

GRA obtains a final decision declaring illegal a fiscal credit imposed to a deconsolidated company.

Aranal Comercial, S.A. de C.V. (Aranal Comercial) subsidiary of UK based Imperial Chemical Inc. (ICI), with Goodrich, Riquelme's advice and representation, has cleared a US \$4.8 million dollar fiscal credit which had been imposed by the Mexican Tax Authority.

Aranal Comercial was part of a group that consolidated its results for tax purposes. The company distributed dividends among its shareholders during 1998. At the end of that year, a deconsolidation took place when the controlling company sold the shares of the controlled entities. Accordingly, Aranal Comercial, as well as the other controlled entities, filed the corresponding notice of deconsolidation.

In 1998, distribution of dividends by controlled companies out of the Net Tax Profit Account (CUFIN) was free of tax, and there was an option in the Administrative Rulings for paying an amount equivalent to the tax generated as "if there were no consolidation regime" to the controlling company.

On the other hand, the 1998 Income Tax Law did not impose or foresee the obligation of a deconsolidated company to retroactively pay the income tax from a dividend distribution, but only to comply with its tax obligation related to the year in which the company ceases to consolidate individually. As of 1999 the Income Tax Law does provide and impose to pay retroactively the income tax generated in a dividend distribution by controlled companies.

The interpretation sustained by the tax authority was that the wording "comply with its tax obligations related to the year in which it ceases to consolidate individually" contained in the provision of the law related to deconsolidation implied that Aranal Comercial had the obligation to pay income tax over the dividend distribution as a result of its deconsolidation.

Aranal Comercial challenged the decision through an annulment procedure, contending that the 1998 Income Tax Law could not be interpreted in the sense that a controlled company must revert the effects validly produced under the consolidation regime and must therefore pay income tax on the dividends distribution.

The Tax Court annulled the illegal assessment made by the Local Tax Authority, and pronounced that Aranal Comercial had not omitted any income tax payment regarding the distribution of dividends among its shareholders' during 1998, on grounds that the provision of the Income Tax Law that ordered for the payment of the tax as "if there were no consolidation regime" in the fiscal year of deconsolidation did provide for the reversion of effects derived from dividend distributions ruled under the consolidation tax regime, even if said distributions took place during the deconsolidation tax year but before said deconsolidation happened.

The Tribunal also considered that Aranal Comercial complied with the law as it adopted the option provided for in the Administrative Rulings, paying the amount of the tax to the controlling company, and consequently the fiscal assessment was declared illegal.

The Tax Authority challenged the decision and the Court of Appeals confirmed it on January 31, 2006.