

## Bill on tax treatment for financial derivatives

A new bill states a specific tax treatment for financial derivatives

Recently the Government sent to the Parliament a Bill in order to provide for a specific tax treatment for financial derivatives (hereinafter FD) (see the Bill in the following link: [\[CLICK HERE\]](#)).

Following the criterion stated by the International Accounting Standard No. 39 (IAS No. 39), the Bill considers as FD those instruments or contracts which: (a) its value changes in response to the change in a specified interest rate, the price of shares, commodity price, foreign exchange rate, index of prices, credit rating or credit index, or other variable (underlying asset); (b) it requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have a similar response to changes in market factors, and (c) it is settled at a future date.

The Bill takes into consideration the increasing use of FD, the absence of specific regulations and the deficiencies of the current rules in order to provide adequate solution to the tax problems involved in the use of this type of instruments.

### Concept of FD

The Bill defines FD as “those contract in which the parties agree to realize transactions in the

future in relation to an underlying asset, such as futures, forwards, swaps, options and similar, as well as its combination, in accordance with the definitions to be established by the Government”.

### Income from Uruguayan source

The Bill states that the income obtained through FD will be considered as from Uruguayan source when the transactions are performed by Uruguayan income tax taxpayers (Corporate Tax – *Impuesto a las Rentas de las Actividades Económicas*, IRAE – and Resident Income Tax – *Impuesto a la Renta de las Personas Físicas*, IRPF –).

### Income from foreign source

On the contrary, the Bill states that the income obtained through FD by Non-Resident Income Tax taxpayers (*Impuesto a la Renta de los No Residentes*, IRNR) will be considered as from foreign source.

However, the operation on the underlying asset, provided that such asset is located in Uruguay, will be considered as from Uruguayan source like any other purchase-sale transaction.

### Income's calculation

According to the Bill the income obtained through FD will be computed at the moment of its settlement, i.e. its payment, assignment, transfer, compensation or expiration.

### **Deductible expenses**

The Bill states that the losses derived from FD are deductibles provided that the counterparty or intermediary is not an entity resident, domiciled, constituted or located in countries or jurisdictions with low or null taxation, or which benefits from a special low or null taxation regime.

### **Special regime for financial institutions**

The Bill authorizes the Government to establish a special regime of calculation for the income obtained through FD by the institutions comprehended in Act No. 15.322 (Financial Intermediation Act – *Ley de Intermediación Financiera* –).

In this sense, it is provided that the taxpayers may choose to apply the general regime, and such option should be maintained for a period of two to five years in accordance to the rules to be determined by the regulations.

### **Calculation of assets and liabilities**

The Bill states that for the calculation of assets and liabilities, both for fiscal adjustment due to inflation and also for the calculation of Net Wealth Tax (*Impuesto al Patrimonio, IP*), only should be considered the resulting balance of the settlement of the FD.

### **Value Added Tax**

Finally, the Bill states that the results derived from FD shall not be considered for the calculation of Value Added Tax (*Impuesto al Valor Agregado, IVA*).

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