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NEWS

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OFFICIAL GAZETTE No. 261 (March 3, 2023)

TAX INFORMATION EXCHANGE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA (U.S.A.) AND ECUADOR

The **Tax Information Exchange Agreement (TIEA)** between USA and ECUADOR is in force, which would increase cross-border controls and tax transparency for taxpayers of both countries.

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By Official Gazette No. 261 of March 3, 2023, the "Tax Information Exchange Agreement between U.S.A. and Ecuador " (**TIEA**) was issued and the main points of the agreement are the following:

GENERAL

- The **TIEA** allows the exchange of information related to U.S.A. federal taxes and those administered by the IRS Ecuador with respect to foreign or national individuals or legal entities domiciled in said countries. In the event of future amendments creating or modifying existing taxes, such changes will also be part of the scope of the **TIEA**.

TYPES OF EXCHANGE OF INFORMATION

- The TIEA allows for 3 types of Exchange of Information:
 - 1) **Exchange of Information on Request (EOIR);**
 - 2) **Automatic Exchange of Information (AEI); and,**
 - 3) **Spontaneous Exchange of Information (SEI).**

- **Exchange of Information on Request (EOIR):** Request for specific information (RSI) for tax purposes with the following criteria:
 - a) The Requested Country must carry out all relevant measures to collect the information requested by the Requesting Country; notwithstanding that there may be no tax control process in force in the Requested Country;
 - b) The Requesting Party must carry out the RSI complying with formalities such as: identity of the persons to be reviewed, contact information, request for information and form in which the information will be received, period of analysis, factual and legal basis of the reasons of the request, official declarations that the RSI complies with the local regulations.
 - c) The Requested Party shall comply with appropriate information gathering and auditing procedures, such as: exhibition of accounting books, testimonies, documentation, records, questions, hearings in which the Requesting Country may participate.
 - d) Banking, financial, fiduciary information, ownership of assets,

ultimate shareholders of companies, among others.

- **Automatic Exchange of Information (AEI):** Expedited procedures for the exchange of information under standardized, automated and recurring schemes by both the Requesting Party and the Requested Party.
- **Spontaneous Exchange of Information (SEI):** Either Party (Ecuador or U.S.A.) may collect tax information that comes to its knowledge or considers relevant to share such information to the other Party; under procedures to be established in advance.

OTHER CONSIDERATIONS

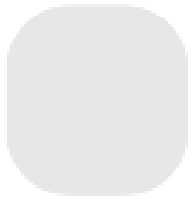
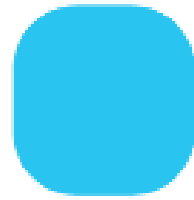
- **Foreign Tax Inspections (FTI):** Officials of a Party (Ecuador or the U.S.A.), with the prior consent of the Parties, are authorized to visit and conduct interviews and inspections of documents in the country of the other Party.
- The Parties (Ecuador or the U.S.A.) **may deny the request for Exchange of Information** when:
 - a) Information is requested outside the legal measure of the Requesting Party.



- b) All legal measures available to the Requesting Party to obtain the information have not been exhausted.
 - c) They refer to commercial, business, industrial or professional secrets or in an industrial process; except for banking, financial, fiduciary, ownership of assets, final shareholders of companies.
 - d) Disclose confidential communications between client-attorney or other legal representative in cases of provision of legal advice or information related to ongoing or anticipated legal proceedings.
 - e) If the RSI is contrary to public law and order.
 - f) If the Requesting Party has met the statute of limitations.
- **Confidentiality of information for tax purposes** is included; and such information may only be disclosed in public court proceedings or court judgments. In certain cases, it is possible to disclose information only for terrorism cases, international agreements for legal assistance in criminal matters and similar. In the case of Ecuador, there must be prior consent from the U.S.A. to disclose information to its tax authorities.



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