Legal Update

by Allan Garro N.

New Corporation Tax in Effect

Consequences of the financial crisis that affected the world during the last three years are still visible everywhere. The latest news coming from Europe reveals the Euro is not as strong as expected, clearly showing that the possibility of a new crisis is still alive and kicking. Because of this many countries have seen their tax revenues severely reduced due to a decrease in general business activity. Their immediate reaction has been, ironically, to raise taxes. Costa Rica is not an exception.

The Government has been trying to get a general tax package named "Fiscal Plan" approved in Congress, but is finding a lot of obstacles, mainly because of the tough opposition by some political parties that believe it is not smart to raise taxes during a crisis, especially when Public Institutions are reluctant to cut their budgets even in unnecessary areas. While this power struggle continues a new tax against corporations, of which many people are unaware, was approved.

In what might be considered a clever move, on December 27th, 2011 the IMPUESTO A LAS PERSONAS JURÍDICAS, or Tax on Corporations, appeared in the official gazette as law #9024. By clever, we mean it was rammed through during those days when most people are focused on the Christmas / New Year celebrations and not many people stay in touch with governmental activity. Coincidence or not, a few years ago another tax package named LEY DE CONTINGENCIA FISCAL or Fiscal Contingency Law was published on a similar day.

The basic rules established by this new law are simple:

- The tax is on ALL CORPORATIONS registered in the National Registry, whether they are established as Sociedad Anónimas –Sas-, Limitadas –LLCs-, EIRLS, En Comanditas -Silent Partnerships- or Sociedad en Nombre Colectivo - Collective Name Company. It also includes foreign corporations that obtained a corporate ID number at the Registry for their Costa Rican divisions.

- The annual amount of the tax is 50% of a salary base, which is currently approximate 180.000 colons or USD $360. Those companies classified as inactive by the Revenue Ministry will be required to pay half the tax, about $180. Inactive companies are those without commercial activities or income, generally used as holding companies.

- The tax will be due in January each year, except in 2012, when it will be due April 1st in order to give Registry a chance to create the technological platform to collect the tax at National Registry offices. Interest and fines apply for late payment.

- Those companies dissolved by their stockholders before April 1st, 2012 won't have to pay the tax. If assets need to be transferred into another company's name they will be exempted from paying transfer taxes for 6 months starting January 1st, 2012.

The criteria are not yet clear as to how a corporation will be classified as active or inactive. Hopefully the process won't involve lengthy procedures or huge lines to obtain a certification from the Revenue Ministry to present to the National Registry. It would be logical to have this kind of information online, however, experience over the years has warned us not to expect logic.

The law also contains some rules we believe are against the Constitution, therefore it is likely to be challenged in Constitutional Court:

- It creates a personal liability for the legal representatives of companies. They can be held personally responsible for the tax. This

contravenes the Code of Commerce and other existing tax laws.

- If payment is delayed the Registry will not register any amendments or provide any certifications related to the corporation. This last point violates the principle of Public Information Rights that rules the National Registry.

- In case no payment is received for over 3 years the National Registry will dissolve the company. No other tax law in the country has such a penalty for non-payment, so it could be considered a confiscatory measure.

- Those companies operating small businesses registered as PYMES in front of the Economy Ministry are exempted from paying the tax. The list of requirements to become a PYMES can be found on www.meic.go.cr and the registration process needs to be renewed every year.

Most expats residing in the country have one or more corporations, usually to protect properties, cars and other assets. It is strongly recommended to maintain only those that are necessary and think about dissolving the others. In order to reduce the number of companies we recommend merging them. For example, if a person has three corporations and only requires one, they can be merged instead of dissolving two. This reduces the cost.

It seems things are changing regarding having a company in Costa Rica. It is necessary to do the homework to ensure everything is in order to avoid future surprises. Be certain to hire a professional that understands the process well, and to include a few more dollars in your annual budget to cover this new expense.

A SIDE NOTE. A law recently approved by the United States' Congress named FATCA will force Banks, Stockbrokers and other Financial Institutions in Costa Rica to send information about investments and bank accounts held by US Citizens straight to the Internal Revenue Service in the USA. If you question how the United States can enforce a law in Costa Rica the answer is they can't. However, the US Government will retain 30% of all interest or other income sent from the US to any Financial Institution in Costa Rica that appears to be reluctant to provide the reports they demand. Only COOPERATIVAS or Cooperative Associations and Complementary Retirement Funds are exempted. The rule is to start being applied in the middle of 2013.

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