

2-1-1974

# Taxation

M. J. Langer

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## Recommended Citation

M. J. Langer, *Taxation*, 6 U. Miami Inter-Am. L. Rev. 171 (1974)  
Available at: <http://repository.law.miami.edu/umialr/vol6/iss1/11>

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## TAXATION

MARSHALL J. LANGER  
*Attorney at Law*  
*Miami, Florida*

### CARIBBEAN REPORT

#### ANTIGUA

A property survey has been carried out in the area in and around St. John's with a view to fixing a more realistic valuation for property tax assessments. Taxes will be levied at an annual rate of 5% of the increased valuations.

#### BARBADOS

The United Kingdom and Barbados have signed a protocol amending the double taxation agreement between them. The protocol was signed in September 1973, and is awaiting approval. It applies to the dividend article in the existing agreement and is apparently intended to conform to recent changes in U.K. company taxation.

#### HAITI

Haiti has enacted various modifications to its income tax law by virtue of a decree of April 5, 1973. The standard deduction of one-third of gross rental income has been reduced to one-fourth. There is now a more precise definition of the estimated tax base and the net income tax base of professionals. There has also been an increase in the capital gains tax applicable to transfers of unimproved real estate.

#### JAMAICA

A new income tax treaty between the United Kingdom and Jamaica was signed in March 1973 and is awaiting ratification. It is supposed

to go into effect as of April 1973 in the United Kingdom and as of January 1973 in Jamaica. It replaces an earlier treaty signed in 1965. Under the new treaty Jamaican residents will be entitled to the tax credit available under the new U.K. system of taxing companies and company distributions. There will be a 15% withholding tax on dividends, 12½% on interest and 10% on royalties.

#### NETHERLANDS ANTILLES

In June 1973, there was an exchange of notes between the Netherlands and Norway which resulted in extending the existing income and net worth tax treaty between these countries to the Netherlands Antilles. After ratification, it is intended that the treaty will apply to the Netherlands Antilles retroactively to January 1, 1972.

An annotated restatement of the Netherlands-U.S. income tax treaty as presently in force between the U.S. and the Netherlands Antilles compiled and edited by Marshall J. Langer has been privately published by Manacon Services Ltd., 400 City National Bank Building, Miami, Florida 33130. Copies are available from the publisher at a cost of \$10 each. It is often difficult to find the applicable treaty provisions since there is now an entirely separate treaty between the United States and the Netherlands in Europe.

#### TURKS AND CAICOS

Prentice-Hall has published an article entitled "Turks and Caicos—A New Tax Haven in the Caribbean Area" by Marshall J. Langer in its U.S. Taxation of International Operations Service. Turks and Caicos is a British colony located southeast of the Bahamas and north of the Dominican Republic. It has no income tax and none is likely to be enacted.

In August 1973, Turks and Caicos adopted the U.S. dollar as its currency and did away with all exchange control.

#### EDITOR'S NOTE

The following tax developments have been extracted from recent *Newsletters* of the Inter-American Center of Tax Administrators in Panama. The *Lawyer* gratefully acknowledges the collaboration of the Center.

## LEGISLATION

*ARGENTINA*

The General Tax Directorate of Argentina published in its Bulletin of April, 1973 an interesting chart showing statistical data related to the activities of the Directorate. Specifically, two charts that present the distribution of individual taxpayers by brackets of income, during 1970 and 1971, are relevant. Among the conclusions of these charts, it is noted that approximately 6% of the total individual taxpayers (nearly 80,000) reached an annual net income above \$20,000 annually (US\$2,000), representing 33% of the total revenue declared by the taxpayers in those years, and approximately 50% of the total income tax collected. On the other hand, approximately 60% of the taxpayers (nearly 870,000) receive income under \$5,000 (US\$500) annually, representing, in total, less than 20% of the total income declared by the taxpayers and about 10% of the total tax collected.

## CHILE

Law 17,920 enacted in April, 1973, establishes several new excise taxes. In the first place, a sales tax on wine of one Escudo for each litre sold which is to be increased to two Escudos when the sales price to the consumer exceeds 2% of the basic annual salary established. This is in addition to the Single Stage Tax on wine established in 1971 and which amounts to 26% on the sales price. Also, a 0.50 Escudo tax on bottles containing 285 cu. cm. of beer was established. Both taxes are added to the sales price and will be readjusted on an annual basis in accordance with the percentage of fluctuation of the consumer price index.

Law No. 17,940 was passed on June 6th, amending sales, services, income and net wealth taxes. The scales for taxes on sales and services are amended. The flat rate of 30% for sales of goods is amended to progressive rates ranging from 10% to 60%, according to the goods. The President of the Republic is authorized to publish a decree updating the laws. Income tax may be paid by monthly installments, and these will be discounted from the annual return. Finally, under certain conditions, certain type of taxpayers are allowed to deduct from their 1973 net wealth tax the amount of 5,600 Escudos.

## COLOMBIA

The following is a brief summary of the organization and applications of the sales tax that has been in effect in Colombia since 1965.

*Characteristics:* The sales tax is applicable to sales and transfers of movable property, as well as to the services of professional contractors for repairs of movable property. The tax is applied once, during the stages when the goods are first circulated. Taxpayers have the right to deduct from their liability, the taxes paid to suppliers of raw materials in the same period as well as for packaging and taxes on returned goods. To a certain extent, this sales tax follows the mechanics of the value added tax.

*Taxpayers:* These are the producers, importers and contractors who perform taxable transactions. Also, taxpayers or corporations who engage in business with producers or importers.

*Exemptions:* Exemptions are granted, among others, to transactions with foodstuffs for general consumption, textbooks, medicines, exports, real estate and intangible assets.

*Rates:* There is a general 4% rate and differential rates of 10%, 15% and 25% according to type of article and its origin.

*Penalties:* Delinquency is punished by means of a 3% monthly surcharge. Fraud is penalized with fines amounting to an equivalent of the tax fraud or doubling it. There is also a 3,000 Colombian pesos fine (US\$1=21 pesos) for omissions in registration at the Taxpayer Registry.

*Administration:* The tax is administered by the General Directorate of National Taxes.

## EL SALVADOR

The Ministry of Justice of El Salvador published during 1972 and 1973 three volumes under the title *Summary of Fiscal Laws* which contain a summary of every fiscal law related to public revenue applicable in the country. It also includes laws related to direct, indirect and liquor taxes. The publications constitute a contribution to the circulation and knowledge of the different laws.

## MEXICO

In June, 1973, a decree establishing incentives to be granted to companies and economic institutions promoting the industrial and tourist development of Mexico was promulgated. To qualify for these incentives, the companies and institutions are to increase their sales and services in a percentage equivalent to the percentage of the rate of growth of the industrial activity in the country plus 20% of that rate. The companies and institutions are also to show significant increases in at least five of the following activities: 1) Nationalization of companies representing a predominantly foreign investment; 2) Creation of new sources of employment; 3) Establishment of new companies in industrial and tourist activity; 4) Development of national technology; 5) Increased exports; 6) Import substitution; 7) Investment in areas of lesser relative economic development; 8) Industrialization of natural resources; 9) Expansion of industrial and tourist companies; 10) Allocation of shares to the public.

These increases will be evaluated on the basis of a comprehensive analysis of promotion activities, which will consider the following aspects:

That they do not displace small or medium sized companies that are working satisfactorily.

That they do not monopolize areas of the national market with detriment to the general public or to certain social classes.

That no expenditures classified as expenditures in luxury items be made.

That they comply with the law, especially with the laws to Promote Mexican Investment and to Regulate Foreign Investment.

The basic tax incentives granted are as follows:

a) The possibility of requesting income tax exemptions on the profits derived from the sale of shares of the aforementioned companies, from the Ministry of Finance.

b) Exemptions from withholdings on the dividends of companies included in the provisions.

c) The possibility of companies paying their income tax in accordance with special instructions to be issued upon request to the Ministry of Finance and Public Credit.

## PANAMA

The Director General of Revenue of Panama recently issued the following rule:

1. Tax auditors, when visiting a taxpayer, shall notify the taxpayer of his obligation to present whatever reports and documents are requested from him within a five work-day period.

2. Taxpayers shall also be advised that non-compliance with the above mentioned requests is subject to fines, varying from B/.10.00 to B/.1,000.00 (the Balboa is equivalent to the U.S. Dollar), in addition to official tax assessment.

Several amendments to the stamp tax have been passed with the enactment of Law 44 of June 14th, 1973. Taxpayers are allowed to pay the stamp tax by means of the system of filing monthly returns as of January, 1974. The return is to be filed with the General Directorate of Revenue in the course of the first five working days of each month and it is to include a list of the taxable documents, the total sum of the amounts contained in them and the tax to be paid. There is also taxpayer assistance service aimed at insuring adequate interpretation and compliance with this tax. Whenever a taxpayer requires assistance on a given issue, he is to deposit the amount pertaining to the tax in question and the Director General of Revenue shall rule on the issue within 30 days.

## PERU

By Decree 20060 of June 19th, 1973, Peru established a 15% sales tax on professional sports events. The tax is applied on the value of the ticket, and promoters act as withholding agents. Promoters shall pay the corresponding tax by means of a return to be filed and paid at the National Bank. The tax is considered part of Public Revenue and is administered by the General Directorate of Revenue. The law also establishes that promoters of professional sports events will turn over 13% of the gross income from tickets to the National Institute of Recreation, Physical Education and Sports, including the amounts covering free tickets. This percentage shall be applied to the maintenance of sports facilities, organization of competitions, promotion and other institutional expenses.

Decree No. 4 of January 16, 1973 establishes the Classifications for Revenues and Expenses in the National Budget of Peru, as follows:

*Chapter I: PUBLIC TREASURY REVENUE*

1. Taxes
  - 1.1. Income Tax
  - 1.2. Net Wealth Tax
  - 1.3. Import Tax
  - 1.4. Export Tax
  - 1.5. Tax on Production and Consumption
  - 1.6. Tax on Salaries
  - 1.7. Other Tax Revenues
2. Non-Taxes
  - 2.1. Sales of Goods and Services
  - 2.2. Public Fees
  - 2.3. Public Property Income
  - 2.4. Sales of Capital Goods
3. Public Treasury Transactions
  - 3.1. Bonds
  - 3.2. Other Transactions
4. Retirement Deductions
5. Fines
6. Other Revenues

*Chapter II: ASSIGNED REVENUES*

1. Taxes
  - 1.1. Import Tax
  - 1.2. Consumption and Production tax
2. Fines

*Chapter III: OWN REVENUE*

1. Sales of Goods and Services
2. Public Fees
3. Public Property Income
4. Loan Reimbursement
5. Pending Balance
6. Sale of Capital Goods
7. Other Own Revenues

*Chapter IV: PUBLIC DEBT*

1. Internal
2. External

*Chapter V: TRANSFERS*

1. Current Transfers
  - 1.1. Internal
  - 1.2. External
2. Capital Transfers
  - 2.1. Internal
  - 2.2. External

Peru, in Decree No. 19327 of 1973, approved "Development of the Movie Industries." Among the tax incentives granted, there is an exemption and deduction of import taxes on goods and semi-processed goods utilized in filming by national companies. Fifty percent of the revenue is exempted, if reinvested in the purchase of capital goods needed for the movie industry.

The Bank of the Nation and the General Directorate of Revenue of Peru have published, jointly, a volume entitled "Tax Reform D. L. 19620", which includes laws, rulings, and resolutions related to Decree Law 19620 of November 21, 1972 (which substitutes the stamp tax and other taxes for sales and service tax). A second volume will be published

very shortly as a tax guide in compliance with one of the objectives of the Tax Administration: "to publish the different tax regulations to allow taxpayers to effectively comply with the law".

## URUGUAY

Decree 314 of May 3, 1973 defined the concepts of royalties and technical assistance regarding income tax. Royalties are defined as the price corresponding to the time period intangible assets are in use or exploited and technical assistance given, such as the direct rendering of services by those having the necessary facilities to provide such services. In the latter case, it establishes that the price must be in relation to the services rendered and that it was not possible to stipulate the price as a function of the results obtained. Technical assistance cannot be considered as a means of achieving the transfer of technology; it is a privilege and not simple information regarding improvements related to patents of inventions, patentable procedures and similar items. In regard to royalties, they were set at 30% of the deduction made to determine net income, notwithstanding the option to deduct the actual costs; to this effect, certifications by independent professional offices would be required.

In compliance with Law 14,100 of December 29, 1972, the Executive Power passed Decree 526 of July 5, 1973 with the codified legal text of all internal taxes administered by the General Directorate of Revenue. The document was prepared by a Special Commission formed by Tax Directorate Officials, and consists of 740 articles, divided into four books. The first three volumes deal with taxes administered by each of the three agencies subordinated to the Tax Directorate. The fourth volume is dedicated to overall provisions on tax administration, procedural and penal laws and related topics. The document is completed with a subject index of the contents of each book and with an alphabetical index. These codified books represent a splendid contribution aimed at providing information to taxpayers and to the general public on tax legislation in force.

## DOUBLE TAXATION

### LAFTA COUNTRIES

Tax experts from ten LAFTA countries meeting in Montevideo from 9 to 13 April undertook the study of technical concepts concerning double taxation on the basis of the multilateral convention for the relief of international double taxation adopted by the Andean subregion.

The meeting—which attracted observers from the Organization of American States (OAS), the Inter-American Development Bank (IDB), the Institute for Latin American Integration (INTAL), the Inter-American School of Public Administration (EIAP), the U.N. Economic Commission for Latin America (ECLA) and the Andean Commission—requested the Secretariat to prepare a study supporting the formulation of the “source” principle as the best suited to Latin American interests in the taxation of income.

The group also requested the Secretariat to study methods to relieve international double taxation in case of a conflict between capital-exporting countries and host countries, as well as to examine the current income tax legislations in the LAFTA countries as far as treatment of foreign income is concerned.

The group scheduled a second meeting for April 1974.

#### U.S.—U.S.S.R.

A convention, similar to a treaty, was signed, which exempts private citizens and firms living and doing business in one country from similar taxation by the other. The U.S. Senate must ratify the convention. Main provisions of the pact are the following. The income-tax convention between the United States and the Union of Soviet Socialist Republics seeks to promote economic and cultural relations between the two countries by eliminating tax barriers to the extent possible. The convention deals with taxes at the federal level in the case of the United States and with all-union taxes in the case of the Soviet Union.

The general content of the convention is similar to that of U.S. treaties with other countries, but somewhat more emphasis is given to tax exemption. After defining various terms, including its geographical scope, the convention goes on to provide that the following types of payments, among others, made between the two countries will be exempt from tax in the source country:

Rentals or royalties for the use of patents, copyrights, equipment and know-how;

Payments for engineering, architectural and other technical services;

Interest on indebtedness in connection with the financing of trade between the two countries;

Reinsurance premiums; and

Income from the sale of goods effected through a commission agent.

The convention provides reciprocal exemption from tax for shipping and aircraft operations. It also provides that an individual will be exempt from tax on income from personal services if he is present in the host state for six months or less, and will be exempt for longer periods if he falls into a special category such as teacher, student or correspondent. In the case of students, the exemption may be for as long as five years. The convention also provides against prospective changes in the tax laws by stating that where income is exempt from tax, the transaction giving rise to the income also will be exempt from tax.

Equality of tax treatment is safeguarded by the convention. Citizens of one State residing in the other will not be subject to more burdensome taxation than the latter's citizens or those of third countries. For this purpose all national, State, and local taxes are covered by the convention.

#### BRAZIL—BELGIUM

In June, 1972 the Governments of Belgium and Brazil signed an agreement to avoid double taxation on the income of residents of both countries. The agreement contains the following basic rules:

Income derived from real estate may be taxed in the Contracting State where the property is located.

The profits of an enterprise pertaining to one of the Contracting States shall be taxable only in that country unless the enterprise is in trade or business in the other Contracting State and has a permanent establishment situated therein. If the enterprise is in trade or business under these conditions, the profits of the enterprise may be taxed in the other Contracting State but only in the portion that may be attributed to that permanent establishment.

Profits derived from the international traffic of ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is located.

Interest and royalties arising in one of the Contracting States and paid to a resident of the other Contracting State shall be taxed by the latter. However, this type of income may be taxed in the Contracting State in which it arises as long as the rate does not exceed specific limits.

Salaries, wages and similar remunerations, as well as income derived from professional services or other independent activities pertaining to residents of one of the Contracting States, shall be taxable only in that Contracting State unless these remunerations are paid by an enterprise located in the other Contracting State.

*Among the unilateral measures approved to be individually applied by the Contracting State in order to avoid double taxation, we find the following:*

Brazil agrees that when a resident of Brazil is entitled to income that is taxed in Belgium, a credit equivalent to the tax paid in Belgium is thus granted. Belgium agrees that when a resident of Belgium is entitled to income taxed in Brazil, this income shall be exempted from taxes, although Belgium may, for assessment purposes on the total income of a given resident, apply the rate that would result if that income were not exempt.

#### TRINIDAD and TOBAGO—SWITZERLAND

By Convention dated February 1st., 1973 subscribed by the Governments of Trinidad and Tobago and Switzerland, arrangements were made, inter alia, for the avoidance of double taxation on income. Among others, the following rules were approved:

Income from immovable property may be taxed in the Contracting State in which such property is situated.

The profits of an enterprise of one of the Contracting States shall be taxable only in that Contracting State unless the enterprise carries on a trade or business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on a trade or business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Dividends paid by a company which is a resident of one of the Contracting States to a resident of the other Contracting State may be taxed in that other Contracting State.

However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that Contracting State, but the tax so charged shall not exceed: (a) 10% of the gross amount of the dividends if the recipient is a company which controls directly or indirectly at least 10% of the voting power of the company paying the dividends; (b) in all other cases, 20% of the gross amount of the dividends.

Interest and royalties arising in one of the Contracting States and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that Contracting State, but the tax so charged shall not exceed 10% of the gross amount of the interest.

Salaries, wages and other similar remuneration in respect to an employment as well as income in respect to professional services or other independent activities of a similar character, derived by a resident of one of the Contracting States, shall be taxable only in that Contracting State, unless the employment, services or activities are exercised or performed in the other Contracting State. If the employment, services or activities are so exercised or performed, such remuneration or income as is derived therefrom may be taxed in that other Contracting State.

## TAX SPARING

A number of tax treaties between the Federal Republic of Germany and developing countries use a tax-sparing credit in order to preserve the tax advantages offered by the developing country to the investor. The tax-sparing credit applies in so far as these treaties do not permit the exclusion of income from the tax base, i.e., to dividends that do not qualify for the exemption of inter-company dividends and to interest and royalties. The tax-sparing credit is granted for these types of investment income because they usually benefit from tax reduction or exemption in the developing country and the application of the foreign-tax credit in the creditor country would nullify this benefit.

The detailed rules of the tax-sparing credit and the conditions for its application vary under the different tax treaties with developing countries which cover a period of nine years (1958-1967). The tax-sparing credit was originally introduced as an experimental measure and technical differences of the credit provisions under the various treaties reflect

the experience gained over this period and the different needs of the developing countries. A treaty covering tax-sparing credits was signed by Argentina and Germany in 1966.

## GENERAL

The *Inter-American Bulletin on Taxation* of the OAS highlights the following in the issues indicated below:

### *January - March 1973*

ARGENTINA — Undertook important tax reforms including modifications to the personal and business income tax, internal taxes, and establishment of a tax on individual net worth and the consequent repeal of the gift tax.

BOLIVIA — Enacted a one time tax on inventory goods imported by businesses and imposed a tax on the net value of exports.

CHILE — Introduced substantial modifications to the income tax and the sales tax.

MEXICO — Modified its income tax and the commercial receipts tax.

PARAGUAY — Amended the income tax.

PERU — Reformed its income tax, established a sales and service tax and imposed taxes on business and individual net worth.

URUGUAY — Undertook a broad tax reform including, among others, the income tax, business profits tax, value added tax, and net worth tax.

### *April - June 1973*

COLOMBIA — Modified personal exemptions in its individual income tax, and reformed the income tax rates applicable to certain forms of business organizations, and adjusted the non-taxable minimum amount, the base and the rates of the complementary excess profits tax.

ECUADOR — Created the General Directorate of Customs.

HAITI — Introduced modifications in the individual income tax and reformed various provisions of the business profits tax.

JAMAICA — Amended the individual income tax and imposed a new tax rate schedule.