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STRATEGIC FIDUCIARY ADVICE

AGREEMENT BETWEEN URUGUAY AND THE UNITED STATES FOR THE EXCHANGE OF INFORMATION ON TAX MATTERS

On October 24th, 2023, Uruguay and the United States signed a treaty implementing a new framework for the exchange of information on tax matters between the two countries (**TIEA**). Although the exchange of information is streamlined, it is not yet automatic, so the interested party must request the information following a specific process.

The agreement will enter into force one month after Uruguay notifies the United States in writing, confirming the completion of the internal procedures necessary for entry into force. In this case, it would be the approval of the agreement by the parliament.

To read the full text of the document for those who wish to read it, please [click here](#).

In this context, the purpose of this document is to answer the questions we have most frequently heard from clients regarding the TIEA.

What does the signing of a 'TIEA' agreement between the United States and Uruguay entail?

The agreement allows both countries to request information about their tax residents to verify possible tax evasion. There are three types of exchanges contemplated, although not all will be active from the beginning of the agreement:

- i) **Upon request:** It is not automatic; one party must request information from the other whenever there are objective data of possible tax evasion or tax claims by the taxpayer.
- ii) **Automatic:** Although it is automatic, subsequent regulations are required to determine the exchangeable information and the procedure. It can result in the signing of FATCA or simply in an exchange of the 'country by country' type carried out by certain large companies.
- iii) **Spontaneous:** It also requires subsequent regulation. Information is exchanged on tax rulings and pricing agreements, relevant for taxpayers included in the transfer pricing analysis.

In addition, the agreement allows tax inspections in the other country, with prior authorization, although it is not a mechanism for the exchange of information.

What does this mean in practice?

Without new complementary provisions adopting automatic or spontaneous exchange, the entry into force of the agreement implies that one party must inform the other about a well-founded suspicion of tax evasion to obtain information. Mass or general requests based simply on obtaining information, known as 'fishing expeditions', are not allowed. More information about this topic later.

The main difference from the exchange prior to the TIEA is that it is now of an administrative nature, not judicial, making it faster and less costly for the state.

Why is this agreement necessary for Uruguay?

While resident individuals in Uruguay generally do not have to pay taxes on income generated abroad, the payment of 12% on income generated from movable capital is applicable. This occurs, for example, in the following cases:

- Interest on deposits in financial institutions or other entities abroad.
- Interest on loans granted to non-resident entities.
- Dividends or profits.

Individuals who have paid taxes abroad on income from movable capital must report it to use it as tax credit.

FREQUENT QUESTIONS

WHAT INFORMATION IS EXCHANGED?

These countries can share information that may be potentially useful for the determination, assessment, and collection of taxes, as well as for the recovery and enforcement of tax claims. They can also share information relevant to investigations or trials in tax matters or any other express agreement they may agree upon in the future.

WILL ONLY INFORMATION FROM FINANCIAL INSTITUTIONS BE EXCHANGED?

No, the requested and provided information may include **details about**:

- **accounts in financial institutions** and anyone acting in a representative or fiduciary capacity, including designated agents and trustees;
- **ownership of companies**, partnerships, trusts, foundations, ownership information for all individuals forming an ownership chain;
- **trusts**, settlors, trustees, and beneficiaries; and
- **foundations**, information about founders, members of the foundation board, and beneficiaries.

It is crucial to highlight that, as explained earlier, upon the entry into force of the recently signed agreement, only the exchange through prior request and the option to conduct inspections on U.S. soil, with prior authorization, will be activated.

IS THE DELIVERY OF INFORMATION MANDATORY?

No, but the state receiving the request must do everything possible to obtain the information.

Furthermore, the competent authority of the requested party (either the IRS or the DGI, as appropriate) may refuse to provide assistance if the disclosure of information involves revealing trade, business, industrial, or professional secrets, as well as trade processes. This also applies to confidential communications between a client and a lawyer or other recognized legal representative, provided that such communications are related to seeking or providing legal advice or are used in an ongoing or planned legal proceeding.

It is not mandatory to obtain or provide information about the ownership of publicly traded companies or public collective investment funds or plans unless obtaining such information does not cause disproportionate difficulties for the requested party.

IS THE TAXPAYER'S NAME SUFFICIENT FOR A STATE TO REQUEST INFORMATION?

No, the request must be made with the highest degree of specificity:

- The identity of the verifiable person or group or category of persons under inspection or investigation.
- A detailed statement of the information requested, including its nature and the desired format.
- The period for which the information is requested.
- The subject under the tax legislation of the requesting party regarding which the information is requested.
- Reasons to believe that the requested information is relevant to the tax administration or enforcement of the requesting party, regarding the identified person or group or category of persons.
- Reasons to believe that the requested information is in the requested party or is in the possession or control of a person within the jurisdiction of the requested party.
- If known, the name and address of the person believed to possess or control the requested information.
- A statement that the request complies with the legislation and normal administrative practices of the requesting party and confirmation that the competent authority of the requesting party could obtain the information if it were in its jurisdiction.
- Confirmation that the requesting party has exhausted locally available means to obtain the information, except those that would result in disproportionate difficulties.

WILL IT BE RETROACTIVE? OR WILL ONLY DATA FROM PERIODS AFTER THE SIGNING OF THE AGREEMENT BE REPORTED?

It will only be retroactive for criminal tax matters.

For all other requests, information can only be requested for tax periods beginning after the entry into force or, when there is no taxable period, for taxes arising from the date of entry into force.

IS THE ULTIMATE BENEFICIARY REPORTED, OR IS IT ONLY THE HOLDER OF THE ASSETS?

It will depend on the information that the United States can access.

Since, starting January 2024, American companies must report their ultimate beneficiaries to FinCEN, this information will be available in the case of an exchange.

Let's remember that this type of treaty is broader than FATCA in terms of the information exchanged, although more limited when considering the number of affected taxpayers. This is simply because FATCA necessarily involves automatic annual information exchange.

DO YOU WANT TO KNOW MORE?

GET IN TOUCH WITH OUR TEAM TO RECEIVE PERSONALIZED
ADVICE THROUGH CONTACT@UNTITLED-SLC.COM

This document does not constitute legal or any other form of advice and should not be interpreted as such. We have prepared and shared it solely for informational purposes. Without having all the information about the client and/or their specific situation, it is impossible to provide advice. We do not intend to do so here under any circumstances. We recommend consulting with your legal and/or accounting advisors both in Uruguay and in the United States before making any decisions regarding the topics covered here. The document was updated in January 2024.



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