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Taxation

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TAXATION

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NOTE

The report on taxation is now divided in two parts. The report on the Caribbean is prepared by Marshall J. Langer. The report on Latin America is prepared by John P. Corrigan, Jr.

CARIBBEAN REPORT

Publications Concerning Tax Havens

Milton Grundy, an English tax barrister, has edited the 2nd edition of his book entitled *Tax Havens*. It deals with 14 tax havens, six of which are located in the Americas. They are: The Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Netherlands Antilles and Panama.

Each section is written by a local trust company. The book is jointly published by Sweet & Maxwell Ltd. of London, and Matthew Bender and Co., Inc. of New York.

A booklet entitled *1973 Survey of Foreign Tax Havens* by Marshall J. Langer contains sections dealing with tax havens in the Caribbean and Central America. In addition to the well-known tax havens, it also deals with some lesser-known jurisdictions with tax haven potential, including Montserrat, Turks and Caicos, Antigua, Barbados, St. Vincent, Jamaica, Anguilla, Haiti and Costa Rica. The booklet consists of 85 pages, approximately half of which is a selected bibliography. Copies are available at \$5.00 each from the publisher, Manacon Services Ltd., 400 City National Bank Building, Miami, Florida 33130.

BRITISH VIRGIN ISLANDS

Proposed Income Tax Amendments

The *Island Sun* reports that the Financial Secretary of the British Virgin Islands has introduced into the Legislative Council a bill to amend the income tax ordinance. Among other things, it would create a board of referees authorized to hear appeals from income tax assessments made by the Commissioner and it would extend the statute of limitations applicable to income tax assessments.

HAITI

Tax Incentives Increased

Tax News Service published by The International Bureau of Fiscal Documentation, Amsterdam, reports that a decree has been issued increasing tax incentives for the construction of hotels, motels and other tourist facilities. The new decree provides for income tax exemption for the first ten years of operation compared to a five-year exemption granted under the prior law. It also provides that additions to existing tourist facilities are entitled to the same tax incentives as new facilities. In addition, hotels with at least 125 rooms are entitled to run a gambling casino.

JAMAICA

Income Tax Reforms

The Jamaican *Weekly Gleaner* reports that the Tax Reform Act, 1972, was introduced in the Jamaican House of Representatives in December 1972. The bill is designed to implement changes announced by Prime Minister Michael Manley's Government in the June 1972 budget presentation. Among other things, the bill would increase the personal exemptions allowed to all taxpayers to J\$1,000 (approximately US\$1,200). The existing income tax and surtax rates would be integrated into a single rate schedule with a maximum rate of 60%. The changes take effect as of January 1, 1973.

Proposed Jamaica-Trinidad Tax Treaty

The CIAT Newsletter reports that Jamaica and Trinidad-Tobago have held preliminary talks which could lead to a proposed double taxation agreement between them.

Tax Treaty with Germany

The Governments of West Germany and Jamaica initialled an income tax treaty in September 1972. This proposed new treaty is designed to provide for double taxation relief with respect to corporate income tax, transfer tax and stamp duties.

ST. KITTS-NEVIS

Income Tax Amendments

St. Kitts-Nevis has enacted a 1972 income tax amendment ordinance which makes a number of changes. One of them is that losses may now be carried forward for only five years. Another is that interest paid will be deductible only if the recipient is either taxed on the interest or is exempt under the Income Tax Ordinance or some other law.

Complaints About Turnover Tax

The *Caribbean Business News* reports that the Caribbean Association of Industry and Commerce (CAIC) is deeply concerned over the 5% Turnover Tax reported in the last issue. CAIC feels that the Turnover Tax will have an adverse effect on investment in the State. The Chamber of Commerce feels that it will cause price increases and add to the cost of living.

TURKS AND CAICOS

New Incentive Law

A Development Encouragement Ordinance was recently enacted by the State Council of Turks and Caicos. Under it, an approved developer can receive guarantees against direct taxes as well as exemption from import duties on most items used to establish or expand a development enterprise.

SOUTH AMERICA, PANAMA, CENTRAL AMERICA AND MEXICO

ARGENTINA

Withholding Tax Rates

Pursuant to Resolution No. 1474, the withholding tax rate on bearer securities (excepting shares) has been reduced from 43% to 41%.

Taxation of Interest on Export Credits

The Court of Appeals recently held that interest on the deferred payment of imported goods is not subject to Argentine withholding tax. This decision is in conflict with prior determinations of the Tax Office but would seem to be the final word on the matter, at least for the time being. Case of Casa Denk-Aceros Boehler, S.A.C. & I.

Interest on Local Deposits

Nonresidents who have time deposits with local banks may not deduct costs incurred in connection with such deposits from the interest payable thereon.

Royalties

The Tax Court has ruled that the deduction for presumed expenses incurred by foreign holders of royalty rights does not apply to royalty payments made on account of trademarks. Decision No. D-1402.

Text and Indexes

The tax laws as of January 1, 1972 have been consolidated in one text entitled "Text Enacted in 1972".

A list of tax incentives on a subject by subject basis has been prepared by the Tax Office.

Revaluation of Fixed Assets

Argentina has again regulated the manner in which fixed assets of major enterprises may be revalued tax-free. The Law (No. 19742) reportedly applies to stock issues resulting from the capitalization of such assets.

Foreign Remittances Regulated

Payment abroad of interest, royalties, technical fees and certain other items must be reported for all tax years commencing 1970 and for current payments a special information return must be used. Tax Resolution 1480 of 8/11/72.

Technical Assistance Agreement

The U.S. and Argentina have entered into a technical assistance arrangement whereby equipment and goods exported to or imported into either country are duty-free. Law No. 19766 of 8/4/72.

Cattle Head Tax

Law No. 19,876 establishes a tax of 1.5% on the last sale of cattle for slaughter. The last seller or owner of the cattle has the obligation of paying the tax whose proceeds shall inure to the benefit of the National Housing Fund.

BOLIVIA*Sales Taxes Amended*

Effective August 1, 1972, the sales tax rate has been consolidated at 5%. Supreme Decree No. 10330 of 6/30/72.

Royalties on Gold Production

Applicable rates now range up to 5% depending on the price obtained. Supreme Decree No. 10315 of 6/15/72.

BRAZIL*Taxation of Interest*

Article 11 of Decree-Law No. 410 of Dec. 30, 1968 provides that interest remitted abroad is subject to withholding tax even in the case of interest paid to the seller of goods on a deferred payment basis. The taxation of such interest was further regulated by Decree-Law No. 1,215 of May 4, 1972, which encouraged loans with a minimum term of ten years by granting incentives to such loans and discouraging shorter term loans by denying them such incentives.

Pursuant to a recent order of the Ministry of Finance, supplementing Decree-Law No. 1,215, new and existing loans may seek exemption or reduction of the tax on interest, and the following factors will be considered in determining the request: a) whether the nature of the loan classifies it to be of national importance; (b) the cost reduction to the local firm or governmental agency in borrowing from abroad; and c) compliance with the minimum grace period specified by the National Monetary Council.

An unrelated appellate court decision recently held that foreign loans for financing services are not subject to withholding taxes.

Deduction of Exchange Losses

According to a recent decree of the Ministry of Finance, exchange losses on foreign loans contracted in accordance with Brazilian Law are deductible as cost or operating expenses.

Intercompany Dividends

This matter has been the subject of two tax rulings, Nos. 161 of April 28, 1972 and No. 164 of May 8, 1972.

Tax Exemption for International Carriers

Income earned by foreign firms engaged in overland transportation will be exempt from Brazilian tax provided their home jurisdiction grants reciprocal treatment to Brazilian firms.

Reorganizations and Capitalizations

Important rulings of the Tax Office concern these corporate steps. Ruling No. 191 of 6/28/72 concerns capital increases made out of undistributed profits. Ruling No. 181 of 5/19/72 concerns tax-free revaluation of assets by publicly held companies.

COLOMBIA

Proposed Tax Amendments

The Minister of Finance has proposed the following tax changes:

- Unify the tax rates applicable to stock and non-stock companies;
- eliminate the excess profits tax now applicable to stock companies;
- increase personal deductions and exemptions;
- tax incentives to promote R & D;
- creation of a National Development Fund by granting tax credit for investments in the Fund;
- a presumptive tax on rural lands; and
- a 1% real estate tax on rural and urban lands.

Sale of Real Property in Parcels

The Council of State has declared that the sale of real property in parcels but simultaneously and in one operation does not convert the

property into the category of an asset held in trade or business when the purpose of the sub-division is to facilitate the sale of the entire property. Consequently, such a sale made after a ten year or longer holding period is not a taxable event.

Interest on Import Financing

Interest paid on financing the importation of merchandise is fully recognizable by the tax authorities not as part of the cost of the merchandise but as a deduction. Resolution No. 2594, Direction of National Taxes. This Resolution was provoked by the attempts of taxpayers to avoid the limit of recognizable interest paid on short term credit used to finance imports (7% annually on the value of each credit) by characterizing the interest as a cost factor which suffers from no such limitation.

Tax Exemption on Deposits with Financieras

Decree-Law 19308 of March 7, 1972 exempts from tax interest received on account of deposits with or bonds issued by local finance companies known as "financieras".

Partnership Deductions

A Council of State decision has ruled that the partners' distributive share is to be computed after deducting the payment of all taxes paid by the partnership. Decision of July 4, 1972.

COSTA RICA

Automobile Assembly Regulations

A bill has been reported that would regulate automobile assembly plants. Qualified firms would be able to import capital equipment duty-free and the imported components would pay a substantially lower duty.

DOMINICAN REPUBLIC

Foreign Investment Restriction Relaxed

Pursuant to a Monetary Board resolution passed in April, 1972 and reported in September, foreign investment may be made in activities previously prohibited when they contribute to the country's advancement.

The 18% ceiling on profit remittances may also be waived when the investment is deemed risky or non-profitable for a long period of time.

ECUADOR

Withholding on Oil Firms

Pursuant to Supreme Decree No. 510 of June 24, 1972, income tax, royalties and export duties payable to the government by oil companies will be withheld by the Central Bank from the proceeds of exported oil. The final tax will be adjusted in accordance with the general income tax law.

Withholding Tax

The withholding tax applicable to fees, commissions and royalties has been regulated. Ministry of Finance Order No. 200 of 7/7/72.

EL SALVADOR

Taxpayer Registry

Pursuant to a law enacted August 29, 1972, a tax registry has been created. All taxpayers, including corporations, will be issued a tax identity card. First-time taxpayers must complete an application and file it with the Ministry of Finance.

Coffee/Exemption from Export Duty

Exports of coffee to non-traditional markets will be exempt from export duty through January 31, 1973. Decree No. 8 of 7/3/72.

GUATEMALA

Exemption of Interest on Foreign Loans

The Tax Office has construed the exemption granted by the Income Tax Law on foreign loans repayable in more than eighteen months. Where all the principal of the loan is repayable after eighteen months, none of the interest is subject to withholding tax. The contrary is true when all of the principal is due within 18 months. When part is due after eighteen months the interest exemption is prorated. Order No. 4/72 of 7/14/72.

MEXICO*Estimated Tax Payments*

Estimated tax declarations will now be used for individuals with taxable income of 50,000 pesos or more during each calendar semester. Official Circular No. 311-I-49973 of 7/10/72.

PANAMA*Taxation of Royalties*

Royalties paid abroad by firms established in the Colon Free Zone will no longer be deductible by the payor but will be tax-free to the recipient. Decree No. 113 of 7/18/72.

PARAGUAY*Incentives for Cooperatives*

The tax incentives available to cooperatives have been regulated pursuant to Decree No. 27384.

PERU*Export Tax Incentives*

Decree-Law No. 19459 exempts certain export credit transactions from the stamp and registry taxes. Decree-Law 19470 exempts export credit transactions from the provisions of Article 17 of the Law on the treatment of Foreign Capital.

Decree-Law No. 19491 exempts non-traditional exports from export duties for a twelve-year period. Exporters of such items will also receive a rebate of taxes levied on their processing or levied on the importation of raw materials used in their manufacture.

Finance Companies

The tax benefits available to finance companies that merge or consolidate have been extended for an additional year pursuant Decree-Law No. 19500.

URUGUAY*New Net Worth Tax*

A one-time net worth tax has been imposed to raise funds for

pensions administered by the Social Security Bank. The tax is an additional 100% of the regular net worth tax and is to be paid in five installments commencing August 1972. Arts. 14 and 15, Law No. 14,069 of 7/28/72.

The same Law establishes partial condonations on tax debts due on account of social security.

VENEZUELA

Price of Export Oil

The value of export petroleum for tax purposes has been further regulated. Pursuant to a Joint Resolution of the Ministries of the Treasury and of Mines and Hydrocarbons, no additional value will be applied for the quarter of 1972 based on the factor of geographic location. Joint Resolution of 8/22/72.

Estimated Tax Returns

Mining and petroleum firms must now file estimated tax returns for each tax year. The return is due in the first quarter and may not be reduced by subsequent returns except for acts of God. Amended returns showing additional income may be required by the Ministry of Finance. 85% of the estimated tax may be paid in six equal bimonthly installments. Decree No. 1008 of 6/14/72.

The foregoing type of tax legislation appears to constitute an indirect expropriation. At the least it constitutes a severe burden on the taxpayer and this, coupled with other measures, is reportedly causing the oil firms to diminish new explorations and drillings.

EDITOR'S NOTE

The *Lawyer* appreciates the cooperation of the Inter-American Center of Tax Administration in Panama. The following information has been extracted from the NEWSLETTERS of July, August and September, 1972 by Richard A. Crisonino Esq., candidate for the Master of Laws (Taxation) at the University of Miami.

Dominican Republic

The Dominican Republic recently approved the regulations establishing the new Department of Electronic Data Processing, which began func-

tioning within the General Directorate of Income Tax. One of the first objectives of this Department is to create a Taxpayers National Registry. The Technical Mission of the Inter-American Development Bank will give technical assistance on this task.

Ecuador

Ecuador started a National Income Audit Program on May 8, 1972. The Assistant Secretary of the Ministry of Finance stated that this program started a new era in the history of auditing in the country for the benefit of all and not only for the Government. The corporations to be audited will be notified promptly. A decree was approved obligating the banks and businesses to give to the Council of Government information on transactions in current accounts, deposits and the business of persons being audited by the Ministry of Finance.

Jamaica and Great Britain

Talks on a new treaty between the United Kingdom took place in Jamaica on 17th., 18th., and 19th., April 1972. These talks are directed towards replacing the earlier treaty concluded on April 2, 1965. That treaty had replaced an earlier one of 1949. The treaty of 1965 was amended by a further agreement which came into force on the 31st of July, 1969. This amendment arose in the main out of the changes that had taken place in the United Kingdom in the method of taxation of companies which had resulted in dividends being subject to withholding tax in addition to the tax borne by companies on their profits. Since that time Jamaica has changed the method of assessing companies by the introduction of company profit tax from January 1, 1970. This, together with other changes in the law and administrative changes in Jamaica made renegotiations necessary.

Mexico

The President of Mexico has ordered an administrative reform for ADP utilization. Within this program, the Directorate of Administrative Studies of the Presidency has started the "Ninth Program" which consists of a rationalization of the ADP system. A Committee was formed with ADP officials both from the Government and private companies. The first task of the Committee was to analyze and evaluate the actual system and the present needs. The Committee established that in 1971 the Federal Government had a total of 94 computer installations in fifty offices, at a total cost of one thousand million pesos (of which 232 million related to

rental or purchase of equipment). Three manufacturing companies provided more than 80% of the utilized equipment (IBM 45%, Honeywell 23% and Control Data Corp. 14%), the balance was shared by five other companies.

Among several findings, the Committee advised that the Government lacks sufficient information on the capacity of installations made, the cost and the actual and potential capabilities of this type of equipment. The Government does not have adequate means to plan and control the growing demands and expansion of the public entities. No studies have been made to prevent the underutilization of the equipment, the utilization of noncompatible equipment or duplication of efforts. Each public entity carries out independent transactions to install and use systems, which prevents the consolidation of advantages to obtain better terms and services from the manufacturers. ADP units are assigned to intermediate or low executive levels, resulting in lack of knowledge of the activities of the different units on the different entities, lack of objectives and coordination among units assigned within the office was apparent. Lack of procedures and standard practices (each work group produces solutions already discovered in other entities). Lack of human resources and lack of systematic programs to train personnel was also noted.

The study of the Commission concludes with an outline of a Program of Rationalization for ADP, which consists of three sub-programs. The objective is to "optimize, rationalize and harmonize the acquisition, installation and use of the available resources by the public sector, thus achieving more productivity." The three sub-programs seek to: improve the organization, operation and function of the ADP system in the public sector; promote the exchange of resources among public entities and plan, develop and administer with standard criteria the specialized human resources with the public sector. The sub-programs have short and medium range objectives. The Mexican experience will be followed very closely by other American countries.

Perú

The General Directorate of Revenue is currently carrying out a tax consciousness campaign oriented towards the characteristics of tax evasion and its negative effects on the national economy. The campaign stresses the reasons to pay the taxes, and not on *how* and *when* to pay taxes (this is the responsibility of the Division of Tax Promotion and has two stages: the first, was started in February 1972 and covers the period for filing

income and land tax returns. This stage has four basic objectives, which are:

1. To explain the philosophy and meaning of the tax.
2. To convince the taxpayer of the Government audit capacity, increased by the latest computer advances which prevents tax evasion.
3. To give careful attention to specific sectors (for example, professionals).
4. To increase taxpayers compliance by stating that tax evasion contributes to the creation of new taxes.

The second phase, presently under way, covers an eight month period and expects to maintain the effects of the first stage and pursues an enforcement objective, through the identification of the tax evaders and their penalization. The program is estimated to cose five million *soles* (approximately, U.S. \$110,000).

The Taxpayer Information Service Office contributes to the Program through information and publication services and by keeping close contact with the private sector.

Also on the domestic tax scene, resolution no. 113 of July 23, 1972 of the General Directorate of Revenue of Perú has established a procedure whereby those taxpayers whose income is derived from business, industry or professional services and who have overpaid their income taxes, may use this credit to pay other tax indebtedness. If they have no pending debts, refunds will be made in cash.

On the international tax scene, Perú has approved tax incentives to foreign investments and foreign trade. Decree Laws No. 19459 and 19470 were approved on July 11 and 18, respectively. The first decree exempts from stamp and registry taxes certain credit contracts for specific exports of manufactured products.

The second decree establishes that the limitations contained in Article 17 (which is not yet approved) do not apply to credit operations to promote exports of manufactured products, nor to companies with Government approval to convert to public or partly public and private corporations. Article 17 refers to the standard procedures for treatment of foreign capital and establishes procedures to prevent foreign investors whose capital share is minimal from benefiting by the use of long term credits obtained locally.