

Legal update

Ruling – interpretation of article 31 of the Income Tax Law

July 2016 Tax

On June 30, 2016, the Constitutional Chamber of the Supreme Court of Justice (CC of the SCJ) issued a decision on a request filed by the Union of Workers of ALCASA and other aluminium-producing companies (SINTRALCASA) for a constitutional interpretation of article 31 of the 2014 Income Tax Law,¹ which regulates the taxable base for calculating income tax on employee remuneration.²

In the decision, the CC of the SCJ ruled the request inadmissible because it held that a request for constitutional interpretation is not the suitable action to deal with conflicts between legal provisions, the unconstitutionality of a legal norm or the infringement of binding judicial precedents.

However, in the ruling the CC of the SCJ expressly established that its previous decision issued in 2007 in *Adriana Vigilancia and Carlos Vecchio*³ is legally binding and has the authority of a final decision with respect to the scope and content of the provision that defines the taxable base of employee remuneration. In this 2007 decision, the CC of the SCJ ruled that only employee remuneration that is earned on a regular and permanent basis, namely the “*normal salary*,” is subject to Venezuelan income tax.

Even though the CC of the SCJ did not explicitly deal with the constitutionality of article 31 of the 2014 Income Tax Law in its latest ruling, this decision could reinforce the position that only employee remuneration that qualifies as normal salary is subject to Venezuelan income tax.

Carlos Fernández S.
Fernando Fernández B.
Leopoldo Escobar
Luis de Freitas

Footnotes

¹ Published in Special Edition of Official Gazette No. 6,152 dated November 18, 2014

² Ruling No. 499 of the CC of the SCJ

³ Ruling No. 301 of the CC of the SCJ dated February 27, 2007

For further information, please contact one of the following lawyers:

> Carlos Fernández S.	Caracas	+58 212.276.0006	carlos.fernandez@nortonrosefulbright.com
> Fernando Fernández B.	Caracas	+58 212.276.0048	fernando.fernandez@nortonrosefulbright.com
> Leopoldo Escobar	Caracas	+58 212.276.0029	leopoldo.escobar@nortonrosefulbright.com
> Luis de Freitas	Caracas	+58 212.276.0031	luis.defreitas@nortonrosefulbright.com

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to "Norton Rose Fulbright", "the law firm", and "legal practice" are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together "Norton Rose Fulbright entity/entities"). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a "partner") accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.