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Recent Tax Shelter Disclosure Requirements in Mexico and Argentina

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Emboldened by new laws, tax authorities worldwide are ramping up efforts to require tax advisors and taxpayers to provide enhanced information regarding tax schemes. Armed with additional disclosures, authorities are becoming more knowledgeable about the risk of abuse in tax shelters and transactions designed to minimize or possibly avoid taxes. This global trend has been embraced in Latin America.

Just as the U.S. American Jobs Creation Act of 2004 amended the Internal Revenue Code to include expanded anti-tax shelter reporting obligations, new legislation in Mexico and Argentina should yield similar information that will likely impact domestic and international tax planning.

These legislative initiatives will need to be considered in connection with development of financial and estate plans incorporating financial products, including life insurance and annuities issued by foreign insurance companies to persons resident in Argentina and Mexico where foreign (offshore) LLCs or trusts are utilized.

Pursuant to the Mexican Tax Code (as amended in December 2019), Mexican taxpayers and their advisors are required to report to the Mexican Tax Authority (SAT), tax structures designed or implemented to avoid the payment of income tax generated through foreign transparent entities such as LLCs, partnerships and trusts.

The Mexican Tax Code does not describe the types of tax structures that are subject to reporting; thus, there may be some ambiguity as to what constitutes a tax structure requiring reporting. Nevertheless, reporting will most likely be required if one of the objectives of the transaction is to avoid the payment of taxes through the use of transparent entities. Reporting must be made within 30 days of the implementation of the tax structure.

Argentina's recently adopted Tax Resolution, which implements a reporting regime that covers domestic and international tax planning, is more comprehensive than Mexico's legislation. Argentina's new regulations provide a broad definition of reportable domestic and international arrangements, as well as examples of situations that are considered international arrangements per se, and thus reportable.

International arrangement is defined in the Argentina Tax Resolution as "any agreement, scheme, plan or any other action through which a taxpayer obtains tax advantages or other tax benefits involving Argentina and any other jurisdiction." International tax planning arrangements that are required to be reported to the Argentine Tax Authority (AFIP) include transactions employing legal entities in such "other jurisdictions": (i) to obtain benefits provided by treaties to avoid double taxation, (ii) that involve a low tax jurisdiction or (iii) where a taxpayer has rights as beneficiary, grantor, or trustee of a foreign trust.

Argentinian taxpayers, tax advisors or any person assisting in implementing these tax planning structures are subject to this reporting obligation. International tax planning arrangements must be reported within 10 days of implementation. The Argentina Tax Resolution retroactively impacts tax planning arrangements implemented after January 1, 2019, and disclosure to AFIP must be made before January 29, 2021.

The reporting of an international arrangement does not automatically trigger a determination by AFIP in connection with the tax treatment or legitimacy of the transaction. However, AFIP, pursuant to the exchange of tax information treaties, may elect to share the information with the foreign jurisdiction involved in the international arrangement.

Estate and financial plans incorporating offshore financial products such as offshore life and annuities sometimes utilize foreign transparent entities established in low-income tax jurisdictions. In light of these recent regulatory reporting schemes, estate planning solutions for persons resident in these countries will need to consider the impact of the new reporting requirements on the sale of offshore investment products.

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