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Tax **News**

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Executive **Summary**

Norma	Fecha	Contenido
Decree No. 1952/2024	June 25, 2024	Articles 306 and 308 of the Annex to Decree No. 4672/2005 ("Customs Code Regulations"), which regulates Law No. 2421/2004 ("Customs Code"), regarding on-board supply and supply in bonded warehouses, were amended.
General Resolution No. 13/2024	June 28, 2024	The National Directorate of Tax Revenues ("DNIT") designated a group of taxpayers as new withholding agents for Business Income Tax ("IRE") and Value Added Tax ("VAT").
Binding Consultation	June 2024	The DNIT issued an opinion on the tax treatment of repurchase agreements.
Binding Consultation	April 2024	The DNIT ruled on the taxation of VAT and IRE on contractual fines..
Binding Consultation	April 2024	The DNIT ruled on the source criterion of the Non-Resident Income Tax ("INR") for services rendered from abroad to a shipping company.

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Decree No. 1952/2024 - Articles 306 and 308 of the Customs Code Regulations, concerning the declaration of goods and provisions on board, and supplies in bonded warehouses, respectively, were amended.

By means of Decree No. 1952/2024, the Executive Branch amended Articles 306 and 308 of the Customs Code Regulations and repealed Decree No. 2436/2014 ("Previous Amendment"), which previously amended both articles. According to Article 306, the consumption of goods constituting provisions on board and supplies in a means of transport on an international voyage and within the customs territory, shall not be subject to the payment of customs import duties. This consumption must be within the quantities authorized by the customs authority.

The new text of Article 306, like its previous amendment, benefits all international means of transport, including those under the Paraguayan flag. Where the new text differs from the previous amendment is that now the economic restrictions or prohibitions (import quotas or licenses, etc.) provided for in Articles 325 to 328 of the Customs Code, which were previously indicated as not applicable to this case, are excluded from the benefit.

Article 308 deals with supplies in bonded warehouses, both for (1) the importation of spare parts and accessories of means of transportation on international voyages and (2) the loading on board of liquid fuel and lubricants. With respect to spare parts, there have been no changes concerning the previous amendment, since the exception to the economic restrictions and prohibitions is maintained, as well as the inappropriateness of the payment of taxes for their importation, if they are intended for the repair of the means of transportation on an international trip.

With regard to the loading on board of fuels and lubricants supplied in bonded warehouses, the most important change introduced by Decree No. 1952/2024 can be noted. Although the import tax exemptions are maintained, on a reciprocal basis, for the supply on board of means of transport in international voyages, it is now indicated that this is subject to economic and non-economic import restrictions or prohibitions; in addition, the explicit monopoly of Petróleos Paraguayos ("Pertropar"), provided for in the previous amendment, has been replaced by the following requirements:

(A) Storage warehouses must-have storage tanks exclusively for this regime and loading docks, duly authorized by the DNIT and by the Ministry of Industry and Commerce.

(B) The physical storage tanks must have a minimum capacity of sixteen million liters (16,000,000L) or sixteen thousand cubic meters (16,000 m^3) and be exclusively for onboard supply.

It is worth mentioning that, according to several local fuel emblems, this new text of Article 308 is the renewed version of Petropar's previous monopoly since only this state-owned oil company would have an exclusive tank for the regime with the required capacity for it. That monopoly was declared unconstitutional at the time by Agreement and Ruling No. 684/2019 of the Constitutional Chamber of the Supreme Court of Justice, so the renewal of this has generated discontent in the fuel sector. So much so that, less than a month after the decree was issued, the Shell emblem announced its possible exit from the country due to this legislative measure

General Resolution No. 13/2024 - DNIT designated new taxpayers as IRE and VAT withholding agents.

By means of General Resolution No. 13/2024 (the "Resolution"), the DNIT has designated a group of 28 taxpayers as new withholding agents, both for VAT and IRE. These designations are in accordance with the provisions of Article 240 of Law No. 125/1991, which empowers the Tax Administration to designate withholding agents to those taxpayers that, due to their activities, are involved in operations in which the withholding of the tax is pertinent.

In this regard, the DNIT has proceeded ex officio to register the VAT and IRE withholding obligations in the Marangatu system of the designated taxpayers, which are obligation 725 - Income Tax Withholdings (IRE/IRP/INR Withholding), and obligation 221 - Value Added Tax Withholding (VAT Withholding).

The Resolution entered into force on July 1st of this year; the date from which taxpayers designated as withholding agents shall withhold IRE and VAT in accordance with the articles of the decrees that regulate such taxes, which are mainly Article 88 of the Annex to Decree No. 3182/2019 and article 38 of the Annex to Decree No. 3107/2019, among others.

Regarding this, the designated withholding agents must issue the withholding vouchers through the Tesakã software, to generate the virtual withholding voucher. For both taxes, the settlement is made through a proforma made available by the DNIT. In the case of IRE withholdings, form No. 525, Income Tax Withholding Settlement, Version 1 is used; while for VAT, form No. 122, "Value Added Tax Withholding Settlement" is used.

The 2 forms mentioned above are issued monthly at the end of each tax period, and taxpayers have the first 6 calendar days of the following month to verify and confirm the forms, which will be automatically confirmed if the taxpayers do not confirm the withholdings within that period. On the other hand, the payment of the withholdings may be made without surcharges up to 1 day after the expiration of the term for their confirmation, i.e., up to the 7th day of the month following the month in which the withholdings were made.

If you wish to consult the list of taxpayers that have been designated as withholding agents, you may do so in the annex to the resolution by clicking here.

Answer to binding consultation on the tax treatment of repurchase agreements carried out by banking entities.

In response to a binding consultation issued in June of this year, the DNIT established its position on the tax treatment to be given to repo or repo transactions carried out by a banking entity.

The consultant described that the repurchase agreement is a type of agreement widely used in the financial and banking markets, normally between a financial entity and an investor, where one of these parties acquires securities from the other (such as bonds, shares or other financial instruments), with the explicit commitment to sell them back at a specific price and on a specific date in the future. In this sense, within the operation foreseen by the Central Bank of Paraguay, there are 3 types of repurchase agreements:

(1) Horizontal Repo: When two banking or financial institutions ("Participants") carry out repo transactions with each other through the Paraguayan Payments System (SIPAP).

(2) Vertical Repo: When the repo transaction is carried out by a Participant with the Central Bank of Paraguay ("BCP").

(3) Tripartite Repo: When the operation is carried out between Participants through the BCP, which acts as the intermediary, who carries out a different operation with each Participant:

(A) A vertical repo with the liquidity demander (seller of the securities).

(B) A deposit in the BCP with the liquidity provider.

In this regard, the consultation made by the bank was whether repurchase transactions are exempt from VAT, based on the provisions of Article 100, paragraph 1, subparagraphs a) and b) of Law No. 6380/2019 ("Tax Law"), which establishes that the sale of foreign currency and public and private securities are exempt, including the sale of shares or quotas of companies, as well as the assignment of credits.

About this consultation, the DNIT confirmed that repurchase transactions, in all their modalities, are effectively exempt from VAT payment, since this is expressly established by the Tax Law in the aforementioned article and paragraphs. However, it also pointed out that the commissions received for the intermediation of such operations (for example, stock brokerage operations carried out by brokerage firms) are subject to VAT and must be invoiced at the rate of 10%.

Response to binding consultation on the taxation of VAT and IRE to contractual fines.

In response issued to a binding consultation during April of this year, the DNIT expressed its criteria on the taxation of VAT and IRE on income received or paid by a taxpayer as a fine or penalty for breach of contract, especially about the non-delivery on time of the products object of the sale and purchase (grains).

In this regard, the DNIT defined the penalty clause as an institute that provides an incentive for the conduct due by the debtor of the obligation, that is, the specific performance of its obligation, formulated and conditioned to the existence of a main stipulation, to which a penalty is applied in case of non-compliance.

Taking this definition into account, the DNIT understood that the contractual fine does not constitute a sale of goods, provision of services or importation, and therefore does not fall within the VAT generating events provided for in article 80 of the Tax Law, thus deducing that the objective element or factual assumption of VAT does not occur in this case. Consequently, the income generated by such concept must be recorded in the exempt column of the respective invoicing.

On the IRE side, the DNIT indicated that the penalties and fines charged for breach of contract derive from a principal obligation that is developed within the scope of commercial operations carried out with its grain suppliers, which constitutes an increase in equity for the company, so that they constitute income taxed by the IRE, under Article 8, paragraph 11, of the Tax Law, which qualifies as taxable gross income the increase in equity produced in the year, unless it comes from activities not taxed or exempted from tax.

Finally, the DNIT clarified that interest or surcharges that may arise from the financing of monetary obligations are subject to VAT, in which case the taxable amount of the tax would be the amount of interest, surcharges, commissions and any other concept other than the amortization of the principal payable by the borrower or debtor, accrued until the maturity of the obligation.

With this pronouncement, the DNIT confirmed the criterion that its predecessor, the Undersecretariat of State for Taxation, had upheld in 2013, which had been applied peacefully by all taxpayers and tax advisors.

set forth its position on the tax treatment to be given to repo or repurchase transactions carried out by a banking entity.

The consultant describes that the repurchase agreement is a type of agreement widely used in the financial and banking markets, normally between a financial entity and an investor, where one of these parties acquires securities from the other (such as bonds, shares or other financial instruments), with the explicit commitment to sell them back at a specific price and on a specific date in the future. In this sense, within the operation foreseen by the Central Bank of Paraguay, there are 3 types of repurchase agreements:

where the Tax Administration was asked whether the income received or paid as fines or penalties for breach of contract, especially those related to the non-delivery on time of the products object of the sale, constitute income not subject to Value Added Tax (VAT), and therefore, the same should be invoiced in the "exempt" column, having about VAT the merely documentary effect and not affecting the VAT tax liquidation.

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Response to binding consultation on the INR source criterion for services rendered from abroad to a shipping company.

In response to a binding consultation issued in April of this year, the DNIT established its position on the INR source criterion for payments for services rendered from abroad (Argentina) to a Paraguayan shipping company for customs, prefecture, health ministry and other entities and authorities related to navigation and foreign trade in that country, as well as logistic coordination of loading and unloading operations in the different ports.

The DNIT stated in this regard that, if only Article 73, paragraph 11 of the Tax Law were considered, then the payments made by the taxpayer to its non-resident service provider for the services rendered in Argentina would be subject to INR. However, Article 2 of General Resolution No. 62/2020 modifies this scenario by clarifying that when the service rendered abroad is used or taken advantage of exclusively outside the country, the amount paid is not subject to INR.

In this context, the DNIT concluded that the income obtained by the foreign company for management services rendered entirely in Argentina and which are related to the business of its Paraguayan client (river freights) are not subject to INR, since the service is used and exploited exclusively in Argentina, a situation that rules out the application of the tax.

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