NEWSALERT

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Tax and Legal

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Index

Summary of the changes in tax regulation recently enacted in Colombia

Law 1430, December 29, 2010 Tax Bill

1. **Super-Deduction:** The 30% super-deduction for the acquisition of tangible income-producing fixed assets was repealed. For taxpayers that have applied to the Legal Stability Regime prior to November 1st, 2010, the Government can stabilize this benefit for three years only.

2. **Banking Tax:** The banking tax it is reduced to 0.2% for year 2014 and 2015, to 0.1% for years 2016 and 2017, and to 0% for year 2018 and onwards. As from 2013 and onwards, 50% of this tax would be deductible. Planning strategies such as payment to third parties using overdrafts, repos, buy/sell back transactions or portfolio investments that did not trigger this tax, are forbidden or limited.

3. **Equity Tax:** The tax bill established some anti-tax planning provisions, such as that companies that performed spin-offs during 2010 must aggregate their net worth to determine the taxable base as if the spin-off would have not taken place, and taxpayers incorporating companies in 2010 are required to aggregate their net worth with the companies' net worth to determine the taxable base as if the incorporation would have not taken place. Certain changes to the taxable bases were also introduced.

4. **VAT on internet:** Internet access services for low to mid income residential customers are exempted from VAT.

5. **Offsetting of Withholding Taxes:** Withholding tax returns filed on a non-payment basis will be treated as not filed, except if the filer has a refundable tax credit balance over USD 1.065.000 to offset the outstanding payment. A six-month deadline applies for the taxpayer to apply for the offsetting of the credit balance. Otherwise, late filing penalties will apply.

6. **Withholding Tax Compliance:** No withholding tax returns will need to be filed where there are no taxes to remit. An amnesty is granted for taxpayers who filed to file these returns with no tax to remit, such that they will not be subject to late failing penalties if making the delinquent filings within six months following the enactment of the law.

7. **VAT Compliance:** No VAT filings will be required for periods where no inputs or outputs exist. An amnesty is created for taxpayers who failed to file VAT returns (with no transactions to report) such that they will not be subject to late failing penalties if making the delinquent filings within six months following the enactment of the law.

8. **Refund Deadlines:** Tax refund rules are amended to increase the deadline to approve or disapprove the refund to 50 working days (formerly 30). If a refund application is insured, the deadline is increased to 20 working days (formerly 10).

9. **Reduced Statute of Limitations:** The reduced statute of limitations due to expire in 2010 was rolled over into years 2011 and 2012. This benefit enables to reduce the statute of limitations of the income tax return if the income tax liability increases in a given number of times inflation with respect to the former year. The ordinary 2-years statute of limitations would be reduced to: 18 months if the tax liability increases in 5 times inflation, 12 months if the tax liability increases in 7 times inflation, and to 6 months if the tax liability increases in 12 times inflation.

10. **Derivatives:** The gain in trading derivatives that are qualified as securities will not be subject to income tax, provided that the underlying asset is stock traded in the Colombian stock exchange, indexes or participations in funds tracking such stock.

11. **Transfer Pricing Penalties:** The cap of transfer pricing penalties for improper compliance of the transfer pricing regime, were reduced.

12. **Foreign Tax Credit for individuals:** The foreign tax credit rule was amended to include foreigners, subject to taxes in Colombia on a worldwide income basis (foreign individuals with five or more years of residence in Colombia). The tax credit is capped at the Colombian income tax applicable to the same income.

13. **Foreign Tax Credit for Dividends:** Foreign tax credit on dividend income is enhanced to include a third-tier of credit availability subject to specific ownership requirements.

14. **Opportunity to Claim Foreign Tax Credit:** Foreign income taxes shall be credited in the year of payment or in any of the following four years.

15. **Interest Payment Abroad:** Interest payments abroad on loans (due in 1 or more years) or cross-border leasing agreements, formerly not subject to withholding tax if the debtor's activities were deemed of interest for the national welfare, are now subject to a 14% withholding tax (33% for interest on loans due in less than 1 year. A grandfather rule was provided for loans and leasing agreements executed before December 31, 2010.

16. **Leasing of Helicopters or Aircrafts:** Leasing payments abroad related to these assets are subject to a 1% income tax withholding. The grandfather rule applies as well to this case.

17. **Interest Amnesty:** An amnesty of 50% of interest for tax obligations of year 2008 or before is granted, provided that the tax and applicable penalties are settled.

18. **Cap to the issuance of tradable securities for the payment of taxes:** Refunds of credit balances exceeding 1.000 Tax Value Units (approx. USD 13.000) cannot exceed 10% of total collection of taxes of the former year by the National Tax Office.

19. **Self-withholding on Some Exports:** An authorization is granted by the Congress to the Government to establish up to a 10% self-withholding on exports for the mining, oil and gas industry. The self-withholding would be creditable against the income tax liability.

Law 1429, December 29, 2010
First Employment Bill

1. **Reduction to Income Tax Statutory Rate for Small Companies.** Small companies (not exceeding USD 1.400.000 in total assets or 50 employees) initiating activities after the enactment of this law would be subject to income tax in the following way: 0% of the statutory income tax rate for the first two years; 25% of the statutory income tax rate for the third year, 50% of the statutory income tax rate for the fourth year, and 75% of the statutory income tax rate for the fifth year.

2. **Reduction of Payroll Fees for Small Companies:** Small companies (not exceeding USD 1.400.000 in total assets or 50 employees) initiating activities after the enactment of this law would be subject to pay payroll fees in the following way: 0% of the payroll fees for the first two years; 25% of the payroll fees for the third year, 50% of the payroll fees for the fourth year, and 75% of the payroll fees for the fifth year.

3. **Tax Credit on Payroll Fees Paid:** A tax credit is granted to employers hiring employees under 28 years old, women above 40 years old, low-income workers earning less that 1.5 minimum monthly wages (approx. USD 420), and disabled, reintegrated (armed conflict) or displaced (as victims of the armed conflict) workers, subject to certain requisites and time limitations (two to three years).

Decree 4825, December 29, 2010
Emergency Measures

1. **Special Equity Tax:** In order to collect funds to deal with the effects of the winter, the Government declared the economic, social and ecological emergency and with the emergency powers a special equity tax was created, which triggered on January 1st, 2011 for taxpayers with net equities ranging from COP 1.000.000.000 to COP 3.000.000.000. For taxpayers with net equities between COP 1.000.000.000 to COP 2.000.000.000, the rate is 1%, and for taxpayers with net equities between COP 2.000.000.000 to COP 3.000.000.000, the rate is 1.4%.

2. **Equity Tax Surcharge:** A 25% surcharge to the ordinary equity tax was established so that the equity tax that was formerly 4.8% would be effectively 6% (for net equities exceeding COP 5.000.000.000) and the equity tax that was formerly 2.4% would be effectively 3% (for net equities between COP 3.000.000.000 and COP 5.000.000.000).

3. **Stability Agreements:** The Decree established that the Special Equity Tax and the Surcharge are not covered by Legal Stability Agreements.

Ruling 98797 of December 28, 2010

Legal Stability and Equity Tax: The Tax Office by means of ruling 98797 of December 28, 2010, interpreted that: "*The Legal Stability, applied in connection with tax regulations, is primarily directed to maintain incentives (such as the special deduction for investment in real productive assets), subject to the possibility of stabilizing other general provisions as those related to taxable rates and tax bases that are being applied at the moment of executing the agreement (…) In this regards this office considers that there is a legal impossibility to stabilize rules that are nonexistent at the moment of executing the agreement*".

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