ARGENTINA

Amendment to the Argentine Income Tax Law. Taxation of proceeds resulting from the transfer of shares and quotas and dividends

BRAZIL

General Aspects of the Alternative Public Procurement Regime (RDC)

CHILE

Funds Management

Hague Convention on Apostille

New Bankruptcy Regulations

COLOMBIA

Recent Inter-American Court of Human Rights hearings in the “Palacio de Justicia” case

GUATEMALA

ABA report concerning human rights cases in Guatemala

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Amendment to the Argentine Income Tax Law. Taxation of proceeds resulting from the transfer of shares and quotas and dividends

Effective September 2013, as a result of Law No. 26,893 (the “Law”), which amended the Argentine Income Tax Law, any proceeds resulting from the sale (transfer, disposal and/or exchange) of shares, quotas and ownership interest, by: (i) Resident individuals and undivided estates; (ii) Non-resident individuals and undivided estates; and (iii) Non-resident entities is subject to Income Tax. The special applicable rate in the case of resident individuals and undivided estates is 15%.

Also, the Law includes an specific provision imposing a withholding and payment obligation for the buyer in case of sales or transfer between non-resident parties.

Moreover, the Law also introduced significant changes to the Income Tax Law in connection with taxation of dividends, which shall be effective, for all dividends payable since September 2013. Prior to the enactment of the Law, dividends were not subject to any Income Tax withholding. Now, as a consequence of the Law, a 10% Income Tax withholding is applicable, as a “sole and definitive tax”.

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General Aspects of the Alternative Public Procurement Regime (RDC)

In 2011, the Brazilian Government created the Alternative Public Procurement Regime, also called RDC, with the purpose of fostering and easing the projects related to the FIFA World Cup in 2014 and the Olympic Games and Paralympics in 2016, in Rio de Janeiro.

According to the Federal Government, RDC consists of a new public procurement regime, which aims at making the acquisition process more efficient, supporting the exchange of experiences and technology and encouraging technological innovation, without sacrificing the transparency and the regulation of the acquisition process by supervisory authorities.

RDC was initially created by the provisional Presidential Decree No 527/2011. However, such a Decree was later converted into the Law No 12.462/2011, which broadened the scope of RDC and is still in force.

Nowadays, RDC has its applicability restricted to contracts related to the Olympic Games and Paralympics in 2016, the FIFA World Cup in 2014, the works and services related to the State airports whose distance to the cities hosting the World Cup does not exceed 350 km, the projects related to Brazil Growth Acceleration Program - PAC, the works and engineering services under the Unified Health System - SUS, the works and engineering services within the public school systems.

It is important to stress that the use of RDC is not mandatory. Rather, RDC is always optional, and its adoption over other forms of public procurement must be described in the Invitation to the procurement process.

The Brazilian Public Procurement Act, Law No 8.666/1993, as a general rule, is not applied to RDC. As determined by Law No 12.462/2011, once RDC is chosen, the rules of the Public Procurement Act are disregarded for the acquisition process, except when expressly provided for in the Act, such as the cases of exemption and waiver of Public Procurement and the rules applicable to the Contract between the government and the bidder.

Law No 12.462/2011 brings a number of innovations regarding the hiring procedure in the RDC compared to other forms of Public Procurement described in the Public Procurement Act. The most relevant and controversial of them refers to the implementation of an integrated model of procurement, in order to ensure less costly and time-consuming Procurement procedures.

The integrated model of procurement is typically adopted in EPC - Turnkey Agreements. Unlike in other procurement forms listed in the Public Procurement Act, in which the government is required to prepare the basic project of the works, with a detailed list of materials and works that are going to be used throughout the project, in the integrated Procurement model the Government only presents a draft of the project to the bidders. All other works to be performed in the project, ranging from the drafting of basic and detailed projects to the
performance tests, are done by the bidder, who is obliged to deliver the project within the agreed parameters. The remuneration of the contractor, in this case, is variable, linked to its performance. There is also the possibility of bonuses for goals.

Another feature brought by the Law No 12.462/2011 on RDC, relates to the fact that the government is entitled to keep the budget under confidentiality until the contract is awarded. Even in this case, the Government must provide all necessary information for the bidding process. With this measure, the Government seeks to avoid collusion and other practices that could harm the competition.

RDC acquisition process resembles the Brazilian auction process, provided by the Public Procurement Act. As in the auctions, there is an inversion in the phases of the procurement process. In this case, the qualification phase is held after the opening of proposals, so that only the documents related to the winner of the bidding are reviewed. In order to ease the recruitment, the Government is allowed to create a record with the permanent pre-qualification of companies interested in participating in future procurement processes. Bidding in the context of RDC is preferably done by electronic means.

Unlike in the forms of procurement provided in the legislation, in the RDC there is only one single appeal phase, which takes place immediately after the award of the contract. At the appeal stage, the government analyses the appeals related to the offers and qualification.

Given its increasing use, the RDC is likely to be applied to all other areas involving public procurement in the future, supplanting other forms of public procurement under the Brazilian legislation. Thus, it is highly advisable that companies which are hired or plan to be hired by the Public Administration understand all of the nuances of this regime, in order to get adapted to an increasingly likely scenario in which the procurement processes will all be held through RDC in Brazil.

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**Chile**

**Funds Management**

On November 11, 2013, a bill submitted by the Government to modernize and consolidate existing third party fund management regulations (the “Bill”) was approved by both the House of Representatives and Senate. This measure aims to boost Chile’s financial services’ exportation.

The Bill’s main objective is to unify and simplify fund regulations into a single legal body, thereby: (i) Providing a common and symmetrical treatment for the administration of investment funds, mutual funds, foreign capital funds, and housing funds; (ii) Promoting foreign investment; (iii) Simplifying and reducing funds management associated costs; and (v) Improving access to fundraising for risk capital and medium and small companies.

Among other matters, the Bill will modify existing regulations: (i) Replacing an exhaustive listing of permitted investments with provisions allowing freedom of choice in connection thereof, although subject to additional supervision by the Securities and Insurance Superintendence; (ii) Modifying the tax regime applicable to foreign capital funds, granting an exemption from applicable income tax over to the sale of quotes when 80% of the fund is destined to foreign investment for a term of at least 330 days; and (iii) Including regulations regarding individual portfolio management, providing that only administrators with an investment portfolio comprised of 500 or more clients, or with a portfolio with a value over UF 10,000 (approximately USD 441,045) shall be supervised by the Securities and Insurance Superintendence.

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**Hague Convention on Apostille**

On November 20, 2013, the bill that will apply the recently ratified Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents (the “Apostille Convention”) was approved by Congress (the “Bill”).

The main purpose of the Convention and Bill is to make international relations less bureaucratic and to reduce the workload of the Ministry of
Foreign Affairs by simplifying the legalization and authentication process of public instruments among signatory states.

Currently, both national and foreign officers’ certifications are required to legally use a Chilean public instrument abroad. Likewise, foreign documents to be used in Chile also need to undergo through several steps (i.e. legalization, translation, and notarization), also requiring certification of foreign and local authorities. Pursuant to the Convention and the Bill these requirements will no longer be applicable among the signatory states, where the sole certification required will be the “Apostille” seal, which shall be affixed on the document by the corresponding authority, depending on the authority issuing the document (e.g. the Ministerial Regional Secretary of Justice, Ministry of Health, Ministry of Education, the Ministry of Foreign Affairs and/or the Civil Register, etc.)

The Bill is currently waiting to be enacted by the President of Chile.

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New Bankruptcy Regulations

On November 19, 2013, a bill including new regulations on bankruptcy was approved by Congress, thereby amending the Commerce Code (the “Bill”). The Bill addresses deficiencies of these specific existing regulations, aiming to promote entrepreneurship and strengthening the Chilean economy.

The Bill aims to: (i) Stimulate the effective reorganization of companies which may overcome temporary financial difficulties through agreements with its creditors; (ii) Provide effective tools to ensure that nonviable enterprises may be liquidated in shot periods of time, stimulating entrepreneurial resurgence and/or assets relocation; and (iii) Endowing the Bankruptcy Superintendence with additional monitoring and sanctioning authorities to ensure an efficient bankruptcy process and implementation of the Bill.

Among other amendments the Bill: (i) Allows for the debtor’s right of defense to be exercised before bankruptcy is declared; (ii) Regulates a public registry of inspectors (veedores) whose principal task will be to promote agreements between the debtor and its creditors (allowing for a company’s restructuring); (iii) Includes a special bankruptcy proceeding directed to individuals (persona natural); and (iv) Updates the types of criminal offenses currently existing in connection to bankruptcy.

The Bill is now pending constitutional review before being enacted.

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Colombia

Recent Inter-American Court of Human Rights hearings in the “Palacio de Justicia” case

In November 2013, the Inter-American Court of Human Rights held hearings in a case with important implications for the peace process in Colombia, Case No. 10.738 Carlos Augusto Rodriguez Vera and others (“Palacio de Justicia”) v. Colombia. The case concerns the State of Colombia’s alleged failure to fulfill its duty to investigate the torture, disappearance and extrajudicial at killing of court personnel during a hostage incident in 1985. The ABA filed an amicus brief arguing that the State was required to take affirmative action in light of a pattern of inappropriate pressures and threats, and to protect the judicial functionaries, including judges and prosecutors, who worked on cases related to the incident in which that killing occurred.

The case arose out of a November 1985 hostage taking that occurred during the internal armed conflict that has raged in Colombia for several decades. In November 1985, members of a guerrilla group took control of the Palace of Justice in Bogotá, Colombia, holding hostage approximately 350 judges, public servants, workers, and visitors. When government security forces sought to regain control of the Palace of Justice, a number of judges, civilians, and guerrillas were killed. In addition, at the time of the incident, Magistrate Carlos Horacio Urán Rojas was seen being escorted out of the Palace of Justice by government security forces and was later found dead, with a gunshot wound to his head, having been shot at close range. When, in 2010, the prosecutor assigned to the case opened an investigation for crimes against humanity against three generals implicated in the killing of Magistrate Urán.
The IACHR therefore concluded that the State of Colombia had taken insufficient steps to investigate and prosecute those responsible for the torture of four individuals and the forced disappearance of thirteen individuals, including Magistrate Urán Rojas, in violation of the right to judicial guarantees and judicial remedies provided for in Articles 1(1), 8(1), and 25(1) of the Convention.

The Court has previously held that enforcement and application of the Convention’s right to judicial guarantees and judicial remedies unambiguously require State Parties, such as the State of Colombia in this case, to “provide sufficient security measures to the judicial authorities, prosecutors, witnesses [and] legal operators”. The ABA brief argued that Colombia’s alleged failure to protect Magistrate Urán Rojas, Judge Jara Guiterrez, and other judicial functionaries, including prosecutors, and attorneys, if proven, would constitute violations of the right to judicial guarantees and judicial protection, to the detriment not just of the victims and their next of kin of the victims, but to that of society at large, which is entitled to know the truth and to see that justice is done.


[7] Letter of the IACHR presenting case 10.738, Carlos Augusto Rodriguez Vera and others
Guatemala

ABA report concerning human rights cases in Guatemala

Over the past decade, the Guatemalan government has approved an increasing number of megaprojects to utilize natural resources, such as the development of mines, oil fields, cement plants and hydroelectric dams in rural areas inhabited by mostly indigenous populations. These projects are established and operated primarily by foreign corporations, mainly from Spain, Russia, Canada, and the United States, which receive licenses from the Guatemalan government and establish local subsidiaries. In some instances, the projects have resulted in the violent displacement of indigenous people from their ancestral lands. Some projects have also reportedly been associated with the killing of community members and environmental contamination.

Many communities have organized informal consultation processes in which the majority of voters reportedly rejected such projects, and some communities have declared their lands to be “mine-free zones.” The Guatemalan government has dismissed such votes, arguing that the projects benefit the nation as a whole. The continuation of megaprojects in the face of community opposition has furthered social conflict. This trend has been exacerbated by the ongoing failure of the Government of Guatemala and international entities to compensate communities displaced by the internal armed conflict and the development of megaprojects.

International Labor Organization (ILO) Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples, and other provisions of international law enshrine the rights of indigenous peoples to participate in decision-making processes when state actions may directly impact their communities. Prior to undertaking development projects that affect lands traditionally occupied by indigenous and tribal peoples, the state has a duty to consult these communities “in good faith and...with the objective of achieving agreement or consent.” The Inter-American Court of Human Rights (the Inter-American Court) has stated that the obligation to consult is “a general principle of international law.” Consultation should incorporate a genuine dialogue with affected populations as part of a participatory process, with the goal of reaching an agreement. While current international law does not automatically grant communities a veto right over proposed projects, the Inter-American Court has held that projects threatening the right to life of an indigenous or tribal community with long-standing ties to the land require that the state not only engage in consultations, but that it “obtain the free, prior and informed consent of the community according to their customs and traditions. Thus, as a prerequisite to the development of megaprojects, governments are obliged under international law to - at a minimum - engage in prior consultations which are culturally adequate and in good faith in order to reach an agreement.

Chixoy Dam: Failure to Compensate Displaced Communities:

According to a 1981 Inter-American Commission report, local communities were violently displaced from their land to construct the Chixoy Hydroelectric Dam. Despite this and other press reports concerning the violence, the World Bank and the Inter-American Development Bank (IDB) provided nearly $400,000,000 in loans for the construction of the dam. According to diplomatic cables, the United States abstained from a vote on the IDB loan due to a failure by the Guatemalan Government to stop “indiscriminate violence.” In 2009, the President of Guatemala, the World Bank, the IDB and the Office of the United Nations High Commissioner for Human Rights signed a report stating that the Chixoy Dam was built in a context of forced relocation and gross human rights violations and that both banks continued to disburse funds in full knowledge of these violations, in contravention of their own policies. The U.N. High Commissioner for Human Rights, the Organization of American States and the Guatemalan Government signed a reparations plan in 2010 but the government has yet to implement the plan.

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