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Taxation

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TAXATION

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ARGENTINA

First Interamerican Tax Conference
Rosario, Argentina, Nov. 1 - 8, 1970

This Conference, sponsored by The Inter-American Bar Association and organized by the Interamerican Tax Committee of that Association, was successful in bringing together leading tax experts from most of the American Republics. A number of outstanding Argentine attorneys, accountants and economists were in attendance. They made special contributions in committee work after having supplied the majority of the studies that formed the basis of committee consideration.

The Conference concentrated on the inter-relationship between taxation and development, as well as the analysis of tax administration and techniques. Dr. Miguel de Juano and his able staff are to be congratulated for having so ably organized and run this important Conference.

Taxation of Royalties

A 1969 Tax Court case that was not published until recently has held that royalties paid or credited to an affiliated company are to be treated as if a dividend had been paid to the foreign affiliate.

The basis for the decision is the finding that the two entities constituted an economic unit which was defined as existing where one company owns 80% or more of the capital of the other company. As a result of the decision, royalties credited by an Argentine branch of a foreign company to the home office could not be deducted by the branch. Tax Court decision No. 277 of September 17, 1969.

Taxation of Interest

Another 1969 Tax Court decision held that interest due on a foreign loan that enabled the Argentine borrower to draw funds on open account is subject to tax in Argentina. The Tax Court noted that the same result would hold true even though the country of the creditor's domicile would also tax the same interest income. Tax Court decision No. D-441 of November 6, 1969.

Additional Tourist Promotion Incentives

Certain of the tourist-oriented businesses not covered by the International Hotel Promotion Law will be granted special tax concessions consisting primarily of accelerated depreciation. These benefits apply provided the investment is made prior to the close of 1975. Law No. 18674 of May 5, 1970, and Regulations thereon issued pursuant to Decree No. 2081 of May 14, 1970.

BRAZIL

Duty to File Income Tax Returns

Recent orders of the Ministry of Finance provide that (a) all owners of foreign assets, real estate, securities, vehicles, aircraft and ships must file income tax returns for 1971; and (b) under specified circumstances all persons negotiating promissory notes and bills of exchange or acquiring real estate must have their names placed on the Taxpayers' Register.

Withholding Tax

The Ministry of Finance has announced that the Government intends to exempt from withholding all remittances abroad of profits derived from foreign investments in agricultural enterprises in Brazil.

Taxation of Capital Gains

A 1970 Revenue ruling clarifies the taxability of certain capital gains derived by non-resident persons and entities from Brazilian sources. The previously stated position of the Tax Coordinator, that only capital investments registered with the Central Bank of Brazil could be remitted without deducting the 25% withholding tax, has been expanded to include re-investment of the earnings from such capital excluding, however, stock dividends. Gains from the sale of securities by non-residents are also not subject to the withholding tax provided they are not remitted abroad. Revenue Ruling 324-70 (108 D.O. No. 91 of May 18, 1970).

New Income Tax Regulations

Recently published Regulations pertain to (a) the distribution of profits derived from monetary correction, (b) taxing payments received by foreign distributors of motion pictures, and (c) the withholding tax on payments of commissions and fees. Regulations published in 108 D.O. No. 86 of May 11, 1970.

Capitalization of Undistributed Profits

A 1970 Decree Law provides that the capitalization of undistributed profits will not be subject to income tax as of June 1, 1970. This benefit will be forfeited if the company's capital is decreased within 5 years of the tax-free capitalization, and is not applicable if the company's capital had been decreased within the 5 years preceding the capitalization. Decree Law No. 1109 of June 26, 1970.

Technical Services

A 1970 opinion of the Treasury of the State of Guanabara held that the Government of Brazil has the constitutional right to tax remittances abroad representing payment of technical services rendered abroad in connection with a Brazilian project. Opinion of June 1, 1970.

CHILE

New Compulsory Loan Regulations

New regulations have been issued concerning the compulsory loan applicable to income taxpayers for the 1970 tax year. Decree No. 179 of February, 1970.

Taxation of Corporate Liquidations

A 1970 Revenue ruling holds that transfers of assets by a company to its shareholders upon liquidation are subject to capital gains tax. Revenue ruling of March 12, 1970 (Tax Bulletin No. 198 of May, 1970).

Excise Tax on Foreign Currency

A 50% tax has been imposed on the value of foreign currency purchased by Chilean citizens for foreign travel. This and other similar measures were anticipated as a result of the flight of capital following the inauguration of the new government.

Taxation of Stock Dividends to Non-residents

Stock dividends of Chilean companies received by non-residents are subject to capital gains treatment in Chile when such stock is sold within five years of its distribution, in the manner set forth in a Revenue ruling of April 14, 1970.

Tax Incentives for the Hotel Industry

The computation of tax incentives for the construction of hotels and similar facilities are to be calculated pursuant to instructions set forth in a Revenue ruling of Sept. 17, 1969.

Taxation of Foreign Sales

Export sales to Chilean importers may be subject to tax in Chile if the price charged exceeds the international market price. The rate of tax is 37.5% of the excess over the international market price. Revenue ruling of July, 1969.

COLOMBIA

Proposed Tax Measures

Among the tax measures that have been proposed is one that would abolish the Excess Profits Tax and would simultaneously increase the income tax on corporations while bringing the rates of tax applicable to limited liability companies more closely in line with the corporate tax rates.

Another bill that has been submitted would reduce from 2.5% to 1% per month, the penalty for late tax payments provided the taxpayer make at least a partial payment prior to February, 1971.

Tax Returns of Foreign Companies

A 1970 decision of the Council of State partially eliminates the necessity for filing Colombian Income Tax Returns by foreign companies with Colombian source income. Council of State decision of April 14, 1970.

ECUADOR

Amendments to Income Tax Law

Decree No. 466 of 1970 established an emergency budget for 1970 urging new taxes on sales, services, imports and real property, together with revision of all incentive and promotion legislation.

Decree No. 467 has abolished all income tax exemptions that were made available pursuant to the Industrial Promotion and other promotion laws, and tax concession agreements.

Among other changes effected by Decree No. 467, are the following:

1. 60% of fee income earned by foreign persons from Ecuadoran sources is now regarded as the net taxable income from such sources, provided the taxpayer's stay in Ecuador during the tax year is less than twelve months. When the stay in Ecuador exceeds a year, 100% of the entire fee income is subject to tax.

2. Profits of the Ecuadoran branch of a foreign company are now taxed at 40% whether or not remitted to the home office. Previously, branch profits were taxed at 20% if not remitted, and at 30% if remitted abroad.

3. The exemption previously granted to the payment of interest on foreign loans, applicable to those loans bearing interest not exceeding 7½%, or to loans that financed the importation of capital equipment, have been eliminated. The withholding tax on all remittances of interest (and royalties) is a flat 40%.

4. A 30% tax is now levied on a company's undistributed profits and is payable by the corporation. Previously, corporations were not taxed separately from the shareholders. If the corporation's profits are distributed, they constitute dividends on which the following new withholding rates are applicable:

With regard to registered shares — 20%
With regard to bearer shares — 45%
With regard to registered shares belonging to non-residents — 40%

EL SALVADOR

Stamp Tax

In August, 1970 the Legislative Assembly approved a bill introducing a 1% stamp tax. Export sales are reportedly exempt from this tax. Decree No. 77 of August 27, 1970.

Foreign Entertainers

Pursuant to recently adopted regulations, foreign actors and entertainers are required to pay in advance the 10% levy previously imposed upon their gross compensation. In the event it is impossible to determine the tax in advance, the local contracting party must supply a bond guaranteeing payment of the tax. Executive Decree No. 16 of May 12, 1970.

GUATEMALA

New Municipal Tax

A Municipal Tax has been levied on working capital of businesses and manufacturers. We have not yet received details as to the method of determining and calculating the tax. Offhand it would appear to be cumbersome in administration and susceptible to avoidance.

GUYANA

Company Income Tax

The *Lawyer of The Americas* has not previously reported on the taxation proposals contained in Guyana's 1970 Budget. The principal change involves establishment of both a Corporation Tax and a Company Profits Tax on local corporations. For Non-Commercial Companies (defined as those engaged in production) the corporate taxes are levied at a flat 25% and the profits tax at a flat 20%. For Commercial Companies (defined as those engaged not less than 70% in trading) the rates are 35% and 20%, respectively.

Dividends to a non-commercial corporate shareholder are taxed at 35% whereas dividends to a commercial corporate shareholder are taxed at 40%.

Dividends to individual non-resident shareholders of a non-commercial company are taxed at 27% on the first G$8,000 and at 30% thereover. They are taxed on dividends from commercial companies at 31% on the first G$10,000 and at 40% on amounts thereover.

Net capital gains would now be taxed on the following basis: (a) 100% if realized within 7 years of acquisition; (b) 20% if realized within 7 to 25 years of acquisition; and (c) no tax if realized after 25 years of acquisition.

Important changes would be effected both as regards tax incentives and the Property Tax.

Life Insurance Companies

The aforementioned budget proposed that only the investment income of life insurance companies be taxed. After deducting only those expenses relating to the earning of investment income, the balance would be taxed at 45%.

The budget proposes that life insurance companies be required to invest in Guyana 95% of their statutory funds and other reserves on policies sold in Guyana, and also that they invest in Guyana government bonds 20% of their yearly additions to such funds and reserves. A minimum deposit of G$250,000 in securities would have to be deposited with the Guyanese Treasury.

JAMAICA

Measures Against Tax Avoidance

This Report has referred to previous warnings of the Jamaican Government concerning steps that would be taken to combat tax avoidance. The Ministry of Finance and Planning has introduced various proposals, the principal ones intend to curb the use of tax havens by taxing payments to non-residents in respect to know-how, management, technical and other services. The recipients of such income would become liable to tax on the profits derived from such payments. Non-residents would become fully liable to tax on all income drived from their activities in Jamaica. Among the controversial enforcement measures is the ability to arrest, on suspicion that the taxpayer is planning to leave the country to avoid payment of tax. Also, a proposal whereby the Commissioner of Revenue would have the power to declare null and void any agreements or arrangements which, in the Commissioner's opinion, would directly or indirectly alter or relieve the application of any income tax to the transaction or matter in question.

It is anticipated that existing income tax law will be tightened generally along the lines indicated above without granting to Government some or all of the enforcement measures described.

MEXICO

Export Incentives

The Secretary of the Treasury has released a comprehensive report outlining tax incentives currently applicable to industries devoted to exports from Mexico (B. O. of *Secretaría de Hacienda y Crédito Público,* Feb. 1970).

Proposed Incentives for Securities Market

Another Treasury study analyzes methods of stimulating the securities market through tax incentives. These incentives would be directed toward medium size and small companies that seek public ownership.

Taxation of Export Sales to Mexico

An important opinion of the Income Tax Bureau has held that certain export sales to Mexico are subject to taxation in that country. In the case in question, the goods were sold CIF, a Mexican port, and the exporter had the obligation to install and test the machinery sold as well as to train local operators designated by the importer. The seller had no other contact or business in Mexico. However, he was held to be engaged in business in that country because part of the performance of the contract would require his performing certain services in Mexico during a period of some months. Income Tax Bureau Opinion of March 19, 1970.

NICARAGUA

Sales Tax

A 5% sales tax has been established on sales made by taxpayers to non-taxpayers, applicable to merchandise sold in such manner that the tax is payable only once. Manufacturers with sales exceeding C$420,000 are considered taxpayers for the purpose of this law. Imports are subject to the tax even if the seller is not a taxpayer. Exempt from the tax are agricultural products, crude oil, cement, agricultural machinery and equipment, books and magazines, and those alcoholic beverages that are exported. Law No. 1103 of May 26, 1970.

PANAMA

Withholding Tax on Dividends

Pursuant a recent resolution of the Tax Office, the 10% withholding tax on imputed dividends applies as of January 1, 1970, and must be computed on 40% of the profits for the fiscal year in question. At the time a dividend is declared, the 10% withholding must be made regardless of the fiscal year to which it applies. Resolution No. 03-D6I of April 14, 1970.

Levy on Tax Incentives

The 20% surtax on taxes waived under the Production Development Law (reported in the October, 1970 issue of *The Lawyer*) has been repealed. Decree No. 82 of April 17, 1970.

PERU

Travel Tax

On September 18, 1970 the Government imposed a 10% tax on the use of foreign exchange for travel abroad. A 50% tax is applicable to purchases of up to twice the previously allowed maximum exchange allocation. Thus, the first US$40.00 daily limit bears a 10% surcharge and the second US$40.00, a surcharge of 50%.

Taxation of Foreign Loans

Interest earned on foreign loans extended prior to August 10, 1968, has been declared exempt from income tax provided that the effective rate of interest does not exceed 9% exclusive of any fees paid to Peruvian guarantors. Supreme Decree No. 068-70-EF of May 13, 1970.

Regulations governing the taxation of interest on foreign loans to Peruvian exporters have been amended. See Taxation, Vol. 1, No. 3, *Lawyer of the Americas*, at p. 107, for previous references.

Industrial Incentives Law

This law, reported on in its then draft form in the October, 1970 issue of *The Lawyer*, was enacted as Decree-Law 18350 and published on July 30, 1970.

The highlights of this new law are its provisions for profit sharing and employee participation in company ownership. Each industrial concern must (a) distribute to its work force 10% of net income before taxes and (b) transfer 15% of net income before taxes to the Industrial Community, a legal entity which will represent the workers. The annual allocation to the Industrial Community may be reinvested on behalf of the workers and the increment in capital credited to the Community. If it is not reinvested, however, the owners are obliged to sell stock for a corresponding amount to the workers. The ownership transfer will continue until the Industrial Community achieves 50% ownership of the industry. The work force will initially be represented on the Board of Directors of an industry by one member, to be increased with the progressive acquisition of new shares.

The law provides for four industrial classifications, ranking industrial groups by their relative economic importance to the development of the country, as follows: (1) basic industries (metallurgy, chemicals, paper, machinery, etc.); (2) support industries (food processing, housing, transport, and other basic consumer goods); (3) industries producing non-essential goods and (4) luxury goods, which are not granted any priorities. Although the basic industry category is reserved for the public sector, contracts may be granted under certain circumstances to private entities to enter the field of basic industries either with or without state participation.

Tax incentives for the industries subject to the law apply to both reinvestment and capitalization of profits. Industries may reinvest 65 to 85% of their net incom before taxes, in relation to their accorded priority. The tax on capitalization of profits ranges from 1% for first-priority industries to 8% for third-priority industries, compared with a capitalization tax of 15% under the previous law. Partial exoneration from certain duties on the import of capital goods also is granted to the industries in relation to their degree of priority. Credit incentives in the form of low interest-rate loans by government development banks also are available.

TRINIDAD AND TOBAGO

Tax Treaty With The U.S.A.

In November, 1970, the United States Senate consented to a new income tax treaty between the United States and Trinidad and Tobago. Upon confirmation by the Trinidadian legislature and exchange of the instruments of ratification, it will come into force. The treaty will be generally effective for the taxable years beginning on or after January 1 in which instruments of ratification are exchanged.

URUGUAY

Amendments to Tax Laws

Law 13892 of October 19, 1970 enacted several unrelated amendments to existing Uruguayan tax law. Among the more important changes are the following:

1. Interest earned on deposits with local banks in local currency are now exempt from both income tax and the net wealth (patrimony) tax;

2. An extraordinary annual tax will be in effect throughout 1971 and 1972 at the rate of 50% of the net wealth tax paid by the taxpayer for 1969; and

3. Delinquent taxpayers were given a period of 60 days within which to bring themselves current, thereby freeing themselves of applicable surcharges and penalties. In addition there would be no penalties applicable to the reporting during this period of previously undeclared income although the normal 8% tax on "income regularization" would still be applicable.

On November 19, 1970 the Government reduced the rate of interest on delinquent taxes to 2% per month.

VENEZUELA

Oil Taxes

Legislation introduced in the Venezuelan Congress would increase the official income tax rate for major oil companies to 60% from 52%, retroactive for the entire year 1970. Other provisions of the proposed law would possibly increase the Government's share as much as 86% when combining the income tax with the royalty payments that also have to be paid to the Government.