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Taxation

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TAXATION

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ARGENTINA

Reform of the Tax System

The Secretary of the Treasury recently announced eight new laws and a decree amending the present tax system. These are Laws Nos. 18524 through 18531, inclusive, and Decree No. 8600 of Dec. 31, 1969 (*Boletín Oficial* of Jan. 19, 1970). The Secretary characterized the amendments as medium-term in nature with long-term tax reforms to be forthcoming within three years. The principal changes enacted by these laws and the decree follow:

1. A 15% withholding tax on dividends paid to local holders of shares is designed to encourage corporations to change from bearer to nominative shares. This tax will not apply to bearer shares of stock publicly traded through the Buenos Aires Stock Exchange or to holders who identify themselves to the payor.
2. The withholding tax on interest arising from securities and paid to residents will be 12% when paid to identified holders and 43% when paid to unidentified holders.
3. Bringing current previous tax delinquencies or evasions is encouraged through the payment of a flat 8% surcharge on the amounts of past due taxes.
4. Certain inter-corporate transactions arising from corporate reorganizations and mergers are facilitated through a reduction or total exemption of sales, stamp and certain other indirect taxes.
5. A Value Added Tax of 3% will begin to be applied in 1971 on certain business activities including major constructions and the operation of hotels and garages. Low cost housing and private constructions are exempt.
6. The three-mill stamp tax applicable to the purchase and sale of foreign exchange has been extended to apply to banks and authorized exchange houses located throughout the country.

Tax Incentives for Production of Petrochemicals

The tax incentives applicable to the production of certain petrochemical by-products have been extended to apply to processes which extract hydrocarbons from methane. Decree No. 6703 of Oct., 1969 (B.O. No. 21797 of Oct. 28, 1969).

Oil Company Income Tax Regulations

Regulations have been issued implementing the special income tax imposed on oil companies pursuant the Hydrocarbons Law of 1968. Arts. 1-20, Decree No. 6815 of Oct. 20, 1969 (B.O. No. 21801 of Nov. 3, 1969).

Local supplies of certain oil companies are now entitled to tax rebates previously established in 1967 for exporters. Arts. 1-12, Decree No. 6656 of Oct. 20, 1969 (B.O. No. 21802 of Nov. 4, 1969).

Technical Assistance Agreements

A recent opinion of the Income Tax Bureau held that a foreign company that rendered technical assistance to an Argentine concern had to declare the gross amount of compensation earned even though the services were rendered partly within and partly without Argentina. The reported effect of the decision is to require the payor to withhold on the entire gross fee including reimbursable expenses with the statutory deduction of 50% applicable to the taxable transaction. Opinion No. 91 of 1969.

Foreign Parent-Local Subsidiary Relationship

It has been reported that Argentine subsidiary-foreign parent relationship deductions are being disallowed on the theory that such relationship is tantamount to that of a foreign home office and its local branch, especially when the foreign parent owns more than 90% of the shares of the local subsidiary.

Tax Incentives for Southern Industries

A recent law grants tax exemption to sales of products manufactured south of Parallel 42. The exemption also applies to sales of domestic products and raw materials supplied to such industries. Arts. 1-3, Law No. 18447 of Nov. 17, 1969 (B.O. No. 21815 of Nov. 24, 1969).

BOLIVIA

Monetary and Fiscal Restraints

An economic freeze on the remittance of profits abroad and a requirement that 100% of the foreign exchange received by exporters be surrendered have been decreed in an effort to maintain the existing rate of exchange. The decree also imposes a 9% annual tax on commercial and private loans. Mining companies are required to deposit with the government certain percentages of the gross value of their exports. Other businesses must deposit 2% of their paid-up capital and reserves. Declared dividends and partnership profits are to be deposited for one year in a local bank after payment of the corresponding income tax. Arts. 1-12, Supreme Decree No. 08959 of Oct. 25, 1969 (G.O. No. 475, Oct. 25, 1969); Regulations, Supreme Decree No. 08986 of Nov. 7, 1969 (G.O. No. 477, Nov. 7, 1969).

Disallowance of Some Tax Exemptions

Due to balance of payments difficulties, several tax exemptions are being tightened. A three-member Fiscal Commission has been appointed that will pass on all applications for exemption from import duties and property taxes on new buildings. Arts. 1-7, Supreme Decree No. 08954 of Oct. 8, 1969 (G.O. No. 473, Oct. 13, 1969).

Rentals by Foreigners

Leases of real property owned by resident foreign persons must be reported, pursuant to Supreme Decree No. 08883 of July 31, 1969 (G.O. No. 464, Aug. 11, 1969 distributed Sept. 3, 1969).

Lajta and Andean Group

The Andean Group Agreement for the integration of the Andean Group countries has been approved together with an agreement establishing the Andean Development Corporation. Arts. 1-3, Supreme Decree No. 08985 of Nov. 5, 1969 (G.O. No. 477 of Nov. 7, 1969).

Important tariff concessions for imports from Argentina, Brazil, Colombia, Chile, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela have been granted retroactively to January 1, 1969, pursuant to Supreme Decree No. 08896 of Aug. 19, 1969 (G.O. No. 465, Aug. 19, 1969).

BRAZIL

Capital Gains Taxes

Capital gains obtained by resident individuals on the sale of shares of Brazilian corporations or on the assignment of partnership interests in Brazilian limited liability companies are not taxable according to a recent decision of the Tax System Coordinator. However, such capital gains derived by nonresident aliens or foreign entities are still subject to the 25% withholding tax which is measured on the realized value in foreign currency and is taxable at the time of repatriation.

An Income Tax Department opinion holds that gains from the sale of real estate are not taxable even if the vendor is a nonresident alien. *Revista Fiscal* No. 15 of Sept. 15, 1969, Item 247.

Corporate Reorganizations

Two important rulings of the Income Tax Department set forth guidelines on the taxation of gains or losses resulting from corporate reorganizations including mergers of subsidiary companies into their parent company. *Revista Fiscal* No. 15 of Sept 15, 1969, Items 252 and 255.

Filing of Tax Returns by Foreign Companies

An Instruction of the Ministry of Finance published in the Official Gazette of September 8, 1969 requires that foreign corporations having any type of permanent establishment in Brazil must file tax returns in Brazil commencing with the 1970 tax year. This instruction would reportedly apply to foreign shipping and airline companies as well as other foreign entities domiciled in Brazil.

Capitalization of Reserves and Profits

The time limit for the tax-free capitalization of reserves and current profits has been extended until May 31, 1970. Decree Law No. 1071 of Dec., 1969 (O.G. of Dec. 5, 1969).

Income Tax Regulations

New consolidated regulations have been issued by the Secretary of Federal Revenue replacing all prior administrative rulings. The new regulations pertain to such matters as the excess profits tax on remit-

tances abroad, incentives for tourism, depreciation, provision for bad debts and re-evaluation of fixed assets.

Minerals Tax

Commencing January 1, 1970 the single tax on minerals is governed by a new law. Depending on the mineral, the tax rate ranges between 1% and 17% of the price for each mineral which is determined by the Ministry of the Treasury. Arts. 1-30, Decree-Law No. 1038 of Oct. 21, 1969 (107 D.O. No. 202 of Oct. 21, 1969).

Withholding Tax on Remittances Abroad

A recent decision of the Federal Revenue Court restricts the power of the Central Bank to stop remittances abroad. Previously the Central Bank could hold up such remittances on the ground that the income tax was under-withheld. *Revista Fiscal* of Nov. 30, 1969, Item 366.

CHILE

Tax Law Changes

The following important tax law changes have been enacted pursuant to Law No. 17267 of Dec. 22, 1969 (D.O. of Dec. 23, 1969):

1. The rate of tax on corporate income has been raised from 30% to 35%.
2. Banks and insurance companies will pay at the special rate of 40%.
3. Salaries paid in foreign currency will be taxed at the rate of 6% instead of the old rate of 3.5%.
4. Category II type income paid to directors of companies has been increased from 20% to 30%.
5. The Executive Branch has been authorized to increase the rate of tax on royalty income and technical assistance fees received by non-residents up to 80% should it be determined that the service paid for is not necessary for the country's economic development.
6. The provisions of this Law replace Art. 31 that dealt with taxation of foreign banks.

Surtax on Bank Loans

Another recent law establishes a surcharge on loan transactions that are not readjustable in accordance with other provisions of Chilean law and in particular Art. 17 of Law No. 17267 of 1969. The surcharge is applicable to "foreign concerns" which borrow in local currency. A company is determined to be foreign if 50% or more of its share capital is owned by foreigners. The surcharge is levied on the sum representing the difference between the average cost of the loan in the international money market and equivalent cost in the Chilean money market without regard to any devaluations that may have taken place. Art. 23 of Law No. 17272 of Dec., 1969 (D.O. of Dec. 31, 1969).

The apparent intention of this law is to penalize companies that are substantially foreign owned for borrowing in the local money market with the objective of forcing them to borrow outside of Chile.

Computation of Capital Investment

The declaration and computation of non-borrowed invested capital is now regulated pursuant to Revenue Ruling of June 26, 1969 (D.O. No. 27383 of July, 1969). Under the income tax law, such capital must be revalued annually.

Foreign Exchange

A recent order of the Central Bank requires local agents of foreign companies to bring into Chile all foreign exchange received as remuneration for their services. Central Bank Order of Aug. 5, 1969 (D.O. No. 27419 of Aug. 12, 1969).

Royalty Expenses

New guidelines apply to the deduction of expenses attributable to royalties and fees for technical assistance. Deductions of amounts of up to either 20%, 15% or 10% will be allowed on the royalties and fees remitted abroad, in accordance with their usefulness for the development of new industrial, mining and farming processes. Arts. 1-4, Decree No. 1422 of June 30, 1969 (D.O. No. 27412 of Aug. 4, 1969).

COLOMBIA

Extension of Tax Incentives for Basic Industries

The tax and other incentives made available to basic industries pur-

suant to Law No. 81 of 1960 have been extended on a gradual basis through 1973. For 1970 the tax exemption is 80%; 1971, 60%; 1972, 40%; and 1973, 20%.

The original conditions for qualification, as amended, must still be met. The law extending these incentives specifically provides that beginning with the 1974 tax year no further incentives will be granted pursuant to Arts. 112-116 of Law No. 81 of 1960. Law No. 37 of Dec. 30, 1969.

Tax on Interest Paid By Colombian Branch Office

The *Consejo de Estado* has suspended application of Art. 45 of Decree No. 154 of 1968 which attempted to disallow deduction of interest paid by a local branch office to its foreign head office. The *Consejo's* ruling holds that the suspended provision improperly tried to add interest payments as one of the items that cannot be deducted by a local branch in its dealings with the home office. Thus, for the time being, such interest payments may be deducted in Colombia by the local branch. Resolution dated Sept. 19, 1969.

Necessity to File Income Tax Returns

By Resolution dated October 30, 1969, the *Consejo de Estado* annulled a provision of Decree No. 154 of 1968 requiring that non-domiciled recipients of payments on account of interest, rents, commissions, royalties and technical assistance, would have to file a Colombian income tax return and pay income tax thereon in addition to the 12% withholding tax. As a result of this ruling, it will no longer be necessary for foreign taxpayers who are non-domiciliaries of Colombia to file such returns or pay such income taxes in addition to the withholding tax.

Tax Investments

The rules governing investments in certain funds in lieu of payment of certain electricity promotion taxes have been changed. Arts. 1-5, Decree No. 1566 of Sept. 22, 1969 (D.O. No. 32907, Oct. 14, 1969), repealing Decree No. 3258 of 1961.

ECUADOR

Income Tax Surcharge

A surcharge equivalent to 11% of the income tax due has been levied for taxpayers whose annual income exceeds 4,200.00 sucres com-

mencing October, 1969. Arts. 1-2, Law No. 69-38 of Oct. 22, 1969 (*Registro Oficial* No. 294 of Oct. 27, 1969).

Per Capita Tax

Commencing in 1970, all persons 18 years or older, domiciled in Ecuador, will be subject to an annual per capita tax for the benefit of the Eastern Region of Ecuador. The new tax ranges from 5 *suces* to 300 *suces* depending on the person's income or net worth and is deductible from the income tax. Arts. 1-4, Law No. 69-26 of Sept. 3, 1969 (R.O. No. 270 of Sept. 22, 1969).

Industrial Incentives

The Senate has recommended that the Executive Branch undertake the study of industrial projects essential to the economic development of the country. Financing by international institutions is to be requested by the Executive, after estimating the cost of the proposed projects. Senate Resolution of Oct. 8, 1969 (R.O. No. 305 of Nov. 12, 1969).

The pending Industrial Promotion Law is reportedly still under study by the Chamber of Industries of Guayaquil.

New Stamp Tax

A new law established one or two *suces* stamp tax on each page of judicial papers, public deeds and recording office certificates. Arts. 1-4, Law No. 69-37 of Oct. 15, 1969 (R.O. No. 291 of Oct. 22, 1969).

Tax on Transfers of Foreign Securities

Law No. 69-12 of 1969 introduced a 1% tax on the value of foreign negotiable assets, including foreign currency, purchased or sold in the free market.

Insurance Companies

Law No. 163 of 1969 provides that insurance companies operating in Ecuador must invest 10% of the "forced investment" tax in bonds of the local housing bank, *Banco Ecuatoriano de la Vivienda*.

Promotion of Fishing Industry

Regulations implementing the promotion of this industry are set

forth in Order No. 7733 of October 15, 1969 of the Ministry of Industries and Commerce. (R.O. No. 316 of Nov. 27, 1969).

It has been reported that the Permanent Legislative Commission has proposed increased duties on export of processed fish. However, at a recent conference held by the Ministry of Industries and Commerce, the Ministry expressed opposition to new taxes on that industry.

EL SALVADOR

Incentives for Container Industry

Pursuant the Central American Agreement for Fiscal Incentives to Industrial Development, El Salvador has granted tax concessions to manufacturers of containers. Order No. 257 of July 31, 1969 (224 *Diario Oficial* No. 179 of Sept. 29, 1969).

Motion Picture Commissions

The taxation of commissions for representing foreign motion picture distributors has been clarified by legislative decree. The basic income tax is not applicable to commissions for representing foreign motion picture producers, distributors or lessees because such commissions are subject to the 5% withholding tax imposed by Decree No. 111 of 1941. Arts. 1-3, Legislative Decree No. 467 of Sept. 18, 1969 (224 D.O. No. 173 of Sept. 19, 1969).

Duty and Tax Exemptions for Petroleum Products

The extent of duty exemption and exemption from consumption tax on the importation of petroleum products is set forth in Executive Order No. 859 of Sept. 9, 1969 (225 D.O. No. 200 of Oct. 28, 1969).

GUATEMALA

Peten Region Promoted by Incentive Law

Domestic industrial and farming enterprises located in the Peten Region may be granted land in the region and tax-free re-investment of up to 44% of profits derived from within the region. Arts. 9 and 23, Legislative Decree No. 45-69 of Sept. 8, 1969 (186 *El Guatemalteco* No. 56 of Sept. 19, 1969).

Mining Activities

The mining of quarries is now regulated by Legislative Decree No.

47-69 of Sept. 11, 1969. In addition to the basic income tax, concessionaries with exploration and exploitation licenses will be subject to three taxes: (1) a fixed tax on the awarding of the license or its extension; (2) a ground rent tax applicable during the first five years of exploitation; and (3) a royalty tax of 6% of the mineral extracted, computed on the mineral's price at the mine's entrance.

Central American Incentives Agreement

The Central American Agreement on Tax Incentives for Industrial Development has been clarified to provide that the tax incentives shall be denied where the business or its shareholders are subject to tax on foreign source income by their home countries. Arts. 1-92, Executive Order of Oct. 22, 1969.

Investment Guaranties Convention

New regulations have been issued which govern eligibility of U. S. investors under the Guatemala-United States Convention on Foreign Investments. Arts. 1-12, Executive Order of Oct. 22, 1969 (186 E.G. No. 89 of October 29, 1969).

HONDURAS

Taxes Waived for Border Inhabitants

Possibly as an outgrowth of the conflict with El Salvador and to stimulate settlement of the border area by Honduras, inhabitants of certain border areas will not be subject to local taxes or national income tax on profits derived from such border areas. Arts. 1-5, Legislative Decree No. 62 of Oct. 24, 1969.

JAMAICA

Tax Developments

It has been reported that recently enacted tax bills (a) increase duty exemptions applicable to CARIFTA oriented industries, and (b) exemptions and deductions have been increased under the Personal Income Tax for low salaried individuals.

MEXICO

Source of Income

Two strict interpretations of what constitutes Mexican source income

have been reported. The Supreme Court held that the purchase of goods in Mexico by a foreign company through a local agent constitutes Mexican source income even though the goods are sold abroad. A Revenue Ruling holds that the sales of goods owned by a foreign company and deposited in bond in Mexican warehouses constitutes Mexican source income. These decisions may be difficult to enforce at least against the nonresident party.

Tax Law Changes

A number of amendments were enacted pursuant the Revenue Law of December 26, 1969. Among the more interesting provisions are the following:

1. Dividends and other distributions from Mexican corporations remain excluded from the global income of individuals.
2. Gains from the sale of securities remain excluded but only with regard to Mexican securities.
3. Individuals may exclude interest from debt securities issued by residents, and interest on loans made to local credit institutions or on deposits with such institutions.

PANAMA

New Tax Developments

On February 17, 1970, the government enacted new legislation modifying the Panamanian tax structure as follows:

1. *Corporate Income Tax*—The highest rate on the new progressive rate scale has been increased from 45% to 50%.
2. *Corporate Net Worth Tax*—The maximum rate is now set at 0.5% of net assets with a maximum tax of B\$10,000.00.
3. *Dividend Tax*—This rate has been increased from 8% to 10%.
4. *Personal Income Tax*—There has been an average increase of approximately 20% across the board pursuant the new progressive rate schedule.
5. *Tax Incentives for Production Development*—Same were reduced from 98% to 80%. These are the incentives applicable to industries that invest in natural resources, agriculture, cattle and fisheries.

PARAGUAY

New Income Tax Law

A bill that would replace the existing income tax law has been introduced in Congress.

Interest Paid Abroad

A Supreme Court decision of November 8, 1969 held that amounts paid abroad on liabilities arising from current banking operations are not deductible for income tax purposes.

PERU

Taxation of Foreign Airlines

A Tax Court decision has confirmed that foreign airlines are not subject to Peruvian income tax if their respective countries grant the same treatment to Peruvian airlines under the same circumstances.

Tax Changes

A new tax measure has been proposed which would increase tax rates and minimum tax brackets; tax locally produced automobiles; and impose new taxes on the fishing industry.

TRINIDAD AND TOBAGO

Double Taxation Treaty

The United States has signed a treaty with Trinidad and Tobago to avoid double taxation, to prevent tax evasion and to encourage trade and development. The treaty replaces the previous agreement which expired in December, 1969.

URUGUAY

Tax Law Amendments

An important new tax measure has been enacted. One of its provisions exempts profits from sales to exporters and distributions of such profits to shareholders. Law No. 13782 of Nov. 3, 1969 (D.O. No. 18190 of Nov. 10, 1969).