

## NEWSLETTER

### Tax & Legal - CHILE

#### CHANGE IN THE JUDICIAL CRITERIA FOR PAYMENT OF MUNICIPAL DUTY BY INVESTMENT COMPANIES

Municipal Duty ("Patente Municipal") is a local tax that was established in 1979 by *Decreto Ley* No. 3063 (DL 3063). According to Article 23 of DL 3063m those who perform a profitable activity, occupation or profession within a municipality must pay a tax directly benefiting that municipality. The tax is paid annually, with rates varying between 0.25 and 0.5 percent of the taxpayer's equity, depending upon the applicable municipal ordinance.

Recently, the Chilean Supreme Court changed its criteria regarding the obligation of investment companies to pay municipal duty. Specifically, on September 29, 2009 in *Inversiones Riveros Riquelme Ltda. - I. Municipalidad de Providencia* (Docket 2516/2008), the Court opined that investment companies' activities "are not exempt" from the payment of municipal duty. These companies, according to the Court, are performing "tertiary activities", which are all the activities not categorized as primary or secondary. Using the latter as a "residual rule", the Court specified that, if a for-profit company is not performing a primary (extraction) or secondary (manufacturing) activity, its activity is tertiary, which means "services".

In the *Riveros Riquelme* decision, the Court stated that, since the company's by-laws included the performance of profitable activities, the company was subject to municipal duty. According to the opinion, it doesn't matter if the company is civil or commercial; the main criterion for determining the tax obligation is the performance of profitable activities. The opinion also specified that, according to Article 27 of DL 3063, the only entities exempt from this tax are non-profits, such as foundations, and cultural, sports or artistic corporations.

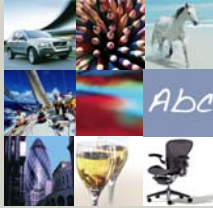
The *Riveros Riquelme* opinion modifies previous Supreme Court and Court of Appeals judgments, such as *Inversiones Abranches Ltda. - Municipalidad de Lo Barnechea* (Supreme Court, Docket 2725/2003) and *Sociedad de Inversiones Las Perdices Ltda. - Alcalde de la I. Municipalidad de Peñalolén* (Court of Appeals of Santiago, Docket 3909/2008). In that line of cases, the courts found that the obligation to pay municipal duty existed when a company's profitable activities were actually performed in a specific place.

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Without taking a specific position on the Supreme Court's recent decision, we understand that the most compelling argument behind the Court's reasoning in *Riveros Riquelme* is Article 24 of DL 2063 (modified by Law 20,033 of July 1, 2005). The latter prescribes that, when an investment company does not register a commercial address, "the license will be paid in the municipality according to the taxpayer's registered address".

Taking the *Riveros Riquelme* decision into account, the following possibilities exist to reduce the tax burden of investment companies:

- The company can establish its address in a municipality that has a lower tax rate. As previously stated, each municipality fixes its own tax rate. Most municipalities have the highest rate, which is 0.5 percent of the company's equity. Examples of municipalities that fall into this category are: Las Condes, Providencia, Santiago and Viña del Mar. Examples of municipalities with lower rates are: Lo Barnechea, with 0.35 percent; La Florida, with 0.32 percent; and, Zapallar and Santo Domingo, each with 0.25 percent.
- The company can finance with loans (and not equity), which are exempt from stamp tax in 2009.

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