



VECO TAX *News*

Periodic update report published by Veco Group SA
Via Lavizzari 4, CH-6900 Lugano • tel. +41 91 911 71 11 • fax +41 91 923 94 19
Web site: www.vecogroup.ch Email: info@vecogroup.ch

MEXICO

Incentive granted on social security contribution

On 8 April 2014, a Decree which grants an incentive to promote the incorporation to the social security system was published in the Official Gazette.

The subsidy will consist of a percentage on the social security contribution (for example 50% for the first two years, 40% for third and fourth year, 30% for fifth and sixth year, etc.) and will be calculated considering a ceiling of three times the general minimum salary in force in the Federal District.

The subsidy may be granted to the following persons:

- Certain individuals and employers according to the Social Security Law, who are subject to tax under the incorporation regime and have not made any contribution to the social security system or the National Workers Housing Fund during 24 months before the date of submission of the application to obtain the

subsidy referred in the Decree;

- Employees of employers subject to tax under the incorporation regime, who have not made any contribution to the social security system or received contributions into their housing fund subaccount during 24 months before the date in which they were registered; and
- Individuals who were subject to tax according to the intermediate regime and submitted the informative tax return before 15 February 2014 according to the Income Tax Law in force until 31 December 2013 and currently are subject to tax under the incorporation regime, as well as their employees.

The subsidy will not be considered taxable income for income tax purposes and will not grant the right to apply for refund or offset.

The Decree entered into force on 1 July 2014.

COSTA RICA

Investment funds – bill abolishing tax benefits

IN THIS EDITION

MEXICO

Incentive granted on social security contribution

1

COSTA RICA

Investment funds – bill abolishing tax benefits

1

CHINA

Administrative guideline on General Anti-Avoidance Rule

2

PANAMA

FATF List

3

BRITISH VIRGIN ISLAND

FATCA Agreement

4

INDIA

Formation of a special investigation team

4

On 18 June 2014, a bill to amend the Securities Market Law, submitted by the government to the Congress,

was published in the Official Gazette.

The bill would abolish tax benefits for investment funds. Under article 100 of the Securities Market Law, the following benefits are granted to investment funds:

- Income derived by investment funds from domestic securities and other assets located in the country is subject to tax at the rate of 5% provided that the income is not subject to or exempt from the tax established by article 23 (c)2 of the Income Tax Law;
- Capital gains derived from the alienation of investment funds assets are subject to tax at the rate of 5%;
- Investment funds are exempt from transfer taxes levied on acquisition and the sale of assets; and
- Dividends, capital gains and other income derived from investments in investment funds are exempt from tax.

The bill would abolish these tax incentives for new investment funds.

Concerning existing investment funds, tax benefits would be abolished after a 6-month period from the entry into force of the law (i.e. publication in the Official Gazette).

CHINA

Administrative guideline on General Anti-Avoidance Rule

The State Administration of Taxation (SAT) has published an administrative guideline on the General Anti-Avoidance Rule (GAAR) for public comment.

The GAAR provision has been incorporated into the Enterprise Income Tax Law under article 47 since 2008, but only briefly provides that the tax authority has the authority to make adjustments if an enterprise executes an arrangement which lacks reasonable commercial purpose to reduce taxable income.

Further, article 120 of the Implementation Rules of the Enterprise Income Tax Law elaborates that "lack of reasonable commercial purpose" is referred to as tax reduction, exemption and deferral as the main purpose of an arrangement.

The guideline is intended to provide introductions to the tax officials and taxpayers.

1. Main features of tax-avoidance arrangement

- The sole or main purpose, or one of its main purposes, is to obtain the tax benefits; and
- The legal form of the arrangement is in compliance with the tax law and regulations, but the arrangement is not in conformity with economic substance.

The tax benefits should be construed as reduction, exemption or deferral of tax payable of enterprise income tax.

2. Methods of tax adjustments

Special tax adjustments should be made by adhering to the substance-over-form principle and by reference to similar arrangements with a reasonable commercial purpose and economic substance. The methods of tax adjustments would include:

- Re-characterization of the whole or part of the arrangement;
- Denial of the existence of a party to the transaction for tax purposes, or treating one of the party and other parties to the transaction as one entity;
- Re-characterization of the income, deductions, tax incentives or foreign tax credit or reallocation of them between the parties to the transaction; and
- Any other reasonable method.

3. SAAR, treaty provisions and GAAR

Special tax-avoidance rules (SAAR) on transfer pricing, cost sharing arrangement, controlled foreign company, thin capitalization etc. have preference over the GAAR.

However, if the arrangement falls within the applicable scope of the treaty provisions on beneficial ownership, limitation of benefits etc. the treaty provisions have preference over the domestic rules.

4. Separate guideline for indirect share transfer

A separate guideline on indirect share transfer would be issued by the SAT. That implies that this guideline does not cover the cases where a non-resident disposes of the shares of a foreign company holding shares in a Chinese enterprise.

5. Investigation

The suspicious cases would be reported to the tax authority at the provincial level which will, after its own approval, report to the SAT for approval of investigation. The tax authority would issue a GAAR inspection notice to the taxpayer who can provide documentation to prove that its arrangement does not constitute a tax avoidance arrangement as referred to in the guideline within 60 days after receiving the notice.

The documentation would include:

- Information on the background of the arrangement;
- Explanatory documents on the commercial purposes of the arrangement;
- Internal information on the decision-making process and governance such as resolutions of the board of directors, memos and email exchanges etc.;
- Detailed documents on the transactions of the arrangement such as contract, supplements to the contract and evidence of payments etc.;
- Information on the communications between

the taxpayer and its tax advisors;

- Information on the communications between the taxpayer and other parties to the transaction;
- Other documents proving the non-tax avoidance nature of the arrangement; and;
- Other documents required by the tax authority.

The extension of 30 days can be granted upon the application if the taxpayer is unable to provide the documents above in time due to special circumstances. The investigation could take place on the spot, through written request of information and gathering information from public sources, through an information exchange procedure or Chinese embassies.

6. Obligation of the tax planner

The tax authority is authorized to require the tax planner, whether or not it is an entity or individual, to provide related documents or evidence. The guideline imposes an obligation on tax advisors to provide information on their clients.

The tax advisers or intermediary would be notified by a letter if its cooperation/assistance is required.

7. Outcome of investigation

The outcome of investigation could be the following three ways:

- There would be no tax adjustment;
- The arrangement is found to be subject to special tax adjustment and the competent local tax authority would issue the preliminary decision on special tax adjustment to the taxpayer; and
- The SAT's view and the decision of the local tax authority are different, the local tax authority would follow the SAT's view and review the outcome.

If a preliminary decision on the special tax adjustment is issued to the taxpayer, it may appeal to the tax authority within 7 days.

8. Retroactive application

Once in force, the guideline would apply to all the arrangements concluded and executed after 1 January 2008, except the arrangements which are settled with the tax authority before the effective date of the guideline.

PANAMA FATF List

On 27 June 2014, the Financial Action Task Force (FATF) issued a list of countries which have a deficiencies in strategic anti-money laundering and combating the financing of terrorism.

The list includes Panama among 21 other countries and is part of the FATF action plan to address those deficiencies. Panama's Government decided

to work on implementing its action plan to address these deficiencies, including the following actions:

- Adequately criminalizing money laundering and terrorist financing;
- Establishing and implementing an adequate legal framework for freezing terrorist assets;
- Establishing effective measures for customer due diligence in order to enhance transparency;
- Establishing a fully operational and effectively functioning financial intelligence unit;
- Establishing suspicious transaction reporting requirements for all financial institutions and Designated Non-Financial Businesses and Professions; and
- Ensuring effective mechanisms for international co-operation.

BRITISH VIRGIN ISLAND

FATCA Agreement

The US Treasury Department has released the official text of the intergovernmental agreement (IGA) that the United States signed with the British Virgin Islands on 30 June 2014 for implementation of the Foreign Account Tax Compliance Act (FATCA).

Accordingly, financial institutions in the British Virgin Islands will be required to report tax information about

US account holders to the government of the British Virgin Islands, which will in turn relay that information to the US Internal Revenue Service (IRS).

Article 12(1) of the US-British Virgin Islands IGA provides that the IGA will enter into force on the date of the British Virgin Islands' written notification to the United States that the British Virgin Islands has completed its necessary internal procedures for entry into force of the IGA. IRS Notice 2013-43 was previously issued to provide that a jurisdiction will be treated as having an IGA in effect, if the jurisdiction is listed on the Treasury Department's web page dedicated for that purpose. The British Virgin Islands is now listed on the web page.

INDIA

Formation of a special investigation team

The Indian government, on 27 May 2014, approved the formation of a Special Investigating Team (in the following "SIT") to implement the decision dated 1 May 2014 of the Supreme Court.

The SIT has been charged with the responsibility and duties of investigation, initiation of proceedings and prosecution in matters involving unaccounted money.

The SIT will have jurisdiction in cases where investigations have already commenced or are pending or awaiting to be

initiated or have been completed. The SIT will report to the Supreme Court on the status of work from time to time.

In a related development, the Indian government is in discussions with the Swiss authorities, seeking details of Indians who have parked untaxed wealth in Swiss Banks.

The Swiss tax authorities are expected to soon share with India a list of Indians (both individuals and entities) who hold accounts with Swiss banks.

These individuals and entities are suspected to have held untaxed money in Swiss banks through structures such as trusts, domiciliary companies and other legal entities based out of countries other than India.

It is worth noting in this regards that on 20 January 2014, the India - Liechtenstein Exchange of Information Agreement (2013) entered into force with effect from 1 April 2013.

It is highly likely that this exchange of information may extend to other countries such as Mauritius, British Virgin Islands, etc.