

ON TAX LAW TO LUXURIOUS HOUSES

Last September 29, the By-Laws to the Joint and Several Tax Law for the Strengthening of Housing Programs, better known as Tax Law to Luxurious Houses was published in Official Newspaper La Gaceta. This law had been published last December 10, 2008. However, its effectiveness had been subjected to the publication of the corresponding By-Laws. Both the Law and the By-Laws will enter into effect next October 29th.

There have been multiple doubts and concerns regarding several aspects of these stipulations on the part of subscribers.

Licentiate Gabriela Barrantes of Faycatax, Expert in Income Tax Law of the Law Offices Facio y Cañas, agreed to provide us a comment on this new tax to luxurious houses.

We hereby transcribe it for the knowledge of all interested parties.

We thank Licentiate Barrantes very and the colleagues of FAYCATAX very sincerely their contribution to his informative service.

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Practical comment on the Joint and Several Tax Law for the Strengthening of Housing Programs

The Joint and Several Tax Law for the strengthening of housing Project, Commonly referred to as "Tax to luxurious houses" intends to tax real estate goods located within our territory that comply with the following considerations:

- Real estate goods of residential use used usually, occasionally, or for recreation that constitute a residential unit; whether or not they occupy different subsidiary properties.
- The property should have fixed constructions and fixed and permanent premises, i.e., houses, swimming pools, ranch, sport installations, parking lots, among others, with a value above ₡ 100.000.000 (one hundred million colones).
- Should the constructions in the property exceed the value of ₡ 100.000.000 (one hundred million colones) the land's value should be added. The total resulting from the value of constructions and the land will be the taxable basis of the tax.

For the effects of the taxable basis of the tax, agricultural, commercial, industrial, and other types of areas different from residential use of the property should not be accounted for.

Owners or holders of Rights on residential units located in the same property (condominiums, properties in rights, etc.) should be evaluated independently.

Passive subjects of the tax are the owners or holders of possession rights of the properties, i.e., concessionaires, co-owners, permission holders, occupants of border zones and of the maritime coastal zone, among others. For the effects of this law, the contributor will be the owner or possessor of the property on January first of each year.

The tax entered into effect on October 1 of this year. Resolution N° 29-2009 of the General Income Tax Bureau, published in La Gaceta of September 29, 2009, establishes the obligation of registering passive subjects of the tax within the 3 months following the publication of the resolution, to which effect should be used the electronic form available in Tribunet and Tributación Digital.

For the fraction and payment per fraction of the year 2009, that goes from October 1 to December 31, 2009, contributors should file a declaration per residential unit that are charged the tax; to which effect, the amount of the tax to be paid in the fiscal period 2009 should be prorated, by the months of effectiveness of the Law, to which effect, he would pay the fourth part of the amount he would have been paid for the tax per year.

When is the taxable basis of the tax modified?

- In the cases stipulated in article 14 of the Law on Real Estate Taxes (i) the value consigned in public instrument, (ii) constitution of a mortgage lien, (iii) rectification of capacity or gathering of properties, (iv) the major value formally acknowledged by passive subjects, (v) the fractioning of the property, (vi) the construction or addition of improvements in the properties requiring a construction permit, whose evaluation will modify the taxable basis, provided it represents a value equal to or above twenty percent (20%) of the value registered.)
- By determination of the passive subject.
- By official determination.

The tax rate will be applied to the taxable basis (total value of the property, i.e., sum of construction and land), as per the staggered rate:

VALUE	RATE
a) Up to ₪250.000.000,00	0,25%
b) Over ₪250.000.000,00 and up to ₪500.000.000,00	0,30%
c) Over ₪500.000.000,00 and up to ₪ 750.000.000,00	0,35%
d) Over ₪750.000.000,00 and up to ₪1.000.000.000,00	0,40%
e) Over ₪1.000.000.000,00 and up to ₪1.250.000.000,00	0,45%
f) Over ₪1.250.000.000,00 and up to ₪1.500.000.000,00	0,50%
g) Over ₪1.500.000.000,00 will be applied	0,55%

This tax has a one-year calendar period (January 1 to December 31) and should be paid no later than the first 15 days after it is earned, that is, January 15.

For the first evaluation of real estate goods, i.e., fiscal period 2009, contributors should use the evaluation parameters established by the Technical Normalization Body detailed hereinafter:

- The Unit Base Value Manual by Constructive Type for the evaluation of constructions and other fixed and permanent premises, published in Official Newspaper La Gaceta No. 78 of April 23, 2008. Available at <https://www.hacienda.go.cr/>
- Maps and Value Matrixes per Homogeneous Zones for the evaluation of the lands. Available at <https://www.hacienda.go.cr/>

Resolution No. 30-2009 published in Official Newspaper La Gaceta on September 29, 2009 establishes the methods used to determine the fiscal value of the real estate properties affected by this tax.

Tax contributors should file every three years a sworn declaration that updates the value of the real estate properties during the first 15 days of the month of January. In the case of co-owners, only one of them should be appointed for due recording in the Registry, and that appointed may include other owners in the form. In the case of condominiums or properties in right affected by this tax each residential unit should record and liquidate the tax independently.

In case the passive subject of the tax does not file a sworn declaration for this tax, the Income Tax Administration may officially do so, using the evaluation methods established in the Unit Base Value Manual per Construction Type for the evaluation of constructions, as well as the Maps and Matrixes of Values per Homogeneous Zones for the evaluation of lands. And the passive subject may be notified of the determination of the taxable basis, the tax to be paid, and may even be applied the administrative sanctions regulated in the Code of Fiscal Regulations and Procedures.

The obligation of providing information on the part of the National Registry to the Tax Administration, who should inform of all movements that generate a change in value of the real estate properties was established by means of regulation. Also established is an obligation of providing information of evaluations on approved construction maps to the Federated Association of Engineers and Architects, as well as to the municipalities, who should send a report on construction permits and evaluations made on real estate properties.

The joint and several liability among co-owners is established, and in case of transference of the property, the acquirer will be jointly and severally responsible for the payment of the tax corresponding to the fiscal period in force on the acquisition date, as well as of the corresponding interests, penalties, and sanctions.

This new tax has some weaknesses, as well as the fact that only 35 of the 81 municipalities have up-dated a platform of values for lands.

Besides, penalties for discrepancies on the value declared may reach values of up to 10 times the difference between evaluations, amount that is not similar to any legislation in force on the same subject.

Disbursements for this new tax will not be deductible from income tax.

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