NOBOA PAGÁN ABOGADOS
ACTUALIDAD REGULATORIA BOLETIN INFORMATIVO

November 29, 2005 • Sto. Dgo., D. R.• Year II, Volume XVI

Editor´s Note. Facing the DR-CAFTA. The approval and Promulgation of the Tax Reform Law. A. Noboa Pagán – B. Roa Mateo.

On this December 14, the Executive Power, enacted the Tax Reform Law.

The same was converted into law by the Senate, on December 8 of this year. The Tax Reform was made attending to the inherent necessities of adjustment that the Dominican legal tax system needed in order to enforce the DR-CAFTA and the agreement with the International Monetary Fund (IMF).

In this law, the legislator elevated the exemption's base of the minimum wage to the amount of 23,500.00 in order for it to be charged with Tax on the rent starting on January 2006.

In addition the tax on financial interests, became eliminated, in which according to an article Published on the local newspaper *Listin Diario*, where suppressed in order to preserve deposits of the public, avoid capital loss, strengthen financial intermediation, as well as the preservation of 10% to retentions of professional independent services. Moreover, the law maintains, as it is at present, 1% of ISS, keeping the exemption to the value of the properties in 5 million Dominican pesos, as the 1.5 % of advance payment applying to the outcome of gross sales.

This law modifies some of the dispositions of the Tax Code, concerning the tax on the consume of fossil combustive and derivates of oil, and also the ones concerning the tax and tariff reform.

Financial. Monetary and Financial Administration Resolutions of September 20, 2005. By J. Velázquez Morales.

The Financial and Monetary Administration through the October 30th edition of the newspaper "*El Caribe*" announced three (3) resolutions issued by the Monetary Board on September 20. Following is a brief description of the most relevant provisions in each resolution:

(1) The **First Resolution** approves the final version of the **Enforcement Regulation of Law No. 92-04** that creates **the Exceptional Risk Prevention Program for the Financial Mediation Organizations,** after considering that the unconstitutional nature appeal submitted by *Consejo Nacional de la Empresa Privada (CONEP)* (National Private Company Council) and *Fundación Institucionalidad y Justicia (FINJUS)* (Institutionalism and Justice Foundation) did not halt the approval of such regulation by the Monetary Fund.

(2) The **Second Resolution** approves and invalidates any other provision contrary to the modifications of **article 20 and 22 of the Regulation for the Preparation and Publication of the Consolidated Financial Statements,** approved by the Monetary Fund on March 29, 2005, after considering that such modifications had been petitioned by the very same *Asociación de Bancos Comerciales* (**ABA**) (Commercial Bank Association) and other associations linked to the sector, in order to make the standard more flexible. Also, it was considered that: **a.** the accounting consolidation of an economic group is a complex process that requires time for its execution, as accounting-wise, not all consolidated

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companies close on the same date, considering that such group does not have a uniform account plan or catalogue for all consolidated companies, and also considering that some of those companies are under the control of various regulating entities with account registries standards also different; **b.** The publication of the consolidated financial statements of the controlling party involves non-financial companies with economic activities which legal framework in the appropriate sector does not require any publication, and that there would be competition-related aspects that could derive from this publication; **c.** Both the BC and SIB agree that the publication of the financial statements of financial groups must not only be done on the web page of the financial mediation company, but also in a newspaper of nationwide circulation.

(3) The **Sixth Resolution** provides that **companies interested in providing electronic platform services for the negotiation of foreign currency** in the Dominican Republic, under the protection of the provisions in Article 13 of the Foreign Exchange Regulation and any modifications thereto, **must comply with all the following requirements: a.** Companies must be incorporated and established as **stock companies**, pursuant to the laws of the Dominican Republic or country of origin, with the object to operate an Alternative Negotiation System; **b.** Have a minimum subscribed and paid-in capital of **RD$30.0 million**, to ensure the quality of services provided; **c.** Must send along with the authorization request to the Monetary Board all documents evidencing the incorporation of such company and the communication and electronic technicality necessary to effectively carry out this kind of operations; **d.** Companies operating such alternative negotiation systems must abide by the international standards recognized in that subject matter, such as those issued by the *International Organization of Securities Commissions* **and the** *Committee of European Securities Regulators;* **e.** Companies operating an electronic platform must also abide by the national and international ethic guidelines accepted for this type of activity, the guidelines contemplated in the agreements entered into with clients; **f.** Finally, **agreements** entered into by and between companies operating on an electronic platform of foreign exchange negotiation and clients **must include the guidelines** specified to such end in the instruction booklet put together by the Central Bank in order to **lay down the rules** for the operations of such companies.

On the other hand, the resolution establishes that the Central Bank Management must include the previously mentioned provisions of the **Instructions Booklet for the Operation and Running of the Electronic Platform of Foreign Exchange Negotiation,** which at present in under preparation. In addition, such provision establishes a **90-day** calendar period so that entities operating on an electronic platform abide by these provisions.

Economic Constitutional. The Supreme Court of Justice determines Articles 63, 80 and 143 of the Tax Code to be unconstitutional. By B. Roa Mateo.

The Supreme Court of Justice, through judgment passed on November 23, 2005, determined the unconstitutionality of Articles 63, 80 and 143 of the Tax Code,

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which provided, among others, the legal principle known as *"Solve et repete."*

Based on the provisions ruled as unconstitutional, whenever any private person felt that his/her rights had been damaged by a tax collection, in order to assert such same rights, he/she had to pay first and afterwards resort to the appropriate legal resource.

Article 63 of the Tax Code provided that with "*the notification of the resolution from the Ministry of Finance, whenever an appeal against the decision from the Tax Administration was filed, the taxpayer will be notified to make payment of taxes, including any late fees (...) with no right to file any other appeals with any other authority or court, without the proof of payment.*"

Article 80 of such law provided among others, the inability to file an appeal with any Contentious Tax Court against the decisions regarding the application of taxes, fees, and others, without proof of payment from the appropriate tax collection offices.

Finally, article 143 also stated the obligation of the Contentious Tax Court to declare inadmissible the instances of any attempt of possible appeals against the application of taxes or any other assessments, fines, surcharges and interests, without submission of proof of payment of taxes, assessments, fines, or surcharges subject matter of the appeal by the parties.

Competition. US Justice vs. National Association of Realtors "NAR". NAR amended policy continues obstructing Internet-based Competition (Source DOJ, translation A. Noboa Pagán).

This past October 4, the US Justice Department modified the claim of the complaint against the National Association of Realtors "NAR"), determining that the policy modified by the group keeps preventing Internet-based real state brokers from offering better services and lower costs to consumers. The complaint challenges the NAR rules that limit the competition among real state brokers using Internet tools to serve their customers. The new complaint addresses how NAR's changes to its rules still obstruct competition, threaten to lock in outmoded outdated business models and inflate prices in the industry.

"NAR's last-minute changes did not fix the antitrust problems of its policy," said J. Bruce McDonald, Deputy Assistant Attorney General of the Justice Department. *"When buying and selling homes, consumer should receive the full benefits of competition – better services and lower costs. The amendment to NAR's policy continues obstructing customers from realizing such benefits."*

On September 8, 2005, the Department's Antitrust Division filed a civil antitrust lawsuit against the NAR in the US District Court in Chicago. On the same day, the NAR announced the modification of its policy. The policy continues to provide "brick-and-mortar" brokers with the power to inhibit the growh Internet-based business models, the Department pointed out. The amended complaint petitions the court to prevent NAR from using either its old policy or the modified policy.

Specifically, the modified policy includes a provision, "blanket opt-out", that allows brick-and-mortar brokers to prevent an

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innovative broker from providing over the Internet the same Multiple Listing Service ("SLM") information that other agents provide in their offices. Such provision was included in NAR's initial policy. NAR's modified policy specifically exempts its own official website, Realtor.com, from the blanket opt out.

The NAR also announced the change of its membership rules. The new rules –very similar to its original policy's anti-referral rule– deny access to SLM listings to brokers operating referral services. Such membership rule effectively prevents two brokers from working together in what can be a more innovative and efficient way, with one attracting the business and educating the potential buyer about the market, and the other guiding the buyer through home tours and the contract and closing process.

NAR's modified policy, just as its original policy, denies brokers the possibility of using new technologies and business models, the same benefits of MLS members available to the competitor brokers, suppresses innovation, discourages price and quality competition, and prevent new and efficient competitors from entering into the marketplace, all to the detriment of competition.

The new complaint was filed in the US District Court in Chicago.

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