

## Legal update

### Income Tax Law Amendment

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#### January 2016 Tax

The Decree of Amendment of the Income Tax Law (“Amendment Decree”), issued by the President of the Republic, was published in the Special Edition of Official Gazette Nr. 6,210, dated December 30, 2015. The Amendment Decree was issued by the President under the powers granted under the “Enabling Law”<sup>1</sup>.

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#### Entry into force

The Amendment Decree will enter into force on December 31, 2015 and will be applicable to the fiscal years that start after that date.

#### Main amendments:

##### a) Availability of income

The income availability criterion was modified since as a general principle income shall be deemed available when the activities that produce such income are performed (e.g. accrual basis).

In this connection, certain categories of income that were previously deemed available when the income was paid (cash basis) will be now taxed on an accrual basis, namely: (i) income connected to the assignment of the right to use or enjoy immovable property, including royalties and similar participations; (ii) dividends; (iii) income derived from non-commercial professions; and (iv) income derived from the sale of immovable property.

The earned-basis criterion of income availability was not modified.

The only categories of income that will be considered available on a cash basis are the ones derived from: (i) employment relationships; and (ii) windfall profits.

In the provisions governing taxation on an accrual and earned basis, the term “*enrichment*” was replaced by “*income*”. The term “*enrichment*” is only used in the case of income taxed on a cash basis.

##### b) Expense deductibility

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<sup>1</sup> Law that Authorizes the President of the Republic to enact Decrees with Rank, Value and Status of Law in the delegated Subject Areas (Special Edition of Official Gazette Nr. 6,178, dated March 15, 2015)

The Amendment Decree eliminated the rule that compelled taxpayers to declare as an income for the current fiscal year the expenses deducted on an accrual basis in the preceding fiscal, but that were not paid in the following fiscal year.

**c) Applicable tax rates to banking, financial, insurance and re-insurance institutions**

A 40% tax rate was established for net income derived by legal entities domiciled in Venezuela from the performance of banking, financial, insurance or re-insurance activities.

**d) Investment and activities tax credits**

The tax credits for new investments in industrial activities, tourism services, agriculture, cattle, fishing and fish farming activities was eliminated.

**e) Tax assessment and collection / tax withholdings**

In addition to debtors, payers of net or gross income subject to income tax were included as withholding agents. This inclusion was already established in Article 84 of the Income Tax Law Regulations on Tax Withholdings.

It was established that withholdings must be performed when the payment takes place or when the taxpayer records the accounting entry related to the payment (which is denominated "*credit to account*"), whichever occurs first. A definition for credit to account was included, which was previously set in the Regulations, pursuant to which "**the amounts that debtors or payers credit into their accounting or records**" are considered as credit into account.

**f) Exclusion of special taxpayers from the adjustment for inflation system**

Special taxpayers were excluded from the adjustment for inflation system. Banking, financial, insurance and re-insurance activities had already been excluded from the adjustment for inflation system in the 2014 amendment to the Income Tax Law. The Tax Authorities must issue the guidelines for the accounting adjustments that special taxpayers will have to make as a result of their exclusion from the adjustment for inflation system.

The estimated tax returns filed after the entry into force of the Amendment Decree must exclude the result of the adjustment for inflation of the previous year.

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