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Latin American Pathway to Tax Compliance – VDP Experiences and the Current Argentine Proposal

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1. The international context: OECD giant steps towards international transparency

Last year OECD released its Update on *Voluntary Disclosure Programs: A pathway to tax compliance*, a renewed edition of the survey published in 2010; the 2015 update was aimed at providing guidance to governments wishing to offer taxpayers the chance to come forward and become compliant, regularizing their tax affairs by declaring income and wealth that might have been concealed in the past.[1]

When the first edition of the survey appeared (2010), it was just a year and a half after the G20 leaders had declared the end of the banking secrecy era in tax matters, calling upon countries to implement the OECD standard on exchange of information upon request. Since then, a considerable progress was made on this front as it was evidenced by (i) more than 500 standard-complying TIEAs in force, and (ii) a revitalized work of the Global Forum on Transparency and Exchange of Information, which included a peer review program to ensure that transparency standards were effectively implemented.

The updated 2015 survey came after a new major milestone in tax transparency was reached in 2014, i.e., the adoption of the OECD *Standard for Automatic Exchange of Financial Account Information in Tax Matters*,[2] which called on governments to obtain account information from their financial institutions and exchange it with other governments automatically and on a yearly basis. In this context, a large number of countries (including most financial centers) have already committed to implement automatic exchanges in 2017 or 2018.[3]

2. New international transparency standard and associated taxpayers' risks for non-compliance

The new OECD Standard on Transparency and Automatic Exchange of Information together with the conventional operation of FATCA under IGA 1 and 2 models,[4] sharply increase the risk that taxpayers with offshore undeclared assets and/or income be detected in a foreseeable future. As a result, taxpayers may be forced to face severe consequences, including the payment of wealth, income or other transaction taxes not covered by the statute of limitations, interest, fines, administrative penalties, and tax, foreign exchange and/or financial criminal prosecution, all of which represent a heavy and concrete threat for keeping themselves non-compliant.

In this scenario, while entering full transparency times and prior to the effective implementation of the automatic exchange, it is understood that governments might well wish to provide a last window of opportunity to non-complying taxpayers with concealed assets and income to regularize their tax situation. As recognized in the 2015 OECD survey, This goal is achievable through the launching or improvement of existent temporary special-purpose voluntary disclosure regimes that guarantee some form of effective protection against tax and associated offenses criminal prosecution, and, additionally, offer (though not necessarily) waivers or reductions of interest and/or fines to make it even more attractive.

These practices, whether in the form of general or special programs targeting undeclared offshore assets and income, were already widespread beyond the Latin American region at the time of the OECD 2015-Update, as shown in the annex to that survey which inventoried and compared the practical experiences of 47 countries around the globe.

As the OECD Survey itself observed, when the rules are properly designed and fit within the long-term compliance strategy of the tax administration, these regimes benefit the taxpayers making the disclosure, compliant taxpayers and governments as well. In this regard, it is understood that the key to success centers on allowing noncompliant taxpayers to come forward voluntarily paying more than they would, had they been fully compliant from the outset, but facing less punitive sanctions than evaders who choose to remain undisclosed and are later detected by the tax administration. In this last regard, consistency with anti-money laundering rules is also highly recommended.

Based on the foregoing, temporary special voluntary disclosure regimes are suitable to offer non-compliant taxpayers an opportunity to regularize previously concealed assets and income (perhaps concealed and accumulated offshore even by predecessors –parents or grandparents–), while enlarging the national tax basis by the incorporation of such taxpayers.

3. Latin American Reaction: From a slow beginning to a full speed present trend

As illustrated in the OECD-2015 Survey, there had been a significant post global financial crisis trend towards creating voluntary disclosure regimes, aimed at providing non-compliant taxpayers with an opportunity to come forward and regularize their tax affairs.[5]

Latin America did not widely accompanied this trend until recently, and, in fact, as of March 2015, only Chile had introduced a workable special regime patterned after the OECD Guidelines and the successful experiences in EU countries such as Italy and Spain. [6]

What has been stopping Latin American countries from following the rest of the world’s lead, particularly considering the success of similar initiatives elsewhere?[7] This is an issue addressable either from the perspective of governments or the perspective of taxpayers.

On the government side, a major impediment came from past experiences with ill-conceived and unsuccessful tax amnesties, which are deemed to have deeply undermined tax compliance in the long run. In this regard, however, it is worth distinguishing voluntary disclosure schemes patterned after OECD guidelines and legislated in several countries outside the region, in one hand, and traditional Latin American tax amnesties, in the other hand; while the latter have implied a full waiver of the defaulted taxes, voluntary disclosure regimes usually imposed a regularization levy that come to engross the state coffer.

On the taxpayer side, the traditional lack of interest in these programs originated either in the widespread Taxpayers' feeling of being beyond the reach of the law (a quite common attitude among risk-taking tax dodgers), or in certain attendable concerns associated with the coming forward under these regimes. These concerns include, *inter alia*: (i) uncertainty on the criminal consequences; (ii) confidentiality issues and the potential misuse of disclosed information that might adversely affect business or personal reputation; (iii) personal security issues; and (iv) chances of post compliance high-risk tax profile categorization.

Insofar as aggressive risk-taking dodgers are concerned, they are now at a crossroad; in effect, FATCA and OECD CRS-automatic exchange of information have created a huge information net which should cause them to re-evaluate past behavior and come forward through the window of opportunity opened in their home countries as a way of preserving themselves. And this is so because of tax and legal/economic reasons as well: (i) from a tax point of view, to avoid the risk of being detected while remaining non-compliant, and thus forced to face severe tax and tax criminal consequences; and (ii) from an economic and legal perspective, to avoid putting the personal wealth at risk, by becoming a sort of *tax pariah* with no secure place to hide.[8]

Insofar as the other factors that might prevent taxpayers to come forward under a voluntary disclosure regime, as mentioned above, much depends on the country's overall policy regarding compliance, and the legislation's fine tuning so that taxpayers' worries regarding confidentiality, security, and risk-profile characterization are eased and overturned by a well-designed statute framed in the context of fostering an enhanced relationship between tax administrations and taxpayers.

As of today, the Chilean regime concluded on December 31, 2015, with an unexpected success[9], while the Colombian, Mexican and Brazilian programs are getting their ways through with a varied fortune; the Argentine voluntary disclosure program is currently under consideration and, hopefully, it is expected to be passed by Congress, enacted by the Executive Branch, and become fully effective by August.

3.1 The Chilean Voluntary disclosure program

The Chilean special voluntary disclosure program was a one-time temporary regime which lasted from January 1 to December 31, 2015, applicable to undisclosed assets acquired before January 1, 2014 (cut-off date) which fell within the expressly listed type of assets allowed to be declared under the program.

The program applied a fixed rate levy of 8% on the value of the assets and income declared, without further interest charges and fines; moreover, there was no criminal prosecution under tax, foreign exchange and securities laws, but criminal prosecution under anti-money laundering law was not waived.

Formal conditions for eligibility included, *inter alia*, (i) reporting requirements concerning ownership of the assets and income declared (including a back track, sometimes troublesome, ownership record), as well as a valuation of the assets declared in accordance with Chilean tax laws; and (ii) the submission of a special return before December 31 , 2015, and the payment of the special 8% levy within 10 business days as from the date in which the taxpayer receives the order of payment from SII or *Servicio de Impuestos Internos.*

The Chilean program did not oblige taxpayers coming forward to repatriate the regularized

offshore assets or income, thus avoiding an overambitious condition sometimes requested under these schemes which often conspire against the success of the program itself.

Assets or income that, at the time of their declaration, were situated in high-risk or non-cooperative jurisdictions in accordance with FATF's categorization were excluded, and hence, might not be regularized under the Chilean program.

3.2 The Colombian three-year period, rate-increasing vernacular program

Colombia approved for years 2015/17, an annually-increasing rate regime, aimed at allowing the regularization of undisclosed assets for purposes of the wealth tax (Impuesto Complementario de Normalización Tributaria al Impuesto a la Riqueza). Although regulated in one unique legislative piece, the three-time deadline provided for under the regime makes it a hybrid between a one-time special voluntary disclosure program of the type recommended by the OECD 2015 Survey and a general, ongoing disclosure program.

The main features of the program are: (i) the taxable event is the possession of undisclosed assets or nonexistent liabilities as of January 1, 2015, 2016 and 2017; (ii) the omitted assets must be valued for purposes of the regularization levy in accordance with the rules of the Colombian tax law (Estatuto Tributario); and, for this purpose, rights in foreign private foundations, foreign trusts and the like are to be assimilated to similar rights held in Colombia; (iii) the applicable tax rate of the regularization levy ranges from 10% in 2015 to 13% for 2017 (11.5% in 2016), (iv) the declaration of undisclosed assets does not make the taxpayer to incur further tax liability for income and wealth taxes corresponding to previous periods, interest and penalties thereon, or criminal prosecution; and, finally, (iv) the law makes clear that the use of the regularization scheme does not make lawful those assets of unlawful origin, such as assets directly or indirectly related to money laundering or terrorist financing, so that anti-money laundering rules apply.

3.3 The Mexican misstep

The Mexican special voluntary disclosure program which would end by the end of June, 2016, was originally contemplated in Fraction XIII, transient rules to the income tax law for 2016 (Fracción XIII de las Disposiciones Transitorias de la LISR para 2016), and applies to offshore investments and income held undisclosed as of December 31 2014, as long as the investments and the income are repatriated to Mexico within six months as from the date of entry into force of the new rules, channeled into the country through a deposit or investment in a Mexican credit or brokerage institution, and, maintained in the country for a minimum three-year period.

Qualifying undisclosed foreign investments for regularization include those made directly or indirectly, whether through foreign legal entities or tax transparent vehicles.

Qualifying Mexican investments upon repatriation vary depending on whether the declaring taxpayer is an entity or an individual. In case of legal entities, qualifying investments include the acquisition of capital assets, technological R&D investments in the taxpayers' own projects, and the repayment of business liabilities incurred with unrelated parties. In the case of individuals, they include acquisition of capital assets, technological R&D investments, investments through Mexican financial entities, or in securities or shares issued by Mexican resident entities.

No special (reduced) regularization levy is contemplated. On the contrary, the ordinary income tax on profits generated by the undisclosed foreign assets must be paid (adjusted for inflation as from

the month in which the tax should have been paid and up to the month in which it is effectively paid). For purposes of the Mexican income tax liability assessment, comparable taxes paid on that income in the host jurisdiction are creditable against the Mexican income tax payable under the regime.

Taxpayers coming forward and regularizing under the regime are exempted from interest and fines otherwise payable, and remain free from penalties associated to formal non-fulfillments as well as criminal tax prosecution.

There are at least three different aspects that have significantly jeopardized the success of the Mexican special voluntary disclosure program (i) as anticipated, the Mexican program makes no reduction whatsoever on the otherwise applicable tax on the regularized income; in other words, the regime provides no special reduced levy as it happened under the Chilean and Colombian programs, as well as under the Brazilian program discussed below. This feature, together with the forced repatriation of the previously undisclosed offshore investments to Mexico for a three-year minimum period detracted from the attractiveness of the program. [10]

Also, as Manuel Tron observed in a contribution to Arena Pública,[11] it should be additionally noted that the pre-existent general regularization program basically provided all the same meaningful benefits that the current special regularization contemplates, except for the waiver of interest and penalties for formal non-fulfillments which are benefits now added under the special program but conditioned upon meeting the repatriation requirement; based on the weak outcome of the program in terms of attractiveness, it appears that taxpayers have not found the repatriation condition to be commensurate to the newly afforded benefits.

3.4 The Brazilian RERCT

A special voluntary disclosure regime was also approved in Brazil on January 13, 2016.[12] The program applies to undeclared funds, assets and rights of a lawful origin, maintained offshore (including those subsequently transferred to Brazil) as of December 31, 2014, and belonging to Brazilian resident or domiciled persons.

The types of assets to be regularized under RERCT are expressly listed but in very broad terms; and, in fact, they include a variety of financial assets or placements as well as of tangible and intangible property. According to the Brazilian regime, declaring taxpayers must include in the regularization all undeclared assets and income held offshore as of the cut-off date, so that no partial regularization is allowed. Excluded assets from regularization are those obtained from unlawful activities such as drugs and arms trafficking, terrorist financing, contraband, kidnapping, as well as crimes against the public administration and the financial system.

As in the cases of Colombia and Chile, a special levy is imposed on the value of the assets being regularized, converted into Brazilian currency as of the last day of December 2014. The regularization levy stands at 15%; and also applicable is a fine equivalent to 100% of the assessed tax, or another 15% (the aggregate tax cost of regularizations is then 30%). The tax and the accompanying fine must be paid over to the administration on or before October 31, 2016. After paying tax and fine, it is mandatory to amend the 2014 and 2015 income tax returns, as well as the Central Bank Declaration of Brazilian Assets Abroad (“DCBE”).

No other penalties or criminal prosecution for tax or foreign exchange related crimes follow regularization under RERCT.

RERCT is designed as a one-time regime lasting 210 days from the regularization rule's effective date, i.e. until October 31, 2016, and, as in the case of the Chilean program, taxpayers coming forward are not obliged to repatriate or hold the assets in Brazil for any period of time.

4. Brushstrokes on the Voluntary disclosure bill currently under congressional consideration in Argentina[13]

The bill under current congressional consideration provided for not only an exceptional and temporary voluntary disclosure program,[14] discussed hereinafter, but also for (i) a more favorable than the otherwise applicable payment regime of overdue taxes, customs duties and social security obligations,[15] (ii) benefits to be afforded to compliant taxpayers, (iii) amendments (some of them largely expected) to the income tax, the minimum presumed income tax (MPIT), and the personal assets tax (PAT),[16] and (iii) the creation of a bicameral Tax reform Commission (with equal number of members from the House and the Senate) that will undertake the analysis of tax reform proposals coming from the Executive Branch.

A feature of the voluntary disclosure regime which, because of its significance in term of public policy fairly exceeds the scope of the technical discussion below, is that revenues coming from the application of the special levy analyzed in 4.5, *infra*, does not go to engross the general treasury; instead, they are destined to The social Security National administration and earmarked to the financing of the National Program of Historical Reparation for Retirees and Pensioners (*Programa Nacional de Reparación Histórica para Jubilados y Pensionados*) created by the same bill, and consisting of (i) the cancellation of overdue adjustments to beneficiaries of the system, whether or not previously claimed in court; and (ii) the creation of a universal basic pension to the eldery (i.e., highly vulnerable persons who are not in a condition to obtain the benefits ordinarily granted to retired employed or self-employed persons).

4.1 Qualifying taxpayers and disclosable assets

Qualifying taxpayers allowed to regularize are resident individuals[17] and undivided estates, as well as taxable entities[18] and other fiscally transparent forms of business endeavors[19] residing or domiciled in Argentina as of December 31, 2015, whether or not registered as taxpayers before AFIP (Federal tax agency).

Resident individuals and undivided estates may voluntarily disclose even property in possession of, deposited, or registered in the name of the declaring taxpayer's spouse, decedents or ascendants up to a second grade of consanguinity or affinity or third parties qualified to regularize in accordance with the preceding paragraph. As a condition for the benefits of regularization to be afforded to the declaring taxpayer, the disclosed assets must be held in his name on or before the due date of the tax return corresponding to the 2017 taxable period.

Disclosable assets under the proposed program are: (i) domestic or foreign currency, (ii) real estate, (iii) tangible personal property including shares and other equity participations in legal entities, beneficiary rights to property put in trusts or similar wealth structures (*patrimonios de afectación* or *fonds réservés)*, (iv) all types of financial instruments, financial placements, and securities including bonds, corporate debt securities (*Obligaciones negociables*), ADRs (*certificados de depósito en custodia*), investment fund participations and the like. And (v) other tangible and intangible personal property, whether situated inside or outside the Argentine territory, including creditor rights and all type of rights likely to have an economic value.

The bill expressly states that qualifying individuals and undivided estates are also allowed to voluntarily regularize currency, assets or rights legally owned by companies, trusts, foundations, associations or any other juridical body organized abroad, whose ownership or benefit belongs to the declaring taxpayer as of December 31, 2015, inclusive. In case of multiple beneficiaries, stockholders or owners, the assets may be declared by them in the proportion they decide to do it.

Cash or securities deposited with custody agents or financial institutions located in high-risk or non-cooperative jurisdictions according to FATF's categorization are excluded from regularization.

4.2 Cut-off date and Application Period

Qualifying disclosable assets must pre-exist to the enactment date of the law, in the case of individuals, or the ending date of the last accounting period terminated before January 1, 2016, in the case of legal entities (hereinafter "assets pre-existent date" or "cut-off date"). [20]

The application period runs from the date of entry into force of the law to March 31, 2017, inclusive.

4.3 Form of the voluntary declaration

The form and procedure to voluntarily disclose qualifying assets under the proposed program vary in accordance to the nature of the assets concerned and their location, as follows (i) currency or securities held abroad: Declaration of deposit with financial entities agents, custody agents, securities housings, or other depositary agents outside Argentina;[21] (ii) domestic or foreign currency or securities deposited in Argentina: Declaration and evidence of the deposit; (iii) domestic or foreign currency held in cash outside the financial system: Deposit with local financial institutions on or before October 31, 2016;[22] and (iv) Movable or immovable tangible or intangible property in Argentina or abroad: Sword statement individualizing the property in accordance with the conditions to be set forth by the implementing regulations.

Taxpayers disclosing currency or securities in accordance with point (i) of the preceding paragraph are not obliged by law to repatriate the property so regularized, nor penalized with the application of a higher regularization levy. (If, however, they decide to do so the property should be channeled through an Argentine financial entity.)

4.4 Valuation of the disclosed assets

Foreign currency and foreign currency-denominated assets must be valued in Argentine pesos considering the prevailing market value of the foreign currency as of the cut-off date, as reported by *Banco de la Nación Argentina* (buying rate).

The value of disclosable shares, equity, interest or benefit participations in companies, trusts, foundations, associations, or any other legal body set up in Argentina or abroad must be assessed at the net pro rata value of the participation belonging to the declaring taxpayer.

Real estate pieces are to be valued at the prevailing market price and in accordance with complementary rules to be provided for in the implementing regulations. Inventory, in turn, is to be valued by applying PMIT rules as of the cut-off date. The regularization of inventory prevents the declaring taxpayer from computing it to assess the income tax in the tax period immediately following the exteriorization.

Other assets are to be valued as of the cut-off date by applying PAT rules in the case of individuals, and MPIT rules in the case of business entities.

4.5 Regularization levy

The rate of the regularization levy varies depending on the nature of the assets to be disclosed, the value of the aggregate wealth being disclosed, and the date of regularization.

In the case of domestic or foreign real estate, the levy stands at 5%.[23] In the case of assets whose value exceeds $a 800,000, the levy on the aggregate value of the assets other than real estate is 10% for regularizations made on or before December 31, 2016, and 15% for regularizations made as from January 1, 2017 and until March 31, 2017.[24]

Exemptions from the special regularization levy apply if and when (i) the disclosed funds are used to originally subscribe for certain Argentine public bonds, namely, a dollar-denominated non-transferrable three-year bond with a zero-rate interest coupon, acquired on or before September 30, 2016, or a dollar denominated seven-year bond (non-transferrable during the first 4 years), with a 1% interest coupon. The subscription of this last bond exempts from the regularization levy an amount equivalent to three times the amount subscribed.

Exemptions from the regularization levy also apply when the regularized funds are utilized to subscribe or acquire interest in open or closed investment funds destined to invest in securities to finance infrastructure projects, productive investments, real estate and removable energies, small and medium-size business enterprises, mortgages loans adjusted by *unidad de vivienda* (UVI), developing of regional economies and other objects related to real economy sectors, in accordance to regulations to be issued by the Argentine SEC (*Comisión Nacional de valores*). In all these cases the minimum investment period required by the bill as approved by the House of Representatives is 5 (five) years as from the subscription or acquisition date.

The regularization levy should be assessed and paid over to the government in the form, dates and under other ancillary conditions to be set forth by AFIP. All benefits afforded to taxpayers who voluntary disclose concealed assets or funds under the proposed program are conditioned upon the payment of the regularization levy in accordance with AFIP´s implementing rules.

4.6 Regularization afforded benefits

The regularization under the proposed voluntary disclosure program carries the following benefits to the disclosing taxpayers (i) exception from the otherwise applicable tax consequences associated with net worth unjustified increases;[25] (ii) exemption of any civil and tax criminal consequences, foreign exchange regime and customs criminal consequences, and administrative penalties derived from the non-fulfillment of obligations related to or originated in voluntarily disclosed assets and profits generated thereon. These benefits extends to managers, administrator, directors, and comptrollers of entities governed by ACA, and to those who exercise similar functions in or in connection with trusts, cooperatives, undivided estates, investment funds, as well as to external auditors (accountants who certified annual statements of all those entities);[26] (iii) exemption of the payment of taxes omitted in connection with the assets and funds disclosed under the program.[27] The proposal makes clear that the taxpayers disclosing assets under the program will afford themselves of the contemplated benefits even in connection with undeclared assets or holdings possessed before December 31, 2015.

4.7 Completeness Requirement

As in the case of the Brazilian program, all the benefits afforded under the proposed program are conditioned upon a full voluntary disclosure of undeclared assets as of the cut-off date. Consequently, should AFIP comes to know of the existence of any asset or holding at that date which has not been voluntary disclosed by a declaring taxpayer under the program or previously, it would be prevented from enjoying the associated benefits described in the preceding sub-heading. To that end, AFIP keeps all investigative and other prerogatives conferred by law.

4.8 Additional Comments on the argentine proposed plan

All in all, the Argentine proposal as approved by the House of Representatives appears to be a well-balanced voluntary disclosure program. The program, if finally enacted as expected, will become a suitable tool to taxpayers to come forward before AEI-CRS is fully implemented and effective among Argentina, major trade/investment partners in Latin American and outside the region, as well as popular offshore financial centers around the world. Once enacted, the program should be seen as an attractive last window of opportunity to become complaint under the law, and avoid future tax, legal, and economic calamities associated with the maintenance of concealed wealth and income in a world that no longer offers places to hide.[28]

A new twist in the same line has been recently opened as a consequence of the Panama papers scandal and the UK-led initiative to automatically share information on the ultimate owners of companies. Although Argentina is not yet part of the 41 countries[29] that has agreed on the initiative, this is also another threatening component of the new transparency paradigm which is rapidly expanding and would reached Argentina rather soon.

5. Final

Latin American countries not yet in the mood (e.g., Bolivia, Ecuador, Peru, Uruguay and Venezuela), aware of the troubles encountered by non-compliant taxpayers with undisclosed foreign assets should follow the lead of successful programs in countries like Chile and Brazil, and taking advantage of the momentum, set forth temporary, voluntary disclosure regimes specially targeted to offshore assets. The programs should be patterned after the OECD 2015 Survey, and couched into their national compliance strategy, avoiding parallel non-tax goals such as repatriation of assets which have proven to conspire against the success of the programs themselves.[30]

[1] OECD, *Update on Voluntary Disclosure Programmes – A Pathway to Tax Compliance*, August 7, 2015. See Teijeiro, *Tending bridges to tax compliance: Is it Latin America losing momentum?*, Kluwer International Tax Blog, August 19, 2015.

[2] OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, July 2014, later approved by the G20 Finance Ministers Meeting in Cairns, Australia, September 20-21, 2014. Automatic exchange of information under the OECD Multilateral Convention on Mutual Administrative assistance in Tax matters, as amended in 2011, always requires the existence of a separate agreement between the competent authorities of the parties to make the automatic exchange fully operative. See also OECD, CRS Implementation handbook.

[3] OECD Global Forum on transparency and Exchange of Information for Tax Purposes. As of May 9, 2016, there were 55 jurisdictions committed to undertake first exchanges by 2017, and 46

additional jurisdictions committed to undertake first exchanges by 2018. Early adopters include, *inter alia*, the following Latin American countries and popular financial centers in the region: Argentina, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Colombia, Curaçao, Guernsey, Ireland, Isle of Man, Jersey, Liechtenstein, Luxembourg, Mexico, San Marino, Seychelles, Trinidad and Tobago, Turks and Caicos Islands. Among those adopting CRS in 2018, Andorra, Antigua and Barbuda, Aruba, Bahamas, Belize, Brazil, Chile, Costa Rica, Hong Kong, Monaco, Panama, Saint Lucia, Saint Vincent and the Grenadines, Saint Maarten, Switzerland, Uruguay.

[4] In accordance with the source cited in the preceding paragraph, The United States has indicated that it is undertaking automatic information exchanges pursuant to FATCA from 2015 onwards, and, to that end, it has entered into intergovernmental agreements (IGAs) with foreign FATCA-partner jurisdictions.

[5] Countries outside Latin America which enacted this type of programs include, among others, Australia, Belgium, Denmark, France, Ireland, Italy, The Netherlands, Portugal, South Africa, Spain, the UK and the United States of America. In this last case, the Offshore Voluntary Disclosure Program (OVDP) in its various versions, together with FATCA, have been two clamps of the same pincer used to pick up US taxpayers with offshore concealed assets and income in Switzerland and elsewhere.

[6] A pre-existent Mexican general program was not exclusively targeted to undisclosed offshore funds, the Colombian hybrid program on wealth tax designed to last over a three-year period was in its early stages, and an Argentine repatriation experiment (forcing to repatriate undisclosed funds as a mandatory requirement to regularize) had been a *fiasco* in terms of attractiveness.

[7] See, on the issue, Teijeiro, *Voluntary disclosure in LatAm: A win-win game*, International Tax Review, November 2015.

[8] Banks in suitable jurisdictions have long started to require clients to evidence that funds placed at the institution have been originally declared for tax purposes in their home jurisdictions, or have been regularized through an available voluntary disclosure scheme.

[9] In accordance with information released by SII (Servicio de Impuestos Internos) and reproduced by the Chilean press, the voluntary disclosure system was a great success, allowed the regularization of approx. U$S 19,000 MM, and a special levy collection of U$D 1,502 MM. See http://www.elmostrador.cl/mercados/2016/01/06/por-que-se-recaudaron-us-1-500-millones-en-vez-de-us-128-millones-en-declaraciones-de-capitales-en-el-exterior/

[10] it is well known that one of the reasons taxpayers with concealed offshore assets used to justify their behavior is the need or at least the convenience to escape country risk in their own home countries, so that, for the same reason, they are often reluctant to assume that risk again even for a limited period of time.

[11] Tron M., *Repatriación de capitales*, Arena pública, 14 de septiembre de 2015.

[12] Regime Especial de Regularizacao Cambial e Tributária or RERCT; lei 2960/15.

[13] Comments in this section are made on the *Regimen de Sinceramiento Fiscal* containing the implementation of a *Sistema Voluntario y Excepcional de Declaración de Tenencia de Moneda*

Extranjera y demás Bienes en el País y en el Exterior, pursuant to the text of the bill prepared and sent to Congress by the Executive Branch (Message 724/16, dated May 31, 2016), as amended by the Social Security and Ways and Means Commissions of the house of representatives, and approved by the house of Representatives on June 15, 2016.

[14] The Message from the Executive Branch expressly recognized that the initiative is patterned after the OECD guidelines, the experiences of countries like Spain, Italy, Brazil and Chile, and the FATF recommendations.

[15] It contemplates the waiver of fines, penalties as well as the waiver of a portion of interest that is dependable on the seniority of the debt.

[16] The amendments proposed by the Executive Branch included a phasing out of PAT over a two-year period (according to the text approved by the House the tax will remain in force thereafter at a reduced 0.25 rate), clarifications on the scope of the exemption from capital gain taxation, now expressly stating that embraces ADRs and securities listed in stock exchanges outside Argentina, new rules on the assessable taxable basis for capital gains purposes, with the aim of avoiding taxation on inflation (phantom) income, the elimination of the 10% withholding on dividends paid to individuals and foreign shareholders, and the elimination of the MPIT for fiscal years initiated from January I, 2019.

[17] Resident individuals are excluded if and when, during the period started on January 1, 2010, and ending on the enactment date of the law, have carried out functions in the Executive, legislative or judicial branches at the three levels of government (federal, state or provincial –including the Autonomous City of Buenos Aires–, and municipal levels), among other detailed designated public servants; spouses, and ascendants and descendant in first line of the designated public servants.

[18] Stock corporations (SA), limited liability companies (SRL), ordinary limited partnerships (SCS) and corporate silent partnerships (SCA) –an hybrid form of business entity whose capital is partly represented by shares–, civil associations and foundations (as long as taxable),mixed state-private owned entities (*sociedades de economía mixta*) and other forms of state-owned entities ruled by art. 1, Law 22,016, ordinary trusts (*fideicomisos*) except when the settlor is also the beneficiary, financial trusts, investment funds, and permanent establishments (PEs) situated in Argentina, and belonging to individuals or entities residing outside Argentina.

[19] Other business organizations governed by the Argentine companies Act (ACA) not treated as separate taxable entities, sole proprietorships, and certain business auxiliaries including commission agents and brokers.

[20] In this regard, it is worth noting that domestic or foreign currency deposited in domestic or foreign financial institutions over a three-month uninterrupted period prior to the cut-off date also qualifies as long as it can be evidenced that prior to the submission date the funds were applied (i) to the acquisition of real or personal (non-fungible) property in Argentina or abroad, or (ii) as equity contribution to the capital of business enterprises, or loans to other domiciled income taxpayers. In all cases the application of the funds must be maintained in any of the above described applications for a period of six month or until March 31, 2017, whichever the longest.

[21] To that end, the declaring taxpayers should request from the foreign entities acting in any of the capacities described in the text, an electronic statement of account as of the cut-off date with

the following information: (i) identification of the entity and jurisdiction of incorporation, (ii) account number, (iii) name and domicile of the account holder, (iv) a statement evidencing that the account was opened before the cut-off date; (v) the account balance or value of the portfolio, expressed in foreign currency as of the cut-off date, and (vi) place and date of issuance of the electronic statement. No additional back-tracking information needs to be provided.

[22] The deposit must be maintained in the name of the taxpayer for a six-month period or until March 31, 2017, whichever the longest. The amounts deposited may be retired in advance if destined to acquire real property or registrable movable property.

[23] Assets (including real estate) whose value does not exceeds $a 305,000, are subject to a 0% rate; while assets (including real estate) whose value exceeds $a 305,000 but it is not greater than $a 800,000, are subject to a 5% rate.

[24] In this case, the declaring taxpayer may choose to cancel the levy at a 10% rate, by delivering BONAR 17 and/or Global 17, at face value, all along to March 31, 2017. The effective rate payable under this option is then even lower, and depends on the FMV of the bonds purchased and delivered in payment at face value.

[25] In accordance with article 18, f, Law 11,683, the amount of the unjustifiable increase in net worth plus an additional 10%, is deemed net taxable income subject to the ordinary income tax rate that currently stands at 35%.

[26] The exemption does not extend to claims that might be submitted by private parties affected through, as a consequence of, or in occasion of the tax infringements whose consequences are cured by the proposal.

[27] Including (i) income tax, and the tax on undocumented outputs; (ii) tax on the disposition of real property by individuals (*Impuesto a la transferencia de inmuebles* or ITI); (iii) Tax on debits and credits in bank accounts; (iv) VAT and excise taxes; and (v) PMIT, PAT, and equivalent special tax on cooperatives. The ample scope of the exemption does not cover, however, the income tax deduction of expenses, and the corresponding VAT input, evidenced by invoices deemed false by the tax agency.

[28] If, as reported by the international and local press, Argentine stock of concealed assets/funds ranges between U$S 250,000 MM and U$S 400,000 MM, one can expect that the voluntary disclosure call to regularize might easily attract at least one fourth of the lowest estimation.

[29] Afghanistan, Anguilla, Austria, Belgium, Bermuda, Bulgaria, Cayman Islands, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Gibraltar, Germany, Greece, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Latvia, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Nigeria, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Arab Emirates, and United Kingdom (HM Treasury, June 8, 2016).

[30] Of course, from a country perspective, the opportunity should be first and above all predicated on the basis of political stability and an adequate business climate.

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