Chapter XX

URUGUAY

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I INTRODUCTION

Inward investment is booming in 2012, and has consistently grown over the last few years. As of 2012, Uruguay ranks among the top 20 countries in terms of the volume of foreign direct investment coming into the country. The phenomenon is attributable to several factors:

a Uruguayan traditional agrarian products are highly priced in the international markets (wheat, soybean, rice, corn, meat);
b forestry production has revolutionised the Uruguayan agrarian landscape;
c the establishment of a major pulp-plant (by Finnish Metsä-Botnia, currently UPM), and the construction of a second one (Montes del Plata: a joint venture between Stora Enso and Arauco), which is in process at the time of writing;
d the increasing needs of significant infrastructure works to facilitate transportation of local production; and
e the stability of the country.

Other general conditions of the country remain attractive: no exchange controls, inflow and outflow of foreign currency is free, no foreign investment registration, high literacy levels, a reliable legal system and independent judicial system, high internet penetration and a peaceful environment.

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II COMMON FORMS OF BUSINESS ORGANISATION AND THEIR TAX TREATMENT

The most commonly used types of business entities are the corporation ('SA') and the limited liability company ('SRL'). Both are subject to corporate income tax ('CIT') at the rate of 25 per cent, VAT at the rate of 22 per cent (or 10 per cent, as the case may be), and net equity tax at the rate of 1.5 per cent, to name the most significant taxes impacting upon business forms in Uruguay.

Additionally, SAs are subject to corporation control tax ('ICOSA') at an annual flat sum (the amount is updated by the Executive Branch on a yearly basis).

Foreign companies can also adopt the form of a branch. Branches are deemed to be part of the same legal entity as their parent company, and are subject to CIT (at a rate of 25 per cent) in the same manner as any other corporation or business entity.

i Corporate

Most businesses adopt the corporate form, as the liability is limited to the capital the shareholders or the partners may have injected into the company (except for the branch of a foreign entity, where the parent company is fully liable for any and all of the debts of the local branch, as the parent company and branch are deemed to be part of the same legal entity). Essentially, the tax treatment of the several corporate forms is the same: all are subject to CIT, VAT and net equity tax.

ii Non-corporate

Non-corporate entities are also CIT taxpayers: agrarian partnerships, permanent establishments of foreign entities, state-owned agencies, investment funds, trusts (save for security purposes trusts), civil partnerships and *de facto* partnerships (except where comprised exclusively by resident individuals, and except where their income is of capital-source only, in which cases the partners are subject to personal income tax ('IRPF') at rates ranging between 10 per cent and 30 per cent).

Sole-proprietorships, which combine capital and labour to obtain an economic result, are also CIT taxpayers.

III DIRECT TAXATION OF BUSINESSES

CIT is assessed on a yearly basis over the Uruguayan sourced income at the rate of 25 per cent. Income is deemed to be of Uruguayan source where the same stems from activities conducted in, assets based in or rights economically utilised in Uruguay.

i Tax on profits

Determination of taxable profit

CIT is assessed over Uruguayan sourced 'net income'. Net income is defined as the balance between gross income minus admitted expenses.

Gross income means the total byproduct of commercial, industrial, services, agrarian and any other activities comprised within the scope of the CIT. For sale transactions, gross income means the total net sales minus the acquisition cost.

Gross income includes any other increase in the assets of the taxpayer occurring in the course of the fiscal period. For example, the notion of gross income also includes:

a the result emerging from the sale of fixed assets (which result is the balance between the sale price minus the adjusted acquisition cost duly depreciated);
b exchange differences resulting from foreign currency transactions;
c benefits emerging from collections arising from the compensations or indemnities for extraordinary loses; and
d the result emerging from the sale or transfer of an ongoing business concern, to name a few.

Revaluations of fixed assets and injections of paid-in capital are not deemed to be gross income.

Net income results from the balance between gross income minus the expenses (accrued in the fiscal period) that are necessary to obtain and preserve the taxable income, all duly recorded.

Deductible expenses are only those expenses that constitute taxable income for the other party, whether under CIT, IRPF or non-residents income tax ('IRNR'), or that otherwise are subject to an effective income taxation abroad. Where the sums paid are subject to IRPF at the rate of 12 per cent (because the respective sums correspond to capital gains), or where the sums paid are subject to IRNR at the rate of 12 per cent, the deduction would be effected on a *pro rata* base. The effective taxation abroad must be evidenced by competent public bodies abroad, or otherwise by private auditing companies of recognised prestige.

The following expenses are expressly deductible:

a losses arising from force majeure non-covered by insurance;
b losses stemming from criminal acts committed by third parties and not covered by insurance;
c bad credits;
d depreciation costs;
e compensation for services (whether pertaining to subordinate employees or to independent contractors);
f expenses in favour of personnel (which are not deemed salary) to assist in the health, culture and education of respective employees, in reasonable amounts;
g donations to public bodies; and
h taxes (with the exceptions of CIT, net equity tax and taxes payable to non-governmental bodies).

Certain expenses can be deducted for an increased amount:

a employees training in those areas which are deemed to be a 'high priority';
b expenses required (as established by the Administration) to improve working conditions and the work environment;
c research and development projects previously approved by the Administration; and
d expenses incurred to obtain internationally admitted quality control standards.

Expenses related to non-taxed income may not be deducted. By way of example, the following expenses are not deductible:

a personal expenses pertaining to the shareholders or partners;
b losses stemming from illegal acts;
c penalties for tax infringements;
d CIT and net equity tax; and
e goodwill amortisation.

Certain expenses are fully deductible regardless of the tax treatment received by the payee: freight expenses paid to maritime and air transportation companies; expenses incurred abroad for housing, transportation and similar items, all in amounts reasonable as per the Tax Office judgment.

Depreciation occasioned by the normal wear and tear of assets used in the business or activities of the taxpayer that produce taxable income must be computed at a fixed annual percentage. Amortisation of improvements over urban and suburban real estate shall be 2 per cent per year, and 3 per cent for rural real estate.

Capital and income

Capital gains earned by any type of corporate entities located in Uruguay, including permanent establishments belonging to entities organised abroad, are subject to CIT at the rate of 25 per cent.

Losses

Losses can be carried forward to offset taxable income of future fiscal years, up to five years from the year in which the loss was incurred.

Rates

The sole and general CIT rate is 25 per cent.

Administration

All corporations, sole proprietorships and other CIT taxpayers must file their tax returns within four months from the end of their fiscal period.

In Uruguay, in addition to the National Government (which exercises tax powers over national taxes through the Tax Office ('the DGI'), the departments (provinces) have authority to create taxes over the tax bases expressly listed in the National Constitution; the number of taxes the departments may create is rather limited, the most significant ones being the tax on the ownership of real estate property and the tax on the ownership of vehicles.

In general, there is no routine audit cycle.

The DGI is responsible for interpreting the laws and decrees regarding taxes under its jurisdiction. It is possible to file binding tax inquiries. The DGI response to such inquiries ('advanced rulings') is binding upon the Tax Office, and is published in the Official Bulletin of the DGI. Where the taxpayer believes that the opinion expressed by the Tax Office in the advanced ruling is incorrect, the taxpayer may challenge such opinion through appeals at the administrative level (those appeals are also ruled by the DGI, and, if rejected, by the Executive Branch), and if the opinion of the Tax Office is still maintained, the same may be challenged before the High Administrative Tribunal an independent court made up of five justices, which revises the legality of the acts issued by the Administration.

Tax grouping

As a general rule, tax regulations do not recognise the concept of consolidation (the combining of two taxpayers) for tax purposes. Under Uruguayan tax rules, each taxpayer is responsible for its own taxes, and must pay the tax owed or carry forward the losses without considering its relationship with other taxpayers. As a result of this system, a tax can be triggered even though an economic group suffers, in the aggregate basis, tax losses. That said, on occasions the Tax Office has attempted to impose tax liability on companies or individuals different from the taxpayer, arguing the 'economic group' doctrine.

ii Other relevant taxes

Other relevant national taxes are listed below:

Value added tax

VAT applies over the sale of goods, the rendering of services, the importation of goods and the value added over construction in real estate property.

VAT is assessed only on a territorial basis: only sales effected in Uruguay and services performed in Uruguay are subject to VAT. Services performed abroad are excluded from the taxable event.

The tax rate is 22 per cent, except that the sale of certain goods (bread, medicines) and certain services (for instance, services related to medical care) is subject to a reduced rate of 10 per cent. VAT over the real estate construction is subject to the same rate.

Certain expressly listed services (such as supply of ships, transportation to foreign countries) are excluded from VAT where rendered for the benefit of foreign persons who benefit from the exported service abroad; in those cases, the taxpayer also benefits from a credit equivalent to the inbound VAT.

Net equity tax

Net equity tax is assessed over the net worth – assets minus liabilities – at an annual rate of 1.5 per cent (except for banking institutions, which are subject to a higher rate). Only certain liabilities can de deducted.

Excise tax

Excise tax is assessed over the importation or first local sale, as the case may be, of certain assets expressly listed, including tobacco, perfumes, alcoholic beverages, cosmetics and vehicles. The rate varies on a case-by-case basis.

Corporation control tax

ICOSA is assessed at the time of incorporation of companies at the approximate amount of US$950; thereafter, ICOSA is assessed at the end of the closing of every annual fiscal period at an annual sum of US$550. Such an amount is adjusted on a yearly basis, and the precise figure varies depending upon the prevailing rate of exchange.

Stamp tax

There are no stamp taxes in Uruguay.

IV TAX RESIDENCE AND FISCAL DOMICILE

i Corporate residence

For CIT purposes, residence is determined in accordance with the place of incorporation of corporate business: therefore, companies incorporated in Uruguay are deemed to have corporate residence in Uruguay for CIT purposes (regardless of the location where the management and control are exercised). Companies established abroad that transfer their domicile to Uruguay are also deemed to be Uruguayan residents for CIT purposes (likewise, companies incorporated in Uruguay that have transferred their domicile abroad are deemed to be non-residents once the transfer of domicile proceedings has been finalised).

ii Branch or permanent establishment

Branches of foreign entities are deemed to be a permanent establishment of the foreign entity and as such Uruguayan residents for tax purposes. Uruguay CIT rules expressly contemplate the permanent establishment notion following (essentially) the OECD guidelines: a foreign entity is deemed to have a permanent establishment in Uruguay where the foreign entity conducts all or part of its activity through a fixed place or location. By way of example, the notion includes direction venues, branches, offices, manufacturing plants, mines, construction works (including their supervision) whose duration exceeds three months, and performance of services (including consulting) over a period in excess of six months in any given 12-calendar month period.

The local income of a permanent establishment is determined on the ground of its separated accounting, subject to the necessary adjustments to determine the actual income of the permanent establishment. Operations conducted between the foreign entity and its permanent establishment are deemed to be as conducted between unrelated companies, as long as the same are engaged on an arm's-length basis. Financial operations (capital withdrawals, etc.) are deemed to be capital transactions.

V TAX INCENTIVES, SPECIAL REGIMES AND RELIEF THAT MAY ENCOURAGE INWARD INVESTMENT

i Holding company regimes

Uruguayan laws contemplate a special regime for holding companies – investment companies – which are defined as those corporations whose main purpose is the participation in the capital of other companies, in Uruguay or abroad. Holding companies are not subject to the restrictions applicable to other corporate entities regarding the limits in the participation in the capital of other companies.

Such holding companies are frequently used for tax planning purposes, both in Uruguay and abroad. Distribution of dividends is only taxed (at the rate of 7 per cent) where the corporate income is taxed: this means that where the company's income is exempted (for instance, this is the case for income obtained by free zone companies), or where the company's income remains untaxed or excluded from the scope of CIT, the distribution of dividends abroad is not subject to taxation.

This holds especially true for regional and international tax planning. As explained above, for CIT purposes Uruguay maintains the principle of the source: only Uruguayan-sourced income is subject to CIT. Therefore, if a Uruguayan holding company participates in the capital of foreign companies, the dividends distributed by the holding company remain untaxed: this is because the income of the holding company (i.e., the dividends collected from the foreign companies in which the holding company takes part) is foreign-sourced and as such excluded from the scope of CIT.

ii IP regimes

Uruguayan laws do not include any special IP regime.

iii State aid

There are several investment promotion systems. Industries, sectors and projects declared 'promoted' benefit from a wide range of tax benefits.

iv General

Several characteristics of the Uruguayan tax system tend to favour and encourage investments in and through Uruguay.

Non-taxation of foreign-sourced income

This tends to be quite an attractive characteristic of the Uruguayan tax system, especially to channel investments abroad (see Section V.i, *supra*).

Free zones

Uruguay has a very successful free zone regime. Free zones are defined as those areas of the Uruguayan territory that are deemed excluded or separated from the customs territory: merchandises and services entering the free zones from abroad are not subject to any taxation, and the delivery of goods and services from the free zones to foreign countries is also untaxed. The introduction of goods from the free zones into the Uruguayan customs territory is deemed an import operation, subject to standard import taxation.

Goods delivered in the free zones are exempted from VAT; services performed within the free zones are also exempted.

Not only can certain areas be declared free zones: under the Free Zones Acts, a specific project, because of its impact over the overall economy, may be declared a free zone. This is the case of the pulp-plant established by Finnish Botnia (and thereafter acquired by Finnish UPM) and the Montes del Plata pulp-plant, whose construction has just started: both are, by themselves, free zones. Both projects (each of them for amounts that largely exceed US$1 billion) speak highly of the success of the free zone system. As of today, more than 1,500 projects are based in Uruguay's free zones. In recent times, two exclusively services-oriented free zones have been approved, both conveniently located in the city of Montevideo. All sorts of activities can be conducted in the zones: industrial, services, commerce, warehouse, assembling and finances count among the many projects currently conducted out of Uruguay's free zones.

In addition, free zone users or operators are exempted from all national taxes. Free zone users are those entities or persons who enter into an agreement with a free zone owner to operate in the zones and have their agreement registered with the Free Zones Division. In order to maintain their free zone user status, the personnel of free zone operators must be comprised by Uruguayan citizens in a percentage of not less than 75 per cent, unless a waiver is expressly obtained from the Executive Branch.

Free zone operators are precluded from conducting their normal business operations in the rest of the Uruguayan territory.

The tax benefits granted by the Free Zones Act are secured by the Uruguayan state: eventual denial of such benefits triggers liability for damages.

Most activities in the zones are conducted by special-purpose corporations whose by-laws restrict their operations to activities in the free zones.

The Investment Promotion Act

The Investment Promotion Act (Law No. 16.906 of 7 January 1998) establishes the main principles that govern investment projects in Uruguay:

- *a* foreign investments are granted the same treatment as national ones;
- *b* the state commitment to grant fair treatment to investment projects and to refrain from any discriminatory acts;
- *c* investments are admitted without the need of any prior approval;
- *d* inflow and outflow of foreign currency is free; and
- *e* disputes with the Uruguayan state may be settled by arbitration.

The Investment Promotion Act also grants some automatic tax benefits:

- *a* exemption from net equity tax of those moveable assets directly applied to the industrial process (essentially, machinery);
- *b* net equity tax exemption in connection with data processing equipment;
- *c* VAT exemption over the import of the assets listed under (a) and (b); and
- *d* VAT refund for the VAT included in the purchase of such goods.

The Investment Promotion Act authorises the Executive Branch to recognise an accelerated amortisation, and to grant a net equity tax exemption over building enhancements and over intangible assets.

On a case-by-case basis, the Uruguayan Administration may grant broader tax benefits (CIT exemption, net equity tax exemption over other assets, etc.) considering the following criteria: technological encouragement, export promotion, workforce generation, and local added value, to name some of the most significant ones.

Decree No. 455/007

In 2007, an Executive Branch Decree implemented the Investment Promotion Act expanding its benefits to a broader spectrum of companies. Since then, most investment projects conducted in Uruguay are channelled through the Investment Promotion Act. The main aspects of the regime established under Decree No. 455/007 are as follows.

Beneficiaries

This refers to all companies (or sectors of companies) whose investment projects are declared 'promoted' by the Executive Branch. Under the Decree, there are no restrictions as to the sectors or projects that may be declared promoted. For purposes of the Decree, 'investment' is deemed to be the acquisition of the following items intended to form part of the fixed assets or intangibles:

a moveable assets intended directly for the company's activities;

b enhancements in real estate properties; and

c those intangibles to be defined by the Executive Branch.

Benefits

The Decree grants ample CIT benefits, which vary depending upon the size of the project: the larger the investment project, the higher the percentage of CIT exempted. There is a cap for the CIT exemption that can be given under the Decree: such cap ranges from 20 per cent (of the amount invested) for the smallest trench of investments, up to 100 per cent (of the amount invested) for the largest trench of investment projects, with a cap of 60 per cent of the total sum of the tax to be paid. The CIT exemption established above may be granted for a maximum period of 25 years.

Criteria

In addition to the size of the investment, a matrix of targets and indicators are also considered at the time of evaluating the grant of CIT exemption indicated above: employment creation, territorial descentralisation, export growth, increased added value, increased research, development and innovation, use of clean technologies, and the overall impact of the project on the Uruguayan economy.

Temporary admission regime

Temporary admission is the tax-free introduction of foreign goods into the national customs territory (from abroad), with no purpose other than being re-exported abroad within a maximum period of 18 months, in the state in which the products were introduced or after having been subject to certain processing, manufacturing, repairing or value-added processes, with effective occupation of labour.

The temporary admission regime also applies to machinery and equipment of any source entering temporarily for maintenance, repair or upgrade.

International or offshore trading

Trading of foreign goods between foreign companies (with no physical transit of the merchandises through Uruguayan territory) is subject to CIT (at the rate of 25 per cent) only over a reduced tax base of 3 per cent assessed over the balance between the sales price and the purchase price.

Sale of bearer shares

Sale of bearer shares by a non-resident is exempted from all taxes.

VI WITHHOLDING AND TAXATION OF NON-LOCAL SOURCE INCOME STREAMS

i Withholding outward-bound payments (domestic law)

Dividends paid by Uruguayan companies to foreign shareholders are subject to a 7 per cent withholding (for IRNR), as long as such dividends pertain to income subject to CIT in Uruguay. Where the company's income is exempted or excluded from CIT, the distribution of pertaining dividends is exempted. Therefore, distribution of dividends by companies whose income is fully foreign-sourced, or distribution of dividends by companies who benefit from a free zone user status, is exempted from any withholding. Where the income of the Uruguayan company is partially exempted or non-taxed, the distribution of dividends is taxed only on a *pro rata* basis.

Interest paid to foreign entities is subject to a 12 per cent withholding (for IRNR). However, such withholding is exempted where the borrower is a CIT taxpayer whose assets are dedicated to non-taxable income in a percentage of not less than 90 per cent. Due to such reason, interest paid by free zone users to foreign entities remains untaxed.

Technical services – paid by CIT taxpayers to foreign entities – are subject to a 12 per cent withholding (for IRNR) as long as they relate to an income subject to CIT in Uruguay. Where no more than 10 per cent of the income (of the Uruguayan entity receiving the technical services) is subject to CIT, the 12 per cent withholding only applies over a reduced tax base of 5 per cent of the total fees paid by the CIT taxpayer to the foreign entity. Technical services fees paid by free zone users are exempted from any withholding.

Royalties paid by CIT taxpayers to foreign entities are subject to a 12 per cent withholding (for IRNR). Royalties paid by free zone users are exempted from any withholding.

ii Domestic law exclusions or exemptions from withholding on outward-bound payments

As explained above, the sale of bearer shares by a non-resident is exempted from IRNR.

Distribution of dividends abroad is exempted where the income (of the Uruguayan company distributing the dividends) is exempted or non-taxed.

Dividends distributed to non-residents by companies whose stock is publicly listed are also exempted.

Interest paid abroad is exempted where the assets of the borrower dedicated to untaxed activities represent not less than 90 per cent of his orher total assets.

Interest paid by public bodies is exempted from IRNR.

iii Double taxation treaties

Uruguay has eight double taxation treaties currently in full force and effect with the following countries: Germany, Hungary, Liechtenstein, Mexico, Portugal, Spain and Switzerland. Other double taxation treaties have been negotiated or signed with Belgium, Ecuador, Finland, India, Malta, South Korea and Sweden.

Under the treaties in force, the applicable withholding rates cannot be above the rates listed in Appendix I.

iv Taxation on receipt

Dividends received by CIT taxpayers (Uruguayan companies) from companies based abroad are deemed foreign-sourced income and therefore remain untaxed.

VII TAXATION OF FUNDING STRUCTURES

i Thin capitalisation

In Uruguay there are no thin capitalisation rules.

ii Deduction of finance costs

Finance costs can be deducted if they are considered necessary to obtain and maintain the source of income. The limitation referred to under Section III.i, *supra*, also applies to finance costs deduction.

iii Restrictions on payments

In order for a company to be able to pay dividends, it must have reflected accounting profits deriving from approved financial statements. No dividends can be distributed until prior years' losses have been covered. A legal reserve must be established, into which 5 per cent of the net profits must be channelled; such an obligation ends when the legal reserve reaches a percentage of 20 per cent of the paid-in capital. There are no other specific rules preventing the payment of dividends.

iv Return of capital

Reduction or capital return is feasible. The price portion (of the return or reduction) that exceeds the face value of the share is deemed to be dividend, and is subject to taxation as mentioned above.

VIII ACQUISITION STRUCTURES, RESTRUCTURING AND EXIT CHARGES

i Acquisition

Normally, non-local companies acquiring a local business would purchase shares in the local target company, where the capital of the local company is expressed in bearer shares. This is because the transfer of bearer shares is exempted from IRNR and from IRPF.

Traditionally, business ventures were financed by loans. However, since the enactment of the IRNR – which is assessed (among others) over the interest payable to foreign entities – equity seems to be more frequently seen. This is also to avoid exchange difference tax implications where the loan has been contracted in foreign currency.

ii Reorganisation

The Executive Branch has the right to exempt the merger, spin-off or reorganisation of companies from CIT – as well as from VAT and from the tax on the transfer of real estate property (2 per cent on both the seller and buyer) – where it is demonstrated that such corporate reorganisations may expand or strengthen the applicant company.

iii Exit

There are no specific exit taxes in Uruguay. If a company established in Uruguay decides to transfer its domicile abroad, the company must so inform the relevant pubic bodies (the Tax Office, the Social Security Office and the Internal Comptroller of the Nation) and obtain certificates evidencing the absence of tax and social security liabilities. The transfer of domicile abroad remains untaxed. Upon the completion of proceedings to transfer the domicile abroad, the entity will be deemed to be a non-resident for all tax purposes.

IX ANTI-AVOIDANCE AND OTHER RELEVANT LEGISLATION

i General anti-avoidance

Uruguay's Tax Code includes a general anti-avoidance rule usually known as the 'reality principle', which means, essentially, that substance prevails over form. Although the scope of such a principle is far from clear, it is frequently invoked by the Tax Office to challenge tax structures deemed to be abusive (or absent of business purpose).

ii Controlled foreign corporations

Uruguayan laws include just a small number of anti-deferral rules. Uruguayan tax residents (IRPF taxpayers) who obtain passive income (income stemming from deposits, loans, and financial or credit placements of any type) from foreign entities must pay IRPF (at the rate of 12 per cent) over such an income – regardless of their effective distribution – as long as the foreign entity is subject to an effective income taxation (in the foreign country) at a rate below 12 per cent.

iii Transfer pricing

Transfer pricing rules were enacted in Uruguay by Law Nº. 18.083 of 27 December 2006 ('the Act'). The Act introduced comprehensive legislation on this subject, mainly patterned after the OECD guidelines.

In 2009, the Act was regulated by Decree Nº. 56/009 of 26 January 2009 and Decree Nº. 392/009 of 24 August 2009 ('the Decrees'), and more recently by Tax Office Resolution Nº. 2.084/008 of 1 December 2009 ('the Resolution'), which refined some of the provisions of the Decrees and set forth formal obligations that have to be met by the subjects regulated by transfer pricing rules.

The Decrees determined that the persons who fall under transfer pricing rules are:

a CIT taxpayers that perform operations with related parties incorporated, based, with residence or located abroad; and

b those who perform operations with entities incorporated, domiciled, based, with residence or located in countries of nil or low taxation, or that benefit from a special regime of nil or low taxation, including operations performed with entities operating in custom exclaves (even those that might be located inside the national territory) and benefit from a regime of nil or low taxation.

The Resolution defined the requirements needed for the determination of a connection between the parties, describing a series of hypotheses under which this link is deemed verified.

The Act had left to the Regulation the exhaustive determination of the list of countries of nil or low taxation, and special regimes of nil or low taxation. The Decrees included a list of 33 countries of nil or low taxation regimes, including the American Virgin Islands, Belize, the BVI, the Cayman Islands, Gibraltar, Dutch Antilles and Panama, and authorised the Tax Office to broaden this list.

The Decrees set forth that those countries, dominions, jurisdictions, territories or associated states that enter into exchange of information agreements, or those that introduce amendments in their internal income tax rules in order to adjust them to internationally recognised parameters, would be withdrawn from the list. Uruguay has recently entered into treaties aimed at avoiding double taxation with several countries (as listed above), which include exchange of information obligations.

The five recognised adjustment methods recognised by the Act are:

a the comparable price between arm's-length parties method;
b the resale price between arm's-length parties method;
c thecost plus method;
d the profit split method; and
e the transactional net margin method.

The Act sets forth the manner under which these methods should be applied.

The Decrees provide that the application of adjustment methods, as well as the analysis of the transfer prices comparability and justification, can be conducted either in connection with the situation of the foreign party or the local entity.

Accordingly, it was established that for the application of the adjustment methods, those transactions between which there are no differences affecting the price, the profit margin or the amount of the consideration should be considered comparable, and also those where (if applicable) the differences can be eliminated by virtue of adjustments that allow a substantial degree of comparability.

The Decrees describe the items and circumstances that should be taken into consideration in order to adjust the differences that permit a comparison between operations (e.g., the characteristics of the transactions, functions or activities, contractual terms, economic circumstances), and set forth the requirements to be met in order to eliminate these differences.

When the application of any of these adjustment methods determines the existence of two or more comparable transactions, the following criteria could be applied, depending on the case: the prices interquartile range, the amounts of the consideration or the profit margin.

If the price, the amount of the consideration or the profit margin set by the taxpayer is located within the interquartile range, the transaction would be considered as agreed upon between independent parties. If they are not located within these ranges, the Decrees determine that the price, the amount of the consideration or the profit margin that could have been used by independent parties is the one corresponding to the median reduced by 5 per cent for the case in which the price or amount of the consideration agreed upon, or the profits margin obtained, is lower than the value corresponding to the first quartile; or to the median increased by 5 per cent in the event that the price or amount of the consideration agreed upon, or the profit margin obtained, is higher than the amount corresponding to the third quartile.

Regarding import and export operations, the Act provides the mandatory application of comparable prices methods between independent parties for all operations completed between related parties that have as their object agricultural and livestock commodities and other assets with known quotations on transparent markets, in which foreign intermediaries participate who are not the effective recipients of the merchandise.

In such a case, the comparable price to be applied is the quotation of the good in a transparent market on the date of issuance of the bill of lading of the merchandise or equivalent document. If the sales agreement of the imported or exported good is filed with an Agreements Registry established by the Decrees, the quotation of the good in the transparent market that will be considered is the one of the date of such an agreement.

The Resolution sets forth that the authority in charge of the Agreements Registry will be the Chamber of Commerce of Products of the Country, and that the sales agreements that can be registered are those whose terms are less than 240 days. In order for this filing to be effective with regard to the Tax Office, it has to be registered within five working days of the month following its execution. The Resolution includes a list of transparent markets corresponding to a list of products.

The above method would not be applicable if it is demonstrated that the intermediary has a real economic presence and activity, and meets certain other requirements set forth by the Act and the Decrees.

The Tax Office is authorised to establish special regimes in order to determine presumed profits ('safe harbours') for import and export operations that have as their object goods with international prices publicly known through transparent markets, stock exchanges or similar methods.

The Tax Office is also authorised to enter into advance price agreements with taxpayers, which will have a validity of three fiscal years.

The Resolution, as amended by Resolution Nº. 745/011, introduced the following formal obligations that will have to be met by those parties governed by transfer pricing rules:

Annual information

The parties must submit information on an annual basis when one of the following conditions is met:

a they perform operations under tax pricing rules for an amount exceeding 50 million indexed units); or

b they have been duly notified of this obligation by the Tax Office.

'Major taxpayers' have been excluded from mandatory filing with the Tax Office.

Annual information that must be submitted includes:

a a sworn statement detailing and quantifying the operations performed during the term that fall under transfer pricing rules;

b a copy of the balance sheet of the respective fiscal year, if this was not already provided by other provisions; and

c a transfer pricing study.

The term to submit this documentation expires on the ninth month counted as of the closing of the corresponding fiscal year, according to the schedule applicable to each taxpayer.

The transfer pricing study must include (as a minimum) the following information:

a a detail of the activities performed;
b the risks assumed and assets used in order to perform these activities;
c details of the items, documentation, circumstances and facts considered during the preparation of the study;
d details and a quantification of the operations included under transfer pricing rules;
e identification of the entities that were part of the operations included under transfer pricing rules;
f the method used for determining the prices of the operations, indicating the reasons and grounds justifying the method as the most appropriate, as well as the reasons the methods not used were rejected;
g identification of all the comparables selected for the justification of the transfer price;
h identification of the information sources from which the comparables were obtained;
i details of the comparables selected that were rejected, indicating the reasons why they were considered;
j quantification and methodology used to practice the necessary adjustments over the selected comparables;
k determination of the median and the interquartile range;
l description of the business activity, characteristics of the business and other relevant elements of the comparable entities; and
m conclusions of the study.

Parties that must submit annual information are obliged to keep the documents and any evidence justifying the transfer pricing study for the statute of limitations term of the taxes.

Parties that do not have an obligation to submit annual information to the Tax Office must still keep evidence, and justify the transfer prices and the comparison criteria used for the statute of limitations term of the taxes in order to demonstrate and justify the correct determination of these prices, the amount of the consideration or the profit margin declared.

iv Tax clearances and rulings

See our comments in Section III.i, *supra*, in connection with advanced rulings.

X YEAR IN REVIEW

In July 2012 the Uruguayan Congress passed an Act that (among other items) mandates the identification of the shareholders of companies whose capital is expressed in bearer shares.

While bearer shares are maintained, the names of the stock owners must be filed with the Central Bank of the Uruguay ('the CBU') via two sworn statements, the first filed by the shareholder with the company that issued the bearer shares ('the company'), and the second filed by the company with the CBU.

Nominative shares are excluded from the above regime.

In 2012, a new tax ('ICIR') came into full force and effect. ICIR is assessed over the ownership of rural land in excess of certain thresholds.

Taxpayers have challenged ICIR, and have argued that the tax infringes the National Constitution. At the time of writing, the Supreme Court of Justice is yet to issue its decision in this connection.

Act No. 18.910 of 25 May 2012 sets forth that individuals setting their fiscal residence in Uruguay at any time after 1 July 2007 are allowed to be exempted from IRPF (on foreign-sourced income) for a term of five years. To this end, the taxpayer should file his or her option to pay IRNR instead of IRPF for such foreign-sourced income.

XI OUTLOOK AND CONCLUSIONS

It would be reasonable to infer that the control and powers of the Tax Office will continue to expand. Treaties for the exchange of tax information are scheduled to be put into practice shortly. It is also foreseeable that the number of transfer price audits conducted by the Tax Office will increase.

Appendix 1

Country	*Dividends (tax source country)*	*Interest (tax source country)*	*Royalties (tax source country)*
Germany	5% if shareholder owns at least 10% 15% in all other cases	10%	10%
Hungary	15%	15%	15%
Liechtenstein	5% if shareholder owns at least 10% 10% in all other cases	10%	10%
Mexico	5%	10%	10%
Portugal	5% if shareholder owns at least 25% 10% in all other cases	10%	10%
Switzerland	5% if shareholder owns at least 25% 15% in all other cases	10%	10%
Spain	5%	10%	5% if referring to copyright of literary, artistic or scientist works 10% in all other cases

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Jonás Bergstein is a partner with the tax department of Estudio Bergstein. Mr Bergstein is an expert in tax and corporate transactions. Over more than 20 years, Mr Bergstein has assisted multinational companies doing business in Uruguay. He has advised companies in merger and acquisitions procedures, international tax planning, distribution systems and project finance.

A graduate of Harvard Law School, Mr Bergstein was a foreign associate with WilmerHale (Washington, DC) and with Mattos Filho e Suchodolski Advogados (São Paulo) before joining Estudio Bergstein more than two decades ago.

Mr Bergstein is an associate professor of taxation at the Montevideo Law School (Universidad de la República), and has been a lecturer at the Supreme Court of Justice (Center for Judges Training, Introduction to the Case Method) and at the Institute of Business Studies of Montevideo (Foreign Investment in Uruguay). Mr Bergstein is the author of 'Foreign Investment in Uruguay: A Law and Development Perspective', 20 *U. Miami Inter-American Law Review* 359 (1989); *Termination of Distributor Agreements under Uruguayan Laws* (1996; 2nd ed. 2010); *Taxation of Financial Investment Corporations* (2006) and *The Estoppel Doctrine in the Relationship Between the Tax Office and Taxpayers* (2008). Mr Bergstein has also published more than 50 articles in Uruguay and abroad on matters regarding taxation, foreign investment, banking, telecommunications, privatisations and general business law.

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Domingo Pereira heads the tax department of Estudio Bergstein. His practice is focused on tax advice, including structure transactions, mergers, acquisitions, divestitures and spin-offs to ensure maximum tax efficiency. Mr Pereira provides international tax services to create tax-efficient operations, structures and financing. He also advises on transfer pricing matters, from optimising group operations to determining compliance mechanics. Mr Pereira has vast experience representing clients before the Tax Office, and is especially active in tax due diligence procedures.

Domingo Pereira routinely advises clients on corporate and regulatory matters, and he has assisted various transnational companies doing business in Uruguay, particularly with the design, planning and organisation of tax-efficient structures. Mr Pereira has been especially active in the mergers and acquisitions area, advising both buyers and sellers on the tax consequences derived from the respective transaction.

Mr Pereira teaches and writes extensively on taxation. He is a member of the Tax Institute of Universidad de la República – Montevideo Law School and of the Uruguayan Tax Institute.

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