30 No more tax on corporations?

by Alan Garro

In previous editions of this magazine I wrote about the Tax on Corporations which came into effect in 2012. It was an annual tax on all corporations registered with the National Registry based on the Code of Commerce, such as SAs and LLCs, plus all branches of foreign corporations that obtained a corporate ID number for their Costa Rican divisions and appointed a legal representative here. The law was published in the official Gazette on December 27th, 2011.

Most foreigners living in Costa Rica, either partial or full time, were caught with one or more corporations which they used to either run a business or to protect assets. This caused a problem in their budgets, because according to the new law inactive corporations would pay an annual amount of close to two hundred dollars and those that are active would pay an amount close to four hundred dollars. Many people owned several corporations and therefore decided to dissolve or merge some of them.

In order to force payment the law established that every corporation reaching three periods without paying would be dissolved by the National Registry, and their legal representatives would be held jointly and severally liable for payment. However in 2013 a lawyer named Edgardo Campos filed an action against the law before the Supreme Court, so the Registry decided to await the outcome of the final decision. I was admitted as part of the case as a party supporting the case.

On January 28, 2015 the Press Department of the Court issued a statement indicating that the Supreme Court had issued a ruling which declared the tax invalid, but under certain conditions. The main reason given by the Justices was the violation of the Principle of Advertising. This means that any bill must be published in the official newspaper and that if Congress introduces substantial reforms after it is published, then the project should be published again before being passed into law.

What happened was that after the bill was published the following reforms were added: a. To expand those subject to the tax by adding branches of foreign companies as well as holding legal representatives personally responsible, b. The tax rate varied since the original proposal was three hundred dollars per company and c. Two additional sanctions that prevented corporations from transferring or acquiring assets or obtaining certifications showing the legal representative were introduced.

Now keep in mind that the Supreme Court ruled under important conditions. First of all the exemption from payment of tax begins in January 2016, which means you must pay amounts due including 2015. Second. the provisions allowing the National Registry to dissolve those companies that did not pay the tax for three periods consecutively remains valid, so a lien can be placed on their assets as security for payment of the tax.

It is also important to note that after reading the judgement carefully, it is easy to conclude it leaves the possibility open for the Government to push hard for a deal with Congress by showing the need for such a tax to exist, in which case basically what is required is to publish a new projected law that gets approved without further modifications and fits to the principles already mentioned, in which case it would be expected that next year there would be a new Law of Tax on Corporations.

At the time this article is being written the full judgment of the Supreme Court is not available, but its basic guidelines are the ones explained above. Even the Director of the National Registry has stated that once they receive the entire document explanations or clarifications will be requested. It is best to watch to see what happens with this ruling in the coming months and to keep an eye on the local news for further developments.

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