Tax Bulletin

1. The DIAN has clarified its stance regarding the time and period over which it is necessary to file the income tax return upon acquiring tax residency in Colombia.

By means of Opinion No. 000947 dated July 29, 2015, the DIAN has stated that if interrupted or uninterrupted stay for 183 or more days in the country spans more than one tax year, the person will be considered resident from the second tax year or period. In such event said individual will be required to meet tax obligations only in regard to the second period. However the DIAN also clarified that the tax year is not dividable, reason why once the tax residency is acquired in connection with a tax year/period, observance of tax obligations will relate to the entire year/period and not from the month of the year in which such residency was acquired.

2. Colombia was not included in the IRS report of countries that have met infrastructure and confidentiality requirements to receive tax information.

Last October 2nd the IRS reported the progress made in the infrastructure required to implement the information interchange with certain countries it had entered an IGA for implementation of the FATCA. In this regard it listed the 34 countries that have met the established confidentiality and infrastructure requirements and which will consequently receive information from the IRS. Colombia was not included in such list so it may be concluded that the country failed to meet the requirements for receiving tax information from the IRS. It is important to note that this does not mean that the FATCA is not effective in Colombia. All financial and non-financial entities of the country receiving investments or deposits from a natural person or legal entity qualified as US-persons are required to provide information to the IRS on the same under penalty of being subject to withholdings.

3. Opinion 0830 date 03 September 2015: Branches and EP are under obligation of conducting and retaining the study for assignation of the income and windfall profits even if no operation is performed in the tax year or period.

4. Companies undergoing reorganization or liquidation are not exempted from payment of the CREE tax (Official letter 24445 of 2015).

The DIAN has clarified that since companies under reorganization or liquidation are not expressly excluded as passive subjects of the CREE tax, the same are under obligation of filing the annual return of such tax for the corresponding tax year or year fraction.

5. VAT exclusion of electric power utility and supplemental activities is not automatically and entirely applicable to all assets used on occasion or by provision of the electric power utility.

In Opinion 025652 dated September 3, 2015, the DIAN stated that even though according to section four of Article 476 of the Tax Code, the electric power utilities and supplemental activities are excluded from the VAT, this is not an all-encompassing exclusion. Hence

supplemental activities of generation, commercialization, transformation, interconnection and transmission are excluded from the sales tax, however, other supplemental activities, such as the lease of electric power meters or other instruments, are not excluded.

6. The DIAN specified and clarified tax effects of reorganizational mergers and spin-offs between companies when the same are partially made (Official letter 25600 of 2015).

Article 319-6 of the Tax Code establishes that in the event of merger or spin-off, the beneficiary companies do not receive any taxable revenue as a result of the asset transfer between the same nor is it held that such transaction relates to a conveyance of shares. Likewise, it is not understood either that there has been a conveyance of shares, units or interests in regard to shareholders and partners. However, for purposes of the above, it is necessary to hold the shares for at least two years once the split-off has been perfected as otherwise it will be mandatory to pay the tax due increased by 30% over the conveyed shares. In regard to this temporary restriction to the conveyance of the shares, the DIAN has provided that in the event the reorganizational spin-off is partial, the same will not apply to shares, units or interests held by the partners on the divesting company. In other words, according to the above supposition, the temporary restriction would be applicable to those shares, units or interests that may be received by the shareholders of the acquiring or beneficiary company.

7. Dian Official Letter 26155 of 2015: The DIAN revokes Opinion 004445 of 2015 on GMF exemption over loan subrogation or novation operations between banking companies.

The DIAN has considered that subrogation, purchase of receivables and novation are covered by the exemption under Article 879 of the Tax Code provided a disbursement credited to the debtor's account is made. When disbursement is made to a third party, it will only be exempted when the debtor has destined the loan to the purchase of a home, vehicles or fixed assets.

8. In Opinion 0943 of 2015, the DIAN has clarified whether an Industrial User of Goods and Services may belong or not to a business group.

In this regard the DIAN has established that an Industrial User of Goods and Services may belong to a business group, provided the same maintains its individuality and capacity to acquire the rights and obligations imposed by customs regulations. Accordingly, an Industrial User belonging to a business group is required to perform exclusively its activity from those areas declared as Free Trade Zones and carry out those activities it has been authorized under the law and the qualification act.

9. Opinion 0948 of 2015: Advances paid by the partners for a future share subscription are a tax liability.

The DIAN held that advances paid by partners for any future share subscription may be considered a liability and be fiscally requested, provided the same are supported by accounting books and/or suitable documents and upon fulfilling all accounting formalities. Such advances are not considered a loan given that the same are not provided as mutuum and hence they do not generate presumed interests.

10. DIAN, Official Letter 25936: Sale abroad of properties covered under the long term temporary import scheme is not subject to the VAT tax.

In regard to any chattels covered under a long-term temporary import scheme whose ownership is transferred abroad, the principle of territoriality takes precedence. Accordingly, it is necessary to take into account the material situation or location of the properties, reason why the sale of properties located abroad does not generate the VAT tax even if the same relate to properties subject to a temporary import.

We hope the above information will prove useful and relevant. We remain at your disposal to provide any additional information you may require on these matters.

Sincerely yours,

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