

Legal update

Income tax exemption on income derived by PDVSA, its subsidiaries and mixed companies from hydrocarbon production activities

August 2018

Tax

On August 2, 2018, the president of the Republic issued Decree No. 3,569 which grants an income tax exemption on certain income of territorial or extraterritorial sources derived by Petróleos de Venezuela (PDVSA), its subsidiaries and mixed companies incorporated under the Organic Hydrocarbons Law (“OHL”), regardless of whether they are domiciled in Venezuela. The Decree was published in the Official Gazette of the Bolivarian Republic of Venezuela No. 41,452 of August 2, 2018.

Scope of application

The exemption applies to income of territorial and extra-territorial sources derived from oil production activities by PDVSA, its subsidiaries and mixed companies incorporated under the OHL (domiciled in Venezuela or not).

Formal duties

Taxpayers that obtain exempt income shall file the annual tax return, including both exempt and taxable income, assessed in accordance with the procedure set forth in the Income Tax Law and its General Regulations.

Taxpayers that produce exempt income must comply with the obligations set forth in the Income Tax Law, its General Regulations and any other relevant legal provisions. Taxpayers who breach said obligations will not benefit from the exemption.

Costs related to exempt and taxable income

Costs that relate both to taxable and exonerated income must be allocated proportionally to each type of income.

Impact of the exoneration on the shadow tax

Mixed companies incorporated under the OHL must assess the impact that the special advantage (commonly known as the “shadow tax”), that is normally established in favour of the Venezuelan State in the incorporation agreements of mixed companies, could have on the exemption, since it could partially or totally annul the benefit of the exoneration in practice.

Validity

The Decree entered into force after its publication in the Official Gazette, i.e. on August 2, 2018. The exoneration has a term of effectiveness of one (1) year, starting on the date of its entry into force. The exoneration will apply to the fiscal year from January 1, 2018 to December 31, 2018. In principle, the exoneration would apply to companies that have a fiscal year other than 2018.

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