HOLDING COMPANY STRUCTURES IN LATIN AMERICA

May 26, 2021
Agenda for Today

- Landscape of Holding Company Structures
- Treaty Networks
- Territorial Tax Regimes
- Colombian Holding Company Regime
- Q&A
With You Today

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Landscape of Holding Company Structures
Europe

- OK Treaty Networks (into LatAm region)
- General application of participation exemption rules (div. income and capital gains)
- Stringent economic substance requirements (increased cost)
- Application of general anti-abuse, anti-avoidance, hybrid, ... rules
- Constant introduction of new rules (e.g., Netherlands: conditional withholding tax)
- Long term consequences of Brexit
Availability of territorial tax regimes
Poor treaty networks (into Latin American region)
Difficulty in obtaining a residency certificate (passive companies)
Political instability: Hong Kong?
Low Tax, Zero Tax Jurisdictions

- Economic Substance Act
  - Mind and management requirements
  - Large fines, strike-off and disclosure for non-compliance
- “Blacklist”
  - Increased withholding tax rates
  - “CFC” rules
- Banking restrictions
- Limitations on workforce
Treaty Networks
## Double Taxation Treaties (DTT), Exchange of Information Agreements (EOI) and International Transport Treaties (ITT) Signed by Chile

<table>
<thead>
<tr>
<th>DTT*</th>
<th>EOI</th>
<th>ITT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>Czech Republic</td>
<td>Mexico (ONU Model)</td>
</tr>
<tr>
<td>Australia</td>
<td>Denmark</td>
<td>Netherlands</td>
</tr>
<tr>
<td>Austria</td>
<td>Ecuador</td>
<td>Norway</td>
</tr>
<tr>
<td>Belgium</td>
<td>France</td>
<td>New Zealand</td>
</tr>
<tr>
<td>Brazil</td>
<td>Ireland</td>
<td>Paraguay</td>
</tr>
<tr>
<td>Canada (OUN Model)</td>
<td>Italy</td>
<td>Peru</td>
</tr>
<tr>
<td>China</td>
<td>Japan</td>
<td>Poland</td>
</tr>
<tr>
<td>Colombia</td>
<td>Korea</td>
<td>Portugal</td>
</tr>
<tr>
<td>Croacia</td>
<td>Malaysia</td>
<td>Spain</td>
</tr>
</tbody>
</table>

### EOI
- Bermuda
- Guernsey
- Jersey
- Uruguay
- Multilateral Convention

### ITT
- France (air)
- United Arab Emirates
- Germany
- US (air)
- Panama (air)
- Uruguay (air)
- Singapore (sea)
- Venezuela
- Switzerland (air)

* Countries for which treaty is not yet in force:
  - India
  - US
  - UAE
Common Operating Structure

HOLDING COMPANY STRUCTURES IN LATIN AMERICA

ParentCo

Chile HoldCo/OpCo

Dividend

Remittance

Country A, B, C, ...

LatAm Subsidiary(ies)

LatAm Branch(es)

- Use FTC to reduce double taxation
- Use Treaty to reduce capital gains
- Use Treaty to reduce withholding taxes
- Use Treaty to reduce PE exposure
Territorial Tax Regimes
Introduction to Uruguay’s Territorial Tax Regime

- **Income Tax on Economic Activities**: 25% tax on net income from Uruguayan sources obtained by a company.

- **WHT on dividends**: applied on taxable net income obtained by a company.

- Therefore, dividends originated from foreign sourced income are not subject to WHT when paid.
Introduction to Uruguay’s Territorial Tax Regime

**VALUE ADDED TAX (VAT)**

- VAT taxes the internal circulation of goods and the local rendering of services at a basic rate of 22%.
- There is a reduced rate of 10% applicable to certain goods and services, and there are also exemptions.

**NET WORTH TAX (NWT)**

- NWT or Wealth Tax taxes the net assets located in Uruguay at a rate of 1.5%.
Uruguayan Holding Companies

- Holding companies are defined by Uruguayan legislation as those entities that have equity interests on other companies.
- These entities must state in their by-laws that their object is to be a holding company.
- The most common type of company is the Uruguayan Corporation (Sociedad Anónima). One of its main advantages is that it allows for one shareholder only.
- Uruguayan corporations can be set up from scratch or bought with no previous activity (shelf company).
- Another type of company that is used is the Limited Liability Company (Sociedad de Responsabilidad Limitada), which requires the existence of two partners.
Uruguayan Holding Companies

HOLDING COMPANY STRUCTURES IN LATIN AMERICA
### Tax Treatment for Uruguayan Holding Companies

<table>
<thead>
<tr>
<th>Corporate Income Tax (CIT)</th>
<th>Net Worth Tax (NWT)</th>
<th>Value Added Tax (VAT)</th>
<th>WHT on Dividends</th>
<th>ICOSA Tax</th>
<th>Statutory Obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not taxable (on foreign sourced income)</td>
<td>Not taxable (on assets located abroad)</td>
<td>Not taxable (if activities carried on outside Uruguay)</td>
<td>Not taxable (on dividend attributable to foreign source income)</td>
<td>Taxable (Uruguayan Corporation pays; annual fixed tax of US$500)</td>
<td>Applicable</td>
</tr>
</tbody>
</table>
### Uruguayan Holding Companies - Frequently Asked Questions

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must directors be Uruguayan nationals or Uruguayan residents?</td>
<td>No. Directors can be foreign nationals and/or foreign residents.</td>
</tr>
<tr>
<td>Is the holding company required to have a local bank account?</td>
<td>No. It can be local or foreign.</td>
</tr>
<tr>
<td>Are there foreign exchange restrictions in Uruguay when paying dividends?</td>
<td>No. There are no restrictions in Uruguay.</td>
</tr>
<tr>
<td>Are there substance requirements for holding companies in Uruguay?</td>
<td>There are no such requirements in Uruguay legislation.</td>
</tr>
</tbody>
</table>
Double Taxation Treaties (DTT) and Exchange of Information Agreements (EOI) Signed by Uruguay

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<tr>
<th>DTT</th>
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<td>Germany</td>
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<td></td>
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<td>Portugal</td>
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<tr>
<td>Chile</td>
<td>Brazil (not in force)</td>
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<tr>
<td>Italy</td>
<td>Faroe Islands</td>
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<tr>
<td>UK</td>
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<tr>
<td>Vietnam</td>
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<tr>
<td>Finland</td>
<td>Greenland</td>
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<tr>
<td>Mexico</td>
<td>Sweden</td>
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</tbody>
</table>
Colombian Holding Company Regime
Introduction

MEMBERSHIP INTO OECD

- Colombia became a member of the OECD.
- As part of its admission process, Colombia took several steps to encourage foreign investment and increase the competitiveness of the country.
- One of these steps was the introduction of the CHC regime, which is intended to attract foreign investors.
- Spanish model (ETVE).
TAX LAW CHANGE

▶ The CHC regime was initially introduced in 2018 by Law 1943 which was ultimately declared unconstitutional.

▶ Subsequently in 2019, Law 2010 re-introduced again the CHC regime under the same general principles.

▶ A CHC is not, or need not be, a separate company. CHC can also engage in other business activities.

▶ A resident company that satisfies certain criteria can apply for the CHC benefits.
Introduction

RELEVANT COLOMBIA TAX LAW

Income Tax Exemption for:

- Net Income on dividends received by CHC.
- Withholding tax on dividends paid to a CHC by non-resident entities.
- Withholding tax on dividends paid by a CHC to non-resident entities.
- Capital gains tax on sale of shares of non-resident entities by CHC.
- Capital gains tax on the sales of CHC shares by non-resident shareholders.
Criteria to Access CHC Regime

- A 10% participation is required in the capital of two or more resident or non-resident entities for a minimum time period of 12 months.
- To have 3 or more employees whose roles and responsibilities are related with the company’s main purpose.
- To have an address in Colombia and demonstrate the strategic decisions about investments and assets are made in Colombia.
- To be authorized as a CHC by the Colombian tax authorities (DIAN).

“To hold securities, investment or shares or participations in resident or non-resident entities, and / or the administration of such investments.”
## Comparability Analysis of Benefits

<table>
<thead>
<tr>
<th>Dividends Received</th>
<th>ORDINARY REGIME</th>
<th>CHC REGIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>▶ From non-resident entities are subject to Corporate Income Tax (&quot;CIT&quot;) of 31% (2022 30%).</td>
<td></td>
<td>From non-resident entities: exempt of CIT.</td>
</tr>
<tr>
<td>▶ From resident companies:</td>
<td>▶ After-taxed profits are subject to a 7.5% withholding on income tax. (Exception for business group or controlled company: 0%).</td>
<td>▶ From resident companies:</td>
</tr>
<tr>
<td>▶ After-taxed profits are subject to a 31% CIT and 7.5% withholding tax. (Exception from withholding tax for business group or controlled company.)</td>
<td></td>
<td>▶ After-taxed profits are not subject to withholding on income tax.</td>
</tr>
<tr>
<td>▶ Untaxed profits are subject to a 31% CIT and 7.5% withholding tax. (Exception from withholding tax for business group or controlled company.)</td>
<td></td>
<td>▶ Untaxed profits are subject to the 31% CIT.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dividends Paid</th>
<th>ORDINARY REGIME</th>
<th>CHC REGIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>▶ Paid to a non-resident entity (assumes no treaty relief):</td>
<td></td>
<td>▶ Paid to a non-resident entity*:</td>
</tr>
<tr>
<td>▶ After-taxed profits are subject to a withholding tax of 10% on income tax.</td>
<td>▶ Dividend attributable to exempt (overseas) holdings are exempted from withholding tax.</td>
<td></td>
</tr>
<tr>
<td>▶ Untaxed profits are subject to a 31% CIT and 10% withholding tax.</td>
<td>▶ Dividend attributable to domestic source profits are subject to (assumes no treaty relief):</td>
<td></td>
</tr>
<tr>
<td>▶ Distribution of additional paid-in capital is subject to a 31% CIT.</td>
<td>▶ After-taxed profits: 10% withholding tax.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>▶ Untaxed profits: 31% CIT and 10% withholding tax.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>▶ Distribution of additional paid-in capital exempt of CIT.</td>
<td></td>
</tr>
</tbody>
</table>

* These benefits do not apply if the seller is located in a blacklisted jurisdiction.
Dividends

Dividends With CHC

- 10% or 31% + 10% WTH
- 31% CIT only if dividends are from non-taxed profits

Dividends No CHC

- WTH 0% (from C3)
- 0% CIT
- 7.5% or 31% + 7.5% WTH or 0% (Business group or Controlled company)

* Assumes no treaty relief
## Comparability Analysis of Benefits

<table>
<thead>
<tr>
<th></th>
<th>ORDINARY REGIME (ASSUMES NO TREATY RELIEF)</th>
<th>CHC REGIME</th>
</tr>
</thead>
</table>
| **Capital gains**    | ▶ Sale of shares of a non-resident entity will be subject to CIT (31%) or capital gains (10%).  
▶ Sale of shares of the holding entity resident in Colombia will be subject to CIT (31%) or capital gains (10%). | ▶ Sale of shares of a non-resident entity are exempt of capital gain tax.  
▶ Sale of a CHC will be subject to tax on gains as they relate to domestic profits.* |
| **Industry and commerce tax** | ▶ Dividends are taxed with Industry and commerce tax. (Rate approx. 1%). | ▶ Dividends from shareholdings outside Colombia are not taxed. |

* These benefits do not apply if the seller is located in a blacklisted jurisdiction.
Other Points

- Could this regime be considered as a preferential regime by another country?
- Legal Certainty: will Colombian tax law keep these rules for an indefinite period?
THANK YOU
Thank You

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