

# Government submits new amendments to the Bill on Tax Compliance Obligations

Tax Newsletter – August 29, 2024

On August 27th, following discussions on the proposals submitted a couple of weeks ago, the Government introduced a new set of **amendments** to the **Tax Compliance Bill within the Pact for Economic Growth, Social Progress, and Fiscal Responsibility** called the "Tax Compliance Bill", **Bulletin 16621-05**, to the Senate Finance Committee.

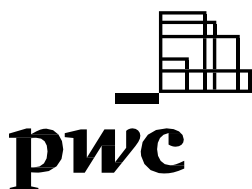
After the proposed amendments submitted by the Executive on August 12th, several agreements were reached, but some matters still needed to be discussed. Yesterday, the Government submitted them to the Senate.

Specifically, this new set of amendments focuses mainly on two relevant issues: the application of the **General Anti-Avoidance Rule** (GAAR or NGA) and changes regarding the new **governance of the Internal Revenue Service** (SII). Additionally, some clarifications were added concerning measures to combat informality and payment methods.

On the other hand, certain issues that were initially intended to be discussed in the original bill have been removed. Notably, the provision that aimed to amend Article 27 bis of the VAT Law, which sought to shorten the VAT refund periods, was excluded. Therefore, this will not be part of the bill and will be considered in a separate legal initiative.

These amendments will be reviewed by the Finance Committee in the coming days, with the goal of sending the text to the Senate in the early days of next month.

Below, we share a summary of this new set of amendments submitted by the Executive.



## Amendments to tax regulations of the bill

### 1. General Anti Avoidance Rule:

As already mentioned, the original bill aims to modify several articles of the Tax Code in this area, ensuring that the General Anti-Avoidance Rule (GAAR) will undergo both clarity and coherence adjustments, as well as substantive changes.

With these latest submitted amendments, it is noteworthy that the **GAAR will remain under judicial authority**, as it is now, **leaving behind the Executive Branch's original idea of shifting it to administrative authority**, where the SII would declare tax avoidance.

Therefore, if the Commissioner of the SII wishes to classify an act as tax avoidance, he must first go to a Tax and Customs Court (TTA) to obtain the corresponding declaration.

Additionally, the following changes are made concerning the GAAR:"

- 1) A definition is established for when **tax avoidance** occurs, which will be when, through acts or legal transactions, or a combination of them, with abuse or simulation, **the taxable events established in tax legal provisions are avoided**.
- 2) It is regulated that the GAAR may be applied when the tax avoidance involves a set or series of acts or legal transactions, even if one or more of them, individually considered, may be subject to a specific anti-avoidance rule.
- 3) The **statute of limitations** for acts or legal transactions that can be reclassified is extended **from 3 to 6 years**.
- 4) The terms "simulated acts or transactions" are replaced with **"simulated acts or legal transactions"** as those that may be subject to review under the GAAR.
- 5) Finally, it is agreed that to declare **tax avoidance**,

the conditions established are that the acts or legal transactions, or a series of them, **have generated a reduction in the tax base equal to or greater than 1,000 UTM**; or have **accessed a tax benefit**; or have **entered into a special tax regime**.

### 2. Provisions related to the governance of the Internal Revenue Service (SII):

The recently submitted amendments **create two new councils** within the SII: an internal council called the **"Executive Committee"** and an external council named the **"Tax Council"**.

#### A. Executive Committee:


This committee will have a series of **functions to counterbalance the powers of the Director of the SII**, as it will be composed of the Deputy Directors of Auditing, Legal, and Normative Affairs of the Agency, who will no longer be appointed by the Commissioner but through the Public Senior Management System. (ADP).

Therefore, the National Directorate of the SII will no longer consist solely of its Director but also of these three Deputy Directors.

This body will be responsible for evaluating whether the SII should initiate an investigation process under the anti-avoidance rule.

Additionally, the **auditing** process will be directed by the **General Anti-Avoidance Rules Department**, in coordination with the Regional Directorate or the Large Taxpayers Department, as applicable. Therefore, it **will have a say in the appropriateness of classifying an act as tax avoidance before a Tax and Customs Court (TTA)**.

Once the auditing stage is completed, the General Anti-Avoidance Rules Department must prepare a report that includes, at a minimum, the analyzed background information, the taxpayer's arguments, and the reasoning for classifying the acts or legal transactions, or a set or series of them, as constituting or not constituting tax avoidance. The report must be signed by the officials in charge of the audit and by the head of the Department



Additionally, the Committee may provide opinions on the filing of **complaints or lawsuits exceeding 1,200 UTA**; the **reward for anonymous informants**; **transactions or operations with institutional interest**; and **assessments, resolutions, and charges arising from the above**. The Committee's decisions must be unanimous among its members.

## **B. Tax Council:**

The Tax Council will have **binding authority over the legality of Circular Letters proposed by the Commissioner of the SII** that are subject to prior public consultation. These Circular Letters can be rejected or approved with the vote of three out of the four council members. The Commissioner of the SII will also be a member of the Council.

Additionally, the Council will have the authority to **review and provide opinions on the SII's Tax Compliance Management Plan**, though its opinion will not be binding.

Regarding its **structure**, the council members will be **appointed by the Minister of Finance** from a shortlist proposed by the Senior Public Management System (ADP). They will serve **five-year terms** and will be subject to **disqualifications**, such as engaging in tax or legal advisory services and/or representing taxpayers administratively or judicially before the SII while in office; and having been convicted of an offense with an afflictive penalty, domestic violence, or any crime that permanently disqualifies them from holding a public office, among other specified disqualifications.

Lastly, it is noted that they may be compensated with up to 50 UF per session, with a maximum of 150 UF per month.

## **3. Business reorganization**

The rule on business reorganizations, contained in Article 64 of the Tax Code, is amended, stating that **the power to assess transactions will not apply to mergers and divisions, whether national or international**, as long as the tax cost of the assets is maintained in the absorbing or newly formed company in a merger, in the companies created as a result of the division, or in the company receiving the contribution of

one or more assets, and no actual cash flows are generated for the contributor. Therefore, **the requirement for a legitimate business purpose is removed** in the case of **mergers and spin-offs**.

## **4. Definition of Business Group**

The definition of "Business Group" proposed in the original bill within the Tax Code is removed, thus maintaining the current reference to Article 96 of the Securities Market Law, ensuring that there will be one single technical definition of a business group.

## **5. Article 27 bis of the VAT Law**

The Bill proposed that the restitution of VAT credit for the acquisition of fixed assets, when a refund had been requested, should be done within 10 years from the generation of operations subject to VAT, and not beyond 15 years from the fiscal year following the year in which the refund was requested by the taxpayer.

The amendments remove the deadlines for the restitution of VAT credit via tax debit.

## **6. Exemption for Low-Value Imports:**

Another amendment proposed by the Executive concerns the **removal of the VAT exemption currently granted to imports** of goods valued up to US\$41.

To combat informal trade, it is now proposed to create **a tariff exemption for the importation of goods, with a limit of up to US\$500 per unit**. However, controls will be required, such as the use of credit or debit cards or setting a limit on the number of purchases eligible for the benefit.



## 7. Obligation of electronic payment methods:

The text with the amendments also establishes that **purchase and sale transactions exceeding 50 UF or their equivalent in foreign currency must always be conducted through electronic payment methods or any other payment method that allows for the identification of the payer.**

According to the proposed modifications, this requirement **will apply to the full value of the transaction**, without the possibility of splitting the payment into amounts below the established limit or making successive purchases for the same purpose.

However, the Commissioner of the SII, through a reasoned resolution, may determine that certain sectors or economic activities in one or more regions of the country are exempt from this obligation. To do so, the Commissioner must consider the characteristics of the economic sectors, the penetration of electronic payment methods, or the banking status of taxpayers in a specific area.

## 8. Export VAT

The amendment establishes that exporters who cease their activities must **demonstrate that they have exported, in the last 36 months, an amount equivalent to the refunded VAT**, as stipulated by Article 36 of the VAT Law. If they do not meet this requirement, they must return the proportional part of the refund, except if they are in bankruptcy liquidation.

Additionally, if an exporter with an advanced refund is absorbed by another company in a reorganization, the new company will retain the rights and obligations of the refund without having to return the already refunded amounts, provided that the original project continues.

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