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USA Owners Must Disclose Interest in *Sociedad Anonima* and *Sociedad de Responsabilidad Limitada* to the Internal Revenue Service or Potentially Face Large Fines

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Many ask whether a Costa Rican corporation owned by USA persons must file a tax return with the USA Internal Revenue Service. The short answer is the USA Internal Revenue Service has, generally, not yet figured out how to extend its jurisdictional system so as to require a non-USA legal entity to file tax returns in the USA.

However, USA owners (individuals, corporations, partnerships, trusts, etc.) of a *Sociedad Anonima* or "SA" or *Sociedad de Responsabilidad Limitada* or "SRL" formed in Costa Rica are required to include a form in **their** USA income tax returns if:

- They own more than 10% (not 50%) of the non-USA corporation or partnership (a SA or SRL in Costa Rica)
- or
- They are an officer or director of a non-USA corporation or partnership (a SA or SRL in Costa Rica).

For this purpose:

- For a SA or a nonelecting SRLⁱ, control is defined as 10% or more based upon either voting rights or fair market value.
- For an electing SRL, control is defined as 10% or more of either the owner's interest in (1) capital, (2) profits or (3) deductions or losses.

Control or ownership can be direct as well as indirect.

Among other information, these forms require the presentation of the balance sheet and income statement of the non-USA corporation or partnership using USA Generally Accepted Accounting Principles in US dollar.

Failure to include these forms results in a US\$10,000 to US\$20,000 penalty per year per non-USA corporation or partnership assessed on each noncompliant USA owner. We understand through experience, informal discussion and allusions in the current instructions to the relevant forms that the USA taxing authorities will not assess the penalty if the USA taxpayer voluntarily amends the relevant income tax returns to include these disclosure forms prior to contact by the Internal Revenue Service.ⁱⁱ This apparent informal policy decision of “tolerance” is not mandatory on the part of the USA taxing authorities. It can be withdrawn at any time or selectively and arbitrarily applied. However, neither the offending taxpayer nor the taxpreparer is required to volunteer this penalty within an amended USA income tax return.

To return to the original question, any business person would conclude, as a practical business matter, that the USA Internal Revenue Service does, indeed, require a non-USA corporation to file an income tax return in the USA where the non-USA corporation is owned or otherwise controlled by a USA person. Further, the definition of control for this purpose is expansive.

Global law is filled with exceptions and nuances. The issues in this letter are truly the subject of multiple treatises. Thus, it is not possible to cover all factual possibilities or the plethora of exceptions or other overriding rules which might exist with respect to specific taxpayers. Extrapolating these general comments to specific circumstances should be done with great professional care.

Treasury Circular 230 Disclosure – To comply with requirements imposed by the Internal Revenue Service, we inform you that any tax advice contained in this written communication (including any attachment) is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding tax penalties that may be imposed on the person. If this written communication contains any tax advice that is used or referred to in connection with the promoting, marketing or recommending of any transaction(s) or matter(s), this written communication should not be construed as written to support the promoting, marketing or recommending of the transaction(s) or matter(s) addressed by this written communication, and the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor. No limitation has been imposed by Chapple Blondet SRL on disclosure of the tax treatment or tax structure of the transaction(s) or matter(s).

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ⁱ SRLs and their USA owners may make a certain election to treat the SRL as a “disregarded entity” or a “partnership” for USA income tax purposes. See also, our memo at www.ChappleBlondet.com Resources entitled *USA Taxation of the Owners of Sociedad Anonima and Sociedad de Responsabilidad Limitada Formed in Costa Rica* dated 2 March 2006.

ⁱⁱ You can see these Forms 5471 and 8805 together with their instructions at www.irs.gov.