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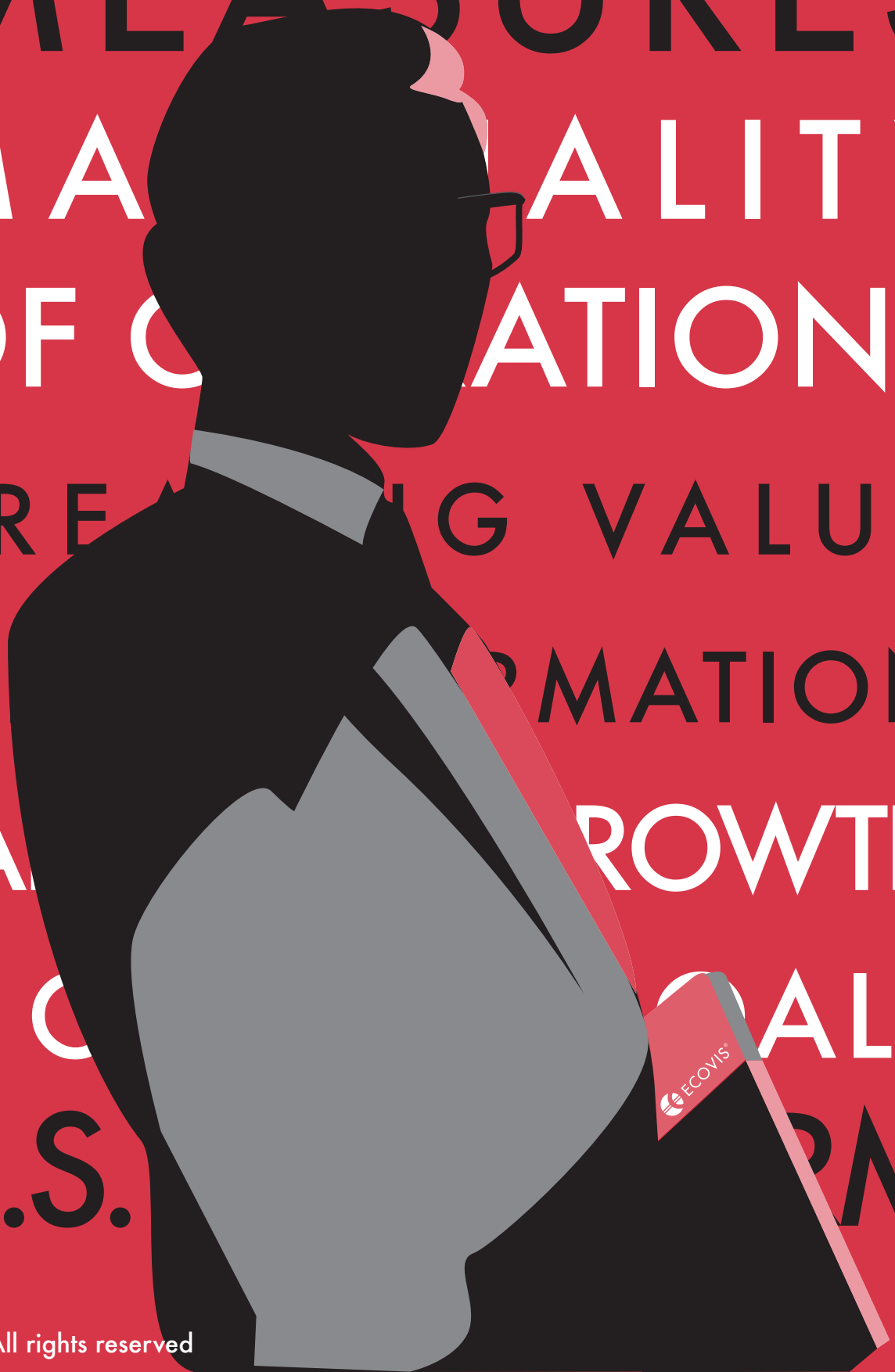

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On behalf of all partners of the ECOVIS Americas region, we thank you for taking the time to read the 4th issue of our bimonthly magazine.

All content has been prepared by employees and partners from our offices including articles, design, translation and format of the document. If you would like to share an article, reference, or provide any other feedback, you may contact the editor to the following:

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What We've Been Up To...

From the Andes to Niagara Falls, our partners have had many exciting projects, recognitions and accomplishments we are thrilled to share with you.

IFA LONDON 2019

Our partner in Mexico, Ricardo Quibrera Saldaña, flew to London to attend the prestigious IFA annual international meeting, this year held in london, UK, at the Queen Elizabeth Hall.

IFA 2019 73rd CONGRESS OF THE INTERNATIONAL FISCAL ASSOCIATION LONDON ENGLAND

GUATEMALA PARTNER LEAD SPEAKER

IGCPA

Our partner in Guatemala, Byron Méndez Sagastume, was the lead speaker at the Guatemalan Institute of Public Accountants and Auditors, known as IGCPA, to discuss the important updates to the IFRS with a focus on small-medium sized firms. A live Facebook transmission was also held.

11 September

ECOVIS Perú

Congratulations to all accountants in Peru!

ASOCIACIÓN DE AUDITORES EXTERNOS | CHILE |

ECOVIS Chile is now a member of the External Auditors Association of Chile (Asociación de Auditores Externos).

ECOVIS Chile

24th IPM ECOVIS

Our partners from the Americas region will be joining our global partners at the 24th International Partner Meeting of ECOVIS during November in Sydney, Australia.

We are now on LinkedIn!

@ECOVIS Americas

linkedin.com/company/ecovis-americas

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01 CREATING VALUE WITH INFORMATION

The auditor's role has been based on the principle that "knowledge is power". However, in the present, auditor's must know that "the power lies in understanding information".

The above mentioned consists in diving inside a company's process, in order to learn the business model, strengths, weakness, opportunities and threats of said processes. This can only be achieved by analyzing information and presenting reports which genuinely provide value to clients. How? By implementing data analytics, a foreign concept not long ago in Colombia, but which now has everything to do with the present and future for all firms lending professional services.

With the purpose of migrating to a modern auditing process, at ECOVIS Colombia great resources and developments have been allocated to data analytics. In order to do so, it is necessary to understand each stage and proces, which consists of:

1. Business Intelligence: provides auditors the ability to process infinite data of different sources, and analyze it from a risk perspective.

2. Machine Learning: this is the second stage the auditor navigates, creating a system which learns autonomously. In terms of competitiveness, this stage is unparalleled.

3. Artificial Intelligence (AI): by applying expert systems to provide the necessary information for the auditor to interpret and evaluate the auditing plan, which in turn reduces time spent in data revision and creates an efficient workflow, to understand the core of the business.

4. Robots: this stage is the goal, by implementing virtual entities or artifical mechanics which take care of the repetitive work of the auditor, consequently building upon knowledge and improving the service in a highly competitive market.

From experience, it is undeniable to auditors that change is coming, and key to future success lies in innovation. Data analytics will distinguish conventual auditing firms from the technology driven ones, with quick algorithms able to predict risk. A young practice in the latinamerican region, it is important that firms consider educating their employees and investing in the technology, in order to attract not just national prospects but international ones too.

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02 OPINION: U.S. TAX REFORM

In late 2017, the U.S. enacted the Tax Cuts and Jobs Act ("TCJA"), bringing legislative substance to President Donald Trump's campaign promise of tax reform. In my role as a technical tax professional, I am responsible for understanding, interpreting and applying the new law. TCJA presented a significant challenge, given the lack of legislative debate behind the new provisions, one that required considerable guesswork until the Treasury Department and Internal Revenue Service issued guidance; in fairness, they too had to scramble to implement the new provisions created by Congress.

As an interested observer of the legislative process that produced the TCJA, and as a U.S. taxpayer who must contend with the new tax law, I feel a high-level perspective of TCJA is useful to understand what the new law sought to achieve, and where we are 18 months later. Unfortunately, TCJA has a number of provisions that conflict with its intended outcomes, in addition to technical flaws embedded in the rushed legislation which, if not corrected, will continue or exacerbate problems of U.S. multinational companies competing in the global marketplace.

TCJA's provisions have been thoroughly addressed elsewhere and are not the focus of this discussion. The new law, to no one's surprise, achieved passage only as the result of considerable political maneuvering, concessions and compromises. Certainly, it would not be an understatement to describe TCJA as less than a carefully crafted, technically sound tax masterpiece. Admittedly, some progress was made to address some of the issues impacting the international tax areas targeted by the President and his Administration. TCJA sought to "level the playing field" for U.S. businesses through the reduction of the U.S. corporate tax rate and to attract new foreign investments. At the same time TCJA provided some incentives for U.S. companies to retain manufacturing operations and intellectual property in the U.S. The law also sought the return of the considerable offshore profits earned by U.S. companies' foreign subsidiaries and not repatriated due to the high tax cost that would have been incurred. Additionally, progress of sorts was made towards the widely proclaimed goal of moving the U.S. to a territorial taxing system. However, 18 months after being signed into law, the proclaimed successes of the legislation have fallen short of achieving the identified goals, and the successes claimed in the media.

Territorial Tax System

TCJA was marketed to an eager U.S. audience as moving the U.S to a territorial tax system which typically would have taxed only U.S. sourced income. However, with the imposition of the Global Intangible Low-Taxed Income ("GILTI") provisions, the U.S tax base expanded to include the foreign profits of foreign corporations controlled by U.S. shareholders. No longer could U.S. parent corporations create foreign "blocker" companies to provide tax deferral and efficient redeployment of their offshore profits. Companies with existing "blocker" structures must consider if the continued expense of maintaining the foreign corporations is justified. Moreover, structuring foreign operations to address the potential GILTI liability has proven challenging and expensive for affected U.S. taxpayers.

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Participation Exemption

Under TCJA's new Participation Exemption provisions, dividends received by U.S. corporate shareholders appear to enjoy a 100% dividends received deduction. While appearing to move the U.S. closer to the rest of the world, the GILTI provisions potentially make this benefit illusory, as the shareholder may have already been subjected to tax on the foreign subsidiary's profits. Additionally, as a direct offset to the Participation Exemption, TCJA mandated the repatriation of previously untaxed, accumulated foreign profits. These deemed repatriations were taxed at a lower tax rate, which increased U.S. tax revenues (some over an eight-year deferral period). However, while these "phantom" distributions were required, the actual repatriation of cash to the U.S. shareholders was not. The anticipated return of the offshore profits and investment into the U.S. economy has not reached anticipated levels. Cash that was distributed has not produced the expected level of capital spending. Distributions received by individual shareholders will have suffered a high individual rate of U.S. tax. Although elective treatment was available to obtain lower-taxed corporate treatment on the deemed repatriation, this upfront savings was reduced by a second level of tax on the actual cash distribution. The complexity of the new provisions and the alternative tax implications required costly professional advice to understand their options.

Leveling the Playing Field

The new 21% corporate tax rate brought the U.S. into the mid-range of global corporate rates, and the Foreign Derived Intangible Income ("FDII") tax deduction provides U.S companies with an additional benefit in competing with foreign-based competitors. However, it should be noted that the FDII deduction faces potential challenge by the World Trade Organization ("WTO"), and although the incentives for re-positioning manufacturing may prove beneficial in some respects, the cost of altering supply chain structures and operations may not be practical or economically feasible in the short-term. Further, certain TCJA provisions actually work counter to the intended return of the manufacturing operations to the U.S., by providing GILTI offsets for offshore infrastructure.

Summary

TCJA has required changes in operations and tax structures of multinational companies. The consequence of dealing with a tax reform bill that was designed for political expediency is that the outcomes from that law are more political in nature than the result of sound tax policy. Whether TCJA's changes produce actual tax benefits to U.S. businesses and foreign investors has yet to be concluded. Previous U.S. tax reform efforts have often been characterized as "full of sound and fury, signifying nothing." TCJA certainly created considerable noise, and the required responses to its provisions have perhaps signified "something." With the prospect of more tax "reform" following the 2020 election cycle, U.S. multinationals will need to balance responses to the TCJA provisions while anticipating the need to react yet again following a second round of tax legislation.

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03 MATERIALITY OF OPERATIONS

ne of the aspects that are most questioned within the review procedures of the tax authorities and, in the legal / litigious processes that derive from such reviews is that of the "materiality of operations", with the purpose that operations will not be deemed non-existent and / or simulated to obtain tax benefits.

However, there is currently no legal provision that precisely regulates a concept of materiality, what type of documents prove it or the power of the tax authorities to question the same, so the scope and effects of the materiality under discussion is undefined in Mexican tax legislation. Consequently, on the one hand, this creates legal uncertainty among taxpayers since they have no legal certainty about the information that their accountants must integrate to verify said materiality and, on the other hand, it generates excessive actions by the tax authorities, which to verify the materiality that they question, requires under internal criteria all kinds of additional non-fiscal or accounting information.

The Mexican Tax Courts have not approved their resolution criteria on the materiality of operations and said criterion has been subject to different interpretations. However, today the decisions of the Courts in their majority and on a recurring basis are to confirm that the tax authority has the power to question the materiality of the facts that the taxpayers support the taxable income and the deducted expenses that apply for tax purposes. If this trend continues, this type of criteria will soon form mandatory jurisprudence for the Courts themselves and, consequently, the verification of materiality will be irrefutable.

In this regard, it is worth mentioning the within the tax reform proposal that would be applicable in Mexico from the year 2020 (subject to the approval of the chambers), which intends to implement different provisions through which the tax authorities may extend the scope of their powers to review the operations of the companies and determine if the operations are existent or not. This implies that a company cannot invoice, until it clarifies and demonstrates that its operations are not non-existent.

Due to the above, it is insufficient that the taxpayer has the accounting records, contracts, tax receipts and proof of payments and economic flow of their operations to prove that they are real, so you must integrate documentation and evidence other than the fiscal and that allows to locate all the situations of fact related to the operations.

Consequently, the fact that an operation meets the materiality requirement or not implies, among other things, the rejection of deductions for income tax purposes, or the inappropriateness of the corresponding creditable value added tax; as well as, in some cases the total or partial refusal in returns of balances in favor, which significantly affects the cash flow and operation of the companies.

It should be mentioned that it is very important to demonstrate, together with the materiality of the operation, the business reason for the operation, while even if it is demonstrated that the operation was actually carried out, it

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It should be mentioned that it is very important to demonstrate, together with the materiality of the operation, the business reason for the operation, while even if it is demonstrated that the operation was actually carried out, it must also be verified the reason for carrying out the operation. That is, the relationship between the taxpayer's lucrative occupation and its objective of obtaining a profit. In the fiscal reform for the year 2020 the business reason will be an indispensable requirement for the tax effects of the taxpayers' operations.

Based on the experience we have had, it is clear that the documentation proving an operation includes information about the before, during and after said operation was performed; especially when materiality is an aspect of consideration that is increasing at the administrative and jurisdictional level, not only in Mexico, but also at the international level. Our suggestion is to integrate in all cases a "fact book" or "defense file "that includes information related to the decision process to perform the operation in question. This may include an acquisition of goods or contracting services, as well as information related to the formal existence of an agreement between the parties. Likewise, information must be provided to demonstrate the financial and accounting aspects of the operation in question.

From the above, as an example, we can mention that within the information to be presented, or to be included within the defense file of an operation, are the following:

- Written analysis related to the need to acquire the good or to contract the service, used to make decisions related to the transaction;

- Documents proving previous negotiations and the formalization of the transaction itself, that is, the corresponding contracts;

- Documents proving the follow-up of the agreed commitments:

- Documents that support the realization of the services and periodic progress reports, as well as the corresponding deliverables.

- Documents and accounting entries of the payment method and its effective realization.

- Opinions related to the relevance of acquiring the good or contracting the service;

- Correspondence that accredits all the above aspects not only between the provider and the customer, but also with advisors and other third parties related to the transaction;

- Documents that accredit relevant aspects of the sector or branch in which the taxpayer acts in relation to the need or relevance of the acquisition of the good or the reception of the service.

At our firm – **ECOVIS Quibrera Saldaña** – we have the necessary tax and legal experience to support you in the cases of verification of operations, so we are at your service in any process of review or request for refund of taxes in those that require it, which today, without a doubt, the aspect of materiality must be demonstrated.

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04 PANAMA'S GROWTH & GLOBAL GOALS

Multinational entities are in constant global expansion. In August 2007 Panama created the regime of Multinational headquarters, known as SEM (from its initials in Spanish) Sede de Empresas Multinacionales. This legislation attracts and promotes international investment in Panama. This law applies only to the multinational entities that want to develop important activities on commerce, finances or services in other countries. This law also give the opportunity to different multinationals entities to establish their regional headquarters that allow them to sell from Panama to the rest of the world.

Multinational entities can operate from Panama as headquarters, and sell to the different regions and countries except in the Panamanian territory. If the company wants to operate selling within the Panamanian territory, it will require an expansion of their license. Therefore it is important to seek advice from accountants and lawyers prior to changing method of operations.

SEM entities are located in a free zone known as Panamá Pacífico. As soon as these entities are established in this area, the entities receive a commercial license that allows them to operate from this special zone and obtain particular tax benefits.

Within these tax benefits, SEM entities are exempt from paying income tax on international operations up to 10 years. The foreign executives of these multinationals will experience tax benefits as well on their salaries, as long as the entity headquarters pays them. This means that executives do not have to pay income tax nor social security in Panama.

In the matter of entity exports, VAT is exempt or Impuesto de transferencias de bienes muebles y servicios, I.T.B.M.S. (from its initials in Spanish).

SEM entities also have the privilege to bring and hire specialized workforce and are able to bring their families at any time.

The popularity of SEM entities has proven beneficial to multinations and to the country alike since it has contributed to the economic growth of Panama. Currently, there are 147 SEM companies operating from Panama including: Samsung Electronics, LG, DHL, Hutchinson Port Holding Group, Maersk, Scotia Bank, Assicurazioni Generali, Tetra pack, PSA Peugeot Citroen, General Electric, Johnson & Johnson, Caterpillar, Procter & Gamble, Unilever, China Railway International Group Co., Isuzu Motors Limited, and much more. All these companies have taken advantage of this law, and the opportunity to grow their operations globally.

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05 URUGUAY IMPLEMENTS PREVENTIVE MEASURES

In accordance with Law No. 19,574 dated November 20, 2017 and its Regulatory Decree No. 379/2018, direct and indirect users of free zones, casinos, real estate, lawyers, notaries, accountants, auctioneers, merchants of antiques, works of art and metals and precious stones, providers of certain services (incorporation of companies, functions of directors, facilitators of registered office, etc.), non-profit organizations, cross-border goods transportation, all these subjects are obligated to report unusual or suspicious operations to the Financial Information and Analysis Unit (UIAF) of the Central Bank of Uruguay (BCU) and must implement policies and comply with procedures for the prevention of being used in money laundering, financing of terrorism and proliferation of weapons of mass destruction (risk of laundering onwards).

Subjects of the financial sector are not included in this decree since they have their own regulations issued by the Central Bank of Uruguay.

The obligated subjects must carry out a laundering risk assessment as well as take appropriate measures to identify and evaluate them. For this, each obligated subject must consider the client risk, the geographical and operational risk. As a result of the analysis a level of risk will be assigned which may be low, medium or high.

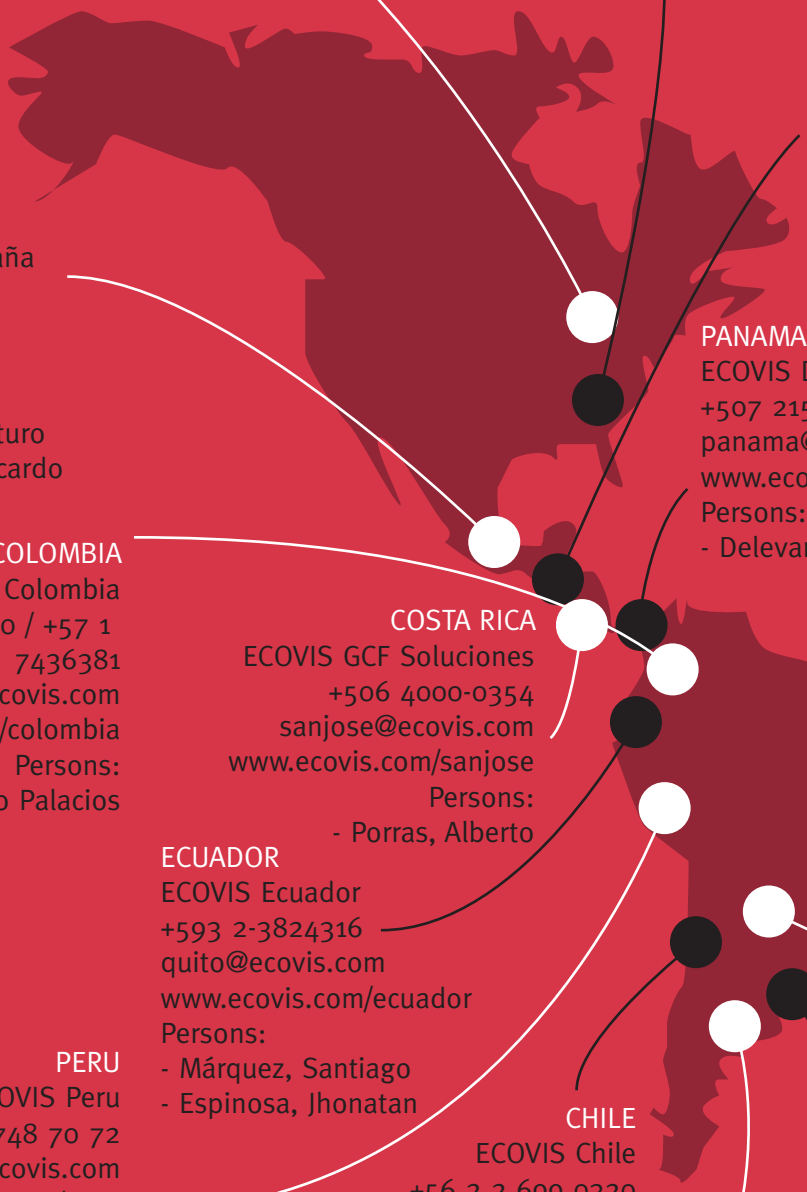
The risk of laundering must be administered by the obligated subjects in such a way that they must develop procedures and policies that allow to prevent, detect and report unusual or suspicious operations.

The application of due diligence procedures must be carried out for new clients as well as for existing ones and it is important to emphasize that the procedures are prior to accepting it as a client and when the procedures cannot be applied, no commercial relationship will be established with them.

Regarding due diligence measures, these must be proportional to the identified risks; the greater the risk, higher rigorous diligence, and the lower the risk, simplified. The measures may include identifying the client, the person who claims to act on behalf of the client, as well as the final beneficiary, obtaining information on the purpose of the business relationship and the nature of the business to be developed, obtaining a reasonable explanation of the origin lawful of the funds managed in the operation.

There is also a need to designate a compliance officer, who may be the same obligated subject, and whose functions will be to periodically review the policies, procedures and controls implemented to comply with the provisions for the prevention of laundering, propose measures to mitigate the risks, propose alert mechanisms, collaborate in the preparation of reports of suspicious operations, coordinate the necessary training and verify compliance and the results in general of their application.

MEMBER DIRECTORY



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ABOUT ECOVIS

Ecovis is a leading global consulting firm with its origins in Continental Europe. It has over 6,500 people operating in over 70 countries. Its consulting focus and core competencies lie in the areas of tax consultation, accounting, auditing and legal advice.

The particular strength of Ecovis is the combination of personal advice at a local level with the general expertise of an international and interdisciplinary network of professionals. Every Ecovis office can rely on qualified specialists in the back offices as well as on the specific industrial or national know-how of all the Ecovis experts worldwide. This diversified expertise provides clients with effective support, especially in the fields of international transactions and investments – from preparation in the client's home country to support in the target country.

In its consulting work Ecovis concentrates mainly on mid-sized firms. Both nationally and internationally, its one-stop-shop concept ensures all-round support in legal, fiscal, managerial and administrative issues.

The name Ecovis, a combination of the terms economy and vision, expresses both its international character and its focus on the future and growth.

LEGAL

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