

Tax Reform Law 253-12

CHAPTER I. INCOME TAX

DEFINITION OF GROSS REVENUE OR INCOME

A Paragraph II of article 268 of the Tax Code has been included within the definition of gross revenue, all increases in net worth whose source cannot be justified and all goods or rights, properties or acquisitions that do not relate to revenue or net worth declared by the taxpayer will constitute non reported income, as well as nonexistent debt that are filed in the tax declarations or registered in the accounting books or any other registry used as the basis to determine its tax liability. All non-declared income in this Paragraph will be included in the taxable base to determine the tax liability in the fiscal period in which they are discovered, except when the taxpayer sufficiently and undeniably proves that it has been the title holder of such assets and rights in a prior date to the statute of limitations period.

INCOME LEVIED ON THE NON-RESIDENT OR NON-DOMICILED TAXPAYER

Article 270 of the Tax Code is amended adding two paragraphs which establishes that non-resident individuals or entities that receive revenue in the Dominican Republic through a permanent establishment, will be taxable for the total taxable income of such establishment which will be of 29% of its net taxable income, notwithstanding any particular rules that may be applicable. Nevertheless, these permanent establishments do not become residents only by this sole event.

TABLE OF CONTENTS

CHAPTER I. Income tax

CHAPTER II. Tax on the transfer of industrial goods and services (ITBIS)

CHAPTER III. Excise and selective tax

CHAPTER IV. Tax incentive laws that grant tax exemptions

However, non-resident individuals or entities that receive revenue without a permanent establishment will be taxed separately for each income unit subject to tax.

REVENUE FROM EXPORTS AND IMPORTS

Article 273 of the Tax Code has been repealed which established how to determine the taxable income that derive from exports and imports. This article provided that the revenue those foreign exporters received from the importation of their products in the country would be considered as foreign source income. Moreover, by repealing this article, the mechanism established under the tax code to determine the value of the exported products has been eliminated.

TRANSACTIONS BETWEEN RELATED PARTIES

Article 281 is amended which related to the validity of any act of law between related taxpayers to provide that operations made with taxpayers with related or domiciled entities in countries, of low, nil or tax havens, must be made in accordance to prices utilized in the transfer of goods or services of the same nature between unrelated parties which must be registered in the accounting books and registries of the taxpayer. Additional provisions are included on the arm’s length method, the comparable unrelated price analysis and the advance pricing agreements (APA).

PAYROLL AND INDIVIDUAL INCOME TAXES

The law modifies article 296 of the Tax Code regarding the personal income tax for individuals domiciled or resident in the Dominican

Republic, so the annual taxable income for individuals in their fiscal year will be as follows:

The annual adjustment by inflation of the inco-

ANNUAL TAXABLE INCOME IS	THE TAX IS
Not over RD\$399,923.00	Exempt
Over RD\$399,923.01 but not over RD\$599,884.00	15% of the excess over RD\$399,923.01
Over RD\$599,884.01 but not over RD\$833,171.00	RD\$29,994.00 plus 20% of the excess over RD\$599,884.01
Over RD\$833,171.01 ¹	RD\$76,652.00 plus 25% of the excess over RD\$833,171.00

me tax bracket table above will not apply for the years 2013, 2014 and 2015.

WITHHOLDINGS ON PAYMENTS IN GENERAL MADE TO NONRESIDENTS

Article 305 of the Tax Code is amended to provide that the 29% withholding to be made on payments or credits on account made to non-resident individuals or entities of Dominican source income will apply provided a different treatment is given to a category of income.

WITHHOLDING ON INTEREST PAID TO NON RESIDENTS

Article 306 of the Tax Code is amended to eliminate the restriction that currently exists in which a lower rate of a 10% withholding only applied to interests paid to nonresident financial institutions. Therefore, all payments of interests made or credited on account to nonresidents (regardless of the type of entity

¹ The adjustment for inflation established in the numeral 1, subsection a) of Article 327 of the current Dominican Tax Code.

receiving this interest) will be subject to this 10% withholding.

Notwithstanding the foregoing, no withholding will apply to interests paid or credited on account to bondholders of bonds that have been issued by the Ministry of Treasury, as well as the securities negotiated through the stock exchanges and approved by the Superintendence of Securities prior to the enactment of the law.

WITHHOLDING ON INTERESTS PAID TO INDIVIDUALS BY FINANCIAL INSTITUTIONS.

Subsection s) of Article 299 of the Tax Code has been repealed. This subsection established an income tax exemption to the interests received by individuals from financial institutions regulated by the monetary and financial authorities such as the National Housing Bank (*Banco Nacional de la Vivienda*) and Savings and Loans Associations (*Asociaciones de Ahorros y Préstamos*).

As a result of this annulment, a 10% tax withholding will apply to interests received by resident individuals. Notwithstanding this withholding, the tax reform creates a mechanism by which individuals will be able to make their income tax returns and request refunds of the amount withheld only if they comply with one of the following conditions:

- (a) When its taxable income, including interests, is lower than RD\$240,000.00 or,
- (b) When its net taxable income is lower than RD\$400,000.00 provided that revenue from interests does not exceed 25% of its taxable net income.

The juridical persons, however, will include

the interests received in their annual balance sheet.

Notwithstanding the foregoing, no withholding will apply to interests paid or credited on account to bondholders of bonds already issued by the Ministry of Treasury and the securities already negotiated through the stock exchanges and approved by the Superintendence of Securities. However, for new issuances, the withholding agent of the tax will be the securities clearinghouse.

WITHHOLDINGS ON DIVIDENDS AND TAX CREDIT

Article 308 of the Tax Code will be modified lowering the tax rate to 10% to be withheld and paid to the Tax Administration by the entity paying dividends which will be construed as a definitive payment.

The Tax Reform also provides that the Tax Administration will also determine by rulings issued to that effect which will allow a distribution of profits different from dividends.

With this amendment, Paragraphs I, II, y V are repealed and, therefore, juridical persons making the dividend withholdings will not be able to offset such withholdings against their corporate income tax, as well to offset any excess credit in future years.

The Tax Reform also includes that permanent establishments located in the country will be required to make this 10% withholding on dividends when they repatriate profits to their parent companies for this item of income or any similar item of income, thus eliminating the existing free repatriation of profits (without any withholding) by the permanent establishment to its parent company.

These provisions will also apply to free zone entities when any party to the free trade agreement (DR-CAFTA) has approved a tax of the same nature to juridical persons that benefit from similar tax regimes.

CORPORATE INCOME TAX TO JURIDICAL PERSONS

The tax reform amends article 297 of the Tax Code that establishes the corporate income tax for corporations. This amendment sets a progressive reduction of the corporate income tax rate, which will be lowered as follows:

- a) From fiscal year 2014 a 28% tax rate, and
- b) From fiscal year 2015 a 27% tax rate.

ADMITTED DEDUCTIONS TO THE INCOME TAX

In addition to the tax receipts valid for deducting expenses, the tax reform includes that taxpayers that make payments greater than RD\$50,000.000 (annually adjusted by the inflation published by the Central Bank), must utilize any means available in the banking and financial system to personalize the beneficiary (i.e. different from that of the payment of income) to support deductible costs and expenses or that constitute a fiscal credit and other payment account. This amount may be annually adjusted by inflation in accordance with the publication made by the Central Bank of the Dominican Republic.

Deduction of interests. Article 287, sub-section (a) of the Tax Code related to the deduction of interests is amended. The amendment provides that interests from debt and expenses that are derived from the incorporation, renewal or cancellation of such interests will be deductible provided they are directly related to the business and such expenses affect

the acquisition, maintenance and/or exploitation of taxable goods.

Moreover, it provides that when the referred expenses are allotted as taxable income from the lender (i.e. whether these are interests' paid or credited on account to nonresidents or residents), the deduction will be limited to apply the expenses to the quotient of dividing the tax rate applicable to the payment of interests to a nonresident and resident lender, respectively, and the corporate income tax of juridical persons, which is currently of 29%.

Notwithstanding the foregoing, in the event the expenses are considered taxable income in that entity's country of residence, the deduction will be of 100% provided their final effective tax rate is equal or greater than the 29% corporate income tax rate applicable to juridical persons in the Dominican Republic. If, on the contrary, the effective tax rate is lower, the deduction to be made must be proportional up to the limit set forth above.

It will be prima facie evidence that the effective tax rate will be the nominal rate, except if there are special tax regimes to determine the taxable income, tax exemptions and similar determinations that reduce the taxes resulting from applying the nominal rate.

In any case, the amount deductible for interests will not exceed the value resulting from multiplying the total amount of interests earned in the fiscal period ("I") by 3 times the ratio between the Annual Average Capital Account (the net worth) ("C") and (ii) the Annual Average of all Debts ("D") of the taxpayer's accrued expenses ($I * 3(C/D)$)

Where:

The Capital Account will be the amount resulting from adding the share capital, the legal

reserve and the retained earnings of the entity, in accordance with their financial statements, excluding the results of the current fiscal year.

The Annual Average Capital Account will be calculated by adding the capital at the beginning and at the end of the fiscal year and divide such balance by two.

The Annual Average of all Debts of the Taxpayer will be calculated by adding the balance of all debts at the beginning and at the end of the fiscal year and divide such balance by two.

The term all Debts does not include the debts that the taxpayer may have incurred with resident or domiciled individuals or entities that include such interests in their taxable base to be levied with the corporate income tax rate of 29%. Therefore, the interests deriving from these debts are not limited by this provision.

The financial regulated entities regulated by the monetary and financial board of the Dominican Republic are excluded from this limitation.

The interests not deducted may be carried forward for 3 years from the date they were earned.

Taxes and Duties. Subsection b) of Article 287 of the Tax Code is modified to establish that the taxes and duties levied to goods are deductible provided they are paid for the goods that are to be enabled and exploited with the purpose of: (i) obtaining revenue, (ii) that they are considered part of the cost and (iii) they do not constitute a credit or advance tax, in order to determine the tax obligation related to different duties of the Income Tax.

ASSETS TAX

From the year 2015, the assets tax will be lowered from 1% to 0.5%. As of 2016 this

tax will be eliminated. However, the reduction will only apply if the measure implemented will allow the government to reach and maintain its tax goals for year 2015.

Once eliminated, the real estate property tax will apply to juridical persons or entities.

The assets tax on Net Financial Productive Assets of Institutions classified as banks, loans and savings bank and credit corporations, will be extended up to December 31 2013.

TAXES ON SHIPPING COSTS AND DELIVERIES.

All merchandises included in article 4 of Presidential Decree No. 402-05 dated July 26 2005 imported through couriers will pay the corresponding taxes.

These taxes apply to merchandise of "de minimis value" below or equal to US\$200.00 FOB which include, but not limited to, materials to be distributed in commercial quantities, such as some type of literature, printed documents, newspapers and magazines with origin labels..

TAXES ON REAL ESTATE PROPERTY (IPI)

The tax reform modifies articles 1 and 2 of the Law No. 18-88 that establishes the tax on luxury housing and vacant urban lots dated as of February 26th, 1988 with respect to the following:

- a)** A one percent (1%) tax rate is levied to the total value of property holdings of individuals whose value will be determined by the General Directorate of National Registration;
- b)** The property holdings assessed with this 1% levy are the following:
 - (i)** The property holdings of real estate property intended for urban or rural houses

of individuals, whose value including the lot where they are erected, is greater than RD\$6,500,000.000 to be annually adjusted by inflation;

(ii) The property holdings of vacant lots and other real estate property not intended for housing, including those intended for commercial, industrial or professional activity of individuals, whose overall value exceeds RD\$6,500,000.00 to be annually adjusted by inflation, and,

(iii) The compound resulting from the combination of (i) and (ii) whose joint value exceeds RD\$6,500,000.00

Vacant lots are construed to be the following:

(a) Lots where there is no formal construction approved by the corresponding authorities, intended for residential or commercial activities of any sort; and

(b) Those constructions that occupy less than 30% of the total extension of the lot.

The rural lands dedicated to agricultural exploitation, as well as the furniture, machinery, power plants and other movable goods that exist within the property are excluded from this tax.

The following land and housing are excluded from the payment of this tax:

(i) the rural land used for agricultural exploitation, as well as fixtures, machinery, equipment, merchandises or any other moveable assets that are located in the assessed real estate property; and

(ii) a house whose owner who is of 65 years of age, provided that he has not transferred said house in the last 15 years and it constitutes the only immovable asset of the owner.

TAXES ON MOTOR VEHICLES

The law substitutes the tax established under Article 32 under Law No. 495-06 dated as of December 28, 2006 for an annual tax for circulation of motor vehicles of 1% assessed over the value of said vehicle.

The value will be established in accordance to the table of reference issued by the tax authorities related to the type and year of the vehicle including the depreciation factor, and, with the exception of motorcycles, the amount of tax can never be less than RD\$1,200.00.

This amount will be annually adjusted by inflation in accordance with the chart published by the Central Bank of the Dominican Republic.

In addition to the stamp tax of 17% of the CIF value levied on each vehicle upon registration of such vehicles as set forth in Article 22 of Law 557-05, motor vehicles will be taxable according to the CO2 emissions per kilometer with the following tax rates, on the market value of such motor vehicles as follows:

- a)** Less than 120g CO2 / km = 0%
- b)** Between 121 and 220g CO2/km = 1%
- c)** Between 221 and 380g CO2/ km = 2%
- d)** Exceeding 380g CO2/ km = 3%

Transportation vehicles with a capacity of over 16 passengers, and loading trucks will not be levied with this tax. Tax rules will be issued for the application of this article.

TAXES ON GAMBLING

The paragraph of article 309 related to withholdings to payment to individuals is modified in relation to the following:

Increases the withholding to 25% over the prizes or jackpots obtained from gambling activities and any other prizes offered by promotional or advertisement campaigns, which will be considered as a definitive payment.

In addition, a tax on prizes received from sports bar and lotteries in accordance with the following table:

PRIZES	TAX
Over RD\$100,000.01 but not over RD\$500,000.00	10%
Over RD\$500,001.00 but not over RD\$1,000,000.00	15%
Over RD\$1,000,001.00	25%

A 10% withholding is created to be levied on prizes earned through slot machines which will be considered as final payment which will be paid monthly to the tax administration (DGII).

All gambling activities, lotteries, bookies, casinos and any gambling establishment, slot machines and other electronic gaming, bingos and any other type of gambling operating in the DR, must request a license to the Ministry of Treasury. In addition, any transfer of lottery or sports gaming house must be previously approved by the Ministry of Treasury.

WITHHOLDINGS ON PAYMENTS MADE BY THE DOMINICAN STATE

There is an increase from 3% up to a 5% withholding on payments made by the Dominican State and its agencies, eliminating the existing tax exemption to payments for telephone services made by the Dominican state institutions and its agencies.

Additionally, the Tax Reform includes the following:

a) That the taxpayers that generate their income through commissions there will be

withholding tax that will apply to the commission being paid in accordance with the tax rule or resolution, with the prior authorization of the tax administration;

b) That the National Treasury, prior to making payments related to the acquisition of goods and services in general made by Dominican State institutions and its agencies, will be required to make a 5% withholding on the payment made and file such withholding to be considered as a payment on account to the provider.

TAXES ON RETAIL BUSINESSES

An annual tax of RD\$12,000.00 will be levied on retail businesses, including bars and restaurants, who have a total monthly sales over RD\$50,000.00.

CHAPTER II. TAX ON THE TRANSFER OF INDUSTRIAL GOODS AND SERVICES (ITBIS)

Article 345 of the Tax Code that establishes the Tax on the Transfer of Industrialized Goods and Services (ITBIS or Value Added Tax). The tax rate to be applied will be of 18% for the years 2013 and 2014, and a 16% from 2015, subject to verification of the tax basis of the ITBIS according to the table set forth in paragraph I of the Article 345.

A new reduced tax of ITBIS is included applicable to dairy products, coffee, tallow, consumable vegetables, sugar, cacao and chocolate in accordance to the following table:

- (i)** For year 2013, 8%.
- (ii)** For year 2014, 11%
- (iii)** For year 2015, 13%; and
- (iv)** From 2016 onwards, 16%.

Article 375 of the Tax Code modifies the ITBIS table of exempted goods.

Article 344 of the Tax Code is modified and establishes that the following services will be exempt from ITBIS:

- 1) Financial services, including insurance;
- 2) Retirement and pension service plans;
- 3) Ground transportation services for passengers and cargo;
- 4) Electricity, water and trash collection services;
- 5) Residence rent services;
- 6) Health services;
- 7) Educational and cultural services;
- 8) Obituary services; and
- 9) Beauty Saloon and barber's shop.

Therefore, personal care and cultural services (i.e. theater, ballet, opera, dance, cultural groups, ballroom and symphonic orchestra) are subject to the payment of ITBIS.

The tax treatment for compensation or deductions for taxpayers that reflect credits for advanced payments of ITBIS in the purchase of goods and services that will only benefit the exporters, excluding producers of ITBIS exempt goods.

A new sub-section d) is included to article 340 of the Tax Code which refers to the special rules to determine the taxable base for ITBIS and provides that in the case of "All Included" hotel enterprises, the taxable base will be the prices that have been determined in accordance with the Advanced Pricing Agreements (APA) established under Article 281 bis of the DR Tax code.

For the application of the ITBIS and the excise tax, that the enterprises under a special tax or customs regime will be acting as withholding agent and will be construed as the taxpayer in fact of the individual or entity that purchases the good that is being transferred or that renders a service.

CHAPTER III. EXCISE AND SELECTIVE TAX

EXCISE TAX ON THE CONSUMPTION OF BEER, ALCOHOL AND CIGARETTES

An amendment is made to the list established under article 375 regarding the merchandize levied with the excise tax.

Amounts are established of the specific excise tax to be paid per liter of absolute alcohol in accordance to the table set forth in this article. In addition to these amounts, an excise tax of 10% ad-valorem will be paid over the retail price of alcohol products, alcoholic beverages and beers.

Amounts are established of the specific excise taxes on cigarettes which include, but not limited to, packs of 10 or 20 cigarettes. In addition to these amounts, an excise tax of 20% ad-valorem will be paid over the retail price of Tabaco products.

TAXES ON FOSSIL FUELS

An amendment is made to Article 1 of Law No. 112-00 which relates to excise taxes levied to fossil fuels and all petrol derivatives, in accordance with the following table:

TABLE NO. 1. CONVENTIONAL FUELS	TAX PER GALLON IN DOMINICAN PESOS
Liquefied Petroleum Gas (GLP) ²	0.00
Premium Gas	64.35
Regular Gas	56.93
Kerosene	16.61
Avtur (Jet A-11 for aviation turbines)	5.81
Gasoil Premium	29.89
Gasoil Regular	23.92
Fuel Oil	16.61

TABLE NO. 2. OTHER FUELS	TAX PER GALLON IN DOMINICAN PESOS
Natural Gas (Liquefied, compressed or any other transportable form)	Exempt
Other liquefied petroleum gases for domestic, commercial or industrial use	0.00
Gas for aviation motors (AVGAS)	56.93
Other fuels like gasoline for reactors and turbines	56.93
Other Premium fuels (Octane 93 RON or more)	56.93
Other fuels like kerosene for aviation turbines	16.61
Other Premium fuels (0.3% or less sulfur), general use.	29.89
Other Premium fuels for the use of electricity generators companies.	29.89
Other regular gasoil: more than 0.3% sulfur.	16.61
Other oil fuels: residuals different than FO No. 6	16.91
Virgin heavy oil for direct use as fuel.	5.81
Emulsified heavy oil.	5.81
Lignites	0.00
Mineral coal and petroleum coke	0.00
Cokes and semi-cokes of coal, lignite, oil or peat.	0.00

² The Dominican Government will provide a direct subsidy for the families to purchase GLP for domestic use.

The tax reform also provides that GLP for domestic, industrial and commercial use will be sold at a price capped to the ex-works sale of GLP to the consumer.

Article 23 of Law No. 557-05 is amended to increase from a 13% to a 16% ad-valorem tax the internal consumption of fossil fuels and petrol derivatives. Similarly, it reduces the excise tax rate on AVTUR to 6.5% ad-valorem.

The taxable base of this tax is the parity price of imports of these products fixed by the Ministry of Industry and Commerce through weekly resolutions issued to that effect.

An additional tax of RD\$2.00 is included levied on the consumption of fuel and gasoil, regular and premium set forth under Law No. 112-00 (taxes on fossil fuels) which will be quarterly adjusted by the inflation rate published by the central bank.

A refund system is created by the Tax Authorities of the excise taxes paid on fossil fuels and all petrol derivatives, as follows:

- a) A 100% refund of the advanced amounts for taxes provided by the generators that sell electricity through the National Interconnected Electrical Grid (*Sistema Eléctrico Nacional Interconectado (SENI)*) established under Laws No. 112-00 (tax on fossil fuels) and 557-05 (ad-valorem tax on the local consumption of fuels);
- b) In the event generators that do not sell electricity through the National Interconnected Electrical Grid (*Sistema Eléctrico Nacional Interconectado (SENI)*), the Tax Authorities will only refund the amounts related to the excise tax levied under Law No. 112-00 (tax on fossil fuels);
- c) The companies under special tax regimes or contracts ratified by the National Congress

that establish tax exemptions may also request this refund;

The Executive Power will establish through regulation the necessary procedures for enterprises to benefit from this refund system.

TAX TO TELECOMMUNICATION SERVICE: CABLE TELEVISION.

Article 381 of the Tax Code to include within the scope of telecommunication services, cable television which will be assessed with a 10% tax.

CHAPTER IV. TAX INCENTIVE LAWS THAT GRANT TAX EXEMPTIONS

FREE TRADE ZONES

Article 11 of Law No. 139-11, Paragraph III is amended which relates the income tax applicable to free zones on the transfers of goods and services to the local market raising the tax rate from a 2.5% to a 3.5% when the transfer of such goods or services is made to the local market.

Commercial free trade zones benefited from Law No. 4315, dated as of October 22 of 1955, modified by Law No. 397 dated as of January 2nd, 1969, will be subject to a corporate income tax of 5% of their gross sales.

New permits for special free zones are suspended in accordance with Law 8-90.

LAW NO. 158-01 REGARDING THE PROMOTION FOR TOURISM DEVELOPMENT

The law repeals Paragraph IV of Article 4 of the Law No. 158-01, dated as of October 9,

2001 and, as a consequence, eliminates the tax exemptions granted to the first purchaser and the individuals or entities who made one or several investments directly with the promoters and developers.

NON FOR PROFIT INSTITUTIONS

The law modifies article 50 of the law 122-05, and focuses that the non for profit institutions that participate in any commercial or industrial activity that competes with for profit companies, will be subject to the ordinary tax regime established under the Dominican Tax Code.

TAX EXEMPTIONS ON RENEWABLE ENERGY SOURCES

The law eliminates the exemptions for the income tax established in articles 10 and 13, and lowers the fiscal credit to the corporate income tax from 75% to 40% applicable to the total cost of the investment made by owners or leaseholder of family houses, commercial or industrial houses that change or switch to renewable energy sources for their own consumption provided these projects have been approved by the relevant authorities.

TAX INCENTIVE LAW FOR THE FILM INDUSTRY

The law modifies article 39 of the Law to Promote the Film Industry No. 108-10 that established the transferability of a fiscal credit equivalent to a 25% of the expenses incurred in the Dominican Republic by individuals or companies that produce films in the Dominican Republic, to include that such fiscal credit must be exclusively used by the producer to comply with its tax obligations.