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Tax
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Executive **Summary**

Standard	Date	Content
General Resolution No. 17/2024	August 29, 2024 (Reminder)	The extension established by the National Directorate of Tax Revenues ("DNIT") for the application of fines for late filing of the electronic voucher registry has ended.
Binding Consultation	July 2024	The DNIT issued its opinion regarding the tax treatment in the Corporate Income Tax ("IRE") of the returns generated both by the investment made in mutual funds and by deposits in local banks.
Binding Consultation	July 2024	The DNIT expressed its opinion on the Value Added Tax ("VAT") invoicing of goods produced under the National Automotive Policy ("PAN") that are resold by non-beneficiaries of this regime.
Binding Consultation	November 2023	The DNIT established its position on the taxation and deductibility of services rendered by retired workers.

General Resolution No. 17/2024 (Reminder) – The extension established by the DNIT for the application of fines for late filing of the electronic registration of vouchers ended.

On last October 31 ended the extension established by the DNIT in General Resolution No. 17/2024 for the application of fines for late filing of electronic vouchers, both for taxpayers with obligation 955-Monthly Voucher Regime ("Obligation 955") and for those with obligation 956-Annual Voucher Regime ("Obligation 956").

It is important to remember that the extension applied until the fiscal year 2023 for Obligation 956, and until August 2024 for Obligation 955. It is also reminded that the filing of the electronic register of vouchers can be made up to the subsequent month –the second month after– of the tax period to be declared.

In this regard, as of November 1, fines for contravention have started to be applied to late filing of the electronic register of vouchers, amounting to Gs. 100,000 for each period reported, in accordance with the provisions of Article 8 of General Resolution No. 90/2021 and Section 4(b) of the Annex to General Resolution No. 13/2019.

Although the accountants' associations have expressed their rejection to this action and have demanded the DNIT another extension to the application of those fines, the DNIT has stated that there will be no further extensions, given that they were being granted for approximately 33 months (from February 2022 to October 2024).

Response to Binding Query – IRE's tax treatment of the returns generated both by the investment in mutual funds and by deposits in local banks.

In response to a binding consultation in July of this year, the DNIT ruled on the IRE levy that affects the returns generated by the placement of capital in 2 different alternatives:

1. Investment in a mutual fund (Brokerage).
2. Demand deposits or certificates of fixed-term deposit in local banks.

The taxpayer who entered the consultation argued that such income is exempted by article 25, numeral 1, item g) of Law No. 6380/2019 ("Tax Law"), which provides that IRE's exemption applies to "the income from the valuation of the participation quota or the higher value of the negotiation or the liquidation thereof, of the Equity Investment Funds provided for in Law No. 5452/2015".

In this regard, the DNIT stated that the returns generated by the investment made in mutual funds are exempted from IRE by the transcribed rule since they are a kind of equity investment funds regulated by Law No. 5452/2015. In this way, the DNIT clarifies that all forms of investment returns in equity investment funds are covered by the IRE exemption, which includes not only the negotiation of participation in them or their liquidation, but also the periodic distribution of their net profits, as applicable.

Regarding the return or interest generated by demand savings deposits or fixed-term deposit certificates in local banks, that institution pointed out that they do not benefit from any IRE exemption, since they are not expressly included within the provisions of article 25 of the Tax Law; and, therefore, they are taxed by the IRE, by article 8, numeral 11 of the same law.

In other words, this response from the DNIT indicates that the placement of capital in demand deposits or fixed-term deposit certificates in local banks has a higher tax cost than the investment in mutual funds, thus resulting in the latter being more efficient for companies that pay the IRE, at least from a tax perspective.

Response to Binding Query – VAT invoicing of goods produced under the PAN that are resold by non-beneficiaries of the PAN.

When analyzing a binding consultation in July of this year, the DNIT addressed the issue of a reseller of goods produced under the PAN that wished to invoice them as if he was a beneficiary of the said regime, even though he was not, as a kind of fiscal stability in the commercialization chain.

In this regard, the consultant stated that he acquires tricycles that are invoiced 80% exempt and 20% taxed by VAT at 10%, but at the time of resale, he invoices them 100% taxed by VAT at 10%. Therefore, he asked if it is possible to obtain VAT parity on his purchases and sales of tricycles, even though he is not registered as a PAN beneficiary, since he currently purchases them with a direct VAT of 2% on the purchase price (10% rate on 20% of the price), while he resells them with a direct VAT of 10% on the sale price.

Regarding this matter, the DNIT pointed out that article 8 of Law No. 4838/2012 only provides for the application of the tax benefits of the PAN to the sales made by the beneficiaries thereof, and that due to the principle of legality of article 179 of the National Constitution, the application of its tax regime is limited to those who comply with the requirements and conditions of said law to be subject to it.

Thus, the DNIT expressed the restrictive interpretation criterion for the application of a differentiated VAT regime in the sale of certain goods. Consequently, said institution indicated that VAT's reduced tax base applies only to operations carried out by PAN subjects on goods admitted to this regime.

Response to Binding Query - Taxation and deductibility of services rendered by retired workers.

In response issued to a binding consultation during November 2023, the DNIT set forth its position on the tax status of services rendered to IRE taxpayers by workers who, having availed themselves of the retirement benefit, are rehired to continue rendering their services in an employment relationship, but without contributing to mandatory social security under article 2 of Law No. 1286/1987.

For this purpose, the DNIT had to determine whether or not those are personal services rendered in an employment relationship. To this effect, it mainly contrasted the first paragraph of article 131 with the numeral 4) of article 15 of the Tax Law, between which there would be an apparent contradiction since each of them provides the following (the text is paraphrased and is not an exact transcription):

Article 131, paragraph 1	Article 15, numeral 4
Personal service performed in an employment relationship shall be considered as that in which the contracting party has the legal obligation to contribute to a retirement and pension system, or the social security system created or admitted by law or decree-law.	The remunerations or contributions paid to personnel for services rendered in an employment relationship shall be deductible, provided that contributions have been made to a social security system created or admitted by law or decree-law. If the social security contribution is not applicable, the remunerations or contributions paid to personnel, for services rendered as employees, will be deductible provided that the remunerations are paid to personnel who are taxpayers of the Personal Income Tax ("IRP").

Thus, from the first paragraph of article 131 of the Tax Law it would appear that, if no contribution is made to mandatory social security for a personal service in an employment relationship, the personal service rendered does not arise from a labor relation, but an independent one. On the other hand, numeral 4 of article 15 of the same Tax Law recognizes the possibility of a service rendered as an employee for which it is not necessary to contribute to the mandatory social security, which will not be deductible if the employee is not a taxpayer of the IRP and will be fully deductible if he/she is.

Given this situation, the DNIT made such understanding of article 131 prevail and ignored the second paragraph of article 15, numeral 4, of the Tax Law, equating it to numeral 7 of the latter article, which regulates the deductibility of services rendered independently, with which, in practical terms, the DNIT ended up deleting that paragraph as redundant, thus eliminating the progress that said text represented concerning the regulation before the Tax Law, which did not provide for the deductibility of dependent services without a contribution to the mandatory social security.

As a result, the DNIT classified as independent personal services the services rendered by retired workers whose relationship with the employer is governed by labor legislation, assigning to the latter all the tax characteristics of personal services rendered independently:

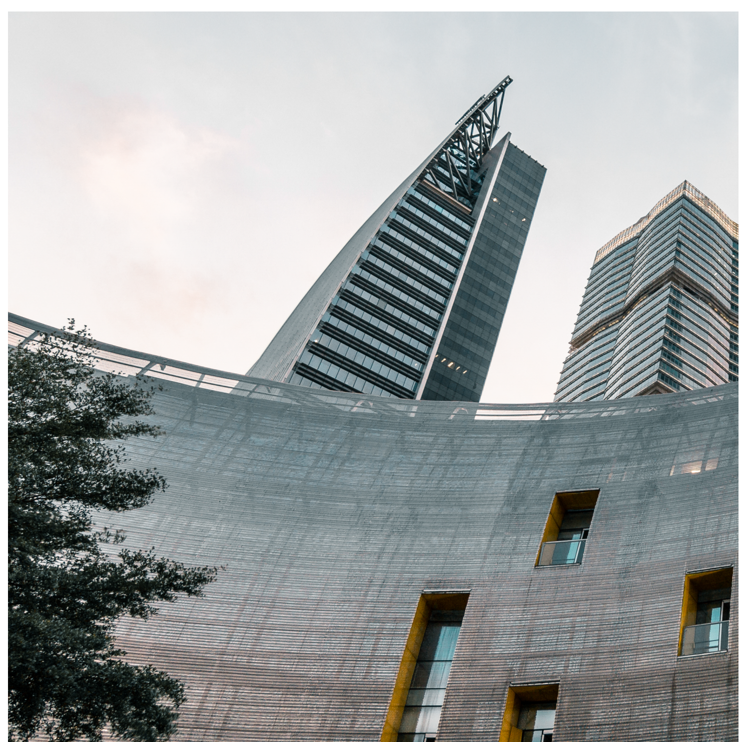
1. The employee must register as VAT taxpayer.
2. The employee must invoice his services to the employer with 10% VAT, so the former must pay this tax on his services.
3. The employer may use the VAT of the retired employee's invoice as VAT credit in its monthly VAT liquidation.
4. The salary billed by the retired employee will be a deductible expense for the employer in its IRE's settlement, according to the following :
   a. up to the limit of 1% of the annual gross income if the employee is not an IRP taxpayer, or
   b. without any limitation if the employee is an IRP taxpayer.

We respectfully disagree with the position of the DNIT, since we understand that the above has a much more elegant and coherent solution by simply giving a somewhat different reading to the first paragraph of article 131 of the Tax Law. This would consist in the fact that this provision does not require the "payment" of the mandatory social security contribution to qualify personal services as "employment", but rather it requires that such services be of the type that normally generate the obligation to contribute, which can be cancellated by a form other than payment, such as debt relief (this is the case of retired workers).

In synthesis, the solution we propose consists in understanding that the first paragraph of article 131 of the Tax Law equates the personal service rendered in a dependent manner to the type of relationship that would generate the obligation to contribute to mandatory social security, and not to equate it to a specific way to cancel it, such as its payment, as the DNIT does. In this way, the apparent inconsistency between the 2 articles of the Tax Law would be eliminated and the deductibility of the retirees' work as dependent service would remain in force, since this would generate the obligation of the social security contribution, which would not be cancelled with its payment, but with its release/exoneration.

[1] See DNIT's criteria on the deductibility of independent personal services paid to IRP's taxpayers, in the response to a binding consultation in November 2023, available here.

[2] Jointly with the other items included in the penultimate paragraph of article 15 of the Tax Law.



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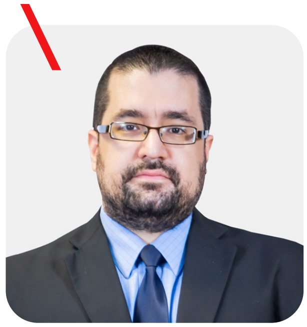

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