

Avoid Paying The Yearly Corporation Tax With a Civil Company in Costa Rica

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In 2012 a law #9024 named “Tax on Corporations” came into effect. It was an annual tax on all corporations registered at National Registry based on the Code of Commerce such as SA’s and LLC’s plus all of those branches of foreign corporations that obtained a corporate ID number for their Costa Rican divisions. Most foreigners living in Costa Rica were caught with one or more corporations used to either run a business or just to protect assets. This caused a problem for their budgets because according to the new law inactive corporations would pay an annual amount close to two hundred dollars and those being active would pay an amount close to four hundred dollars.

On January 28, 2015 the Constitutional Court issued a ruling which declared the tax invalid under certain conditions. The main reason given by the Justice was the violation of the principle of advertising. Now keep in mind that the Supreme Court ruled important conditions for ending this tax. First was the exemption from payment of tax starting the month of January 2016 which means you must pay the amounts due including 2015. Second is the provisions allowing the National Registry to dissolve those companies and corps who did not pay the tax for three consecutive periods leaving their assets are liable if they had any, so a lien can be placed on them as security for payment of the tax.

Because the Government really seemed to need this tax back, during 2017 a new law number 9428 brought the tax back this time with many changes. For 2017 it needed to be paid proportional when the law took effect on September 1st, 2017 until December 2017. After that it would be due every January, so the tax had to be paid during January, 2018 to cover the entire year. This time the amount for inactive companies is lower than the previous tax. For inactive companies during 2018 the amount will be approximate 64,000 colons or US\$115. For active companies the amount varies depending on their gross income, on amounts between US\$192 and US\$383 yearly.

The Registro Nacional will not issue any certifications of the company, popularly named “*Personerías*” unless the tax is paid. With the former law there was a “shortcut” by asking for a Certificacion Literal, but the new law eliminated that possibility. Those companies that reach 3 years without paying the tax will be dissolved by the Registry of Corporations. Any assets held by those companies will remain attached with a lien as guarantee for the corp payment. Stockholders will be considered responsible for the tax aswell. Last year the Registry of Corporations dissolved more than two hundred thousand companies that were behind more than 3 years many of which held valuable assets.

Presidential Decree 40417-H rules the way this law will be applied. All inactive corporations will have to file a D-140 form indicating they will remain inactive. Because there are so many there will be an order according to the last number of corporate ID to comply with this. As follows: Last corporate ID number ends 1 or 2= it was due October 2017. Last corporate ID number ends 3= March 2018, Last corporate ID number ends 4= April 2018 and same every month until October for companies with last ID number ending in 0. Not complying with filing this form will produce a fine close to \$400 per month delayed to maximum five months fine.

There are a couple of aspects that can be taken advantage from: 1. During the following 12 months after the law takes effect, the assets (real estate, vehicles, boats...) held by an inactive corporation can be transferred TAX FREE to any other corporation or person. This is good for the case of a person that holds 4 corporations with assets and will like to keep only 2. Transfer taxes are usually very high, and this is a great chance. 2. During the following 24 months after the law takes effect all those persons that are on the Board or hold a POA can legally resign by preparing a resignation letter and visit a Notary to acknowledge letter was delivered to the company.

The main question that always arises is: "is there any way to have a company that does not pay that tax corp tax? The answer is Yes. There is special type of company named SOCIEDAD CIVIL or CIVIL COMPANY that can be legally registered and does not pay the tax on corporations. Their structure are very similar to an LLC or Limitada, needing only one or more administrators to represent the company. Because they don't pay the tax filing the D-140 form in front of the Tax Ministry is not required either. Civil Companies are great for asset protection, not so much for running a business, since any liability caused by the company can be deemed as personal liability of the stockholders.

To proceed registering a Civil Company it requires a minimum of two stockholders who are considered the founders, but nothing forbids that later the entire amount of capital stock is owned by one person. They need to appear in front of a Notary to prepare the document, indicating that the company is based on the rules of the Civil Code exclusively, then pay for a publication on the official Gazette and submit the articles of incorporation. Those owning a different corporation such as S.A. or LLC can legally transform their corporation into a Civil Company. This will cause that for the following years the tax on corporations will not have to be paid.

About the Author: Allan Garro was incorporated as a lawyer and public notary in 1996. He specializes in Litigation, Corporate and Real Estate Law. He has also acted as external legal consultant to Congress. He has been the author of more than 100 published English Language articles and can be reached at [\[email protected\]](#)