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Chile: International post BEPS audit strategies

As everyone will know, on January 1, 2016 came into force the regulations promoted by the OCDE, known as the BEPS Plan, an acronym for "Base Erosion and Profit Shifting", a plan supported by the member countries of the G20 that has, among other objectives, the intention to provide governments and their different tax authorities with tools to combat the international tax planning that is developed taking advantage of the regulatory gaps and inefficiencies in information and control between different tax authorities.

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Chile: Estrategias fiscalización internacional post BEPS

Como todos conocerán, el 1 de enero de 2016 entró en vigor la normativa impulsada por la OCDE, conocida como Plan BEPS, acrónimo de "Base Erosion and Profit Shifting", un plan apoyado por los países integrantes del G-20 que tiene, entre otros objetivos, la intención de dotar a los gobiernos y a sus diferentes autoridades tributarias de herramientas para combatir la planificación fiscal internacional que se desarrolla aprovechando las lagunas normativas e ineficiencias en materia de información y control entre diferentes autoridades tributarias.

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International Post BEPS Audit Strategies

Estudio Jurídico Otero

Chile

As everyone will know, on January 1, 2016 came into force the regulations promoted by the OCDE, known as the BEPS Plan, an acronym for “Base Erosion and Profit Shifting”, a plan supported by the member countries of the G20 that has, among other objectives, the intention to provide governments and their different tax authorities with tools to combat the international tax planning that is developed taking advantage of the regulatory gaps and inefficiencies in information and control between different tax authorities.

In other words, this plan aims to provide governments with a global framework with the intention of adapting to a greater transparency that makes it possible to fight against tax fraud and against the use and abuse of all the structures and / or territories of lax taxation.

This plan was a legislative exercise in the different member countries of the OCDE that has allowed the enactment of local regulations in each country, laws, instructions and processes that try to minimize these “black spaces” legislative.

Through different mechanisms such as the exchange of information, greater control over capital movements and specifically in Chile, the new regulations on controlled entities abroad (CFC by its acronym in English), standards that mainly seek to avoid the use of entities abroad to obtain passive income, with the sole purpose of suspending their taxation in Chile). This seeks to achieve greater effective control through these mechanisms in companies or corporations that operate in different international tax systems.


A clear consequence of this whole process is the application of stricter fiscal policies in the area of cross-border operations, with a greater emphasis especially on the prices of **Transfers or Transfer Prices** (hereinafter **PT**). In an increasingly global economic and commercial market, the planning of any type of operation among the economic groups that operate in different systems takes on greater relevance on a day-to-day basis.

In response to this new scenario, it would be necessary to reformulate the hackneyed terms, “taxes are not exported”, “tax administrations have little information on plurinational operations”, etc.

Obviously the objective of all this regulation is to destroy these axioms.

In recent years, the tax authorities have made a significant investment in technological and digital media, which has meant a real revolution in the exchange of information, but with a focus on increasing the amount of data crossed between them. As of today, investments, salaries, capital gains, purchases and sales of assets, etc., are public domain between these organizations with an automatic exchange of information. Forgetting therefore the previous system of exchange at the request of a party.

Returning to the **PTs**, it is currently very important to stop at each multinational group to develop a clear and thorough policy of the transactions that occur daily between the different companies of a group in the different countries in which it operates. We refer spe-



cifically to loans, commercial operations, discounts, rappels, transfer of capital and personnel, etc.

This “[post BEPS](#)” world must involve an interaction between the different actors of a group, not only the financial or fiscal area, but also the operations, production, human capital, compliance departments and even the business departments. of RSC or corporate social responsibility.

All with a unique and concrete purpose that is to process and document within each group [PT](#) policy among different societies, establishing the formal requirements, the price and interest policy and the financial planning of the same, among other aspects.

It is important to note that the governments are making a big effort to regulate this issue in order to provide the tax authorities with the control and review tools - and why not say it to collect- to supervise these operations in an increasingly global world (enough review the current controversies on the payment of taxes on online sales).

Finally, a mention of Chile, where the Internal Revenue Service (SII) has its focus on overseeing these cross-border operations, establishing on the one hand a greater demand for information through sworn statements, such as incorporation, through the Exempt Resolution No. 126 of December of 2016, of the obligation to submit, as of the year 2016 as an annex to the Annual Transfer Pricing Statement (DJ1907), the Country by Country Report (DJ1937) by parent or controlling entities of the Groups of Multinational Companies that have residence in Chile, in order to

guarantee a fiscal system of greater transparency. On the other hand, in the real audit processes, they are being extremely rigorous with the formalities such as notarial documents, contracts, invoices, applied rates, etc. In other words, it is very important for companies to document these situations in a timely manner in order to avoid problems and sanctions in the future, adopting transparent and clear processes regarding transnational operations, formulas and precise deadlines in which they must be carried out.

Alfredo Moreno
Estudio Jurídico Otero

The tax of the future. New data tax.

ILP Global Mertens Thiele

Germany

Las May 30 Chancellor Angela Merkel said at the Global Solution Summits in Berlin that data taxes is the issue of justice of the future and spoke of the future tax burden on data. The reason, considers them the “merchandise” of the 21st century..

Data is a source of income for new businesses, and we are in a world where citizens give their data free to companies that earn money with it, it is necessary to make a change in the tax system.

In the same way that the goods have a price and their corresponding tax must be considered to the personal data as a new merchandise to which a price and a tax are attributed. The Chancellor proposes to structure a system that reforms this situation quickly, the German government seeks to organize the so-called “ownership of the data” and structure a tax system of them. The final reason is the value that these data have as merchandise.

Mrs Merkel clarifies that each person is a data provider and the consortiums earn a lot from it without giving anything back to consumers. This disease obviously should now be compensated by a tax. The logic is that the new taxes lead to tax revenues and these return to the general good.

The data that users give to the consortiums that operate on the internet are used to make profiles and thereby redirect the advertising of companies that have an interest in their products. Entrepreneurs need this type of information to increase their sales and that gives great value to personal data, a value that can

be quantified.

For years it has been criticized that large internet companies such as Google, do not pay taxes in Europe, It is necessary to reach an agreement on this issue at European level to prevent digital companies pay a minimum amount of taxes, much lower than the industries classic, establishing their tax offices outside Europe or in tax havens.

The idea is that digital companies pay their taxes where their users are and not where they have their main establishment.

This will also generate new resources for the EU that will make it more autonomous and less dependent on the contributions of the EU Member States.

Now that the United States has begun to impose tariffs on European products, the problem of the lax European imposition of data processing companies in the United States is being addressed.

It seems that in the near future will be increasing the taxation of IT technology companies whose business is based on the collection and processing of personal data.

Oral Trials in Commercial Matters in Mexico

By: Lic. Roberto A. Segura Martínez

Bitar Abogados

Mexico

On January 25, 2017 was published in the Federal Official Gazette (“Diario Oficial de la Federación”) the reform and addition of various provisions to the Commercial Code, which entered into force twelve months after their publication, in an attempt to answer to the society’s needs, therefore Mexico is updating trials in commercial matters by implementing oral trials.

The first year, counted from the entry into force of the aforementioned reform, commercial trials will be processed orally when the amount in dispute is less than \$1’000,000.00 (ONE MILLION MEXICAN PESOS), which is approximately USD \$50,000.00 (FIFTY THOUSAND DOLLARS, CURRENCY OF LEGAL COURSE OF THE UNITED STATES OF AMERICA). From the second year of its entry into force, commercial trials will be processed orally when their amount in dispute is less than \$1’500,000.00 (ONE MILLION FIVE HUNDRED THOUSAND MEXICAN PESOS), and finally from the third following year, all commercial disputes without limitations of amount will be processed orally.

This new system seeks to:

- Streamline the delivery of justice before the courts, prevailing the principles of orality, publicity, equality, immediacy, contradiction, continuity and concentration, these last two perhaps, the most important to apply, since it is sought to solve conflicts in a shorter period than usual giving speed to the delivery of justice.
- Likewise, it seeks to solve disputes in proceedings in presence of all the parties involved by informing them about all the court actions taking

in place at the moment, pursuing equality between the parties in order to link the evidence of the plaintiff and the defendant and that they are heard by the Judge, trying to carry out all actions in a continuous and consecutive way, in order for the Judge to be able to solve the dispute between the parties in a single act.

- Likewise, it is sought that the impartation of justice involves the active participation of the parties with the judge, in order for the latter to solve any doubts that the parties might have in a colloquial language so they are able to understand all judicial actions that are being carried out in the process. This changes in the law try to make judicial proceedings more humane and fair, making sure that there are no doubts about the process. On the other hand, the Judge is empowered to exhort the plaintiff and the defendant to come to an agreement, so the disputes is solved in a conventional manner, thereby the reform provides an alternative for the parties to solve commercial matters by themselves with the help of the judge.

In the face of such change, it is essential to adapt the forensic practice to the application of this new oral procedural system; either from the structure of the Courts, adapting their facilities, as well as the actions of judges and litigators; undoubtedly a breakthrough in the Mexican commercial justice system.

Tax duties after Funding a Company in Spain

ILP Abogados

España

Working for yourself or owning a company sometimes can be quite difficult. Because of these challenges, we have prepared a small summary of the most relevant aspects that you need to know including financial obligations that one needs to know prior to starting the company.

Because there are [certain obligations required before starting your company](#), we have to:

- Present a census declaration following the model 036 or 037.
- However, the obligations during start of a company we have to present model 840 of the Economic Tax Activities.
- With these obligations, it is also necessary to the rules relating to the Economic Tax Activities, the informative declarations and obligations corresponding to the developing activities.

First of all, it is necessary to mention the [differences of taxation of autonomous workers and the business companies](#). The autonomous workers, in addition to the people without legal representation, pay their profits to the IRPF in four trimestral payments. The business companies on the other hand, pays taxes to the Tax Society.

Autonomous Workers

An autonomous worker is the person who classifies his own production to produce and distribute goods and services. But what often escapes us is what an autonomous worker has to do.

- An autonomous worker has to register with the treasury before starting his economic activity
- They have to present a Census Declaration, detailing the activity, place, and taxes that will affect it.
- As we have mentioned before, an autonomous worker must pay quarterly installments to the IRPF by direct or object estimations.
- At the same time, they have to fill the tax income return following the D-100 model. They are given the option of making the payment in one or two installments without interest.

Anonymous or Limited societies

We should mention the two societies together because the financial obligations are the same.

- Before starting the economic activity, they should ask for an NIF, following the 036 model.
- At the end of every fiscal year they should record their annual revenues because this is the most important aspect to the Society of Taxes since it serves to configure their tax base. The same form is necessary for day to day transactions in the accounting books.

Both societies pay taxes to the Tax Society whose tax period coincides with the fiscal year; however, the fiscal year cannot exceed the 12-month closing date. In addition, both societies have to pay the Economic Activities Tax except if they have net revenue less than a million euros.



The IVA common elements

When talking about the IVA, we have to discuss the common elements between autonomous workers and commerce entities. They follow a quarterly or monthly period of liquidation and they have to turn in the 303 model.

Retentions

Certain people or entities have to retain or deposit a pre-established amount into the treasury. If there are workers' and professionals' retentions they have to present the 111 model; on the other hand, if there are rent retentions they will follow the 115 model and make payment to the Tax agency.

Annual Declaration of Third-party Operations

The business companies that create economic activities should present the 347 model in February when they have performed operations that are greater than 3.005,06 euros in the natural year that they make the declaration.

The business companies are obligated to present their fiscal statements online and with electronic certificates including their self-assessments and their census statements.

The I AGROMIN 2018 Convention and the Growth of the Economy for 2018

Estudio Laos, Aguilar, Limas & Asociados

Peru

Two weeks ago (from June 6th to June 8th) the I AGROMIN Convention was held in the city of Trujillo - La Libertad Region - a mining and agro-exporting area. In this meeting, representatives of agriculture, mining and state officials converged in order to collect certain guidelines - based on in of successful experiences developed in various regions of the country - that serve to implement appropriate public policies in order to both agricultural and mining activities, which are two important segments of the national economy, work in an articulated manner to exploit more effectively the enormous natural resources that Peru has, thus generating resources for the State, through taxes that contribute substantially to the economy of the country to close the existing gap in the deficit in infrastructure, education, health, science and technology, promoting the eradication of poverty, development and the welfare of the population.


In this line, the Central Reserve Bank of Peru has indicated that the global increase in the price of the main minerals exported by Peru; the increase in agro-exports, which have been growing steadily in the last 18 years to annual levels of 14.5%; the reactivation of the construction and manufacturing sectors; as well as the improvement in private investment will generate expectations in the GDP growth, referring that this factor could exceed 4.0% this year; Likewise, the annual inflation rate is estimated not to exceed 2%, with a highly positive surplus in the trade balance, hoping the actions of the Congress of the Republic and the political noise decrease.

In this I Convention it was possible to know, thanks to the studies carried out by the Geological Mining and

Metallurgical Institute of Peru (INGEMMET), the metallic mining potential of Peru until 2050 (without counting the potential of non-metallic mining, hydrocarbons or renewable energies) in a positive scenario like the one we are currently experiencing, has resources in the order of US \$ 758,000 millions and in a conservative scenario it would reach some US \$ 547,000 millions. This potential is located in the regions of Cajamarca, Apurímac, Piura and Pasco; Likewise, the regions of Arequipa, Ancash, Puno, Ica, Lima, La Libertad, Lambayeque, Moquegua and Tacna also have important mining projects on a level of intermediate wealth. Of these resources, 28% constitute income for the State as a result of the payment of Taxes and royalties while the mining canon would contribute substantially to the improvement of those region's economy, allowing to derive part of this income to enhance other development areas that each region requires.

However, it is public knowledge that mining requires in its productive process, the element-water liquid, which is also required for agriculture; it is also true that mining always generates disturbance in the environment, reason why it is necessary to implement more effective measures to mitigate or remedy the possible damages generated by mining activity as well as promoting the joint use of water. The preservation of these last two elements is the factor that generates certain conflicts between mining activity, agriculture and the environment.

If we take into consideration that agriculture in Peru is disparate due, on one hand, there are extensive areas of the national territory planted with modern irrigation techniques and high productivity that are destined for



agricultural exports that generate annual income of more than US \$ 6,700 million; as well as other irrigation projects that would expand the agricultural frontier are coming into operation, such as: I) the III stage of the CHAVIMOCHIC Project in the La Libertad region with more than 65,000 hectares; II) the Olmos Project in the Lambayeque region with 35,000 hectares; III) the Majes-Siguas in the Cusco-Arequipa regions with 30,000 hectares; IV) the Alto Piura Project in the Piura region with 30,000 hectares and; V) the Chinecas Project in the Ancash region with nearly 20,000 hectares, in the next five years an extension of 170,000 hectares of agricultural land with technified irrigation will be enabled, also destined for agro-exportation, with which it is estimated that for the next few years the income of foreign currency could be tripled for this item, so the expectations for this area of the economy are quite good. It is important to note that in Peru there are no limitations on the acquisition of land; The treatment for the local or foreign investor is the same and there is free entry or exit of foreign currency, without any restriction, so this will be a good market niche for domestic or foreign investors.

However, on the other hand we still have about 2'000,000 families, representing 34% of Peruvian households who live off the farm and manage about 2'000,000 hectares of crops that the vast majority use irrigation by gravity or ancestral techniques of irrigation and others are rainfed land, in these areas the productivity is low, therefore their economic income is reduced and their living conditions are lower, so it is urgent that the huge revenues of mining are managed with much greater efficiency so that they translate into better conditions of education, health, training, techni-

cal and financial assistance and the implementation of technified irrigation, as well as the formalization of agriculture and associativity to manage economies of scale needed in agriculture, with This will allow this population to integrate into modern agriculture with high productivity, improving living conditions, prosperity and well-being of a large segment of the Peruvian population.

With this purpose in mind, the State has issued Law N° 29736 - Law on Agricultural Productive Reconversion - and Regulation, in the same way, part of the income generated by mining (that can increase substantially according to mining potential indicated above) has been used in order to developing certain efforts to support these 2'000,000 Peruvian families can access modern means of agriculture, provide support in technical assistance and implementation of technified irrigation systems to improve the productivity of the field in this enormous amount of areas of cultivation that are currently underutilized. These actions allow auguring that we are re-entering the path of growth, hoping that our Congress and the political class will support with complementary measures.