

Government submits new amendments to the Bill on Tax Compliance Obligations

Tax Newsletter – August 13, 2024

On Monday, August 12, as had been discussed for some days, the Government introduced **new 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**.

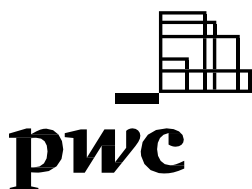
After the bill was approved in general terms in the Senate floor and returned to the Finance Committee for detailed discussion, the Executive Branch submitted a series of amendments within the framework of the protocol signed a few weeks ago.

Specifically, these new amendments modify the bill in some areas that had already been under discussion, mainly regarding rules on **banking information requests and banking secrecy, information duties, some amendments to VAT law provisions, and the customs ordinance**.

However, despite these amendments, it is expected that in the coming weeks, a new set of amendments will be introduced concerning two major issues still under discussion: changes to the **governance of the Internal Revenue Service (SII)** and the administrative application of the **General Anti-Avoidance Rule (GAAR or NGA)**.

The Executive Branch has reported that the implementation of these amendments will be carried out within the current budget and will not incur significant additional fiscal expenditure. In this way, the Government intends for these amendments to be discussed and approved in the Senate to move forward with the final stages of the bill's legislative process.

Below, we share a summary of these amendments submitted by the Government.





I. Modifications to the Tax Code

1. Requirement for information and bank secrecy:

The recently submitted amendments change the original bill on this matter, which, it should be noted, had already been subject to modifications. With the latest changes, we can now distinguish: **(i)** a general procedure, subject to judicial oversight, similar to the one currently in place but with shorter timeframes and greater protections for the taxpayer; and **(ii)** an exceptional procedure for qualified cases that would be more aligned with the lifting of banking secrecy as outlined in the Economic Intelligence draft bill.

General procedure:

The amendments proposed by the Executive Branch establish that the SII, within the scope of an audit and prior to issuing a summons, may require the taxpayer to provide their banking information. For this, the SII must specify the transactions or types of transactions or products subject to the request and the period it covers.

Similarly, response deadlines to the SII's request are set in **three specific cases**: **(i)** when there is an agreement between the SII and the taxpayer; **(ii)** when there is no consensus between the parties; and **(iii)** when the seriousness of the facts under investigation warrants notifying the taxpayer after the information has been provided.

In general terms, the taxpayer will have a 10-day period to respond either positively or negatively to the summons in which the SII requests access to banking data, in addition to specifying the timeframe within which the information will be provided, which in any case cannot exceed 20 days. **If the taxpayer does not respond, it will be understood that they do not approve access**, unlike the original bill, which stated that if there was no response, the required person would approve the lifting of banking secrecy, also known as "positive silence".

However, if the taxpayer rejects the lifting of banking secrecy, the SII will only be able to gain access through the judicial procedure established in Article 62 bis (requesting access from a court). If the SII obtains a favorable ruling, or if an agreement is reached to lift the secrecy, the bank will have 10 days to provide the requested information.

Exceptional procedure:

While, as a general rule, the taxpayer must be notified of the information request, an exceptional procedure is established when the access request is based on: **(1) audit procedures related to tax crimes** (punishable by fines or imprisonment); **(2) information obtained through the new rule requiring banks to report on taxpayers receiving more than 50 transfers in a month from different individuals**; and **(3) audit processes investigating discrepancies of more than 2,000 UF between the amounts declared by the taxpayer and the information held by the SII within the last 36 months, or repeatedly failing to comply with certain obligations**, such as not displaying accounting books and not maintaining proper accounting records.

In these cases, the SII must submit the request to a Tax and Customs Court (TTA), justifying the need to obtain the banking information to verify the accuracy and completeness of tax returns or the absence thereof. On the other hand, the judge will have five days to verify compliance with the requirements.

At the end of that period, the court must notify the SII of the ruling. If approved, the SII must send the request and the court's ruling to the respective bank, which will provide the information within 20 days.



2. Duty of information and start-up activities:

The original bill, as part of measures against tax evasion, includes modifications to the duties of information disclosure and adds the obligation for various public and private entities to require a declaration of start-up of activities from their users.

Now, the amendments introduce the following modifications:

- (1) The **obligation to report changes or statutory modifications of legal representatives, partners, or shareholders, and reorganizations when they occur abroad** but have a direct effect on Chilean taxpayers **is eliminated**.
- (2) The scope of the rule that, in the original bill, allows for the **extension of the statute of limitations by six months** (even if it has already expired) in cases where the omission of information duties regulated by Article 68 is detected, is expanded
- (3) The original bill requires **operators of technological intermediation platforms** to demand a declaration of start-up activities from their supplier users. The amendments now add that: **(i)** platforms can be exempted from this obligation for persons who declare they are not subject to the obligation to start-up activities; **(ii)** platforms will be required to demand that those offering their products or services provide proof of compliance with their tax obligations, in the manner and within the time frame determined by the SII through a resolution; and **(iii)** they will be required to annually report to the SII the individuals and entities registered on the platform, and for those who declare they are not obligated to notify the start-up of activities, the number of transactions and the accumulated amount of those transactions.

3. Obligation to report information on repeated Bank Transfers:

The original bill included an obligation for banking and financial entities to provide information to the SII when **the holder of an account receives more than 50 deposits from 50 or more different individuals or entities, or when, within a six-month period, at least 100 deposits from 100 different individuals or entities are made**.

With the amendments, adjustments are made to the criteria that deposits into account holders' accounts must meet to be reported to the SII by financial entities. Specifically, it is clarified that **all of the account holder's accounts must be considered when tallying the deposits**, and that this information may serve as the basis for an audit process

4. Audit and control procedures for Financial Institutions:

It is established that the SII will implement a system that allows public services and agencies of a fiscal and semi-fiscal nature to transfer data and records requested by the SII for tax auditing purposes.

Additionally, **commercial banks are now required to verify the start-up of activities and the good standing tax status** of applicants for credit operations, loans, or any other transaction of a financial nature, as well as the penalties associated with non-compliance (1 UTA per omission, with a maximum of 500 UTA).



5. Information requirements for regular sellers of used movable goods:

Another of the amendments aimed at fighting the informal market now **requires regular sellers of used movable goods to issue a tax document** that identifies: **(i)** their supplier; **(ii)** the goods purchased; and **(iii)** the quantity and origin of the goods.

This obligation will not apply if the supplier issues the corresponding invoice for the sale.

6. Obligation to use electronic payment methods:

The amendments also include the obligation that any purchase or sale transaction exceeding **50 UF or its equivalent in foreign currency must be conducted through electronic payment methods or any other payment method that allows for the identification of the payer.**

This provision does not permit the transaction to be broken down into successive smaller amounts. Finally, a penalty for non-compliance with this rule will be imposed, ranging from 50% to 500% of the transaction amount, with a minimum of 2 UTM and a maximum of 40 UTA, and potential imprisonment in case of repeated offenses.

7. Self-Reporting of tax discrepancies:

Taxpayers are given the option to **self-report discrepancies in taxes that may constitute tax crimes**, along with the requirements for doing so:

- Submit a proposal for the tax returns to be corrected, which can include only the three years prior to the request.
- Not be under an audit procedure for the same taxes.
- Not have been convicted of tax crimes or subject to fines if opting not to file a complaint.
- Not have self-reported previously.

In these cases, the taxpayer will not be subject to a complaint or legal action, and such discrepancies will not be eligible for forgiveness of interest and penalties. However, they may enter into a payment agreement with the Treasury Service.

8. Tax Anonymous informant:

Another significant change pertains to the figure of the tax anonymous informant, as outlined in the original bill.

The amendments propose **raising the requirements for someone to qualify as an anonymous informant and to be eligible for a reward** for their contribution to an investigation. Under the new provisions, **a person will lose their status as an anonymous informant not only if they provide false information but also if they renounce their anonymity or publicize their report.**

The Executive suggests that to qualify for the financial reward, which amounts to 10% of the defrauded taxes, the value of the offense must exceed 100 UTA.

Finally, informants who lose their anonymity will be disqualified from receiving this compensation.

9. End-up of activities:

Finally, the amendments provide clarifications on the procedure related to the end-up of activities. Specifically, a **positive silence** provision is introduced into the rule requiring the SII to review and issue the tax assessment corresponding to the termination of business activity within a six-month period. If this period elapses without the issuance of the assessment, the **taxpayer's submission will be deemed accepted.**



II. Modifications to the VAT Law

In this matter, the amendments primarily address the following: **The procedure for assessing the taxable base, as incorporated in Article 20 of the law** (applicable when the taxpayer is unable to determine the tax payable), **is restricted** when the sales determined by the SII do not exceed 2,400 UF.

Additionally, the application of tariffs or customs duties is eliminated for individuals who have purchased goods from abroad through a digital platform, provided that the platform has declared and paid the corresponding VAT.

III. Modifications to the Customs Ordinance

The main changes introduced by the amendments are as follows:

1. Modifications are made to the **administrative reconsideration process related to claims filed with the Tax and Customs Court (TTA)** in the following aspects:
 - It is established that during the administrative reconsideration process, the taxpayer must be given the opportunity to be heard and present the required documentation to resolve the request, unless the appeal is inadmissible or fully accepted by the Customs Service
 - The evidence presented must be evaluated based on sound reasoning.
2. Regarding the Customs Tax Administration System, which maintains an electronic record of all its procedures, cases, or judicial actions, it is established **that no record may be deleted without prior court order.**

This body may also require, if necessary, that documents and evidence presented in a process be provided in physical format, either on paper or via an electronic storage device.

IV. Modifications to the tax on highly valued goods “Luxury Tax”

In this matter, the amendments are limited to **extending the exemption for yachts used by high-performance athletes to vessels weighing 1,500 kilograms or less**, whether or not they have been used in official regattas. This requirement will only apply to vessels with a greater weight, but not exceeding 3,000 kilograms.

V. Modifications to the Taxpayer Ombudsman's Office (DEDECON)

The main changes introduced by the amendments are as follows:

1. An obligation to provide an annual report on its activities to the Senate Finance Committee.
2. Expanded powers to represent taxpayers in customs matters as well.
3. An extension of the duty to hold regular meetings with the SII to promote cooperation with the tax authority and address taxpayers' issues and legal matters, now including the General Treasury and the National Customs Service. Additionally, a special duty of coordination and cooperation with the SII's Taxpayer Assistance Sub-Directorate is introduced.

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