University of Miami Inter-American Law Review

6-1-1969

Taxation

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ARGENTINA

Effective January 1, 1969, major changes to Argentina's Income Tax Laws have been effected by Law No. 18032 (1968). Among the provisions of interest to foreign companies and non-resident individuals are the following:

1. Dividends by domestic corporations to resident individuals or local legal entities are now exempt from the former 8% tax payable on such dividends by the distributing corporation. Dividends to non-resident individuals or foreign legal entities paid by domestic corporations are subject to a 12% withholding tax.

2. Branches of foreign corporations doing business in Argentina through a permanent establishment are now subject to a 33% tax rate which is the same rate applicable to domestic companies. Distributions from such a branch to the home office will now be subject to the additional 12% withholding tax.

3. Income of any kind payable to foreign entities, other than dividends and branch profits, is now subject to a 41% withholding tax, which is the sole applicable tax on such distributions.

4. Nonresident individuals will be taxed on their Argentine source income at the same rates as are applicable to residents of Argentina; these rates now begin at 12% and retain their ceiling of 50% on the excess over eight million pesos.

5. Interest on bearer securities is now taxed at a flat 41% and is withheld by the payor. Argentine residents may reduce the withholding tax to 12% by identifying themselves before the appropriate tax authorities. Where the payor does not claim a deduction for the interest paid, no tax is imposed; where the same occurs with regard to a nonresident recipient, the latter will pay only a 12% withholding tax.

6. Fees or salaries paid to foreign directors are subject to with-

holding at the rate of 41%, which will be the only tax applicable to such fees and salaries.

7. Insurance premiums paid to a foreign insurance company are now subject to a 4.10% withholding tax.

Law No. 18033 (1968) creates an emergency national tax on land capable of agricultural exploitation, at a rate of 1.6% of assessed value. This tax is creditable against income from realty only.

It has been announced that Argentina will introduce a turnover tax on value added as of January 1, 1970, covering all stages of production and distribution, including agriculture, mining and transportation.

Another tax under study is a special tax on ingoing and outgoing freight; the rate on outgoing freight would be either 4 or 5% and the rate on incoming freight, 2%.

Decree No. 8374 (1968) extends the period in which an application for tax relief may be made by certain industries and for investment in certain areas; the new deadline is July 1, 1969 and is applicable to such industries as petrochemicals, mining and construction.

Regulations have been issued implementing tax incentives offered in connection with the development of the hotel industry. General Resolution No. 1250, October 21, 1968, regulating Law No. 17,752 (1968) discussed in the February 1969 issue of Lawyer of the Americas, at page 78.

BRAZIL

Recent decrees have introduced substantial amendments to the Brazilian Income Tax Laws. These changes affect companies with fiscal years ending on or after January 1, 1968. These amendments include the following changes in the withholding tax structure:

1. A 20% withholding tax is now imposed on interest paid under financing agreements for the importation of machinery and equipment.
2. Dividends paid on bearer shares are subject to withholding tax at the rate of 15% for publicly owned companies and 25% for other companies. If the owner declares his ownership of the bearer shares he may receive the dividends free of withholding tax. These changes do not affect the 25% withholding tax on dividends paid to nonresidents.

3. A withholding tax of 8% is applicable to payments for professional services made by business entities to professional associations.

Pursuant to these amendments, realized exchange losses in connection with loans used for working capital purposes are deductible; this is so where the loan is used for the purchase of fixed assets. Other features introduced include limitations on the amount of tax deductible remuneration that can be paid to directors and officers, a 30% tax applicable to the correction of understated inventories, and a 15% tax on the revaluation of land and buildings. Decree Law No. 401 (1968) and Decree No. 433 (1969).

Fixed interest derived from debt securities, issued after December 31, 1968, will be subject to income tax and rates ranging from 4% to 10% depending upon the maturity of the security. Tax credits for investment in registered securities have been extended until 1970 but at the rate of 3% for 1969, and 1% for 1970 applicable to commercial entities and at the rate of 12% for individuals. Decree Law No. 403 (1968).

A recent opinion of the Attorney General of the Brazilian National Treasury holds that any income paid or credited to nonresident aliens is subject to Brazilian withholding tax when such income was derived from property, activities or enterprises located or carried out within Brazil. Treasury Opinion, October 15, 1968.

Another recent opinion, this one from the Income Tax Office, holds that fees received by foreign companies for technical services rendered abroad to Brazilian companies are not subject to Brazilian taxes provided the foreign country has no offices or representatives within Brazil, and further provided that the technical assistance is rendered to new enterprises. Income Tax Office Opinion, September 15, 1968.

CAYMAN ISLANDS

As of January 1, 1969, the provisions of the Treaty between the United Kingdom and the U.S.A., previously extended to the Cayman Islands by protocol, ceased to be in effect. This development is not expected to tarnish the image of the Cayman Islands as a tax haven; rather, it may serve to strengthen such status by reason of the absence of exchange of information provision often provided in tax treaties.

CHILE

According to a recent ruling, the special 7.5% tax levied on nonresident shareholders is applicable to capital gains derived by corporations notwithstanding the fact that the income tax law expressly states that its income tax is the only one applicable to capital gains. Internal Revenue Service Ruling, July 11, 1968.

Recently enacted laws and regulations modify several areas of Chilean tax law:

1. The rate of the "additional" tax has been raised from 30% to 37.5%. This additional tax is applicable to income received by nonresident alien individuals and by foreign companies.
2. There are new rules applicable to split-offs, spin-offs and other distributions of stock of controlled operations.
3. "First Category" tax rates have been amended. The rate applicable to individuals has been reduced from 20% to 17% and the rate applicable to corporations has been increased from 20% to 30%. The "First Category" tax is applicable to income from commercial and industrial activities, real estate and otherwise on income from capital investments.
4. "First Category" taxpayers will continue to be required to advance income taxes to the Central Government during 1969. These compulsory loans are required from all enterprises active in Chile, and the amount of the loan will equal 13% of the taxes levied directly on the enterprises' profits. Also subject to the compulsory loan law are nonresident taxpayers who receive dividends and other distributions from Chilean companies. For these taxpayers, the amount of the loan will be 13% of the "additional tax" to be withheld.
   The loan shall be refunded to the taxpayer by crediting it in five (5) equal installments against his income taxes for the years 1971 through 1975. These loans are non-interest bearing. It will be interesting to ascertain how payment of these taxes will be treated under the U. S. Foreign Tax Credit.
5. The tax on minimum presumed income has been replaced by a net wealth tax (patrimony tax) levied on the assets of individuals as of December 31 of each year where such assets exceed twenty times the annual minimum salary. The tax rate would vary from 1% to 2% according to the amount of the assets. Taxable assets would include real and personal property but would exclude state savings certificates, bank deposits, and a few other items. Expenses incurred in acquiring or maintaining the assets would be deductible.

COLOMBIA

A new law enacted in December 1968 seeks to promote tourism by providing tax incentives for the building of new hotels or the improvement of existing hotels. Such investments will be eligible to receive tourist development certificates for up to 15% of the investment. The certificates may be utilized at par value to pay any kind of national tax; they will be issued to bearer and will be freely negotiable; they will however be regarded as taxable income to the direct beneficiaries of the certificates.

In addition to the foregoing, those engaged in new hotel enterprises or their expansion will be eligible to receive certificates in amounts up to 40% of the taxable income derived therefrom during a period of ten years. These certificates will be issued upon the conclusion of an agreement between the investor and the national government. Law No. 60 (1968).

An interesting and perhaps controversial ruling entitled "Tax Aspects of Payments Abroad", was issued by the National Tax Division on October 5, 1968. It discusses in considerable detail the withholding and other taxes applicable to payments and remittances abroad of interest, commissions, profits, royalties and dividends. The ruling makes the following points of interest to foreign investors:

1. The withholding tax applicable to payments of interest to foreign corporations is 12%; interest payments by Colombian partnerships to foreign partners (the owners of which are also foreigners) are subject to an 18% withholding tax plus the 12% tax on remittances abroad, hence a total tax of 30%. Interest payments to non-resident alien individuals are subject to withholding at a rate of 18%.
2. Fees to commission agents located abroad for services rendered abroad are not subject to withholding tax provided the amount of such fees does not exceed 2-½% of the invoice value of the transaction and further provided that the Colombian importers identify by name and address the foreign commission agent. There would be a 30% withholding on such fees when made by a Colombian partnership to its foreign partner when such foreign partner does not distribute its own dividends or profits within Colombia. This tax would be 18% in the case of payments to nonresident alien individuals who would be members of the payor partnership in Colombia. Other payments in the nature of commissions and fees pay a combined 24% withhold-

ing tax unless the recipient is a foreign person or foreign entitly, is domiciled abroad and the services were rendered abroad, as discussed above.

3. Payments or remittances of profits from a Colombian branch to the home-office abroad or from a subsidiary to a foreign parent pay a total withholding of 24% based upon 12% income withholding tax and 12% remittance tax.
4. Dividends from a Colombian subsidiary to a foreign parent pay only the 12% withholding tax.
5. Dividends paid by non-affiliates and non-subsidiaries to foreign shareholders which are corporations and which do not distribute their own dividends within Colombia are subject to the 12% withholding tax.
6. Partnership distributions of profits to foreign partners are subject to an 18% income withholding tax plus a 12% remittance tax except that the latter tax is waived with regard to those profits reinvested in Colombia. Profit distributions to nonresident alien partners are subject only to a withholding tax of 18%.
7. Income remitted abroad other than dividends and partnership distributions are subject to combined withholding taxes totaling 24%.

A recent decree holds that the income earned by nonresident alien individuals in connection with the production of motion pictures within Colombia shall be treated as income from sources outside Colombia. Decree No. 3076 (1968).

COSTA RICA

Regulations have been issued by the Executive branch relating to the collection of the tax on undeveloped land. Decree No. 15, October 13, 1968.

DOMINICAN REPUBLIC

The full text of the 1968 law on industrial incentives has been received. This subject was covered in the previous issue of the *Lawyer of the Americas* at page 81. The tax incentives for Class "A" industries include 100% exemption from Dominican income taxes provided the principal business operations of the qualifying enterprise are carried on outside the Dominican Republic; when the enterprise is strictly a local venture the tax exemption amounts to 75% exemption from income tax during the first five years and an exemption of 50% during the balance of the concession. The period of the tax and the other concessions depend upon the geographical location of the industrial plant and run from eight years for industries located in and around the city of Santo Domingo, up to twenty years for industries located near the border with Haiti.

ECUADOR

The national tax authorities are considering various methods to prevent income tax evasion. One such requirement proposed to Congress is that individual taxpayers file with their return a declaration of net worth, and that companies and corporations submit lists of partners and stockholders, all as of December 31 of the tax year in question. These measures are still being debated following strong adverse reaction from local business circles.

A September 1968 Tax Court decision holds that the sending of an employee to Ecuador to collect data for services to be rendered outside Ecuador does not constitute the establishment within Ecuador of a permanent office by the foreign company; hence, the foreign company is not to be considered as having a permanent domicile in Ecuador and its employee is not required to carry books of account in Ecuador.

EL SALVADOR

In mid-January 1969, a new 4% tax on net capital gains was enacted replacing the previous system based upon the number of years during which the property was held. This new law raised such controversy that it was repealed in late January 1969. The provisions of the previous law have been revived.

GUATEMALA

An executive order issued on January 1969 regulates the eligibility of U. S. enterprises for foreign investment guaranties pursuant to the Guatemala-U.S. Convention on Foreign Investment Guaranties.

Congress has set up a commission to review the entire income tax system, and has declared that until the commission renders its report no further tax legislation shall be enacted.

Regulations concerning the calculation of annual fees imposed on domestic and foreign legal entities, pursuant to Article 77 of the Income Tax Law, are set forth in Revenue Ruling No. 56, September 1968.

GUYANA

Two regulations have recently been issued concerning Chapter 299 of the Income Tax Ordinance relating to the payment of tax by companies. These regulations authorize the Commissioner to collect tax on the amount by which estimated chargeable income for 1968 exceeds that of 1967, and for the year thereafter. The purpose is to enable the Commissioner to collect the company's income tax in advance.

HONDURAS

The new economic stabilization taxes became effective on September 12, 1968.

MEXICO

Effective January 1, 1969, the income tax rates applicable to companies have been amended as follows:

1. On income up to 500,000 *pesos* the rates run from 0% to 28.70%;
2. On income between 500,000 *pesos* and 1,500,000 *pesos* the applicable rate is 48.65% on the excess over 500,000 *pesos* with the tax on the first 500,000 *pesos* amounting to 143,500 *pesos*;
3. Companies earning more than 1,500,000 *pesos* are now subject to a flat rate tax of 42% on their total income, rather than the former tax at progressive rates. This flat rate tax applies only if taxable income exceeds 1,500,000 *pesos*. Tax Reform Law, December 30, 1968.

This new tax measure maintains the exclusion for individuals of dividends and other distributions received from Mexican corporations. Also excluded are capital gains from the sale of securities provided the securities are issued by Mexican entities.

Corporate shareholders may now apply for refund of the withholding tax applicable to dividends received if the dividends are distributed to employees or are reinvested in industrial, agricultural or fishing ventures under certain specific conditions.

Foreign tax credit given to Mexican taxes was recently discussed in *Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. United States* (404 F.2d 960, 1968), following previously decided *Missouri-Illinois Railroad Company v. United States* (381 F.2d 1001, 1967), and *Missouri Pacific Railroad Company v. United States* (392 F.2d 592, 1968).

NETHERLANDS ANTILLES

Two bills have been submitted to Parliament amending the income tax laws relating to individuals. The first bill increases tax exempt income from *NAfl.* 2,000 to *NAfl.* 3,000. The second bill increases income tax rates for income of *NAfl.* 7,700 and more. Child deducations will be increased and a deduction for extraordinary expenses will be introduced.

PANAMA

The law promoting the tourist industry has been amended and a 5% tax on hotel charges has been imposed. Decree No. 58 (1968).

PARAGUAY

A surtax on real property has been introduced to finance installation of a drainage system in Asuncion. This tax which is to be levied only in 1969, is imposed on the value of the property at rates varying between 0.1% and 0.3%.

Law No. 1007 (1965) introducing taxation of economic entities has been amended by Law No. 70 (1969) imposing an annual tax on corporations, comandit companies, companies involved in mixed economy as well as branches of foreign entities. The levy amounts to ½% of the capital, including accumulated reserves. The law was implemented by Decree No: 2531 (1969).

PERU

Decree of August 13, 1968 introduces new income tax regulations. The principal ones provide that:

1. Peruvian and non-Peruvian residents are subject to tax on income from Peruvian sources.
2. Deductions are allowable and special deductions are given for royalties—10% of gross income.
3. Tax rates for individuals range from 3% on 30,000 *soles* to 42% on 500,000 *soles* of taxable income.
4. Non resident individuals now pay 30% on dividends and 40% on remuneration for services rendered from abroad and other items.
5. Legal entities are subject to tax rates that vary from 20% on 100,000 *soles* to 35% on 500,000 *soles* and over.
6. Non resident companies will be taxed as follows:

40% on dividends; 30% on income obtained from Peruvian branches; 40% on other income.

The decree also spells out what constitutes income.

Decrees issued in August, 1968 relate to the operations of banks and insurance companies. Two-thirds of the share capital of commercial banks must be held by Peruvian citizens or by foreigners who have resided in Peru at least five years. Foreign banking entities are prohibited from establishing new branches or agencies in excess of the number currently in operation. Bank mergers will not be permitted without the prior approval of the Central Reserve Bank. Banks operating in Lima must have a minimum capital of 60,000,000 *soles*, and in all other provinces, 20,000,000 *soles*. Banks that have failed to meet the foregoing requirements by June 30, 1970, will be ineligible to receive government agency deposits.

Insurance Companies are subject to the same capital structure requirements as banks. Investment of reserves is limited to: (1) rental housing of social benefit, (2) mortgage bonds, (3) development bank obligations, (4) treasury bonds, (5) time deposits placed with savings and loan associations and state development banks, and other types of investments approved by the monetary authorities. Insurance companies that do not meet the minimum capital requirements of 20,000,000 *soles* must comply within a period of two to three years.

TRINIDAD AND TOBAGO

The United States and Trinidad have extended—through 1969—the convention for the avoidance of double taxation and the prevention of income tax evasion. Originally due to expire on December 31, 1967, the agreement has been extended twice, and will run until December 31, 1969.

URUGUAY

Important legislation effecting changes in almost every existing tax has been enacted. Under these amendments, a credit for foreign taxes imposed on foreign source income of domiciled Uruguayan citizens has been created; the tax on income from financing operations now applies to all income of taxpayers engaged primarily in financing activities; new rates up to 8% of the actual value of the property are imposed on real property transfers.

Other amendments relate to the real property, stamp, sales and patrimony taxes, tax on commissions and banking activities, and a tax on minimum production of agricultural and cattle raising industries. Law No. 13695 (1968).

A recently-enacted statute imposes a tax on "inheritances and acts assimilated thereto", thus repealing the existing tax on inheritances, legacies and gifts. The new rates range from 3% to 39% on community property and on the assets inherited by children; from 6% to 42% on assets inherited by or transferred to parents and spouse; from 8% to 46% if recipients are brothers, sisters, adoptive children and adoptive parents; from 20% to 56% if recipients are otherwise related; and from 40% to 75% if the recipients are strangers. Law No. 13695, *supra.*

The Ministry of Transportation, Communications and Tourism has submitted several changes in the bill now pending in Congress for promotion of tourism. Among the tax incentives to the hotel industry is exemption from certain real property taxes and import duties. The bill also creates a fund for the promotion and development of tourism. One of the sources of contributions to this fund is the proposed Tourist Patent which is an annual franchise to be levied on all enterprises related in any way to tourism.

A November 1968 ruling of the Income Tax Bureau clarifies previous inconsistencies in the Income Tax Law by holding that: dividends paid to non resident aliens are subject to a 55% withholding tax, and those paid to foreign legal entities having no branch, agency or establishment within the country are subject to a 40% withholding tax.

VENEZUELA

The Tax Court recently disallowed deduction of certain expenses claimed by a Venezuelan company under the Income Tax Law of 1965, on the ground that these had been incurred abroad. The ruling refers first to premiums paid abroad on behalf of a group insurance fund for the benefit of the taxpayer's employees. It was also held that social security payments made to the United States government were not deductible. Judgment No. 25, Second Income Tax Court *in re Continental Emsco.*