



# *Newsletter – April 2014*

## **Tax Reform Bill introduced by the Chilean Government to Congress on April 1<sup>st</sup> 2014**

On April 1st 2014 the Chilean Government sent a Tax Reform Bill to the Congress, **in order to replace the corporate income tax system and modify such Law and the Chilean Tax Code.**

**Below you will find a brief summary of the main provisions:**

### **I. Income Tax Reform**

#### **1) Increase of the Corporate Income Tax rate :**

The First Category Tax rate is gradually increased from 20% to 25%, (21% in 2014, 22,5% in 2015, 24% in 2016, and 25% from 2017 onwards).

#### **2) Taxation on accrual basis/Elimination of the Taxable Profits Ledger (FUT):**

From commercial year 2017 onwards, tax year 2018, Surtax and Additional Tax (WHT) taxpayers, as the case may be, would be subject to taxes on accrual basis, that is to say, during the same period in which the company generates taxable profits, these are immediately attributable to partners or shareholders.

Due to the taxation on accrual basis the FUT is definitely eliminated from 2017 onwards.

Also, dividend or profits distributions allocated to temporary differences must be kept in a different ledger.

Entities subject to First Category Tax would have to keep a record of the “attributable profits”, of the “non taxable and exempt profits” and of the “temporary differences” in order to determine the tax treatment applicable to the final partners or shareholders.

Also, it a 10% withholding tax is levied on the entity where the “attributable profits” are generated, and if the income is attributed to a non resident or non domiciled taxpayer, the withholding would be equal to the difference between 35% and the First Category tax rate.

This provision would apply from January 1<sup>st</sup> 2017 onwards

From 2017 onwards, Surtax maximum rate would be reduced from 40% to 35%. This provision would apply from January 1<sup>st</sup> 2017 onwards. Payroll tax would be reduced counting from first day of the following month after the publication.

#### **4) Tax treatment applicable to Capital Gains:**

- i. All capital gains would be subject to income tax, unless those that are considered as a non taxable income since they are derived from the alienation of publicly traded and from the alienation of certain bonds, according to the law.
- ii. The income tax exemption applicable to capital gains derived from Real Estate alienation is eliminated. However, capital gains obtained upon the sale or exchange of homes used as principal residence are still exempted provided certain requirements are met.
- iii. Regarding the tax cost of shares and quotas, the attributable and undistributed profits registered by the company between the acquisition date and the alienation date of the relevant shares or quotas are still recognized as part of such cost.
- iv. In case of investments made in shares or quotas, financed with debt, interest associated to the loan used to acquire such shares or quotas would not be deductible for income tax purposes, but would form part of the tax basis of such shares or quotas.

This provision would apply from the first day of the month following the publication date onwards.

- v. The tax treatment applicable to capital gains is modified. In fact, the current distinction between “habitual and non habitual” sellers is eliminated, and a new tax treatment is established based only on the holding period as follows:
  - Lower or equal to one year: it is considered as ordinary income.

- More than one year: it is applied an average marginal rate which is determined by adding the annualized gain to the taxable basis of the Surtax of the previous years, with a 10 years cap.

This provision would apply from January 1<sup>st</sup> 2017 onwards

## 5) Tax treatment applicable to Funds

The Funds Law (Lay No. 20.712) recently approved, is modified by amending the tax treatment, establishing that the quota holders would be subject to taxes also on accrual or attributable basis.

The managements companies would have to withhold, declare and pay a 10% over the total tax result obtained by the Fund.

Regarding Private Investment Funds, the management company would have to perform a 35% WHT upon the total profits derived from the Fund.

This provision would apply from January 1<sup>st</sup> 2017 onwards

## 6) International Tax provisions

### i. CFC Rules (“Controlled Foreign Corporation”)

A provision is established which avoids that the payment of taxes upon foreign sourced passive income (dividends, royalties, interest, etc.), is deferred. The latter as long as the foreign entity is controlled by a Chilean company being able to use the tax credit paid abroad. Please note that losses generated abroad may not be allocated to the relevant foreign “passive income”.

This provision would apply from January 1<sup>st</sup> 2017 onwards

### ii. Deductibility of the expenses incurred abroad with related entities

The deduction of expenses incurred abroad with related entities is allowed only as long as the relevant expense has been duly paid and the Additional Tax has been duly declared and withheld, if any.

This provision would apply from the first day of the month following the publication date.

### iv. Excess of indebtedness provisions

A new provision is introduced in order to calculate the excess of indebtedness associated to interest and to any other charge or financial expense paid to foreign related entities.

This provision would apply from January 1<sup>st</sup> 2017 onwards

## II. Green taxes

“Green taxes” which levy certain assets that are not eco friendly are established. The reform establishes an emissions tax which levies the issuance of certain pollutant and also establishes an additional tax applicable in case of import of light most pollutant vehicle using diesel.

## III. Corrective tax

The tax upon alcoholic and non alcoholic beverages with a high level of sugar, and upon energizing or hypertonic beverages, is increased.

## IV. Real Estate

It is proposed to tax with VAT the customary sale of immovable assets. The tax credit regarding the real state tax paid by real state companies is eliminated.

## V. Stamp Tax

The stamp tax limit maximum rate is increased from 0,4% a 0,8%.

This provision would apply from January 1<sup>st</sup> 2016 onwards

## VI. Decree Law No. 600 (Foreign Investment Statute)

The reform proposes to eliminate DL No.600 from January 1<sup>st</sup> 2016 onwards, for the new investment projects.

However, the foreign investors who have already entered into an investment contract with the Foreign Investment Committee would continue being subject to the laws applicable to such contracts according to the current provisions.

## VII. Antiavoidance and antielusion provisions

The following provisions against elusion and avoidance are incorporated:

- (i) General Anti-Elusion provision which allows the Chilean IRS to challenge the tax benefits obtained by means of elusive and abusive tax planning, and to impose penalties upon the taxpayers and tax advisors involved.
- (ii) Provisions are established which entitle the Chilean IRS to access the information necessary to comply with its assessment role.
- (iii) Provisions are introduced which allow the IRS to access information of e - commerce transactions paid through electronic means (credit and debit cards).

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