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In December of 2017, the Tax Administration of Costa Rica (TA) issued for public opinion the draft of the rules that will apply to the “Shareholder and Ultimate Beneficial Owner (UBO) registry”, the purpose of this document is to regulate the scope in which the information must be disclosed and declared to the TA in Costa Rica.

Is important to recall, that Costa Rica is making efforts to combat tax fraud, and is doing so by following the guidelines and rules issued by the OECD, which, although is generally considered to be “soft law”, in our country such guidelines are used as reference when issuing tax norms; this will then mitigate taxpayers behaviors whose objective is to erode the taxable base and shift profit perceived by the UBOs.

The draft contains a glossary where, for example we will find the definition of what it is to be understood by “third party administration”: where the “administrator” would be the legal representative of the entity abroad. The concept of UBO is defined as any individual with 15% of the shares, or that has the effective management and control of the company.

We also find other concepts such as “chain of legal structures”, which is defined as the grouping of legal entities where it exists direct or indirect shares.

Another important element of this document is the “Transparency Registry”, where the register of Shareholders and UBOs will be administered by the Central Bank of Costa Rica (BCCR), which in my opinion could generate some kind of adequate tax register. Although the BCCR is implementing a software and other procedures, is the TA who should guard and request information from taxpayers, as the TA’s main purpose is to have control of the tax information of citizens.

The following are subject to provide this information: legal entities, or any legal structure domiciled in the country, third party resource managers, non-profit organizations and private trusts, including foreign trusts that carry out activities in Costa Rica.

On the other hand, are not obligated to comply with this requirement, the companies that trade in public traded trusts, financial entities supervised by the General Superintendence of Financial Entities, companies or resource managers of third parties regulated by the General Superintendence of Securities and Pensions, the Executive, Legislative and Judicial branches.

Those responsible to supply the information are: the legal representatives of companies, trustee in the case of trusts, in the case of third party administrators the legal representative or agent, among others.

Regarding the supply of information, it will be done through a sworn statement where all the participations and final beneficiaries will be registered in the registry.

For purposes of identifying the final beneficiaries we find the following rules; the BCCR will develop, with the information of the received declarations and the aforementioned parameters of 15%, an identification of the beneficiaries.

It is important to mention that, if within the chain of related structures information has not been completed, none of the obligated parties will be considered to have complied with the obligations of articles 5, 6 and 7.

The obligated subjects must comply annually with the supply of the information in accordance with the start date established by resolution of the TA. Likewise, information must be provided within 10 business days following the incorporation of companies or structures.

With regard to the substantive participation of legal persons or legal structures domiciled abroad, the party responsible for the supply of the information must provide such registry with information on the ownership of all the shares of these companies and the powers granted in Costa Rica. If it is impossible to identify the final beneficiary, it will be presumed that the final beneficiary is the manager.

The person responsible for the supply of information must leave evidence of the impossibility of identifying all the shareholders of the legal entity domiciled abroad and that the records kept by the company have been verified.

Regarding the trusts, the object of the contract, the trustor, the trustee (s), trustees and other beneficiaries must be declared.

In the case of the third-party resource manager, the rules of articles 6 and 7 will be followed regarding the supply and determination of the final beneficiaries.

For non-profit organizations, they must be registered and the guidelines of article 6 regarding the supply will be followed.

As previously mentioned, the BCCR is the entity that will guard the registry of shareholders and UBOs, and must follow the control procedures and safeguard the information that is received, such information must be available to the TA.

Regarding the penalties for non-compliance, we find that Article 84 of the Tax Code of Standards and Procedures (TCSP), which represents 2% of the gross income of the figure or legal structure, with a minimum of three base salaries and a maximum of 100.