

THE CHILEAN INTERNAL REVENUE SERVICE ADDS NEW SCHEMES TO ITS CATALOGUE

By including these new schemes, the Chilean Internal Revenue Service (the “SII”) intends to guide taxpayers in situations that may be subject to a tax audit, in accordance with Law No. 20,393 (the “Law”) dated November 25, 2009, thus granting greater legal certainty regarding potentially risky operations.

There are thirteen new cases referring to local operations and four having a cross-border reach. Most of them refer to corporate taxes, adding three Value Added Tax (“VAT”) payment cases and three cases under Law No. 16,271 on Inheritance, Allocations and Donations Taxes, as well as high personal wealth and multinational companies’ cases framed within the 2019 Tax Compliance Management Plan.

Some of the most interesting cases are the following:

1. Donation of social interests to minors in productive societies: In this case, the SII aims to prevent the parents’ tax evasion by involving the referred minors, even when a third party manages the corresponding assets. Currently there are 1,158 companies with minors among their partners or shareholders. A series of circumstances will be taken into account when determining whether the purpose sought by the donation is elusive or not as its goal cannot be solely the reduction of the parents’ tax basis.

2. Use of Private Investment Funds (“FIP”) in order to transfer funds to other countries: In this case, the SII means to avoid payment evasion of Chilean applicable taxes to these transfers. According to the information collected by the SII, in 2019 there were 581 FIP, with 4,143 participants or partners. The SII will review all circumstances connected with the creation and use of FIPs to determine whether tax avoidance exists therein.

3. Use of preferential foreign tax regimes or “tax havens” for income generated in Chile: The SII will closely review the use of companies located in tax havens in order to avoid taxes applicable to profits generated in Chile. An example of this is the sale of goods at cost value to a foreign related company, who then sells these goods to third parties at a higher value, without performing any activity that justifies the increase in such sale value. In 2018, 285 taxpayers carried out operations with companies in tax havens for \$ 2.5 billion.

4. Companies that set their domicile in parts of the country where there are tax exemptions that allow tax reductions to the group of companies to which they belong: In this case, the SII seeks to avoid that taxpayers breach the spirit of the exemption, which is the to promote regional development.

5. Use of a Market Maker for purposes other than the tax benefit set forth by Article No. 107 of the Income Tax Law: The SII will control whether the hiring of a market maker is done in order to increase a company's stock market presence, or solely to benefit shareholders in their stock sale and therefore avoiding paying taxes on their greater sales value. Thus, the SII will review the circumstances in which the hiring of the market maker took place and the real purpose had in mind.

6. Use of companies in order to obtain VAT refunds: Shareholders of companies that are free of VAT payment, use other of their companies that pay VAT in order to purchase real estate properties to rent them later to the non-VAT paying company. This is done in order to request the refund of the VAT incurred in the purchase of the furnished property by the second company, operation that will hereinafter be reviewed with special attention by the SII.

7. Assignments of real estate sale promises: Real estate sales prior to January 1, 2016 as well as sales made after such date though subject to a promise to sell executed prior to such date are VAT exempt. To avoid the abuse of assignments of the referred promises, the SII will control if the parties involved in such transactions (promising buyer-promising seller or assignee) are related parties. The amount of properties promised and subsequently transferred will also be considered as relevant aspects. On the other hand, the taxpayer must prove the underlying commercial reasons of the acts and the connection between the execution of promises of sale and their subsequent assignments.

8. Use of commercial current account (intercompany loans) to avoid VAT accrual: The SII seeks to prevent misuse of a commercial current account (intercompany loan) in terms that the payments made by one party to another under a contract for the provision of services subject to VAT are not disguised as payments made under a commercial current account, thus avoiding paying the applicable VAT.

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For more information, please click the following link:

http://www.sii.cl/destacados/catalogo_esquemas/catalogo_esquemas_2019.pdf

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