

Harris Gómez Group

Business & Law Journal

September 2010

PERU'S 180 DAY EMPLOYMENT LAW

Persons that are in Peru for 183 days in a 12-month period (calendar year of 1 January through to and including 31 December) are considered domiciled for tax purposes. This rule applies across the board, to Chileans, to Australians, as well as to Peruvians returning to the country. Before reaching that number of days, foreigners working in Peru are considered 'non-domiciled' and are taxed only for their Peruvian income with a flat rate of 30% (without any deductions).

Once the limit (that is, 183 days in a calendar year) has been reached, the following year they are considered domiciled in Peru for tax purposes, and they have to pay taxes in Peru for their worldwide income at a rate of 15% for the first USD\$27,000 (approximately), 21% for the income between USD\$ 27,000 and USD\$ 54,000, and 30% for any excess thereafter.

Employees can usually deduct around USD\$7,000 from their gross income before applying the rates.

PERUVIAN TAX LAW ON SERVICES PROVIDED BY A FOREIGN COMPANY

Peruvian Income Tax Law states that the services provided by a foreign company to a Peruvian company outside of Peru are not subject to Peruvian Income tax, except if the service provided is considered a "technical assistance service". If the service provided by the foreign company to the Peruvian company is considered a "technical assistance service", it shall be subject to Peruvian income tax laws.

The rate that a Peruvian company shall withhold in payment to a foreign company for the provision of "technical assistance services" abroad shall be 30% of the income. This rate can be reduced to 15%, if the foreign company provides to the Peruvian company: i) an affidavit stating that it shall provide the referred-to services and that it will post in its accounting records the income resulting there from; ii) a report issued by an

internationally renowned audit firm stating that the technical assistance has been provided by the foreign company.

Peruvian Income Tax Law defines "technical assistance" as *"any independent service, whether provided from abroad or in the country, whereby the provider undertakes to use its skills, through the application of certain proceedings, arts or techniques, in order to provide specialized non-patentable knowledge, that may be necessary in the production, commercialisation, or service supply proceeding or any other activity performed by the user, which also comprises the training of people to apply such specialized knowledge."*

Further, Peruvian Income Tax Law states that besides the above description, "technical assistance" comprises the following services:

- 1) Engineering services: The performance and supervision of the assembly, installation, starting-up of machines, equipment and production plants; calibration, inspection, repair and maintenance of machines, equipment; and performance of tests and assays, including quality control, feasibility studies and final engineering and architectural projects.
- 2) Research and Project Development: Preparation and performance of pilot programs, research and lab experiments and technical planning or programming of production units.
- 3) Financial counselling and consultancy: counselling on assessment of financial and banking entities and in the formulation of plans, programs and international promotion of sales thereof; counselling on the distribution, placement and sale of securities issued by financial entities.

Nevertheless, it should be noted that if the service of technical assistance (no royalties) will be provided by a Chilean company to a Peruvian company, the payment would not be subject to Income Tax in Peru, courtesy of the Double Taxation Agreement between Chile and Peru, so long as the service is not carried out in Peru over a period (or periods) that in total exceeds 183 days (see above), within any given twelve month period.

However if the service will be carried out over a period (or periods) that in total exceeds 183 days, within any given twelve month period, a “permanent establishment” will be considered to have formed in Peru and the Chilean company will have to pay income tax as a Peruvian company.

If the service was provided by a company domiciled in Peru, the Income Tax rate would be 30%, but such percentage would be applied on the profit that such company would obtain and not on the gross income.

ADDITIONAL WITHHOLDING TAX IN CHILE

In general, a corporation in Chile is subject to a “First Category tax”, on an accrued basis, applicable to its annual income with a rate of 17%. Its foreign shareholders that are not domiciled or resident in the country pay an “Additional Tax” (at a rate of 35%) on amounts withdrawn or distributed, against which they have the right to a credit equivalent to 17% of the amounts distributed that were originally subject to the First Category Tax in the company. The amount of the credit is considered income for the shareholder and, therefore, it must be included in the taxable base of the Additional Tax, thus resulting in a tax of 35%.

Therefore, dividends, retirement and/or remittances of utilities of joint-stock companies, companies of persons or permanent establishments of foreign companies are all burdened by the additional tax rate of 35%.

Additional Tax is also applied to ALL profits derived from Chilean sources by all persons that do not have domicile or residency in Chile. Therefore, this includes services rendered offshore but paid for by Chilean sources. This Additional Tax is a direct, personal tax, subject to proportional tax rates.

Some exemptions that apply to the Additional Tax rate of 35% include:

- 1) Payments made abroad are exempt in the case of freight services, loading and unloading charges, storage, weigh-in, product sampling and analysis, insurance and reinsurance operations, commissions for international telecommunications and for smelting, refining, and other special treatment of Chilean products;
- 2) Exemption also applies to amounts paid in the case of exportable goods and services, advertising and

promotion, market analysis, scientific and technological research, legal advice, and legal defence before the administrative, arbitration or jurisdictional authorities of the respective country;

- 3) In special cases there is a smaller Additional Tax rate for revenue that satisfies special requirements established by Chilean tax law known as “tax-reduced services”. Remittances of funds for payment of engineering and technical services in general, supplied in Chile or overseas, are subject to a 20% tax, as it is considered a “tax-reduced service”;
- 4) Fees paid for the use of trademarks, royalties, patents, formulas, advisory and other similar services are subject to a 30% tax;
- 5) Payments made abroad to foreign producers or distributors for material to be shown in cinemas or television are subject to a 20% tax;
- 6) Payments for the use of copyright or author’s rights on books are subject to a 15% tax;
- 7) Premiums on insurance of any type, taken out with companies not established in Chile, for goods permanently located in the country or against the material loss goods on land subject to temporary admission or in transit, as well as premiums on insurance for persons domiciled or resident in Chile. The tax on insurance premium of an insurance premium is 22%, and 2% for reinsurance premiums;
- 8) Maritime transport to and from Chilean ports supplied by foreign companies is subject to a 5% tax;
- 9) Rental, sub-rental, chartering, sub-chartering, usufruct or any other right to the use or temporary employment of foreign ships that are destined to or used for coastal services, or when the respective contracts allow or do not forbid the ship’s use for coastal services are subject to a 20% tax;
- 10) Income arising exclusively from the work or skills of foreign individuals, who have carried out scientific, technical, cultural or sporting activities in Chile, is subject to a 20% tax.

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In general terms, in order to calculate the additional tax, you must:

- 1) Add to the distribution of profit, an equivalent amount of the First Category Tax (17% over the accrued or perceived profit) on taxable income. This result is called the "tax base";
- 2) Then the additional tax rate (0-35% depending on the case), must be applied over the tax base; and
- 3) Then the resulting tax is reduced by the First Category Tax in the form of a credit against it, which was added in '1' above to calculate the additional tax base. That is the end result would be a rate of up to 35% being applied.

ZONA FRANCA – TAKING ADVANTAGE OF IT – THAT IS, DEFERRING THE 19%

Companies must pay 19% IVA (VAT or GST) on all imports to Chile. When bringing imports into the Iquique Tax Free Zone, that is, the 'Zona Franca De Iquique', companies can defer payment of this tax. However, when bringing products into Chile from the Iquique Tax Free Zone, all products that leave the zone, headed to the rest of Chile, are considered imported goods and therefore subject to taxation. To that end, all taxes will be due upon leaving the zone (according to Law No 825). One of the main taxes to pay will be IVA (that is GST as we know it in Australia), which is 19%.

Due to the recent Free Trade Agreement between Australia and Chile ("FTA") most tariffs and customs duties have been abolished. In each individual case you will need to determine whether your imported products are FTA exempted.

One advantage of having a Chilean company already set up is that you will be able to seek an imputed tax credit for the 19% when you sell the product to a third party. To take advantage of this credit, any sale must be invoiced from a Chilean entity.

The National Director of Customs regulates the entry/exit of all merchandise in the zone. It states that the sale of all foreign merchandise for the importation to the zone, the rest of Chile, foreign countries, and other free trade zones should be formalized before Customs Service by a 'Solicitud Registro Factura a Zona Franca de Extensión (S.R.F.)',

'Factura de Importación' or a 'Solicitud de Reexportación' according to the corresponding circumstances of the entry/exit of the merchandise.

CHILEAN ENERGY MINISTRY INVITES TENDERS FOR GEOTHERMAL CONCESSIONS ('CONCESIONES')

The Chilean Energy Ministry has recently invited applications for its latest round of geothermal concessions. It was announced on 1 September 2010, that a total of 50 'concesiones' are up for tender process in 21 areas of geothermal exploration between the areas Tarapaca and Los Rios. The Chilean Government support for geothermal energy development is steeped in its focus on looking for green and sustainable alternative energy options, projected to create economic growth, employment and tackle poverty.

The Government has stated that its' goal is to authorise 50 'concesiones' this year, and a further 120 in each year following.

Interest in bidding for the 'concesiones' should have been made no later than 30 September 2010 via the solicitation of a tender application, while the bidding process itself finishes 9 November 2010 where all applications fall due.

MICROMINE CHILE S.A. OPENS ITS DOORS IN SANTIAGO, CHILE

Australian Mining technology company Micromine Pty Ltd have recently transformed its Latin American presence and set up its headquarters in Santiago, Chile. Having been around in Chile for just over two years now through its Chilean subsidiary, Micromine Chile S.A., the company have leased offices in the fashionable new office block Edificio Plaza Americas in Avenida Vitacura and are looking to expand further into the Latin American market, building off their already successful venture into Brazil.

We wish them every success in their future.

DISCLAIMER: THE INFORMATION CONTAINED IN THIS JOURNAL IS TO BE USED AS A GUIDE ONLY AND NOT TO BE RELIED UPON AS LEGAL ADVICE. FURTHER LEGAL ADVICE SHOULD BE SOUGHT.



Micromine - Leading provider of innovative software solutions and services to the mining and exploration industry

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About Harris Gómez Group...

Harris Gómez Group Ltda is an international and multidisciplinary firm specialising in "cross border" transactions between Australia (and Common Law countries) and Latin America. We have over 17 years of legal and business experience, and its team of over 20 locally admitted lawyers, accountants, and patent attorneys have a deep understanding of the legal and business cultures in both regions. It is a "one stop shop" for all your corporate and tax needs.

Unique & Offering Added Value

Going into new markets is risky and riddled with complexity. Navigating through the legal, tax, corporate laws and governance can not only be a minefield but could also cost you unnecessary time and money. We pride ourselves on saving you time and money while offering a personalised service. Taking an Australian (or Common Law) perspective going into the Region is what makes us unique in the market. Vice versa, we also take a Latin American perspective going into Australasia and Asia.

Expertise

A "one stop shop" offering business/legal advisory and support for new start ups, (for Australian businesses going into Latin America and for Latin American businesses going into Australia and Asia) and as well as for existing businesses to assist with their growth and planning. Our clients view us as a strategic partner for the long run.

"Harris is both a strategic planner and tactical deliverer. If you want something done his firm does it at the highest level. He understands both business and cultural aspects of doing business in Latin America and is someone that listens and provides useful, experienced advice. Harris Gomez Group is an essential partner in Latin America for trusted legal and business advisory services"

Nigel Warren Current Consul General and Senior Trade Commissioner, Austrade in San Francisco and former Senior Trade Commissioner Latin America. 18 November 2009.

know what is involved and what are the implications to your Australian business, we can help you. We can provide you with various options for tax effectiveness.

We are of the view that your business needs to be strategic and take a "regional view" - that is where you are actually currently selling and what new markets you intend to be in the future and then work from there.

For example, depending on your markets, you may want to consider bringing your products through Chile's Trade Free Zone in Iquique. Chile, in comparison to Australia, enjoys stronger and more competitive trading treaties with many Latin American countries, including Brazil, Colombia and Mexico. There are also Tax Free Zones in Brazil that may serve you better.

We can help you further understand and "map out" your plans for the Region.

Asset protection and managing risk to the parent and subsidiary company.

We strongly recommend that you plan in the event that matters do not go as expected. That is have a contingency. The key is not to lose control. We can certainly assist you with understanding how to limit your exposure - that is for the parent company, its subsidiaries and its directors.

Clients

The advantage we have is that we can offer most of the services that the large firms do, whilst being cost effective. At the same time, we offer you a personalised service and you will always be dealing with a partner and/or a senior associate. Some of our clients' backgrounds are:

- Large Mining Company
- Junior to Medium Mining Companies
- Large Australian & Chilean Banks
- Publicly Listed Companies
- Large Construction and Infrastructure
- Large Universities & Research Centres
- Governments & Embassies
- Mining Technology Services
- Agribusiness
- Investment & Capital Raising
- Hospitality
- Medical
- Food and Wine
- Insurance
- Private Companies and Wealthy Individuals
- Sports
- Transport & Logistics



Harris Gómez with then President of Chile Michelle Bachelet

Cross border strategies and managing global structural tax rates.

We can help you with understanding what is involved with regards to taxes (local and international). For example if you are wanting to manufacture in Brazil or Peru and want to