



## TAX ADJUSTMENT LAW

In the Official Gazette No. 26,370-C of September 17<sup>th</sup> of 2009, was enacted the Law No. 49 of the same date, whereby the Fiscal Code was reformed and other fiscal measures were adopted.

Because of the significance of the provisions of this act, our expert in Tax Matters, Mr. Pablo Gonzalez, Authorized Public Accountant, has prepared the following statement of the main subjects covered by the same.

The main issues of the Reform are the following:

### I. ANNUAL FRANCHISE TAX:

- ✓ The payment of the franchise tax is extended to the limited liability companies and any other juridical persons, except non-profit associations.
- ✓ The administrative dissolution is established for corporations with delinquency in the payment of the franchise tax for over ten (10) years, and it shall start from the year 2005.
- ✓ A period of dissolution of three (3) years after the administrative dissolution is established for requesting the reinstatement of a corporation at the Public Registry provided that a fine of B/.1,000.00 is paid as well as the payment of the owed taxes plus the corresponding surcharges and fines generated.
- ✓ Upon Expiration of the three (3) year term without having requested the reinstatement of the corporation, the registry of the same will be canceled and its name can be used by any interested.

### II. INCOME TAX ON PROFITS REGARDING REAL PROPERTIES.

- ✓ It is established in the transfers of real properties, the payment by the seller of a 3% of the total value of the transfer or the cadastral value whatever is higher, as an advance of the Income Tax (ISR).
- ✓ It is allowed at the taxpayer's option, to consider the 3% of the value of the sale as the definite ISR of the capital gain or to request a refund or credit compensation provided that there is a surplus between the 3% paid as an advance and the 10% tax computed over the real profit obtained in the transfer. (Sales Price - Basic Cost of the Real Property = Capital Gain x 10%).



- ✓ The taxpayers have until June 30th, 2010 to opt again for the filing of an affidavit of the new cadastral value (Article 766-A), which shall be used as basic cost of the asset starting from the acceptance of the application by the Directorate of Cadastre and Patrimonial Properties of the Ministry of Economy and Finance (MEF).

### III. REAL PROPERTY TAX - FEES AND REAL PROPERTY EXEMPTIONS

The real property tax tariffs shall read as follows:

1) Real Properties without appraisals (Article 766 of the Tax Code) – The tax shall be of:

- a. 1.75% upon the excess tax base of B/.30,000.00 up to B/.50,000.00.
- b. 1.95% upon the excess tax base of B/.50,000.00 up to B/.75,000.00.
- c. 2.10% upon the excess tax base of B/.75,000.00

- ✓ *The real properties whose land and improvements value do not exceed the sum of thirty thousand balboas (B/.30,000.00) are exempt from payment of the real property tax.*

2) Real Properties with Appraisals (Article 766-A of the Tax Code)– The tax shall be:

Starting from the year 2010, the taxpayers that file until June 30th, 2010, the affidavit of the new cadastral value (Article 766-A) shall pay the real property tax based on the following combined alternative tariff:

- a. 0.75% upon real properties whose land and improvements value are not higher than B/.100,000.00; or
- b. 2.10% upon real properties whose land and improvements value are higher than B/.100,000.00.

- ✓ *The real properties whose land and improvements value do not exceed the sum of thirty thousand balboas (B/.30,000.00) are exempt from payment of the real property tax.*

3) Real Properties under the Horizontal Property System:

**Starting from the year 2010**, a paragraph is added to article 766 of the Fiscal Code and it establishes a progressive tariff applicable to the real properties lands that are governed by the Horizontal Property System with condominiums adjacent in vertical form, except the real properties intended for social housing units:

- a. 1.40% upon the excess tax base up to B/.20,000.00.
- b. 1.75% upon the excess tax base of B/.20,000.00 up to B/.50,000.00.
- c. 1.95% upon the excess tax base of B/.50,000.00 up to B/.75,000.00.



d. 2.10% upon the excess tax base of B/.75,000.00.

#### 4) Improvements Exemptions

The exemptions from real property tax shall follow these rules:

- ✓ The real properties whose land and improvements value does not exceed the sum of thirty thousand balboas (B/.30,000.00) exempted from payment of the real property tax remains.
- ✓ It is established that **the improvements for residential use** whose value is up to B/.80,000.00 shall be exempted from payment of the real property tax for 20 years, starting from the date of the occupation permit or registration, whichever shall first occur.
- ✓ The exemption schedule established by article 81 of Law N°6 of 2005, reformed by Law N°29 of 2008 that set forth that the improvements whose construction permit is issued starting on **July 1<sup>st</sup>, 2009** are exempted from payment of the real property tax as of the improvements registration date remains, based on the following schedules:

#### **Improvements for residential use:**

| Value of the improvements in balboas          | Years of exemption |
|---|--------------------|
| Up to B/.100,000.00                           | 15                 |
| More than B/. 100,000.00 up to B/. 250,000.00 | 10                 |
| More than B/. 250,000.00                      | 5                  |

#### **Other improvements:**

In this case, the improvements, whatever its value, will be exempted for a period of 10 years.

#### **TRANSITORY RULE:**

Improvements whose construction permits have been issued before July 1<sup>st</sup>, 2009 shall enjoy 20 years of exemption of the real property tax, provided that the registration of the improvements at the Public Registry is done before **December 31<sup>st</sup>, 2011.**



#### IV. TRANSFER TAX (ITBMS) ON PERSONAL PROPERTY AND SERVICE

##### NEW ITEMS TAXED:

The following operations are added to the Items taxed with the 5% of Transfer Tax on Personal Property and Service (ITBMS):

- ✓ **Starting from the year 2010**, commissions collected for transfers of negotiable documents and titles and securities in general, payments of commissions generated by bank and/or financial services rendered by entities lawfully authorized to render this kind of service, as well as commissions or retributions collected by persons engaged in brokerage of personal and real property.
- ✓ Legal services rendered to vessels of international trade registered in the National Merchant Marine, as well as the registration of their naval mortgages.
- ✓ Professional services rendered to persons domiciled abroad, which do not generate taxable income within the Republic of Panama, whether they be corporations, private interest foundations, trusts or vessels.
- ✓ Fixed telephony for commercial use.
- ✓ Commissions on bank and financial services.
- ✓ Lease or sublease of real property exclusively destined for house or room of the lessee, whose lease contracts are of 1 to 6 months.

##### NEW EXEMPT ITEMS:

- ✓ Lease or sublease of real property exclusively destined for house or room of the lessee, provided the term of the contract shall exceed 6 months.
- ✓ Freight, cargo transport, as well as transportation of passengers by air, by sea and by land.
- ✓ Fixed residential telephony.
- ✓ Loading, unloading, transfer to or among the ports operations and ancillary services rendered to cargo at ports, as well as repair, maintenance, cleaning and ancillary services rendered to the vessels in transit within the territorial waters.
- ✓ Commissions earned by travel agencies.

#### V. NOTICE OF OPERATION (LAW 5 OF 2007)

##### ACTIVITIES WHICH SHALL REQUIRE NOTICE OF OPERATION:

- ✓ Persons or companies established or to be established within the areas of free international trade which owns or operates the Colon Free Zone or any other Free Zone or Area established or to be created hereafter.



#### **ACTIVITIES WHICH SHALL NOT REQUIRE NOTICE OF OPERATION:**

- ✓ Companies Holding Licenses of Multinational Corporation Headquarters, covered by Law No. 41 of 2007, provided they do not render services other than those established in article 4 of said Law.
- ✓ Companies operating under special systems, applicable to areas or zones developed or which may be developed, by virtue of the adjudication of international procedures of contractors' selection.

#### **THE TAX ON NOTICE OF OPERATION IS AMENDED:**

- ✓ The tax imposed shall be of 2% of the capital of the company with a minimum of B/.100.00 and a maximum of B/. 60,000.00, for persons or companies established within all the territory of the Republic of Panama.
- ✓ The tax imposed shall be of 1% of the capital of the company with a minimum of B/.100.00 and a maximum of B/. 50,000.00, for persons or companies established within the areas of free international trade held or operated by the Colon Free Zone of any other free zone or area established or to be established hereafter.

**Natural or juridical persons with an invested capital of less than ten thousand balboas (B/.10,000.00) shall be exempt.**

#### **VI. PAYMENTS AND TAXES OF THE GAMBLING ROOMS AND THE WHOLE CASINOS:**

##### **KEY MONEY:**

A payment to the Panamanian Government in concept of key money for new whole Casino Managers or Operators is established in accordance with the following classification:

- ✓ Managers/Operators of Slot Machines Rooms Type "A" the amount of B/. 500,000.00.
- ✓ Managers/Operators of Whole Casinos the amount of B/.1,000,000.00.

##### **TAXES FOR THE GAMBLING CONTROL BOARD:**

A monthly tax according to the gross income is established to the Slot Machines Rooms Type "A" and the whole Casinos in the following manner:

- ✓ **Slot Machines Rooms Type A**
  - From January 1<sup>st</sup>, 2010 until December 31<sup>st</sup>, 2011, 16%.
  - From January 1<sup>st</sup>, 2012 until December 31<sup>st</sup>, 2013, 19%.
  - From January 1<sup>st</sup>, 2014 they shall pay 22%.



✓ **Whole Casinos:**

- From January 1<sup>st</sup>, 2010 until December 2011, 12.5%.
- From January 1<sup>st</sup>, 2012, 15%.

The **Slot Machines Room of the Presidente Remón Racetrack** shall pay 10% monthly of its gross income to the Gambling Control Board.

**VII. OTHER TAXES AND FISCAL OBLIGATIONS:**

- ✓ The selective tax tariff on the cigarettes consumption is increased, from 32.5% to 50% of the consumer sale price declared by the national producer or importer, establishing a minimum of 0.50 cents per pack.
- ✓ A selective tax tariff is established on the tobacco consumption, Havana cigars and other products derivative from tobacco, which shall be of the 50% of the consumer sale price declared to the Ministry of Economy and Finance by the national producer or importer.
- ✓ The premiums for the granting of bonds and all the insurance policies are taxed with 5%, except the fire insurance policies, life insurance with surrender values and the agropecuary insurance.
- ✓ The tax maximum that the financial entities governed by Law 42 of 2001 have to pay is increased up to **B/. 50,000.00** annually on the basis of the 2.5% of the capital paid up to December 31<sup>st</sup> of each year.
- ✓ All companies that have Notice of Operation and that are established within the areas of free international trade owned by or operated by the Colon Free Zone or any other free zone or area established or that may be established hereafter, are taxed with a **5% tax on the dividends**. Likewise, they shall be obliged to pay a **complementary tax of 2%** in the event that they do not distribute dividends to their shareholders or that the amount to be distributed be inferior to 20% of the net income for the period dealing with.
- ✓ The Non Profits Organizations are bound to present, before the Ministry of Economy and Finance, a consolidated annual report of all the donations received; within a ninety (90) days following to the close of each calendar year.
- ✓ The obligation to file a tax clearance shall be added in the following cases:
  - a. For the delivery of the Tax Credit Certificates, of Euro certificates or any other documents that have been established or may be established hereafter based on special laws or of tax incentives.
  - b. The issuance of administrative acts by which credits in general are recognized.