



## Tax Bulletin

### **I. The Ministry of Finance has issued Decree 1123 of 2015, which regulates requirements, procedures, amounts and conditions for applicability of the conciliation and termination by mutual consent of tax, customs and foreign exchange matters provided under the tax reform.**

#### Conciliation of contentious administrative proceedings:

- Applicability: Conciliation of contentious administrative legal proceedings of a tax, customs or foreign exchange nature may be requested provided a nullity and reinstatement of right action was filed before 23 December 2014 against: official tax calculation from review, arithmetical correction, valuation, review of amount and correction of customs duties, monetary penalties or penalties for inapplicability of refunds and/or offsets.

In addition, for such conciliation to be applicable, it is necessary to meet certain requirements: i) The action should have been accepted before filing of the conciliation request; ii) There should be no final ruling or decision in connection with the action; iii) Proof should be submitted of payment of the private calculation of the tax to be conciliated and iv) Evidence payment of the amount determined in the return or returns for the year 2014 regarding the same tax subject matter of conciliation.

- Conciliation Request: The request in writing shall be filed before 30 September 2015 at the Board of Conciliation and Judicial Defense of DIAN or at the Special Board of Conciliation and Termination by Mutual Consent.
- Amounts to be conciliated: Depending on the type of proceeding the amount of the conciliation will vary:

Type of proceeding	Amount to be conciliated	Requirement
<b>Proceedings vs. Official Tax Calculation in single or first instance</b>	30% of total penalties, interests and update	Payment shall be made of 100% the tax under challenge and 70% of penalty and interests.
<b>Proceedings vs. Official Tax Calculation in second instance</b>	20% of total penalties, interests and update.	Payment shall be made of 100% of tax under challenge and 80% of penalty and interests.
<b>Proceedings vs. Administrative act levying a monetary penalty</b>	50% of updated penalties	Payment shall be made of the remaining 50% of the penalty and update.
<b>Proceedings vs. Administrative act levying a penalty for inapplicable refund and/or offsetting</b>	50% of updated penalties	Payment shall be made of 50% of the updated penalty and return the excess amount refunded or offset with respective interests.



Termination by Mutual Agreement:

- Applicability: Administrative proceedings before the DIAN may be terminated provided the same relate to: a special requirement, requirement expansion, official tax calculation from review, arithmetical correction, valuation, review of amount, correction of customs duties or resolution deciding a remedy filed against any of the above acts.
- Likewise, the same is applicable against summons to declare, list of charges or monetary penalty.

The requirements are: i) Notice of any the above acts should have been given before 23 December 2014; ii) No filing of nullity and reinstatement of right action as of 22 December 2014; iii) by the time of filing the request (before 30/10/15), such act has not become final upon exhausting administrative channels or running of the statute of limitation for filing an action; iv) correction of the private return according to the higher tax or lower positive balance; and v) proof of payment of the private calculation of the tax to be terminated by mutual agreement.

- Application: The request should be filed before 30 October 2015 at the same DIAN Boards being competent to hear the conciliation request.
- Amount: In order to determine the amount of termination by mutual agreement of administrative proceedings, it is necessary to take into account the type of administrative act regarding which termination is sought. It should be noted that the agreement and signing of the termination by mutual agreement should be completed before 30 October 2015.

Type of administrative act	Amount to be settled	Requirement
<b>Special requirements, expansion of requirement, official tax calculation from review, arithmetical correction, valuation, review of amount, correction of customs duties.</b>	Total amount of interests, penalties and update.	Correct the private return and pay 100% of the tax or lower positive balance proposed or calculated.
<b>List of charges, filing of charges, assessment of monetary penalty.</b>	50% of penalties and update thereof.	It is necessary to pay the remaining 50% of the penalty and updates.
<b>Summons to declare, penalty for failing to file a return and resolutions deciding the corresponding remedies</b>	70% of penalties.	Due filing relating to the tax subject matter of the penalty and payment of 100% the tax due.



## II. Pronouncement from the Council of State regarding applicability of amortization of non-productive exploration investments with productive revenues: Sentence 19103 dated 15 April 2015.

The Council of State has ruled that Article 143 of the Tax Code does not provide regulations in connection with the manner and terms under which investments made in exploration may be amortized when the same turn out to be unsuccessful. Based on the above, the Council has stated that it is Article 69 of Decree 187 of 1975 that provided that expenses incurred in exploration, prospection or installation of wells or mines that are not productive may be amortized with revenues from other explorations that may have turned out to be productive. This regulation has thus made possible to amortize such investments, while rendering the deduction applicable.

## III. Decree 1050 of 26 May 2015: Correction of errors and mistakes of the tax reform.

Among the articles of Law 1739 (Tax Reform) corrected by the aforesaid decree is Article 21 related to surcharge on the income tax for equity (CREE) and Article 70 corresponding to the triggering event of the gasoline and diesel fuel tax.

Originally, the paragraph of Article 21 read: *“users qualified and authorized to operate in offshore free trade zones shall not be taxpayers of this surcharge to the income tax for the activity CREE”*. In the aforesaid decree, a change was made from “activity” to “equity” insofar as the former did not reflect the name of such tax.

While an amendment was made to Article 70 due to an incorrect reference appearing in such article. In the original text of the reform reference was made in Article 70 to Article 43. However, it should actually refer to Article 49, since Article 43 relates to the annual declaration of assets abroad, while Article 49 refers to the triggering event of the gasoline and Diesel Fuel tax.

Sincerely yours,

**Sanclemente Fernández Abogados S.A.**

Should you require additional information, please contact us at:

Maria Fernanda Castillo - [mcr@sfa.com.co](mailto:mcr@sfa.com.co)

Fredy Castaño R - [fcr@sfa.com.co](mailto:fcr@sfa.com.co)

The information in this bulletin is confidential and addressed only to the clients of SANCLEMENTE FERNÁNDEZ ABOGADOS S.A. for the exclusive use thereof, and is only for informational purposes and it does not constitute legal advice or counsel. Legal advice should be sought in connection with any particular matter or issue. Total or partial reproduction, use, copy, transformation, edition, distribution, sale, rental, public communication or any other procedure is prohibited to any person, company or entity other than the addressee of this communication. Express authorization in writing from SANCLEMENTE FERNÁNDEZ ABOGADOS S.A. is required for reproduction or forwarding of this information to any other person.