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Recent Developments in International Taxation

Bolivia

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I. RECENT HIGHLIGHTS

1.1 TAX PRESCRIPTION

Since 2003, Bolivian Tax Administration (SIN) had only four years to investigate and assess a taxpayer for deficiency taxes. However, Law 291 enacted on September 22, 2012, has changed that general rule by introducing the following limitation periods to assess tax and impose penalties:

4 years for the 2012 period;
5 years for the 2013 period;
6 years for the 2014 period;
7 years for the 2015 period;
8 years for the 2016 period;
9 years for the 2017 period;
10 years for the 2018 period;

This new rule means, that the limitation period established above will be due concerning the tax duties and penalties that would have been generated on the given year.

Nowadays, the limitation period will be extended for 3 more years if the taxpayer does not accomplish the legal obligation to register in the SIN or taxpayer is registered in a different tax regime.

On the other hand, the limitation period to execute penalties for tax administrative penalties is 5 years. However the power to execute assessed tax liability is not subject to prescription period.

Limitation periods were originally computed from the January 1st. of the next calendar year after the last day prescribed by law for the filing of the return. However, Law 291 changed the computing system, which starts from the first day of the next month after the last day prescribed by law for the filing of the return.

However, Law 317 enacted on December 2013, has changed once again the regime of the limitation periods by returning to the original system (i.e. the limitation period is computed from the January 1st. day)

These changes on the regime were introduced by the annual financial law which had the main purpose of modifying the General State Budget. That is the reason why some analysts think that it has brought legal uncertainty to the taxpayers.

1.2 NEW FOREIGN CURRENCY EXCHANGE TAX

Law 291 also created a new foreign currency exchange tax. This tax is meant to apply on the foreign currency-exchange made by Banks and Exchange Entities, which are compelled to pay a tax rate of 0,70% of the value of the whole exchange operation (or the 50% of the same value in the Exchange Entities case) expressed in local currency. This tax is non-transferable and must be paid for 36 months since December 5th of 2012.

The exchange-operations made by the Central Bank of Bolivia are exempt for paying this tax, so are the taxable persons which make an exchange operation with the Central Bank.

1.3 TAX INCENTIVES ON THE SALE OF BOOKS

On an attempt to stimulate reading among the Bolivian citizens, Law 366 has been enacted on April 23, 2013. This tax law establishes a zero percent tax rate at VAT for the sale of Bolivian productions and also for the import of books, and newspapers and magazines in printed version. This rule will be effective upon regulation no later than July 2013.

II. CASE LAW

2.1 THE MAQUILA AGREEMENT AS AN AGREEMENT OF BUSINESS PARTNERSHIP

Traditionally, the Bolivian Tax Administration (SIN) defined maquila agreements as a type of service agreements, considering that there is a provision of services by the maquila worker, consisting on the transformation of raw material into manufactured products, and whose remuneration is expressed in a remuneration in kind, which consists on the delivery of some of the manufactured products.

However, this appreciation has been recently rejected by the Supreme Court of Justice in the case Félix Flores Gómez vs. Gerencia de Grandes Contribuyentes del Servicio de Impuestos Nacionales. This ruling is based on the

application of the Principle of equity (horizontal equity) understanding that the maquila agreement is an agreement of business collaboration based on a mutual benefit earned by both parties after the manufacturing process. This fact shows coordination and collaboration between both parties, whom want to achieve a common purpose. Also, in the final manufactured product exists a business cooperation and participation of both parties.

This case has an important impact, since it defines and clarifies the tax treatment of the maquila agreement by defining that it is not a service agreement, but a business collaboration, therefore no subject to the taxable event of Value Added Tax.