

REPORT ON TAX CLAIMS

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APPENDIX – NATIONAL LAW SUMMARIES

**ARGENTINA
AUSTRALIA
BRAZIL
CANADA
CHILE
CHINA, P.R.
ESTONIA
FRANCE
GERMANY
[GHANA]
GREECE
LATVIA
LITHUANIA**

**MEXICO
[NEW ZEALAND]
POLAND
PORTUGAL
[RUSSIA]
SOUTH AFRICA
SPAIN
SWEDEN
TURKEY
[UNITED KINGDOM]
UNITED STATES
VENEZUELA**

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I. INTRODUCTION

As insolvency law reform continues in developed and transition countries, adjustments continue to be made to rules governing treatment of tax claims in liquidation and rehabilitation proceedings. The insolvency reform effort recently gained added impetus on December 2, 2004, when the United Nations General Assembly adopted the “UNCITRAL Legislative Guide on Insolvency Law.”² The UNCITRAL Guide describes one of the nine “key objectives” of a strong insolvency regime to be “recognition of existing creditor rights and establishment of clear rules for ranking of priority claims.”³ A clear and predictable ranking system is beneficial because it can help “to ensure that creditors are certain of their rights at the time of entering into commercial arrangements with the debtor” and can help to facilitate secured credit.⁴ There is, however, a limit on the extent to which these goals can be achieved and distribution policies often reflect public policy choices. Two categories of claims afforded priority are particularly prevalent: priority for employee salaries and benefits and tax claims.⁵

This report, which describes and compares the priority of tax claims in the insolvency laws in [25] countries, is an outgrowth of a prior study, *Should the Sovereign be Paid First? A Comparative International Analysis of the Priority for Tax Claims in Bankruptcy*, 74 Am. Bankr. L.J. 461 (2000), which examined the origins and justifications of the tax priority rules as well as the criticism of the priority rules and reform efforts, and compared the treatment of tax claims in insolvency proceedings in Australia, Canada, France, Germany, Mexico, New Zealand, the United Kingdom, and the United States. This report updates the earlier research to reflect subsequent changes in the laws of the eight countries covered and expands the study to include the laws of the following additional countries: Argentina, Brazil, Chile, Peoples Republic of China, Estonia, [Republic of Ghana], Greece, Latvia, Lithuania, Poland, [Russia], Portugal, South Africa, Spain, Sweden, Turkey, and Venezuela. The report complements a report published earlier this year by INSOL International, *Employee Entitlements*, that describes the treatment of wage and benefit claims in the insolvency laws in 24 countries.

¹ Report prepared by the Committee on Tax Priorities, Reporter, Barbara K. Day, Co-chairs: Hon. Ralph Zulman and Hon. James Garrity.

² UNCITRAL LEGISLATIVE GUIDE ON INSOLVENCY LAW (2004) (the “UNCITRAL Guide”), available at <http://www.uncitral.org/english/texts/insolven/insolvencyindex.htm> (last visited May 4, 2005).

³ *Id.*, at 18. “Priority” means “the right of a claim to rank ahead of another claim that arises by operation of law” and “Priority claim” means “a claim that will be paid before payment of general unsecured creditors.” *Id.*, at 10. This is in contrast to a “secured claim” which is “a claim assisted by a security interest taken as a guarantee for a debt enforceable in case of the debtor’s default. *Id.*, at 11. “Security interest” is “a right in an asset to secure payment or other performance of one or more obligations.” *Id.*

⁴ *Id.*, at 337.

⁵ *Id.*, at 343.

The Appendix, which may be useful as a practice guide, describes how tax claims are treated in liquidation and rehabilitation proceedings under the national laws of the [25] countries covered by this report. These summaries, which also describe the types of taxes imposed in each country and outline the methods available for enforcement outside of insolvency proceedings, are based on information provided by insolvency experts in each country.

The Table in Section II of this report shows the priority of tax claims under the national insolvency laws of the countries covered by this study. Sections III and IV compare the treatment of tax claims in liquidation and rehabilitation proceedings in the countries covered by this study, and Section IV offers some conclusions that can be drawn from the comparison.

The contributions of the following participants, who have made this report possible by providing information about the tax and insolvency laws in their countries, are gratefully acknowledged:

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II. SUMMARY OF TAX PRIORITIES UNDER NATIONAL INSOLVENCY LAWS

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NO PRIORITY RULES	<ul style="list-style-type: none">• Estonia• Germany
NO PRIORITY FOR TAXES	<ul style="list-style-type: none">• Australia• Sweden• Turkey• U.K.
PRIORITY FOR SOME TAXES BASED ON: (1) TYPE OF TAX, (2) DURATION OF TAX, OR (3) PERCENTAGE OF TAX	<ul style="list-style-type: none">• Canada (1)• Chile (1)• France (1), (2)• Poland (2)• Portugal (2)• [New Zealand]• Spain (3)• U.S.A. (1), (2)
PRIORITY FOR ALL TAXES	<ul style="list-style-type: none">• Argentina• Brazil• China• Greece• Latvia• Lithuania• Mexico• South Africa• Venezuela

III. TREATMENT OF TAX CLAIMS IN LIQUIDATION PROCEEDINGS

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As reflected in the above Table, Germany and Estonia have no priority claims in insolvency proceedings. Germany's bold move was part of sweeping insolvency reforms that went into effect in 1999, and reflects the view that insolvency laws should not create any special entitlements.⁶ According to this view, the only priorities granted should be those found in the non-bankruptcy laws because bankruptcy priorities undermine the goal of collectivization. Consequently, the law contains no special priorities of any kind for pre-bankruptcy claims.⁷ Germany adopted this approach with the hope of increasing the average distribution to unsecured creditors when a business fails.⁸

Estonia followed the German model and abolished all priority claims, including tax priorities, effective January 1, 2004, as part of the enactment of a new Bankruptcy Act. The tax priority was abolished in order to treat all creditors equally in bankruptcy proceedings, regardless of whether the claimant is a private company or the state. The new Estonian Bankruptcy Act was part of ongoing reform of the judicial procedures in Estonia, and is intended to shorten the duration of bankruptcy proceedings. Like the Germans, the Estonian tax authorities have significant enforcement tools outside of bankruptcy, including the ability to impose interest and penalties, seize property, garnish amounts owed to the taxpayer by third parties, commence involuntary bankruptcy proceedings, and obtain a registered pledge, mortgage, or commercial pledge upon agreement of the taxpayer. At the request of a taxpayer with insolvency problems, the tax authorities may permit unpaid taxes to be paid in installments, with interest reduced by up to 50% as of the date of decision on payment in installments. In addition, if a legal representative, manager or administrator of assets fails intentionally or due to gross negligence to ensure proper performance of tax obligations, he or she can be jointly and severally liable with the taxpayer for unpaid taxes.

Although Australia, the United Kingdom, Sweden and Turkey retain a priority for employee wage claims, they have abolished all general tax priorities. At the time Australia eliminated priorities for tax claims in 1993, it strengthened its tax administration rules.⁹ Specifically, it allows the taxing authorities to initiate involuntary insolvency proceedings when the tax is still an "uncertain amount," whereas previously taxing authorities could only initiate proceedings when the amount owed had been fixed. Second, it imposes personal liability on company directors for unremitted withholding taxes. Finally, it recognizes that certain taxes, such as real estate taxes, may become liens by statute and obtain priority through their secured status. Unless the tax claims become liens, they are paid after claims owed to the holder of a floating charge as well as wage claims.

In 2002, the United Kingdom [eliminated all priorities except for employee wage claims, and limited the rights of holder of floating charge – INSERT INFORMATION WHEN RECEIVED]

⁶Manfred Balz, Symposium Commentary, Market Conformity of Insolvency Proceedings: Policy Issues of the German Insolvency Law, 23 BROOK. J. INT'L L. 167, 174 & 174 n. 34 (1997).

⁷Employee claims are paid from a special fund to which all employers make contributions. See supra note 6.

⁸Klaus Kamlah, The New German Insolvency Act: Insolvenzordnung, 70 AM. BANKR. L.J. 417, 420 (1996).

⁹ADAM TOWNLEY & DAVID PRATT, A PRACTICAL GUIDE TO INSOLVENCY, at 96-97 (1996).

Sweden abolished priority for tax claims in insolvency effective January 1, 2004, as part of a package of legal reforms regarding priority legislation first recommended in 1992. In addition to eliminating the tax priority, the legislation reduced the floating charge on the debtor's assets to 55% of the value of the assets. In combination, these measures ensure that some amount of assets will be available for unsecured creditors of insolvent debtors. Employee claims continue to be accorded priority, although the amount is restricted, and it is believed that the State's losses as a result of the abolition of the tax priority will be neutralized by the increased dividends on prioritized wage claims.¹⁰

The Republic of Turkey abolished the general priority for tax claims in insolvency proceedings in July 2003 so that tax claims now rank the same as other unsecured debts. The amendment ranking unsecured tax claims the same as other unsecured claims is aimed at protection of rights of the ordinary unsecured creditors of the failed business. At the same time, Turkey amended the Law on Procedure of the Collection of Public Claims to post-pone all execution proceedings against the debtor upon commencement of the bankruptcy proceedings except for foreclosure of security interests and levy and garnishment. There is an exception for taxes and claims arising *in rem* and customs tax for related property are not abolished. Also, tax authorities can establish a lien to secure the tax claims that put them in the position of a secured creditor with regard to the property.

Canada and New Zealand have eroded and refined their bankruptcy priority rules for tax claims, each after considerable study and analysis of the issues involved. Canada and New Zealand, agree that no special priority should be granted for direct income taxes. They continue to adhere to the view that taxes collected from and withheld on behalf of third parties such as employees, should be entitled to a special bankruptcy priority when a business fails.

Withholding taxes are the single category of taxes entitled to priority in Canada, where they are granted priority over secured as well as unsecured claims, except for preexisting liens on real property. This is also the single category of tax priorities that the New Zealand Law Commission recommended in 1999 be retained.¹¹ In a thoughtful study, the Law Commission reasoned that it is unfair to the persons whose entitlements are withheld not to assure payment of these amounts because such persons have ordered their affairs on the assumption that the taxes have been paid and because it is unfair to allow the assets of the insolvent's estate to be increased through the use of monies the debtor ought to have paid on behalf of third parties.

Similarly, in Chile, the only tax claims entitled to priority treatment are taxes where the bankrupt is acting as tax collector on behalf of the taxing authorities. As in Canada, these taxes are entitled to priority not only over unsecured claims but also over secured claims. Thus, value added taxes that have been collected and employee income taxes that have been withheld are entitled to first priority treatment. All other direct tax obligations of the debtor are general unsecured claims in Chile.

¹⁰ See Government Bill, proposition 2002/03:49 and Summary of the Right of Priority Committee, SOU 1999:1, at 34-36.

¹¹ NEW ZEALAND LAW COMMISSION, STUDY PAPER 2, PRIORITY DEBTS IN THE DISTRIBUTION OF INSOLVENT ESTATES ¶ 249, at 62 and ¶ 146, at 40 (1999).

South Africa's attempt to eliminate tax priorities was unsuccessful. In 1984, the South African Law Commission recommended that the preference for employee claims in insolvency proceedings be limited and that all other preferences be abolished. The Law Commission's decision and recommendation were based on the reasoning similar to that in the other commonwealth countries. In 1989, the Cabinet of the Government of South Africa rejected these recommendations and endorsed the view taken by the Cabinet Committee for Economic Affairs that the abolition of preferences could not be supported because it would have unacceptable cost implications for the State.¹²

The remaining [14] countries covered by this study (Poland, Portugal, Spain, Argentina, Brazil, the United States, France, South Africa, Latvia, Lithuania, Mexico, Greece, China, and Venezuela) retain bankruptcy priorities for a wide variety of tax claims and social security contributions in cases of insolvency.¹³ Each of these countries also maintains priorities for employee wage and benefit claims as part of an extensive set of priority rules.

Within the last five years, however, five of these countries, Poland, Portugal, Argentina, Spain, and Brazil have taken steps to limit tax priorities in the context of insolvency law reform. The 2003 Law on Bankruptcy and Reorganization in Poland narrows the scope of the tax privilege found in its 1934 law. The new bankruptcy law provides second priority for all taxes and public charges, after payment of costs of administration, payments under contracts assumed by the administrator, and premiums for pensions, disability and sickness benefits and dues for work, but limits the priority to amounts due for a year immediately prior to the declaration of bankruptcy. Similarly, the new Portuguese Insolvency Code continues to provide states and municipalities with special, immovable and general creditors preferences for tax claims owed to states and municipalities, but limits all of these preferences to amounts due for 12 months prior to the beginning of the insolvency proceeding.

Argentina and Spain have chosen other means to limit the impact of the tax priorities on unsecured creditors of an insolvent debtor. While the 2002 Argentine Bankruptcy law provides a general preference for the principal amount of any taxes and duties, labor credits, the principal amount of social security debts, certain personal expenses of individuals, and certain credit invoice amounts, all claims entitled to the general preference must not take more than 50% of the debtor's total assets after special preferences are paid.

Spain's 2004 Insolvency Act provides a general privilege for income tax and social security withholding on behalf of employees that ranks prior to all claims except employee wage claims and registered secured claims, but has limited the priority afforded to all other tax claims to 50%

¹²SOUTH AFRICAN LAW COMMISSION WORKING PAPER 61, REVIEW OF THE LAW OF INSOLVENCY: STATUTORY PROVISIONS THAT BENEFIT CREDITORS (1995).

¹³ The eleven countries that were the subject of the Asian Development Bank's Regional Technical Assistance for Insolvency Law Reform (Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Pakistan, Philippines, Singapore, Taipei, and Thailand) which was concluded at the end of 1999, were in this category as well. See Asian Development Bank, *Report on the Results of The Technical Assistance* ¶ 207 ("Very few of the [subject] economies have sought to limit priority claims. In Indonesia, for example, there is a long list of priority claims and taxation claims are given priority over all other priority claims.") available at <http://www.insolvencyasia.com> (click on "Summary of the Project"). For an update on the insolvency laws of these countries, see *The Asia-Pacific Restructuring and Insolvency Guide 2003/2004* (Globe White Page), available at <http://www.asianrestructuring.com>

of the amounts owed. The remaining 50% of the tax claims are treated as general unsecured debts. One of the goals of the new law is to minimize the impact of the bankruptcy on other market agents such as suppliers and creditors and the limitation on the tax priorities. Draft 05-11-05 goal.

The new Brazilian Bankruptcy and Corporate Recovery Act, which becomes effective on June 9, 2005, amends provisions of the National Tax Code that until now afforded tax credits priority over both secured and unsecured credits, subject only to labor credits. Under the new law, tax claims will rank in 6th position, behind certain wage claims, credits related to export transactions, post-bankruptcy credits, and secured claims, but ahead of special privileged, generally privileged, and unsecured creditors. In addition, the National Tax Code has been amended to provide that in any judicial sale of assets, the buyer will not assume the seller's tax liabilities, which previously was the case.

While the remaining nine countries provide priority for all types of taxes, the priority systems differ to some extent. In the United States and France, different types of taxes are entitled to priority for different periods of time. In the United States, in general the priority periods are longer where the administration and collection process is more complex and time consuming, or where the taxes are of a quasi-trust nature. For example, there is no specific limit on the priority period for withholding taxes. Also, a longer priority period is allowed for income taxes where self-assessment is required, whereas a shorter period applies for ad valorem taxes on property such as real estate taxes and customs duties, where the taxing authorities can readily impose liens on or detain the property subject to tax. In France, the general tax preference entitles the government to priority with regard to movable assets but not real estate (except for real estate taxes). In the United States, the tax priority can extend to any unencumbered assets of the bankruptcy estate, either real or personal.

No distinctions are made with regard to the duration or types of taxes entitled to priority in South Africa, Latvia, Lithuania, Mexico, Greece, China, and Venezuela, where all taxes and government credits are entitled to priority over unsecured creditors, subject only to the applicable statute of limitations for collection.

In South Africa, Latvia, and Lithuania, certain types of taxes are granted priority over other types of taxes, although the preferred taxes in each country are different. In South Africa, withholding, customs, excise, and sales taxes rank in a tier along with certain wage and employee claims, ahead of income and profits taxes. Latvia ranks individual income tax payments, and compulsory state social insurance contributions, in the first tier with wage claims after payment of administrative expenses of insolvency, but ranks certain payments for farm and agricultural undertakings and state claims for repayment of state guaranteed loans ahead of other tax and state social insurance claims. In Lithuania, all taxes and other payments to the budget, social taxes, and loans received from the state or guaranteed by the state are entitled to second priority after payment of secured claims and employee claims and payroll taxes.

In Mexico, Greece, China, and Venezuela, a bankruptcy filing has very little impact on tax collection. Prior to adoption of the Commercial Insolvency Law in Mexico in 2000, the bankruptcy and tax enforcement systems were completely separate. The tax authorities were not required to participate in the bankruptcy proceedings and their enforcement actions were not affected by the commencement of a bankruptcy proceeding. Under the current law, upon commencement of insolvency proceedings, the bankruptcy court must give notice to the taxing

authorities in order for them to decide whether to demand payment through an independent administrative proceeding. From the time the insolvency judgment is rendered, however, the amount of tax debts will continue to be updated as well as penalties and other charges related thereto. In commercial bankruptcy, the taxing authorities may partially waive tax claims accrued pre-bankruptcy, provided that the debtor enters into an agreement with creditors in accordance with the following: (1) if tax debts are less than 60% of the aggregate debts in the proceeding, the waiver shall not exceed the minimum benefit granted to unrelated creditors who represent at least 50% of the recognized non-tax creditors; or (2) if the tax debts exceed 60% of the aggregate debts recognized in the proceedings, the waiver shall not exceed the surcharges related to the outstanding tax credits. If no agreement is reached with creditors and the debtor's business is liquidated, the taxing authorities can enforce tax claims unimpeded by the pendency of insolvency proceedings.

In Greece, tax claims enjoy a general preference regardless of whether in insolvency, non-insolvency, or foreclosure. Administrative enforcement is not stayed on the debtor's insolvency. Joint and several liability with debtor of directors, board members and managers for payment of taxes, wages and social security, as well as criminal penalties for failure to fulfill these obligations. Prosecution and indictment are not suspended because of insolvency, but generally such persons are acquitted at trial, with various constructs based on their inability to make payments due to the bankruptcy. There is no formal "priority" between tax and secured claims, but rather the product of liquidation is divided into 1/3 for tax claims and 2/3 for secured (and other preferred claims), and each category of claim is paid preferentially from the respective parts of the proceeds. Wage claims for up to two years preceding bankruptcy have general preference over both tax and secured claims.

Under the liquidation regimes in China (currently only available for state owned enterprises and enterprises where at least 25% of the equity is held by foreign investors), tax claims take priority over unsecured claims and secured claims arising after the occurrence of the tax claim. Under a proposed draft bankruptcy law submitted to the National People's Congress for deliberation in June 2004 tax claims would continue to rank before unsecured claims but after secured claims (whether arising prior to or after the tax claim), bankruptcy expenses, and employee claims.

Venezuela is the only country in the study that recently has added to rather than diminished the privilege for tax claims. Prior to 2001, taxes claims (excluding interest or penalties) for the current year and the preceding two years were privileged and ranked after claims secured by mortgage or pledge and social security and wage claims, but ahead of unsecured claims. In 2001 these limitations were eliminated so that currently all tax credits (without a limitation as time, and including interest and penalties) are entitled to priority. In addition, the commencement of liquidation proceedings does not stay the enforcement of tax claims, such as foreclosure.

IV. TREATMENT OF TAX CLAIMS IN REHABILITATION PROCEEDINGS

Most of the countries that have insolvency laws providing for some kind of generally available rehabilitation or reorganization provide for a stay, either automatic or at the discretion of the presiding official, of further collection efforts by tax authorities upon the commencement of a proceeding for some period of time to permit reorganization efforts. In New Zealand, where there is no generally available reorganization procedure, collection efforts by taxing authorities may be subject to a moratorium only in the government-imposed statutory management

procedure. In Venezuela, and Brazil, insolvency proceedings do not stay administrative enforcement of tax claims.

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Many of the countries that have modernized their reorganization laws have rules that can authorize the tax authorities to accept payment of their tax claims in installments over time. The laws of the United States and Canada provide that payment of priority tax claims can be stretched out (over six years in the United States and over six months in Canada), but that interest must be paid on these claims. In France, creditors, including taxing authorities, which do not accept a reduced payment, can be forced to accept payment over ten years under a reorganization plan.

In Germany, Australia, Estonia, Sweden, Turkey, and the United Kingdom, where taxes are treated as unsecured claims, the taxing authorities are entitled to vote on an arrangement or reorganization plan, but are bound to accept the same treatment as other unsecured creditors, unless their claims have risen to the status of enforceable and non-avoidable liens. The same is true of the non-priority portion of tax claims in Canada and the United States.

In Argentina, taxing authorities may or may not, like any other creditor, accept the debtor's proposed debt restructuring including the restructuring of tax payments. A reorganization plan must create three categories of creditors: special preference, general preference, and non-preference, but the debtor may offer more than one alternative for each category. Because taxing authorities usually do not accept the release of tax credits, debtors usually create a separate category for unpaid taxes in reorganization plans.

In Poland, tax claims are subject to arrangement proceedings and may be subject to any arrangement agreed in such proceedings among the creditors, including deferral for the fulfillment of obligations, an arrangement for the repayment of debt in installments, the reduction of the amount of debts, the conversion of claims to shares or stock, or the change, exchange or annulment of a right securing specific claims. Tax authorities do not enjoy any special privileges in voting on a plan of arrangement. The situation appears to be the same in Portugal.

In Latvia, taxing authorities can be compelled to accept payment over time if the creditors accept the reorganization plan containing such a requirement. Tax claims are classified together with other claims in terms of voting on a settlement. In voting on a plan the claims are divided into three groups and the rehabilitation plan must be accepted by at least two groups.

In New Zealand, which as noted, really does not have a modern reorganization law, the government must agree to any delayed payment of its taxes. Similarly, in Mexico, the law does not require the taxing authorities to accept delayed payment and does not require the taxing authorities to consent to a reorganization plan. It does, however, contemplate that an agreement for payment of taxes may be negotiated. Taxing authorities in Mexico may permit payment on terms not to exceed 48 months provided that there is a guaranty of payment, although this is not allowed for taxes withheld, transferred or collected. Surcharges and fines continue to accrue during the conciliation phase of an insolvency proceeding but if the reorganization plan is approved, such fines and other charges are cancelled. The amount owed to the taxing authorities is determined by the tax agency, not by the insolvency court.

In Spain, the taxing authorities have the right to decide whether tax claims will be included in an insolvency agreement or not. If they are included, the taxing authorities are bound by the agreement like other creditors. Draft 05-22-05

In Lithuanian restructuring proceedings, the debtor company must settle claims with current payments unless the creditors have consented to different treatment. Disputes regarding settlement of current payments generally are heard by the court, but the court is not competent to decide on execution of and payment terms for taxes and other statutory payments, so these issues are not affected unless an installment plan is negotiated and agreed that provides for payment.

In Greece, administrative enforcement of tax claims generally is stayed in reorganization and the reorganization agreement, is binding on all, including dissenting and non-participating creditors and the State if approved by the required votes. On a practical basis, however, debtors heavily indebted for taxes and social security dues are unlikely to enter reorganization. One third of the estate is reserved for tax claims and two third for secured and other preferred claims. Because reorganization agreements must make express payment for all social security dues, and social security dues are preferred claims, if taxes and social security dues are expected to exhaust the going concern liquidation value, there is little incentive for creditors to reorganize the company.

In Brazil, tax creditors are not included in the reorganization plan and tax foreclosures are not stayed by the proceedings, in order to force the debtor to negotiate. Currently, there is no ability for a debtor to pay delinquent taxes through an installment plan, although it is anticipated that the National Tax Code will be amended to permit installment payments of tax credits. It is not anticipated that the rule on tax foreclosures will be modified.

In South Africa, taxing authorities are entitled to vote on a proposed plan of arrangement. If the plan defers payment or deals with the tax claims in some other manner – and is approved by the court after voting requirements are satisfied, the taxing authorities would be bound by the plan.

Tax claims are subject to the same rules in Venezuelan moratorium as well as liquidation proceedings: neither type of proceeding stays enforcement of the tax claims.

China does not currently have a law that permits reorganization of an enterprise, although legislation that would permit reorganization has been submitted to the legislature for deliberation. It appears that tax claims would be treated the same in reorganization as in liquidation under the proposed law.

V. CONCLUDING OBSERVATIONS

The UNCITRAL Guide generally recommends that insolvency laws minimize the priorities accorded to unsecured claims,¹⁴ summarizes certain considerations that countries should weigh in deciding whether to afford priority to tax claims:

¹⁴ *Id.*, at 348. Reasons stated for minimizing unsecured creditor priorities include (1) it can foster unproductive debate over which creditors should be afforded priority and why, (2) it can impact the cost and availability of credit which will increase as funds available for distribution to other creditors decreases, (3) the concern that is the basis for the priority may be more readily addresses by non-bankruptcy law such as social welfare legislation, (4) it can

Priority is often accorded to government tax claims to protect public revenue, but has also been justified on a number of other grounds. These grounds include that it can be beneficial to reorganization because tax authorities will be encouraged to delay the collection of taxes from a troubled business on the basis that eventually they will be afforded a priority for payment under insolvency and that, because the government is a non-commercial and unwilling creditor, it may be precluded from some commercial debt recovery options. Providing a priority to such claims, however, can be counterproductive because failure to collect taxes can compromise the uniform enforcement of tax laws and may constitute a form of state subsidy that undermines the discipline that an effective insolvency regime is designed to support. It may encourage tax authorities to be complacent about monitoring debtors and collecting debts in a commercial manner that otherwise would assist to prevent insolvency and the depletion of assets.¹⁵

The UNCITRAL Guide also points out that “[i]n reorganization proceedings it may be desirable to provide that priority claims must be paid in full as a predicate to confirmation of a plan, unless the affected priority creditors agree otherwise.”¹⁶

Many of the jurisdictions covered in this report appear to have considered these factors in establishing their rules for priority claims. The different treatments of tax claims in the national laws described in this report and the recent history of their revisions reflect varying judgments as to how these considerations should be balanced within the context of different national legal systems. Some conclusions can be drawn from this review:

First, there is a clear trend to reduce tax priorities, both in developed and transition countries. Australia, the United Kingdom, Germany, Sweden, Turkey, and Estonia, have eliminated all general tax priorities, and Canada and Chile have eliminated all but withholding taxes. In the commonwealth countries this trend appears to be based on the view that the government does not need the revenue at the expense of other creditors and can make up for its position as an "involuntary creditor" by using the special collection tools it has at its disposal. Germany's move to abolish all priorities for pre-bankruptcy claims is based on the policy judgment that pre-bankruptcy entitlements should not be reordered in the event of insolvency. Estonia's similar move was intended to treat equally all creditors in the bankruptcy proceedings, notwithstanding, whether the claimant is a private company or state. South Africa has rejected these arguments out of concern for loss of State revenues, [and New Zealand has not yet acted on recommendations that priorities be further reduced.] Poland, Portugal, Spain, and Argentina all have cut back on the portion of an insolvent estate committed to payment of tax claims in a more general ways than by distinguishing among the types of taxes assessed. Brazil and Mexico have also taken some steps to diminish the impact of the tax authorities claims in insolvency proceedings. Venezuela is the notable exception: it has not modernized its insolvency laws and has in fact recently increased the tax claims entitled to priority.

complicate the basic goals of insolvency and make it difficult to achieve efficient and effective insolvency proceedings. *Id.*, at 342.

¹⁵ *Id.*, at 345. Tax priority claims may also be of particular concern in transnational cases. *Id.*, at 343.

¹⁶ *Id.*, at 347.

Second, transition countries tend to have more general tax priorities than developed countries. Effective tax administration rules and enforcement are important to equalize the government's "involuntary creditor" disadvantage, particularly where tax priorities are eliminated. Thus, where a country's tax administration rules are not effectively designed or enforced, eliminating the tax priority could place the government in a worse position than other creditors in collecting its revenue claims. Where the government's revenue needs exceed its ability to collect revenues outside of bankruptcy and insolvent companies are significantly in arrears, the choice may be made to retain a bankruptcy tax priority to minimize the losses to the general public.

Third, there appears to be some, but certainly not general, agreement that amounts withheld from third parties which are to be paid over to the government by the debtor should be afforded special treatment, whether through a specific bankruptcy priority, a trust theory, the imposition of third party personal liability, or a combination of the foregoing.

Fourth, specific rules have been developed for rehabilitation proceedings where reorganization is a goal of the national insolvency laws. Giving the debtor breathing space by staying the collection of taxes, and specifically allowing consensual or non-consensual extended payment of arrearages as part of a plan of rehabilitation, can serve the goal of encouraging viable businesses to reorganize.

Fifth, in large part, the legal reforms appear to be based on reason and policy judgments rather than economic analysis. This may in part be due to the fact that there appears to be little empirical data available on which to base recommended legislative changes or to evaluate the impact of the changes that are being made.¹⁷

¹⁷ Exceptions to this include, Lopez-Ibor, Rocio Albert & Artes-Caselles, Joaquin, *Bankruptcy Proceedings and Government: Should Bankruptcy Law Grant Privileges to the Treasury*, Volume 2003 GERMAN WORKING PAPERS IN LAW AND ECONOMICS, PAPER 9, available at <<http://www.bepress.com/gwp>> (last visited Feb. 28, 2005); Government Bill, proposition 2002/03:49 and Summary of the Right of Priority Committee, SOU 1999:1, at 41; (Sweden)(describing legal-economic studies obtained, including Theodore Eisenberg, *A Review of the Law and Economics Literature on Creditor Priority in Bankruptcy* (1998)); Eger, Thomas, *Bankruptcy Regulations and the New German Insolvency Law from an Economic Point of View*, EUROPEAN JOURNAL OF LAW AND ECONOMICS, 11:1; 29 (2001).

**INTERNATIONAL INSOLVENCY INSTITUTE
REPORT ON TAX CLAIMS**

NATIONAL LAW SUMMARIES

ARGENTINA

Taxes: Federal taxes: Income tax, tax on presumed minimum income (assets), tax on credits and debits in bank accounts, personal assets tax, VAT, excise taxes (alcohol, tobacco, fuel, luxury articles), withholding tax on dividends and interest paid to foreign creditors, labor contributions and withholdings (social security, medical services, pension and unemployment benefits), customs duties. Local taxes: Turnover tax, Stamp tax, Property tax.

Enforcement: Interest and penalties, summary judgment to obtain the payment of taxes, interest, fines, etc, owed by taxpayers, non-judicial tax liens, third party liability, installment plan for financial hardship, 5 year statute of limitations.

Insolvency Law: Argentine Bankruptcy Law, which provides for direct bankruptcy, business reorganization, and extra-judicial plan of arrangement. The current Argentine Bankruptcy Law N° 24,522 was published in the Official Gazette on August 9, 1995, and was amended by Laws 25,563 and 25,589 which were published in the Official Gazette on February 15, 2002 and May 16, 2002, respectively.

Tax Claims in Liquidation: Section 241 of the Bankruptcy Law provides a special preference for improvements to assets, employee claims for certain business related assets, taxes and duties applicable to specific property (real estate taxes, excise taxes, certain local taxes), mortgages and pledges over sale proceeds of pledged assets. Section 246 provides a general preference for other labor credits, the principal amount of social security debts, certain personal expenses of individuals, principal amount of any taxes and duties, certain credit invoice amounts. Claims entitled to general preference must not take more than 50% of the debtor's total assets, once credits with special preferences are paid. Clause 241 was included in the Bankruptcy Law 24,522, and was not amended by Laws 25,563 and 25,589. Excess amount loses the general preference and is treated as a general non-preferred credit.

Tax Claims in Rehabilitation: Taxing authorities may or may not, like any other creditor, accept the proposal of the debtor that may consist of refinancing tax debts. A reorganization plan must create at least three categories (special preference, general preference, non-preference). Because taxing authorities usually do not accept release of credits, debtors usually create a separate category for unpaid taxes in reorganization plans.

Other comments: The Argentine Congress continues to analyze new measures to prevent tax evasion such as new ways to protect the fiscal credit in insolvency proceedings and bankruptcy.

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AUSTRALIA

Taxes: Individual and corporate income, capital gains, sales tax, goods and services tax, stamp duty, stamp duty, land tax, payroll tax (payable by employer), excise duties, gambling taxes, insurance taxes, international trade taxes, motor vehicle taxes, franchise taxes.

Enforcement: Interest and penalties, garnishment of obligation owed by third party, real estate taxes become lien on property, third party liability, installment plan for financial hardship, 5 year statute of limitations.

Insolvency Law: Corporations Act (2001) provides for three types of external administration for insolvent companies: receivership, voluntary administration, winding-up (liquidation).

Tax Claims in Liquidation: Commonwealth tax owed does not constitute a priority debt in receivership. Indirect taxes in the form of employee superannuation contributions are given priority, as are employee wages claims and secured creditors under fixed and floating charges.

Tax Claims in Rehabilitation: Treated as unsecured creditor for principal, interest, and penalties. If the reorganization is such that the creditors are required to accept payment over time, taxing authorities will as well.

Other comments: Insolvency (Tax Priorities) Legislation Amendment Act 1993 (Cth) abolished statutory priority for all tax payable after June 30, 1993. This changes was made in response to the Australian Law Reform Commission's report into Debt Recovery and Insolvency (report 36, tabled in Parliament on 21 October 1987), which recommended that a debt to the Crown be accorded the same status as a debt to anyone else. Reference materials: Australian Law Reform Commission's report into Debt Recovery and Insolvency (report 36, tabled in Parliament on 21 October 1987, accessible from www.austlii.edu.au); Australian Law Reform Commission Report No. 45, General Insolvency Law Inquiry (1988).

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BRAZIL

Taxes: FEDERAL - corporate income tax, social contributions on profits, gross receipts taxes, excise tax, social security contribution on payroll, social contribution on fund transfers made by means of bank accounts, tax on financial, exchange, credit and other transactions, customs duties CIDE technology, CIDE oil, tax on rural real estate, and individual income tax; STATE – VAT, tax on donations and on inheritances, and tax on vehicles; and MUNICIPAL – tax on services, tax on transfers of real estate, tax on urban real estate, and contribution for public illumination.

Enforcement: Administrative process – issuance of tax assessments; judicial process – fiscal executions with attachment of assets; amounts collected: outstanding taxes, interest and fines; installment agreements: available in the federal sphere within a 60 month term (a bill of law currently is being discussed to introduce a special installment agreement with a longer term for companies in a judicial recovery process) and should be verified in each State or Municipality; statute of limitations: varies depending on the tax, but is generally 5 years from the taxable event; tax liability: third parties or successors may also be held liable for taxes due by other entities.

Insolvency Law: Bankruptcy and Corporate Recovery Act, Federal Law No. 11,101, effective June 9, 2005, provides for the following proceedings: (1) judicial recovery (court supervised process); (2) extra judicial recovery (previously negotiated plan may be approved in court in order to bind all creditors, provided that 3/5 of all creditors agree to the proposed plan; and (3) bankruptcy (liquidation).

Tax Claims in Liquidation: Tax claims under the new bankruptcy law, except for tax fines, rank in 6th position, behind (i) wage claims related to three months preceding bankruptcy (up to the limit of 5 minimum monthly wages), (ii) restitution claims (e.g., the amount delivered to the debtor, in domestic currency, resulting from an advance on an export exchange contract, (iii) post petition claims; (iv) regular labor credits (limited to 150 minimum monthly wages) and compensation for accidents at work; and (v) claims secured by *in rem* guarantees (up to the value of the encumbered asset). Tax claims under the new bankruptcy law, however, still have priority over special privileged creditors, general privileged creditors, unsecured creditors (including labor credits which exceed the cap referred to in (iv) above, and tax fines.

Tax Claims in Rehabilitation: Judicial or extrajudicial recoveries neither involve tax claims nor stay administrative or judicial processes related to taxes. However, in order to have a judicial recovery approved in court, it is necessary to present clearance certificates issued by tax authorities. Installment agreements are available as mentioned in the Enforcement section above.

Other comments: The historical reason for the structure of priorities is the principle of supremacy of the public interest over private matters. The new bankruptcy law is a significant change and is designed to maintain and encourage the continuity of the business and stimulate economic activity. Under recent amendments to the National Tax Code, there is no successor liability for taxes for a business unit sold in bankruptcy proceedings.

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CANADA

Taxes: Income (or profits) tax; capital gains tax; capital tax (value of corporate assets); realty tax (value of real property owned); withholding for employee wages and salaries, amounts earned by and dividends, interest, rent, royalties, and fees paid to non-residents; employment insurance; pension plans; goods and services/harmonized sales tax; and retail sales tax.

Enforcement: Interest and penalties, seizure of personal property, garnishment of amounts payable by third parties, non-judicial lien, third-party liability of corporate directors and others obligated to withhold or deduct taxes as well as goods and services providers for uncollected goods, services, and sales taxes.

Insolvency Law: Canada's insolvency regimes are set forth in two federal statutes: the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") and the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36 (the "CCAA"). The BIA provides for both liquidations and reorganizations. The CCAA provides for reorganizations where the debtor's liabilities exceed \$5 million.

Tax Claims in Liquidation: In a liquidation, employee source deductions for income tax, Canada pension plan and employment insurance have a priority over secured creditors pursuant to deemed trusts created by the federal *Income Tax Act* (s. 227(4)) (as well as provincial equivalents), the *Canada Pension Plan Act* (ss. 23(3) and (4)) and the *Employment Insurance Act* (s. 86(2) and (3)).

Tax Claims in Rehabilitation: In a reorganization under either the BIA or the CCAA, the debtor's plan must provide for payment of outstanding employee source deductions within six months of Court approval of the plan (BIA, s. 60(1.1), CCAA, s. 18.2(1)).

In both BIA and CCAA reorganizations, the enforcement of tax claims is stayed (BIA, s. 69(1)(a) and 69(1.1)(a), CCAA, s. 11(3)). Under the BIA, once the debtor files a notice of intention to make a proposal ("NOI") or a proposal, enforcement of source deduction claims is stayed (BIA, ss. 69(1)(c)-(d) and 69.1(1)(c)-(d)). The stay does not apply if the debtor fails to make employee remittances after filing a NOI or a proposal (BIA, ss. 69(3)(a) and 69.1(3)(a)) or if a creditor becomes entitled to realize on security on property claimed by the tax authorities with respect to source deductions (BIA, ss. 69(3)(b) and 69.1(3)(b)).

Other comments: Before 1992, the BIA (and its predecessors) provided that property held by the bankrupt in trust for any other person did not form part of the bankrupt's property divisible amongst its creditors. In the 1989 case of *British Columbia v. Henfrey, Samson, Belair Ltd.* (1989), 59 DLR (4th) 726 (SCC), the Supreme Court of Canada ruled that a deemed trust had to comply with general principles of trust law in order to constitute property that was exempt from distribution to the bankrupt's creditors. The statutory deemed trust in that case did not meet this test. In 1992, the BIA was amended to provide that only trusts that are valid under general trust law principles are exempt from the bankrupt's property (BIA, s. 67(2)). However, the BIA was also amended to provide (in s. 67(3)) that deemed trusts respecting employee source deductions were exempt from section 67(2). On that basis, those claims enjoy priority over secured creditors.

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CHILE

Taxes: Business profits tax, income tax (resident and non-resident), capital gains tax, inheritance taxes, employee withholding taxes, municipal duty for business activities, real estate tax, value added tax, special sales tax on luxury goods, and tobacco, fuel and stamp taxes.

Enforcement: Payment of taxes is not negotiable, but the amount of penalties and interest can be negotiated. The treasury can seize assets and auction them through a judicial proceeding (particularly in the collection of property taxes). Treasury regularly joins other creditors in petitioning for bankruptcy, although it rarely does so along.

Insolvency Law: Bankruptcy Law No. 1552, October 28, 1982.

Tax Claims in Liquidation: Tax claims where the debtor is the tax collector (VAT, employee withholding, other special taxes) are entitled to priority along with the administrative costs of insolvency proceedings and employee wage claims. These claims have absolute payment priority and are paid out of the proceeds of sale of the debtor's assets, even if the assets are pledged or mortgaged. Other tax claims have no priority in insolvency.

Tax Claims in Rehabilitation: There is only one class of creditors that votes on a composition plan.

Other comments:

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PEOPLES REPUBLIC OF CHINA

Draft 05-22-05

Taxes: Income tax (individual and business); turnover tax (business tax, VAT, consumption tax); natural resources and property tax; tax on activities with specific purposes (stamp duty, real property transfer, urban maintenance and construction, vehicle purchase, vehicle license, land appreciation, slaughter); agricultural tax; import and export duties.

Enforcement: Interest and penalties; seizure of property and sale by auction or otherwise; guaranty may be required in case of tax avoidance and if not provided, bank accounts may be frozen or property seized.

Insolvency Law: The current insolvency law regime mainly consists of The Enterprise Bankruptcy Law, effective as of November 1, 1988 (applicable only to state-owned enterprises); The Foreign Invested Enterprises Liquidation Measures, effective as of July 9, 1996 (applicable only to foreign invested enterprises, in which foreign shareholders are generally required to hold an aggregate of at least 25% of the equity); and relevant provisions in The Civil Procedures Law and the Company Law. Liquidation is the only mechanism for bankrupt companies under the current regime. In 1994, China embarked on the task of creating a new unified bankruptcy law. After ten years' of drafting, a proposed draft new bankruptcy law was finally submitted to the National People's Congress for deliberation in June 2004 (the "First Draft Bankruptcy Law"). The new bankruptcy law is currently undergoing several drafts and may come out in 2006.

Tax Claims in Liquidation: Under the current tax and bankruptcy regimes (e.g., the Law on Administration of Tax Collection, effectively May 1, 2001), tax claims take priority over (i) unsecured claims and (ii) secured claims arising after the occurrence of the tax claim. The First Draft Bankruptcy Law places tax claims before unsecured claims but after secured claims and does not appear to make a distinction between secured claims arising prior to the occurrence of the tax claim and those arising after the occurrence of the tax claim. The priorities of different bankruptcy claims are currently being heatedly debated among legislators and significant changes may be made to the final version of the new bankruptcy law.

Tax Claims in Rehabilitation: Currently, only liquidation is available. For the first time in China's legislative history, the First Draft Bankruptcy Law provides for the mechanism of reorganization (in addition to liquidation) for bankrupt companies. Under the First Draft Bankruptcy Law, in the event of a reorganization, tax claims shall be paid before unsecured claims but after secured claims in the manner described above in the case of liquidation.

Other comments: Under the First Draft Bankruptcy Law, both bankruptcy expenses and employee claims get paid ahead of tax claims.

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ESTONIA

Taxes: Income tax, social security contributions, funded pension contributions, unemployment insurance premiums, real estate tax, gambling tax, heavy goods vehicle tax, VAT, customs duties, alcohol, tobacco, fuel excise duties, packaging excise duty.

Enforcement: Interest and penalties, seizure of property, deduction from employee salary, involuntary bankruptcy, non-judicial tax liens, third party liability, installment plan for financial hardship (not customs debt or withholding agents), 7 year statute of limitations..

Insolvency Law: Bankruptcy Act (effective January 1, 2004).

Tax Claims in Liquidation: There are no provisions for priority ranking of tax claims which are submitted in the same manner as other claims of unsecured creditors. If the tax claim was secured by a registered pledge, commercial pledge or mortgage, then it is treated as a secured claim. Secured claims and administrative expenses are paid first. There are no other priorities. Tax debts are discharged for legal persons upon dissolution through bankruptcy or liquidation. Natural persons may be discharged if unable to pay 5 years from bankruptcy

Tax Claims in Rehabilitation: Tax claims can be deferred where a compromise is approved by one half the creditors present whose claims constitute at least two-thirds of the total amount of claims. Tax claims are classified together with other unsecured claims for voting purposes.

Other comments: All priority rules were abolished effective 1/1/04. Prior to that time, tax claims had the third highest ranking. The reason for abolishing priority rules for tax and other claims was to treat equally all creditors in the bankruptcy proceedings, notwithstanding, whether the claimant is a private company or state.

The adoption of the New Bankruptcy Act was prompted by ongoing reform of the judicial procedure in Estonia and the desire to shorten the duration of bankruptcy proceedings. In practice, unsecured creditors rarely receive distribution from the bankruptcy estate because secured creditors recover most of assets. As a consequence tax administration also usually does not recover tax debts.

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FRANCE

Taxes: Personal and corporate income, business, turnover, registration, stamp duty, wealth, customs duties; contributions for social security, agricultural security and holiday insurance; taxes on property, including real estate. Draft 05-22-05

Enforcement: Interest and penalties, collection of amounts owed to debtor by third parties (not stayed by commencement of insolvency proceedings where notice is sent prior to commencement), non-judicial tax liens, third party liability.

Insolvency Law: Law No. 85-98 of 25 January 1985, as amended in 1994 (codified under Articles L 620-1 to L 628-3 of the French Commercial Code in 2000) is the substantive bankruptcy law that provides for a unified proceeding commenced as reorganization proceeding, but which can become a liquidation if rescue is not possible. Law No. 84-148 of 1 March 1984, as amended in 1994 (codified in the French Commercial Code under Articles L 611-3 to L 612-5) is applicable to voluntary arrangements.

Tax Claims in Liquidation: Rules relating to priorities for tax authorities are found in the French Tax Code (art. 1920-1929 septies), not the insolvency law. The Tax Code provides a general preference for four years of income, corporate income, business, turnover, registration, stamp duty and wealth taxes and three years of customs duties, as well as social security contributions, agricultural security contributions and contributions for holiday insurance schemes of unlimited duration. Creditors with general preference have priority over other creditors with regard to proceeds of movable property, but not real estate. Property taxes have special priority over other creditors with regard to specific property taxed (e.g., real estate for real estate taxes).

[WHAT IS RANKING OF EMPLOYEE SALARY AND WAGE CLAIMS?]

Tax Claims in Rehabilitation: [HOW ARE TAX CLAIMS TREATED IN REDRESSMENT?]

Other comments: See Alain David, *Preferences of the Tax Authorities and Bankruptcy Law in France*, in Corporate Insolvency and Rescue: The International Dimension 221 (Dennis Campbell and Anthony E. Collins eds., 1993). A new law on prevention and bankruptcy to be discussed in Parliament in October 2004, would encourage early creditor participation and settlement and provide preference for claims of creditors who participate in the procedure, including tax claims. [WHAT IS CURRENT STATUS OF THIS NEW LAW?]

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GERMANY

Taxes: Income, wage, corporate, business, real estate, gift, succession duty, tax on acquisition of real estate, interest rebate tax, motor vehicle tax, supplementary taxes, such as solidarity tax contribution as well as other taxes on assets; value added tax, petroleum tax, tobacco, beer, sparkling wine and insurance taxes. Most significant are wages and income tax, value added tax, petroleum tax, and business tax.

Enforcement: Fines, interest, and penalties; personal liability of statutory agent for gross negligence; sequestration of movables, direct payment from third party debtors, lien on land without need for obtaining judgment; and forced administration or judicial sale of immovable assets; right to commence insolvency proceeding.

Insolvency Law: Insolvency Code, effective January 1, 1999.

Tax Claims in Liquidation: There is no priority for tax claims. The tax authorities have a right to preferential satisfaction of claims only if the claims are secured with pledges or property charges prior to the opening of the insolvency proceeding. Penalty payments and interest are subordinated claims if they rate to pre-bankruptcy tax claims.

Tax Claims in Rehabilitation: There are no special rules for taxes in the statutes. They may consent to partial or delayed payment like unsecured creditors. However, the Federal Ministry of Finance has instructed that tax authorities shall apply for and interdict of the insolvency plan by the insolvency court if the plan curtails the rights of the tax authorities in comparison to the rights under the Insolvency Code (pro rata among creditors).

Other comments: Tax priorities were eliminated in the course of the introduction of the 1999 Insolvency Code. The background for the changes was criticism that the insolvency estate was consumed by the huge amount of privileged claims so that the average creditor often received nothing. See Explanatory Statement of the Federal Government for the Introduction of the Insolvency Code BTDR 12//2443 p.81. Recent change to VAT to provide that purchasers of construction works are tax debtor and VAT amounts are therefore paid directly to tax authorities and not to insolvent contractor, ensuring payment of these amounts outside insolvency case.

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REPUBLIC OF GHANA

Taxes:

Draft 05-22-05

Enforcement:

Insolvency Law:

Tax Claims in Liquidation:

Tax Claims in Rehabilitation:

Other comments:

Information furnished by:

Date:

GREECE

Taxes: Corporate and individual income, capital gains tax, special tax on real estate, real estate transfer tax, real estate wealth tax, capital concentration tax, inheritance and gift tax, stamp duty, VAT, excise duties, import duties from non EU, dividends from foreign companies, withholding tax on interest, withholding income tax for employees, social security contributions.

Enforcement: Interest and penalties, involuntary bankruptcy, installment plan for financial hardship, 5 year statute of limitations from assessment. Seizure of property, deduction from employee salary, and liens are only available through court proceedings. Directors, administrators and persons with management/legal representation of company at time of dissolution are jointly and severally liable for payment of any corporate or withholding tax due, as well as VAT and other indirect taxes.

Insolvency Law: There is no single instrument. The basic statutes include (a) Royal Decree of April 19-May1, 1835, (b) Mandatory Law 635/1937, (c) Legislative Decree 3562/1956, (d) Royal Decree of 22.12.56, (e) Law 1386/a983, (f) Presidential Decree 34/1985, (g) Law 1892/1990, (h) Law 2000/1991, (i) Law 2741/1999.

Tax Claims in Liquidation: Tax claims enjoy a general preference regardless of whether in insolvency, non-insolvency, or foreclosure. Administrative enforcement is not stayed on the debtor's insolvency. Joint and several liability with debtor of directors, board members and managers for payment of taxes, wages and social security, as well as criminal penalties for failure to fulfill these obligations. Prosecution and indictment are not suspended because of insolvency, but generally such persons are acquitted at trial, with various constructs based on their inability to make payments due to the bankruptcy. There is no formal "priority" between tax and secured claims, but rather the product of liquidation is divided into 1/3 for tax claims and 2/3 for secured (and other preferred claims), and each category of claim is paid preferentially from the respective parts of the proceeds. Wage claims for up to two years preceding bankruptcy have general preference over both tax and secured claims.

Tax Claims in Rehabilitation: Administrative enforcement of tax claims generally is stayed in reorganization. So-called reorganization agreement requires consent of 60% of all claims, including 40% of secured claims and 50% of shareholders. The agreement is binding on all, including dissenting and non-participating creditors and the State.

Other comments: On a practical experience basis, debtors heavily indebted for taxes and social security dues are generally unlikely to enter reorganization. Reorganization agreements must make express provision for payment of all social security dues, which are in any event preferred claims. Thus, creditors generally do not consent to consensual restructurings – if taxes and social security dues are expected to exhaust the going concern liquidation value, there is little incentive for secured creditors to organize it.

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LATVIA

Taxes: Corporate and individual income, social security contributions, real estate, lottery and gambling tax, passenger vehicles and motorcycles tax; VAT, customs duties, excise tax, natural resources tax, stamp duties.

Enforcement: Interest and penalties, seizure of property, involuntary bankruptcy, non-judicial tax liens, third party liability, installment plan for financial hardship, 3 year statute of limitations from decision.

Insolvency Law: Law on Insolvency of Undertakings and Companies (1996) (the “Latvian Insolvency Law”).

Tax Claims in Liquidation: After payment of administrative expenses of insolvency, the following claims are paid before payments to general unsecured creditors: (1) individual income tax payments, compulsory state social insurance contributions, and a list of certain employees claims; (2) certain payments for farm and agricultural undertakings, (3) compulsory state social insurance contributions for one year period of time prior to initiation of insolvency proceedings, (4) state claims regarding repayment of state-guaranteed loans, (5) other tax debts including the rest of the compulsory state social insurance contributions, except deferred tax payments, and (6) deferred tax payments. A company is discharged for an undertaking if bankruptcy proceedings have been completed and insolvency terminated.

Tax Claims in Rehabilitation: Taxing authorities can be compelled to accept payment over time if the settlement containing such a requirement is accepted by the creditors. The settlement requires vote by more than $\frac{3}{4}$ in amount if provides for less than half, or $\frac{2}{3}$ in amount if settles more than half of claims. Tax claims are classified together with all other claims in terms of voting on a settlement. A rehabilitation plan can be approved if it is accepted by two out of the following three groups of creditors: (a) secured creditors in the amount of the secured claims; (b) priority creditors and secured creditors in the amount of their unsecured claims; and (c) other creditors and secured creditors in the amount of their unsecured claims. In either settlement or rehabilitation, the repayment of tax claims depends on the provisions included in the respective plan.

Other comments: One of the most important amendments to the Latvian Insolvency Law came into force on November 20, 2003, and had a minor effect on the priority of tax claims. The compulsory state social insurance contributions giving rights to unemployment benefit were excluded from the list of the first priority group claims. The reason for this was that a special fund was established from which an insolvent company’s debts to its employees and tax debts with regard to these employees’ claims (including compulsory state social insurance contributions) shall be covered. Tax administration usually does not recover any tax debts at all because payment goes to secured creditor with mortgage or commercial pledge. There are no specific amendments under consideration relating to priority rules, but a new Law on Insolvency is being drafted that will emphasize reorganization and settlement in order to avoid bankruptcy.

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LITHUANIA

Taxes: Resident income, corporate profit tax, real estate tax for enterprises and organizations, pollution tax, inheritance tax, land tax; VAT, excise, social insurance taxes (pension, illness and maternity, unemployment, accident) among others. Draft 03-22-05

Enforcement: Interest and penalties, seizure of property, order to credit institution to suspend financial transfers, involuntary bankruptcy (more than one third of bankruptcy proceedings are initiated by tax authorities, including State Social Insurance Fund Board), non-judicial tax liens, 5 year statute of limitations. Tax authorities may negotiate a settlement with a delinquent taxpayer which must include a payment schedule and provide for payment of interest.

Insolvency Law: Law on Bankruptcy of Enterprises (for legal persons) and Law of Restructuring, both adopted May 20, 2001, effective as of July 1, 2001 with further amendments.

Tax Claims in Liquidation: All taxes and other payments to the budget, social taxes (compulsory state social and health insurance payments), and loans received from the state or guaranteed by the state, are entitled to second priority after payment of secured claims and employees' claims related to employment relations.

Tax Claims in Rehabilitation: In restructuring proceedings the company must settle with current payments unless the creditors have consented. Disputes regarding settlement of current payments are heard by the court which decides on forms and payment terms. However, the court is not competent to decide on execution of and payment terms for taxes and other statutory payments, so the tax claims are privileged in this case.

Classification of priority rules under the Law of Restructuring differs slightly from the grouping under the Bankruptcy Law. The first priority includes payroll taxes (withheld from salaries), although this is not the case under the Bankruptcy Law. This was as a result of amendments at the beginning of 2003. Other taxes are in the second priority – and general claims are in the third priority grouping.

Other comments: 2003 amendment to Law on Restructuring grouped payroll taxes withheld with first priority group of employee claims.

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UNITED MEXICAN STATES

Taxes: Income for individuals and entities, asset tax, real estate property transfer tax, social security taxes; VAT, special tax on production and services. Draft 05-22-05

Enforcement: Surcharges (updates to reflect inflation) and penalties, preventative and definitive seizure of property, non-judicial tax liens, third party liability, installment plan for financial hardship, generally, 5 year statute of limitations.

Insolvency Law: Commercial Insolvency Law (LCM) (2000).

Tax Claims in Liquidation: According to the Fiscal Code of the Federation (CFF), Commercial Insolvency Law (LCM), and Federal Labor Law, all kinds of taxes (“contributions”) are included within the concept of tax credit and are treated alike. Tax credits together with certain labor credits are ranked fourth out of six credit categories in bankruptcy. Specifically, tax credits must be paid after (i) credits against the bankruptcy estate for the benefit of workers derived from wages or salaries, (ii) exclusively privileged creditors, and (iii) secured creditors. For a secured creditor to have preference over a tax debt, its security must have been duly registered in the public registry prior to the date on which a notice of the existence of the tax debt becomes effective. Taxing authorities do not need to validate claims in the context of insolvency proceedings. Upon commencement of insolvency proceedings, the court must give notice to the taxing authorities in order for them to decide whether to demand payment through an independent administrative proceeding. From the time the insolvency judgement is rendered, the amount of tax debts will continue to be updated as well as penalties and other charges related thereto.

Tax Claims in Rehabilitation: Taxing authorities may but are not required to permit payment on terms, whether deferred or in installments, without the term exceeding 48 months, provided that there is a guaranty of payment. This is not allowed for taxes withheld, transferred or collected. Until such time as the insolvency judgment is rendered by the court, surcharges and fines continue to accrue, but if the debtor’s reorganization plan is approved, fines and other charges accrued during the conciliation stage are cancelled. Plans of reorganization must include the payment of tax debts. The amount owed is determined by the tax agency, not by the insolvency court. Tax authorities consent to the reorganization plan is not required. In commercial insolvency, the taxing authorities may partially waive tax claims accrued pre-bankruptcy, provided that the debtor enters into an agreement with creditors in accordance with the following: (1) if tax debts are less than 60% of the aggregate debts in the proceeding, the waiver shall not exceed the minimum benefit granted to those creditors who, not being related parties, represent at least 50% of the recognized non-tax creditors; (2) if the tax debts exceed 60% of the aggregate debts recognized in the proceedings, the waiver shall not exceed the surcharges related to the outstanding tax credits.

Other comments: One can conclude that more than policies or reasons, there simply is an overriding interest in the collection of taxes, without much thought having been given to the impact that leaving wealth in private hands would have.

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Date: November 12, 2004

POLAND

Taxes: Corporate and personal income, gifts and inheritance, real estate, agriculture and forest, means of transportation, VAT, excise, gaming, customs duties. Most significant source of revenue and easiest tax to collect is VAT.

Enforcement: Interest and penalties, seizure of property, deduction from employee salary, involuntary bankruptcy, non-judicial tax liens, third party liability, installment plan for financial hardship, 5 year statute of limitations from due date.

Insolvency Law: Law on Bankruptcy and Reorganization, dated February 28, 2003 (the “Bankruptcy Law”).

Tax Claims in Liquidation: The Bankruptcy Law provides second priority for all taxes and public charges due for a year immediately preceding the declaration of bankruptcy, including interest and costs of enforcement. The balance of tax claims are paid as third priority along with other unsecured claims. First priority is granted to costs of administering the bankruptcy proceeding, payments under contracts assumed by the administrator, premiums for pensions, disability and sickness benefits, and dues for work. These rules do not apply to secured claims which are satisfied from the proceeds of sale of the encumbered property.

Tax claims secured by proprietary rights in rem enjoy priority only if they rank higher than secured claims of other creditors, except that tax and social security claims secured by a mortgage always rank higher than mortgages other than mortgages securing bank’s claims under credit agreements.

Tax claims are not discharged under the bankruptcy law, except that on motion of an individual bankrupt, tax claims may be annulled once during a 10 year period on terms specified in the Bankruptcy law.

Tax Claims in Rehabilitation: Tax claims are subject to rehabilitation (arrangement) proceedings and may be subject to any arrangement agreed in such proceedings among the creditors, including deferral for the fulfillment of obligations, an arrangement for the repayment of debts in installments, the reduction of the amount of debts, the conversion of claims to shares or stocks, the change, exchange or annulment of a right securing specific claims. Tax authorities do not enjoy any privileges regarding voting on a plan of reorganization or rehabilitation.

Other comments: As a result of the 2003 Bankruptcy Law, tax claims remain privileged but the scope of the privilege has been narrowed from the 1934 law. Tax claims have been included in arrangement proceedings and subject to all rules regarding modification of claims in such proceedings. In liquidation proceedings, tax claims are no longer privileged in terms of distributions of proceeds from the sale of secured assets. This means that general rules of priority of secured creditors are applicable to tax claims.

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PORTUGAL

Taxes: Personal and corporate income, net wealth tax (includes transfer tax and local tax on real estate), VAT, excise taxes on consumption of certain goods, stamp duty and road transportation tax, municipal vehicle tax, parafiscal system to finance social security payable by recipient of income and employer. Draft 05-22-05

Enforcement: Interest and penalties, seizure of property, injunctive relief against disposition of property, involuntary bankruptcy, non-judicial tax liens, third party liability, installment plan for financial hardship, periodic legislation provides forgiveness of interest for delinquent taxpayers.

Insolvency Law: Insolvency and Companies Recover Portuguese Code, effective September 2004 (the “2004 Insolvency Code”), provides the framework for a unified single insolvency proceeding based on debtor patrimony liquidation but also grants creditors the possibility to approve a specific plan in order to promote the company’s liquidation in a different way or to promote the recovery of the company.

Tax Claims in Liquidation: The Portuguese Civil Code, as limited by the 2004 Insolvency Code provides states and municipalities the following priority for taxes due for 12 months prior to the beginning of the insolvency proceeding: *special creditor’s preferential claims* for claims against assets to which specific taxes relate, *immovable creditors’ preferential claims* for real estate tax claims against real estate, and *general creditors preferential claims* with regard to movable assets not encumbered by special statutory preferences. Legal mortgages for real estate taxes registered more than two months before the insolvency proceeding also are recognized. The balance of tax claims are treated as common credits. Tax claims are not dischargeable.

Tax Claims in Rehabilitation: Tax debts have exactly the same treatment as other debts, except in what concern special creditor’s preferential claims as state above.

Other comments: Under prior law, governmental entities were given preference prior to settlement ahead of other creditors. This preferential treatment meant that only in rare cases would creditors other than the State, the municipalities or social security and entities holding security receive payment. The 2004 Insolvency Code presents a compromise solution, according to which some governmental credits are deemed privileged depending on the duration of the privilege. It significantly limits the priority/preference rules found in the Portuguese Civil Code. The 2004 Insolvency Code also foresees that the declaration of insolvency extinguishes several creditor’s preferential claims and legal mortgages that usually benefit the tax authorities.

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RUSSIA

Taxes:

Draft 05-22-05

Enforcement:

Insolvency Law:

Tax Claims in Liquidation:

Tax Claims in Rehabilitation:

Other comments:

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SOUTH AFRICA

Taxes: Individual and corporate income, capital gains, taxes on property (rates), pay as you earn, resident withholding tax on dividends or interest, non-resident withholding tax on dividends or interest, VAT, customs and excise taxes

Enforcement: Interest and penalties, seizure of property, garnishment by notice to third parties to pay amounts owed to taxpayer directly to taxing authorities, involuntary bankruptcy, non-judicial tax liens.

Insolvency Law: South African Insolvency Act 24 of 1936 (the “Insolvency Act”), applicable to the winding up and reorganization of companies by the Companies Act 61 of 1973.

Tax Claims in Liquidation: Section 99 of the Insolvency Act provides priority for the following taxes and charges after payment of secured creditors, costs of liquidation and certain employee claims: amounts due under the Workers Compensation Act, withholding taxes (income tax owed by others and from earnings and non-resident tax withheld on interest earned), customs, excise, or sales duties (plus interest and penalties), sales tax plus interest and penalties, unemployment insurance contributions. Other Section 99 priorities are amounts due to the General Council on Pneumoconiosis and the National Supplies Procurement Fund and the appreciation contribution due to the Community Development Board. Section 101 of the Insolvency Act provides that after the Section 99 amounts are paid, the following amounts are entitled to priority: income and profits taxes (plus interest), certain partnership income taxes. None of the foregoing have priority over secured claims, except that municipalities are entitled to be paid for rates for property taxes in arrears for up to two years preceding the date of liquidation out of the proceeds of immovable property.

Tax Claims in Rehabilitation: Recovery of claims from corporate debtor will be dealt with in a court sanctioned plan which the tax authorities would be compelled to accept, even if it defers payment or deals with the claims in some other way. Taxing authorities are entitled to vote on plan as other creditors.

Other comments: The 1984 South African Law Commission Report on *Amendments to South Africa’s Insolvency Laws* [ISBN 0621 090840] recommended preference for administrative costs, employee claims limited to R3000 per employee, and claim for arrears maintenance in terms of a court order and that all other preferences be abolished. In December 1989, the Cabinet endorsed the view taken by the Cabinet Committee for Economic Affairs that the abolition of preferences could not be supported because it would have unacceptable cost implications for the State. See also, South African Law Commission Working Paper 61, *Review of the Law of Insolvency: Statutory provisions that benefit creditors* (1995); BH Swart, *Die rol van ’n concursus creditorum in die Suid-Afrikaanse insolvensiereg* (1980) (doctoral thesis).

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SPAIN

Taxes: Direct taxes include personal, corporate and non-resident income tax; wealth, gift and inheritance tax, capital gains tax on land, real estate tax, vehicles tax, tax on economic activities and construction and works tax. Indirect taxes include withholding on personal income tax, value added tax, insurance premium tax, transfer tax, corporate operations tax, stamp duty tax, and customs and excise duties.

Enforcement: Interest and penalties, levy and seizure of property, garnishment of salaries, credits and securities, right to commence insolvency proceedings, third party liability for corporate directors, successors, duty agents; tax and possessory liens. Possible to defer payment based on financial hardship as part of general agreement with creditors, except that the agreement must not constitute a state subsidy to the debtor in accordance with the case law of the European Court of Justice.

Insolvency Law: Insolvency Act 22/2003 of July 9, 2003, effective September 1, 2004, which unified and modernized the prior law.

Tax Claims in Liquidation: Tax debts guaranteed by specific assets by means of mortgage or pledge, VAT on imports and excise and customs duties with retention rights, and taxes such as annual real estate taxes registered in public register, have priority over all creditors as secured creditors. The new Insolvency Act provides that amounts withheld by debtor that are owed by third parties (employees, suppliers) have priority over all other creditors except employee claims and registered secured creditors. 50% of all other pending tax claims rank next in priority; the remaining 50% of tax credits is treated as general ordinary credit.

Tax Claims in Rehabilitation: Taxing authorities have the right to decide whether the tax claims will be included in the general insolvency agreement or not. If included in the general insolvency agreement, the taxing authorities are bound by the contents of the agreement as accepted by the creditors and approved by the court.

Other comments: Prior to the enactment of the new Insolvency Act, tax credits were ranked as privileged for their whole amount. Also, withheld amounts were enforced on a separate basis – they were not considered part of the liquidation, but instead amounts held on behalf of the taxing authorities. One of the goals of the new law is to try to help the continuity of activity, reinforcing the principal of the par condition creditorum, and minimizing the impact on other market agents such as suppliers and other creditors.

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SWEDEN

Taxes: Income from employment, capital, and business; tax on capital, real estate, inheritance, gift, VAT and excise on duties. Draft 05-22-05

Enforcement: Interest and penalties, seizure of property, involuntary bankruptcy, third party liability, installment plan for financial hardship under certain circumstance.

Insolvency Law: Bankruptcy Act (1987) for winding up of insolvent business and Reorganisation of Business Act (1996) for reorganising business activities with the protection of the court. The Rights of Priority Act (2004) governs the priority of claims among creditors.

Tax Claims in Liquidation: There are no priority or preference rules for claims of taxing authorities. Tax claims are treated like other unsecured claims and are payable after secured claims, costs of bankruptcy, claims secured by a floating charge (limited to 55 percent of the value of the assets covered by the floating charge), and employee salary claims.

Tax Claims in Rehabilitation: The court can, after an application, open a business reorganization and the taxing authorities can be required in these proceedings to accept payment over time. Pre-reorganization tax claims are classified together with other claims without priority in terms of voting.

Other comments: Sweden abolished priority rules for tax claims in insolvency on January 1, 2004, as part of a package of law changes regarding priority legislation. One of the aims of the changes is to facilitate business reorganization without bankruptcy. See Government Bill, proposition 2002/03:49 and proposal of the Right of Priority Committee, SOU 1999:1, which contain calculations regarding the changes (English Summary discusses the right of priority for tax claims at 34-36). Also, paper on dividends on tax claims by Anna Berlin (Law Student, University of Stockholm), concluding that state's losses as a result of the abolishment of the priority of tax claims, often are neutralized by the increased dividends on prioritized wage claims. The state takes over the wage claim from the employee if the State-administered wage guarantee is used.

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REPUBLIC OF TURKEY

Taxes: Personal income tax (some collected by withholding – e.g., wages), corporate, motor vehicle, real estate, VAT, customs, special consumption, bank and insurance transactions. Draft 05-22-05

Enforcement: Interest and penalties, seizure of property, deduction from employee salary, involuntary bankruptcy as measure of last resort, non-judicial tax liens, third party liability (parties who are required to withhold and pay the debtor's tax liabilities to the authorities but fail to do so), installment plan for financial hardship, 5 year statute of limitations. Also, from time to time the Turkish Parliament passes "Tax Peace Laws", which provide for general dismissals and exemptions from certain taxes.

Insolvency Law: Turkish Code of Execution and Bankruptcy 2004 (TCEB), which includes Law No. 5092 (2/21/04), Restructuring of Capital Companies and Cooperatives by Conciliation.

Tax Claims in Liquidation: TCEB and the Law on Procedure of the Collection of Public Claims, No. 6183 provide that taxes and claims arising in rem (land or building taxes for immovable property, motor vehicle taxes for vehicles) and customs tax for related property are satisfied from sales proceeds of related property, with priority over all other claims. All other tax claims are paid 4th rank, with all other unsecured debts, after payment of employment claims, guardian or tutelage claims, and other specified privileged debts. If tax authorities establish a lien to secure the tax claims then such security gives them the position of a secured creditor with regard to the property. Execution proceedings are stayed by commencement of bankruptcy proceedings, with the exception of proceedings for foreclosure of security interests and levy and garnishment which are administrative actions of tax authorities. Tax claims are not dischargeable but penalties and interest may be discharged by law.

Tax Claims in Rehabilitation: The 2004 amendments to TCEB allow an insolvent company or cooperative to apply to the commercial court of first instance for restructuring where a restructuring plan (concordat) has already been approved by an affirmative vote of the required number of affected creditors. There are no examples of how this will be implemented, but it is assumed that taxing authorities would be treated equally with other creditors for voting and satisfaction because there is no priority rule for tax claims in this type of reorganization. Restructuring does not specifically regulate interest and penalties' therefore should be restructured under same conditions applicable to principal tax claims. In the event of approval of a concordat, tax authorities are not obligated to obey the concordat rules based on Law No. 6183. In the event of a postponement under Law 6183, maximum deferral is two years; additional interest continues to accrue over deferral period.

Other comments: Priority for tax claims in insolvency proceedings was abolished in July 2003. Prior to that time, unsecured tax claims were ranked as 5th priority and other unsecured debts were 6th priority. This amendment ranking unsecured tax claims the same as other unsecured claims is aimed at protection of rights of the other ordinary creditors. The "postponement of insolvency" procedure also was introduced which results in post-ponement of all execution proceedings against the debtor including proceedings related to tax claims. The time periods for such postponement are set forth in the relevant legislation. The 2004 amendments to TCEB provide for restructuring of capital companies and cooperatives by conciliation. Within the scope of this procedure, creditors, including taxation authorities, may approve a restructuring plan.

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UNITED KINGDOM

Taxes:

Draft 05-22-05

Enforcement:

Insolvency Law:

Tax Claims in Liquidation:

Tax Claims in Rehabilitation:

Other comments:

Information furnished by:

Date:

UNITED STATES

Taxes: Personal and corporate income, social security, sales, motor vehicle tax, real estate tax, customs duties, certain excise taxes, employee withholding for income social security, unemployment insurance. Federal taxes are income, social security, customs duties, and certain excise taxes. Other taxes are state level except for real estate and motor vehicle which are municipal.

Enforcement: Interest and penalties, seizure of property, deduction from employee salary, non-judicial tax liens created by filing notice, third party liability for withheld amounts (responsible persons and financiers of net wages), installment plan for financial hardship permitted, __ year statute of limitations.

Insolvency Law: Title 11 United States Code (the "U.S. Bankruptcy Code") provides for liquidation (Chapter 7) and business reorganization (Chapter 11).

Tax Claims in Liquidation: Section §507(a)(8) of the U.S. Bankruptcy Code provides eighth level priority for the following taxes: income or gross receipts tax (3 years), property tax (1 year), taxes required to be withheld (no limit on time), employment tax on wages, salaries, commissions (3 years), excise tax (3 years), customs duties (1 year), penalties fore foregoing to the extent they compensate for pecuniary loss. Eighth priority claims are payable after administrative expenses, certain employee wage and benefit claims, certain claims of grain producers and fishermen, consumer deposits, and alimony and child support claims. Any additional tax claims are paid as unsecured claims. Where notice is properly filed before bankruptcy petition, a statutory lien attaches to all real or personal property, in accordance with first in time, first in right filing priority and gives taxing authorities secured status. However, the statutory tax lien is subordinate to other priority claims in a liquidation. Enforcement of tax claims is stayed by commencement of Chapter 7 liquidation.

Tax Claims in Rehabilitation: Enforcement of tax claims is automatically stayed upon commencement of Chapter 11 case. Priority tax claims must be paid in full but under a confirmed plan of reorganization, the debtor can stretch out payments over six years as long as debtor pays interest. Tax claims secured by liens are treated as secured claims which must be paid in full at market rate if they are not paid in full on effective date of reorganization plan.

Other comments: Tax priorities were limited in duration in the 1978 Bankruptcy Code, along with priority claims in general. They have not been further amended since that time. Reference materials: Senate Report 95-989 (1978); House Report 95-595 (1977); Report of the Commission on the Bankruptcy laws of the U.S., H.R. Doc. No. 93-137 (1973); United States Trustee Program, Preliminary Report on Chapter 7 Asset Cases 1994-2000 (June 2001) contains statistics on receipts and disbursements to classes of creditors.

Information furnished by:

Barbara K. Day
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Committee Reporter

Date: May 22, 2005

VENEZUELA

Taxes: Individual and corporate income tax, withholding taxes, value added tax, stamp tax on transactions, municipal gross income tax on businesses. Draft 05-22-05

Enforcement: Interest and penalties; tax authorities, when they are authorized by law to do so, have authority to forgive interest and penalties, but not unpaid taxes, which can only be forgiven by special law. 4 year statute of limitations on enforcement. Tax authorities are entitled to an executory process before Venezuelan courts whereby they can proceed to seize assets in a very expedited way. In addition, the genuineness and authenticity of all information and facts contained in the tax assessment issued by tax authorities is presumed, and tax debtors have the burden of proving that they are false.

Insolvency Law: Insolvency Procedure and Moratorium Procedure (for corporation that has liquidity problems) under Venezuelan Commercial Code of 1919.

Tax Claims in Liquidation: Organic Tax Code grants a general privilege for taxes, interest and penalties over all assets except assets subject to mortgage or pledge, and claims for wages and social security. Civil Code specifies priority for national and municipal taxes and contributions over all movable assets. Special contributions and registration fees relating to real estate have priority with regard to the real estate. The filing of an insolvency procedure does not stay collection of secured or priority claims, including tax claims, and such tax claims continue to accrue interest.

Tax Claims in Rehabilitation: Same treatment for tax claims in moratorium procedure as in insolvency procedure.

Other comments: Prior to 2001, the Tax Code priority was restricted to taxes for the current year and two preceding years, with no priority for interest or penalties. In 2001 the Tax Code was changed to eliminate these restrictions.

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