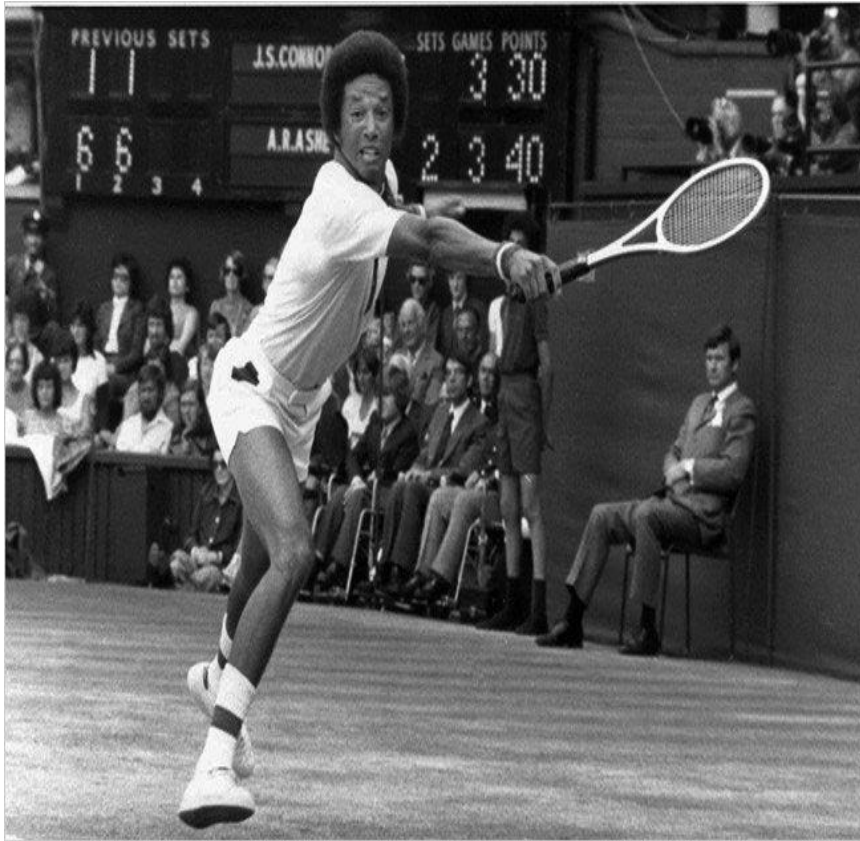


TTN Conference Buenos Aires 2017

Ultimate beneficiary owner
Uruguay's case

Jonas Bergstein
Bergstein Abogados

TTN Conference Buenos Aires 2017



“Change is the sign of our times. The world is changing at a dramatic pace. Most people resist change, even if it is for better. If you manage to understand and acknowledge the indisputable fact of life which is the quickening pace of change, then you will have a head start.”

Arthur Ashe, *Days of Grace*, 1993

A. Background



- Members of international organizations such as the G7, G20 and the OECD are clearly committed towards achieving a system of greater transparency of beneficial owners of legal persons and the sharing of information between and among government agencies
- The impetus for this movement is rooted primarily in financial (including tax) crimes, terrorist financing and anti-money laundering. The collection and sharing of this information can clearly have an impact on legitimate tax planning

A. Background G7 Declaration



G7 Bari Common Declaration on Fighting Tax Crimes and Other Illicit Financial Flows (May 13, 2017):

2. We will continue to work to ensure access to beneficial ownership information for tax authorities, financial intelligence units and law enforcement agencies, and welcome the work by the FATF and the Global Forum on Transparency and Exchange of Information for Tax Purposes on reinforcing inter-agency and international cooperation, in particular on beneficial ownership information. We also look forward progress on the work by the OECD in complementary tax areas relating to beneficial ownership;

4. We ask the OECD to start discussing possible ways to address arrangements designed to circumvent reporting under the Common Reporting Standard or aimed at providing beneficial owners with the shelter of non-transparent structures, considering also model mandatory disclosure rules inspired by the approach taken for avoidance arrangements outlined within the BEPS Action 12 Report, and to report back to the Group of Seven by our next meeting. We encourage the G20 to endorse this work.

A. Background Uruguay



Registry of Bearer Shareholders

- Act No. 18,930: Uruguay implemented a bearer shares identification system entered into force on August 1, 2012.
- In accordance with such piece of legislation, entities whose capital were expressed in bearer shares, were required to report --before the Uruguayan Central Bank-- the names of the direct holders of such shares, but not the identity of their beneficial owners.

B. Response in Uruguay



Tax Transparency Act

- On December 29, 2016, the Uruguayan parliament passed the Tax Transparency Act. The act entered into force on January 1, 2017, and introduced three significant innovations intended to align Uruguayan rules with OECD standards:
 - The obligation of Uruguayan banks to provide --to the Tax Office-- information regarding their clients' accounts.
 - Several amendments to the tax treatment on those legal entities domiciled in null or low taxation jurisdictions (offshore companies)
 - Creation of a registry --within the Uruguayan Central Bank-- containing the names of the beneficial owners of companies operating in Uruguay
- With the approval of the Tax Transparency Act, entities issuing nominative shares are also required to report the names of their shareholders. Previously, only the names of holders of bearer shares were provided to the Central Bank.

B. Response in Uruguay



Central Bank Registry of Beneficial Owners

- Beneficial owners are those individuals who, regardless of their nationality and/or residence, ultimately and effectively control companies, investment funds, trusts, foundations operating in Uruguay (including those who directly or indirectly own at least 15% of the paid-in capital or of the voting rights).
- Foreign companies with assets in Uruguay with a tax value higher than approximately USD 310,000, must also identify their beneficial owners.
- Limited liability companies are not obliged to report their beneficial owners provided their equity participations directly belong to such beneficial owners.
- Nor those investment funds and trusts registered abroad, whose final beneficial owners are companies listed on prestigious stock exchanges, or whenever there is an obligation to identify the beneficial owners in some other country and is an exchange of information agreement in force with Uruguay which would allow to know their names.

B. Response in Uruguay



Central Bank Registry of Beneficial Owners

- Reporting entities must provide the following information as regards their beneficial owners: (i) name; (ii) marital status and identification of the spouse; (iii) address; (iv) nationality; (v) passport or identity documentation number; (vi) tax identification number; (vii) status of Uruguayan resident or non-resident; and (viii) percentage of paid-in capital or voting rights.
- They must also report the composition of the ownership chain.
- Reporting entities may be required to provide documentation supporting their disclosures. In consequence, such entities must retain documentation about their beneficial owners for at least 5 years.

B. Response in Uruguay



Central Bank Registry of Beneficial Owners

- Relevant reporting dates:
 - New entities: 30 days as from incorporation date;
 - Pre-existing entities whose capital is expressed in bearer shares: 30 September 2017;
 - Other pre-existing entities: 30 June 2018

B. Response in Uruguay



Central Bank Registry of Beneficial Owners

- To guarantee compliance with the obligation to identify the beneficial owners, the act imposes severe penalties for failure to do so, namely:
 - fine of approximately USD 24,000;
 - prohibition of distributing dividends and profits; and
 - suspension of the certificate issued by the Tax Office.
- Entities that use inadequate legal forms that mislead or hinder access to the identity of the beneficial owners will be subject to a fine of approximately USD 240,000.

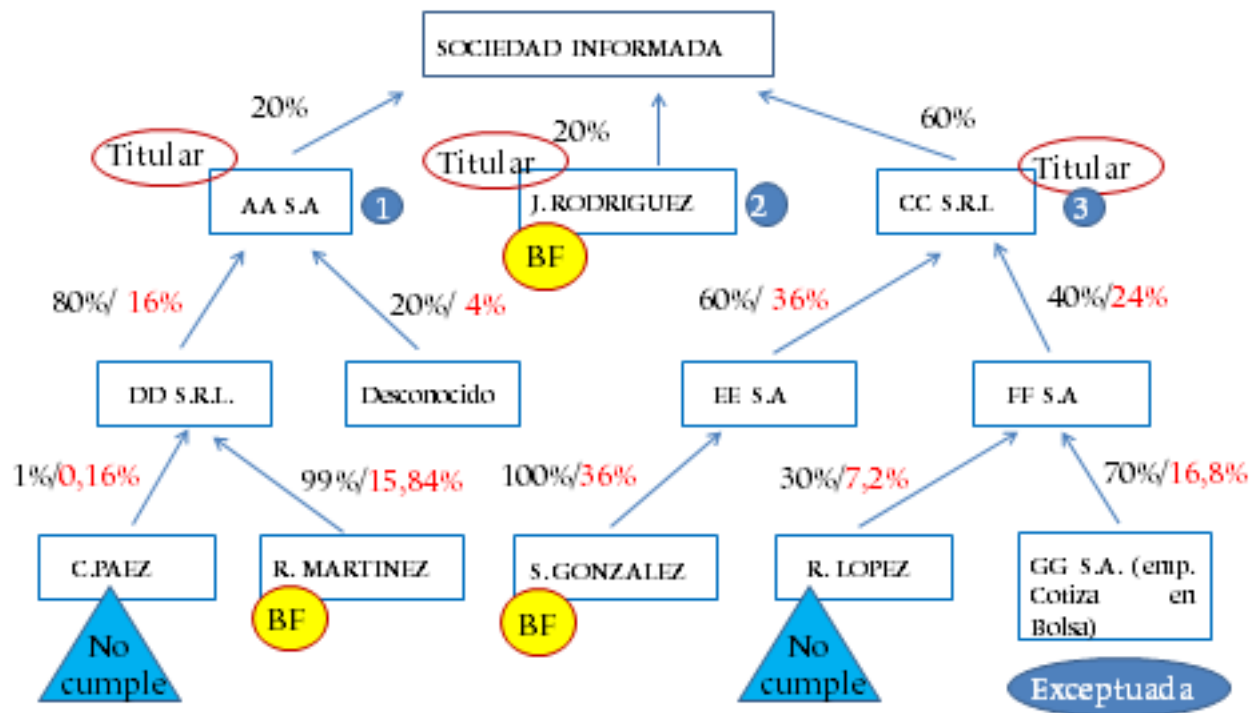
B. Response in Uruguay



Central Bank Registry of Beneficial Owners

- The Uruguayan Central Bank, according to the law, must keep the information provided by the reporting entities as confidential.
- However, the Central Bank may disclose such information to the following bodies:
 - Tax Office, in the framework of a request of information received from a foreign tax authority.
 - Anti-Money Laundering Office.
 - Anti-Corruption Office.
 - Criminal Courts.
 - Family Courts, on alimony matters.

B. Response in Uruguay



B. Response in Uruguay



Central Bank Registry of Beneficial Owners

- Practical issues:
 - Modification of the declared information
 - Companies listed on the stock market
 - Trust and investment funds registered and monitored abroad
 - Ultimate shareholders who are not beneficial owners
 - Non-profitable institutions



C. A Few Issues

- Why is the registration of beneficial owners so important?
- Current levels of enforceability
 - Assessment of the transparency trend up to now
 - Has automatic exchange of information in September 2017 actually occurred (for 2017 countries)? Do we know any concrete results or outcome?
 - Sanctions over taxpayers who fail to comply with transparency requirements
 - What has been the impact upon our profession (more work, etc.)?
 - Situation of countries which did not align with CRS.



C. A Few Issues

- Constitutional issues
 - Are the CRS and the automatic exchange of information rules fully compatible with local constitutional standards?
 - What is the role --increasingly weakened-- of national parliaments in a world where standardized laws are created by the OECD?
 - What is the protection established for those cases where the authorities make an abuse or misuse of the information they have obtained?
 - Increasing sanctions for those public officers who infringe the confidentiality of the information?
 - Registry of beneficial owners publicly available



C. A Few Issues

- Defense of tax planning
 - Fighting against tax planning does not infringe attorney-client privilege?
 - Is the lawyer becoming a cooperation agent of the Tax Office?
 - Who (and where) draws the line between cooperation with the Tax Office and disclosure of tax planning on one side, and on the other side infringement of duties which are the essence of our legal profession (including the duty of confidentiality) as typical defined in western law? Are CRS undermining the basics of the legal profession?
 - What has been the reaction of the local bar and business community to this trend?
- Multi-layer chains of stock-holding; the ridiculous level of information detail for each Director of each company in the stockholding chain (for instance: marriage economic regime between husband and wife!); threshold of control (15%); costs involved.

C. A Few Issues

Global Kidnapping Threat Map

