



Tax Newsletter

Timely news and information on national tax issues

Effects of the New Declaration of Unconstitutionality of Legislative Decree No. 763 in the Transfer Pricing Regime

The Constitutional Court of the Supreme Court of Justice once again declared unconstitutional Legislative Decree 763, through Resolution N° 126-2014, issued on December 12, 2018. That Decree reformed the Tax Code (TC) with respect to Transfer Pricing regulations, exchange of information with Tax Administrations of foreign jurisdictions, electronic equipment, interruption of the calculation of

the statute of limitations on oversight and penalization powers, tax solvencies, publication of the resolutions and disclosure of debtors, among other matters. Furthermore, due to its relation to the matters indicated above, the court also declared unconstitutional Legislative Decree 413, which contained articles of the Electoral Code. This article shall detail the specific considerations in tax matters.

The declaration of unconstitutionality is due to procedural errors in the passing of Legislative Decree 763, since alternate Legislative Assembly deputies that had not been elected by direct vote of the people, but rather as the result of the electoral victory of the corresponding incumbents, participated in the passing of such Decree. Therefore, the reforms contained in this Decree were passed without having

the necessary number of votes (half plus one), violating that regulated in article 123, section 2 of the Constitution of the Republic.

The Court's ruling on the unconstitutionality of the decree may be consulted at the following link

<http://www.jurisprudencia.gob.sv/PDF/126-2014.PDF>, and the link to the press release on this ruling is as follows

http://www.csj.gob.sv/Comunicaciones/2018/12_DICIEMBRE/COMUNICADOS/18.12.18%20Sala%20de%20lo%20Constitucional%20resuelve%20demanda%20del%20proceso%20de%20Inconstitucionalidad%20%20%20%20105-2018%202.pdf

For purposes of the Transfer Pricing Regime, this declaration of unconstitutionality eliminates the reference that the TC made in article 62-A regarding the use of the OECD Transfer Pricing Guidelines, for the use of international methodology when determining market prices in transactions performed with related companies. Thus, the status and application of the regime returned to what it was before the issuance of Legislative Decree No. 763.

The above implies that prior to using the international methodology of the OECD, it is necessary to either validate or rule out the applicability of the local

Transfer Pricing method; that is, the method established in article 199-B of the TC. If this method is not applicable and the technical arguments proving its inapplicability have been provided, then one can proceed to use the OECD methods. With this Decree, it was no longer necessary to rule out the method of art. 199-B.

Despite the elimination of this reform to the TC through this declaratory judgment, the Transfer Pricing obligations regulated in articles 62-A (preparation of the supporting documentation or Transfer Pricing study) and 124-A (filing of the Informational Return, form F-982) and other implications of the regime, remain in effect, since these obligations derive from the reforms made to the TC in the year 2009, and not from those made in 2014 through the questioned Decree.

It is also important to mention that due to the reforms that had been made to the TC through Legislative Decree No. 763, in the 2018 tax period the Tax Administration issued a new Transfer Pricing Orientation Guide, which due to its guiding nature regarding the Transfer Pricing Regime, will continue being applicable for the tax periods following its issuance and until a new update to the guide is issued.

Let us remember that on May 28, 2018, the Court issued the first declaration of unconstitutionality of the same Decree due to procedural flaws in the legislative process, with such declaration being effective as of January 1, 2019. However, in judgment 126-2014 issued last December, the Court adjusted the effects of the declaration of unconstitutionality of this Decree, deferring them until May 31, 2019, which is the deadline for the Legislative Assembly to issue the corresponding tax regulations, otherwise, the reforms of this Decree will be expunged from the Salvadorian legislation



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Regulatory Summary

Issuance of a new version of the Annual Report on Income Tax Withholdings, form F-910

New General Administrative Provision DACG No.DGA-015-2018

On November 14, 2018, the General Customs Office (*Dirección General de Aduanas - DGA*) published on its transparency site, in the section on "Other Regulatory documents," the **new "General Administrative Provision DACG No.DGA-015-2018,"** addressed to DGA officials and employees, Customs Civil Service aides and users of the Customs Service, which was issued on September 27, 2018 and is in effect as of October 1, 2018.

The new provision mentioned above substitutes "General Administrative Provision DACG No.DGA-014-2018," dated September 11, 2018 and has the purpose of "*regulating the Export, Re-export, and Transit process, in its various forms, whose border crossing of departure is the La Hachadura Land Customs Office.*"

A summary of the content of the new "General Administrative Provision DACG No.DGA-015-2018" is presented as follows:

Tax Calendar

January 2019

The updated 2019 tax calendar is now available on the Tax Administration's web page. It includes all holidays and deadlines for each of the tax obligations.

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

January 16

VAT

Declaration and payment of the Tax on the Transfer of Movable Goods and the Rendering of Services (F-07).

FINANCIAL INCOME AND TRANSACTIONS

Monthly declaration of Payment on Account, Tax Withheld on Income from Financial Transactions, and the Special Contribution for Citizen Security and Coexistence (F-14)

SPECIFIC AND AD VALOREM TAXES

Declaration and payment of Specific Taxes, Ad Valorem Taxes and Special Contribution (F-06).

OTHER OBLIGATIONS

- Report on Donations (F-960)
- Report on Specific and Ad Valorem Taxes on Producers and Importers of Alcoholic Beverages, Potable Ethyl Alcohol and Beer, Carbonated Beverages, Isotonic Beverages, Fortified Beverages or Energy Drinks, Juices, Nectars, Soft Drinks and Concentrated or Powder Mixtures for the Preparation of Drinks (F-955).
- Report on Specific and Ad Valorem Taxes on Producers and Importers of Firearms, Ammunitions, Explosives and Similar Items, Producers of Tobacco

and Producers, Importers and those that clear fuels through customs (F-988).

- Monthly Report of Sales to Producers, Distributors or Retailers of Tobacco and Tobacco Products (F-956).
- Updating of Address for Receiving Notifications (F-211).
- Statement of Origin and Application of Funds (F-950).
- Report on Authorizations Made to Accounting Systems, Legal Accounting Books, VAT Books or Records, Certifications and Reports issued on Modifications to Legal Books, Subsidiary Books and Special Records (F-463).

January 23

VAT

Monthly Report on Withholdings, Collections, and Advances on Account of VAT (F-930).

PRINTING PRESSES

Monthly Report on Documents Printed for Taxpayers of the VAT (F-945).

CNR

Property and Mortgage Registry: Semi-annual report on the Registration of Real Property.

COMMERCIAL REGISTRY

Semi-annual report on the Establishment, Transformation, Merger, Dissolution or Liquidation of Companies.

MUNICIPALITIES

- Semi-annual Report on the registration, obtaining of licenses, permits or termination of activities in commercial, industrial, and services establishments or establishments of any economic nature.
- Semi-annual report on the Suppliers or Creditors of Movable Tangible Property or Services.

OTHER OBLIGATIONS

Report of Importers, Distributors, Manufacturers of Vehicles and their Representatives (F-990).

January 31

WITHHOLDING AGENTS

Annual Report on Income Tax Withholdings, 2018 Period (F-910)

NOTARIES

Report of Notaries on the Granting of Instruments in their Notarial Capacity (F-986).

COMPANIES

Report on the Distribution or Capitalization of Profits, Dividends or Surpluses and/or List of Partners, Shareholders or Members of Cooperatives 2018 (F-915).

OTHER OBLIGATIONS

- Request for Allocation and Authorization of Quota of Ethyl Alcohol to be Imported or Acquired (F-947).
- Summary of the Report on Suppliers, Customers, Creditors and Debtors (F-987).
- Report on Performance of Surgeries, Operations and Medical Treatments (F-958).
- List of Suggested Sale Prices to the Public or Final Consumer of Unsweetened or Sweetened Soft Drinks, Isotonic Beverages or Sports Drinks, Fortified Beverages, Energy Drinks, Juices, Nectars, Beverages containing Juice, Refreshments and Concentrated or Powder Mixtures for the Preparation of Drinks; of Tobacco Products and Alcoholic Beverage Producers (F-948)

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Descarga la APP



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