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Virtual New Era of Taxation Conference
3 – 24 September 2020

A virtual conference presented by the IBA **Taxes Committee**

Covid-19: the 'new normal' in taxes and private wealth

Moderator

Guadalupe Diaz-Sunico
Lener, Barcelona

Confirmed Speakers

Russel Cohen
Farrer&Co, London

Diego Olarte
Reyes Abogados, Bogota

Lucia Rodrigo
Rodrigo Elias & Medrano Abogados, Lima

Jake Kaplan
Alston & Bird, Atlanta

Jorge Lopez
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Discussion leaders

Jose Rubens Scharlack
Scharlack, São Paulo

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Residence status of individuals and COVID-19

RESIDENCE STATUS OF INDIVIDUALS FOR TAX PURPOSES – COVID-19
The OECD Analysis and the Colombian Case

- April 2020: The OECD released a document on how the Pandemic is raising tax issues, mainly where there are cross-border elements in the equation, for example, individuals who are **stranded in a country** that is not their country of residence.

- Article 4 OECD Model Tax Convention): allocation of taxing rights over employment income. An individual may be resident in only one country at time.

- If the person is resident in only one country, that is the end of the matter. If he/she is a resident in both countries that are being tested, the tie-breaker rules in Article 4 of the OECD Model are applied. There is a hierarchy of tests, starting with the question regarding which state the person has a permanent home available to him/her.

REYES ABOGADOS ASOCIADOS

RESIDENCE STATUS OF INDIVIDUALS FOR TAX PURPOSES – COVID-19
The OECD Analysis and the Colombian Case

- Two situations could be considered under the OECD analysis:

1. A person is temporarily away from home and gets stranded in the host country by reason of the Covid-19 crisis and attains domestic law residence in the latter.

2. A person who is working in a certain country ("previous home country"), has acquired residence status there and returns temporarily to his/her previous home country because of Covid-19.

- The OECD analysis serve as guidelines to the Tax Administrations when assessing a person´s resident status during the Covid-19 outbreak.

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Colombian Case

(Colombian Tax Authority "COTA"):

May 26, 2020: The COTA concluded that the tax residence rules regarding permanence in Colombia, were not suspended due to the health emergency.

June 11, 2020: The COTA reconsidered its position. Each case should be analyzed separately, considering:

- Tie-breaking rules under Tax Treaties enforceable with Colombia, based on the recommendation of the OECD issued in April 2020, and
- Force majeure and fortuitous events which must be duly evidenced before the exclusion from the tax resident status rules.

Government's tax measures for HNWI due to COVID-19

RODRIGO, ELIAS & MEDRANO ABOGADOS

TAX MEASURES IMPLEMENTED BY THE PERUVIAN GOVERNMENT DUE TO COVID-19: INDIVIDUALS

- **Postponement of statute of limitations for Income Tax return filings**

  - Individuals who obtained more than 5,000 UIT of income (approx. US$ 6’000,000.00): no postponement was approved (late March, first days of April).
  - Individuals who qualify as principal taxpayers who obtained up to 5,000 UIT of income: postponed until late June, first days of July.
  - Individuals who do not qualify as principal taxpayers who obtained up to 5,000 UIT of income: postponed until late July, first days of August.

- **Postponement of statute of limitations for monthly tax liabilities**

  - Postponements varied depending on the month to which the tax liability corresponded, and the income obtained by the individual.

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TAX MEASURES IMPLEMENTED BY THE PERUVIAN GOVERNMENT DUE TO COVID-19: INDIVIDUALS

- **Discretionary Power Not to Penalize Tax Infringements During the State of Emergency**
  - The Tax Administration issued a Superintendence Resolution that set forth that it would apply its discretionary power not to penalize tax infringements committed or detected during the State of Emergency (that is, between March 16, 2020 and June 30, 2020).
- **Reduction of Monthly Moratory Interest Tax Rate**
  - From 1.2% to 1.0% since April 1, 2020
- **Others**

TAX MEASURES UNDER DISCUSSION

- **Wealth Tax?**

Political Party	Taxpayer	Taxable Base	Tax Rate	Permanence
FREPAP	▪ Individuals: who obtain income from S/ 1'000,000.00 (approx. US$ 285,000.00) or who own property (estates) valued at such sum or greater. ▪ Others: Legal entities and economic groups that comply with certain criteria.	It is not specifically provided.	▪ Individuals: from 0.22% to 1% ▪ Legal entities: from 1% to 2% ▪ Economic groups: 2%-3%	Permanent
Somos Perú	Individuals and Legal Entities.	▪ Net earnings, income and periodical wealth increases that imply the permanence of their source. ▪ Gains obtained from the transfer of goods.	▪ More than S/ 10M up to S/ 50M: 1% ▪ More than S/ 51M up to S/ 1,000M: 2% ▪ More than S/ 1,000M: 3%	Tax periods: 2020 and 2021.
Frente Amplio	Individuals domiciled in Peru whose net equity is greater than 400 UIT (aprox. US$ 490,000.00).	Net equity comprised of estates, cars, shares and bonds, bank deposits and credits, collection objects valued at more than 2 UIT (artwork, jewellery, etc.), other financial titles. MINUS: liabilities related to such assets.	▪ Progressive cumulative tax rate that goes from 0% to 5%	Permanent

RODRIGO, ELIAS & MEDRANO ABOGADOS

TAX MEASURES UNDER DISCUSSION

- **Property Tax**
  - Modifications to the taxable base from construction cost to market value.

Current Individual Income and Transfer Tax Landscape in the United States

- Current U.S. income tax policy:
  - Top marginal income tax rate of 37%
  - Standard deduction of $12,400 for individuals or $24,800 for married couples filing jointly
  - Top long-term capital gains tax rate of 20% plus 3.8% "Obamacare surtax"
  - Inherited assets get a basis step-up equal to the FMV of the asset at the decedent's death
- Current U.S. transfer tax policy:
  - The combined exclusion from estate and gift taxes is $11.58M per person and $23.16M for married couples
  - The exception from generation-skipping transfer taxes is $11.58M per person
  - Top estate, gift, and generation-skipping transfer tax rate of 40%
  - No federal inheritance tax

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Potential Impact of U.S. Presidential Election

- The Democratic presidential nominee, former Vice President Joe Biden, proposes wholesale changes to existing tax policy
  - Increase top marginal tax rate from 37% to 39.6%
  - Drop estate and gift tax exclusion to inflation-adjusted 2017 level of $5.49M
  - Apply ordinary income tax rates of 39.6% + 3.8% “Obamacare surtax” to long-term capital gains for households making over $1,000,000
  - Cap tax benefit of itemized deductions at 28% of taxable income
  - Eliminate step-up in basis on inherited assets
- Currently, most polls show Vice President Biden with a lead of 7% - 9%
  - But, these changes won’t be possible unless Democrats sweep Congress too

State Tax Policy Changes

- Unlike the federal government, every U.S. state except Vermont is constitutionally required to balance its budget
- Examples of proposals to increase state income taxes abound:
  - California: Proposal to increase top marginal income tax rate from 13.3% to 16.8% for those earning more than $5,000,000
  - Washington, DC: Proposal to increase top marginal income tax rate from 8.75% to 8.95% for those earning more than $350,000
- Other “creative” state tax proposals:
  - California: Proposal to impose a 0.4% wealth tax for those with a net worth in excess of $30,000,000
  - New York: Proposal to tax billionaires’ unrealized capital gains and direct proceeds to workers ineligible for unemployment or stimulus funds
- No known examples of proposals to raise state estate or inheritance taxes

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How COVID-19 has changed the attitudes of society and our clients

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Society's attitudes

1. Attitudes to the wealthy

2. Attitudes to taxation

Society’s attitudes to the wealthy

1,637 likes

davidgeffen
Sunset last night...isolated in the Grenadines avoiding the virus. I’m hoping everybody is staying safe.

F&
Co

Society’ attitudes to the wealthy

Thomas Piketty (*Capital in the Twenty-First Century, 2013)*:

“ Those who are neither top income earners nor top successors: they are poor, and they are depicted as dumb and undeserving. ”

F&
Co

Society’s attitudes to tax

New appetite for Big Government

Backlash against Philanthropy

F&
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Society’s attitudes to tax

Rutger Bregman (Davos 2019):

“ The answer is very simple. Just stop talking about philanthropy. And start talking about taxes … Taxes, taxes, taxes. All the rest is bullshit, in my opinion. ”

Our clients’ attitudes

1. Attitudes to wealth
2. Attitudes to taxation
3. Attitudes to globalization and mobility

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Co

Our clients' attitudes: to taxes

Millionaires for Humanity:

“ We…. ask our governments to raise taxes on people like us. Immediately. Substantially. Permanently. ”

Our clients' attitudes

1. Attitudes to wealth generally

2. Attitudes to taxation

3. Attitudes to globalization and mobility

QUESTIONS FOR THE AUDIENCE

QUESTIONS FOR THE AUDIENCE

A. Are trusts (foreign) or local *fideicomisos* an increasing demand from HNWI to protect their wealth against recently approved or envisaged tax measures deriving from Covid-19?

B. Which tax policy ideas are governments in your jurisdiction considering to close Covid-19 related budget deficits that are specially targeted to HNWI?

C. How does your Government treat tax residence status of individuals in view of the lockdown and travel restrictions deriving from Covid-19?

D. How has Covid-19 changed your clients' attitudes to tax planning?

CLOSING REMARKS

- HNW families from across the glove follow closely the recent developments and raise with their advisors their need to create or review current family wealth planning, including the use of trusts, foundations, wills, lasting power of attorneys and insurance measures.

- The Covid crisis has put enormous constraints on Governments and deficits are deep and far reaching. The response is to increase existing taxes or create new ones and the rich are political low hanging fruit.

- Families and advisors worldwide currently discuss the possibility of heavier tax burden and anticipate tougher approach and more complex discussions with tax authorities worldwide.

- Many countries already take measure to amend tax laws and to make additional use of mutual assistance measures, treaty requests and spontaneous exchange of information.

CLOSING REMARKS

- Newton was right! “For each action there is an equal opposite reaction”. The wealth management industry response, although not perfect or bullet proof, Trusts, Fideicomisos and the like, continue being good solution with considering

- Due of travel restrains, residency issues are coming up more often, and most countries anticipate more discussion about the definition of residency, taxation of expats working in a different jurisdictions. It is very likely that effective place of managed and permanent establishment issues will rise.

- Do client plan or only talk about planning? Do they act or react? Apparently, everyone reacts to the situation differently

- Interestingly, client perspective on mobility issues tax become secondary consideration to the important sense of personal safety, security and proximity to the extended family.

THANK YOU!

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