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International taxes
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Treaties to Avoid Double Taxation

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Espiñeira Pacheco y Asociados

Treaties to Avoid Double Taxation (DTT) are conventions negotiated among countries, for the purposes of defining the fiscal treatment applicable to allow taxpayers have presence in both countries.

The ultimate goal of a DTT is to eliminate or reduce the impact that a double taxation may have on taxpayers, when there is attempt to levy the same income in both countries. This is achieved by allocating taxable matters between the countries.
In addition to reducing or eliminating double taxation, DTTs also help to properly distribute fiscal income between the countries, prevent tax evasion, and promote the free flow of international trade.

As regards hierarchy, in accordance with article 2 of the Master Tax Code, CDTs prevail over domestic income tax law. CDTs are standards of international legislation, and as such, they are to be construed according to the Vienna Convention regarding Treaties Legislation; These standards stipulate general principles relating good faith , the predominance of the text and the need to take into account the objective and purpose of the Treaty.

Main Provisions

CDT´s entered into by Venezuela are mostly based on the model proposed by the Organization for Economic Cooperation and Development (OECD), published for the first time in 1963 and periodically reviewed ever since. These treaties reflect the consent of the Government on matters such as double taxation, source of income, taxpayers' identity, effective date, and administrative matters. Certain typical provisions include specific tax reductions or exemptions for residents of a country on certain kinds of revenues, such as those derived from interest, dividends, royalties and business profits. In like manner, the notion of residence is an important provision, given that it determines whether a person or entity is entitled to the benefits of the treaty.

A common provision contained in DTTs consists on defining the term Permanent Establishment (PE) for determining the place of business. The precise definition of PE varies from one Treaty to Another depending on the preferences and business criteria of the countries involved.

CDTs often contain provisions on the exchange of information relevant for executing the provisions of the treaty. Most CDTs are structured as follows:

Chapter I	Articles 1 and 2	Scope of application of the DTT
Chapter II	Articles 3 through	Definitions
Chapter III	Articles 6 a 21	Income Taxation
Chapter IV	Article 22	Equity Taxation
Chapter V	Articles 23a and 23b	Methods to avoid Double Taxation
Chapter VI	Articles 24 to 29	Special Provisions
Chapter VII	Articles 30 and 31	Final provisions

Treaties entered into by Venezuela

To date, Venezuela holds DTTs with the following countries::

Treaties to Avoid Double Taxation		
Germany	Austria	Barbados
Belarus	Belgium	Brazil
Canada	China	Korea
Cuba	Denmark	United Arab Emirates
Spain	United States	France
Indonesia	Iran	Italy
Kuwait	Malaysia	Norway
Netherlands	Portugal	Qatar
United Kingdom	Czech Republic	Russia
Sweden	Switzerland	Trinidad and Tobago
Vietnam		

Finally, it is important to point out that in order to be entitled in Venezuela to the benefits of the DDT, it is essential to provide evidence of residence by means of a tax residence certificate issued by the corresponding foreign authority, legalized and translated into the Spanish language.

Exchange Agreement N° 20

Exchange Agreement N° 20, dated July 19, 2012 was published in the Official Gazette N° 39.968, dated June 14, 2012. This agreement was entered into between the Ministry of the People's Power for Planning and Finances (MPPPF as per its Spanish Acronym) and the Venezuelan Central Bank (VCB), and entered into effect as of the date of its publication in the Official Gazette.

The aforementioned Exchange Agreement stipulates that companies not domiciled in the Bolivarian Republic of Venezuela, who partakes in the execution of strategic projects of public investment for the development of the national economy and the promotion of productive offer, may keep funds derived from abroad in foreign currency at local universal banks.

In addition, it establishes that individuals of legal age, domiciled in the national territory and companies domiciled in the country may keep at term-demand accounts held in local universal banks, funds in foreign currency derived (among other legal transactions) from the liquidation of securities denominated in foreign currency, issued by the Venezuelan Government and its decentralized entities, or by any other entity acquired through the SICOTME or the SITME systems

Moreover, it stipulates that governmental entities which obtain foreign currency from their exporting activity, may assign up to 5% of their monthly average balance held in foreign currency accounts authorized by the Directors of the VCB to the acquisition (at international financial markets) of securities in foreign currency issued by the Venezuelan Government or its decentralized entities, for the purposes of being traded through the SITME system.

Venezuela's Withdrawal from the ICSID CIADI

Venezuela´s withdrawal from the International Center for the Settlement of Investment Disputes (ICSID), has been in effect since last Thursday July, 36, 2012.

In accordance with that set forth in Article 71 of the ICSID's convention, withdrawal notice presented by Venezuela on February 24, 2012, will be effective after a period of six (6) months after receipt of said notice.

Our Services in International Taxes

- Evaluation and analysis of the principal fiscal effects that originate transactions with foreign entities.
- Tributary advising relative to processes of corporate international restructuring.
- Fiscal advising for the application of agreements to avoid the double taxation signed by Venezuela with other countries.

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