**LATAM Conference**

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# *Tax Litigation - Chile*

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## Overview

- Change of Litigation System - Law 20.322 of 2009
  - **Old system**
    - Regional Director of the IRS acting as a Tax Judge in spite of not being a qualified attorney in a procedure more inquisitorial than adversarial.
    - In theory, legal value of evidentiary pieces was determined by a fixed system contained in the law (*prueba legal o tasada*).
    - Decision of Tax Judge in practice needed to follow IRS regulations.
  - **New System** (which entered into force in Santiago in 2013)
    - Independent Tax Judges and a full fledged litigation procedure
    - Legal value of evidence is determined by the Tax Judge in accordance with “the rules of logic and experience” (*sana critica*)
    - 2014 Tax Reform Bill aims to introduce a GAAR the effects of which could be radical in a legal environment in which <u>form</u> is the rule.

# The Old Chilean Tax Litigation System

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## Lack of Independence

- Regional Directors of the Chilean IRS as Tax Judges
  - Judges of their own adversarial actions
  - Administratively bound by IRS Rulings, General Instructions and Resolutions (issues by the "boss")
- Procedurally discussed within the Chilean IRS venue and premises
  - IRS agents serving as court personnel
- Procedure without much formalities
- Due process of law?
- Role of the Court of Appeals  and “timing effect”” over contingencies, interest and penalties



# *"The New Deal"*

## Independent Tax Judges

» *Mostly former Chilean IRS personnel*

- Litigation venue separate from the Chilean IRS
- Chilean IRS now is a “party” in an adversarial system
  - Effect: more formalistic procedural rules
- Evidence is analyzed and evaluated in accordance with the “rules of logic and experience”, with much greater freedom for the Tax Judge
- Pre-trial “Discovery” in Tax Summons (*citaciones*). **Pitfall !!!**
- GAAR proposed in 2014 Tax Bill should increase freedom to the Tax Judge and to the Courts in general, reducing blatant tax avoidance (good) and legal certainty (bad)

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# *The Coca Cola Embonor Case*

## Facts

- Cayman Branch issues bonds abroad
- Funds used by Branch to incorporate a Cayman Subsidiary
- Cayman Sub purchases foreign shares, which allow the indirect acquisition of a Chilean bottling business.

## Tax Results

- » *Interest of the Branch Deductible in Chile, and gain made by Cayman Sub not subject to taxes in Chile.*

## Final Decision

- No business purpose + aggressive tax planning = no deduction (surprise, surprise, we do not have a GAAR).

# Thank you !!

Arturo Garnham
Garnham Abogados Ltda
Tel 562 2378 7115
agarnham@garnhamycia.cl