

***Tax Insight***  
*Modifications introduced to the Free  
Zone regulations*

December 2018



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## ***Tax Insight***

### ***Modifications introduced to the Free Zone regulations***

Last December 6th, the Executive Power approved a decree that introduces certain changes to the Decree 309/018 (in force since October 5<sup>th</sup>, 2018), that regulates the Free Zone (onwards “FZ”) Law No. 15.921.

#### ***Free Zone User Agreements***

The Decree 309/018 established that the FZU agreement will be authorized, when it is understood that the company which aims to be FZU meets the objectives stipulated in the Free Zone Law and the objective of its agreement.

It was understood that the objectives would be met when the user:

- generated employment in FZ in an adequate proportion in relation to the developed activities;
- carried out its activities in FZ; and
- had tax domicile in the FZ.

The new decree, approved last week, introduces a new provision to the literal in which is entailed that the user must develop its activities in FZ.

In this regard, in addition to employ human resources full-time in a reasonable number according to the substantial activity undertaken, and use or take advantage of the ZF facilities, it is added that the **direct costs and expenses** incurred by the user must be adequate to the activities carried out, taking into consideration the **assets, risks and functions** established by the agreement and the investment project.

#### ***Intellectual Property (IP) rights and others intangible assets***

New clarifications are included regarding the exemption applied to the incomes derived from the exploitation of the IP rights and others intangibles:

- It is clarified that the IP rights registered under the Law No. 9.739 that refer the rules, correspond exclusively to the copyright over software.
- It is clarified the tax treatment to the users that perform industrial activities, depending if the goods sold have or do not have IP rights included:
  - **Sale of goods with no IP (\*) rights included:** the incomes will be totally exempted
  - **Sale of goods with IP rights included:** the user must determine the proportion of the income that corresponds to the intangible and apply the exemption rate established by the Decree 309/018.

(\*) While in this point the Decree mentions “Industrial Property”, we understand that it is a mistake in the drafting because of the context and the difference of the concept. We expect that in brief the Executive Power clarify this matter.

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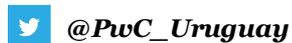
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