

November 9, 2016

LEGAL ALERT

Law No. 20,956: “Law to Boost Productivity”

On October 26th, 2016, Law No. 20,950, otherwise known as the **“Law to Boost Productivity”** (the “Law”), was published in the Official Gazette, introducing various modifications to different laws and regulations in order **to enhance the country’s productivity through the expansion of the financial system and the promotion of the exportation of services.**

Main measures for the expansion of the financial system:

- **Several legal provisions of Law Decree No. 824 (Income Tax Law - “ITL”)** are modified, eliminating a number of operative obstacles with the purpose of facilitating the settlement of foreign custodians in Chile and promoting the participation of foreign investors in the financial market. To these ends:
 - The methodology for calculating interest accrued by publicly offered debt instruments referred to in Article 104 (“Article 104 Instruments”) is modified in order to adjust their computation method to the particular terms of each instrument’s issuance;
 - A new withholding rule is established for issuers of Article 104 Instruments, under which they are obligated by default to make a general 4% withholding over the amount of interest accrued to the date of each payment or redemption with respect to the holders, allowing local holders to use the withheld amount as an anticipated payment towards any First Category Tax or Global Complementary Tax due[1].
 - It is established that for the application of the new withholding rule, the withheld amount must be paid within five business days following the withholding date, including several legal changes to ensure that the issuer has the necessary cash flows to cover the withholding tax.
 - It is established that certain Article 104 Instruments issued by the Central Bank and the General Treasury of the Republic are exempted from the obligation of recognizing the difference over the principal balance due on redemptions or prepayments as interest.
 - Finally, issuers and other agents that act as withholding agents must

inform the Chilean Tax Authority as to which withholding mode has been chosen.

- **Law No.19,983 (Governs the Transference of the Assignable Copy of an Invoice and Makes it Directly Enforceable)** is modified establishing two new scenarios in which the invoice is understood to be irrevocably accepted:
 - a) not claiming the lack of delivery of the merchandise or the provision of the service within eight calendar days from the receipt of the invoice; and
 - b) to expressly accept the invoice within the same term. In addition, the parties are no longer allowed to agree on a term to reject the invoice and it is stated that if the receipt has not been made within eight calendar days following its reception and there is no claim made regarding the content of the invoice or non-delivery of merchandise or provision of services, it will be presumed that the services have been provided and the merchandise delivered, leaving the bill suitable for assignment and directly enforceable, with no need for the receipt to be evidenced in the invoice.With this, a higher certainty is assured regarding the terms for the acknowledgment of receipt, thus enabling higher liquidity and lower financial costs for companies via factoring.
- **Article 45 of Law Decree No. 3,500 (Establishes the new Pensions System - “DL 3,500”)**, which establishes the instruments in which Pension Fund Managers (“AFP”) may invest the funds of the Pension Funds, is modified, incorporating (a) instruments, transactions and agreements representative of real estate assets, private equity, private debt, infrastructure and other types of assets that the Investment Regime might determine; and (b) bonds issued by investment funds governed by Law No. 20,712. In both cases, the Investment Regime of the Pension Funds will determine the conditions to be met by these instruments.
- **Article 58 A of Law No. 19,728 (Establishes an Unemployment Insurance)**, which governs the investments of the Solidary Unemployment Fund and the Unemployment Fund. Previously, both funds may only invest in the instruments listed in article 45 of DL 3,500. The Law modifies the former, establishing that the Solidary Unemployment Fund must be invested in the instruments, transactions and agreements listed in article 45 of the DL 3,500 and in the promise of payment and subscription of investment funds quotas agreements described in article 48 of the said DL. On the other hand, the Unemployment Fund must be invested in all the instruments, transactions and agreements listed in said article 45, excepting for those included in letter n).
- **Law No. 18,840 (Organic Constitutional Law of the Central Bank of Chile)** is modified**, replacing the Central Bank's power to create and regulate the operation of check and other securities clearinghouses to which banking companies and their subsidiaries attend to, for a broader power to create

and regulate the operation of payment systems established in Chile, in which banking companies and other financial institutions controlled by the Superintendence of Banks and Financial Institutions participate, for the acceptance, settlement and liquidation of payment orders corresponding to money obligations, allowing the Central Bank to acknowledge payment systems established offshore. Additionally, it is indicated that transactions in accordance with the rules of these systems will be firm, i.e., final, irrevocable, binding and enforceable against third parties, and may not be affected by a declaration of nullity, unenforceability, inefficiency, challenge, forced liquidation, or any other cause, which seeks to limit or restrict the transactions carried out and remarking the principle of firmness and irrevocability of payment transactions of international payment systems.

- **Law No. 18,876 (Establishes the Legal Framework for the Incorporation and Operation of Private Deposit of Securities Custody Entities) is modified.** The assets that may be deposited are increased from only publicly offered securities, to include other assets, documents and agreements at the discretion of the Securities and Insurance Superintendence ("SVS"). Furthermore, Article 14 is replaced, regulating in detail the pledge and real rights on securities held on deposit. Thus, in order to give greater flexibility to this type of pledge, it is noted that pledges or real rights over the deposited securities: a) may be granted subject to other laws; or b) may be granted subject to a new type of pledge named "Special Pledge over Deposit Securities Registered in the Book Entries System", regulated in article 14 and in article 14 ter. This new pledge will be granted, modified and released pursuant to a framework agreement entered into by the deposit entity and the depositors, to which their corresponding principals may adhere as well, provided they are qualified investors.
- **Decree with Force of Law No. 251 (Insurance Companies Law) is modified**, allowing insurance companies to invest directly in public use infrastructure concession companies, and also allowing the SVS to exclude the shares of such companies from the prohibition of being subject to liens (these projects are generally subject to liens given the nature of their development).
- **Article 7 of Decree Law No. 1,123 of 1975 (Replace the Monetary Unit) is modified**, eliminating the \$1 and \$5 peso coins. Additionally, it is established that in the case of payments made in cash, the quantities equal to or less than \$5 will be rounded down, and the quantities equal to or greater than \$6 will be rounded up, not generating any tax effects or any obligation to modify tax documents that have been, or should be, issued.

Main measures to promote the exportation of services:

- **Article 41 A of the ITL is modified**, extending the foreign tax-credit benefit to any service qualified as an export service by the National Customs Service, no longer limiting it exclusively to technical and other similar services[2]; and extending the foreign tax-credit benefit for income arising from employed and independent work, when it comes from countries without a tax treaty to avoid double taxation. Article 59 of the ITL is also modified, eliminating the withholding tax rate increase for payments made to related parties on account of software and engineering services; and extending the withholding tax exemption to payments for technical or engineering works or services hired in order to export services from Chile.
- **Certain provisions of Law Decree No. 825 (Value Added Tax Law) are modified.** On one hand, the VAT exemption of number 16, letter E, of article 12 is modified, broadening the concept of export services in order to include services that are partially rendered in Chile and used abroad. Article 36 is also modified, allowing the recovery of the VAT associated with the acquisition of goods and services used to render services that are entirely provided and used abroad, when such services would have been subject to VAT if rendered in Chile and are levied with a tax of an identical or similar nature in the country in which they are rendered or used.

[1] This new withholding rule shall not apply when the terms of issuance of the respective instrument state that the withholding shall be governed by the rule applicable to representatives, custodians, brokers and other local entities designated by non-resident taxpayers for the purposes of complying with their tax obligations, in which case, the provisions of Article 74 No. 8 (formerly No. 7) shall apply.

[2] Retroactively applicable to services provided on or after January 1st, 2016.

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