

Tax News

November 2023

Executive Summary

Standard	Content	Date
Law N° 7196	The consular fee and the contribution to the Paraguayan Institute of the Indigenous ("INDI") on trade documents and international transportation of goods are eliminated.	October 27, 2023
Law N° 7218	The withholding on account of Corporate Income Tax ("IRE") to public sector suppliers is increased until December 31, 2023.	November 16, 2023
Decree N° 777	The withholding of IRE as a single and definitive payment for small producers of earth minerals extracted from mills is reduced by half until December 31, 2023.	November 24, 2023
Binding Consultation	The previous Tax Authority ("SET") ruled on the deductibility in the IRE of interest paid for late cancellation of taxes or penalties applied by any public body.	May 2023
Administrative Court Ruling N° 281/2023	The Administrative Court decided to confirm the response of the previous SET to a binding consultation on the deductibility of the provisions for premium debtors for the determination of the IRE.	November 2023

More information:

Law No. 7196/2023 - Modifies several articles of Law No. 4033/2010, "On the Consular Tariff", eliminating it together with the contribution to INDI as costs associated with trade documents and international transportation of goods.

With the sanction and enactment of Law No. 7196/2023, published in Official Gazette No. 214 of November 2, 2023 and effective as of the following day, Paraguay eliminated the economic restriction to international trade and transportation that consisted in charging consular fees for the legalization or visa of commercial documents issued abroad that are necessary for the international transportation of goods destined to Paraguay, as well as their importation into the country.

Specifically, the decree eliminated the legalizations or visas corresponding to the trade chapter's navigation, air navigation, rail transport, land transport and import operations sections. It also eliminated the contribution to INDI, provided in Article 57, paragraph a) of Law No. 904/81, as 7% of the consular fee on specific international trade and transport documents. In this way, the cost of imports into the country is reduced, since the aforementioned economic costs are eliminated.

Law No. 7218/2023 - Establishes extraordinary management measures for public finances, among which is the increase in the withholding of IRE on account of public sector suppliers until December 31, 2023.

Law No. 7218/2023, published in Official Gazette No. 225 of November 16, 2023, provided several measures to bridge the financial gap faced by the new Government at the end of 2023. One of these measures consists in the increase, until December 31, 2023, of the withholdings on account of the IRE applied to public sector suppliers, excluding Municipalities and Governors' Offices. Thus, withholdings to public sector suppliers are as follows:

Withholding IRE	Until 11/16/2023	From 11/17/2023 to 12/31/2023	From 01/01/2024	Variation
Public sector suppliers	3%	4%	3%	+/-1%



The amount withheld will be credited as an advance payment of the IRE that public sector suppliers will pay in April of each year, which, in financial terms, implies a loan at zero interest rate ("0") for the State, for an indefinite term, since the end of this financing to the public sector will depend on the date on which the tax credit for advance payments of the IRE is offset, or its repetition is obtained.

IRE withholding will not be made when the amount of sale or service rendered, excluding VAT, is less than PYG 2,550,307 which is the minimum salary for unspecified miscellaneous activities for the Capital that was in force as of January 1, 2023, by Decree No. 7270/2022. For the taxpayer to be able to apply this exception to IRE withholding, the splitting of invoices on the same day will not be taken into account since all purchases made from the same supplier on the same date constitute a single transaction; the number of invoices used is irrelevant.

Decree No. 777/2023 - Reduces by half until December 31, 2023, the withholding of IRE as a single and definitive payment for small producers of earthy minerals extracted from mills.

By means Decree No. 777/2023, published in the Official Gazette No. 238 of December 1, 2023, the Executive Power provided that taxpayers of IRE that acquire earth minerals extracted through mills of small producers, who lack the size to determine the IRE on their account, must withhold this tax applying the general rate of 10% on a net income that drops from 30% to 15% of the price of the operation, until December 31, 2023.

This measure implies a transitory reduction by half of the IRE taxable base for the referred activity, which also means a reduction by half of the respective levy, which drops from 3% to 1.5% of the transaction price, as follows:

Withholding IRE	Until 01/12/2023	From 02/12/2023 to 31/12/2023	From 01/01/2024	Variation
Taxable income	30%	15%	30%	+/-15%
Rate 10%.	3%	1,5%	3%	+/-1,5%

The purpose of this measure is to facilitate compliance with tax obligations, as well as to promote the growth and formalization of the sector benefited by it. It is worth mentioning that this measure is not new since reductions had already been provided for exceptional periods in 2020 and 2021 through Decree No. 3725/2020.



Answer to Binding Consultation on the deductibility in the IRE of interest for late cancellation of taxes or penalties applied by any public body.

In response to a binding consultation in May 2023, the former SET established its position on the deductibility in the IRE of interest for late payment of taxes or penalties applied by any public body. In the consultation, the taxpayer referred explicitly to the interest charged by the tax authority when granting IRE payment facilities. The taxpayer stated that it should be deductible.

In this regard, the taxpayer pointed out that although Article 16 of Law No. 6380/2019 (the "Tax Law") establishes as non-deductible costs and expenses for the determination of the IRE the penalties for infringements applied by any competent public agency, the mentioned regulation does not include as non-deductible costs or expenses the interest paid for the fractioning of the IRE, since these, in its opinion: (1) are not the tax itself, (2) nor do they constitute an infraction penalty, but rather (3) are a financial cost similar to a loan from a banking entity, which is considered deductible for the determination of the IRE.

The Tax Authority approached the consultation recognizing that interest for late payment originates in the deferral of the payment of the principal obligation and that its purpose is to maintain in the future the original value of the amount owed, the payment of which is deferred. Thus, the Tax Administration qualified interest as an accessory of the principal obligation and used the legal principle that states that "*the accessory follows the fate of the principal obligation*" to affirm that interest shares the deductibility of its principal, which in this case was the IRE, which is not deductible in the liquidation of the tax itself, which also made the interest paid for it "non-deductible".

This reasoning would also apply to the interest paid for the deferral of any penalty applied by any public body, which would be a non-deductible expense since such penalties would also be deductible. However, this would not be sufficient to state that interest for any tax other than IRE would not be deductible in the liquidation of this tax because, to the extent that the tax is deductible as a cost or expense, the interest paid for it would also be deductible.

With this in mind, the Tax Administration also referred to numeral 10 of article 15 of the Tax Law as a second argument to deny the deductibility of late payment interest paid to public entities, stating that in such cases, the interest is not income taxed by an Income Tax. Therefore, it would not be a deductible expense in the IRE.

Regarding this last argument, it is worth mentioning that Article 56 of the IRE regulations annexed to Decree No. 3182/2019 provides for the interaction between the requirements for deductibility of interest in the IRE and establishes that the main requirement for this is that (a) they involve income taxed by an Income Tax, without reference to any rate limit; and, failing this, that (b) they do not exceed the average passive rates of the banking and financial market for similar operations. In other words, this second requirement allows the deductibility of interest that does not comply with the first one.



Administrative Court Ruling No. 281/2023 - the Administrative Court resolved to confirm the response of the previous SET to a binding consultation on the deductibility of the provisions for insurance' premium debtors for the determination of the IRE.

The Administrative Court confirmed through Ruling No. 281/2023, the response issued by the former SET to a binding consultation formulated by a guild of insurance companies regarding the deductibility in the IRE of the provisions on "*debtors for premiums*". The previous SET had issued the answer stating its position on the non-deductibility of such a concept, arguing that it does not fall within the concept of "*reserves similar*" to mathematical reserves but rather that they are provisions on bad debts, whose deductibility is only allowed to banks and finance companies under certain conditions.

The former SET added that to consider the reserves of insurance companies as "similar" to mathematical reserves, they must meet the following requirements (which would be missing in the reserves for prize debtors): (1) not increase the equity of the companies, (2) be integrated with premiums or portions of premiums economically unearned or unearned in the year, and (3) form a provision to cover the risk corresponding to subsequent periods, i.e., constitute company liability.

On this point, the taxpayers based their position on the following arguments related to the provisions discussed: (a) they are established by the control authority (the Superintendence of Insurance of the Central Bank of Paraguay), and therefore constitute mandatory reserves and, therefore, are necessarily deductible expenses; (b) they are comparable to mathematical reserves and, therefore, deductible; (c) it is inconsistent not to consider them as deductible since this would imply taxing them, contrary to the income concept.

The Administrative Court, by a majority vote (two judges voted in the same sense and one against), resolved as follows concerning the allowance for doubtful accounts for insurance premiums: (i) they are not similar or equivalent to mathematical reserves, but constitute technical credits; (ii) they are provisions for debtors and, as such, do not constitute deductible expenses as they do not meet the requirements of numeral 17 of Article 15 of the Tax Law, and (iii) only provisions on bad credits granted by entities regulated by Law No. 861/1996 (banks, finance companies and other credit entities) under the conditions established by the Central Bank of Paraguay are deductible, this deductibility not being extensible to insurance and similar entities.

It is important to note that Administrative Court Ruling No. 281/2023 can still be appealed before the Criminal Chamber of the Supreme Court of Justice, where this decision could be reversed.

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