



Tax Issues in Developing Economies

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Overview of Brazil's Main Tax Issues

- High Tax Burden on Companies and Individuals
 - The tax burden in Brazil reached 43.4% of the GDP
 - Although still comparable with Austria, Belgium, France, Italy and the Scandinavian countries, the services and infrastructure offered are still far behind from the ones available at those countries.
 - International competitors experience lower tax burden levels (Argentina 23%; Canada 33,4%; China 17%; India 17,7%; Mexico 9,7%).
 - Brazilian tax system is composed of 61 taxes and social contributions.
 - Final customer bears tax cost (black market)

Cost of Doing Business in Brazil

- Government administration ethics
- Paperwork required to open a company
- Paperwork required on import/export operations
- **High tax burden**
- High labor costs (includes **Social Security**)
- **Tax Law** complex and inefficient
- High level of **tax compliance** requirements
 - According to ABIMAC the Brazilian Cost increases 36% of a product price in comparison with a similar product manufactured in Germany or in the USA

3

Main Taxes Applied on Business Activities

- Corporate Income Tax (IRPJ 25% + CSLL 9%)
- Pis (0,65% or 1,65%) / Cofins (3,0% or 7,60%)
- IPI (Excise Tax) average 15%
- ICMS (Vat) 7% to 25% - average 18%
- ISS (Service Tax) 2% to 5%
- IOF (Tax on Financial Op., Currency Exchange, Insurance) 0,38% to 25%
- Customs Duties (+ IPI + PIS/COFINS + ICMS + IOF)
- Withholding Tax on Services Performed by Non Residents (15% to 25%) + ISS + PIS/COFINS + CIDE (10%) + IOF (0,38%)
- Dividends not subject to taxation

4

Business Taxation in Chile

General overview

Two levels of taxation:

- Corporate tax at a 17% rate (temporarily raised to 20% for income earned in 2011 and to 18,5% for income to be earned in 2012).
- Final taxes: Personal Income Tax (up to 40%) for local residents, and Additional Tax (WHT at 35%) for non-residents. ***Corporate tax is a credit against these two taxes.***
- Intercompany dividends in Chile are tax free.
- Capital gains may be taxed as ordinary income; only subject to corporate tax; or tax free, depending on the circumstances

5

Corporate Tax in Chile

General overview – example –

Chilean company taxable income	100
Corporate tax (First Category Tax)	(20)
Income distributed to parent	80
Withholding tax basis	100 (80 +20)
Withholding tax	(35)
Corporate tax credit	20
Withholding tax payable	(10)
Amount available to foreign parent company	65

6

Chilean Withholding Tax – General overview

WHT Reduced Rates

- Reduced 30% rate: Royalties for use of trade mark, some patents, formulas and similar
- Reduced 15% rate: Patents, industrial designs, software licenses; Technical services or technical assistances rendered abroad
- Reduced 4%: Interest payments to banks or financial institutions (thin cap rules may apply)
- Others: Insurance over assets in Chile: 22%; Leasing 35% over 5% of the payment.

7

Chile's Tax Treaty network

Country	Dividends %	Interests %	Royalties %
Belgium	15	5 - 15	5 - 10
Brazil	10 - 15	15	15
Canada	5 - 15	10 - 15	10
Colombia	0 - 7	5 - 15	10
Korea	5 - 10	5 - 15	5 - 10
Croatia	5 - 15	5 - 15	5 - 10
Denmark	5 - 15	5 - 15	5 - 10
Ecuador	5 - 15	5 - 15	10
Spain	5 - 10	5 - 15	5 - 10
France	15	5 - 15	5 - 10
Ireland	5 - 15	5 - 15	5 - 10
Malaysia	5 - 15	15	10
Mexico	5 - 10	5 - 10 - 15	10
Norway	5 - 15	5 - 15	5 - 10
New Zealand	15	10 - 15	10
Paraguay	10	10 - 15	15
Peru	10 - 15	15	15
Poland	5 - 15	5 - 15	5 - 10
Portugal	5 - 10	5 - 10 - 15	5 - 10
United Kingdom	5 - 15	5 - 15	5 - 10
Sweden	5 - 10	5 - 15	5 - 10
Thailand	15	5 - 15	5 - 10
Switzerland	10	10 - 15	10 - 15

8

Emerging Issues

- Issues include:
 - Transfer pricing
 - Litigious revenue authorities
 - Currency management (inflation)
 - Political risk (change in law)

9

On Going Tax Issues for Foreign Investors

- Transfer Pricing rules not in line with OECD and arm's Length principles.
- Adoption of fixed margins
- Imports
 - Comparable uncontrolled price method (similar/identical)
 - Cost plus method (production cost abroad) + 20% profit
 - Resale price method (PRL20) + 20% DIST profit margin
 - Resale price method (PRL60) + 60% MNF profit margin
average net resale price after deducting local value add

Non related transactions involving Tax Heavens subject to TP rules

10

Ongoing Tax Issues for Foreign Investors

- High uncertainty on tax costs. Frequent change of rules.
 - Example: IOF (Tax on Financial and Currency Exc. Operations)

IOF rates are continuously growing from the basic 0,34%

- 6,00% IOF on up to 2 years external loans (4/2011)
- 6,38% IOF on credit card transactions abroad (3/2011)
- 6,00% IOF on the inflow of international investments in the Brazilian capital markets (12/2010)
- 3,00% IOF on internal loans (4/2011)

11

Ongoing Tax Discussions at Court Level

- Federal Supreme Court
 - Exclusion of the ICMS and of the ISS in the PIS/COFINS base
 - Exclusion of the CSLL from the Corp. Income Tax (IRPJ) base
 - Exclusion of the export revenue from the CSLL base
 - IPI tax credit on tax exempt sales
 - Regional ICMS Incentives, including FUNDAP
- Superior Court of Justice
 - Statutes of Limitation for Submissions of Tax Refunds
- Federal Court of Appeal
 - Taxation of Services under Article 7 Tax Conventions

12

Chilean Transfer Pricing Rules

- Poorly drafted legislation.
- No obligation for transfer pricing studies
- Some litigation is just starting
- New legislation is expected later in 2011

13

Tax Controversy Today in Chile

- Aggressive tax planning that considers a long term implementation period. Example: Branches of Chilean companies abroad, regarding tax losses and the avoidance of stamp tax by obtaining loans abroad.
- Structures that allow remitting funds abroad avoiding the withholding tax on dividends, in particular through investments abroad.
- Corporate Tax reimbursements requests due to the offset of tax profits with tax losses

14

Local Issues Relating to Takeover of Canadian Target with Local Subsidiary

- Typical Scenario – CanAcquireco purchases CanTarget shares from public; subsequent amalgamation of CanTarget with CanAcquireco or CanAcquire subsidiary
- Post-Acquisition restructuring
- Transfer of direct or indirect interest in Chilean or Brazil subsidiary of CanTarget
- Nature of amalgamation
- Carve-out for mines in capital gains articles?

15

Financing Local Development/Construction

- Foreign service provider of technical services (e.g., geological or engineering services).
- Financing mine construction
 - Use of CanAcquireco's captive finance subsidiary in low-tax jurisdiction
 - Chilean financial institution WHT rate
 - Local functional currency issues

16