

**BULLETIN No. 0061
NOVEMBER 11, 2010**

**MEASURES TO RELIEVE FOREIGN EXCHANGE
PRESSURES:**

**ELIMINATION OF THE INCOME TAX
EXEMPTION FOR THE PAYMENT OF INTEREST
OF CREDITS CONTRACTED ABROAD**

On the 29th of October of this year the National Government adopted several measures to relieve foreign exchange pressures and to defend the employment, within which we highlight **the elimination of the exemption of income tax to the payment of interest of credits contracted abroad.**

The collection shall be made by withholding in the source, which was of 0% for the payment of interest of credits contracted abroad.

The purpose of the measure is to level the tax conditions of internal and external credit operations and in that way to discourage the use of foreign indebtedness operations.

Document Conpes 3687 dated on the 5th of November of this year, called "*Updating of activities of interest for the economic and social development of the country related to Article 25 of the Tax Statute*" issued by the National Economic and Social Council – Conpes, makes the following recommendations:

- (i) It requested the National Government to repeal Decree 2105 of 1996¹; and

¹ Which clarified the activities of interest for the social and economic development in order to apply subsection 5 of letter a) and of letter c) of article 25 of the Tax Statute.

- (ii) It was recommended to the National Government not to consider any activity as of interest for the economic and social development of the country, only for the purposes of the application of the benefit set forth in subsection 5 of letter a) and of letter c) of article 25 of the Tax Statute.

All of the foregoing in order help in the reduction of sustained pressures on the appreciation of the exchange rate, worsened in particular by the tendency of the Colombian companies to contract foreign indebtedness.

Pursuant to the aforementioned recommendation, the National Government enacted Decree 4145 of November 5, 2010, "*Whereby subsection 5 of letter a) and of letter c) of article 25² of the Tax Statute is regulated*" which establishes that are subject to income tax withholding, at a rate of 33%³:

² **Article 25. Revenues that are not considered as of National Source.** Do not generate income of a national source:

a) The following credits obtained abroad, which are not deemed to be had in Colombia:

[...]

5. The credits obtained abroad the national, foreign or mixed – capital companies established in the country as well as the trust funds managed by trust companies established in the country whose activities are considered as of interest for the economic and social development of the country, according to the policies adopted by the National Economic and Social Council, Conpes.

[...]

c) The rent income originated in leasing contracts entered into directly or through leasing companies, with foreign companies without domicile in Colombia, to finance investments in machinery and equipment related to export processes or to activities that are deemed as of interest for the economic and social development of the country, according to the policies adopted by the National Economic and Social Council, Conpes."

³ Article 408 of the Tax Statute

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Abogados

- (a) The payments or credits of interest on credit facilities contracted and disbursed as from the enactment of Decree 4145 of 2010 **and** any new disbursement of previously contracted credits obtained abroad by national, foreign or mixed – capital companies established in the country.
- (b) The payments or credits of leases derived from leasing contracts entered into as from the effective date of Decree 4145 of 2010 **and** those in which any new payment is made to the vendor regarding contracts executed before, or through leasing companies with foreign companies with no domicile in Colombia.
- (c) Decree 4145 is in force as from the date of its publication and repeals Decree 2105 de 1996 of and any other provisions that are contrary to it.
- abroad at least during the first few months of 2011.
2. An amendment of the 2011 financial plan was adopted, in order to balance not only the external funding sources but also the service of such indebtedness, reducing, in that way, the Government monetization flow.
 3. A tariff reform was proposed, previously approved by the Tariff Superior Council, which has the intention of reducing the production costs of the companies, the promotion of imports and the demand for foreign currency.
 4. The Ministry of Agriculture, through Finagro, shall open facilities to support foreign exchange hedging operations of agricultural sectors.
 5. It was decided to support the law project that intends to transfer the control of the payment of royalties to the National Taxes and Customs Directorate – DIAN, with the ultimate purpose of obtaining an additional increase in the collection, which shall be reflected in the reduction of the indebtedness of the Nation, as well as of the pressures that generate the need of foreign indebtedness.

According to all of the foregoing we can conclude that the measures adopted by the National Government, with the enactment of Decree 4145 of 2010, excluded from the tax exemption of Article 25 of the Tax Statute those situations that fall within the first article of the aforementioned decree, which are then subject to income tax withholding at the rate of 33%.

Other measures adopted by the National Government to relieve foreign exchange pressures:

1. It was decided to monetize 1.5 billion dollars of the flow projected for 2010. Therefore, it was decided to freeze such funds in accounts

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