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OCDE

Centre for Tax Policy and Administration, *Director*
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VIA EMAIL & U.S. MAIL

Dear Sir,

We are writing you as members of the board of **The 1841 Foundation**, to express our concerns that in the past years, authorities in Argentina have been violating the privacy rights of many of its citizens, by leaking to the press private financial and tax information in breach of their agreements with the OECD.

The 1841 Foundation understands and respects the fact that governments need to have access to certain information concerning their taxpayers to collect taxes. We also understand that financial crime and money laundering must be combated.

But at the same time, it is very clear to us that individuals have a right to privacy and personal safety and that when there is a tension between a human right and a mere interest of a government, the human right must prevail. This means that authorities to fight tax evasion, financial crimes, and money laundering, should try to avoid stepping on an individual's right to privacy.

We, at **The 1841 Foundation**, consider that there are many options to conduct such inquiries and that this will become even more of an issue with the consolidation of new technologies such as the blockchain. In our opinion, the balance between privacy and transparency is an important one and a topic that the OECD has been avoiding for quite some time now.

We can only speculate that the reason is that the OECD is a European-centric organization with little information on what is going on in countries in Latin America or Africa.

We strongly believe it is time for the pendulum to go back to equilibrium.

A good way to align interests would be rewarding countries that offer a high degree of rule of law and/or protect the privacy of certain information, by allowing them to access financial information on their taxpayers from countries under CRS.

However, this is not at all the situation in Argentina which prompted this letter.

Before entering the specifics of the case of Argentina, we appreciate that your organization does have statistics on governmental transparency, corruption, and crime and that information needs to be used for CRS purposes. As a result, not only will individuals see their rights upheld, but you will be creating the right incentives for more countries to embrace those values as well. Once again, balance is the key issue here, as we are dealing with very important, basic, and sensitive issues.

Now, let us focus on the specific case we are to discuss with you.

The authorities in Argentina have once again, for the third time in a very short time in 2022, allowed private financial and tax information on their taxpayers to be filtered to the press, including information submitted in good faith by other OECD countries via the CRS mechanism. This time, the leak was in the context of an extraordinary additional wealth tax to the rich in a country that already taxes wealth. In fact, in 2021, Argentina has become the first country in the world to tax personal wealth twice!

The other two examples occurred in the context of tax amnesty offered by Mauricio Macri's administration in 2016 and, a couple of years earlier, when the head of the tax authority at that time (Ricardo Echegaray) personally caused the so-called Falciani's list, which included private information of clients of HSBC to be leaked.

Even more important than all of the above, the Department of the Treasury should be reminded that in 2015 FinCEN suspended its MOU with Argentina for the exchange of financial intelligence due to the unauthorized disclosures of information by its Argentine counterpart to the press involving Prosecutor Alberto Nisman, who had been murdered earlier that year under strange and still not clarified circumstances after accusing then President Cristina Kirchner of treason for entering an illegal deal with the Iranian regime.

In addition to this, it is noteworthy that the current director of the Argentinean Tax Administration (Carlos Castagneto) is a divisive political activist rather than a technical bureaucrat and that any private information of opponents to the current government under his control is at great risk. This can be easily

confirmed by looking at his social media profiles, especially his Twitter account (@CastagnetoC).

Another important recent development to take into consideration is that Local Congress is expected to vote an amendment to the local regulations to fight money laundering and terrorism financing. This draft legislation provides, on its articles 26 to 29, the creation of a Registry of Beneficial Owners of entities not within the UIF (which is the local FinCEN) but within the local Tax Administration. Moreover, this type of Registry, recently declared invalid by the Court of Justice of the European Union, will be accessible by organizations that have very little, if anything, to do with this fight, weakening the fiscal secrecy. Examples of this are the “*Superintendencia de Seguros*” (Argentinian Insurance Superintendency) and, more importantly, the “*Instituto Nacional de Asociativismo y Economía Social, INAES*” (National Institute of Associations and Social Economy).

The current government of Argentina lacks the integrity required to be a trusted partner in handling sensitive information affecting the privacy and property of its citizens outside the country.

Vice President Cristina Fernandez is facing multiple criminal trials where she has been accused of grand corruption, fraud to the State, money laundering, and treason, among other offenses and she has been already condemned in first instance, which leads to a huge public pressure from the executive branch of the government to the Supreme Court.

In her pursuit of impunity, she and her political associates in government have coopted and dismantled control bodies, such as the Tax Administration, the Financial Intelligence Unit (“UIF”), the Anti-Corruption Agency (“OA”), and the Office of the Attorney for the National Treasury (“*Procuración General del Tesoro*”), among other government bodies and/or agencies.

They have attempted, but so far failed, to take control of the prosecutorial and judicial services, but have conducted and continue to conduct constant attacks against prosecutors and judges, unduly interfering in their independence and thereby breaching the Constitution of Argentina. These circumstances have provoked a general deterioration of the always weak Rule of Law, and of the role of the Judicial Power as the ultimate guarantor of the constitution, causing a serious loss of confidence in the legal and institutional frameworks designed to protect individual rights and fundamental Freedoms.

In addition, their mismanagement of government and economic affairs has

been characterized by an unsustainable increase in public spending that has widened the budgetary deficit and created unstable macroeconomic conditions. Despite numerous claims for spending cuts, the government has continued to pursue its spending spree, financing the deficit through foreign indebtedness, a confiscatory tax regime, and an irresponsible expansion of the monetary base, which has placed Argentina amongst the countries with the highest inflation rates in the world.

The consequences of such deliberate wrongdoings have caused multiple runs on the peso and its loss of value, a widespread increase of the informal economy, and a significant growth of capital flight flows towards safer laws and more stable currencies.

These are the underlying reasons that explain the presence of Argentine citizens with funds and other assets in the United States and in other jurisdictions that have historically offered protection to wealth from abuse of power and lack of liberty. Argentine citizens that have sought protection of their wealth in America have been largely driven by an instinct of self-preservation placing their trust in the American promise of a free society where the Rule of Law is upheld and where property right and privacy are protected.

Due to all of the above, Argentina has made it to the podium in our recent research of "Tax Hells", appearing in third place after Belarus and Venezuela as one of the countries that worst combines a high tax regime with on-going government mismanagement. To the best of our knowledge Belarus signed an IGA to further implement FATCA in a much different geopolitical context and Venezuela of course does not have one. A complete list of these countries can be found in our website, www.the1841foundation.com.

With all the above in mind, we firmly believe that **Argentina should be suspended and should not be receiving information under CRS until said country can provide assurances that whatever information it receives will be safely kept following your guidelines.**

In addition to the above, **we would like to request a private meeting with the appropriate OECD representative to discuss improvements to CRS, which include the items we have highlighted in this letter.**

We look forward to hearing from you. Please direct your response and/or comments to martin.litwak@the1841foundation.com

Cheers,



Martin Litwak

Martin Litwak
The 1841 Foundation
Chairman