The economic impact of taxation on the flow of software copyright royalties within the Common Market of the South

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The Common Market of the South ("MERCOSUR") was created as an ambitious project towards the economic integration of its members, based on the free movement of goods, services, capital and people. However, the lack of specific goals in economic and exchange policies, and the lack of coordination of their fiscal policies have resulted in distortive investment flows and in competing tax incentives among members, evidenced particularly in software matters, the focus of this work.

MERCOSUR countries do not escape the international debate on the approaches to taxation on computer programs. What is at stake here and is subject to misunderstanding is the determination of whether any given software is to be considered as a mere good over which there are property rights, or whether it is an intangible, over which there is an intellectual or author's right.

The economic approach holds that to distinguish between both kinds of rights, certain economic variables have to be considered, such as for instance the purpose to which the software is put. Where such software is put to personal purposes, it should be understood as a merchandise, a mere good, whereas if it is put to commercial exploitation, it should be understood as an intangible, an intellectual right or author's right[1].

Likewise, for taxation purposes the economic approach focuses as whether the assignor retains an interest on the software, like in the case of payments contingent on productivity, use or transmission[2].

On the other hand, there is also the private law approach which focuses on the nature of the agreement made for software transfer (e.g. a licence versus a sale).

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Although MERCOSUR countries are closer to this latter approach, when it comes to canned software of massive consumption they are gradually coming to treat the transfer of software as a transfer of a specific good, though only on a case by case analysis.

Also, MERCOSUR members have traditionally been importers of software and services, but in the last few years this paradigm has been changing as shown in Table A of this report, and member states are gradually becoming exporters of software and services. This new favorable change in turn brings about new challenges to be solved. For example, an Argentinean exporter of software and services cannot compute his income paid abroad as a tax credit on his tax return in Argentina, because his profits are considered to have been produced in Argentina[3].

Some countries such as Uruguay have consolidated their exporting trend and have applied tax policies aimed at turning the country into a business platform for software and information technology (IT).

Other countries, such as Argentina and Brazil, offer an interesting combination of tax incentives along with attractive market volumes. Brazil for instance, notwithstanding their complex tax scheme, has anyway become a very attractive market because of their most significant volume and efficient export credit lines.

Despite these incentives, taxation is in these countries still anchored onto their traditional self-concept as developing countries, with an unequal flow of wealth as importers of technology. This becomes fully apparent in the restrictions invariably included in their legislation, on deductions of royalties, technical services or other concepts paid abroad.

This circumstance also explains why the economic approach is frequently set aside in favour of an expansive source approach, like in Argentina in the case of payments for remote access to an international data base using software.

In view of all this, the Observatorio Iberoamericano del Derecho de Autor (ODAI) and the Society for Economic Research on Copyright Issues (SERCI) is hereby granting us the unique opportunity of assessing the economic impact of taxation on the flow of software royalties in the MERCOSUR, for which we would like to express our sincere appreciation.

We would also like to thank all the friends and colleagues who have generously collaborated with enormously helpful information in view of the unfortunate lack of systematized information in the region. My sincere thanks to Eduardo Meloni, Pablo Palazzi and Macarena Pereyra Rozas from Argentina, Marcos Andre Vinhas Catão from Brazil, María Gloria Triguis and Lorena Dolsa from Paraguay and Sebastián Arcia and Gianni Gutiérrez from Uruguay.

What follows is a detailed analysis of the above picture within the legal context of MERCOSUR.

1. MERCOSUR: Current integration scheme

MERCOSUR is a customs union originally formed in 1991 by Argentina, Brazil, Paraguay and Uruguay through the Treaty of Asunción. Venezuela joined the block in 2006, with pending approval by the Paraguayan congress. Initially conceived just as a free-trade zone, it formally became a customs union in January 1995, with common external tariffs, for all member countries. Bolivia, Chile, Colombia, Ecuador and Peru later became associated states, though not full members[4].

As stated above, this Treaty contemplates the free movement of goods, services, people and capital[5]. Special protection is granted to the principle of free movement of goods and services, whereby no discrimination based on nationality or origin of goods is allowed[6]. The principle of free trade entails no taxes or other restrictions on common trade. The Treaty also sets forth that goods originating in any member state should have the same tax treatment as locally manufactured products.

In spite of its ambitious objectives, MERCOSUR has made little progress in coordinating tax legislations, especially in matters of direct taxation which display huge asymmetries because of exclusively territorial criteria on tax income[7] with systems based on the principle of worldwide income taxation [8], and mainly due to tax incentives to attract capital and/or the settlement of service centers (e.g. software, research and development activities and others), all of which translates into harmful tax competition among member countries.

The scope of this report will focus on Argentina, Brazil, Paraguay and Uruguay, today's full members of MERCOSUR.

2. Legal Protection and definition of software.

MERCOSUR members protect software as a copyright[9]. They have signed the International Berne Convention[10], the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPs") of the World Trade Organization ("WTO")[11] and they are members of the World Intellectual Property Organization ("WIPO")[12].

Despite their diversity and just like the legislations of the remaining Ibero-American countries, intellectual property laws of MERCOSUR members implicitly or expressly state that the term *author* corresponds only to the physical person who has created the work[13].The laws of Brazil and Paraguay state so expressly (Section 11, Act 9610 and Section 2, Subsection1, Act 1328/98), while in Argentina and Uruguay, it arises from their distinction between ownership rights pertaining to the author proper, and other kinds of ownership rights. (Section 4, Act 11723 and Section 7, Act 9739, amended by Act 17616).

As regards proprietary rights on software created at work for an employer, to a greater o lesser extent, the laws of MERCOSUR members presume that unless otherwise agreed, such rights belong to the employer[14]. Matters, however, are different regarding moral right.

In Brazil the provisions related to moral rights do not apply to software programs, except regarding the author's right to claim his authorship of the software and his right to oppose any mutilation or other modification damaging his honor or reputation[15].

Paraguay[16] and Uruguay[17] expressly grant the enforcement of moral rights to the employer through a legal authorization.

The Argentinean legislation has no limitations to said moral rights which, from a strict legal point of view, remain with the physical person creating the software, namely the employee[18].

Argentina has been the only member to define for fiscal purposes the term software, establishing that the creation of software is to be held as a productive activity equal to industrial activity, thus enabling the extension onto the former of several tax benefits inherent to the latter, particularly those related to gross income tax, the main tax collected by the provinces in Argentina[19].

The following Table shows the legal definition of software by each member country.

	ARGENTINA	BRAZIL	PARAGUAY	URUGUAY
Has it got a definition on software in tax legislation?	Expression organized from a set of instructions or orders in any language at an intermediate or high level, of assembly or of machinery organized in structures of different sequences or combinations, stored in a magnetic, optical, electrical field, disks, chips, circuits or any other which could be appropriate or developed in the future, intended for a computer or any other machine with information processing capacity able to perform a certain function, directly or indirectly having or lacking database [20]	No	No	No
Has it got a definition on software in authorship legislation?	Software shall be understood as works included among those of Section 1 of Act 11.723, namely, any production including one or several of the following expressions: I.The general or detailed designs of the logical flow of data in a computing system;II. The computer programs, in its "source"version, directed to the human reader, as well as in its "object" version directed to be performed by the computer[21]	Software program is the expression of an organized set of instructions in natural or code language, contained in a physical support of any kind, necessarily employed in automatic machines for the manipulation of data, devices, tools, or peripheral equipment, based on digital or analogue technique, so they will operate in the way and with the purposes determined[22]	Software program is the expression of a set of instructions in the form of words, codes or plan or in any other form which on being incorporated in an automated reading device, is capable of making a computer carry out a task or produce a result. A computer program also includes the technical documentation and users' manuals[23]	No

Table B: Definition on Software

3. Economic effects under domestic tax laws

3.1. Tax mitigation through incentives

Except for Paraguay, all MERCOSUR members grant significant incentives to software activity and related services. In Argentina and Brazil, incentives are granted within a specific framework, upon compliance with certain requirements and the filing of supporting documents. In Uruguay, tax benefits are ruled by the National Tax Code and extend to software activity without further requisites. These benefits are shown in Tables C.1 and C.3

Again except for Paraguay, MERCOSUR members also grant tax incentives for Research and Development (R&D), including the development of software as technological platform.

These benefits are shown in Table C.2

3.2. Different jurisdictional systems and taxation sources (economic versus financial source)

MERCOSUR members have different jurisdictional systems to tax income. While Argentina and Brazil adopt a worldwide income basis on the principle of residence, Paraguay and Uruguay on the other hand adopt an exclusively territorial scheme where income deriving from sources abroad is not levied.

In Uruguay there is the added benefit of attractive software tax incentives and an efficient tax-free regime with the aim of further consolidating its regional position as a business and technological ventures platform[24].

As regards non-residents, all MERCOSUR members levy income on a territorial basis, i.e. exclusively on sources located within their respective territories.

However, Brazil has followed its own criterion as to the source liable to taxation, applying a system based on the 'financial source', while the remaining countries apply a system based on the 'economic source'.

According to Professor Xavier, classically *income source* is understood as *production source*, widely known as *economic* *source* and refers to "the capital giving rise to the income being taxed", which is located where the activity is carried out or production factors are used, or where the rights or assets creating the income are located[25].

The 'economic source' approach adopted by Argentina, Uruguay and Paraguay thus implies the recognition of the natural place of origin of the income/revenue. The source of income is located where production factors have been applied to generate an economic benefit.

The 'financial source' approach on the other hand, is connected to the idea of the origin of payments. While the 'economic source' approach bears a direct causal link between the revenue and the activity originating it, there is no such link in the 'financial source' approach, which is rather connected to the origin of payments[26].

This is the standard used by Brazil which applies a general withholding tax rate of 15 % on all the payments by a resident to a non-resident[27], unless the latter resides in a low tax jurisdiction, in which case the rate is of 25%[28].

As pointed out by Brazilian Vinhas Catao, Decree-Law 1418/75 has superseded an old precedent by the Supremo Tribunal Federal (Sumula No.585), which required a connection between the source of production and that of payment, so that tax at the source could be collected from contributors located in Brazil[29].

From then on and for over thirty years now, Brazil has applied the 'financial source' approach.

3.3. Higher effective taxation due to limits on deductions for payments made to non residents.

Tax legislations in MERCOSUR countries impose restrictions on deductions for payments made to non-residents.

As regards payments for technical services, Argentina has established that deductions should not exceed the following limits: a) 3% of sales or incomes taken as contractual basis for the compensation, or 5% of the investment effectively made for technical services[30]. In addition, no deduction is allowed for payments abroad arising from technology transfer agreements not registered with the Technology Transfer Registry[31]. This is currently a controversial issue in Argentina.

In Brazil, deductibility is associated with 'transfer pricing'. Here, payments which qualify as "royalty" or "technical, scientific, administrative or similar assistance", shall not be governed by transfer pricing rules of Act 9430/96[32], because they will already have been affected by the limits on deductions established by Act 4506/64 (between 3% and 5%, as the case may be)[33].

Act 4506/64 defines "royalties" as any payment related to: (i) the right to explore or extract natural resources, including woods; (ii) the right to search and extract mineral resources; (iii) the use or exploitation of inventions, manufacturing processes and formulas and of trademarks; (iv) the exploitation of copyright, unless payment is made to the author himself. Interests and any other compensation for delays in the payment of royalties are also included herein[34]. The legal doctrine holds that the scope of this definition has given rise to some interesting issues.

Leonardos observes that payments considered as royalties would not be included within transfer pricing rules, like in the case of copyright already assigned by the creator (author) to a third party, the derivative owner. Conversely, payments made to the original owner/author, would not be considered as royalty and consequently transfer pricing rules must be applied[35].

This topic will be discussed further in 5.1, on tax implications in MERCOSUR countries, of the European continental approach on copyright.

The Paraguayan legislation provides that payments for counseling and consultancy not directly related to the activity performed in Paraguay will be deductible up to 2.5 % of the net income taxed. This shall be applicable only to total payments, not to each service separately[36]. This state of affairs has become controversial in this country.

The Uruguayan legislation states that expenses incurred by Income Tax on Business Activities' contributors cannot be deducted if made to IRNR or non-resident income tax payers, if in excess of 25% of said payments[37].

Limits to deductions in Argentina and Paraguay are therefore related to technical or consultancy services, while in Brazil they are related to payments which qualify either as "technical, scientific, administrative services or the like", or as "royalty". Lastly in Uruguay, limits to deductions operate generally on any concept subject to the non-resident income tax (IRNR).

4. Economic effects under Double Taxation Conventions (DTC).

4.1. Canned or embedded software: possible double taxation

The qualification of payments for the use or right of use of computing programs, computers or software is what best illustrates one of the most discussed issues related to the 'economic' versus the 'legal' approach to this type of income. In the legal approach, in particular according to the qualification set forth by the rules of Civil Law, most specially as regards copyright, such payments always qualify as royalties[38]. The tenets of the economic approach, in turn, are best represented in the Commentaries to MC OECD[39].

Argentina does not agree with the interpretation given by the Commentaries in paragraphs 14 and 15, and considers that payments for software qualify as royalties when less than the whole of those software rights is transferred, both when payment is made in consideration for the right to use a copyright for its commercial exploitation, and when software is acquired for personal or business purposes by the buyer[40]. Brazil, in turn, has disagreed with the interpretation of paragraphs 17.1 to 17.4 "particularly regarding its tax principle of financial source of payment stated in its domestic tax legislation"[41].

By virtue of the clause of remittance back to internal legislation of most of the DTCs signed by MERCOSUR members -according to section 3 (2) of the MC OECD nomenclature[42]- it is interesting to pay attention to each country's criterion on the so- called "canned software" or "off–the-shelf" software.

In Argentina there are no formal statements on the issue. There are only opinions expressed during consultations by the Link

Team between the Argentine Tax Bureau (AFIP) and the Economic Sciences Professional Council of Buenos Aires. At a first meeting the Tax Bureau stated that imports of canned software are not subject to withholdings in Argentina for they resemble imports of goods. At a second meeting, however, it held that in principle they would be subject to a 31.50 % withholding tax, though each specific case had to be analyzed individually[43].

In Brazil, the issue has been discussed at length in relation to other taxes rather than to income tax, such as: the Contribution of Intervention in the Economic Domain ("CIDE Technology"), the Financing Contribution of Social Security ("COFINS"), the Contribution for the Social Integration Programme ("PIS"), the Tax on Services ("ISS") and the Tax on operations related to the circulation of goods and on the inter-state and inter-municipal transport services and communication services ("ICMS").

In relation to the above taxes, it has been widely discussed for instance, if the import of software and its subsequent commercialization in Brazil constitutes a taxable event, given the nature of software as a good, service or intangible.

As regards the ICMS and the ISS, the Supreme Federal Court has distinguished between "canned software" under jurisdiction of the ICMS, and "customized software" under jurisdiction of the ISS (services)[44]. In an interesting vote, Minister Sepúlveda stated: "Because the subject-matter of this lawsuit, i.e. the licensing or assignment of the right to use a computing programme, is an intangible and not a good, the States cannot apply the ICMS. This does not however mean that the circulation of copies or prints of computer programs produced in series or commercialized in mass such as "software de prateleira"(off- the- shelf software) should be removed from the constitutional scope of influence of the ICMS, for it materializes the corpus mechanicum of the intellectual creation, thereby constituting goods to be commercialized"[45].

As regards the Income Tax (IRF), Vinhas Catao[46] points out that in answers to some queries, the Secretaría de la Receita Federal in Brazil has stated that payments made to a foreign country for the purchase of computer programs produced on a large scale, in a uniform manner, and placed in the market to be purchased by any interested party, which do not involve author rights given their nature as mere goods, shall not be levied by this tax. However, should the payment qualify as royalty because it is made in consideration for the assignment of a license to use a computer program, it would be levied by the IRF (15%)[47].

As to Uruguay, after their 2007 tax reform[48], the issue came up regarding software incorporated to telecommunications equipment, assigned in perpetuity to the user. The Uruguayan Tax Office (DGI) ruled that where the telecommunication equipment is purchased simultaneously and in a single transaction together with software necessary to run it, and given the underlying reality of the business, basic software is part of the cost of such equipment, and as such the transaction is about the sale of property, not giving rise to income of Uruguayan source.

Same treatment is to be given to other basic software commercialized as described above, i.e. purchased together with the equipment and necessary for its performance, assigned in perpetuity, and which form part of other types of goods, such as software included in automobiles, computers or certain household appliances.

On the other hand, assignments of licenses to be applied to pre-existing equipment (when an additional capacity is added to an existing one, or the updating of former programs) or assignments for limited periods of time, are indeed to be considered as provision of services and shall therefore be levied by the non-resident income tax (IRNR), if the provider is a non-resident operating in Uruguay at permanent facilities.

As for Paraguay, in their consultation report of May 9, 2005 the Consulting Council stated that according to section 81 of Act 125/91, any assignment of the use of property and rights in general will be deemed of Paraguayan source whenever used within the country, even though partially, during the period agreed. Under this wide legal scope it was stated that the import of software shall be levied in all cases, regardless of its physical or non-physical support, whether canned or not[49].

The only member of MERCOSUR which includes any reference to the economic interpretation of the commentaries to the MC OECD, has been Uruguay, in a DTC with Mexico signed recently and not yet in force, whose Section 22.2 states: "*It is understood that the Contracting States shall do their best to apply the provisions herein in accordance with the Commentaries on the Articles of the Model Tax Convention on Income and Estates, drawn up by the Tax Committee of the OECD, provided they correspond with those established under the Model.*"

MERCOSUR members are thus slowly incorporating the economic approach sustained by the Commentaries to the MC of the OECD, onto to canned software and machinery or equipment which include software (embedded software), but only upon a case-by-case evaluation, for which they are still far from consolidating this approach in the region.

4.2. Double taxation through unilateral application of domestic laws on a DTC: Case Study

Case 1: ***The Brazilian stance on remittances by Spanish ETVEs***

This case is relevant because ETVEs are frequently used as holding companies of activities carried out in the region. Spain, like several other European countries, created a kind of holding company whose profits and capital gains earned abroad enjoy a special tax treatment. This corporate entity is called the Entidad de Tenencia de Valores Extranjeros, the so-called "ETVE" (Entity Holder of Foreign Equities). As per paragraph 4 of Article 23 of the DTC between Brazil and Spain, "when a resident in Brazil is paid dividends which pursuant to the provisions of this Convention may be taxed in Spain, Brazil shall exempt such dividends from tax[50].

It thus became common practice to devise a tax planning scheme creating a Spanish company which obtained profits or capital gains arising in Brazil, and then paid such profits or gains by way of dividends to its partners residing in Brazil, thereby being favoured with a tax reduction[51].

To avoid these manoeuvres, the Federal Revenue Board of Brazil issued Interpretative Declaratory Act N° 6, dated June 6, 2002 ruling that paragraph 4 of Article 23 of said DTC shall not apply on profits and dividends deriving from an equity holding in an ETVE[52], received by persons residing or domiciled in Brazil.

Case 2: ***Brazilian stance on the taxation of remittances abroad resulting from services provided without transfer of technology***

This case is also telling because the exploitation of software is usually part of mixed contracts where the transaction is about intellectual property jointly with different types of services.

As stated above, Brazil applies the financial source approach by which for income tax purposes, what is relevant is the origin of payment. This approach seems to have recently extended on to the DTC subscribed by Brazil, as a consequence of the statement in Acto Declaratorio Interpretativo COSIT No. 1/2000, consolidating the general interpretation that payments made to a resident of a contracting State, in consideration of technical services not implying technology transfer, are not ruled by Article 7 ("Business Profit"), but by Article 21 ("Other Income")[53]. Consequently, the treaty does not prevent Brazil from applying its general withholding rate on the gross amount of payments (15 %).[54]

However, in the case of "Cía. Petroquímica del Sur" (Copesul), the above criterion was superseded by the Federal Court of Appeals of the Fourth Region[55].

Case 3: ***The Brazilian contribution of 'Intervention in the Economic Domain' CIDE ROYALTY***

Act N° 10168 has set the rate of 10 % on gross remittances abroad for technology transfer. Act 10332 has imposed this rate on all technical services, administrative assistance and the like. In order to clear doubts, Act 11452 further ruled that this rate is not to be levied on payments for license of use of software, provided they do not involve transfer of technology.

Although the rate does not seem to affect software transactions in general, since only very few cases constitute actual transfer of technology, in point of truth it will affect accessory services such as technical assistance, setting-ups, parameterization and the like.

Brazilian doctrine has criticised this tax for being analogous to the IRF and as such, in violation of the provisions in Article 2 of the DTC signed by Brazil[56]. The Brazilian Tax Authorities, in turn, hold the opposite, stating that the tax is levied on the taxpaying company, not on the subject abroad[57].

Case 4: ***Expansion of the Argentine jurisdiction when taxing payments for accessing through software to a remote database***

Based on the fact that in the DTC between Argentina and Spain, technical assistance is held as a royalty generating limited jurisdiction by the State of the source, the Argentine Tax Authority states that payments to a Company resident in Spain for access to an international database (Amadeus system used by commercial airway companies) through software temporarily downloaded to the user's computer in Argentina, is to be considered as payment for technical assistance, not as business profit. In the cases "Aerolíneas Argentinas S.A." and "Austral Líneas Aéreas", the Court of Appeals confirmed this qualification[58].

These judgments were widely criticized by Argentine doctrine[59].

4.3. Limits to the deduction of payments between a permanent establishment (PE) to its Head Office

In some of their DTC, MERCOSUR countries have included a provision with a reservation to apply the limits that might be included in their domestic legislation with respect to deductions of expenses incurred by a PE (see Table D,Group 1), while other DTCs include the provisions of Article 7.3 of the United Nation Tax Model Convention[60], limiting deductions of royalty payments (other than reimbursements of effective expenses) between the PE and the Head Office and/or not computing PE's benefits deriving from payments by the head office or any of its branches (see Table D, Group 2)[61].

	GROUP 1 DTCs in which the State of the Source has provided a generic reservation to apply the limits included in its domestic legislation to deductions of expenses made by a PE.	GROUP 2 DTCs which include specific limits to the benefits and /or the prohibition to deduct royalty payments to the PE.
ARGENTINA	Australia, Canada, Denmark, Finland, U.K, Norway, The Netherlands, Russia, Sweden, Switzerland	Australia and Spain
BRAZIL	Chile, Philipines, Peru, Portugal, Southafrica, Paraguay.	Spain[62], Mexico
PARAGUAY	Brazil	
URUGUAY		Mexico

TABLE D: Limitation of deductions of PE's royalty payments.

The remaining DTCs do not contain such limitations.

4.4. Neutralizing limitations to deductions through a Non-Discrimination Clause (NDC)

As already stated, domestic tax legislations of all MERCOSUR members include limitations to deductions of payments to non-residents, which operate to greater or lesser extents.

The NDC of the MC OECD has been included in several of the DTCs signed by these countries[63]. It is therefore interesting to identify the DTCs where this NDC could become effective to neutralize limitations on deductions.

The following chart shows the distribution of countries as per their inclusion or non-inclusion of NDC and/or the reservation mentioned above.

	GROUP 1A DTCs with NDC for deductions for payments to non-residents, where the State of the source has made no reservation to apply the limitations to deductions contained in its domestic legislation	GROUP 1B DTC with NDC for deductions for payments to non residents, where the State of the source has made a reservation to apply the limits to deductions contained in its domestic legislation	GROUP 2A DTCs without NDC for deductions for payments to non-residents, where the State of the source has made no reservation to apply the limits to deductions contained in its domestic legislation	GROUP 2B DTCs with no NDC for deductions for payments to non-residents, where the State of the source has made a reservation to apply the limits to deduction contained in its domestic legislation
ARGENTINA	Germany, Austria, Belgium, Denmark, Spain, USA, Finland, France, the UK, Italy, Norway, Netherlands, Russia, Sweden and Switzerland		Chile, Bolivia, Brazil[64]	
BRAZIL	Chile; China, Israel, Peru, Portugal and South Africa[65]	Korea, Ukraine	Finland, France, India, Japan	Germany, Argentina[66], Austria, Belgium, Canada, Czech Republic and Slovaquia, Denmark, Ecuador, Spain, The Philippines, Netherlands, Hungary, Italy, Luxemburg, Mexico,Norway, Switzerland and Paraguay
PARAGUAY			Taiwan and Chile	Brazil
URUGUAY	Germany (1987), Germany (2010); Hungary, Mexico, Portugal and Spain.			

TABLE E: Countries with/without Non-Discrimination Clause for payments of royalties to non-residents

As shown, Brazil consistently includes a reservation to apply the limitations to deductibility contained in its domestic tax legislation.

Interestingly, in Argentina there are cases where these limitations have been neutralized upon the application of the NDC. The issue has come up within the scope of the DTC with NDC, in which full deductibility of payments has been admitted[67].

However, this position has recently been revised in a case involving a DTC with Spain with respect to payments for the use of an industrial trademark in Argentina, where it was held that the unique characteristics of the intangible prevented it from being considered as discrimination[68].

4.5. Extension of tax benefits through the 'Clause of Most Favored Nation' (CMFN)

Another interesting tax effect on the economic flow of Royalties is shown by the CMFN, infrequent in DTCs in general, but common in DTCs by MERCOSUR members, especially in Argentina and Brazil.

The CMFN provides that benefits included in a later DTC between a contracting State and a third State shall extend to residents covered by any DTC subscribed earlier with a first State. In broad outlines, the CMFN operates as a communicating vessel along which benefits granted to a later country regarding withholding tax reductions, exemptions and/or deductions, flow onto residents of a previous contracting state. In some DTCs, in addition, the CMFN also operates on the definition of royalty, adding any exclusion granted later to a third state regarding this definition[69].

The following Table illustrates the above in relation to DTCs in the region:

	GROUP 1 CMFN extends on withholding tax, exemptions and/or deductibility without affecting definition of royalty	GROUP 2 CMFN affects the definition of royalty if a later DTC contains any further exclusion thereto
ARGENTINA	Australia, Belgium, Canada, Denmark, Spain, England, Norway, Netherlands, Sweden and Switzerland	Denmark (Rights or property of any kind), Norway (idem), France (study or research of scientific or technical nature related to industrial methods or procedures), Italy (idem)
BRASIL	Austria, Canada, Korea, Spain, Netherlands, Hungary, Israel, Italy, Luxemburg, Mexico, Norway and Sweden	Israel (Technical assistance and services), México (Technical assistance and services)
PARAGUAY	Chile	
URUGUAY		

TABLE F: Scope of CMFN

4.6. Economic influence of the Clauses of Matching Credits (MC) and Tax Sparing Credits (TSC).

The effectiveness of these clauses has been questioned by the OECD[70]. Except for Uruguay, they are nevertheless very common in the DTCs by MERCOSUR countries.

A MC is granted by the country of residence as a fixed credit to be applied on the amount remitted, regardless of the actual withholdings in the same country

A TSC, on the other hand, is granted to prevent the annulment of tax benefits granted by the source-country, owing to taxation in the country of residence[71].

It is to be noted that except for very few cases, TSCs are only for a limited period of time, and have already elapsed in most existing DTCs, being at present of little practical significance. TSCs are in general linked to income arising from investments or business projects.

The following Table classifies DTCs with TSCs according to whether they include a limited duration or not.

COUNTRY	DTC with temporal TSCs	DTC with TSCs with no temporal limit
Argentina	Argentina, Australia, Canada, Denmark, United States, UK, Norway, Sweden and Switzerland	Spain, Italy[72] and Russia
Brazil	Belgium and Paraguay[73]	Hungary[74]and Japan
Paraguay	Brazil[75]	
Uruguay		

TABLE G: Tax Sparing Credit Clause

As far as Matching Credit Clauses are concerned, DTCs of MECOSUR countries can be classified into the following groups: DTCs which include MC which apply generally onto royalty payments – copyright, among others – (Group 1), DTCs which include MC for industrial royalties only, such as for patents, designs and know-how (Group 2), and finally DTCs which include MC only for a limited period of time (Group 3).

Interestingly, in the case of some of Brazil's DTCs (with Germany, Article 24,3c and Holland, Article XII, 4c) the MC is associated to deduction limitations in Brazilian domestic legislation, in order to "offset" the economic effect caused by such limitation. In the DTC signed with Austria, royalties are altogether exempted, if not deductible (Article 23.7).

Also of interest is the case of Argentina and several of its DTCs (with Brazil, Holland, Australia, the United States, the United Kingdom, Switzerland and Sweden[76]), which include a "soak- up tax" clause through which any tax relief or exemption affecting income tax shall not produce any effect should they result in a transfer of income to the tax authorities of the Contracting Country. This clause, typical of Argentina's domestic legislation, is included in DTCs to become operative upon the absence or expiration of benefits derived from MCs and/or TSCs.

TABLE H: Matching Credit Clauses

	GROUP 1 DTC with MC applicable generally on royalties and includes copyright, by increasing the withholding tax credit (WTH) as follows:	GROUP 2 DTC with MC only applicable on industrial royalties and which increases the withholding tax credit (WTH) as follows:	GROUP 3 DTC with MC for royalties but Of limited duration (Group 1+ Group2)
ARGENTINA	Canada [WTH 5/10 %, MC 15 %][77]; Finland [WTH 20/15%, MC 20 %][78]; Italy [WTH 10/18%, MC 20%]	Germany [WTH 15 %, MC 20%]; Spain [WTH 5/10 %, MC 15 %][79]; France [WTH 18 %, MC 20 %]; Sweden [WTH 5/10%, MC 15 %]; Switzerland [WTH 10 %, MC 15 %]	Canadá, Sweden
BRAZIL	Germany[WTH 15%, MC 20/25 %][80]; Austria [WTH10/15, MC 25 %]; Belgium [WTH 10/15, MC 15/20 %][81], Canada [WTH 15 %, MC 20 %][82],Czech Republic and Slovaquia [WTH 15 %, MC 25]; Korea [WTH 15 %,MC 20], Denmark [WTH 15 %, MC 25 %]; Ecuador [WTH 15, MC 25%]; Spain [WTH 10/15 %, MC 25 %]; Philippines [WTH 10 %, MC 25%]; Finland WTH 15 %, MC 25 %]; Netherlands [WTH 15 %, MC 20/25%][83]; Hungary [WTH 15 %, MC 25%]; India [WTH 15 %; MC 25 %];Italy [WTH 15 %, MC 25 %]; Japan [WTH 12.50/15 %, MC 25 %];Luxemburg [WTH 15 %, MC 25 %][84]; Norway [WTH 15, MC 25 %];Sweden [WTH 15 %, MC 25 %]	France [WTH 15 %, MC 20 %]	Belgium,Finland,Norway,Sweden
PARAGUAY			
URUGUAY	Germany 1987 [WTH 10/15 %, MC 20 %]; Germany 2010 [WTH 10 %, MC 10 %]		Germany 2010

4.7. Lowering the economic impact of taxation on technical assistance in DTCs in Argentina: gross basis vs. net basis

All DTCs of MERCOSUR members levy royalties on a gross basis. Most DTCs consider technical services and/or assistance as royalties with limited taxation by the source country[85].

DTCs by Argentina and the countries detailed below allow the levying of royalties for technical assistance on a net basis instead of on a gross basis, significantly lowering the economic impact of taxation on such payments. These countries are Australia, Belgium, Canada, Denmark, Spain, the United Kingdom, Norway, Holland and Switzerland.

In broad outlines, these DTCs require payments to be directly related to the technical assistance provided and to the costs and expenses of any equipment purchased by the provider in order to give such assistance. In the DTC between Argentina and Belgium, tax after deductions cannot be under 5 % of gross royalties.

5. Economic effects in the domestic scope and in the scope of DTC

5.1. Projections upon taxation of the European continental approach on copyright

As already stated, MERCOSUR members protect author rights based on the European continental approach, which is different from the Anglo-Saxon notion of "*copyright".* These two systems belong to different lines of thought. Copyright sprang from "The Statue of Queen Anne" in 1710, related to royal privileges[86]. According to Buitrago, common law copyright focuses on the protection of the work as a good capable of being commercialized and exploited, thereby turning irrelevant the personal relationship between work and author. What matter here are the proprietary rights on copyright, i.e. the owner's ability to fully exploit the piece of work[87].

Unlike the above, since the very inception of the continental system, an author right was recognized as the most sacred and personal property, and as provided by the French laws of 1791 and 1793, the capacity as an author and his prerogatives fall only upon the physical individual, who leaves his personal trait upon the work created[88]. Thus the focus has been on the creator of original works: the human person projecting his/her personality upon the work. That has become the philosophical foundation of author rights, which will determine its contractual regime[89].

As Buitrago points out, within this philosophical framework, *authorship* and *ownership* are two different notions. Understanding the difference between them will be instrumental to domestic taxation and to the clause on royalties in DTCs. The European continental laws consider the *author* as the individual who produces or creates an intellectual work, and the *owner* as the one having exploitation or proprietary rights thereon, but who must recognize the inalienable and unattachable moral rights of the author[90]. On the other hand, in countries of Anglo-Saxon tradition, it is customary to term as "author" both some of the owners of the rights upon the intellectual work, as well as the author proper. U.S legislation considers as author not only the person who creates the work, but also to the person or entity who hired someone to create the work, whether it be an employer or any other physical or legal person ("work made for hire")[91].

These issues have raised interesting discussions in Argentina and Brazil. In Argentina there has been a long standing controversy with the tax authorities[92] who deny the application of the reduced withholding tax (12.25 %)[93] for payments of author rights originating in a software license in cases where the licensor is a legal entity/person. They hold these persons do not qualify as 'author' or 'heir of author rights and that it would in any case constitute a case of 'work made for hire' or a service relationship with the physical creator of the software. As a result, they claim a higher rate of 31.50% on such payments.

This issue may also extend onto DTCs of Argentina with Germany, Canada, Denmark, Spain, Finland, Great Britain and Northern Ireland and Russia in which Argentina has included the requirement of an effective qualified holder of title to author rights[94].

In the case of Brazil, the issue of authorship is tightly connected with the question of royalties. There, it is crucial for tax purposes to determine what exactly can be considered as royalty because royalties suffer certain limits to the deductions applied thereto as explained before. One of the hypotheses of royalties of the Brazilian legislation are the sums paid for rights on an intellectual piece of work to someone other than the author or the creator[95]. As said before they will not enjoy unrestricted deductions to income tax paid in Brazil.

But if these sums are paid to the author himself, they will not fall under the category of royalties and will therefore enjoy full deductions. In this latter case, however, what do apply are the Brazilian transfer pricing rules whose purpose is to prove that the price paid was that of market value.

The Brazilian Tax Authorities interpret that payments to a legal person for a software licence are subject to the limits on deductions, since the legal person is not the original author of the software but a derivative one, thereby causing those payments to qualify as royalties.

The Taxpayers Council rejected this interpretation, and since payments did not therefore qualify as royalties, no limitations on deductions were finally applied[96].

In Brazil, nonetheless, although the local doctrine has regarded the Taxpayers Council's position very favorably[97], the fact is that there is no clear ratio legis for the setting aside of the provisions of the Law of Intellectual Property which sets forth that: "*The author of a literary, artistic or scientific work is the natural person who created it"*[98] .

The above illustrates rather clearly the lack of specific distinction between 'ownership' and 'authorship' in the interaction between Tax Law and Intellectual Property Law, which obviously results in tax controversies.

5.2. Grossing-up: the practice of transferring tax costs onto prices.

Depending on its bargaining power, the foreign licensor may want to be paid royalty with no tax incidence, which is often the case with non-standard software. This brings about 'grossing-up' practices, by which prices will rise to include the tax which would otherwise have had to be paid by the licensor, evidently resulting in higher costs for the licensee.

The following table shows income tax nominal withholding rates ("NR") versus the effective higher rates ("ER") due to grossing-up practices:

ARGENTINA	BRASIL	PARAGUAY	URUGUAY
12. 25% (NR) /13. 96 % (ER): Royalty payments on account of agreements complying with Copyright Law 21 % (NR) /26. 58% (ER): Provided the contracts refer to services deemed unavailable in Argentina and have been registered as per the Transfer of Technology Law 28 % (NR) /38. 89 % (ER): Provided contracts have been registered pursuant to the Transfer of Technology Law but do not belong to the above category, e.g. trademarks, patents, know-how 31. 50 (NR) /45. 99 %(ER): Unregistered transfers of technology	15 % (NR) /24.70% (ER): General rate 25 % (NR) /28 % (ER): Tax havens	15 % (NR) /17.65 % (ER): General rate	12 % (NR) / 13. 63% (ER): Rate for concepts not expressly foreseen, such as author rights, software, technical assistance and royalties

TABLE I: Withholding nominal rate and effective rate increased by effect of grossing-up.

This effect is also present when a DTC is involved, but its impact might be mitigated in cases when the withholding rate is lower.

5.3. Effects of tax planning on the flow of royalties

DTCs with MERCOSUR countries offer several alternatives, many of whose benefits add to their domestic legal systems, thus allowing to effectively combine holding activities and the exploitation of intellectual property, like in the cases of the following countries, traditional holding centers and centers of exploitation of intellectual property: Holland with Argentina and

Brazil; Luxemburg with Brazil; and Switzerland with Argentina and Brazil.

There are also countries with an important network of beneficial treaties, many of them with Ibero-American countries. Such is the case of Spain and its treaties with Argentina, Brazil and Uruguay (signed but not yet in force). DTCs signed by Spain with MERCOSUR countries offer not only lower withholding rates but also MCs (Argentina and Brazil) and TSCs (Argentina, with no temporal limit).

The benefits of the DTC between Spain and Uruguay are even more interesting. This DTC applies on concerns operating in free-trade zones devoted to activities other than financial services, which turn Spanish investments extremely attractive, as they may eventually enjoy twicely non-taxation of profits: their profits would go untaxed in Uruguay if they fall under the scope of Uruguay's vast exemption regime (free-trade zones), and untaxed as well in Spain, by virtue of Spain's inner regulations and, complementarily, because of the application of the DTC[99].

In addition, and most importantly, aside from royalties, services by a Uruguayan software company to Spain when this company has no place of business in Spain, will as well be taxed neither in Spain nor in Uruguay if they take advantage of the promotion regime on said activities, thus becoming an additional case of double non-taxation. Finally, it is worth noting that technical services provided by a Spanish resident will not be subject to taxation in Uruguay either, since they would qualify as business profits[100].

The benefits deriving from DTCs signed by Spain are supplemented by the attractive regime of Foreign Equity Holding Companies/Entidades de Tenencia de Valores Extranjeros (ETVE) ruled by the Real Decreto Legislativo 4/2004[101], frequently used with the Ibero-American countries.

There is finally the case of the DTC between Argentina and Switzerland, the only in the region to allow exclusive jurisdiction to the country of residence in royalty matters[102], yet another case where there might be double non-taxation.

6. Conclusions

Taxation in MERCOSUR countries brings about an array of economic effects on the flow of royalties on software; some of them have significant negative economic impact on profits. Therefore business with MERCOSUR countries should contemplate careful and detailed consideration of tax matters in order to avoid unwanted tax impact.

Although the legal framework of MERCOSUR as a customs union consecrate the freedom of movement of people, capital, services and goods, as far as the coordination of direct taxation is concerned, there is still a long way to go. There are interesting economic opportunities to do business with countries of the region, even more when working on a regional scale. If MERCOSUR countries wish to move forward with a serious integration project capable of generating growing opportunities, rather sooner than later they will have to coordinate their tax systems in order to stop the economic distortions which, among others, were described in this report.

TABLE A: GENERAL DATA PER COUNTRY[103]

Figures in USD

* 2007 ** 2008 *** USD Million

	ARGENTINA	BRAZIL	PARAGUAY	URUGUAY
Population	40,5**	191,5 **	6,9 **	3.4 **
Gross domestic product per capita, current prices	8,266**	8,625**	2,747**	9,351**
Total Exports ***	70,589**	197,843 **	4433**	6.045**
Software Exports ***	504**	313* (+++)	4.7 **	188*
Total software sales (domestic and foreign market)***	2276**	11,200*	50,3**	420*
Relation between software exports/Population	USD 12.44	USD 1.63	USD 0.68	USD 64.40
Relation between software exports/totals	0.71 %	0.16 %	0.11 %	3,84 %
Relation between total Sales/exports	22.14 %	2.79 %	9.34 %	44,76 %

Sources:Figures on population, total exports and gross domestic product of each country taken from the International Monetary Fund Web site (www.imf.org), Instituto Nacional de Estadisticas y Censos(www.indec.gov,ar); Instituto Brazileño de Geografía y Estadística(www.ibge.gov.br); Dirección General de Estadísticas y Censos de Paraguay (http://www.dgeec.gov.py; Instituto Nacional de Estadísticas de Uruguay: http: www.ine.gub.uy; Unión Industrial Paraguaya: (http://www.uip.org.py); Banco Central de Uruguay (www.bcu.gob.uy); Oficina Federal de Recaudación de Brasil (www.receita.fazenda.gov.br); Presidencia de Uruguay (www.presidencia.gub.uy/_Web/noticias/2009/01/2009010705.htm) and the Asociación Iberoamericana de Cámaras de Comercio (http://www.aico.org/aico) Figures on Software exports and software total sales per country taken from the Web site of the Cámara de Empresas de Tecnologías de Información de Argentina "CESSI" (http:///www.cessi.org.ar); Associacao das Empresas Brasileiras de Tecnologia da Informacao "ASSESPRO" (http://www.assespro.org.br); Cámara Uruguaya de Tecnologías de la "CUTI" Information (http:///www.cuti.org.uy); Cámara Paraguaya de la Informática y las Telecomunicaciones "APUDI" (http://www.apudi.org.ar) and Cámara de Tecnología de la información de Paraguay "CTIP" (http://www.ctip.org.py).

(+++) Figures taken from the information provided by the *Associacao das Empresas Brasileras de Tecnologia da Informacao* in the seminar organized by the Federación de Asociaciones de Latinoamérica, el Caribe y España de Entidades de Tecnología de la Información, Available at http://www.cessi.org.ar/documentation. If the information from the *Brazilian Association of Information Technology and Comunication Companies* (BRASSCOM) is taken into account, figures change significantly, as the estimates are of USD 800 M software exports and IT services for the year 2008, Available at http://www.brasscom.org.br/en/box_brasscom_news/the_country_plans_to_export_us_5_billion_in_information_technology. This latter information has not been taken as a basis because the figures on hardware, software and IT service exports cannot be discriminated, for which the 2007 data provided by the Associacao das Empresas Brasileiras de Tecnología da Informacao have been shown instead.

TABLE C, PER COUNTRY: SPECIAL REGIMES, INCENTIVES AND DEDUCTIONS ON ROYALTIES AND R & D

C.1. Are there any special regimes or deductions available to mitigate the tax on income derived from IP?

Country	Tax Regime	Beneficiary	Income Tax Incentives	Other Tax Incentives
Argentina	Promotion of software[104]	Individual or corporate taxpayer whose main activity is the production of software and information services[105]	60 % exemptions on the total amount to be paid	Fiscal Stability for ten years 70 % of employer taxes may be taken as payments on account of other federal taxes (except for the income tax)
Brazil	Information Technology Export Platform (REPES)[106]	Legal entities that provide software and information technology services (on a regular basis or not) which undertake to export at least 60 % of their annual gross revenue.	200% tax deductions on the amount spent on employee training in software development.	PIS and COFINS[107] suspension on sales of new fixed assets to legal entities entitled to the regime PIS and COFINS suspension on gross revenues derived from services rendered to legal entities entitled to the regime PIS and COFINS suspension on services imported, directly, by the legal entities entitled to the regimen or new fixed assets imported by such legal entities Suspension of IPI[108] on imports of new fixed assets without similar domestic equivalent, directly, by legal entities entitled to the regimen The suspension shall be turned into zero percent taxation (PIS/CONFINS) or exemption (IPI), upon compliance with the requirements provided to enjoy the benefits Reduction on social security contributions on company payroll
	Informatics and automated products[109]	Legal entities that manufacture promoted products (including software) in Brazil	When calculating IRPJ and CSLL[110], 160 % deduction for expenses on technological research and innovation in the tax period. Further rules can provide for a 180% deduction of same expenses, depending on the number of employees and researchers hired.	IPI exemptions, if manufactured in certain development areas (Amazonia or Northeast) 95 % reduction of IPI rates if such products are manufactured in other Brazilian regions
Paraguay				

Uruguay	National Tax Code	Software producers	50% exemption on the profits originating in the production of software[111] Exemption of 100 % on the profits originated from the software export[112] 100% exemption for ten years on income for long distance assistance centers with software support[113] Expenses for certification of international rules can be computed increasingly (by one and a half the real amount) for Income Tax on Business Activities (IRAE) purposes[114] Possibility of higher deductions for expenses on software services provided by payers of increasingly (by one and a half the real amount) for Income Tax on Business Activities (IRAE) [115]	The export of software and IT services are exempted from VAT[116]
	Free Trade Zones (FTZ) [117]		Total Exemption of income tax Exemption of withholdings for payments abroad Possibility of operating with non-FTZ areas, but subject to the general taxation regime.	Total tax exemption even from taxes created in the future for the activities performed within the FTZ or abroad[118]

C.2. Are there any special regimes or deductions for research and development costs?

	ARGENTINA	BRAZIL	PARAGUAY	URUGUAY
R + D COST	*Fondo Tecnológico Argentino (FONTAR)*[119]*:* This regime applies to investments in applied research, precompetitive technological research, adaptation and improvements in existing projects. The beneficiaries, either individual persons or entities that perform productive, scientific, technological or financial activities bearing legal residence in Argentina Benefits: A fiscal credit is granted up to 50 % of the cost of the I + D Project which may be computed upon federal tax payments for three years	*Incentives to technological innovation*[120]*:* This applies to investments in the research of new products, or manufacturing processes and in improvements in quality, productivity and competitiveness of existing products and manufacturing processes Benefits: Exclusion from IRPJ and CSLL tax basis up to 60 %, 70 % or 80 % of the relevant expenses with technological research and development Additional exclusion of up to 20 % of the relevant expenses in relation to patented technological development At least 50 % and no more than 150 % of the expenses with research and development of technology innovations to be carried out by scientific and technological institutions Full depreciation in the year of acquisition of new machinery, equipment and tools used in technological research and development when calculating IRPJ and CSLL Accelerated amortization of expenses with the acquisition of intangibles linked exclusively to research and development technology innovations, by way of deduction of such expenses as operational expenses in the year when the same are incurred Government subvention of up to 60 % of fees to researchers holding Masters of PHD degrees Credits for tax paid on payments of or credits for royalties, technical assistance and technical service (10 %) to non-residents. A reduction of the withholding tax to zero has also been granted for payments or credits to non resident for the registration and maintenance of trademarks and patents abroad 50 % reduction of the IPI levied on the purchase of equipment, machinery, devices and instruments, provided such products are used for R&D		*Benefits for specific investment*[121]*:* This applies for projects promoted and approved by the Government, especially to projects of national interest. The purpose of the regime is the creation of employment, decentralization, increase of exports, increase of national added value, increase in the use of clean Technologies *and increase in investigation, development and innovation* (R& D) Benefits: IRAE exemption up to 100 % of the investment amount (considering the reckoning of the matrix) Net- Worth tax exemption upon personal property during all their useful life and on civil works for 8 years in Montevideo and 10 years elsewhere in the country VAT exemption in imports and refunds in local market VAT exemption during all civil work Other benefits to R&D activities: 100 % IRAE exemption of revenues derived from R&D in biotechnology and bioinformatics used by foreign countries[122] Higher deduction of R&D expenses (1.50 % its real amount)[123]

C.3. what kinds of tax incentives are there on software?

Tax Incentive	Fiscal Stability	Tax Exemption on income derived from IP	Accelerated depreciation on income tax	Increased deduction on income tax	Exemption from other federal, provincial or municipal taxes	Tax credit for social contributions	Free Trade Zones
ARGENTINA	X	X			X	X	X
BRAZIL			X	X	X		X
PARAGUAY							
URUGUAY		X	X	X	X		X

[1] An example of this approach can be found in the Organization for Economic Cooperation and Development (OECD), Model Tax Convention on Income and Capital, July 2008, Commentary on the provisions of Article 12, Paragraph 2 (12.2; 13.1; 17.2 and 17.3).

[2] U.S. Model Income Tax Convention and Model Technical Explanation, November 15, 2006, Article 12, Paragraph 2.

[3] The distortion is caused because the tax credit is computed for profits deriving from a foreign source, not for profits obtained locally in Argentina, like in the case of exports. The possibility of creating a legal system with incentives to the export of services including technological development, counseling on information technology, software supply and distance IT support is still under study. Such system will solve this unwanted economic effect. Source: Diario La Nación, Economía y Negocio, May 23, 2010.

[4] Information available at the official site of the Entity:http://www.mercosur.org.uy.

[5] Articles 1 and 7.

[6] Most member countries are much more harmonic in matters of indirect taxation. In Brazil, the Superior Tribunal (ruled against a local tax ICMS (RS 2002/0146332-5) applied on milk imports from another MERCOSUR country, holding that goods manufactured in one member country may not be more heavily taxed -in the context of a local tax- than goods manufactured locally within the relevant local tax jurisdiction. As to Uruguay, the ad-hoc MERCOSUR arbitral tribunal ruled against IMESI (2002), an excise tax on tobacco and cigars, holding that the taxable amount was heavier on imported goods than on locally manufactured ones. As to Argentina, the permanent Revising Tribunal declared that Act 25,626 prohibiting the import into Argentina of refurbished tires was against the Treaty (Decision 1/2005 ratified by Decision 1/2006). For more details of these cases, see 2008, Brussels Congress, International Fiscal Association *"Non discrimination at the crossroads of international Taxation"*, Branch report of Argentina, prepared by ROSSO ALBA, Cristian, Branch Report of Brazil, prepared by GOMEZ DE OLIVERA, André and Branch Report of Uruguay, prepared by BORDOLI, José Carlos, Cahiers de droit International, Volume 93a, pages 110/111,175/177 and 659/660.

[7] Income Tax on Business Activities ("IRAE") in Uruguay and the Income Tax on Business, Industrial and Services Activities ("IRACIS") in Paraguay.

[8] Income Tax ("IG") in Argentina and Income Tax on Legal Entities ("IRPJ") in Brazil.

[9] Argentina through Act 11723, published in the Official Gazette on September 30, 1933 amended by Act 25036, published in the Official Gazette on November 11, 1998. Available at http://www.infoleg.gov.ar; Brazil through Act 9609 and 9610 published in the Union Official Gazette on February 20, 1998. Available at http://www.presidencia.gov.br/legislacao/; Paraguay through Act 1328 protecting author and related rights on October 15, 1998. Available at http://www.leyes.com.py/; Uruguay through Act 9739 of December 17, 1937 amended by Act 17616, published in the Official Gazette on January 17, 2003. Available at http://www.parlamento.gub.uy.

[10] Argentina through Act 25140, published in the Official Gazette on September 24 1999. Available at http://www.infoleg.gov.ar; Brazil through Decree 75.699/75,

published in the Union Official Gazette on May 9, 1975. Available at http://www.lexml.gov.br; Paraguay through Act 321, published in the Official Gazette on August 23, 1991. Available at http://www.leyes.com.py and Uruguay through Act 14910, Published in the Official Gazette on August 23, 1979. Available at http://www.parlamento.gub.uy.

[11] Argentina by Act 24425, published in the Official Gazette on January 5, 1995. Available at http://www.infoleg.gov.ar; Brazil by Decree 1355/94 published in the Union Official Gazette on December 31 1994. Available at http://www.presidencia.gov.br/legislacao/; Paraguay by Act 444 of November 10, 1994. Available at http://www.leyes.com.py, and Uruguay by Act 16671, published in the Official Bulletin on December 29, 1994. Available at http://www.parlamento.gub.uy.

[12] Argentina (1980); Brazil (1975); Paraguay (1987) and Uruguay (1979).

[13] VILLALBA, Carlos A. – LIPSZIC, Delia *"El Derecho de Autor en la Argentina"*, Publishing House La Ley, 2009, page 94.

[14] Argentina: Section 4, Act 11723, amended by Act 25036; Brazil: Sections 2 and 4, Act 9609; Paraguay: Sections 68 and 69, Act 1328; Uruguay: Section 7, Act 9739, amended by Act 17616.

[15] Act 9609, Section 2 (1): *"The Provisions related to moral rights do not apply to the software program, except at any time the author's right, to claim the authorship of the software and the author's right to oppose any mutilation or any other modification to the software, which damages the author's honor or reputation".*

[16] Act 1328, Section 69, Paraguay: *"It shall be presumed, unless otherwise agreed, that the author of the computer program have assigned the economic rights recognized by this law, without limitation and exclusively, to the producer that he is moreover invested with the ownership of the rights referred to in Article 22 and by implication with authority to decide on the disclosure of the program and to exercise the moral rights in the work"*.

[17] Act 17616, Section 10, Uruguay: *"Unless otherwise agreed, when the creation referred to in the paragraph on computer programs and databases in Article 5 of this Law have been produced within employment relations, whether public or private, whose complete or partial objective was of a similar nature to said creations, it is presumed that the author has assigned in an unlimited and exclusive manner, the economic rights and exercises of the moral rights to the employer or the person commissioning the work"*.

[18] There has, however been no conflict on this matter perhaps because software is often the result of teem work.

[19] Act 25856, Section 1, published in the Official Gazette on January 8, 2004 available at http://www.infoleg.gov.ar.

[20] Act 25922, Section 1.

[21] Decree 165/94, Section 1.

[22] Act 9609, Section 1.

[23] Act 1328, Section 2, paragraph 33.

[24] Several International software companies are located in "ZONAMERICA", a Business and Technological park situated in the city of Montevideo (http://www.zonamerica.com).

[25] XAVIER, Alberto, *"Derecho Tributario Internacional",* page .241, Ed. Ábaco.

[26] XAVIER, Alberto, Ob. Cit., page 242.

[27] Section 682 of Income Tax Law, according to Decree 3000/99.

[28] BRANCO Rubén, National Report of Brazil, *"Source and residence: new configuration of their principles"*, Subject I, International Fiscal Association, Congress of Buenos Aires (2005) and SAMMARCO Maximiliano and DOMINGO EPREZ, Guillem*, "España puente europeo hacia Latino América"*, J.M. Bosch Editor, Chapter *"Brasil"*, by XAVIER, Alberto y DUQUE ESTRADA, Roberto, Ed. J.M.Bosch.

[29] VINHAS CATAO, Marcos, Branch Report of Brazil, Subject II *"Tax Aspects of Electronic Commerce"*, in XXIII Latin-American Workshop on Tax Law organized in Cordoba, Argentina by the Instituto Latinoamericano de Derecho Tributario (ILADT), 2006, Book II, page 98.

[30] Decree 1344, Section 146. Published in the Official Gazette on November 25, 1998. Available at http://infoleg.gob.ar.

[31] Act 22428, Section 8, published in the Official Gazette on 23 March 1981. Resolution 328/05, published in the Official Gazette on October 19, 2005, sets forth that licenses of software use and updates are not to be registered. Those that shall be registered are services arising from "mixed contracts" where intangible rights are combined with the provision of services, such as training, parameterization, technical assistance and set ups, among others.

[32] Section: 18, Subs. 9 Act 9430/96, published in the Union Official Gazette on December 30, 1996, Available at http://www.receita.fazenda.gov.br/legislacao.

[33] Act 4506 of November 30, 1964, Sections 52 and 71. Available at http://www.receita.fazenda.gov.br/legislacao.

[34] Serão classificados como "royalties" os rendimentos de qualquer espécie decorrentes do uso, fruição, exploração de direitos, tais como: a) direito de colhêr ou extrair recursos vegetais, inclusive florestais; b) direito de pesquisar e extrair recursos minerais; c) uso ou exploraçâo de invenções, processos e fórmulas de fabricação e de marcas de indústria e comércio; d) exploração de direitos autorais, salvo quando percebidos pelo autor ou criador do bem ou obra. Parágrafo único. Os juros de mora e quaisquer outras compensações pelo atraso no pagamento dos "royalties" acompanharão a classificação dêstes. Lei Nº 4.506, de 30 de novembro de 1964. Disponible en http://www.planalto.gov.br.

[35] LEONARDOS, Gabriel, Relatoría por Brasil, *"Transfer pricing and intangibles"*, International Fiscal Association, Kioto Congress (2008), Cahier de droit fiscal International", Vol. 92ª, page 128.

[36] Act 125/91, Section 8, Inc. ñ) dated January 9, 1992, amended by Act 2421/04 dated June 11, 2004 and ruled by Decree 6359/05, Section 43 dated September 13, 2005. Available at http://www.leyes.com.py/todas_disposiciones.

[37] Act 18083, Sections 19 and 20, published in the Official Bulletin on July 1, 2007. Available at http://www.parlamento.gub.uy. The limit results from the sum total of the non-resident income tax (IRNR) rate and the rate applied abroad, not exceeding Income Tax on Business Activities's rate (IRAE), namely 25 %.

[38] Ault, Hugh J.: The 1992 OECD Model Treaty: Taxation; vol. 33, No. 10, October, 1993, page 330.

[39] BUITRAGO, Esperanza y FORCADA, Carlos, *"Know How, Asistencia Técnica y Software en el Concepto de Regalías de los CDI",* International Fiscal Association, Second Latinamerican Regional Meeting, Buenos Aires, Abril 2010, Page 29.

[40] OECD, Model Tax Convention on Income and Capital, op cit., Opposition 13, page 399.

[41] Ibid, Opposition 15, page 400.

[42] This clause has the following statement: *"As regards the application of the Convention by a Contracting State at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at the time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State".*

[43] Meetings of September 11, 2002 and August 5, 2009.

[44] R.E. 199464/SP, April 30, 1999 and R.E. 176626/SP, November 10, 1998. Available at http//www.stf.gov.br.

[45] R.E. 17662/SP, cited by Caliendo Paulo, en *"Da Tributacao do software nos Acordos Internacionais v. Dupla Tributacao da Renda"*, Direito Tributário Internacional, Vol II, coordinator Heleno Taveira Torres, Quartier Latin, page 402ss.

[46] Op. Cit., page 104.

[47] Consultancy 13/2006 de la 8va. Fiscal Region. Available at http:///decisoes.fazenda.gov.br/netahtml/decisoes/decw/EPsquisaSOL.htm.

[48] Before this reform, the tax treatment on payments abroad for software licenses went through different stages. First, the DGI decided to levy such payments holding they were royalties ruled by Article 2B of Title 2, t.o.1982 from the previous Income Tax on Industrial and Commercial Activities "IRIC". Through Decision Nº 174/990 of April 23, 1990,the Court of Administrative Law set this aside holding that they constituted income resulting from the author's thinking process, not included as royalty. With the passing of Act 17453 of February 28, 2002 which included a new hypothesis in IRIC Article 2 E) Title 4, T.O. 1996 (copyrights), the activity was finally levied by the tax. The Executive then issued Decree 148/002 on April 29, 2002 expressly exempting payments made abroad for software licences. The 2007 reform through Act 18083, created a new income tax for non-residents, doing away with the former exemption (DGI, Consultation 5084 of March 17, 2009). For further information on the previous regime, see BLANCO, Andrés, *"IRIC sobre regalías y servicios técnicos: análisis jurídico de las modificaciones introducidas por la Ley 17453",* Revista Tributaria N° 168 of Instituto Uruguayo de Estudios Tributarios; HOUNIE, Isabel y IFRÁN, Geraldine, *"Panorama del IRIC sobre 'regalías' a tres años*

de las modificaciones de la Ley 17453", Revista Tributaria N° 186 del Instituto Uruguayo de Estudios Tributarios.

[49] Available at http://www.set.gov.py/pset.

[50] ROCHA, Sergio André, *"Interpretation of Double Taxation Conventions, General Theory and Brazilian Perspective"*, Series on International Taxation 32, Wolters Kluwer, 2009, page 167.

[51] Op. Cit., page 168.

[52] Published in Diario Oficial de la Unión on June 11, 2002. Available at http://www.receita.fazenda.gov.br/Legislacao. This decision met with criticism by Brazilian Doctrine. See BICHARA, Luiz Gustavo AS, Branch Reporter of Brazil," International Fiscal Association, 2007, Kyoto Congress *"Conflicts in the attribution of income to a person"*, Vol. 92b, page 144.

[53] Published in the Diario Oficial de la Unión dated January 5, 2000. Available at http://www.receita.fazenda.gov.br/Legislacao. This criterion has been strongly criticised by Brazilian doctrine. See XAVIER, Alberto, *"O imposto de Renda na Fonte e os Servicos Internacionais – Análise de um Caso de Equivocada Interpretacao dos arts. 7° e 21 dos Tratados"*, Revista Dialéctica de Direito Tributário (Sao Paulo, no. 49, Oct. 1999) 10; SCHOUERI Luís E. & EPREIRA RIBEIRO, Ricardo, *"New Wtholding Taxes on Imported Services"*, International Transfer Pricing Journal (Ámsterdam, Sep.- Oct. 2004, 197, among many others.

[54] According to the structre of this clause in DTC subscribed by Brazil-which differs from its similar one in MC OCDE- the qualification of payments as other income" grants Brazil full jurisdiction to levy these profits at the general withholding rate of its domestic legislation (15%).

[55] Federal Court of Appeals of the Fourth Region, "COPESUL CIA/Petroquímica Do Sul", Appeal N° 2002.71.00.006530-5, Lecturer: Vivian Josete Pantaleão Caminha, Verdict dated June 29, 2009. Available at http:// www.trf4.gov.br.

[56] VINAS CATAO, Marcos André, Diario Valor Económico de San Pablo dated August 18, 2008 y RONCAGLIA, Marcelo Marques y MATARAZZO, Giancarlo Chamma, *"CIDE – Tecnología e o artigo de nao discriminacao previsto nos Tratados para evitar a dupla tributacao*", Direito Tributário Internacional Aplicado, Volume V, Editora Quartier Latin do Brasil, Sao Pablo, 2008, Page 1056/1068. Also, and from a different point of view, see the criticism by DA CUNHA, Fabio Lima, *"O conceito de servicos técnicos para fins da contribuicao de intertencao no domínio economico instituída per la Lei 10.168/2000"*, Revista Tributaria N° 74, Page 219/249, Editora Revista Dos Tribunais, 2007.

[57] SRF, Consult Solution N° 165 dated June 15, 2007, Available at http://www.receita.fazenda.gov.br/Legislacao.

[58] Chamber I of the Argentine Federal Court of Appeals in Administrative Matters, "Aerolíneas Argentinas S.A" dated February 5, 2008, published in Tax Magazine 2008-11 (June), 968 and Chamber V, "Austral Líneas Aéreas" (Cielos del Sur S.A) dated June 2, 2009, published in Tax Magazine 2009-19 (October), 1532.

[59] MELONI, Eduardo, O. *"Taxation of Royalties Under Treaty Law: How Far Can a Source State Go?"*, to be published in Bulletin for International Taxation, IBFD, June 2010 and FORCADA, Carlos *"El fallo "Aerolíneas Argentinas" y la utilización*

económica de un servicio en el Impuesto a las Ganancias", en RDF N° 4, July/August 2008,Abeledo Perrot, page 59.

[60] United Nations, Department of Economic and Social Affairs, United Nations Model Double Taxation Convention between Developed and Developing Countries, UN, New York, 1980. This provision states: *"In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices".*

[61] BUITRAGO, Esperanza y FORCADA, Op. Cit., page 22.

[62] Paragraph 2 from the exchange of reversal letters dated December 12, 2003 and February 26, 2003 bears the title *"Limitation of deductions on royalty payments made by permanent establishment to its head office"* ("Limitación de la deducción de cánones pagados por establecimientos permanentes a sus casas centrales"). Apart from this there is no specific regulation on the subject.

[63] OECD, MC, 2008, Art.24.4: *"Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State, shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first mentioned State".*

[64] Argentina has included no reservation to apply its domestic legislation.

[65] DTCs with Chile and China contain no reference to domestic legislation. DTCs with Israel, Peru, Portugal and South Africa refer to it only with regard to deductions on payments by a PE made for royalties.

[66] Brazil has made a reserve [Prot.13].

[67] Argentine Tax Authorities, Memorandum 108/2001 and Note 1421/2004 unpublished, cited by MAGDÁN, Juan, M., Períodico Económico Tributario dated 1st. January 2005, page 54.

[68] Dirección Asesoría Técnica (DAT), Actuación N° 314/2008 and Dirección Nacional de Impuestos (DNI), Memorándum N° 396/2008, both unpublished.

[69] BUITRAGO, Esperanza, FORCADA, Carlos, Op. Cit. Page 23.

[70] OECD, Model Tax Convention on Income and on Capital (Paris: OECD, 2000), Vol, II, *"Tax Sparing: A Reconsideration"*.

[71] ROCHA, Sergio André, Ob. Cit. page 11 and XAVIER, Alberto, *"Direito Tributário Internacional do Brasil"*, 2004, page. 824.

[72] Italy has not forseen the termination of this benefit. However, it provided that the clause shall be for a limited period of time [DTC, 24, 5].

[73] The TSC clause is in benefit of Paraguay.

[74] For income originating in dividends paid by a resident partnership or corporation in Brazil to a resident partnership or corporation in Hungary [DTC, XIII, 3].

[75] See footnote 73.

[76] Although there is no express clause, the parties have agreed that if the term of application of the TSC clause is not extended, all clauses that include limitations to taxation at the source shall be renegotiated [Prot. 11].

[77] The company paying the royalties must operate mainly in the industrial sector [DTC, 23, 1.b].

[78] Expressly includes royalties for the use or concession for the use of computer software and the use or concession for the use of copyright on software [DTC, 12 b) y c)].

[79] The Payments for the use or for the concession to use computer programs are benefitted by this clause [Prot. 4 d)].

[80] MC will be of 25 % provided royalties are paid to a German resident holding at least the 50 % of the capital with the right to vote, of the company located in Brazil, if not deductible from taxation in Brazil. In al other cases the MC rate will be 20 %.

[81] Not applicable on trademark royalties.

[82] Not applicable on trademark royalties.

[83] The MC percentage to be computed by the resident company in The Netherlands shall depend on whether the royalties paid by the company resident in Brazil are deductible or not from taxation in Brazil [DTC, XII, 4c)].

[84] Excluding royalties for trademarks, movie films, television or radio tapes [DTC, 24, 2d)].

[85] The countries of the MERCOSUR which as an exception do not consider technical services and/or assistance as royalties are : *Argentina*: DTC with Germany, Austria, France and the United States which include a clause for business profits and DTCs with Chile and Bolivia which follow the Mode of the Andean Agreement with exclusive taxation by the source country; *Brazi*l: DTCs with Austria, Finland, France, Japan and Sweden which include a clause for business profits; *Paraguay*: DTC with Taiwan which includes a clause for corporate profits: *Uruguay*: DTCs with Germany (2010) Spain, Mexico and Portugal which include a clause for corporate profits, where several of them have expressly stated that they are not to be considered

royalty. In Brazil the effects have been neutralized unilaterally through domestic legislation (Acto Declaratorio Interpretativo COSIT N° 1/2000). For further information, see BUITRAGO, Esperanza, FORCADA, Carlos, Op. Cit., pages 42/58.

[86] BUITRAGO, Esperanza, "*El concepto de cánones y/o regalías en los convenios para evitar la doble tributación sobre la renta",* CISS, Wolters Kluwer, 2007, page 137.

[87] Ibid, Page 137.

[88] Ibid, page 137.

[89] Ibid, page 138.

[90] Ibid, page 138.

[91] Ibid, page 139.

[92] Technical Consulting Authority (DAT), reports 142/1994 dated August 31, 1994; 68/2002 dated June 28, 2002 and 36/2008 dated June5, 2008. Available at http://biblioteca.afip.gob.ar. There are sentences in one or the other way.

[93] In accordance with Sections 93, subsections b) and 20 subsection j) of Act 20.628, t.o. 1997and its amendments. Available at http://www.infoleg.gov.ar.

[94] V.g. Author or beneficiary. In some of these DTCs the terms "heir" or "rightful holder of title or claimant" are used instead of "beneficiary".

[95]Act 4506/64, Section 22, Subsection d), Available at http://www.receita.fazenda.gov.br/Legislacao.

[96] Primeiro Conselho de Contribuintes; Septima Camara, Acordao N° 107-07.713 of July 8, 2004, Relator: Natanaels Martins; Octava Camara, Acordao N° 108-07.262 of January 29, 2003, Relator: Luiz Alberto Cava Meceira, Available at http://carf.fazenda.gov.br/sincon/public/pages/index.jsf.

[97] DE ABREU E SILVA, Antonio Carlos Florencio, *"Breves Consideracoes sobre a Tributacao do Software no Brasil",* International Fiscal Association, Second Regional Latinamerican Tax Meeting, Buenos Aires, April 2010.

[98] Section 11, Act 9610.

[99] LOAIZA KEEL, Carlos, "*El nuevo convenio tributario entre España y Uruguay*", Revista de Antiguos Alumnos del IEEM, December 2009, Page 2.

[100] Ibid, Page 3.

[101] Published in the Official Gazzette of Spain dated 11 March 2004. Available at http://aeat.es.

[102] The granting of exclusive jursidiction to the country of residence is most unusual in DTCs of developing countries. The Agreement is temporarily in force. The amendments in the Amendment Protocol of August 7, 2006 modifying this scheme are not yet in force as they have not been ratified by the parties.

[103] Data related to software exports and total sales of each country included in this table are based on information from private entities representing the entities of each country. They apply different methodologies to classify information from the information technology sector. Thus, the figures which correspond to these two items are estimates and subject to variations. This table only shows the figures that correspond to software and IT services, and does not include hardware even where this data is available.

[104] The regime was created by Act 25922, published in the Official Gazette on September 9 2004. Ruled by Decree 1594/04, published in the Official Bulletin on November 17, 2004. Available at http://www.infoleg.gov.ar.

[105] The Companies entering this regime must be of certified quality under a valid law and have exports for 8% of the promoted billing, or else disclose expenses in R&D for 3% of the promoted expense. Its own development of software is excluded. Therefore, software development for their own use or for use by related companies settled abroad shall not be covered by these tax benefits. The main activity shall be considered as software industry when over 50% is devoted to software or information services. When the percentage is over 80%, benefits will be granted to the whole activity.

[106] The regime was created by Act 11195/05, published in the Diario Oficial de la Unión on November 18, 2005. Later modified by Act 11774/08, published in the Diario Oficial de la Unión on September 8, 2008 and by Act 11908/09, Published in the Diario Oficial de la Unión on March 4, 2009. Ruled by Decree 5712/2006, published in the Diario Oficial de la Unión on March 3, 2006, Decree 5713/06, and by the regulations SRF 630/06, published in the Diario Oficial de la Unión on March 22, 2006. Available at http:// www.planalto.gov.br.

[107] PIS and CONFINS are social security contributions levied on imports and revenues with general rates of 1.65 % and 7.6 % respectively.

[108] IPI is an excise tax charged on imports and on circulation in the domestic market of goods imported or manufactured by an industrialist, as defined by the law. IPI rates range from 10-25 % and average rates for fixed assets are 5-8 %.

[109] The regime was created by Act 8248/91, published in the Diario Oficial de la Unión on October 24, 1991, amended by Act 10176, published in the Diario Oficial de la Unión on January 12, 2001 and Act 11077/04, published in the Diario Oficial de la Unión on October 31, 2004 and ratified in the Diario Oficial de la Unión on January 14, 2005. The regime is ruled by Decree 3800/01, published in the Diario Oficial de la Unión on April 23, 2001. The text of these provisions may be consulted at http://www.presidencia.gov.br/legislacao/.

[110] Social Contribution on Net Profits (9 %). It is levied on the same taxable basis of the income tax.

[111] Section 140 of Decree 150/07, as amended by Decree 348/09. Revenues for consulting and information services, Internet handling and data transmission are not exempted. Revenues exempted are those originating in development, implementation at the client's, updating and correction of versions, customizing, quality test and certification, maintenance of computer software, training and counseling, only if a) they are performed by the producer of software himself ; b) they are services provided to companies producing computer software. Consultation of this text available at http://www.dgi.gub.uy.

[112] Section 163 bis Decree 150/07, as amended by Decree 208/07 of June 18, 2007. Available at http:/www.dgi.gub.uy.Earnings originating in the production of software and related services are exempted from the rule if so provided by the Executive Power, provided properties and services are used only abroad. Exemption on software includes development, implementation at the client's, updating and correction of versions, customizing, quality test and certification, maintenance of computer software, training and counseling. Exemption on services includes call center, outsourcing of business processes, commercialization and other services, provided software has been the object of all cases, even when not developed by the provider of the service.

[113] Decree 951/08 on April 14, 2008. Available at http://presidencia.gub.uy.

[114] Act 17433 published in the Diario Oficial on December 28, 2001 and Title IV - Income Tax on Business Activities, IRAE- of the National Tax Code, Section 23, and subsection. E), text in accordance with Act 18.083, published in the Diario Oficial on July 1, 2007.

[115] Section 23, subsection E) of Title IV - Income Tax on Business Activities, IRAE-, Text introduced by Act 18341, published in the Diario Oficial on September 9, 2008.Available at http://www.dgi.gub.uy.

[116] The property exports are not levied by VAT. As regards service exports, only the exports indicated by the Executive Power (Section 5 of the Title 10 of the National Tax Code).The Section 21 of the Decree 220/1998 considers as service exports not subject to VAT to the counseling and consultancy services, software design and implementation, licenses for use, total assignment of the right to software use, as long as they are fully used abroad. The design, development and implementation of digital contents are also exempted on provision that they are rendered to persons abroad and exclusively used abroad. Available at http://www.dgi.gub.uy and www.parlamento.gub.uy.

[117] Act 10973/2004, published in the Diario Oficial de la Unión on December 3, 2003 and rectified in the Diario Oficial de la Unión on March 16, 2005. Ruled by Decree 5563/2005, published in the Diario Oficial de la Unión on October 13, 2005. Available at http://www.planalto.gov.br.

[118] Act 15921 published in the Diario Oficial on January 21, 1988. Available at http://www.parlamento.gub.uy/leyes and ruled by Decree 454/88. Available at http://www.dgi.gub.uy.

[119] Act 23877 published in the Official Gazette on November 1st, 1990. Ruled by Decree 270/1998. Available at http://infoleg.gob.ar.

[120] Act 10973 published in the Diario Oficial de la Unión on December 3, 2004. The regime is ruled by Decree 5563/2005. Available at http://www.planalto.gov.ar.

[121] Act 16906 published in the Diario Oficial on January 20, 1998. Available at http://www.parlamento.gub.uy/leyes.

[122] Section 163 bis, Decree 150/07 published in the Diario Oficial on May 4, 2007. Available at http://www.dgi.gub.uy.

[123] Section 23, Subsection C) Título IV, National Tax Code. Ruled by Decree 150/2007, Section 48. Available at http://dgi.gub.uy.