

Contacts

German Campos

Socio
german.campos@cl.pwc.com

Mirencu Muñoz

Gerente
mirencu.munoz@cl.pwc.com

Tax News



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Private Equity Funds: Chilean IRS introduces new information requirements

Introduction

On December 24, 2009, the Internal Revenue Service (IRS) issued Resolution No. 203, in which it established the obligation to file an affidavit containing information on Private Equity Funds created under Law No. 18,815. This new obligation is enforceable as from tax year 2010, with respect to the information corresponding to financial year 2009, and the due date to file it expires on March 31.

Summary of the Content of Resolution No. 203 of 2009

In this new resolution, the IRS demands that Private Equity Funds (PEFs) created under law No. 18,815, file an affidavit with information on their incorporation, equity, balance sheet items, profits control and of profits and benefits paid out to their contributors, including the information on the rejected expenses mentioned in Article 32 of Law No. 18,815.

The obligation to file this yearly affidavit must be fulfilled by the company managing the PEF as from tax year 2010 and through the electronic transmission of data or transfer of files using internet. The affidavit must be filed no later than March 31 of each year, in connection with the information on the prior financial year.

In order to allow the fulfillment of this new obligation, the IRS created a new Affidavit Form No. 1804, and issued the instructions on how to complete it.

Final Comments

Firstly, this Resolution is noteworthy because in it the IRS makes an information requirement that exceeds what Law No. 18,815, in its Article 43, demands from the company managing the PEF. In effect, this legal provision requires the PEF managing company to deliver the following information to the IRS: (i) complete identification of the fund participants; (ii) the amount of their contributions, and (iii) the date and amount of the profit distributions. The IRS, on its part, is now demanding information on their constitution, equity, balance sheet items, profits control and of profits and benefits paid out to their contributors, including the information on the rejected expenses mentioned in Article 32 of Law No. 18,815.

Although Article 60 of the Tax Code, in its next to last paragraph, grants ample powers to the IRS to request information from taxpayers, we believe that the nature of the information required this time exceeds what these regulations allow.

On the other hand, it is significant that the IRS includes the rejected expenses of Article 32 of Law No. 18,815 as one of the items to report in this new affidavit, without making any qualifications. This is due to the fact that this rejected expenses regime will be in force for PEFs established before November 27, 2006 only from January 1, 2012, and therefore those expenses should be reported by said PEFs only from tax year 2013. This entry into force date was confirmed by the same IRS in Circular Letter No. 58 of 2007. PEFs established after the 27 November of 2006, however, are subject to the rejected expenses regime as from 5 June, 2007, which is the date when Law No. 20,190 – that introduced the rejected expenses regime in Article 32 of Law No. 18,815 was published in the Official Gazette, and must therefore report them during March of this year.

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