International Taxation

NEWS

Tax discrepancy in Mexico and beyond: what you need to know

...and further information from the international tax sector

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GUERRERO SANTANA
TAX, AUDIT & CONSULTING

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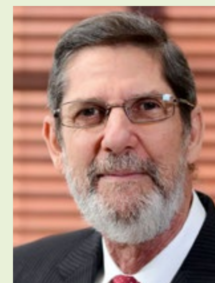
The most important anti-avoidance rules are a general provision based on the concept of substance over form as well as extensive transfer pricing rules modelled on guidelines issued by the OECD. There are only two double taxation treaties in place: one with Canada (for income tax) and one with Spain (for income and capital gains tax).

Companies operating in free zones function in a nearly free trade environment and benefit from considerable tax exemptions (income, dividends, value added tax, import duties, etc.) for renewable 15-year periods. Companies established and operating in free zones on the border with Haiti are entitled to additional benefits.

Investors in the tourism sector benefit from various tax exemptions, from import duty exemptions to 15 years general tax exemption (exempt dividends; applies to most taxes). Favourable tax treatment is also available for investments in the renewable energy sector and the film industry, as well as for foreign investors (minimum USD 200,000) and retirees.

GGI member firm
Guzmán Ariza
Law Firm
Santo Domingo, Dominican Republic
Fabio J. Guzmán Ariza
E: fabio@drlawyer.com
T: +1 80 9255 0980
W: www.drlawyer.com



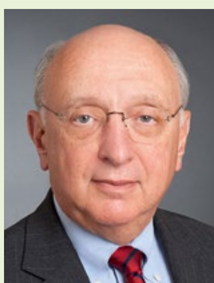
Fabio J. Guzmán Ariza

Fabio J. Guzmán-Ariza is the managing partner of **Guzmán Ariza** law firm. A graduate of MIT and the PUCMM law school in the Dominican Republic (summa cum laude, 1981) and a former professor of Civil Law and Dean of the Law Faculty at the Universidad Católica Nordestana, Mr Guzmán Ariza has assisted international corporations and individuals on Dominican legal issues for more than 35 years. He is presently one of the most important authors on the Dominican legal system, especially in the fields of real estate law, litigation, company law and legal drafting.

GUZMÁN ARIZA
ATTORNEYS AT LAW

New U.S. model treaty

GGI member firm
Ruchelman P.L.L.C.
Law Firm
New York City, NY, USA
Stanley C. Ruchelman
E: ruchelman@ruchelaw.com
T: +1 212 755 3333
W: www.ruchelaw.com



Stanley C. Ruchelman

Stanley C. Ruchelman is the founding member of **Ruchelman P.L.L.C.** He leads a team that provides a broad range of tax planning and legal services required in cross-border transactions. Areas include B.E.P.S. compliance, transfer pricing, F.A.T.C.A., C.F.C. rules, treaty planning, and preparation of acquisition documentation. Clients include non-U.S. individuals and foreign corporations operating or investing in the U.S., foreign financial institutions doing business in the U.S. through branches, and U.S. individuals, corporations, and financial institutions operating or investing abroad.

ruchelman

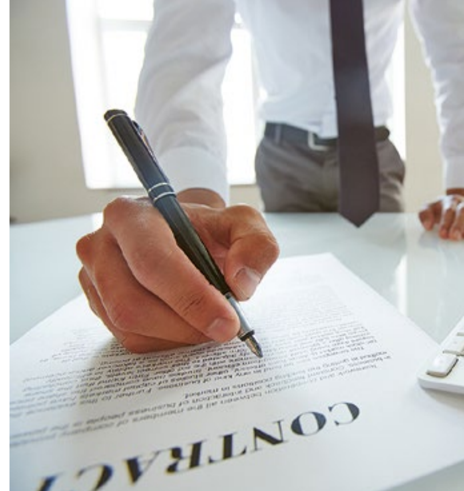
By Stanley C. Ruchelman

In February, the USA published the 2016 Model Treaty, on the basis of which all treaty negotiations are initiated. Several notable provisions are:

- An attack on special tax regimes providing attractive tax for interest, royalties, and guarantee fees. These regimes eliminate the need for back-to-back payments.
- A commitment to renegotiate a treaty when changes are made to the domestic law of a treaty partner that affect the treaty's allocation of benefits between the parties.
- A tightening of the limitation of benefits (LOB) article that may prevent a group based in one country from investing in the U.S. through affiliates engaged in a similar business in a treaty partner jurisdiction.

- An expanded derivative benefits provision when a treaty resident company is owned by an individual resident in another country that has a treaty with the U.S. providing equivalent withholding tax rates for intercompany dividends.
- A denial of treaty benefits when a U.S. business moves to a country that has an income tax treaty with the U.S.
- Mandatory arbitration of disputes between the competent authorities.
- An attack on splintered operations dividing a long-term project into small pieces carried on by related parties to avoid creation of a P.E.

A full explanation of the 2016 Model Treaty appears in the March edition of Insights, the monthly newsletter of Ruchelman P.L.L.C., which can be found **here!**



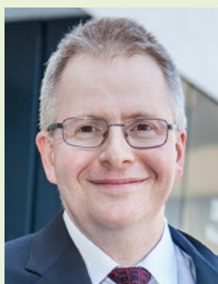
Aspects of German tax treatment of cross-border loans

By Ralf Kammer

Cross-border loans are subject to special German rulings and intensive audits by tax authorities. With regard to interest connected to loans, a complex thin capitalisation rule is applied. This rule affects only a small number of cases, as the interest payments can exceed the interest income of a taxpayer by EUR 3 million per year. Further, since 2008, expenses connected with loans between related corporations cannot be deducted for tax purposes.

In respect of loans granted by German taxpayers to foreign related parties, the tax authorities are applying the arm's length principle. This principle shall not only be applied to the relevant interest rate, but to the whole bundle of contractual regulations of the loan agreements (e.g. securities). This is especially relevant for waivers or write-downs to fair value. However, the Federal Tax Court decided recently that the arm's length principle shall only apply to the interest rate. As a consequence, expenses caused by the write-down of loans which have not been contracted in line with the arm's length principle may lead to a tax deduction. The tax authorities are appealing this decision and the government plans to put in force rules to support the tax authorities' approach, which shall apply to all open cases. Therefore, a German tax adviser should be contacted when the concluding or waiving of loans is planned or in case of a write-down.

GGI member firm
Muth & Partner
Wirtschaftsprüfer Steuerberater
Rechtsanwälte mbB
Advisory, Auditing &
Accounting, Corporate Finance,
Law Firm, Tax
Fulda, Germany
Ralf Kammer
E: ralf.kammer@muth-partner.de
T: +49 661 9736 0
W: www.muth-partner.de



Ralf Kammer

Ralf Kammer is a certified auditor, tax consultant and lawyer under German professional law. He is partner in Muth & Partner mbB and keeps a master degree in international taxation, granted by the University Hamburg. He specialises in international tax law and VAT.

Muth & Partner mbB is a multidisciplinary partnership of auditors, tax consultants and lawyers with three offices in the heart of Germany (headquarters in Fulda). With 100 employees including 26 professionals, the partnership offers a wide range of services in the areas of audit, tax and law consultancy.

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