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News Alert

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Withholding tax rates for non-residents (foreign individuals)

The Tax Authorities confirmed that the *"International Convention of the Protection of the Rights of All Migrant Workers" adopted by Colombia in 1994,* cannot be used to claim that non-resident foreign individuals are subject to the progressive income tax rates of article 241, under the "*non-discrimination*" and "*national treatment*" principles.

The Ruling makes it clear that discrimination can only arise to the extent a different treatment is provided for nationals and foreigners, but from 2012, both are taxed at 33% if they are non-residents. (Ruling 7254 of March 9, 2015)

Presumptive method of taxation- Andean Tax Treaty

As you may recall, in Colombia, income tax liability is determined as a rule as the excess of reportable revenue over deductible costs and expenses (ordinary taxable income "OTI").There is however a minimum liability to be reported, which is established by an alternate computation method, the so-called presumptive income system ("PTS").

PTI is equal to 3% of opening tax equity (equal to tax equity at December 31 of the previous taxable year). Income tax rate is thus applied to the greater of OTI or PTS.

In the case under analysis, the taxpayer excluded from PTS purposes, the shares held in Venezuela (which at the time was part of the Andean Community), given the principle that income tax is only due in the country member to which revenue is sourced. The Tax Authorities disagree with that position, claiming that PTS is not based on actual income earned by the taxpayer, but is a legal presumption whose result is given by the statutory parameters.

The Tax Court sided with the taxpayer, and ruled that assets held in a tax treaty member are to be taxed only on a source basis, and this includes PTS (Ruling 18745 of March 19, 2015).

Goodwill amortization (shares)

Under the changes introduced by Law 1607 of 2012, goodwill tax amortization on share purchases of residents or non-resident entities is permitted provided:

1. A loss of value (impairment) is technically proven
2. The acquiring vehicle remains separate from the entity owning the business (except when, while not entirely clear, the reorganization is required under law)
3. Taxable dividends are distributed to the acquiring vehicle.

The Tax Authorities ruled that impairment of good will must be measured on a yearly basis, to access deductibility.

Finally they highlighted that such impairment is critical and should be measured by an expert (Ruling 9672 of March 31, 2015).

How to report the credit waive on the income tax return

The Tax Authorities concluded that the revenue upon the forgiveness of a payable must be recognized as an ordinary income within the tax return (Ruling 8883 of March 20, 2015).

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