STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition

of

**BTG PACTUAL NY CORPORATION**

for Revision of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Period January 1, 2012 through December 31, 2013.

DETERMINATION
DTA NO. 827577

Petitioner, BTG Pactual NY Corporation, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under article 9-A of the Tax Law for the period January 1, 2012 through December 31, 2013.

A hearing was held before Kevin R. Law, Administrative Law Judge, in New York, New York, on February 27, 2018 with all briefs to be submitted by September 14, 2018, which date began the six-month period for the issuance of this determination. Petitioner appeared by PriceWaterhouse Coopers (Michael Zagari, Esq.). The Division of Taxation appeared by Amanda Hiller, Esq. (Jennifer M. Baldwin, Esq., of counsel).

## *ISSUES*

I. Whether petitioner, as the sole member of two single member limited liability companies, one of which is a registered broker-dealer, may use broker-dealer customer-based sourcing rules in computing its business allocation percentage to source its receipts from another limited liability company that is not itself a broker-dealer.

II. Whether Brazilian Income Withholding Tax is required to be added back to federal taxable income in computing entire net income pursuant to Tax Law § 208 (9) (b) (3).

## *FINDINGS OF FACT*[1]

1. Petitioner, BTG Pactual NY Corporation, is incorporated under the laws of the State of New York. Petitioner is a wholly-owned subsidiary of BTG Pactual Holding Internacional S.A. BTG Pactual Holding Internacional S.A., in turn, is a wholly owned subsidiary of Banco BTG Pactual S.A., a Brazilian investment bank.

2. Petitioner is the sole member of both BTG Pactual US Capital LLC (US BD) and BTG Pactual Asset Management US LLC (US AM). Both US BD and US AM are single member limited liability companies (SMLLC).

3. US BD commenced operations as a broker-dealer in 2009. US BD is an introducing broker-dealer providing execution of Latin American securities to investors.

4. US BD is registered as a broker-dealer with the Securities and Exchange Commission (SEC) (registration number 8-68148) under the Security Exchange Act of 1934.

5. US BD is also registered as a broker-dealer with the Financial Industry Regulatory Authority (FINRA) and maintains Central Registration Depository (CRD) number 149486.

6. US BD is subject to the SEC's Uniform Net Capital Rule, SEC Rule 15c3-1, which requires the maintenance of minimum net capital.

7. US BD, a resident of the United States for tax purposes, earned income on stock trades and underwriting activities from Brazilian sources, and was therefore subject to Imposto de Renda Retido na Fonte, or Withholding Income Tax, in Brazil (Brazilian Withholding Income Tax).

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[1] The parties executed a stipulation of facts in connection with this matter. Such stipulated facts have been substantially incorporated into the findings of fact set forth herein.

8. US AM commenced operations in 2011. US AM is registered as an investment adviser with the SEC (registration number 8-0260014) under the Investment Advisers Act of 1940. US AM also maintains CRD number 152538. US AM earned fees for providing management and advisory services to BTG Pactual Global Asset Management Limited (GAM) and BTG Pactual Absolute Return Il Master Fund, L.P. (ARF Il). US AM also earned trading income or commissions from various third parties located outside of New York. GAM is the main investment adviser for BTG Pactual global hedge funds and sub-contracted US AM as sub-adviser to manage the United States' based trading strategies.

9. GAM is a wholly owned subsidiary of BTG Pactual Holding Internacional S.A., which is a wholly owned subsidiary of Banco BTG Pactual S.A.

10. GAM's address is Clarendon House 2 Church Street, Hamilton HM 11, Bermuda, and ARF II's address is Maples Corporate Services Ltd, Cayman Islands.

11. US AM is listed on US BD's FINRA BrokerCheck Report as an organizational affiliate of US BD because US AM and US BD are under the common ownership of petitioner.

12. For SEC and FINRA purposes, petitioner, US BD and US AM are separate legal entities.

13. As separate legal entities for SEC and FINRA purposes, neither petitioner nor US AM are registered as broker-dealers with the SEC or FINRA, nor are they are subject to the SEC's Uniform Net Capital Rule, SEC Rule 15c3-1.

14. As separate legal entities for SEC purposes, neither petitioner nor US BD are registered as investment advisers with the SEC.

15. Pursuant to an expense sharing agreement, US AM furnished US BD with office space, certain personnel, information technology support, and shared services, such as human resources, legal, operations and finance.

16. Except for the services described in the expense sharing agreement, US BD does not perform services on behalf of US AM and US AM does not perform services on behalf of US BD.

17. For federal income tax and New York State corporation franchise tax purposes, US BD and US AM are treated as disregarded entities.

18. For the 2012 and 2013 tax years, petitioner filed U.S. Corporation Income Tax Returns (form 1120) with the Internal Revenue Service and timely filed General Business Corporation Franchise Tax Returns (form CT-3) and General Business Corporation MTA Surcharge Returns (form CT-3M/4M) with the Division.

19. In 2012, Petitioner reported total receipts of $243,018.306 comprised of the following:

US BD Receipts

| | |
|---|---|
| Commissions - ADR | $11,508,225.00 |
| Equity Secondary - Brazil | $12,687,486.00 |
| Fixed Income Referral Fee | $1,008,230.00 |
| Placement Fees | $23,025,291.00 |
| Research Income | $5,169,509.00 |
| Trading Income | $747,906.00 |
| Total | $54,146,647.00 |

US AM Receipts

| | |
|---|---|
| Advisory Fees | $70,788,173.00 |
| Management Fees | $30,989,306.00 |
| Performance Fees | $85,698,158.00 |
| Trading Income | $1,396,122.00 |
| Total | $188,871,659.00 |

20. In 2013, petitioner reported total receipts of $179,806,361.00 comprised of the following:

US BD Receipts

| | |
|---|---|
| Commissions - ADR | $10,683,599.00 |
| Equity Secondary - Brazil | $13,839,028.00 |
| Fixed Income Referral Fee | $1,168,853.00 |
| Placement Fees | $40,401,607.00 |
| Research Income | $3,402,473.00 |
| Trading Income | $2,175,443.00 |
| Dividends/Wire Fee | $892,013.00 |
| Total | $72,563,016.00 |

US AM Receipts

| | |
|---|---|
| Advisory Fees | $29,534,059.00 |
| Management Fees | $32,529,365.00 |
| Performance Fees | $35,175,362.00 |
| Commissions -ADR | $1,538,782.00 |
| Monetary Variation | $148,114.00 |
| Total | $105,925,682.00 |

Petitioner also earned $1,317,663.00 in its own right.

21. On its originally filed forms CT-3 for 2012 and 2013, petitioner sourced US BD's receipts utilizing the registered broker-dealer sourcing rules of Tax Law former § 210 (3) (a) (9) and sourced the US AM receipts based on where its services were performed pursuant to Tax Law former § 210 (3) (a) (2) (b).

22. Petitioner deducted Brazilian Withholding Income Tax in computing federal taxable income on its form 1120 in the amount of $2,838,840.00 for the tax year ending December 31, 2012 and $3,397,476.00 for the tax year ending December 31, 2013.

23. On its originally filed CT-3 return for 2012, Petitioner reported the following items:

a. petitioner added back the Brazilian Withholding Income Tax in the amount of $2,838,840.00 in computing entire net income; and

b. petitioner, in computing its business allocation percentage (BAP), reported New York State receipts of $199,542,479.00, worldwide receipts of $243,018,306.00 and a New York State receipts factor of 82.1101%.

24. On its originally filed CT-3 return for 2013, Petitioner reported the following items:

a. petitioner added back the Brazilian Withholding Income Tax in the amount of $3,397,476 in computing entire net income; and

b. petitioner, in computing its BAP, reported New York State receipts of $119,354,763.00, worldwide receipts of $179,755,526.00, and a New York State receipts factor of 66.3984%.

25. For the tax years ending December 31, 2012 and December 31, 2013, petitioner timely filed amended forms CT-3 and CT-3M/4M.

26. Petitioner amended its forms CT-3 for 2012 and 2013 to reflect the following changes:

a. the receipts factor of the BAP was modified as a result of sourcing the US AM Receipts

via the registered broker-dealer sourcing rules of Tax Law former § 210 (3) (a) (9);

b. the Brazilian Withholding Income Tax was no longer added-back in computing entire net income.

27. In computing its BAP on its amended 2012 CT-3, petitioner reported New York State receipts of $13,678,254.00, worldwide receipts of $243,120,662.00, and a New York State receipts factor of 5.6261 %.

28. In computing its BAP on its amended 2013 CT-3, petitioner reported New York State receipts of $14,343,050.00, worldwide receipts of $178,931,450.00, and a New York State receipts factor of 8.0159%.[2]

29. The Division began an audit of petitioner's amended CT-3's for the tax years ending December 31, 2012 and December 31, 2013.

30. On March 23, 2016, petitioner filed a petition with the Division of Tax Appeals seeking a refund in the amount of $7,460,464.00 for the tax years ending December 31, 2012 and December 21, 2013, as six months had elapsed since the filing of the amended returns.[3]

31. After petitioner filed a petition with the Division of Tax Appeals, the Division continued auditing the claim for refund.

32. Subsequently, on August 2, 2017, the Division issued NYT-G-17(2)C, entitled "Receipts Factor Methodology For The Owners Of Single Member Limited Liability Companies That Are Registered Broker-Dealers."

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[2] The everywhere receipts of the 2012 and 2013 BAPs varied slightly between the original and amended Forms CT-3 due to certain de minimis adjustments that are not at issue here.

[3] ***see*** Tax Law § 1089 (c).

33. Petitioner presented the testimony and report of Kathleen K. Malone, Esq., a managing director at Duff & Phelps, LLC. Ms. Malone was qualified as an expert in broker-dealer compliance and regulatory matters. Ms. Malone previously was a staff accountant with the SEC, where she led numerous examinations of broker-dealer and registered investment advisers, and approximately three years as a securities compliance examiner at FINRA, where she examined broker-dealers for compliance with FINRA rules and regulations.

34. Ms. Malone testified that petitioner's structure is prevalent throughout the securities industry. The majority of firms in the financial services industry structure their broker-dealers and investment advisers in separate legal entities in order to reduce compliance and regulatory costs and burdens. Approximately 5% of registered investment advisers were also registered as broker-dealers, and approximately 18% of registered broker-dealers were also registered as investment advisers. Ms. Malone opined that majority of financial services firms separate their broker-dealers and investment advisers into separate legal entities because of the burdensome regulatory requirements imposed on broker-dealers by the Securities Exchange Act of 1934. For example, broker-dealers are subject to stringent recordkeeping requirements and net capital requirements (e.g., they must maintain sufficient net capital at all times prior to, during and after purchasing or selling securities). Broker-dealers also have strict requirements regarding the licensing and supervision of their personnel and customers (including strict gift thresholds, continuing education, anti-money laundering, and electronic communication review requirements), which do not apply to investment advisers.

35. The parties have stipulated that if it is determined that petitioner may use the registered broker-dealer sourcing rules of Tax Law former § 210 (3) (a) (9) to source the US AM

receipts, and it is determined that the Brazilian Withholding Income Tax is not required to be added back to its federal taxable income pursuant to Tax Law § 208 (9) (b) (3) for the tax years ending December 31, 2012 and December 31, 2013, the amount of petitioner's refund will be $7,460,464.00, plus interest.

36. The parties have stipulated that if it is determined that petitioner may use the registered broker-dealer sourcing rules of Tax Law former § 210 (3) (a) (9) to source the US AM receipts, and it is determined that the Brazilian Withholding Income Tax is required to be added back to its federal taxable income pursuant to Tax Law § 208 (9) (b) (3) for the tax years ending December 31, 2012 and December 31, 2013, the amount of petitioner's refund will be $7,427,310.00, plus interest.

37. The parties have stipulated that if it is determined that petitioner may not use the registered broker-dealer sourcing rules of Tax Law former § 210 (3) (a) (9) to source the US AM receipts, and it is determined that the Brazilian Withholding Income Tax is not required to be added back to its federal taxable income pursuant to Tax Law § 208 (9) (b) (3) for the tax years ending December 31, 2012 and December 31, 2013, the amount of petitioner's refund will be $395,845.00, plus interest.

38. Petitioner and the Division have stipulated that if it is determined that petitioner may not use the registered broker-dealer sourcing rules of Tax Law former § 210 (3) (a) (9) to source the US AM Receipts, and it is determined that the Brazilian Withholding Income Tax is required to be added back to its federal taxable income pursuant to Tax Law § 208 (9) (b) (3) for the tax years ending December 31, 2012 and December 31, 2013, petitioner will not be entitled to any refund.

***CONCLUSIONS OF LAW***

A. Article 9-A of the Tax Law imposes a franchise tax on all domestic and foreign corporations doing business, employing capital, owning or leasing property, or maintaining an office in New York State (Tax Law former § 209 [1]).[4]

B. In New York, corporate taxpayers report their tax liability based on their computation of the highest of four income bases, one of which is their entire net income base (Tax Law former § 210 [1] [a-d]). A corporation's entire net income base is computed by calculating its entire net income, generally consisting of its investment income (Tax Law former § 208 [6]) and its business income (Tax Law former § 208 [8]; ***see*** Tax Law former §§ 210 [1] [a]; [3]; 208 [9]; 209 [1]). In turn, the corporation's investment income and business income are allocated to New York pursuant to the corporation's investment allocation percentage (IAC) (Tax Law former § 210 [3] [b]) and its BAP (Tax Law former § 210 [3] [a]), with the resulting amounts totaled to arrive at the corporation's entire net income base. The BAP consists entirely of the receipts factor (Tax Law § 210.3 [a] [10] [A] [ii]), the determination of which is at issue herein.

C. The BAP is computed by dividing the corporation's New York business receipts by its total business receipts. In general, a corporation's New York business receipts are defined as: (i) sales of tangible personal property shipped to points within the state; (ii) services performed within the state; (iii) rentals from properties situated, and royalties from the use of patents or copyrights, within the state; and (iv) all other business receipts earned within the state (Tax Law former § 210 [3] [a] [2] [A-D]). Thus, with respect to investment advisors, their receipts were

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[4] An additional surcharge tax is imposed, per Tax Law former § 209-B, upon corporations located or doing business within the Metropolitan Commuter Transportation District (MCTD).

sourced to New York to the extent the services generating such receipts were performed in New York (Tax Law former § 210 [3] [a] [2] [B]; 20 NYCRR 4-4.3 [a]). However, in the case of registered securities or commodities broker or dealers, Tax Law former § 210 (3) (a) (9) provided customer-based sourcing rules for certain categories of receipts, including brokerage commissions, margin interest, certain underwriting revenues, interest on certain loans to affiliated entities, account maintenance fees, and fees for management and advisory services.

D. In this case, petitioner, as the sole member of both US BD and US AM, initially computed its franchise tax liability by sourcing US BD's receipts based upon the broker-dealer rules set forth in Tax Law former § 210 (3) (a) (9) and by sourcing US AM's receipts based upon where the services were performed under Tax Law former § 210 (3) (a) (2) (B). In filing its claims for refund, petitioner sourced US AM's receipts using the broker-dealer sourcing rules. Petitioner's theory is that since US BD is disregarded and deemed a division under the check-the-box regulations (Treas Reg §§ 301.7701-1 to 301.7701-3), petitioner is deemed a registered broker-dealer and can use the broker-dealer sourcing rules not only for US BD's receipts but also for US AM's receipts as well.

A single-member LLC may elect to be classified as an association taxable as a corporation or to be disregarded as a separate entity, resulting in pass-thru taxation of its sole member (Treas. Reg. §301.7701-3 [a] ). If no election is made, a single-member LLC is disregarded as an entity separate from the owner for federal tax purposes (Treas. Reg. §301.7701-3 [b] [1] [ii]). If the single-member LLC is disregarded as an entity for federal tax purposes, "its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner" (Treas. Reg. § 301.7701-2 [a]).

F. Here, there is no dispute that, as the sole member of US BD, a disregarded entity for federal tax purposes, petitioner properly sourced US BD's receipts using the broker-dealer sourcing rules. However, US BD's status as a registered broker-dealer cannot carryover to the non broker-dealer receipts earned by US AM. Stated simply, a disregarded entity that is not a registered broker-dealer is not disregarded under the check-the-box regulations in determining where its receipts are sourced for New York State franchise tax purposes. "The check-the-box regulations merely determine 'the tax consequences for that particular entity'" (***Mellow Partners v Commr.*** 890 F3d 1070, 1075 [DC Cir. 2018] quoting ***Seaview Trading, LLC v Comm'r***, 858 F3d 1281, 1286 [9th Cir. 2017]). In ***Mellow Partners***, the Tax Court addressed the applicability of the small partnership exception to partnership proceedings under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) which exempts "small partnerships" from TEFRA's audit and litigation proceedings. The exemption does not apply if any of its partners is a "pass-thru partner" within the meaning of 26 USC § 6231 (a) (9). The court found that a partnership consisting of two LLC's was ineligible for the small partnership exception even though the LLCs were classified as "disregarded" under check-the-box regulations. The court held "[t]he check-the-box regulations do not determine the tax consequences of a 'separate, higher-level partnership' composed of two or more disregarded entities, nor do they specify who holds a partnership interest for TEFRA purposes" (***id.***). The same rationale applies herein, as the check-the-box regulations, while dictating which entity is taxed on the LLC's receipts, do not dictate whether US AM's receipts are broker dealer receipts for purposing of sourcing receipts within and without New York (***accord Pierre v Commr.***, 133 TC 24 [2009] [where the Tax Court held that although the check-the-box regulations govern how a single-member LLC will be taxed for

federal tax purposes, i.e., as an association taxed as a corporation or as a disregarded entity, those regulations do not apply to disregard the LLC in determining how a donor must be taxed under the federal gift tax provisions on a transfer of an ownership interest in the LLC]).[5]

Petitioner contends that while the legislative intent of Tax Law former § 210 (3) (a) (9) was to provide customer-based sourcing for broker-dealers, these favorable sourcing rules were also meant to apply in situations such as here where the corporate taxpayer's broker-dealer operations and investment advisory functions are divided into separate LLC's. Here, while it is clear that the Legislature extended customer based sourcing rules to registered broker-dealers, there is no indication that customer based sourcing rules were to apply to the receipts earned by non broker-dealer affiliates, such as US AM. As noted by the Division, the language of the statute is the clearest indicator of such intent (***see Matter of DaimlerChrysler Corp. v Spitzer***, 7 NY3d 653, 660 [2006]; ***Matter of Golub Corp. v New York State Tax Appeals Trib.***, 116 AD3d 1261, 1263 [2014]). The text of Tax Law former § 210 (3) (a) (9) is unambiguous. US AM is not a registered broker-dealer, so the customer based sourcing rules applicable to broker dealers do not apply to source the receipts earned by US AM in computing petitioner's BAP and petitioner's ultimate tax liability. Had the Legislature intended for customer-based sourcing rules to apply to the financial services industry as a whole, as petitioner asserts, it would have provided for such in the language of the statute (***see Matter of Landschaftliche Brandkasse Hannover***,

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[5]As further support for its arguments, petitioner relies upon Tax Law § 43, which provides that a SMLLC that is disregarded for federal income tax purposes must also be disregarded for purposes of determining whether the taxpayer that includes the SMLLC satisfies the requirements to be eligible for tax credits against the personal income tax and franchise tax. Tax Law § 43 also requires that if the taxpayer is the sole member of multiple LLCs, the sole member and all LLCs are treated as a single entity. By its plain language, section 43 is specifically limited to credit eligibility and simply has no relevance to the present inquiry.

Tax Appeals Tribunal, September 11, 2017).[6] Petitioner deliberately chose to structure its broker-dealer operations and investment advisory operations into two separate entities because of the regulatory burdens associated with being an entity dually registered as a broker-dealer and an investment advisor. Petitioner is bound by the tax consequences of the form chosen (***see Matter of CS Integrated v Tax Appeals Trib. of State of N.Y.***, 19 AD2d 886, 889 (3rd Dept 2005).

F. Petitioner also argues the Division's position violates the due process, equal protection and commerce clauses of the United States Constitution by claiming the Division has treated it differently than it would a corporation that itself is a registered broker-dealer. Petitioner's arguments are unfounded. First, while petitioner asserts that the Division's position results in a violation of the due process and commerce clauses of the United States Constitution, it has not articulated any argument in support thereof, nor are any violations apparent under the facts of this case. To the extent it is alleged that the Division's position is an equal protection violation, petitioner has not made a showing of uneven treatment (***see Matter of Karlsberg***, Tax Appeals Tribunal, March 1, 2010, ***confirmed Matter of Karlsberg v Tax Appeals Tribunal***, 85 AD3d 1347 [3rd Dept 2011], ***appeal dismissed*** 17 NY3d 900 [2011]). Here the only "uneven" treatment is that petitioner's receipts from US BD are sourced using the customer based sourcing rules while its receipts from US AM are sourced based upon where the services generating such

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[6] It is noted that the New York Legislature amended the Tax Law to change the allocation of service receipts, such as US AM's, to a customer sourcing approach beginning in 2015 (Tax Law § 210-A; L 2014, ch 59 eff January 1, 2015). The memorandum in support of the amendment states that "New York's [then] current sourcing rules fail to acknowledge the shift to a service-based economy. Companies that generate significant receipts from services can incur greater tax liability if they increase their activity in New York. This reform proposal would source a business's receipts to the location of its customers. This assigns income to various states based on where the customers are located and eliminates factors that would increase tax if a company increased its activity in New York. This removes a previous disincentive to locating in New York" (2014-2015 New York State Executive Budget, Revenue Article VII Legislation, Memorandum in Support, Part A).

receipt were performed. It is a well founded maxim that "the equal protection clause does not prevent State Legislatures from drawing lines that treat one class of individuals or entities differently from others unless the difference in treatment is palpably arbitrary or amounts to an invidious discrimination" (***Trump v Chu*** 65 NY2d 20, 25 [1985] ***appeal dismissed*** 474 US 915 [1985] [internal quotation marks omitted]). Petitioner has made no showing that sourcing these receipts differently is palpably arbitrary or results in invidious discrimination.

G. Finally, petitioner also claimed a refund based upon its assertion that it should not have added back Brazilian Withholding Income Tax to its federal adjusted gross income on its originally filed corporate franchise tax reports. Tax Law § 208 (9) defines "entire net income" as the taxpayer's "total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department . . . ." Pursuant to Tax Law § 208 (9) (b) (3) entire net income shall be determined without the exclusion, deduction or credit of "taxes on or measured by profits or income paid or accrued to the United States, any of its possessions or to any foreign country, including taxes in lieu of any of the foregoing taxes otherwise generally imposed by any foreign country or any possession of the United States." Thus, it must be determined whether the Brazilian Withholding Income Tax is a tax on or measured by profits or income.

Petitioner bears the burden of proving the nature of the foreign tax laws and demonstrating entitlement to the exclusion (***Matter of Felmont Oil Corp.***, Tax Appeals Tribunal, May 9, 1996, citing ***Matter of Howes v Tax Appeals Trib.***, 159 AD2d 813 [3rd Dept 1990]). Petitioner has provided an english translation of the legislation referred to as the Brazilian Withholding Income Tax. Article 682 of Decree No. 3000 of 26 March 1999 provides for a tax on "[t]he income and

the proceeds of any nature from sources located in the country . . . by individuals or legal entities resident or domiciled abroad." Article 685 of Decree No. 3000 of 26 March 1999 further provides that "[t]he income, capital gains and other benefits paid, credited, delivered, employed or remitted, by source located in the county, to individual or legal entities resident abroad" are subject to tax at the rates of 15% or 25%, depending on the type of income paid. As stipulated by the parties, US BD earned income on stock trades and underwriting activities from Brazilian sources and was subject to the Brazilian Withholding Income Tax.

Petitioner argues that the Brazilian Withholding Income Tax is a gross receipts tax rather than an income tax. Petitioner cites no authority for this proposition. The translated version contained in the hearing record does not support petitioner's argument. Instead, the statute, as translated, indicates that the tax is "on or measured by profits or income" (Tax Law 208 [9] [b] [3]). Moreover, the fact that a tax is imposed upon the gross amount of income without benefit of any deductions does not establish that the tax is upon gross receipts as opposed to a tax on income (***see Santa Eulalia Mining Co. v Commr.,*** 2 TC 241 [1943] ***appeal dismissed*** 142 F 2d 450 [9th Cir 1944]). In summary, petitioner has not met its burden of proving that the Brazilian Income Withholding Tax is not a tax on or measured by profits or income.

H. Accordingly, the petition of BTG Pactual NY Corporation is denied and the Division of Taxation's denials of BTG Pactual NY Corporation's claims for refund are sustained.

DATED: Albany, New York
March 7, 2019

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE