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TAX UPDATE: LAW 49 OF 2009

Panama Legislature enacts new Tax Law.- Law 49 of 2009 “whereby the Fiscal Code is amended and other tax measures are adopted” introduces changes in the obligations of the taxpayers, among which we highlight the following:

A. Franchise Tax for Corporations.

- Payments of annual Franchise Tax of B/.250.00 at incorporation and B/.300.00 in subsequent years will apply to all national and foreign juridical persons, except for nonprofit associations.
- It is established the possibility to restore the legal personality of a corporation dissolved due to the lack of payment of the annual franchise tax for a continuous period of 10 years, paying a fine of B/.1,000.00 during the 3-years liquidation period.

B. Income Tax on capital gains for the transfer of immovable property.

- Base tax of 10% over taxable income from the sale of immovable property is maintained when the sale is not in the ordinary course of business of the taxpayer. However, the taxpayer will be required to pay a sum equivalent to 3% of the total value of the transfer or the cadastral value, whichever is greater, as an advance on the income tax and may choose to consider this 3% as the final income tax payable in respect of profit.
- The taxpayer may request a refund in cash or the recognition of a tax credit transferable to other taxpayers, when 3% of advance tax paid is greater than 10% of the profit from the sale.
- The taxpayer is given an opportunity to update the cadastral value of its property that will be used as base cost in case of sale, before June 30, 2010.
- The properties for agricultural purposes endorsed by the Ministry of Agriculture pay a single, definitive rate of 3% instead of 5%.

C. Income Tax on capital gains for the transfer of securities.

- When the advancement of withholding tax (5%) exceeds the amount resulting from applying the 10% rate on gains obtained from the sale, the taxpayer may request a refund in cash of the surplus or a tax credit for the payment of taxes administered by General Revenue Department, which can be transferred.

D. Provisions applicable to companies established in Free Zones.

- Activities that can be considered as offshore operations within the Colon Free Zone and other free zones are limited to billing services, repacking and similar, when they produce effects abroad. Commissions, storage and warehouse services, leases, internal movement of goods and cargo are considered local activities.
- Companies located in any free zone of Panama shall pay the dividend tax or participation fee at a fixed rate of five percent (5%) of the amounts distributed to its shareholders or members, regardless of the origin of the source.
- It's introduced a new obligation to withhold and remit to the Treasury 10% of 20% (i.e. 2%) of net profits after taxes, to companies established in any free zones, when there is no distribution of dividends.
- It provides for imprisonment of 1 to 3 years for crimes of smuggling and customs fraud and 4 to 6 years in case of recurrence, and fines of five to ten times the value of the good at illegal if it exceeds B/.50.000.
- It is clarified that the new loans granted within the Colon Free Zone shall be subject to payment of the Special Compensation Fund Interest (FECI).

E. Property Tax.

- To calculate the tax base it shall be considered the highest value of any of the following: (a) the valuation of the property fixed by the Directorate of Cadastre, (b) the price set in any transfer of the immovable property, whether or not titled, including any sale, donation, payment in kind, prescription for the acquisition of

dominion, auction or any other form of transfer of a property that is not covered specifically in this section, and (c) the appraisal in inheritance proceedings.

- The alternative tariff rate for property tax shall be 0.75% on properties whose value of land and improvements does not exceed B/.100,000 and 1% for values above B/.100,000. The rate is not progressive. To qualify for this rate the taxpayer must file an affidavit on the updated value of the property until 30 June 2010.
- It is eliminated the possibility for taxpayers to request general or partial appraisals and subtotals, granting this power exclusively to the Directorate of Cadastre, which will order them ex-officio.
- Property with a value of land and improvements not exceeding B/.30,000 are exempt. Save for immovable property intended for social housing, over this amount does not apply the exemption to the land of estates subject to the Horizontal Property Regime, whose condominiums are attached vertically.
- A new table for calculating property tax subject to the Horizontal Property Regime is established:

1.40% for a tax base up to B/.20,000
1.75% for the tax base up to exceeding B/.20,000
1.95% for the tax base up to exceeding B/.50,000
10% for the tax base up to exceeding B/.75,000

- Improvements for residential use with a value up to B/.80,000 will be exempted from land tax for 20 years.
- New conducts are typified as tax evasion relating to property tax, such as the simulation of legal acts to reduce the cadastral value or total or partial failure to pay the property tax for itself or for another person. Tax evasion for these concepts will be sanctioned by the Department of Revenue by a fine not less than five (5) times or more than ten (10) times the amount defrauded or with imprisonment of two (2) to five (5) years

E. Tax on the Transfer of Movable Goods and the Rendering of Services (ITBMS)

- Are subject to the payment of ITBMS: (a) the commissions from transfers of negotiable documents and securities in general, (b) the payment of commissions from banking and/or financial services rendered by entities legally authorized to offer these type of services, (c) the commissions or retributions paid to persons dedicated to real estate and goods brokerage, (d) the professional services to be provided to personas domiciled abroad, (e) leases of property destined for residential use for terms less than 6 months, (f) commercial fixed-line telephony, and (g) legal services provided to international trading vessels.
- On the other hand, the following services are considered exempt from this tax: (a) freight, (b) fixed-line telephony for residential use, (c) cargo loading and unloading operations, transfer in or between the ports and ancillary services rendered to the cargo in ports, (d) the repair, maintenance, cleaning and ancillary services rendered to vessels in transit within the territorial waters, and (e) commissions earned by travel agencies.

F. Tax on Notice of Operations.

- It rises from B/.40,000 to B/.60,000, the maximum annual amount of tax payable in respect of tax on Notice of Operations, at a 2% tax rate on the company's capital. In the case of companies established in free zones, the tax basis will be 1% with a maximum of B/.50,000 annually.
- Are exempted from the requirement to obtain a Notice of Operations only the companies licensed as Regional Offices of Multinational Corporations and companies that are operating under special regimes, applicable to areas developed through the award of international processes for the selection of contractors.
- Financial institutions regulated by Law 42, 2001 shall pay a 2.5% annual tax on their paid capital as of December 31st each year, which will not exceed in any case B/.50,000.00.

G. Modifications to Law Decree 2 of 1998.

- It is clarified that the hotels which aim for a contract to operate gambling halls, must comply with luxury standards, according to international rules for four-star hotels.
- The Goodwill payment for new Managers and Operators of Full Casinos is fixed in B/.1,000,000 and B/.500,000 for Slot Machines' Halls type "A". The obligation to pay the Goodwill to the Gaming Control Board is established retroactively.
- Slot Machines' Halls type "A" will pay to the State in a phased manner from January 1, 2014, the 22% of their gross income, versus 10% currently paid.
- Full casinos will pay 15% from January 1, 2012, versus 10% currently paid.
- It is regulated the transfer of company shares and the procedure for the appointment of officers of the companies that have contracted with the Gaming Control Board.

H. Others.

- It's established a general principle by which any legal person requiring the issuance of a Notice of Operation is obliged to withhold the dividend tax regardless of source of income. For dividends from a Panamanian source,

the current rate of 10% is maintained and for income from foreign source or arisen from export operations, withholding shall be 5%.

- Article 733-A of the Tax Code, which provided for an exoneration from the withholding of 10% over the capitalization of earnings is repealed. Accordingly, retained earnings in a fiscal period that are capitalized in any subsequent period will be subject to payment of dividend tax and complementary tax.
- Limited liability companies shall pay taxes as legal persons, since it is removed the article that allowed to pay taxes by the partners in proportion to their equity participation.
- Will pay the rate of 1% of FECl the loans secured entirely by deposits and fixed-term savings held in banks located in Panama. On the other hand, loans agreed as automatic loans in life insurance policies secured by the value of the mathematical reserve or cash surrender value, which will be used to pay premiums for the same insurance life policy, are excluded from payment of the FECl.
- Selective tax on cigarette consumption is increased from 32.5% to 50%, also establishing that 40% of such tax is intended as a contribution to the National Cancer Institute, another 40% to the Ministry of Health and the remaining 20% to the Customs Authority to prevent smuggling of tobacco-derived products.
- It is typified as a crime of smuggling the possession or introduction of tobacco products to the national territory without having paid the corresponding taxes on their import or not complying with health regulations.