Latin American Tax Update

Mary Mercedes Marti
Latin American Tax Law Update: 1978

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This study reviews the tax developments in eighteen countries of Latin America during the calendar year 1978. Pertinent legislation and rulings, as well as important judicial decisions, are highlighted in order to provide maximum coverage of the following areas:

Fiscal Policy
Promotion of Economic Development
Inflation-Generated Measures
Social Security Systems
Tax Administration
Special Situations

ARGENTINE

In the tax policy area, important changes have been introduced in the Stamp Tax Law. Pursuant to the amendments, fixed taxes are adjusted in accordance with the present real value of the currency. Said taxes are to be adjusted in the future by the General Tax Bureau every six months according to the changes in the cost-of-living index.¹ Another change involved the loans tax. The one-per-thousand tax on unpaid weekly balances of loans granted by financial institutions has been extended to December 31, 1978.²

In the area of promotion of economic development, the right of exporters to deduct from taxable income an amount equivalent to 10% of the FOB value of certain industrialized products has been extended until December 31, 1979.³ In addition, exercising the au-

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thority granted by the law for protection of national production, the Executive Branch has decreed that the tax rebate of up to 10% of the FOB value of industrialized exports will be computed at the foreign exchange rate prevailing the day preceding that when the exporter is paid or credited such rebate. The benefit became effective on June 1, 1978. If exporters fail to surrender export proceeds on time, the tax rebate is computed at the foreign exchange rate applicable when the proceeds are actually surrendered.4

In order to stimulate the building of rental property, several tax exemptions have been established. Investments in construction of low-cost housing or in shares of companies engaged in such construction, as well as rents therefrom, are now exempt from income tax. The value of such housing is excluded in determining the assets subject to tax on net worth of individuals and on capital of legal entities. Gains derived from the sale of such housing are also exempt from the occasional gains tax. The tax benefit shall apply for ten years after the filing of a return as provided in the law. To qualify, the transactions must be performed prior to November 30, 1979 and the investment in construction must be fulfilled by December 31, 1980.5

As an inflationary measure, systems for updating peso values, contained in the laws of taxes administered by the General Tax Bureau, shall be based on the cost-of-living index measured by the wholesale prices index. The new system applies to fiscal years ending on or after January 1, 1978 and to taxable events occurring on or after January 1, 1978. The new index has been recommended by the Central Bank and is to be determined by the National Institute for Statistics and Census.6

In the area of the tax administration, legislative amendments to the Administrative Proceedings Law have been passed.7 In the judicial sphere, the Supreme Court of Justice has held a former president of a corporation personally liable for taxes levied on the corporation while he was in office, on the grounds that the Tax Procedure Law makes directors and officers of companies personally liable for unpaid company taxes.8

Finally, in exercising the authority granted it by law, the Executive Branch has consolidated the text of numerous tax laws, including

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amendments thereto up to 1977. The new text will be cited as "text ordained in 1977" for each of the tax laws consolidated, which are: the tax on capital; the added-value tax; the stamp tax; the tax on net worth; the gains tax; the judicial proceedings fees; the occasional gains tax; the tax on foreign exchange transactions; the tax on securities transfers; the tax on loans; excise taxes; and the tax for technical education. Each text constitutes an annex to the consolidating decree.9

BOLIVIA

In the fiscal policy area, a series of developments can be reported. Income derived by individuals from mining is to be taxed according to new rules. Presumptive net income is determined as a percentage of gross sales and/or exports of minerals. Taxable income is determined by deducting personal exemptions, 50% of medical expenses, and 50% of rent of residence. Presumptive income ranges from 5% of sales of 650,000 pesos or less, to 20% of sales of 1,700,001 pesos or more.10

All employers are required to make a contribution to the National Service for Training of Workers. The contribution amounts to 1% of up to 10,000 pesos payroll per month, per worker. The tax entered into effect on January 1, 1978. Rules on remuneration included and excluded in computing the tax base are prescribed by the Regulations. Small mining companies are exempt from the new payroll tax. The remuneration excluded from the tax base is comprised of such items as the Christmas bonus, and the thirteenth and fourteenth salaries. Included in the tax base are commissions, overtime pay, production bonuses, and fees.11

Electric companies have been exempted from payment of the 5% tax on revaluation of fixed assets. Such tax, if levied on the electric companies, would have been passed on to consumers, since the Electricity Code provides that the rates payable by the users must include all taxes.12

Important changes in the Import Duty Tariff entered effect on January 30, 1978. Under the amendments, numerous products are taxed ad valorem rather than at a fixed amount per unit or measure.

Among the items subject to the new duties are chemicals, cosmetics, film, plastics, latex, paper, cardboard, sheet music, fabrics, glass, replacement parts, cameras, and projectors. In addition to the ad valorem duty, which ranges from 10% to 45%, all products are subject to a 3% surcharge, an 8% fee for Customs services, and a 1% tax for the development of the Northeast region of Bolivia.\(^{13}\)

Alcoholic beverages are subject to a new tax system. The present decree lifts the ban on imports but amends the tariff to impose high duty on such imports. Imported liquors pay a 30% duty and a 58% additional tax, in addition to a 3% surcharge and a 1% tax for the development of the Northeast region. Domestic liquors are now subject to sales tax at a 35% rate.\(^{14}\)

The deduction of up to 4% of net income of enterprises allowed for charitable contributions has been revised to include certain museums among the institutions which may receive deductible donations. The Internal Revenue General Bureau is required to keep a registry of the institutions which may receive donations qualifying for the deduction.\(^{15}\)

To promote economic development, numerous imports listed in a new decree have been exempted from import duties as of December 23, 1977, provided that they are imported by construction companies which are members of the Bolivian Construction Chamber. Among the products listed in the Annex to the new decree are cement, glass, bricks, iron bars, pipes, machinery, and tools.\(^{16}\)

Finally, in the tax administration area, internal revenue taxes will be collected through the commercial banking system. The rules for bank participation in the program, approved by the present decree, deal with the admission of banks to the system, rights and duties of participating banks, operation of the collection system, and administration by the Internal Revenue General Bureau. The Central Bank of Bolivia, in the city of La Paz, will centralize all taxes collected in the country. The Data Processing Department of the Internal Revenue Bureau will make a separate analysis of tax returns, vouchers for payments received by the banks, and the total amount paid by each taxpayer, to be incorporated into the Taxpayer Current Account.\(^{17}\)

\(^{13}\) Supreme Decree 15283 of January 30, 1978.
\(^{15}\) Decree-Law 15329 of February 21, 1978.
\(^{16}\) Supreme Decree 15207 of December 23, 1977.
\(^{17}\) Supreme Decree 15075 of October 31, 1977.
Important changes have taken place in the fiscal policy area. A new law has established an income tax benefit for legal entities engaged in rendering services to tourists. Up to and including the fiscal period 1980 (taxable year 1979), such entities may exclude from taxable income the amounts attributable to the value of services rendered to nonresident persons in transit in Brazil and paid for in convertible foreign exchange. Should such entities be already exempt from income tax, or subject to the tax at a reduced rate, the benefit will consist in a tax credit computed in the manner prescribed in the new law.

The entities and activities covered by the new measures include hotels, travel agencies, restaurant services, passenger transportation, and operation of public entertainment establishments. Registration with the Brazilian Tourist Enterprise—EMBRATUR—is one of the conditions to be met in order to be eligible for the tax benefit.

The value of the services is the amount of "cruzeiros" resulting from the conversion of the foreign exchange received in payment thereof, in a bank authorized to operate with foreign exchange.\(^{18}\)

Effective January 1, 1978, two decree-laws have introduced import duty changes. One of the decree-laws raises the ad valorem duty rates applicable to various automobiles. The second decree-law has extended to June 30, 1979 several import duty increases that were to expire by December 31, 1977.\(^{19}\)

Two decree-laws have been passed with respect to the single tax on lubricants and liquid gas combustibles. Fuel oil is now subject to a single tax, and new guidelines have been established for fixing the refinery price of petroleum by-products under each of the decrees, respectively.\(^{20}\)

Fourteen decrees implementing Additional Protocols to Complementary Agreements with LAFTA countries have been passed. They deal with concessions applicable to products of several industries. Pursuant to another decree, the concessions under the National List of Brazil have been expanded as of January 1, 1978. The special

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concessions to several less developed countries have also been revised as of that date.  

In the promotion of economic development area, the movie industry has received some tax aids. The exemption from import duties granted for equipment used for the development and expansion of motion picture studies has been extended until December 31, 1980, subject to additional requirements.  

Individuals who keep savings in the Housing Financial System are entitled to a credit against the income tax payable by them, beginning with the fiscal period 1979 (taxable year 1978), pursuant to the terms stated in a new decree-law. Interest and bonuses from such deposits are not subject to withholding of income tax at the source. The new credit is 4% of the amount of deposits described in the present decree-law. The percentage is reduced to 2% if such amount exceeds certain limits fixed by the statute.  

The tax-free revaluation of assets allowed in the event of recapitalization and expansion of existing plants has been extended up to December 31, 1979.  

Certain income tax reductions allowed up to the fiscal period 1975 (taxable year 1974) to hotels which were already in operation by November 21, 1966, have been extended through the fiscal period 1976 (taxable year 1975).  

The Ministry of the Treasury has been authorized to allow the application of up to 100% of the amount of credits to the circulation tax granted by state law for the promotion of exports, the industrialized products tax, or other federal taxes payable by an exporter. The new rules apply to credits generated from January 1, 1978, as well as to those accumulated credits generated during 1976.  

In advancing inflation-generated measures, the Ministry of the Treasury exercising the authority granted it by the law, has fixed the coefficient for updating cruzeiro values contained in the Income Tax Law at 1.35%. Such coefficient was set in accordance with the changes in the value of the Readjustable National Treasury Bonds between November 1976 and October 1977, and it applies as of the

fiscal period 1978 (taxable year 1977). A table of the values expressed in cruzeiros in the Income Tax Law, as consolidated in 1975, and subsequent amendments, among which are the brackets of taxable income for individuals, adjusted pursuant to the 1.35 coefficient and rounded-off to the closest hundredths of a cruzeiro, has been approved. The table identifies each provision in which values are expressed in cruzeiros, the amount stated in the statute as consolidated in 1975 or as appearing in subsequent amendments thereto, and the updated amount resulting from applying an aggregate coefficient of 2.37% to the 1975 figures.  

The Protocol to the Agreement between Brazil and Japan to avoid double taxation of income, which was approved by Congress in 1976, has been promulgated and implemented by regulations. It entered effect on January 1, 1978. Under the Protocol, interest and certain royalties derived by domiciliaries of the signatory countries may not be taxed at a rate higher than 12.5%.  

CHILE

Two developments occurred in the fiscal policy area. A substantial revision of the Import Duty Tariff entered effect on March 30, 1978. The duties range from 10% to 22% ad valorem, except for motor vehicles, which are taxed at 80% and 115% ad valorem. The duties in the 22% to 13% range are to be gradually reduced so that all of them shall be 10% by June 1979. The 10% duty applies to unprocessed foodstuffs, combustibles, chemicals, and industrial raw materials. The 22% duty applies to home appliances, clocks, clothes, and other luxury items.  

Substantial changes have been made in the Alcohol Tax Law, effective January 1, 1978. The changes relate to determination of the selling price upon which the rate is based, revision of the tax rates, filing of returns and payment of the tax, and the procedure used to determine the tax liability of discontinued businesses. The surcharges in effect since May 1975 have been terminated.  

To promote economic development, tax incentives have been reinstated for the period of January 1, 1978 through March 31, 1978.  

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27. 1.30 for 1976, plus 1.35 for 1977, plus 1.35 for 1978, or the coefficient applicable to each amendment. Portaria 745 of December 25, 1977.  
As of January 1, 1978, imports into the Chiloe Province of certain foodstuffs for local consumption will be free from import duty for the next six years. All other imports will only be subject to a 5% ad valorem duty and a sales tax. The ad valorem duty shall be 7% on automobiles valued up to U.S. $3,500. Automobiles of higher value are fully taxable at duties applied to imports in other sections of the country. Finally, the time limit to enjoy the duty break for capital assets, which consists of a deferred payment of import duty, has been eliminated.

With regard to inflation-generated measures, it should be noted that effective January 1, 1978, the stamp tax rates have been adjusted upwards by 24.6%. A table of such rates has been released. Retroactive to January 1, 1978, appraisals of urban and rural property and farmland, fixed as of July 1, 1977, are to be adjusted upwards in accordance with the cost-of-living index change for the period July 1 to December 31, 1977. A similar revision is to apply to exemptions for property used as a residence.

As to social security developments, effective January 1, 1978, the rates and certain provisions of almost every social welfare system in existence have been revised by a new decree-law. Some of the changes are the following: a) The surcharge on the payroll tax for the family allowance system has been eliminated; b) practically every rate established or revised by the statute that implemented the single family allowance system has been modified; c) all provisions requiring that the first salary be contributed in full to a social security fund have been repealed; d) payment of certain overdue contributors is subject to new rules; e) employers' contributions have been reshuffled with respect to financing of the unemployment subsidy fund; and f) certain provisions of the law which overhauled contributions to the social security fund have been repealed.

In addition, the 17%-of-payroll contribution to the single fund for family allowances has been reduced. It was reduced to 13% as of April 1, 1978 and to 10% effective July 1, 1978. This contribution is imposed by the statute which created the single family allowance sys-

34. Decree 1236 of December 14, 1977.
The reduction was prompted by the need to encourage the hiring of workers by the private sector.\(^{37}\)

Improvements were made in the area of tax administration, which revise the time limits set for paying sale and excise taxes to the Treasury. Under the new rules, which became effective February 1, 1978, taxpayers are to file a return and pay to the Treasury the taxes arising during the first fifteen days of each month, no later than the twenty-seventh day of the same month. A final return and payment for the transactions of the full month against which the payment made that month is to be credited must be filed and made no later than the twelfth day of the following month.\(^{38}\)

Finally, in order to simplify tax return forms, the Internal Revenue Service has passed a resolution requiring “First Category” taxpayers (business and industrial enterprises) to list inclusions in and exclusions from book profits in the financial statements which must accompany the returns. Such statements must also show the net corporate income subject to the additional 40% income tax rate.\(^{39}\)

**Colombia**

In the field of tax policy changes, Congress has passed important amendments and regulations regarding the income tax system in an effort to give taxpayers relief from the impact of inflation.

Beginning with the taxable year 1978, amounts expressed in pesos in the Income Tax Law are to be adjusted by 60% of the change in the cost-of-living index for the one year period ending on September 1. Taxpayers may adjust the book value of their fixed assets every year by applying the coefficient described above. For the taxable year 1977, the adjustment of peso values and book values is to be made by using a 14% factor.

Capital gains resulting from the sale of fixed assets and from the sale of shares of certain corporations are granted special benefits in the form of tax credits. A tax credit is also given for investments in shares of such corporations. Detailed rules cover the computation of capital gains from the sale of real estate or shares of stock, the determination of imputed income as amounting to at least 8% of net worth,

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and the deduction of corporate profits invested in shares of new companies, regarding as new those constituted on or after December 23, 1977.

Royalty payments to foreign home offices will be deductible if previously reviewed by the Income Tax Bureau, notwithstanding Decision 24 of the Cartagena Commission, adopted by Colombia, which prohibits such payments. Qualified royalty payments are those made to nonresidents for technical assistance which cannot be rendered in Colombia and which apply to the pre-operating phase of a project. The outright disallowance of deductions for expenses incurred with the home office, contained in the bill submitted to Congress in September of 1977, has now been qualified as indicated above.\(^40\)

The Executive Branch is required to release the new peso values before October 1 of each taxable year. Tax credits may not exceed, in the aggregate, 100% of the amount of the income tax payable.

Changes have taken place with regard to import duties. Beginning January 1, 1978, the import duties on several items, including chemical, electric, and leather products, have been reduced. The new duties apply to shipments which arrived prior to February 3, 1978, but did not clear Customs by that date.\(^41\) In addition, clocks and other appliances have been subjected to higher duties since February 27, 1978. The new duties range from 55% to 75% ad valorem and have been fixed pursuant to the authority to regulate the economy vested in the Executive Branch.\(^42\)

Reversing an earlier position, the Income Tax Bureau has ruled that the gain from the sale outside Colombia of any industrial property or know-how to a Colombian taxpayer is not subject to Colombian tax jurisdiction.\(^43\) According to the controlling Income Tax Law in 1969, interest paid abroad for short-term financing of imports or exports, and commissions paid for banking services rendered abroad, are not taxable in Colombia. Therefore, a Colombian payor bank may deduct payments thereof although no income tax has been withheld.\(^44\)

Taxation of severance pay has been legislated anew, in lieu of the system established in the old law through provisions found to be un-

\(^{41}\) Decree 190 of February 3, 1978.
\(^{42}\) Decree 363 of February 27, 1977.
\(^{44}\) Decision of August 11, 1977, Council of State.
constitutional. Under the new law, severance pay is taxed as ordinary income if a dismissed employee is rehired. If he is not rehired, 30% of the indemnity is regarded as damages and therefore exempt, while the remaining 70% is treated as income in the amount thereof exceeding 40,000 pesos. An income averaging system is prescribed for payment involving more than two years.\textsuperscript{45}

Pursuant to the recent changes to the Income Tax Law and regulations thereunder, prizes paid in cash are subject to a withholding income tax at a rate of 5%. No tax is withheld on payments under 1,000 pesos per ticket.

As an inflation-generated measure, the Executive Branch has updated the amounts expressed in pesos in the Income Tax Law. Brackets of income and brackets of net worth subject to progressive rates applicable in taxable year 1978 have been revised accordingly by 14%. The Executive Branch has also updated peso values contained in various income-related laws and decrees for the taxable years 1974, 1975, 1976, and 1977, thus amending previous updating for such years.\textsuperscript{47}

The last major development is in the area of tax administration, and deals with the overhaul of tax procedure and withholding on gains. Administration of sales, income, and complementary taxes is governed by a new law. Among the subjects provided for are the taxable event, persons liable, withholding agents, statute of limitations, extensions for payment of taxes, tax returns, assessment authority, taxpayers' remedies, notices, and terms. The new rules apply to returns filed on or after January 1, 1977. The same statute grants extraordinary powers to the Executive Branch for one year to implement the new law and to establish the withholding of tax at the source, at the rate of up to 40% of the gain or profit connected with the acquisition of bearer indebtedness securities, such as original discount. Under the new rules, in the case of corporate reorganizations, the surviving company is liable for the tax debts of the absorbed company. The statute of limitations for the government's right to assess taxes where no returns have been filed is reduced from ten years to five years, but the penalty is increased from 100% of the tax assessed to up to 600%.\textsuperscript{48}

\begin{footnotesize}
\begin{enumerate}
\item Law 54 of December 23, 1977.
\item Decree 89 of January 23, 1978.
\item Law 52 of December 23, 1977.
\end{enumerate}
\end{footnotesize}
COSTA RICA

No significant changes have taken place within this country. However, with respect to the promotion of economic development, Congress has been considering an amendment to the law for the promotion of immigration of retired persons. Under the proposed changes, nationals of Costa Rica would enjoy tax benefits if they hold a two-year teaching contract with a governmental institution. Retired nationals who have remained outside Costa Rica for over ten years are eligible for the benefits if they have not waived Costa Rican citizenship. 49

DOMINICAN REPUBLIC

The most significant occurrence in the tax policy area was the extension of the import duty. Congress extended for one more year, beginning January 1, 1978, the 20% ad valorem tax on imported goods. 50

In an effort to promote economic development, Congress has created the Puerto Duarte Free Zone, located in Samana Province. The new zone is under the direction and control of the General Bureau of Customs and Ports. 51

Under a new law, rents derived from buildings completed at a cost of over 1,000,000 Dominican pesos will be exempt from income tax. 52

Improvements in the social security laws are to take place throughout 1978. The recently appointed General Income Tax Director has announced that the administration of income tax will be tightened through several measures to be adopted in 1978. One such measure would require enterprises to submit to the Bureau the names of their executives and personnel in charge of accounting and internal controls. Among the measures to be adopted are prompt issuance of tax clearance certificates, exchange of information with other government agencies, dual examination of tax returns, and intensive reconstruction of income. 53

52. Law 587 of April 21, 1977.
Several tax changes were enacted within the tax policy area. The single tax on net income imposed on oil companies has been raised from 71.42% to 87.31% and the production royalty has been raised from 17% to 18.50%. Both new rates apply retroactively from January 1, 1977, and are to be based on the actual international selling price of oil. The method for recomputing the tax due for 1977 has been set forth by a Joint Ministerial Order. Taxable income is to be ascertained according to the actual selling price derived by private companies, but not less than the international price obtained by the government-owned Ecuadorian Estate Petroleum Corporation (CEPE). Deductions are to be based on the values shown in the oil company's books of account. A complex formula for computing the tax for 1977 and future years, has been jointly set forth by the Ministries of Finances and of Natural and Energy Resources.

Effective January 1, 1978, the added-value tax has been levied at new rates. The general rates for transfers of goods, as well as for services rendered, have been increased from 4% to 5%. The 10% rate imposed on hotel and restaurant services has been reduced to 5%. In addition, all exemptions have been terminated, except those for foodstuffs, medicines, and farming machinery. Several sales tax exemptions repealed by a recent decree have been reinstated. Among the exemptions reinstated are those granted to diplomats under an earlier law. The present Order reinstates exemptions granted for donations from abroad to charitable organizations and for imports by diplomatic personnel, and other exemptions granted for a fixed period, or by international agreements. Beginning January 1, 1978, practitioners of learned professions will no longer enjoy an exemption from income tax for the fees earned during their first year of practice.

Economic development was bolstered by two legislative enactments. Effective January 24, 1978, investors in manufacturing enterprises located in promoted areas are entitled to an income tax exemption on dividends from such enterprises, pursuant to a new statute.

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The exemption applies for the first five years, starting with the first year in which the enterprise begins production.\textsuperscript{60} Additional tax exemptions are available for tourist enterprises, effective November 18, 1977. Pursuant to the amendments to the Tourist Promotion Law, tourist enterprises may deduct original investment from taxable income. Other changes involve, \textit{inter alia}: an import duty exemption for buses; requirements for granting a credit against income tax for investments in tourist enterprises; and benefits available for category B and category C enterprises.\textsuperscript{61}

The common rules on workers' social security, approved by the Cartagena Commission under Decision 113, have been declared operative in Ecuador, pursuant to a new decree. Decision 113, quoted in the present decree, provides for equal treatment of workers who reside in one signatory country and are employed in another signatory country. Such treatment also applies to exemptions and reductions of taxes levied on documents to be filed with social security institutions of signatory countries.\textsuperscript{62}

In the area of special situations, it is noteworthy that an agreement to prevent double taxation under income and net worth taxes has been signed by Ecuador and the Federal Republic of Germany, and ratified by the former.\textsuperscript{63}

\textbf{El Salvador}

In the area of tax policy, the most recent amendments to the export tax on coffee deal with the computation of the tax base for exports of certain processed coffee. The new Order provides that every 46 kilograms of decaffeinated coffee exported will be treated as being equivalent to 46 kilograms of gold coffee and to 54.74 kilograms of roasted coffee.\textsuperscript{64} In view of the depressed international price of sugar, the rate of the excise tax on sugar sold within the country, without regard to its ultimate use, has been reduced to 2 colones per each 46 kilograms.\textsuperscript{65}

Effective December 31, 1977, rural property suitable for farming or cattle-raising became subject to an annual tax at the rate of 1% of

\begin{itemize}
\item[(60)] Decree 2150 of January 12, 1978, implementing Decree 989 of December 14, 1976.
\item[(61)] Decree 1979 of November 18, 1977.
\item[(62)] Decree 1964 of November 15, 1977.
\item[(63)] Decree 1925 of November 7, 1977.
\item[(64)] Treasury Order 21 of January 5, 1978.
\item[(65)] Legislative Decree 437 of December 22, 1977.
\end{itemize}
the appraisal value. Deducted from such appraisal are improvements, crops, and the amount of the purchase money mortgage. In addition, amounts invested or disbursed in the taxable year to provide health, education, or housing assistance, without charge in rural areas, may be credited against the tax imposed for that year. Amounts spent in excess of the tax due may be credited against the tax payable in subsequent years. The tax applies on the appraisal value of property possessed on December 31st of each year. If the value is no higher than 200,000 colones, no tax applies. If the value is over 200,000 colones but not over 900,000 colones, 200,000 colones are deductible. The Executive Branch has been ordered to issue regulations within one year from the effective date of the law. The administration rules for the income tax apply to the administration of the new levy. 66

A typographical error in the legislative decree granting import duty exemption for educational material has been corrected by another legislative decree. The exemption applies to "reactive" materials rather than to "recreational" materials. 67

In the social security systems area, the government reduced contributions to the social security system, effective December 30, 1977, due to increases in the number of working persons and salaries. For old age, disability, and death, the contributions, in percentages of earnings or payroll, are as follows: employer, 2%; insured person, 1%; government, 5%. For sickness, maternity, and work injuries, the employer contribution is 6.25% and the insured person's contribution is 2.5%; the government shall contribute a fixed amount per year to be reviewed every fifth year. Sickness, maternity, and work injury were financed by contributions of employer, employee, and government in the amount of 6.5%, 2.5%, and 1.25% of payroll or earnings, respectively. 68

GUATEMALA

The main development in the fiscal policy area was the new system for taxation of tobacco. Under a new law, effective January 16, 1978, machine-made cigarettes are subject to an excise tax equivalent to 97% of the price of ex-factory or CIF value. Hand-made cigarettes are exempt from the tax. Cigars are subject to a fixed tax commensurate with their quality. Under the previous system, cigarettes were

taxed at a rate of 20% to 30% of the retail price. The new law contains detailed rules on administration and enforcement of the tax, including severe penalties for smuggling cigarettes and cigars.\textsuperscript{69}

The export duty on a contractor's share of the output from "oil operations contracts" has been ascertained. It will amount to 2% of the selling price of exported oil.\textsuperscript{70}

Rules under the Mining Code have been amended with respect to the base for the royalty tax on minerals exported. Such base is now the price in the international market as described in the amended Rules. The changes entered into effect on March 11, 1978. If the price of the exported mineral is not quoted in the international market, the tax is to be computed on the invoice price, less transportation expenses.\textsuperscript{71}

With respect to the promotion of economic development, Guatemala has approved a revision of the Rules under the Central American Agreement on Tax Incentives to Industrial Development. The revision concerns the computation of income tax exemption in the event of plant expansion. The revision was passed by the Meeting of Economy Ministers held in San Jose, Costa Rica, on February 23 and 24, 1978.\textsuperscript{72}

In the area of special situations, Congress has approved, with reservations, and the Executive Branch has ratified the Third Protocol to the Central American Agreement on Tax Incentives to Industrial Development; it has also approved an extension until December 31, 1983 of the Second Protocol to such Agreement. It withheld approval of the extension to November 8, 1983, of the Protocol to the General Treaty of Central American Economic Integration until such Protocol is renegotiated.

Under the Third Protocol, dated August 31, 1977, signatory countries may grant income tax exemptions to manufacturing enterprises and their owners, except where such taxpayers are subject in their home country to taxes which render the exemption ineffective. The Third Protocol was signed in San Jose, Costa Rica, by representatives of El Salvador, Guatemala, Nicaragua, and Costa Rica. Included among the beneficiaries of the tax incentives are exporting enterprises and handicraft. The Second Protocol, as now extended,

\textsuperscript{69} Legislative Decree 61-77 of December 23, 1977.
\textsuperscript{70} Legislative Decree 66-77 of December 22, 1977.
\textsuperscript{71} Executive Order of February 13, 1978.
\textsuperscript{72} Order 26 of March 10, 1978.
will apply to qualified enterprises whose import duty exemption under the previous Protocol would have expired between January 1, 1973 and December 31, 1983.\textsuperscript{73}

In addition, Guatemala has approved the Amendments to the Rules to the Central American Agreement on Tax Incentives to Industrial Development. Such amendments conform to the changes introduced by the Third Protocol to the Agreement. The Rules set forth the procedure to compute income tax exemptions attributable to plant expansion, and provide that foreign shareholders are to file a sworn declaration stating the tax applied on foreign income by their home country in order to determine whether the income tax exemption allowed by the Agreement would be rendered ineffective. The new Rules became effective retroactively to January 4, 1978.

**HONDURAS**

No significant changes took place in the area of fiscal policy. It should be mentioned, however, that the Executive Branch reduced the duties on certain imported motor vehicles used in farming, effective December 14, 1977.\textsuperscript{75} Economic development was furthered in the field of private schools and universities which received tax incentives in the form of import duty exemptions, income tax exemptions for profits reinvested within the same taxable year, and exemptions from sales and consumption taxes. The import duty exemptions apply only to teaching material, furniture, laboratory equipment, and school buses, provided that appropriate substitutes originating from the Central American region are not available. Reinvestments qualify only if used in acquiring educational material, laboratory equipment, and school buses, or to build school buildings, or finance social welfare programs, including scholarships.\textsuperscript{76}

The highlight in the area of the social security system has been the tightening of the laws regarding the payment of contributions.

The regulations have been amended with respect to the payment of contributions by employers. The present Order amends articles 43, 44, and 175 of the regulations passed by Executive Order No. 193 of December 17, 1971. Employers must deposit with the Institute their

\textsuperscript{73} Legislative Decree 62-77 of December 22, 1977; Ratification Instrument of January 2, 1978.
\textsuperscript{74} Order 4 of January 16, 1978.
\textsuperscript{75} Decree 553 of December 2, 1977.
\textsuperscript{76} Decree 574 of January 27, 1978.
contribution and that withheld from employees by the 22nd day of the month following that when the underlying salaries were paid. Late payment is subject to a surcharge which ranges from 5% for one week delay to 10% for over forty days delay.\textsuperscript{77}

The last development of interest is related to tax administration; specifically, customs administration. The Customs Code has been amended with respect to charges for the storage of goods, and the time limit for claiming refunds of import duties or fees paid in excess and for demanding payment of duty or fee deficiencies. Under the amendments, refund claims and demands of deficiencies must be filed or served no later than six months from the date of the overpayment or underpayment, as the case may be. The amendments entered effect on December 10, 1977.\textsuperscript{78}

**MEXICO**

In the tax policy area, substantial changes have taken place under the mining tax system. Commencing January 1, 1978, a new tax system was imposed on the mining sector. Concessionaires are to pay an annual concession tax per hectare and producers are to pay a 7% production tax on the value of the minerals. The rate is 9% for gold, silver, and sulphur, and 4% for iron, coal, and manganese. Concession taxes are 10 pesos per hectare for exploration concessions; exploitation concessions are taxed 30 pesos per hectare in the case of non-metallic minerals, and 60 pesos in the case of metallic minerals.

Against the preceding taxes, taxpayers may claim a credit equivalent to 2% of the value of the minerals; small miners are allowed an additional 1% credit. The Secretary of the Treasury and Public Credit may authorize other tax incentives, including a 75% reduction of the import duty on equipment and machinery used in mining and an accelerated depreciation or amortization of fixed and intangible assets.

In order to enjoy import duty reduction, however, imported assets cannot be manufactured within the country. The new law also sets forth certain limits for the depreciation or amortization of fixed assets and intangibles. Amounts resulting from such depreciation or amortization allowances must be reinvested within the five subsequent fiscal years. Failure to reinvest the amounts attributable to


\textsuperscript{78}. Decree 550 of November 24, 1977.
such tax benefits results in liability for income tax thereon at a 42% rate, plus a penalty of up to 300% of such tax.\textsuperscript{79}

The Income Tax Law and Regulations thereunder have been amended. Pursuant to these amendments, individuals deriving income within the lowest tax brackets will pay lower rates. The amendments apply from January 1, 1978. Other amendments relate to the inclusion of income items in taxable income, depreciation of automobiles, reduction of the tax rate for certain activities, and issuance of withholding certificates for fees paid.\textsuperscript{80}

Provisions of the Income Tax Regulations dealing with the deduction of contributions to retirement plans, annuities paid to former employees, and contributions to a savings fund have been revised. Other changes relate to the computation of the tax on retirement pensions paid in one installment and to payment of estimated tax by employees receiving accumulated income. The amendments entered effect on February 1, 1978.\textsuperscript{81}

Special rates of the gross receipts tax have been revised, beginning January 1, 1978. Services rendered by restaurants are now taxed at a 7% special rate.\textsuperscript{82} In addition, numerous rates and rules regarding an excise tax on the first sale of soft beverages, production and consumption of beer, and production of sugar, alcohol, and alcoholic beverages have been amended effective January 1, 1978. The new rates on wines are 10% and 20% of the consumer price; brandies, domestic liquor, and imported liquor are taxed at a 35%, 45%, and 50% rate, respectively.\textsuperscript{83} The rates of the tax on possession of automobiles have also been revised.

One decree revising several items of the Import Duty Tariff and another revising several items of the Export Duty Tariff entered effect on February 18, 1978. Reduced duties apply to imports from LAFTA countries. The revised export duties range from 5% to total exemption and apply primarily to foodstuffs. The revised import duties range from 1% to 75% and apply primarily to chemicals and certain precision instruments.\textsuperscript{84} The new rates for the tax on tobacco had been in effect since December 31, 1977.\textsuperscript{85}

\textsuperscript{79} Law for the Taxation and Promotion of Mining of December 28, 1977.
\textsuperscript{80} Tax Reform Law of December 29, 1977.
\textsuperscript{81} Executive Decree of January 27, 1978.
\textsuperscript{82} See note 78 supra.
\textsuperscript{83} Id.
\textsuperscript{84} Executive Decrees of February 15, 1978.
\textsuperscript{85} Legislative Decree of December 28, 1977.
The Income Tax Bureau has ruled on the deductibility of automobile expenses paid to employees. Such expenses may be deducted by the employer and are not included in the employee's income, if they are paid to salesmen or collectors, and do not exceed, in 1978, 1.30 pesos per kilometer. The ruling also holds that any reimbursement of automobile expenses to employees, other than salesmen or collectors, is to be treated as additional salary and, therefore, is taxable to the employee. Any payment in excess of the 1.30 pesos per kilometer is likewise regarded as income of the salesman or collector.86

Within the area of economic development, the most important development was the regulation and approval of tax subsidies. Implementing prior practices, guidelines for granting tax subsidies to selected industries and activities have been set forth by law. The same statute approves tax refunds authorized by the Executive Branch during 1977 for the promotion of exports. The Executive Branch has been vested with the power to pass measures necessary for the administration of the tax laws.

As a general rule, tax subsidies may not exceed 50%, or 75% in special situations, of the basic tax paid by the beneficiary. This limitation does not apply to certain cases expressly mentioned by the statute, including, inter alia: book publishings; automobile and truck assembling; Mexican corporate concessionaires of public property which render services declared to be in the public interests; excise and sales taxes on exported manufactured products; mining companies that process all or part of their output within the country; enterprises entitled by law to import duty-free capital assets and supplies; industries declared to be of national interest; and transactions involving the National Workers' Housing Fund.

The present law ratifies tax refunds to manufacturers of exported products, exporters of domestic goods, and exporters of Mexican technology and services.87

Effective January 1, 1978, "major taxpayers" engaged in "necessary" activities may credit against the income tax 10% of the amounts invested in new machinery, but no more that 25% of such credit is allowed in each fiscal year. Rules for the qualification of activities in which the machinery will be utilized, as nationally or socially necessary, are to be handed down by the Secretary of the Treasury and

Public Credit. Claiming the credit does not prevent depreciation of the value of the machinery on the basis of the full amount invested in it.\textsuperscript{88}

In addition, certain tax benefits have been retained. As under earlier laws, several tax law provisions, contained in the Revenue Law, apply ad valorem export duties on the official price of coffee, cotton, shrimp, and crude oil, and their by-products. The 2\% surcharge on imports shall not apply, in addition to items listed in the law, to goods to be consumed within Mexican free zones or to be incorporated in products to be exported, or to air pollution control equipment.

Extensions granted for payment of taxes will give rise, during 1978, to a 24\% per annum surcharge. Import and export tariff changes decreed by the Executive Branch in 1977 are approved.\textsuperscript{89}

Finally, in the area of tax administration, several provisions of the Tax Code have been amended, effective January 1, 1978. They relate to surcharges, penalties for contraband, tax fraud, inspection of documents in taxpayers' premises, procedure for taxpayers' remedies, and appeals. The Customs Code reform relates to sharing of duty revenue with municipalities.\textsuperscript{90} In addition, numerous provisions of the Fiscal Code relating to the Tax Court of the Federation have been amended. They relate, \textit{inter alia}, to rules of procedure, parties' remedies, and jurisdiction of the Court's Regional Chambers.\textsuperscript{91}

\textbf{NICARAGUA}

The only change in Nicaragua's tax laws occurred in the area of tax administration and concerned the Sales Tax Law. The law has been amended with respect to the exemption of certain foodstuffs, as of March 3, 1978.\textsuperscript{92}

\textbf{PANAMA}

The main development in the area of promotion of economic development was the extension of the property tax exemption. The five year exemption from property tax granted for any building or im-

\textsuperscript{88} Id.
\textsuperscript{89} \textit{See note} 78 \textit{supra}.
\textsuperscript{90} Legislative Decree of December 27, 1977.
\textsuperscript{91} Id.
\textsuperscript{92} Legislative Decree 683 of February 25, 1978.
Improvement will again be extended to ten years if construction is begun within the sixteen months following April 1, 1978 or, if already completed, the sale is recorded on or before December 31, 1978.93

PARAGUAY

Of significance in the tax policy area is the new tax on cattle. In order to finance the operation of a newly created Animal Health National Service, a 150-guarani tax is now imposed on each head of cattle sold or slaughtered for consumption, processing, or exportation. This tax supersedes the 100-guarani tax levied under a 1967 law, as amended.94

Numerous items of the Import Duty Tariff subject to specific duties have been taxed by ad valorem duties since January 2, 1978. Specific duties have been changed to ad valorem duties for numerous items of the Import Duty Tariff listed in a new decree. The new duties, which range from 5% to 27.5%, entered effect on January 2, 1978.95

Products used in treating hides, among others, have been exempted from the export duty.96

Two decrees changing the duty applied on certain foodstuffs imported from Chile, and on home appliances imported from neighboring countries, have been passed.97

Within the area of tax administration, exemptions have been tightened. Exemptions from taxes, and import duties granted by law or by international agreements, must be authorized on a case-by-case basis by the Executive Branch. Diplomatic privileges are not affected. In order to obtain the import duty exemption to which any individual or legal entity may be entitled, the interested party must file a petition with the Treasury and describe the goods to be imported.98

PERU

Concerning the tax policy area, it is significant that measures passed in 1977 to cope with the crisis created by low international prices of sugar have been extended through December 31, 1978.

97. Decrees 34534 and 34535, both of October 19, 1977.
Among such measures was the exemption of sugar from the 15% export tax levied on traditional exports.99

Two decrees affecting the tax on net worth of enterprises have been passed. One revises the rates, which are now 1.2% for net worth of up to 3 million soles; 1.5%, if net worth is over that amount but no more than 10 million soles; and 2%, if net worth exceeds the latter. The other decree has revised the exemptions granted under the law which imposes the tax. The new rates apply in the taxable year 1978.100

Special rules for taxation of income, derived by cooperative associations, have been passed. The rules implement legislation which abolished the income tax exemption enjoyed by such associations and their members until December 31, 1978.101

Measures were taken in the area of economic development which provides assistance to housing. Rents derived from housing built within five years from January 17, 1978, will be exempt from income tax according to a new law. The exemption applies for five years from the date of the first lease. Individuals as well as legal entities are entitled to the benefits.102

Finally, in an important resolution, the National Commission for Foreign Investments and Technologies (CONITE) has set forth guidelines for authorizing foreign reinvestment and new investment, and for increasing capital through such investment or reinvestment. The rules apply to capitalizations made from January 1, 1972 and implement legislation adopting Decisions 103 and 109 of the Cartagena Commission. CONITE is the competent authority for the administration of foreign investment and foreign technology. Its authorization is not required, however, if a reinvestment does not exceed 7% of the company capital. The registration of new direct foreign capital authorized by CONITE becomes effective from the date when the capitalization is entered on the books of account.103

URUGUAY

The Executive Branch has been authorized to reduce the rate of the added-value tax irrespective of providing for a commensurate re-

100. Decree-Laws 22045 and 22047, both of December 29, 1977.
duction of the stamp tax. Exercising such power, the Executive Branch reduced the 20% tax rate to 18% effective January 1, 1978. The law was approved by the Council of State on December 20, 1978. The Income Tax Bureau has set forth guidelines for computing the tax by taxpayers whose fiscal year is affected in part by the old law and in part by the new law.104

Changes in the net worth tax have been introduced. Several exemptions relating to rental property from the net worth tax payable as of December 31, 1978, by individuals have been eliminated. The reduction to 15% of the net worth tax payable by legal entities and sole proprietorships concerning certain equipment and machinery has also been eliminated. Thus, all equipment is to be computed at 50% of its value. The amendment applies to fiscal years ending on or after January 19, 1978.105

Capital increases through revaluation of assets will be exempt from the tax on contracts if the provisions of the regulations to be issued by the Executive Branch are complied with. The Executive Branch is to issue regulations within 60 days from the promulgation of the law. In order to benefit from the exemption, the capitalization must be made on or before December 31, 1978.106

Utilizing the power vested in it by the law that revamped the taxes on fuel, the Executive Branch has fixed at 80%, from January 19, 1977, the rates to be applied on the selling price of various fuels derived from petroleum. The rates range from 81.60% of the selling price of premium gasoline to 9.60% of the selling price of bottled gas.105

The list of goods declared to be in competition with similar domestic goods has been expanded. The new items are subject to import duty surcharges ranging from 10% to 65%. In order to protect domestic industry against foreign competition, a long list of goods has been made subject to a 65% import duty surcharge from October 26, 1977.106

Uruguay's national list of goods from LAFTA countries, which are entitled to tariff reductions and exemptions, has been revised retroactively to January 1, 1977. Concessions granted by Uruguay to Ecuador and Paraguay have, likewise, been revised.107

In the area of promotion of economic development, it is to be noted that until December 31, 1978, fertilizers, burlap, seeds, and several other products utilized in farming, or in the manufacture of containers for farm products, were exempted from all customs duties, including the single import tax.\(^{108}\)

A development which highlights the social security systems area is the tax break for voluntary loans. No contribution shall be paid by employers or employees to the social security system on bonuses paid voluntarily with the thirteenth salary for 1977. The exemption includes the 2% stamp levy collected by the Social Security Bank.\(^{109}\)

**VENEZUELA**

With regard to the tax policy area, higher duties have been imposed on several items subject to the 1974 Tariff, as of January 19, 1978. Tile, home appliances, furniture, cooling equipment, and certain road building materials are among the items subject to the revised duties.\(^{112}\)

Construing a provision of the Income Tax Law relating to the jurisdiction to tax, the First Income Tax Court has held that if merely one of the factors connected with the activity which originated the income took place in Venezuela, all the income is subject to tax in Venezuela. The Court quoted a decision of the Court of Appeals which had applied such holding to a nonresident taxpayer who had entered into a contract with the Executive Branch to install a plant within Venezuela.\(^{113}\)

Of interest in the area of promotion of economic development is the extension of the income tax exemption to interest from loans made to farmers. The latter has been extended to loans taken for purchasing domestic or imported cattle breeders.\(^{114}\)

The last developments are of special interest. Congress has approved the Lima Additional Protocol to the Cartagena Agreement. The Protocol establishes a three-year extension for several deadlines contained in the Agreement for the reduction or elimination of duties

\(^{108}\) Decree 119 of March 1, 1978.


\(^{110}\) Decree 66 of February 1, 1978.

\(^{111}\) Decree 681 of December 6, 1977.

\(^{112}\) Decree 2547 of January 17, 1978.

\(^{113}\) Decision of April 30, 1976, First Income Tax Court, reported December 1977.

\(^{114}\) Decree 2567 of January 31, 1978.
on imports from member countries; it also declares the withdrawal of Chile. The law approving the prior Additional Protocol has been repealed.\textsuperscript{115}

To close this tax law update, it should be noted that there are new rules on foreign investments. Exercising the authority granted it by the law which approved the Andean Agreement and various decisions of the Cartagena Commission, the Executive Branch has implemented the Rules on Foreign Investments and Transfers of Intangibles, effective November 15, 1977. The rules define direct foreign investments and foreign and national investors; they establish the Superintendency of Foreign Investments as the competent authority to administer the Rules. Provision is made for the investment of profits in excess of 20\% of the registered capital. Contracts for the transfer of technology, and licensing of the use of patents, trademarks, and tradenames, are regulated in detail. If services are rendered by a foreign parent company, or a related company, payments will not be authorized nor will deduction for tax purposes be allowed.\textsuperscript{116}

\begin{itemize}
\item \textsuperscript{115} Law of December 26, 1977.
\item \textsuperscript{116} Decree 2445 of November 8, 1977.
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