



## Bank Secrecy: Chile passes new law allowing access to banking information

### Introduction

Law No. 20, 406 of 5 December, 2009, introduced changes to the Tax Code with the purpose of broadening the number of situations in which the Chilean IRS may have access to the information on banking operations subject to bank secrecy or confidentiality.

Until before this new law, article 62 of the Tax Code only allowed Ordinary Courts to order the examination of bank current accounts in the context of procedures for crimes related to compliance with tax obligations. Likewise, the Director of the Chilean IRS was allowed to order the examination of current accounts, issuing a well founded decision while investigating breaches to tax laws that are sanctioned with imprisonment or the restriction of the freedom of movement.

### Summary of the contents of the new law

This new bill replaced article 62 of the Tax Code. In its new wording, this article allows not only Ordinary Courts to authorize the examination of the information on banking operations of certain persons, in the context of procedures for crimes related to compliance with tax obligations. Nowadays, the same faculty was granted to Tax & Customs Courts in procedures for the application of penalties that are not imprisonment or restriction on freedom of movement.

Furthermore, article 62 now grants the Chilean IRS, in the context of its fiscal supervision faculties, the possibility to request information on the banking

operations of certain persons that is indispensable to verify the truthfulness and completeness of their tax returns. The Chilean IRS may request this information in the following three cases:

- (i) While exercising fiscal supervision related faculties;
- (ii) Upon request from a foreign tax administration, if there is an agreement for the exchange of information executed by Chile with the respective State which has been ratified by the National Congress, and
- (iii) In the context of a procedure for the exchange of information with the competent authorities under the agreements contained in a Double Tax Convention executed by Chile that is in force.

Information requests made by the Chilean IRS are subject to a regulated procedure under articles 62 and 62 bis, which begins with a notice sent to the bank by the National Directorate of the Chilean IRS asking for the delivery of the information required. On its turn, the bank must notify the owner of the information on the existence of this request and of its scope. The owner of the information may reply to the request made by the Chilean IRS and authorize the bank in this reply to hand this information to the tax authorities.

If the owner of the information does not authorize the bank to fulfill the request from the Chilean IRS, the bank will not be able to deliver this information. In this situation, the Chilean IRS is allowed to file a request for authorization before the Tax and Customs Court corresponding to the address in

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Chile of the owner of the information, as reported by the bank to the Chilean IRS. If the address is not available, the competent court shall be the one corresponding to the address of the required bank. An enforceable court decision allows the Chilean IRS to demand the information from the bank, which shall have 10 days to deliver it, counted as from the date of the notice given by the Chilean IRS with a copy of such decision.

In any case, the bank must always inform the Chilean IRS on whether the owner of the information has issued an answer or not, and of the content of the reply, including the postal and email address registered with the bank. Also, the bank must report if the owner of the information has ceased to be a customer.

### Final Comments


The new bill, on the other hand, broadened the number of cases in which the banking information of taxpayers may be examined. Besides those situations in which tax crimes are under investigation, the information may be examined today in the context of procedures to apply certain penalties that are not imprisonment or a restriction on freedom of movement. More importantly, the new bill allows the analysis of the banking information when it is indispensable to verify the truthfulness of tax returns, i.e. in the general context of the fiscal supervision exercised by the Chilean IRS.

It should be noted that this greater leeway to examine banking information has been balanced with a procedure allowing taxpayers to decide whether they authorize the delivery of this information or not and to exercise the right to challenge the request made by tax authorities before a Tax Court.

Furthermore, all the banking information received by the Chilean IRS under the procedures established by this new laws, that is subject to confidentiality

or secrecy, shall be handled as confidential information and may only be used to verify the truthfulness and completeness of tax returns (or their absence), to collect taxes due and to apply the corresponding penalties. The Chilean IRS must destroy the information received that does not lead to a subsequent fiscal supervision or tax collection procedure. The breach to this confidentiality obligation can be punished with imprisonment and a fine, leading also to the administrative liability -punished with dismissal- of the tax official or authority from the Chilean IRS responsible for such breach.

On the other hand, it should be noted that the file corresponding to the procedure for the authorization from a Tax Court to the Chilean IRS to demand the information from the bank shall be handled in secrecy throughout all its instances.

Finally, it is clear that these new faculties only allow the Chilean IRS to act with respect to information related to banking operations of specific persons when such information or data is indispensable to confirm the truthfulness of the tax returns filed, or to confirm their absence. In this manner, the Chilean IRS is not allowed to make general searches addressing anonymous taxpayers or to embark on 'fishing trips', as it is under the obligation to direct its investigations to specific persons and with respect to data that it may show is indispensable to exercise adequate fiscal supervision on the compliance of taxpayers with their tax obligations. 

## Legal Warning

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