list of socially responsible taxpayers. The advantage of authorizing to publish this information, whether or not taxpayers are included in the list, is that no penal interest and fines will be applied to these taxpayers in relation to violations and tax differences that may be determined during the term of the Agreement, except for sanctions subject to imprisonment.

The Benefit will remain unchanged provided that taxpayers correct the infractions within 30 days from notice and pay the relevant taxes, without prejudice of their right to appeal. Otherwise, the IRS will assess the taxes plus the relevant fines and interest.

Conclusion

The new regulations proposed by this Bill prove to be an important step towards modernization, especially considering the current Transfer Pricing rules are rather unclear in terms of their application. The foregoing is a vital element in today's transactions between related parties, especially considering the great number of transactions performed not only in Chile, but all over the world.

Following the worldwide trend, Chile has decided to conform to the OECD Guidelines as well as the arm's length principle and the methods referred to above, including the price pre-agreements amongst others. Likewise, Chile will need to keep in mind the comments the OECD will make in relation to Transfer Pricing matters considering that Chile is an OECD member since 2010. ◆

ENDNOTES

1 The current text was introduced by Law No. 19.506/ 1997.

2 In practice and as provided in the Law, the list is published by the Ministry of Finance through Supreme Decree 623 of December 3, 2003.

3 Internal Revenue Service.

4 See note 3.

Argentina Finishes Midyear with Milestone Tax Decisions

by Juan Manuel Soria and Daniel Domínguez Rosso Alba, Francia & Asoc., Buenos Aires, Argentina

Argentina concludes the second quarter of 2012 with important events in the field of its international tax policy. During this period, Argentina has denounced the Convention for the Avoidance of Double Taxation (DTT) with Spain and Chile; has ratified four Tax Information Exchange Agreements (TIEA); and signed another one with Uruguay.

Regarding judicial cases, the Supreme Court has analyzed the concept of "useful life" of assets for depreciation purposes, including technological obsolescence as a factor to be considered. Finally in terms of exports legislation, by decree of the president, export tax of biodiesel was increased up to 32%. This measure would probably lead to a constitutional controversy as rates should only be increased by a law enacted by Congress.

Tax Policy Background

The signing of TIEA as well as the ongoing review and analysis of the DTT actually in force are priority tasks assigned by the President to the Argentine Revenue Service (ARS). [1]

Under these policies, Argentina has recently decided to denounce the DTT with Spain and Chile. With these actions, Argentina reaches up to three the number of DTTs denounced in the course of 2012,[2] and a total of four DTTs that were finished by the actual government.[3]

Therefore, Spanish shareholders of Argentine corporations were exempt from PAT.

With regards to TIEA, the current governing party has signed over 14 TIEAs agreements since taking office in 2003. On April 23, a TIEA was signed with Uruguay, while the Congress has recently ratified the TIEAs signed with Republic of Costa Rica, the Commonwealth of the Bahamas, the Republic of San Marino and the Principality of Andorra.

Termination of the DTT with Spain and Chile

On June 29, Argentina denounced the DTTs with Spain and Chile, which were signed on July 21, 1992, and November 13, 1976, respectively.

One of the main reasons that led the Argentine government to denounce the DTT with Spain was an exemption on asset taxes provided for Spanish shareholders of Argentine corporations.

Argentina levies taxes on assets located in the country at the end of the calendar year (PAT). In the case of shares issued by Argentine companies and held by foreign entities, PAT has to be paid by the local company on behalf of the shareholders.

However, in the case of the DTT with Spain the taxing right were allocated "exclusively" to the country of residence of the shareholders (e.g.: article 22 of the DTT provides that "capital represented by shares or equity interest or capital of a company shall be taxable only in the Contracting State of which the owner of such shares or equity interest or capital is a resident").

Therefore, Spanish shareholders of Argentine corporations were exempt from PAT. Additionally, this provision could also benefit residents of third countries with whom Argentina has signed the Treaty of Montevideo (1980) in which it was agreed a "most favored nation clause" stating that: "capitals originating from member countries shall have - within the territory of other member countries-, the right to a treatment not less favorable than the one granted to capitals coming from any other non-member country…." [4]

It is worth mentioning that Tax Court (in re: *Losa Ladrillos S.A.,*August 8, 2011) recently held that a foreign corporation resident in Uruguay[5] could not be treated in a less favorable way compared to a resident of Spain, and therefore its investments in shares of entities incorporated in Argentina could not be taxed in the latter country.

DTT with Chile also had the same exemption on PAT for Chilean shareholders of argentine corporations. However, in the case of the DTT with Chile the main reason which led to the denounce is said to be the allegedly abusive use of Chilean holding corporations - which are not taxed in their foreign income - jointly with the DTT which follows the principle of source taxation.

The ARS considered that under the DTT some corporations reached (abusively) situations of double non-taxation (tax free repatriation of benefits from holding corporations), and therefore challenged those structures[6] . Finally, in view of this allegedly abusive tax planning, Argentine government decided to denounce the DTT.

The DTT with Spain will cease to have effect with respect to taxes withheld at the source on amounts paid to nonresidents, as of January 1, 2013, and with respect to all other taxes, on the fiscal periods starting after January 1, 2013. With regards to the DTT with Chile, it will cease its effects on January 1st 2013 in the case of the individuals and estates, while for enterprises, on the fiscal period starting after the diplomatic notice of termination sent to the other State (June 29).

Ratification of Four TIEAs

The Argentine Congress enacted[7] laws N° 26.747, 26.748, 26.749 and 26.750 approving four TIEAs concluded in late 2009 with the Republic of Costa Rica[8] , the Commonwealth of the Bahamas[9] , the Republic of San Marino[10] and the Principality of Andorra[11] respectively.

The four TIEAs approved by the Congress follow the Model of the Organization for Economic Co-operation and Development (OECD), and provide for the exchange of information on request, which may be about information held by banks, other financial institutions, person acting in an agency or fiduciary capacity; and any other related to the ownership of companies and entities.

To determine the deduction, the costs of acquisition should be apportioned over the recovery period considering the probable "useful life" of the asset.

The TIEA with Andorra entered into force on June 15; the one with San Marino on June 16; with Costa Rica on July 12 and finally the one with Bahamas entered into force on the 27 of July.

TIEA with Uruguay

On April 23, Argentina and Uruguay signed a tax information exchange agreement following the standards of the OECD, and also providing for a method of eliminating double taxation by means of recognizing a tax credit in country of residence for the tax paid in the source country.

The agreement – actually awaiting ratification by Congress - will enter into force on the 30th day after the date of the last notice of the contracting state acknowledging that the constitutional requirements for the entry into force have been complied.

The TIEA could not be applied retroactively. Notwithstanding the aforesaid, the use that the parties make of the information obtained should be monitored, considering that there could be situations where the information exchanged referring to periods following the effective date, could be used in order to make assessments for years prior to the entry into force.

Depreciation – "Useful Life" Concept

Argentine legislation allows a deduction for the wear and tear of assets used in the trade or business[12] . To determine the deduction, the costs of acquisition should be apportioned over the recovery period considering the probable "useful life" of the asset.

Even though it is known that an asset useful life is not necessarily coextensive with its actual physical life, Argentine legislation does not define the concept of "useful life", bringing therefore a number of controversies.

In re "Telintar S.A."[13] it was discussed the recovery period of fiber optic cables. In this regard, while the ARS considered a 20-year useful life, the taxpayer estimated it in 15 years considering the obsolescence derived from technological developments.

The Supreme Court ruled for the taxpayer stating that the concept of useful life refers to the length of time the asset would be "economically" useful or profitable, and therefore, the obsolescence factor should be considered.

Increase of Biodiesel Export Duties

The Argentine president increased export duties of biodiesel [14] from the 20% up to 32 %, invoking delegated powers conferred by the Congress[15] . According to the Economy Ministry, the measure intends to reduce the local price of the biodiesel.

As there are some arguments to consider that the delegation invoked expired in 2010, and considering that only Congress has the authority to legislate on tax matters, there would probably be judicial discussions regarding the constitutionality of the said decree. ◆

ENDNOTES

1 ARS Gazette, January 21, 2010.
2 Denounce of the DTT with Switzerland: notice of January 16, 2012.
3 Denounce of the DTT with Austria: notice of June 26, 2008.
4 Article 48.
5 Contracting State under thee Treaty of Montevideo
6 *Memorandum* 799/10.
7 Official Gazette June 7, 2012.
8 Signed on November 23, 2009.
9 Signed on December 3, 2009.
10 Signed on December 7, 2009.
11 Signed on October 26, 2009.
12 Art. 84 of the Income Tax Law.
13 "DGI *(en autos Telec. Int. Telintar S.A.)* (TF 20.343-I)", D *.522.XLV,* Supreme Court, May 22, 2012.
14 Argentina is one of the world's largest exporter of biodiesel (fuel made from soybean oil).
15 Decree 1339/12.

Personal Income Tax Approved In Paraguay

by Anibal Pangrazio and Beatriz Pisano, Ferrere, Asuncion, Paraguay

The purpose of this article is to describe Paraguayan Personal Income Tax, which was finally passed by Law N° 4673/2012. In this article we will analyze the law, its purpose, and its economic consequences.

1. Introduction

Personal Income Tax (hereinafter "IRP" fromits Spanish acronym) in Paraguay was first passed in 1971 by Law N° 248/71. However, it was suspended shortly thereafter for 20 years until it was finally repealed by Law N° 125/91.

In 2004, Law N° 2124/04 passed IRP again, to be in force as of January 2006, after the government and the private sector agreed to reduce the Corporate Tax's rate from thirty (30)percent to ten (10) percent, as a condition for opening negotiations. However, IRP was never enforced and after years of conflict with the Treasury Department, Congress suspended IRP until 2013.Nevertheless, on July 2012, Congress passed Law N° 4673/2012 on personal income tax in force as of August 1, 2012 (hereinafter referred as the "Law").

2. Taxable Income

According to Section 10 of Law, taxable income will be income derived from (i) salaries (either as an employee or free-lance contractor) from public or private entities;(ii) Fifty (50) percent of the dividends, utilities, or surpluses, obtained by shareholders or partners of entities engaged in activitiessubject to Corporate Tax (IRACIS for its Spanish acronym) and orAgricultural Tax (IMAGRO for its Spanish acronym), distributed or credited, including activities from cooperatives; (iii) capital gains arising from the sale of immovable assets and from rights, shares or quotas of capital assigned during the year; (iv) interests, commissions and savings income; and finally (v) any other income exceeding USD 11,280Law refers to 30 minimum wages where a minimum wage currently equals USD 376.

(such as income from the sale of jewels, paintings, cars, etc).

3. Taxpayers

According to Section 10 of Law taxpayers are:

- **Resident individuals** provided that their annual income exceeds USD 45,534
- **Professional corporations** will pay IRP in any case(i.e.regardless of their annual income).

4. Income Tax System

Unlike other countries in Latin Americathathave worldwide income taxation, Paraguay applies territorial income taxation; therefore IRP is levied solely on Paraguayan source income.

According to Section 12 of Law, Paraguay source income arises from activities performed within the Paraguayan territory regardless of the taxpayer's nationality, domicile, residence or place of issuance of agreements. Also, Paraguay source income arises from dividends and utilities from companies located in Paraguayan territory and capital gains from immovable assets located therein.

In the case of resident individuals, the law establishes a threshold used to determine if the individual becomes subject to taxation (Section 15).

5. Base of calculation and rates

How to calculate IRP—According to Law, IRP's base of calculation is as follows:

NET INCOME PER RATE
Net income = Gross income – deductible expenses.

Rates—IRP's rates are eight (8) to ten (10) percent of the net incomeof the relevant fiscal year (Section 16). The higher rate applies when income exceeds USD 3795 and the lower rate in the remaining cases. Non-residents who receive Paraguayan source income are subject to income tax at a twenty (20)percent tax rate over the fifty (50) percent of the gross income received.

In the case of resident individuals, the law establishes a threshold used to determine if the individual becomes subject to taxation (Section 15). During 2012, resident individuals will only have to pay IRP if the annual income obtained exceeds USD 45,534. This figure will decrease annually in USD 4,553, up to USD 1,138 at the tenth year of tax enforcement. As mentioned above in section 3, professional corporations will pay IRP in any case, with no threshold.

According to Section 17, the payer or sender of non-resident individual's incomesubject to IRP must become a Withholding Agent.

Deductible Expenses—Regarding individuals, both business and non business expenses can be deducted without any limits whatsoever (such asmaintenance, education, health, housing, investment and leisure expenses from the taxpayer or the latter's dependents). Regarding professional corporations, business expenses and investments can be deducted (Section 13).

Tax exclusions—The following income is excluded from taxation (Section 15 of Law):

- Public pensions received by people who experienced disability or injuries during the Chaco war or their heirs.
- Salaries paid to Paraguayan based diplomatic and consular representatives and its personnel for the performance of their services, as long as there is a reciprocal treatment for Paraguayan representatives holding a similar position.

- Beneficiaries of indemnifications caused by death, partial or complete incapacity, disease, maternity, accident, or redundancy.
- Retirement and pension benefits are exempted if the compulsory contributions were made in accordance with a social security service created or admitted by law.
- Interests, commissions, or yields from investments, deposits of capital in banks, financial entities (subject to law N° 861/96 on Banking, finance companies and other credit institutions), as well as cooperative organizations for savings and credit including those accrued in favor of its shareholders, partners, employees and managers, and any yield on debt securities issued by an authorized issuer company.
- Income generated by differences in exchange rates of deposits in national or foreign entities and any pricing of assets as long as they do not consist in capital gains obtained from its sale.

According to Section 13 of Law, investment losses can be carried forward for 5 years at a maximum rate of twenty (20) percent of gross income per future fiscal year.

6. Tax due date

According to Section 16, IRP is an annual tax, due on December 31 of each relevant fiscal year when income is actually received (cash basis). Payment is made by written statement from the taxpayer.

7. Conclusion

From the analysis of the law, we can assert that IRP's main purpose is the formalization of the economy. Therefore, the Treasury does not intend to significantly increase revenues from IRP. However, IRP's application will result in an increase of revenues from indirect taxes such as Value Added Tax (VAT).

According to preliminary non official estimates*http://www.abc.com.py/edicion-impresa/economia/con-el-irp-suman-los-impuestos-directos-que-se-aplican-en-el-pais-434752.html*, during one full year of enforcement, IRP will collect approximately USD 5,668,934 and affect about 2300individual taxpayers (plus professional corporations), while revenues from indirect taxes such as VAT will be approximately USD 45,351,473. ◆

Vehicle Registry Tax Entered In Force

by Juan Carlos Casellas Gálvez, PhD (Tax Law), Mayora & Mayora, S.C., Guatemala

As we previously announced, 2012 and 2013 will be years for change in the Guatemalan tax system. The pinnacle will be January 2013, when the new Income Tax law enters into force. Among its major developments, the new law includes regulations related to permanent establishments, transfer pricing and even a residency concept for tax purposes.

While this day comes, several reforms approved by the Congress are entering into force, such as vehicle registry tax, best known as IPRIMA. This tax is a compensatory measure for loss of revenue that would suffer the Treasury as a result of the enforcement of Central American customs regulations that define import motor land vehicles as nontaxable goods.

IPRIMA only applies to new or used import land motor vehicles and is generated when the vehicle is enrolled for the first time in the public record. According to law, the model of the vehicle is established by VIN number. Also, IPRIMA incorporates several restrictions to import used land motor vehicles depending on the model and the condition of the vehicle. Besides the restriction to import non-rebuildable land motor vehicles, the prohibition to import land motor vehicles that cannot move by themselves is expected to offer a lot of trouble in their implementation. In regard to quantification elements, the taxable base for used import land motor vehicles is the value described in the invoice or the value according to the Official Value´s List; and for new import land motor vehicles is the CIF value of importation. The way the tariffs are described show that IPRIMA is a compensatory measure because they vary between 5% and 20% depending on the type or kind of vehicle, almost as if it were a customs tariff classification. Finally, the payable tax is the result of the application of the tariff to taxable base.

IPRIMA only applies to new or used import land motor vehicles and is generated when the vehicle is enrolled for the first time in the public record.

Once the import process is finished, taxpayer has three days to pay IPRIMA. To do this, taxpayer must provide the tax agency with all the necessary information and documentation to register the vehicle, including receipt proving the payment of VAT on imports. Afterwards, tax agency calculates the tax and requires the payment. Once paid, the tax office registers the vehicle.

Finally, law states that exemptions would only apply to the tax itself and not to the registered obligation. In this sense, we must highlight the new customs law, Article 140 which states that when an exempt vehicle is sold, the new owner must pay either import duties on land motor vehicles or the internal tax replacing it, clearly referring to IPRIMA. ◆

Tax Developments in Brazil

by Ticiana Cunha, Manoela Nunes Dias, Luis Rogério Farinelli, Cristiane M. S. Magalhães, Stephanie Makin, Carlos Eduardo Navarro, Ricardo Silveira, and Tatiana Villani, Machado Associados Advogados e Consultores, São Paulo, Brazil

Reporting Services and Other Transactions with Non-Residents: Mandatory Use of "SISCOSERV" As of August 2012

by Cristiane M. S. Magalhães, Carlos Eduardo Navarro, and Manoela Nunes Dias

In the second quarter of 2012, the Ministry of Development, Industry and Trade (local acronym MDIC) and the Brazilian Federal Revenue Service (RFB) issued several normatives[1] to regulate the filing obligation of *SISCOSERV,*[2] an electronic reporting system introduced by Law 12546, of December 2011.

Through this system, individuals[3] and legal entities resident in Brazil must report the transactions with non-residents involving the export or import of services, transfer or acquisition of intangibles and any other transactions that may change parties' net assets.[4] Information on services rendered abroad by a foreign branch or company controlled by a Brazilian legal entity must also be reported, but services or intangibles connected with imported or exported goods shall only be reported thorough SISCOMEX, another electronic filing system.

The SISCOSERV system, divided into a sales part ("export") and an acquisitions part ("import"), was only made available as of August 2012 on the RFB and the MDIC websites. The normatives set a tight time schedule for the SISCOSERV start date for each of the services, intangibles and transactions as set, as exemplified below:

TRANSACTION	STARTING DATE
Construction Services	August, 2012
Professional Services (including legal and accounting)	October, 2012
Financial Services	February, 2013
Intellectual Property Licensing	July, 2013
Electricity and Communication Services	October, 2013

SISCOSERV requires the Brazilian party to report, within 30 days after the respective activity has started, all major information on transactions such as: (a) the country where the non-resident party is based; (b) the non-resident's name, address and taxpayer identification number (NIF); (c) general payment conditions, such as term, number of installments (if applicable) etc.

It is assumed that the RFB will gather the information reported in SISCOSERV on the import of services and cross-check it with information available on other databases to confirm whether all taxes related to such transactions have been regularly paid. Compliance with transfer pricing rules could also be checked.

The Brazilian party that fails to comply with SISCOSERV obligations could be subject to significant penalties. Experts debate over the legitimacy of these levies under the argument that they do not have legal grounds. Nevertheless, considering that tax authorities could charge such penalties based on acts, the Brazilian party would have to discuss this issue in court.

Unquestionably, SISCOSERV filing obligation results in the increase of Brazilian parties' ancillary obligations, demands extra work and will probably require relevant investments in technology. The information required is far more accurate than that already provided in the income tax return or through the Public System of Digital Accounting (SPED).

Tax on Financial Transactions

by Tatiana Villani and Stephanie Makin

As of June 14, 2012, the zero rate of the Tax on Financial Transactions levied on foreign exchange operations (IOF Exchange) is applicable to loans granted to Brazilian parties with minimum average terms of 720 days (even if such loans are granted by means of the issuance of binds in the international market). Foreign exchange operations related to loans that do not comply with the minimum average terms or are repaid before the 720 days are up are subject to IOF Exchange at a rate of 6%.

IOF Exchange rules applicable to loan transactions have suffered frequent changes in the last 18 months, as shown in the table below:

The government sustains that such modifications have been motivated by the need to control the inflow of foreign currency. No matter the reason,

DATE OF THE EXCHANGE OPERATION RELATED TO THE LOAN	MINIMUM AVERAGE TERM OF THE LOAN FOR THE APPLICATION OF THE IOF EXCHANGE ZERO RATE	IOF EXCHANGE RATE FOR LOANS WITH LOWER MINIMUM AVERAGE TERMS
Until 03/28/2011	90 days	5,38%
From 03/29/2011 until 04/06/2011	360 days	6%
From 04/07/2011 until 02/29/2012	720 days	6%
From 03/01/2012 until 03/11/2012	3 years	6%
From 03/12/2012 until 06/13/2012	1800 days	6%
From 06/14/2012	720 days	6%

the fact is that these changes generate uncertainty, raising doubts as to the application of the zero rate, and increase costs for Brazilian parties to gather such funds abroad.

Federal Senate Approves Resolution to End "port war" in Brazil

by Ricardo Silveira and Ticiana Cunha

Federal Senate's Resolution no. 13 was published last April 26, reducing the State Value-Added Tax (ICMS) rate levied on interstate transactions with imported products to 4%. With this measure, the Federal Senate intends to end the port war generated by the granting of tax benefits by some states to boost the entry of imported products into their territories without the authorization from the National Council of Financial Policy (Confaz). In accordance with the Brazilian legislation, any benefit resulting in the reduction or elimination of the ICMS burden may be granted only upon the consent ofall Brazilian states, which should occur through an agreement entered into between them at a Confaz meeting.

Currently, Espírito Santo, Santa Catarina and Goiás are the states that unilaterally grant the most significant ICMS benefits to importing companies. Precisely for that, these states should be the most harmed with the approval of Resolution no. 13, which intends to make void the benefits not supported by agreements by setting the ICMS rate at 4%.

For illustration purposes, interstate sales are taxed at the rates of 7% or 12%, depending on the origin and destination of the goods. In order to attract importing companies, some states grant a tax subsidy, generally as deemed credit, so that the ICMS burden in the sale of imported products to other states may reach 3%. In this case, a product imported through Santa Catarina (which offers a tax benefit in the import) and sold to São Paulo would be subject to an ICMS burden of 3%, although the ICMS stated on the sale invoice would be 12%, allowing the buyer to use a credit in the latter percentage.

By establishing the ICMS rate at 4%, the advantage of these benefits will be substantially reduced, as the ICMS paid in interstate acquisitions of imported products will be the same within all domestic territory. This is to say that the benefits granted by states such as Espírito Santo, Santa Catarina and Goiás will no longer be attractive for importing companies located in other states, and it should also be considered that there are other costs involved in interstate acquisitions, such as the freight of imported goods.

By establishing the ICMS rate at 4%, the advantage of these benefits will be substantially reduced, as the ICMS paid in interstate acquisitions of imported products will be the same within all domestic territory.

Resolution no. 13 establishes that the 4% rate will only be applied to the goods that are not submitted to manufacturing process after their customs clearance, or, even if submitted, result in goods with an import content higher than 40%. Confaz shall enact rules to define the criteria to be adopted to certify the import content.

In fact, several other issues are unclear and need to be regulated by Confaz until Resolution no. 13 becomes effective, which will take place on January 1, 2013. One of these issues is related to the application of the 4% rate: whether it should be used only in the first interstate sale of the imported goods or also applied in the subsequent interstate transactions (with the same imported goods).

In principle, it is possible to understand that the 4% rate should be applied to all interstate transactions carried out in the sales chain of the imported goods, even because Resolution no. 13 does not make any exceptions in this regard, as it did in relation to the import content and the products excluded from the 4% ICMS rate.

This interpretation diverges from the interpretation of most countries and of the Organization for Economic Cooperation and Development (OECD).

However, should Confaz decide in this sense, doubts will come up on how to prove the condition of imported goods by a party that acquires them in interstate transactions subsequently to the first (carried out after the customs clearance).

Such evidence will impact the calculation of the import content and, as a consequence, on the ICMS stated on the interstate sale invoice (4%, 7% or 12%), which may cause questioning by the state tax authorities on the origin and destination of the imported goods (in the latter case, by virtue of the use of ICMS credit by the acquirer of the goods).

These and other significant issues need to be clarified until Resolution no. 13 becomes effective, otherwise the port war in Brazil may never end.

Court Precedent on Withholding Income Tax on Remittances Abroad for Services Payments

by Luis Rogério Farinelli, Tatiana Villani and Stephanie Makin

On May 17, 2012, the Brazilian Superior Court of Justice ("STJ") decided that payments for technical services with no technology transfer rendered by companies domiciled in countries with which Brazil has signed a Double Taxation Treaty ("DTT") were considered not to be subject to Withholding Income Tax ("WHT") in Brazil, supported by article 7 of the DTTs (which refers to "business profits").

Historically, Brazil has witnessed conflicting decisions from the Federal Regional Courts (second instance judicial Courts) on the levy or not of WHT on these remittances and, thus, this precedent may represent a step forward on the discussion.

According to the Brazilian law, payments for the rendering of technical assistance and technical services to foreign beneficiaries are subject to WHT in Brazil. However, when these remittances are made to countries with which Brazil has signed DTTs, this taxation can be reduced or even eliminated according to which article of the DTT this income is classified under.

In the case taken to STJ's analysis, the taxpayer argued that the income arising from the rendering of technical services with no technology transfer is part of the profit earned by the foreign companies in Canada and Germany and, therefore, should be classified under article 7 of the DTT. In accordance with said provision, the profit of foreign companies with no permanent establishment in Brazil may be taxed only in their countries, which means that Brazil would not be allowed to tax it at source.

Differently, the government argued that article 21 of the DTTs, which refers to "other income" and grants the source country the right to tax with no rate restraint, should be applicable. In the government's view, the amounts paid for the rendering of services are not considered to be "business profits" (article 7), but rather "revenues" that will form the income referred to in article 7 (after the legal additions and exclusions). This position is confirmed by Normative Declaratory Act No. 1/2000, issued by the Federal Revenue Service, which states that technical assistance and technical services, with no technology transfer, are not covered by any specific provision of the DTT and, as a result, should be subject to the rules of article 21 (even if the treaty does not include this article). This interpretation diverges from the interpretation of most countries and of the Organization for Economic Cooperation and Development (OECD).

STJ judged unanimously in favor of the taxpayer's view, deciding that article 7 should be applied and that no WHT would be due in Brazil. According to the ministers, the profits of the foreign company foreseen in article 7 of the DTT comprise the operating profits (in the case at hand, the gross revenues arising from the service rendering) and not the actual profit (net profit adjusted in accordance with the additions and exclusions set forth by the tax legislation).

The decision expressly states that the ADN 1/00 was mistaken to classify the payments to foreign companies for the rendering of services abroad as "other income". The judgment also analyzed the hierarchy of DTTs in Brazil, following the already established position that DTTs are on the same level of domestic legislation, but prevail over the latter because they are considered as special rules that should always be applicable when confronted with a general one.

Although it is a very important precedent based on good legal grounds, such decision does not completely settle the discussion on the matter since (i) it is not binding (thus, in practice, lawsuits from other taxpayers may have an opposite outcome); (ii) the federal government may still appeal from it, and; (iii) the matter was analyzed only under the perspective of article 7 *versus* article 21 of DTT, not entering into the most controversial issue, regarding the concept of "technical services" for DTT purposes and the application of article 12 (generally applied to technical services by force of the protocols of the DTTs entered into by Brazil), which would allow Brazil to tax such income. This and other controversial issues not analyzed in the STJ's decision may be decided in the future in other pending lawsuits. ◆

ENDNOTES

1. RFB Normative Ruling 1277/12, MDIC Ordinance 113/12 and RFB and MDIC joint Ordinances 1908/12 and 1965/12.
2. All transactions to be reported are listed by Decree 7708/12.
3. Individuals that do not carry business activities frequently and professionally are not required to report transactions, provided that the total volume traded does not exceed US$ 20,000 per month.
4. E.g. operating leasing, franchise.

Tax Developments in Colombia

by Juan Pablo Wills, Lewin & Wills Abogados, Bogota, Colombia

Tax and Customs Incentives for Colombian Nationals Residing Abroad to Return to Colombia.

Through act 1565/2012, Congress established both tax and customs benefits for all Colombian nationals residing abroad who wish to return to their homeland. In order to have access to the preferential regime, a person must meet the following requirements:

1. Furnish proof of having resided abroad for at least three (3) years. The acceptable means of proof and other aspects of this requirement are pending regulation by the Government.
2. Provide a written statement to the corresponding authority in which the individual declares its intention of returning to Colombia and manifests that he is looking to be covered by this preferential regime.

3. The returning individual must be of age. (At least 18 years old)

Please note that this benefit expressly excludes any Colombian citizen that has an outstanding conviction either in Colombia or abroad for crimes related to human trafficking, money laundering, drug dealing, violation to international human rights or crimes against the public administration. No consideration will be given to the migratory situation in the residence country of the Colombian citizen that wishes to adhere to this regime.

Assuming that the returning individual complies with all three requirements mentioned above, the purpose of the return must also fall under four specific categories established by this law.

Please note that this benefit expressly excludes any Colombian citizen that has an outstanding conviction either in Colombia or abroad for crimes related to human trafficking, money laundering, drug dealing, violation to international human rights or crimes against the public administration.

1. Solidary Return: Available for all displaced Colombian citizens by reason of the armed conflict in the country.
2. Humanitarian or special cause return: Available for citizens returning by reason of force majeure or due to special circumstances which may endanger the persons physical, economic, or social integrity.
3. Labor return: Available for citizens returning to employ their capabilities acquired abroad or in Colombia in their fields of expertise.
4. Productive return: Available for returning citizens who wish to sponsor productive projects in the municipality of settlement. The investment must be made following the development parameters of each of the different municipalities.

After exhausting the individual's compliance process with both the formal requirements as well as with the motive of the return, tax and customs benefitsincluding the following exemptions from tax and customs duties will be granted:

1. Household furniture and items that do not exceed COP$62.517.600 (Approximately USD$ 34,372)
2. Professional equipment, machinery, capital assets, and other goods (except vehicles) that are used in the development of the person's career or trade and that will remain as such in Colombia. The total amount cannot exceed COP$446.219.370 (Approximately USD$247,900).
3. The currency exchange to Colombian pesos of income resulting from the sale of assets or any other goods earned because of work or services rendered in the individual's residence country. Please note that proof must be furnished regarding the legality of this income. No financial transactions tax will be levied. The maximum quantity subject to this benefit is COP$892.490.838 (Approximately USD$495,828).

Other non-tax benefits as well as further clarification on certain issues are regulated by act 1565/2012. Please note that this article is intended as a merely informative excerpt of the law and further analysis must be conducted in order to accurately establish the applicable regime to a specific case.

Legislative Updates

On July 20, 2012, Colombian Congress started a new legislature. The following is an update of the legislative agenda regarding tax matters.

Bill 193/2012: Through this bill, introduced on March 16, 2012, a Congressman seeks to eliminate the financial transactions tax. Currently this tax has a rate of 4 per 1000 pesos over the total value of most financial transactions. This bill has been debated by the chamber of representatives and it was approved in the first debate. Three debates are still pending as well as all other normal legislative proceedings.

Bill 4/2012: This bill, introduced by a group of congressmen on July 20, 2012, seeks to tax the Oil activity in Colombia with ICA (A local tax currently levied on industrial, commercial and services activities). This bill is still pending its first debate. As itwas presented to Congress, the proposed rate would be between 6 and 20 per 1000 Colombian pesos and the taxable base would be the value of the oil production or the value of the oil extraction in the mouth of the mine.

Update on the structural tax reform: The Colombian Government has announced that it might not present to Congress the tax reform it had anticipated. The current legislative atmosphere as well as other political issues have deferred the study in Congress of this proposal. Although this is not an official statement, we anticipate that the much anticipated tax reform will not be introduced during 2012.

Although this is not an official statement, we anticipate that the much anticipated tax reform will not be introduced during 2012.

Double Taxation Treaties Update

The following chart illustrates the Double Taxation Treaty situation of Colombia: ◆

TREATY	STATUS
Decision 578 Andean Community (Bolivia, Ecuador, Peru, Colombia)	In force
Spain	In force (2009)
Chile	In force (2010)
Switzerland	In force (2012)
Canada*	Signed (November 2008)
México**	Signed (April 2009)
South Korea***	Signed (July 2010)
Portugal***	Signed (August 2010)
India***	Signed (May 2011)
Czech Republic***	Signed (April 2012)

* Approved by Congress and Constitutional Court (pending entry into force)
** Approved by Congress (pending constitutional approval by Court)
*** Pending approval by Congress and Constitutional Court

Tax Developments in Uruguay

by Isabel Laventure, Ferrere, Montevideo, Uruguay

Tax Administration Issues New Personal Income Tax Regulations on Overseas Investments

Until December 2010, Uruguay applied the source principle, only taxing income deriving from activities carried out, assets located or rights exercised in Uruguay. Law No. 18,718 introduced an exception to this principle. As of January 1, 2011, Personal Income Tax is also levied on certain foreign-source investment income obtained by Uruguayan tax residents.

As of January 1, 2011, Personal Income Tax is also levied on certain foreign-source investment income obtained by Uruguayan tax residents.

This law was regulated by Decree No. 510/2011, published in the Official Gazette in February 2012.

In May, the Tax Administration issued Resolution No. 788/012, which adjusts the time schedule for the payment of the tax, either by the taxpayer or by withholding agents.

Withholding agents having agreements with taxpayers to pay on their behalf taxes accrued between January 1, 2011 and June 30, 2012 have until August 20, 2012 to pay in taxes and file the pertinent declaration with the Tax Administration.

Tax Administration Resolution No. 990/2012, published in the Official Gazette on June 12, 2012, establishes the cases where agents do not have to withhold. No withholding is required if the beneficiary presents an affidavit indicating that it is a nonresident individual, nonresident entity, or a resident legal entity.

Additionally, it was necessary to determine yields on public or private debt, savings and similar instruments, with or without explicit interest rates. Tax Administration Ruling No. 836/012 published on May 11, 2012 and No. 990/012 establish how yields are to be computed for such securities and the information that agents must have to withhold income tax on such yields.

Another recent development on the subject is the Law 18,910, published in the Official Gazette on June 15, 2012, providing the possibility of not paying income tax on the aforementioned investment income by individuals acquiring resident status as of July 1, 2007. Such persons have the possibility of not paying income tax on said income for the tax year in which the change of residency took place and for the five following tax years.

Changes to Personal Income Tax on earned income.

Law No. 18,910 published in the Official Gazette on June 15, 2012 modified, among other things, the income brackets for Individual Income Tax over labor income.

Until now the rates for Individual Income Tax ranged between 0% and 25%. This Law establishes a new bracket for which 30% will be payable on amounts exceeding US$ 160,000 annually.

New Regime for Bearer Shares and Other Bearer Participations

Law Nº 18,930 published in the Official Gazette on July 27th, 2012, and effective as of August 1, modifies the regime of bearer shares and other equity participations

Bearer shares will continue to exist but an information system on such equity participations will be established and kept by the Central Bank of Uruguay (CBU).

The information that will have to be reported to CBU is:

- Data permitting identification of the owners of bearer shares, securities or participations in entities residing in Uruguay. In the case of share custodians, agents or other third parties exercising powers of administration and representation of the shareholder, the identification should include the owner of the securities and the custodian, agent or representative.
- The total nominal amount of paid in capital or equivalent, or the net worth, as the case may be.
- The participation that corresponds to each shareholder, partner or participant.

Bearer shares will continue to exist but an information system on such equity participations will be established and kept by the Central Bank of Uruguay (CBU).

Registration should be updated each time this information changes.

Who must report:

(1) Resident entities: Legal and other entities organized under Uruguayan law are considered residents.

(2) Foreign entities that:

   a. Operate in the Uruguayan territory through a permanent establishment according to the definition provided by tax regulations.

   b. Have their effective management in Uruguay (i.e., management and control of their activities), for purposes of engaging in business activities (combining capital and labor) in the country or abroad.

(3) Investment funds: including foreign investment funds whose administrators are residents in the Uruguayan territory, and foreign trusts whose trustee or administrator is a Uruguayan resident.

This information does not have to be reported by entities whose shares and other securities are traded on securities exchanges, provided that the securities are made instantly available for sale or acquisition on such exchanges.

The information received by CBU will be confidential, although the General Revenue Service ("DGI") may request same. Nevertheless, it will not be authorized to obtain lists or general information via "fishing expeditions." To receive information it must show that it has formally initiated an inspection event, or that a well-founded request has been made by tax authorities of foreign countries that have agreements with Uruguay on exchange of information.

Treaties to Avoid Double Taxation and Tax Information Exchange Agreements

In the framework of strengthening fiscal transparency promoted by the OECD, Uruguay continues subscribing and approving new treaties to avoid double taxation with different countries.

On April 24, the Uruguayan Government announced signature of a Treaty for Tax Information Exchange with Argentina. The treaty is awaiting ratification by the respective Congresses.

On July 26, Laws Nos. 18,932, 18,933 and 18,934 were passed, approving Double Taxation treaties with Ecuador, Liechtenstein and Portugal.

The clauses of the treaties are, generally, in accordance with those established in the OECD model. ◆

Latest Amendments in Peru's Tax Law

by Karen Temoche, Rubio Leguia Normand, Lima, Peru

In June and July, the Peruvian government issued several Decrees amending the Income Tax Law, VAT Law, the Tax Code, Customs Law and Criminal Tax Law, respectively.

> *Following a trend observed in Latin American transfer pricing rules in recent years, (i.e. Argentina, Uruguay, Ecuador and Brazil), a new transfer pricing method has been added in order to determine the fair market value of commodities imported to and exported from Peru.*

In our opinion, the most outstanding changes in Peru Tax Law are as follows.

Norma XVI – General Anti-Avoidance Rule (GAAR)

This new rule came into effect last July 19, 2012, and applies whenever a transaction or group of transactions are structured under a legal mechanism with the only purpose of obtaining a tax advantage (not burden transaction, smaller taxable base, bigger credit or tax loss, etc).

In such a case, the Peruvian Tax Administration, taking into consideration the economical substance of the transaction, could apply the tax treatment that would have been applicable if the involved entity would have not use the different legal mechanism, and it will determined the corresponding tax effect, being able to demand the payment of the determined tax debt, reduce the tax credits, etc.

Peruvian law has adopted CFC (Controlled Foreign Company) legislation

Peruvian Income Tax Law has incorporated this regimen to be in forced as from January 2013, which main purpose would be avoiding the indefinite deferral of the imposition in Peru of passive income obtained abroad by non-resident entities controlled by local entities.

According to this Regimen, the resident entities, that solely or together with related local entities, participate directly or indirectly in no less than 50% of the results of non resident entities, shall consider, according to their participation percentage, the net passive income of said entities if the aforementioned income is not subjected to tax burden in the country where it is obtained or if said income is burdened with a tax rate not higher than 75% of the tax rate applicable in Peru for the same income. Said net passive income would be attributable at the end of the fiscal tax year.

Among others, the dispositions included in the Law define the entities considered as controlled entities, the type of income considered as passive income, the way to determine the net passive income, the way to apply the credit regarding the tax paid abroad, and the formal obligations to be accomplished by the resident entities.

Transfer Pricing Rules: Sixth Method

Following a trend observed in Latin American transfer pricing rules in recent years, (i.e. Argentina, Uruguay, Ecuador and Brazil), a new transfer pricing method has been added in order to determine the fair market value of commodities imported to and exported from Peru between related parties when an international intermediary is involved not being this last party the final recipient of the goods; or, when a tax haven is involved in the selling or buying of commodities.

Pursuant to this new method (the so-called "sixth method",) the arm's length value of the commodity will be the quotation value that corresponds to, either: (i) the commodity's quotation as of the date in which it is shipped or unloaded (ii) the commodity's quotation as of the agreement execution's date; (iii) the quotation average of the period comprising 120 days before the shipment date and 120 days after the unloading date of the commodity or (iv) the quotation average of a period computed as from the next day of the agreement execution until 30 days later. ◆

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.

NAME	COUNTRY	PHONE	E-MAIL
Mike Valdés (President)	USA/Brazil	1 773 8678629	mvaldes@lataxnet.net
Luis A. Hernandez (Coordinator)	Uruguay	598 96207050	lhernandez@lataxnet.net
Cristian E. Rosso Alba	Argentina	541145908713	cristian.rossoalba@mcrlex.com
Ramiro Guevara	Bolivia	5912 2770808	rguevara@gg-lex.com
Luis Rogério Farinelli	Brasil	5511 30934855	lfarinelli@machadoassociados.com.br
Paul Tadros	Carribbean	1 514 6970901	paul.tadros@sympatico.ca
Jorge Espinosa	Chile	562 365 1415	jespinosa@espinosayasociados.cl
Alfredo Lewin	Colombia	5713 125577	alewin@lewinywills.com
Adrian Torrealba	Costa Rica	506 2565555	atorrealba@fayca.com
Norman Decastro	Dominican Republic	809 508 7100	n.decastro@drr-law.com
Cesar R. Holguin	Ecuador	5934 2562908	cholguin@lawnetworker.com
Roberto Flores	El Salvador	503 25055555	rflores@romeropineda.com
Eduardo Mayora	Guatemala	502 23662531	emayora@mayora-mayora.com
Jorge Salles-Berges	Mexico	5255 1084 7017	salles@osy.com.mx
Gloria Alvarado	Nicaragua	505 2278 7708	gmaivara@alvaradoyasociados.com.ni
Said Acuña	Panama	507 2691127	saidacuna@riveboca.com
Nestor Loizaga	Paraguay	595 21 227066	nloizaga@ferrere.com
Cesar Luna-Victoria	Peru	511 442 4900	clunavictoria@erubio.com.pe
Fernando Goyco-Covas	Puerto Rico	1 787 2811802	goyco@amgblaw.com
Alberto Varela	Uruguay	598 2623 0000	avarela@ferrere.com
Peter Byrne	USA	1 703 387 3009	pbyrne_taxlaw@attglobal.net
Federico Araujo Medina	Venezuela	5821 29050293	faraujo@tpa.com.ve