



Issues Relating To Organizational Forms And Taxation

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- 1. Identify the forms of organization available in your jurisdiction and discuss the advantages and disadvantages of each (eg., corporation, limited liability company, partnership, limited partnership, co-operative, etc.), describing which type of legal entity is mostly used or is of special interest, namely by foreign investors.**

The most common forms of organization available in our jurisdiction are the following: a.) Stock corporations (“Sociedades Anónimas”), b.) Limited Liability Partnerships (“Sociedades de Responsabilidad Limitada”) and c.) Branches of Foreign Entity.

a) Stock corporations.

This type of legal entity is the mostly used by investors, including foreign ones. There are two kinds of corporations: i) publicly traded corporations and ii) closed corporations.

Corporations may represent their paid in capital with bearer or registered shares. However, for special purposes or certain activities, the corporations shall have only registered shares (e.g. to own land or perform agriculture activities, banks, insurance companies).

Advantages: The stock companies are the most commonly used forms of organization in our country to the following reasons: i) the limited liability of its shareholders as they do not

carry any liability for the company's debts beyond the amount of capital each shareholder pays or has agreed to pay in; (ii) there is no minimum number of shareholders once the company has been incorporated; (iii) the capital can be represented in bearer shares (depending on the type of activity).

b) Limited Liability Partnership ("LLP").

This legal form is usually chosen by medium- and small-size business entities.

Under this kind of partnership the liability of the partners is limited to the capital they subscribe, being however liable for the labor debts (only for non paid wages).

There must be a minimum of two partners and a maximum of 50.

c) Branch of Foreign Entity.

Companies established abroad are recognized in Uruguay and may perform isolated acts or contracts without any other prior administrative procedure or act. However, when they perform activities within Uruguay on a regular basis they must set up a branch in the country. Branches are regulated by provisions similar to those for local companies as regards organization, tax treatment, etc.

Under Uruguayan law, the branch is not a separate legal entity, being therefore the head office, together with the branch regarded as a unique legal entity (except for taxes, which are liquidated separately, considering the activities of the branch in Uruguay as a permanent establishment).

2. Are there attributes of the form that you consider unique to your jurisdiction?

No.

3. Describe the management and governance structure for each organizational form.

a) Corporations.

The Shareholders Meeting is the highest corporate authority and shall meet at least once a year to approve the annual balance sheet and the distribution of earnings, as well as to appoint the Board of Directors or administrator.

Administration may be entrusted to a single administrator or a Board of Directors consisting of one or more persons appointed by the Shareholders meeting.

In the case of publicly traded corporations the Board of Directors must meet at least once a month, whereas in closed corporations it must meet mandatory once a year to call the Shareholders Meeting (to submit the annual balance sheet, etc.). The Board may meet in Uruguay or abroad, at its discretion.

The Board of Directors may govern the corporation subject to the control and approval of the Shareholders Meeting.

b) Limited Liability Companies.

The management of these companies is normally conducted by an administrator or board appointed by the Meeting of Partners.

c) Branch of a Foreign Entity.

Under local Law of Commercial Companies the foreign entity shall appoint one or more legal representatives, who will manage the branch. The branch must also appoint a fiscal representative, who can be the same person as the legal representative (please see answer to question 4 below).

In this case, the Head Office of the foreign entity is liable for all obligations assumed by the branch. In addition, the foreign entity can be validly summoned in Uruguay by suing the branch.

4. Is there a residency requirement for management or owners? In particular, are there restrictions or prohibitions on foreign investors to perform, or have interests in, specific activities?

No, there is no residency requirement neither for management nor owners.

However, the fiscal representative of a branch must be a Uruguayan fiscal resident. Said fiscal representative will be jointly liable with the branch for its tax obligations.

There are no prohibitions for foreign investors to perform commercial or industrial activities in Uruguay, except for: (i) radio or television broadcast services waves in which the provider shall be a company with national shareholders; (ii) in case airline companies with national flag the owner of 51% of the airline company respectively, must be domiciled in Uruguay; (iii) in case of vessels, if the owners or operators are physical persons they must be Uruguayan citizens and be domiciled in Uruguay; if the owners or operators are legal entities, they must evidence that: if the legal entity is a personal company (such as a unlimited liability company) then more than half of its partners must be of Uruguayan citizenship and domiciled in Uruguay; if the legal entity is a stock corporation, in such a case then 51% of the issued shares must issued on a registered basis and be held by Uruguayan citizens; the management and control of the company must be run by Uruguayan citizens; the company must be incorporated in Uruguay.

5. Describe the extent to which management and owners are exposed to liability.

According to Uruguayan Company Law that legal representatives of limited liability partnership and corporations are personally and jointly liable for any damages caused to the company arising for their misconduct as legal representatives.

Legal representatives are liable for:

- acting against the law;
- acting against the by-laws and articles of incorporation of the company;
- not complying with their duty of loyalty to the company; or



- not complying with their duty of care vis-à-vis the company.

Regarding fiscal liabilities, legal representatives as well as the attorneys in fact are jointly liable with the company for its fiscal duties. This implies that the Tax Authority may claim against either the company or the mentioned representatives the sums owed. Nonetheless, there is a double limitation to this responsibility (except for the Corporate Income Tax as explained below): 1) it does not reach those legal representatives who can prove that they have acted with due care, and 2) it is limited to the aggregate value of the corporate net worth, except in case of fraud. However, the liability of Directors of stock companies or partners of limited liability companies for the payment of Corporate Income Tax, is established as objective. Therefore, the above mentioned limitations do not apply in case of this tax.

The Directors and legal representatives of stock corporations and the partners of limited liability partnerships are held jointly liable for:

- contracting the mandatory insurance covering work accidents and
- the compliance with safety and accident prevention regulations.

In case of limited liability partnership, its partners are personally and jointly liable for the labor debts of the company (only for non paid wages).

Regarding criminal conduct, and as a consequence of the application of general principles, the liability of the legal representatives arise from their personal and individual involvement in the criminal act. Such liability would cease when legal representatives sufficiently prove that they:

- had no intervention in such acts;
- or, had no knowledge of the same;
- or had expressed their opposition to it.

6. Ownership interest: (i) how is it represented? (ii) is it transferable?; and (iii) is there a minimum number of owners?

(i) The ownership interest in the Corporations may be represented by bearer or registered shares. In addition, Corporations may issue ordinary and preferred shares. The preferred shares allow their holders to exercise certain rights that are not available to the ordinary shareholders, i.e. the right to appoint certain number of members of the Board of Directors, the right to receive a predetermined amount of profits..

(ii) Yes. There is no restriction in the transfer of shares. However, depending on the type of activity rendered by the company, certain transfers shall be previously authorized by the competent authority (i.e. transfer of shares from financial institutions).

(iii) Stock companies have no minimum number of owners (only when incorporating the company two founders are needed, but this number can be later reduced to one). Limited Liability Partnerships need at least two partners.

7. Is there a minimum capitalization?

The Corporations shall have their capital represented in Uruguayan Pesos, except when their main purpose is to invest in assets located abroad. At least 25% of the Corporation's authorized capital must be paid-in by the shareholders.

8. Is there a security that can be issued to the public?

Yes. Stock companies can issue the following securities to be publicly offered: shares and corporate bonds. In case of trusts, they can issue certificates of indebtedness .

Securities that are publicly offered in Uruguay as well as the issuer of such securities need to be registered before the Central Bank of Uruguay ("CBU"). Further, certain specific regulations apply to such cases.

9. Can the form incur debt, or grant security for debt?

Yes.

10. What is the duration of the form? Can it be renewed?

The term of the Limited Liability Partnerships may be of a maximum of 30 years. For stock companies, there is no maximum term. In both cases, the term may be renewed and modified by the partners or shareholders respectively, by means of an amendment of the articles of incorporation of the company.

11. Describe the process, customary time period and approximate cost of establishing the form.

In the case of closed stock companies, at least two founder shareholders must sign the foundation minutes and approve the by-laws before a notary public. By-laws are subject to authorization of a governmental agency called "Auditoria Interna de la Nacion" and have to be registered once the approval has been granted at the National Registry of Commerce and published in the Official Gazette and other newspaper. The by-laws shall contain the basic characteristics of the corporation (corporate purpose, duration, management, etc), as well as any other regulations not violating legal provisions (e.g. procedure for Shareholders Meetings, legal representation of the company , etc). There are, however, certain legal provisions of the public order that prevail over the stipulations of by-laws. The customary time period for the constitution of a stock company is of approximately 120 days. However, if the articles of incorporation of the stock company are customarily standard and do not have any special clause, the time period reduces to 2 days.

On the other hand, in order to incorporate a limited liability partnership at least two partners shall sign the by-laws of the company before a notary public. Afterwards, the by-laws have to be registered before the National Registry of Commerce and published in the official gazette and in another newspaper. Once the publications are made the limited liability partnership is legally formed. The customary time period for the constitution of a limited liability partnership is of approximately 30 days. However, if the articles of incorporation of the stock

company are customarily standard and do not have any special clause, the time period reduces to 2 days.

Finally, please note that it is possible to acquire “shelf corporations”, already constituted companies which have not started operations and provide an immediate use.

Regarding the costs of establishing the form, they vary depending on the content of the articles of incorporation. For standard companies, the cost is of approximately USD 5.000.

12. Are there requirements for the government (central or local) to be part of a project or investment vehicle or receive part of the profits arising therefrom (apart from taxes)?

No. However, there are special activities which shall be necessarily carried out by governmental bodies, since the State has the monopoly of the same: water and electric supply, local fixed line telecommunication services, insurance over labor risks and the import and refining of crude oil and import and export of liquid, semi liquid and gaseous fuel.

13. For what taxes is the form liable?

In general, Corporations pay the following taxes (other specific taxes may apply depending on the activity).

- a) Corporate Income Tax (“Impuesto a las Rentas de las Actividades Económicas” – “IRAE”)

The IRAE is levied annually on fiscally adjusted net income from a Uruguayan source, derived from profit-making activities carried out by companies at a rate of 25% (for fiscal exercises started after July 1, 2007). In order to obtain the net income, accrued expenses incurred during the fiscal year may be deducted exclusively if they are needed to obtain and maintain taxed income and if such expenses are duly documented.

As a general rule, the only expenses that may be deducted are those which constitute taxable income for the counterparty, either under the IRAE, Personal Income Tax on residents (hereinafter “IRPF”), Income Tax on Non-Residents (hereinafter “IRNR”) or under any form of tax imposed on income in the foreign country.

When expenses incurred qualify as counterparty’s IRPF or IRNR taxable income, the deduction will be limited by applying the ratio between the tax rate for those earnings and the IRAE tax rate corresponding to the expense (except in the case of labor gains which can be deducted in a 100%).

When the expense is incurred abroad, a 100% deduction may be made provided that the tax rate on these expenses is 25% or higher.

If the tax rate is lower than 25%, a proportional percentage to be applied shall be calculated.

- b) Capital Tax (Impuesto al Patrimonio - IP)

The capital tax is an annual tax paid on properties, assets and rights economically located, placed or used within the country.

The taxable amount is determined by the difference between the taxed assets and the deductible liabilities (only commercial debts, tax debts except net worth tax, average debts with Financial Institutions). The tax rate is of 1,50%, which is calculated considering the net worth which is used to obtain incomes subject to IRAE.

In case the company holds assets abroad or exempted assets, liabilities are only computed in the amount exceeding the value of said assets.

A decrease of the 50% paid annually by this tax may be applicable depending the IRAE to be paid. Companies with bearer participations and companies with registered shares, when the shareholders are not individuals, will not be able to make such deduction.

IP is paid annually, but monthly payments in advance are required at a rate of 11% regarding the previous year tax.

Additionally, legal entities included in the IRAE that are debtors of individuals domiciled abroad or legal entities organized abroad that do not perform business in Uruguay through an agency, branch or establishment, are appointed as withholding agents of this tax at a rate of 1.5%. However, loans, investments, guarantees and import prices balances are exempted.

c) Control of corporations tax (ICOSA)

The ICOSA is levied on stock co

14. What is the tax treatment of payments to foreign owners?

The Income Tax on Non-Residents (“IRNR”) applies to incomes of Uruguayan source obtained by non-resident individuals or legal entities not operating in Uruguay by means of a permanent establishment.

The general rate of the IRNR shall be 12%. In the case of dividends or profits paid by Uruguayan companies (IRAE taxpayers) to foreign shareholders, the rate shall be of 7%.

Consequently, dividends distributed by an Uruguayan company (taxed by IRAE) to its Head Office or to its foreign owners will be taxed by the IRNR at the rate of 7% on the distributed amount. It must be stressed that this tax will apply only to the amount of the IRAE net taxable base. To these effects the losses from previous years will not be considered as part of the net taxable base.

15. Is there a tax treatment which would impact foreign owners differently than owners resident in the jurisdiction?

No. Even though residents and non-residents pay different taxes (Non-residents pay IRNR while individual residents pay Income Tax on Residents), both taxes have the same rate (7%) regarding dividends and profits.

Nevertheless, foreign owners may have a different tax treatment in case Uruguay has executed a double taxation treaty with the foreign owners' jurisdiction.

