

THE CHILEAN INTERNAL REVENUE SERVICE PUBLISHES A NEW VERSION OF THE TAX SCHEMES CATALOGUE

On November 23, 2017, the Chilean Internal Revenue Service (“SII”) published a new version of the Tax Schemes Catalogue (the “Catalogue”), a consultation guide originally issued by the SII in 2016 in order to grant legal certainty to all market players as well as ensuring payment of applicable taxes under the Chilean Law.

The Catalogue sets forth cases of potentially elusive situations in which the Anti – Elusive Rule introduced by Law N° 20,780 to the Chilean Tax Code may be applicable. The new version of the Catalogue adds 16 new scenarios that may be controlled by the SII in accordance with its legal powers. It is important to note, however, that the new version of the Catalogue lists cases which are not to be considered elusive by the SII.

The tax schemes originally listed in the Catalogue were the following:

1. Transfer of a real estate property to an individual, who is also the controlling shareholder and legal representative of the company owning the real estate, so that the higher value obtained from the property’s sale is considered non-taxable income.
2. Instrumental company organized with the purpose of transferring income from a company resident in Chile to a foreign company resident in a low taxation jurisdiction.
3. Use of hybrid instrument in order to transfer pending taxable profits as equity contributions to a company resident in a nil or low taxation jurisdiction, where the final beneficiary of the funds is the head office of the Chilean company.
4. Use of the financial instrument denominated “agreed deposits”, which are regulated under the Pension Funds Act.
5. Use of life annuity agreements.
6. Reorganization and subsequent use of the taxation rules set forth for smaller taxpayers.

7. Dilution of equity through capital contributions and withdrawals of funds in order to obtain a merger with a goodwill.
8. Use of reorganization interests as expenses.
9. Restructuring to create non- taxable income originated in a real estate sale.
10. Use of instrumental companies in low or non-taxation jurisdictions.
11. Successive transfer of investments abroad having underlying assets in Chile coupled with the provision of services abroad, which increase their investment cost, for its ensuing transfer to an independent third party.
12. Use of savings insurance abroad to avoid the use of the passive income regime set forth by Article 41G of the Income Tax Law.

In addition to the above, the 16 new tax schemes added in the Catalogue are the following:

1. Life Insurance, with payment of insurance premiums which are tantamount to an asset transfer.
2. Company that generates a tax loss as a consequence of a share sales to a foreign related company
3. Deposit of a multinational company in a foreign bank, where the latter makes a subsequent loan to a Chilean subsidiary.
4. Transfer of obligations of an agreement to obtain tax benefits.
5. Profit withdrawal through payment of trade receivables.
6. Listed corporation making loans to a shareholder domiciled abroad.
7. Real estate purchase through the transfer of company rights or shares.
8. Allocation of fixed assets in a company's restructuring.
9. Use of an instrumental company in another company's restructuring.

10. Family members of the controlling shareholder acquire shares in the family holding company through capital contributions priced at a value below market.
11. Contrato de Asociación o Cuentas en Participación (similar to a JVA) in which the manager thereof contributes a real estate.
12. Lease agreement coupled with a Purchase and Sale Promise of a real estate designed to avoid VAT payment.
13. Use of certain portfolio management agreement for the investment of securities abroad.
14. Change of domicile of a foreign company having assets in Chile.
15. Taking advantage of the 'individual entrepreneur' regime with delay with the purpose of eluding taxes in a sale of shares that otherwise would be applicable.
16. Credit facility agreement with a company related to a retail company (not elusive).

For a full version of the Catalogue, please click here:

http://www.sii.cl/destacados/reforma_tributaria/catalogo_esquemas_tributarios.pdf

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