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BACHELOR THESIS

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DOUBLE TAXATION AGREEMENTS IN SELECTED SOUTH AMERICA COUNTRIES

Ljubljana, April 2016 **ROSMERY IDINA MENDEZ**

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INTRODUCTION

During the 80's most of the Latin American countries faced the most severe economic crisis, from fluctuations, collapsed of economy, high levels of fiscal deficit, hyperinflation, etc. However, to manage this situation every government launches sharp measures like monetary and tax reforms, by implementing macroeconomic stabilization and structural reform programs.

The Latin American nations faced radical changes in trade policies and liberalization, the elimination of national barriers, moving towards to an open economy; bringing as a result, exchanges of goods and services, free movement of capital, technology and peoples. However, with the integration of the markets worldwide, it appears the necessity to enter into a bilateral or multilateral agreements in order to facilitate the trade. Therefore, the tax convention turns out to be the best and the great important instruments to fight against avoidance and eluding taxes.

The most remarkable feature were the fiscal policies and tax reforms that every Government had to implement in order to improve their fiscal administration and tax system in selected South American countries like Argentina, Bolivia, Colombia, Chiles, Perú and Uruguay. The outcome was the successful implementation of the program and grown in tax collection. However, the achievement of the success shows that under the right conditions, the efficiency can be increased in a relatively short period of time, such as Chile case.

It is very important for developing countries to enter into Double Taxation Agreements (DTAs), with developed countries, because attract foreign direct investment. On the other hand, these agreements holding back the development possibilities, represents the inequitable distribution of revenues, the strong protection of the State of residence and it favours capital exporting countries over capital importing.

The most widely used Model Tax Convention on Income and on Capital between developed and developing countries is issued by the OECD, which has gained ground despite their strong protection to State of Residence, inflexible rules and favouritism for capital-importing countries. On the other hand, the UN model is more likely among those

non-OECD countries, because it gives more weight to the source principle than does the OECD Model, but does not have enough power to replace it.

Significant part of their provisions from the OECD and UN Model were reproduced and used as a basis for the Andean Pact, ALADI, ILADT, UNASUR Tax Models which are in force between some developing countries. All of them were celebrated more separated trade blocks of South American countries; instead of unified and seek for a better distribution of revenues and more benefit and develop only one model tax that can be used in favour of all Latino American States. Nonetheless, all models have their differences and issues.

1. BACKGROUND OF SOUTH AMERICAN COUNTRIES

In the 80s and 90s, Argentina, Bolivia, Colombia, Chile and Uruguay, like most Latin American countries faced in the process of globalization and economic trade liberalization, which brought the growth of investment, capital inflow, services, technology and information between different States. Therefore, the trade liberalization has become an important part of many countries development strategy. It was needed the opening up local markets to foreign competition to attract foreign direct investment which leads to improvements in the productivity of domestic industries.

The economy of Argentina[1], Bolivia[2], Colombia[3], Chile[4] and Uruguay[5] have been through huge economic fluctuations, suffering from major external shock, high inflation, balance-of-payments crises and increasing the fiscal deficit. For to solve the economic problems, the countries undertook comprehensive trade liberalization, stabilization program and supporting policies. The reform package or the new economic policy contained macroeconomic stabilization (including fiscal policy and tax reform), trade liberalization, privatization of public enterprises, devaluation of a country's currency and managed, flexible exchange rate, tax overhaul to broaden the tax base and raise tax revenues and join the International Monetary Fund (IMF).

At that time, tough macroeconomic measures were introduced by governments of each country, like the implementation of stabilization program. The outcome of those improvements and changes were successful and efficient in a very short period of time, making the economy to grow.

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[1]Argentina: On June 1985, implemented the Austral Plan by Juan Vital Sourrouille, Minister for Finance of Argentina.

[2]Bolivia: On August 1985, the new government enacted the Supreme Decree No. 21060 so called as "The New Economic Policy" on which authorized the fiscal policy, monetary and tax reforms law, etc.

[3]Colombia: In 1984, implemented the Adjusting Program. (Programa de Ajuste de 1984).

[4]Chile: On January 1983, the government decides to intervene in five banks and dissolving another three as a measure of macroeconomic program to curb the economic crisis.

[5]Uruguay: On November 26, 1982, it announced the withdrawal of the Central Bank of Uruguay (BCU) from the foreign exchange market, causing the breakdown of so-called (Tablita o Sistema Tabular). This fact led the country into an economic and financial crisis.

In fact, the stabilization and liberalization policies and program for Bolivia, Colombia and Uruguay allow the countries come out of the crisis. Chile is an example of the economic success, nowadays is considered in 1th place in Latin America. Argentina is an example of persistent macroeconomic imbalance.

2. DOUBLE TAXATION

Double Taxation is the imposition of taxes in two or more states and occurs when the taxpayers are taxed twice with respect to the same earned income or capital by different tax collectors and in the same fiscal year. This situation occurs when corporations pay dividends to their shareholders, both of them are considered separate legal entities.

Some countries tax their citizens based on their worldwide income, other adopted the territorial criterion or source principle. Indeed, double taxation is one consequence of globalization.

According to Kevin Holmes (2007, p. 19) “Double Taxation” is a phenomenon where taxpayers are engaged in cross-border transactions and are taxed more than once on the same amount of income, and can take different forms, but regardless of the form it inhibits economic activity.

Therefore, to face this phenomenon, the agreements turn out to be the most important instrument to fight and avoid double taxation, as the minimum legal framework for establishing investments in countries.

2.1. Objective of Double Taxation Avoidance Agreements

The objective of a Double Taxation Avoidance Agreements is to provide a settlement between two countries interested in taxing a particular source of income by establishing rules for division of revenue and reducing the rates of tax on some types of incomes.

2.2. Economic and Juridical Double Taxation

There are two types of double taxation: Economic and Juridical both of them can be prevented by domestic laws.

Economic double taxation may occur when the same income is taxed in the hands of different persons. Example, when a corporation pay taxes on profits and again when dividends are distributed to shareholders, both of them are considered as different legal entities. The juridical double taxation occurs when two or more States tax the same person or taxpayer with respect to the same income or capital.

Montaño C. (2006, p. 119) pointed out, “usually the term economic double taxation is allusive to refer to juridical taxation in which a same income source is taxed by two (or more) similar taxes in the hands of different tax collectors”

2.3. Tax Connecting Factors

The tax sovereignty of countries is indisputable when it comes to taxation of individuals regarding their incomes. Therefore, from the point of view of capital exporting countries the criterion of residence in double taxation is more suitable for them. However, the source principle is more important for capital importing countries and is used mostly in developing countries.

There are two main connecting factors between the taxpayer and the state: Personal or Real. For personal connecting factor includes domicile, residence or nationality and as a real factor includes the territorial criterion.

According to Fonrouge (1987, p. 397), connecting factors are divided into two groups: subjective and economic criterion. The subjective criterion takes into account the nationality, domicile or residence of the taxpayer for to establish the tax jurisdiction of the incomes. The subjective criterion is linked to the so-called “principle of worldwide income” and taxes are paid in the country where the taxpayer is resident, regardless of where the income is generated.

Inside the economic criterion we can highlight the territoriality or source principle in order to establish the tax jurisdiction. The income is taxed by the country where the wealth was created or where the assets were located, regardless of where the taxpayer has their residence.

2.4. Territorial or Source Principle

The source principle criterion is based on the right of the State, with its political, economic, legal and social conditions, which help to generate income. Therefore, have right to tax the income and enrichment occurred within the territory, and have justification from an economic and social point of view.

Those incomes generated within the territory are considered as domestic source income, without taking into account the nationality, domicile or place of residence of the taxpayer. Therefore, if we measure the contribution that each domestic and foreign source provides to the total tax collection in each State, we can observe that, even in countries that use the worldwide income criterion, the greatest contribution comes from a domestic or national source.

This criterion is worldwide used and is well accepted by capital importer like Latin American countries. Nowadays, the Bolivian government applied the "Source Principle criterion" for tax on profits, especially for those which come from natural resources. The aim is to maintain neutrality in capital import.

Most Latin American countries such as Argentina, Bolivia, Colombia, Ecuador, Perú, Paraguay and Uruguay have their tax treaty network and their conventions do not always follow the OECD model, they used the source principle criterion on treaties between them.

2.5. Worldwide Income Principle

The worldwide income principle is subject to the State taxing rights and is the link between the taxpayer and the State. This criterion also is so called "universal income" tax the taxpayers based on their residence without to take into account the place where the income is earned. Therefore, the taxpayer's incomes, whether is domestic or foreign are

subject to taxes. However, Bolivia operates a territorial system. Al legal entities, whether are domestic or foreign, are subject to tax on Bolivian-source income.

Nowadays, the worldwide income criterion is worldwide used and has been adopted by most of the tax legislation in the world. However, its implementation is a bit complex, regarding the possibility of collecting revenue outside the country, the system demands the more developed tax administrations and the existence of tax information exchange agreements.

From the economic point of view, the worldwide income criterion is defended under the principle of economic efficiency in capital-export neutrality. It is the criterion that an ideal tax should be effective in raising revenue for the government and not have any negative effects on the economic decision making process of the taxpayer and does not prevent economic resources from being allocated to their most appropriate use, regardless of where in the world taxable income is earned.

The worldwide income principle ensures less distortion in the allocation of capital, because the taxpayer's income is taxes based on their domicile or residence within and outside the country, taking into account the totality of the domestic and foreign income of the taxpayer and granting a credit for the tax paid abroad.

2.6. Residence Jurisdiction

Another connection factor is the residence jurisdiction which embrace natural and legal persons. For the tax purpose and within the civil sphere the terms “domicile” and “residence” are associated. The residence jurisdiction implicates the taxation on taxpayer’s worldwide income on his resident country and at the corporate level of income arising in foreign countries. Therefore, a corporations’s place of domicile is equivalent to its place of incorporation.

2.7. Methods of Relief of Double Taxation used in South America

A country must consider many factors before to decide which method of relieving or eliminating double taxation or combination of them to use as a mechanism to mitigate it.

Furthermore, they need to determine with which type or types of tax problem are dealing with, whether it is economic or juridical double taxation.

There are three methods by which a taxpayer may obtain relief from juridical taxation in order to facilitated the efficient way of allocation of resources: the credit method, the exemption method; and deduction method.

Following is a brief overview of each method of tax relief as a mechanism to eliminate or alleviate double taxation.

2.7.1 Credit method

The credit method occurs when the State of Residence grants a credit against the total tax paid abroad by their taxpayers, based on their worldwide income earned in the State of residence and in the State of source, allowing him to deduct or reduce the tax paid in the source country (OECD Model, Chapter V, Methods for elimination of double taxation Article 23B). In order to apply this method, it is needed that both countries taxes are identical or similar and the amount the taxpayer seeks to deduct had actually been paid in the source country. Moreover, the tax credit mechanism provides a possibility of so-called “full credit” or “ordinary credit”.

Within the full credit mechanism the State of residence allows taxpayers to deduct fully (without any limitation) the tax paid in the source country. Therefore, if the tax paid in the source country is bigger than the tax payable to the State of residence, the latter country is obligated to repay the excess amount to the taxpayer and will grant a tax credit. Under the ordinary tax credit method the state of residence allows a deduction of the foreign-source tax on the basis of worldwide income, but no more than the proportion of taxes that would be attributable to the income from another state.

2.7.2 The exemption method

Within the exemption method the state of residence of the taxpayer considered exempt all incomes and properties owned outside the territory or in the State of source, assuming that taxpaxer’s income was already subject to taxation in the State of source.

The full exemption occurs when the State of residence grants total tax exemption on all foreign-sourced income. Exemption with progression happened when the state of residence takes into consideration the foreign-source income to establish the tax to be imposed on the rest of the income

Majority of the Double Taxation Agreements or DTAs signed by Latin American countries used the exemption with progression method like the Andean Community (Republic of Bolivia, Republic of Colombia, Ecuador and Perú), as a mechanism of tax relief.

2.7.3 The deduction method

The deduction method occurs when countries tax their residents on their worldwide income (foreign and domestic source income) and allow those taxpayers to take a deduction for foreign taxes paid in the computation of their taxable income. Indeed, foreign taxes and other types of taxes are considered as current expenses in foreign jurisdictions.

3. DOUBLE TAXATION AGREEMENTS

The double taxation agreements are signed by two or more sovereign countries in order to avoid that a person is subject to pay taxes with respect to the same income in two or more states. The DTAs functionality is to determine the extent to which state may levy taxes.

3.1. History of Double Taxation Agreement

The DTAs have undergone through significant changes in the last decades. Following a brief outline of an evolution of it. During the 20 and 30 the League of Nations (group of experts) begins to address more deeply the problematic of double taxation and the mechanisms to combat it. Even though since then the international tax legislation has become considerably more complex, the commentaries more extensive and some tax loopholes have had to be closed, this model treaty still forms the basis for all double taxation agreements in force today.

In 1963, the OECD Committee on Fiscal Affairs elaborated a draft "Convention on Income and Capital". From 1971, the Committee revised the draft Convention and accompanying Commentary, which ended in 1977, with the publication of the new Model Convention and its Commentaries and recommended to all member countries. In the 1980, globalization processes and the liberalization of international trade placed pressure on the OECD Model. Moreover, several developed and developing countries wanted to conclude tax treaties with the goal of attracting more foreign direct investment (FDI).

On the other hand, in 1974 the United Nations (UN) used as a basis the OECD Model for to elaborated her own double taxation convention which reproduces significant part of the provisions. The UN published a guide for the conclusion of the agreements between developed and developing countries, also recognized that the OECD model is a valid instrument between developed countries specifically. During the 1979, was published the Manual for the negotiation of tax treaties between developed and developing countries, together with the Model Agreement seeking a better balance between the residence and source criterion.

In 1991, it was recognized that the revision of the OECD Model and Commentary had become an ongoing process, which adopted the concept of a "Dynamic Reform" Model Agreement that allows regular updates and changes, timely, without waiting for a full review, published the next year (1992) a new version. On 2014 updated the latest version.

3.2. Models Tax Conventions

With the purpose of harmonizing the domestic and foreign policy under a common goal, and with the aim to achieve an improvement in the economy and hence a greater welfare for all taxpayers, most of Latino American countries have entered into bilateral or multilateral agreements by following the pattern of the well-known and most widely used .

Since 1963, the OECD "*Model Tax Convention on Income and on CapitaL"*[6] has had great influence in the negotiation, application, interpretation and enforcement of tax treaties. However, the existence of the Model has facilitated bilateral negotiation between OECD members (most of them developed countries) and countries outside the organization

[6] "OECD Model Tax Convention on Income and on Capital", update 2014.

(Developing countries) making possible a desirable harmonization between their bilateral conventions for the benefit of both taxpayers and national administration.

The convention does not deal exclusively with the elimination of double taxation, but also as the prevention of tax evasion and non-discrimination. Moreover, this model as a rule has the exclusive right to tax some income and capital only in the State of residence and limited taxation in the State of source.

The “United Nations Model Double Taxation Convention between Developed and Developing Countries”[7] forms part of the continuing international effort aimed at eliminating double taxation. These hard works were begun by the League of Nations and pursued in the Organization for European Economic Co-operation (OEEC) now known as the OECD. On 1967, the starting point was the OECD Model Tax Convent.

The UN model was developed with the desirability of promoting greater inflows of foreign investment or capital-importing in order to foster the economic development of developing countries. Therefore, the UN model is more likely among those non-OECD countries, because it gives more weight to the source principle than does the OECD Model, in order to preserve a stronger taxing sovereignty of the State of source where the income comes from, restricts the circumstances in which companies can operate in another country without paying taxes in the source country, and leaves open the possibility to obtain higher retention rate on interest, dividends and royalties.

Finally, the Andean Pact[8] or “Convenio para evitar la doble tributacion en ingresos y capital entre los paises miembros de la Comunidad Andina”, which came into existence when the Cartagena Agreement through the Decision 40, was signed in 1969, later on Andean Community of Nations (CAN - 1996), created with the purpose to raise the living standards of their citizen through integration, economic and social cooperation by Bolivia, Chile[9], Colombia, Ecuador and Peru, so they established the trade bloc of South American countries.

[7] “United Nations Model Double Taxation Convention between Developed and Developing Countries”, update 2011

[8] The Andean Pact is a customs union comprising the South American countries of Bolivia, Colombia, Ecuador and Peru.

[9] CHILE withdrew the membership on October 30, 1976

In 1973, Venezuela[10] joined the agreement as a new member, to avoid double taxation and prevent fiscal tax evasion in the member countries.

Nowadays, with the new cooperation agreement with MERCOSUR[11], the Andean Community has four new associate members: Argentina, Brazil, Paraguay and Uruguay.

The key feature of the Andean Community Model Agreement is the absolute defence of the "source country", it gives more weight to the source principle, regardless of the nationality or domicile of the persons, incomes of any kind that perceive shall be taxable only in that Member Country in which such income took place. Therefore, the Model is the only multilateral agreement that currently exist is a unique, under this condition none of the member countries was able to concluded agreements with third parties or developed countries using this model, e.g. in the case of Bolivia, Venezuela and Ecuador, have been used as based the OECD and UN Models.

On May 4, 2004 the Andean Community of Nations (CAN), has enacted a new community rule the "Decision 578"[12], which update and contains the new scheme and rules to avoid double taxation on activities of natural and legal persons.

Thereby promoting the exchange between these countries, attracting foreign investment and prevent fiscal tax evasion between the member countries of the Andean Community, published in the official Gazette No. 1063, on May 5, 2004. Currently in force, and replace the current "Decision 40" of CAN from 1969.

Besides those put forward by the OECD, the United Nations and the Andean Community/Cartagena Agreement, there are other DTAs models, such as the US, which, however, failed to exercise a particular influence, except of course in those agreements signed by other countries with the United States.

[10] VENEZUELA announced its withdrawal in 2006.

[11] MERCOSUR established in 1991 by the Treaty of Asunción, later amended and updated by the 1994 Treaty of Ouro Preto by Argentina, Brazil, Paraguay, Uruguay and Venezuela. As associate states Chile, Bolivia, Colombia, Ecuador and Peru. Observer states New Zealand and Mexico.

[12] Decision 578, enacted a new community rule by the CAN, May 2004

3.3. Differences and issues between the OECD, UN and The Andean Pact Tax Convention

Each DTAs is unique but of course, they have differences and issues between the OECD, United Nations and The Andean Pact tax convention. Nowadays, the OECD model tax is the most predominant and widely used between they member "developed countries or capital exporter"and non-member "developing countries".

The OECD model tax does not deal exclusively with the elimination of double taxation, but also as the prevention of tax evasion and non-discrimination. Moreover, this model emphasizes the criterion of residence, act and reflects the interests rich or developed countries, allocating taxing rights in favour of a taxpayer's residence and it has the exclusive right to tax some income and capital only in the State of residence and limited taxation in the State of source.

The United Nations model is the answer in favour of the developing or capital importing countries, which gives preference to source principle and represent somehow their interests. Therefore, are more likely among those non-OECD countries, because it gives more weight to the source principle, in order to preserve a stronger taxing sovereignty of the State of source where the income comes from. However, their provision is used in DTAs in developed countries and it has been widely well accepted by them.

The developing countries were always opposed to using the OECD model tax, because of the awareness of their strong protection in the State of residence, inflexible rules and because it favours capital exporting over capital importing countries.

However, the OECD and United Nations model tax conventions have their similarities between both models with regard to rights to tax income and on capital like immovable property, business profits, investment income (including dividends, interests and royalties) and capital gains.

Furthermore, we found the Cartagena Agreement/Andean Community model tax, which strongly gives more weight to the source principle, where the incomes are taxable only in that Member Country in which such income took place. Therefore, the model is the only multilateral agreement that currently exists and is a unique, it has been adopted in bilateral DTAs with countries outside the Andean Community.

The most important concepts and changes embodies into the Decision 578, enacted by the Andean Community - CAN (which replace the Decision 40) are: Royalties, interest, dividend and participations, capital gains, Professional, technical services and assistance, consulting services, tax jurisdiction, associated or related companies, exchange of information, interpretation and application, assistance in the collection of taxes.

Their provisions had a greater development to provide support for negotiation of bilateral agreements to avoid double taxation between members of Latin American Free Trade Association (LAFTA) or Asociación Latinoamericana de Libre Comercio (ALALC by its Spanish acronym).

4. DOUBLE TAXATION AGREEMENTS IN ARGENTINA, BOLIVIA, CHILE, COLOMBIA, ECUADOR, PERU AND URUGUAY

4.1. Introduction

Following an overview of the countries, tax systems and the double taxation agreements signed by selected countries of South America like Argentina, Bolivia, Chile, Colombia, Ecuador, Perú and Uruguay. All of them went through huge economic fluctuations, hyperinflation, financial liberalization and market deregulation. Leading them to take drastic measures, like implementation tax and fiscal policy. Those improvements resulted successful in tax reforms and tax collection under the right conditions. Nowadays Chile is one example of it.

4.2. General characteristics of the Tax System in selected countries

The Argentinan Tax System: Administración Federal de Ingresos Públicos – AFIP

Argentina is the third largest country in Latin America (behind Brazil), it is richly endowed with natural resources. The most important industries are agriculture, forestry, mining, industry and energy sectors. In the earliest 1930s, Argentina was the world’s 10th wealthiest nation, but later on has declined due to political instability.

During the 1990s to address the absence of growth and investment, they decided to open up the economy with the purpose to attract foreign investors, which included moving

towards agreements like Bilateral Investment Treaties (BITs) and Double Taxation Agreements (DTAs).

According to its National Constitution, residents pay tax on their worldwide income; nonresidents pay tax only on their Argentina-source income. The power of levying taxes is shared by the National State and Provincial States. The federal tax system is based on the main taxes: residents paid income tax from 9 to 35%, depending on the amount of taxable income; a scale rate of 24,5% nonresidents. The tax rate applicable to income earned by business is 35%. Dividends paid to nonresidents are subject to 10% withholding tax. For interest the general 35% withholding tax is reduced to 15,5% (if the borrower is financial institution). Royalties and technical service fees, payments made to a nonresident is 35% on 35% gross payment (effective rate of 17,5%), export of good and services are zero rated.

Additionally, there are VAT (Value Added Tax) is levied on the sale of personal property located or placed within Argentina; the VAT rate is 21%, although an increased rate for communications services, power, natural gas and water to 27%.

The provincial governments levy real property tax on urban an rural land, but the rate depends on the jurisdiction. Transfer tax doesn't levy. Stamp duty is between 1% to 4%; the customs and excise duties the rate is depending on the nature of the goods. We can also find, sales taxes at a rate of 4%. Financial transactions at a rate of 0,6% per transaction, and finally net wealth/net worth tax (asset) is applied to any equity interests of 0,5%.

Nowadays the Argentina DTAs network are with: Australia, Belgium, Bolivia, Brasil, Canada, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Russia, Switzerland, Mexico, Chile, Uruguay, Spain, Sweeden, Pakistan and United Kingdom, the treaties do not always follow the OECD model and use the tax credit as double taxation relief.

The Bolivian tax system: Servicio de Impuestos Nacionales - SIN

Bolivia is a landlocked country, it is the fifth largest country in South America and it is richly endowed with renewable natural resources. The country has the second largest

reserves of natural gas in South America. The most important industries are mining, agriculture, petroleum, industry.

The Bolivian tax system - SIN established taxes at a national and a sub-national level (departmental and municipal) or direct and indirect taxes, and operates a territorial system. Therefore, all legal entities, whether domestic or foreign, are subject to tax on Bolivian-source income.

The main national-level taxes are: Value Added Tax (VAT) applied on local sale of goods and services with the rate of 13%, Transactions Tax (IT) scale rate of 3% on any financial transactions, Complementary Value Added Tax (RC-IVA) it is applied on personal income of a Bolivian source, with a rate of 13%; Corporate Income Tax (IUE), based on the territoriality principle at a rate of 25%, Dividends, Interest and Royalties has a rate of 12,50% and Tax on Financial Transactions (IFT) the rate is 0,15%. Among the sub-national level taxes are: Tax on Especific Comsuption (ICE) with a rate between 18 to 50%, Real Property Tax, Inheritance Tax with a rate of up to 5%, Direct Tax on Hydrocarbons (IDH), Special Tax on Hydrocarbons and their derivatives (IEHD) for those products the government established the rate. Complementary Mining Tax (ICM) and Air Departure Tax (ISAE) is subject to pay Bs. 250 or equivalent in American dollars (45 USD). Thus, individuals and companies residing in Bolivia are taxed only on their Bolivian-source income.

The Bolivian tax system is considered one of the most complex with a large number of taxes, which lead to taxpayer to the confusion and make the system difficult to enforce. Besides, the income taxes are extremely low, in comparison with the neighbouring countries.

The lack of fiscal discipline and tax evasion still is very high in the majority of Latin Amerian countries.

The Chilean tax system: Sistema de Impuestos Internos – SII.

Chile remains the most competitive economy in Latin America, it shares borders with Bolivia, Argentina and Perú. The country is richly endowed with natural resources like agriculture, forestry, wine, aquaculture, mining and services.

The Chilean tax system – SII is divided under two main categories, the persons resident or domiciled in Chile are subject to income tax on their worldwide income. However an individual taking up domicile or residency in Chile is taxed only on Chilean source income for the first 3 years.

First category income tax is based on "Corporate income – Rentas de Capital" apply to legal persons with a rate of 22,5% as a single tax. The distribution of dividends between Chilean entities are not subject to income tax, but when the profits it is repatriated to a parent company abroad are subject to a 35% additional withholding tax, which can be paid creditable. As well as interest is subject to a 35% tax on the gross amount.

Payment of the royalties for the use, enjoyment or exploitation of invention patents, etc. are subject to 15% additional withholding income tax, but in the case the beneficiary is resident in a tax haven jurisdiction the rate increase to 30%. In case of trademarks, patents, formulae are subject to a 30% income tax.

Second category income tax is for on salaries and remuneration at progressive rates that range from 0 to 40% and it is credited against the total income.

Other personal income or *Complementary Global Tax* (Impuesto global complementario) this tax is paid once a year by natural person domiciled or resident in Chile, is a progressive tax with a rate of 0 to 45%.

Additional Tax – AT (Impuesto Adicional) is based on income obtained by non residents or non domiciled person and which is remittance or payment of income abroad and the money is from Chilean source income with a rate of 35%.

Value Added Tax – VAT (Impuesto al Valor Agregado – IVA) it is applied on domestic supplies of goods and services and on the import of goods, the rate is 19%. Additional are other taxes like, Real property tax imposed at an annual rate of 1% on rural property and 1,2% on developed nonrural property. Other consumption taxes, which have different, ranging of rate from 0 to 61%.

Nowadays, Chile has a network of treaties signed by 26 countries: Australia, Austria, Belgium, Brazil, Canada, Colombia, Korea, Croatia, Denmark, Ecuador, Spain, France, Ireland, Malaysia, Mexico, New Zeland, Norwey, Paraguay, Peru, Poland, Portugal,

United Kingdom, Russia, Sweden, Switzerland, Thailand all of them follow the patter of the OECD model.

The Colombia Tax System: Dirección de Impuestos y Aduanas Nacionales - DIAN

Colombia is located in the northwest of South America, share its borders with Panama, Venezuela and Brazil and also with Ecuador and Perú. It is considered the fourth largest economy in Latin America. The country is rich in natural resources, its main industries are: petroleum, textiles, food processing, oil, mining and energy, chemicals, shipbuilding, agriculture,

Taxes are administered and collected by the DIAN. Fiscal residents (nationals or foreign) are taxed on worldwide income what is earned in Colombia and abroad. Additional, non-residents (nationals or foreign) are taxed only on Colombian-sourced income tax rate is 33%.

At business level is the corporate income tax rate is 25%, which applies to all Colombian and foreign entities, including corporate and foreign branch. In case that foreign companies do not have a branch or permanent establishment (PE) in Colombia the rate is 33%. However, companies located in free zones are subject to a special 15% corporate income tax. Additional, CREE tax (income tax for equality) is levied to the corporate tax at a rate of 9% for the first 3 years.

Dividends paid to a foreign company or entity not domiciled in Colombia may be remitted abroad free of tax. Otherwise tax is imposed at the 33% corporate tax rate. When dividends are to pay a resident from profit that are subject to the payment of taxes at the corporate level are exempt. Otherwise the tax applies a 20%. Payment of interest and royalties to a nonresident is subject to tax of 33%. In the case of licensing of software, it has a special rate of 26,4%.

VAT is imposed on the sale of goods, provision of services and imports with the rate of 16%, with lower rates of 5 to 0% in certain cases.

The municipality levied taxes on real estate based on the valued of property. Additional, the wealth tax has been introduced with a progressive rate between 0,125 and 1,5%.

Colombia has a network of double taxation agreements with Bolivia, Canada, Chile, Ecuador, India, Perú, Mexico, South Korea, Spain and Switzerland all of them follow the OECD model. A foreign tax credit is available to prevent international double taxation.

The Peruvian Tax System: Superintendencia Nacional de Aduanas y de Administración Tributaria – SUNAT.

Peru is one of the best performing economies in Latin America. Sharing borders with Ecuador, Colombia, Brazil, Bolivia and Chile. The country, it is richly endowed with natural resources. The most important industries are agriculture, forestry, mining, industry, services and electrical machinery, refining.

Taxes are administered and collected by SUNAT. All residents are taxed on income that they earn worldwide, while non-residents are taxed only on Peruvian-source income. After 183 days within the country a person is subject to tax.

At business level the corporate income tax is levied on activities in Peru. Foreign companies' branches are taxed on their Peruvian-source income only. The corporate income tax rate is 28% (for 2015-2016). The remittances of net profit abroad pay taxes of 6,8%.

Dividends paid to an individual whether or not resident is subject to a 6,8% withholding taxes (for the years 2015 -2016). For the payments made to a nonresident for interest is 4,99% withholding taxes; otherwise is 30%. Additional, for the payment of Royalties to a resident, which is considered Peruvian-source income, the rate is 30%. However, the taxpayer is subject to a rate of 15% for technical service fees, whether the services are provided in the country.

VAT is added to most goods for sale, particularly imported items and some services with a rate of 19%.

The main taxes at the municipal level are: Property tax with a rate of 0,2% to 1% of the real value of the property paid yearly. Additional, the Real property transfer tax is 3% applicable on agreed price.

Any individual paid taxes based on financial transaction with the rate of 0,0005% proportional of banking operation in local or foreign currency.

Peru has signed a tax treaty to avoid double taxation with Bolivia, Colombia and Ecuador (signatories to the Andean Pact). Additional, the country has seven bilateral tax treaties in effect with Chile, Brazil, Canada, Korea, Mexico, Portugal and Switzerland, which are largely based on the OECD Model Tax Convention on Income and Capital.

The Uruguay Tax System: Direccion General Impositiva -DGI

Uruguay is located in the South East of South America, is characterized by an export-oriented agricultural and is one of the best performing economies in Latin America, the country has a reputation for social and legal stability. Sharing borders with Argentina and Brazil. The country, it is richly endowed with natural resources and the most important industries are food processing, electrical machinery, petroleum products, textiles, chemicals and beverages.

The Uruguayan tax system comprises direct and indirect taxes and operates a territorial source. National and foreign companies are taxed on Uruguay-source income. However, foreign-source income is exempt. Nonresidents without a branch that received certain types of Uruguay-source income are taxed in withholding.

The main direct taxes applied to companies include the Corporate Income Tax (IRAE) is an annual tax levied at a rate of 25% on Uruguayan sources obtained based on economic activities or assets, and the Wealth Tax (IP) at a rate of 1.5%.

In case of Dividens and Royalties paid to a nonresident are subject to a 7% withholding tax. On the other hand, interest paid to a nonresident is 3%, 5% or 12% unless the rate is reduced under a tax treaty. Also technical service fees provided by nonresident and technical services provided from abroad are subject to a 12%.

Another main direct tax levied on natural persons are the Personal Income Tax (IRPF), to those residents who are staying within the country more than 183 days and paid taxes on the income received rate of 3% to 12%. They are subject at a rate between 3% to 12% the non-resident (IRNR), depending on the type of income.

The main indirect taxes include the Value Added Tax (VAT) applicable to the products and services at a rate of 22%, some product are taxed with 10%.

Additional, another indirect tax is the IMESI (impuesto específico interno) is levied at a rate of 10% to 13,3% (the rate varies according to the categories), applies to the first disposal at any title carried out by producers or importers of certain products like fuel, tobacco, beverages, cosmetics and cars.

Uruguay has a network of double taxation agreements (DTAs) of which has entered into recent decades with developed and developing countries, mostly they follow the OECD model and those are: Argentina, Germany, South Korea, Ecuador, Spain, Finland, Hungary, India, Liechtenstein, Malta, Mexico, Portugal and Switzerland.

Additional, has a Double taxation agreements with preferential in good as MERCOSUR with the following countries: Brasil, Argentina, Paraguay and Venezuela, Bolivia, Chile, Colombia, México, Ecuador, Perú and Cuba. Other agreements out of the MERCOSUR with Israel, India, Egipt and Palestine.

4.3. Double Taxation Agreements (DTAs) and Bilateral Protection of Investments (BITs) in selected South America countries

As a result of trade liberalization and financial deregulation policies during the 70's and 80's, the majority of South American countries has undergone through significant changes by undertaking comprehensive trade liberalization, stabilization program and supporting policies (including fiscal policy and tax reform). After all adjustment the economy's growth rapidly as well as international trade.

The absence of growth and investment led the countries moving towards agreements and decisions to open up the economy to foreign investors and signing Bilateral Investment Treaties (BITs) and Double Taxation Agreements (DTAs) in order to attract foreign direct investments.

ARGENTINA has entered into BITs[13] and DTAs with the following countries: Algeria, Armenia, Australia, Austria, Belgium-Luxemburg Economic Union, Bolivia, Bulgaria, Canada, Chile, China, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Greece, Guatemala,

Hungary, India, Indonesia, Israel, Italy, Jamaica, Republic of Korea, Lithuania, Malaysia, Mexico, Marocco, Netherlands, New Zealand, Nicaragua, Panama, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Senegal, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Boliviarian Republic of Venezuela, Vietnam all of them in force. In order to be more protected the country has entered into tax information exchange agreements (TIEA) with the United Arab Emirates, Macedonia, Aruba, Angola, Armenia, Isle of Man, Azerbaijan, Cayman Islands, Bahamas, Andorra, San Marino, Costa Rica, Bermuda, Jersey, India, Ecuador.

Nowadays the Argentina DTAs network are with: Australia, Belgium, Bolivia, Brasil, Canada, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Russia, Switzerland, Mexico, Chile, Uruguay, Spain, Sweeden, Pakistan and United Kingdom, the treaties do not always follow the OECD model and use the tax credit as tax relief.

BOLIVIA maintains tax treaties[14] to avoid double taxation with the following countries: Argentina, France, Germany, Spain, United Kingdom of Great Britain and Northern Ireland and Sweden. Also, it has a multilateral agreement with Perú, Colombia and Ecuador, the conventions do not always follow the OECD model treaty, and it used the tax credit as double taxation relief.

Additionally, Bolivia is a party of the Bilateral Investment Treaties (BITs) [15], with more countries: Belgium-Luxembourg Economic Union, Chile, China, Costa Rica, Cuba, Denmark, Ecuador, Italy, Republic of Korea, Paraguay, Peru, Romania, Switzerland, United Kingdom. On the other hand, the country has terminated eight BIT's.

CHILE[16] has signed treaties to avoid double taxation with Argentina, Australia, Belgium, Brazil, Canada, Colombia, Croatia, Denmark, Ecuador, France, Ireland, Malaysia, Mexico, New Zealand, Norway, Peru, Poland, Paraguay, Portugal, Russia, South Korea, Spain,

[13] United Nations UNCTAD – Bilateral Investment Treaties (BITs) ARGENTINA. Available at: http://investmentpolicyhub.unctad.org/IIA/CountryBits/8
http://www.treatypro.com/treaties_by_country/argentina.asp

[14] BOLIVIA Tax Treaties: http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Bolivia-Individual-Foreign-tax-relief-and-tax-treaties

[15] BOLIVIA BITs: http://investmentpolicyhub.unctad.org/IIA/CountryBits/24

[16] CHILE TAX TREATIES: http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Chile-Corporate-Withholding-taxes

Sweden, Switzerland, Thailand, United Kingdom, Uruguay, United States of America and South Africa. Besides, the country has signed several agreements for the avoidance of double taxation of income from international shipping and/or air transport Germany, France, Costa Rica, Panama, Singapore, United States, Uruguay and Venezuela. Some of the agreements were concluded by means of an exchange of diplomatic notes.

The network of bilateral investments agreements[17] signed by Chile with the following countries: Argentina, Austria, Belgium-Luxemburg Economic Union, Bolivia, Brazil, China, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Greece, Guatemana, Hondura, Hungary, Iceland, Indonesia, Italy, Republic of Korea, Lebanon, Malaysia, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Poland, Portugal, Romania, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, Uruguay, Venezuela, Vietnam.

COLOMBIA: According with the Cancilleria de govierno[18] Colombia has entered into DTAs with Bolivia, Canada, Chile, Ecuador, India, South Korea, Mexico, Peru, Portugal, Spain, Switzerland, the country has a preference for the OECD Model as the base's structure for the DTAs.

Following the list of the countries with whom Colombia has signed Bilateral Investment Agreements[19]: Belgium, Chile, China, Cuba, France, Guatemala, India, Japan, Peru, Singapore, Switzerland, Turkey, United Kingdom. Moreover, Colombia also has entered into tax information exchange agreements (TIEA), with Bahamas, Cayman Islands, Curacao in order to avoid tax evasion and tax fraud in those countries.

PERU[20] has entered into double taxation agreements with Brazil, Canada, Chile, Korea, Mexico, Portugal and Switzerland, Italy, Singapore, United Arab Emirates, Japan, Qatar. Beside it is part of a multilateral agreement with the Andean countries (Colombia, Ecuador and Bolivia), the multilateral treaty is a unique model, all criteria was standardized for all

[17] CHILE BITs: http://investmentpolicyhub.unctad.org/IIA/CountryBits/41
[18] Colombia DTAs: http://www.cancilleria.gov.co/footer/juridicainternacional/tratados/doble
http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Colombia-Individual-Foreign-tax-relief-and-tax-treaties
[19] Colombia BITs: http://investmentpolicyhub.unctad.org/IIA/CountryBits/45
[20] PERU DTAs: http://www.treatypro.com/treaties_by_country/peru.asp

parties involved. However, the tax treaties celebrated with the developed countries follow the OECD model.

Following the list of BITs[21] signed by Perú are: Argentina, Australia, Belgium, Bolivia, Canada, China, Colombia, Cuba, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Italy, Japan, Republic of Korea, Malaysia, Netherlands, Norway, Paraguay, Portugal, Romania, Singapore, Spain, Sweden, Switzerland, Thailand, United Kingdom, Venezuela.

URUGUAY policy is to promote and to provide protection of foreign investments, it has been characterized to give an equal treatment of national and foreign investors. Besides the financial deregulation and liberalization strategy brought as a result a non-existing limiting controls and has become an offshore financial centre.

However, the country entered into double taxation agreements DTA[22] with: Brazil, Chile, Germany, South Korea, South Africa, Ecuador, Spain, Finland, Hungary, India, Liechtenstein, Malta, Mexico, Portugal, Romania, Switzerland, United Arab Emirates, Luxembourg, Vietnam, Singapore.

Furthermore, it has entered into Bilateral Investments Agreements[23] with: Armenia, Australia, Belgium, Bolivia, Canada, Czech Republic, Chile, China, Ecuador, El Salvador, Finland, France, Germany, Hungary, India, Israel, Italy, Japan, Republic of Korea, Malaysia, Mexico, The Netherlands, Panama, Poland, Portugal, Romania, Spain, Sweden, Switzerland, United Kingdom, The United States, Venezuela and Vietnam.

Additionally, the agreements for the exchange of tax information[24] with whom Uruguay has entered into: Argentina, Australia, Brazil, Canada, Denmark, Finland, Faroe Islands, France, Greenland, The Netherlands, Iceland, Norway, Sweeden, Guernsey, United Kingdom, Liechtenstein.

Mostly, the majority of this agreement (double taxation, bilateral investment and exchange of information) follows the OECD criteria.

[21] PERU BITs: http://investmentpolicyhub.unctad.org/IIA/CountryBits/165
[22:] URUGUAY DTA: http://www.treatypro.com/treaties_by_country/uruguay.asp
[23] URUGUAY BITs: http://investmentpolicyhub.unctad.org/IIA/CountryBits/225
[24] URUGUAY TIEA: http://www.treatypro.com/treaties_by_country/uruguay.asp

CONCLUSION AND RECOMMENDATIONS

Due to all above-mentioned, it is very important that all Latin American countries become more aware of tax culture and morale and fight against tax evasion and fraud by implementing a strong mechanism for to control it, this happen due to lack of believing, honesty and due the corruption. However, every Government and tax administration should promote confidence and credibility in order to give a taxpayer motivation to pay taxes.

For any developing country is very important entering into Double Taxation Agreements (DTAs), with developed countries, because attract foreign direct investment. However, those agreements represent the fiscal sacrifice when the country grants exemptions for some items, unfair distribution of revenues, because of the awareness of their strong protection in the State of residence and by their inflexible rules, because it favours capital exporting countries over capital importing.

After many decades with the same tax system, some South American government strength their tax administrations with the purpose to collect more taxes, establishing rules for the transfer pricing, harmful fiscal competition, transparency and exchange of information, but considering their insufficiencies, weaknesses and suitability. Some of them have a very inefficient tax system and weak administrative structure, which needs to be renewed and strengthened. Those who has improved their tax system the outcome were the increase in tax collection.

Currently there are no studies that measure the benefits generated by the DTAs, or the fiscal sacrifice involved in tax collection and the country in general, due to a lack of information.

All Latin American countries should unify as one trade block and undertake the task of drafting and propose their own “Model Tax Convention on Income and on Capital” with the highlight elements of the OECD and the UN (fair distribution of revenues, exchange of information, prioritize source-based taxation) in order to get more benefits for each country and to avoid fiscal sacrifice or tax haven.

It is necessary to promote and encourage The ANDEAN PACT, ALADI, MERCOSUR, UNASUR, CELAC to unify as one regional trade integration and promoted and enforced their

policies, procedure and rules for the negotiation and execution of their own DTAs among the member countries. These regulations could define principles and procedures, which should prioritize source-based taxation rather than residence-based taxation.

Every tax administration of each country should create awareness about paying taxes among taxpayers, beside to promote transparency in the tax system and tax culture among the taxpayers in order to avoid tax evasion or any action made by every government will be welcome. However, nowadays, the majority of the South American countries is mired in corruption which appears in high level. Therefore, it is hard to raise awareness about tax evasion, when the system itself is corrupt.

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