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EXTERNAL AND INTERNAL CUSTOMER SERVICE**

Topic 1.1

**THE RIGHTS AND DUTIES OF THE TAXPAYERS
(IN THE CIAT MODEL TAX CODE)**

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*Case study***Topic 1.1 THE RIGHTS AND DUTIES OF THE TAXPAYERS
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CONTENTS: By way of introduction (and why not, also of conclusion).- A. General considerations.- B. The rights and duties of the taxpayer in the CIAT Tax Code Model.- 1. Taxpayer rights.- 2. Duties of the taxpayers.

BY WAY OF INTRODUCTION (and why not, also of conclusion)

“...If in Greece the honor of citizens was the basis of the State’s tax activity, in Rome it was the servitude of the defeated, and as of the Middle Ages, the acceptance by the subjects. The legitimization of the tax has been enriched throughout the centuries with new ingredients: the doctrine of the State’s sovereignty; basic principles of social solidarity; the belief in the effectiveness of collective action vis-á-vis individual and isolated effort. These ingredients have been combined in varied manners, according to the spiritual values that have given the keynotes to the political community. Despotism has unavoidably brought with it, tax oppression and tax injustice; inorganic and individualist democracy, financial anarchy and the neutrality of the taxation instruments; totalitarianism, integral planning of economic life and the servitude of the Treasury to the general plans approved by the central Power. In such diverse types of financial organization, man’s position has experienced, as could but have been expected, fundamental changes: from the exaltation of the rights of citizens, in classical cultures, to the radical tax slavery of individuals in the States with integrally planned economies. Financial law in our times must endeavor to find a point of equilibrium between the tax sovereignty of the State and the sacred and rights of the human being, which cannot be given up...”

Fernando Sainz de Bujanda¹

¹ in "Hacienda y Derecho", T.I. p. 462, Instituto de Estudios Políticos, Madrid, 1962.

A. GENERAL CONSIDERATIONS

Beyond the importance which should be acknowledged to every achievement in the improvement of the tax system and each of the taxes that comprise it, or in the modernization of the administration whose objective is its application, it must necessarily be borne in mind that for such achievements to be fully effective, there should be a set of rules dealing with the adequate and systematized mechanisms of application of taxes in general.

The precise delimitation of the rights and duties of the taxpayers and of the duties and obligations of the administration is essential for achieving in the area of tax Law two fundamental legal principles, that are frequently expressly provided by the constitutional rules, which are: equality of taxation and juridical security.

The principle of equality of taxation aims to guarantee fair taxation, in the sense of granting equal treatment for all those that are equal and taking into consideration existing inequalities.

It is commonly admitted that the principle of equality is affected when equality or differentiation established by a rule in tax treatment cannot be justified on a reasonable basis. That is, when such equality or difference in treatment may be considered arbitrary.

In our days, the effective enforcement of the principle of equality of taxation cannot be considered fully achieved merely by verifying that it is provided at the legislative level. No society that endeavors to govern itself, in the area of taxation, on the basis of this principle can consider itself satisfied merely with its legal enforcement, without considering what occurs at the level of application of the tax system, or, in other words of the effectiveness of the tax rules that support it. Therefore, it must be affirmed that for the application of the principle of equality of taxation, it is not enough to count on a tax system that may observe it adequately, but rather, it is necessary that there be those essential instruments for making it effective. Among others, there should be rules to satisfactorily regulate the treasury-taxpayer relationships, That is, which may guarantee the rights of the taxpayer but at the same time, may render feasible the commitment of the tax administration of effectively applying the tax system and that such a commitment be fulfilled.

In many of the countries of Latin America, the insufficient legal powers of the tax administration for controlling and demanding compliance with the obligations of the taxpayers, is one of the main causes of tax evasion. This represents, among all acts affecting the principle of equality of taxation, the most rude and reprehensible form of tax injustice.

As for the principle of legal security, this calls for the possibility of anticipating the consequences and tax treatment of the taxpayer situations and actions, it being possible to anticipate the pertinent administrative and judicial decisions on those situations and actions. It should be understood as a basic principle of accurate and definitive knowledge of the amount of the tax debt. Abidance by this principle will promote the trust of citizens in their institutions and will protect them from arbitrary actions.

Traditionally, when there has been conflict between the principle of equality and the principle of legal security, part of the doctrine and court decisions have been in favor of the prevalence of the latter. To make this option, many times one has used as basis the understanding that there is a clash of interests between a citizen who is obliged to pay taxes and the tax Administration, the tax creditor. And in the interest of the preservation of the rights of the citizen, it was considered that the latter should be favored. Nevertheless, if in-depth consideration is given to the taxation phenomenon, it could be understood that conflict takes place between a citizen obliged to pay taxes and millions of citizens whose right could be affected, on the one hand, by being deprived of certain goods or services that should be provided to them by the State and, on the other, on having to be subjected to unequal taxation. Having considered the situation from this latter angle, the advisable option for one or the other principle to prevail could be different.

In sum, it is believed that both principles, of equality of taxation and legal security must fully exist in the tax Law of any country.

The recurring concern expressed by the doctrine, with respect to the need for establishing an adequate balance between both parties in the treasury-taxpayer relationship, was generated and justified in a very different context from the current one. In past times, given the existence of an interventionist State whose objective was its permanent expansion to the detriment of the private sector, it was appropriate to focus the efforts of the juridical doctrine on reiterating the defense of individual rights and guarantees. This was done as a way of stopping such expansion to the extent it implied dominating the rights of the citizens.

The current new conceptualization of the State and its role before society allow for modifying the center of doctrinal attention. It is no longer justified to devote the greatest efforts to develop and support taxpayer rights but rather, in the alleged balance between the parties in the treasury-taxpayer relationship, equal attention and emphasis should be placed on the importance and feasibility of achieving the treasury's right to collect the taxes. This stems from the authority of the legal provisions.

On the other hand, the transformation experienced in the conceptualization of the State is projected, as it could not be otherwise, on the tax Administration.

If it were worthwhile to point out, among tax problems, some significant change in the past decade, it would be the new conception of the tax administration and its objectives, especially in the Latin American countries. Overcoming the tax vision of defining said administration merely as a collecting entity, mechanically and impersonally applying tax rules, there arose a new orientation that includes the idea of service as a fundamental element in the duties of the tax administrations. This means that, rather than an entity for suppressing noncompliance, the tax administration must act as a promoter of such compliance, especially by improving its image vis-à-vis the taxpayers through respect for their rights and by facilitating compliance with their obligations.

Because of these circumstances, it is necessary that the rules governing the treasury-taxpayer relationship be adapted to this orientation, in the sense of delimiting clearly and precisely the functions and obligations of the tax administration and of the taxpayer rights and duties. These rules should particularly guarantee the feasibility of the effective application of taxes, thus allowing said administration to act effectively, within the framework of strict respect for the rights of taxpayers.

In this sense, it is worth recalling the reasons of Act 25/95, which amended The General Tax Law of Spain. It states that it is necessary to count on an adequate "...framework for defining the relationships between the tax administration and the taxpayers in the context of an advanced society that increasingly calls for better spontaneous compliance of its tax obligations by the taxpayers, in order to make a reality of the constitutional principle of general and equitable contribution by all the citizens to defray public expenditures".

The series of rules that should support the tax administration's action for efficiently and effectively performing its functions while guaranteeing at the same time the rights of taxpayers, should respond to the following characteristics:

- accuracy, in the sense of not raising doubts with respect to the solutions offered;
- coherence, in the sense of observing a logical, non-redundant sequence;
- operability, in the sense of avoiding complex and delayed processes;
- economy, in the sense of causing the less indirect tax burden possible; and
- adequacy, in the sense of anticipating solutions that may respond to the various situations that may arise in the treasury-taxpayer relationships.

B. THE RIGHTS AND DUTIES OF THE TAXPAYER IN THE CIAT TAX CODE MODEL

The rules governing the rights and duties of the taxpayers in the CIAT Tax Code Model are found mainly in Titles II and III of this Model: “Title II. Duties and rights of taxpayers and third parties” and “Title III. Powers and obligations of the administration”.

Among the rules found in both titles, those dealing with taxpayers and third parties and those referring to the tax administration, there is a very close interrelationship. It is understood in many cases, that the first ones are the corollary to the second ones and vice versa. Nevertheless, in the CIAT Model Tax Code, it was explicitly decided to consider the duties and rights of the taxpayer, as a way of granting the greatest certainty and security possible to the rules governing the treasury-taxpayer relationship, for the administration as well as the taxpayers, by establishing a real balance and notwithstanding recognition that it may lead to incurring in repetitions, in certain cases.

On the other hand, other titles include rules whose adoption, without explicitly referring to the rights and duties of the taxpayers will be a guarantee of such rights, or as the case may be, the imposition of a duty.

1. Taxpayer rights

As previously indicated, taxpayer rights are not only those originating from the rules, but also those arising as counterpart of the obligations imposed on the administration and from other provisions.

a. Explicitly stipulated rights

The provisions of the CIAT Model Tax Code, which explicitly stipulate the rights of taxpayers, are included in Chapter II. Rights of taxpayers and responsible parties, of Title II. Duties and rights of taxpayers and third parties of said Model.

Specifically, the provisions that explicitly determine the rights of taxpayers and responsible parties are the following:

- *Right to reimbursement and refund of unduly paid amounts (Art. 56).*

Provides for the right of reimbursement and refund of unduly paid amounts, even though no objection may have been made at the time of payment. It also provides for a compensation system, whereby interest is recognized to taxpayers and responsible third parties, equivalent to that which was demanded of them for out-of-term payment, which must be calculated as of the date of receipt of the payment subject to reimbursement or refund.

- *Right to amend returns (Art. 57).*

The taxpayers are afforded a practical solution for correcting errors in the preparation of their sworn returns. It consists of an exemption from the fine corresponding to such offense dealing with the obligation to declare. This is provided in article 169 of the Model, provided it is the first rectifying return and that it is not filed following any action or observation from the Administration and done within the twelve months. The tax Administration's previous intervention is also required if such correction reduces the tax to be paid or increases the balance in favor of the taxpayer.

- *Right to file a complaint for omission or delay in (Art. 58).*

The complaint resource is established in order that the taxpayer and responsible third parties may file claim for lack of action on the part of the Administration in the procedures in which they are an interested party. The projected rule appoints the immediately hierarchical superior as the decision-maker, forcing him to evaluate and sanction undue compliance with obligations by the intervening agents and authorizing him to replace them in solving the request.

- *Right of administrative inquiry (Art. 59).*

Individuals are authorized to make inquiries to the Administration with respect to tax treatment applicable to a specific situation.

Nevertheless, in order not to unnecessarily commit the operational capability of the Administration, a system has been set up of inquiries with binding answers for general situations and another for specific cases. The specific cases are:

- 1) Proposed investments in business activities in the country by resident or nonresident individuals, provided that the inquiry is made by a resident or nonresident individual or entity prior to the investment.
- 2) Systems of tax incentives for investments of a temporary or provisional nature.
- 3) Transactions carried out by businesses or individuals from different States that are members of economic integration treaties.
- 4) Interpretation and application of agreements to avoid double international taxation.

The description of such exceptions are provided for purposes of illustration and each country must consider adapting them to the situations deemed appropriate and if it thus considers it convenient, it should adopt the inquiry with binding effects for most cases.

b. Rights originating from the obligations of the administration

As for the obligations of the tax administration, they are provided in Chapter II. Obligations of the tax administration, of Title III. Powers and obligations of the administration, of the CIAT Tax Code Model.

The obligations of the administration that originate taxpayer rights are the following:

- *Obligation to provide information and assistance to facilitate voluntary compliance (Art. 87)*

Current tax systems are based on voluntary compliance with obligations and have as correlative duty of the tax Administration that it duly inform the taxpayers and assist them free of cost in compliance therewith. To this end, it is provided that the Administration must:

- 1) Explain the tax rules by using to the extent possible, a clear and accessible language, and whenever they are of a complex nature, it must elaborate and distribute explanatory pamphlets for the taxpayers.
 - 2) Keep offices in various places throughout the national territory, which will be in charge of orienting and assisting taxpayers in complying with their obligations.
 - 3) Elaborate return forms in such a way that they may be filled out by the taxpayers, distribute them on a timely basis and provide information on the dates and places for filing them.
 - 4) Precisely indicate in the notices whereby taxpayers are requested to file returns, communication and other mandatory documents, which is the document whose filing is being requested.
 - 5) Disseminate among the taxpayers the defense resources and appeals which may be used against the resolutions of the tax Administration and the entities before which they must be filed.
 - 6) Hold in different parts of the country information meetings with the taxpayers, especially when tax rules are modified and during the main tax return filing periods.
 - 7) Annually publish resolutions issued by the tax Administration, which stipulate provisions of a general nature, by grouping them in such a way as to facilitate their knowledge by the taxpayers.
- *Obligation to determine (Art. 88).*

To face the anomaly of administrative silence, the Model proposes two remedies when there is no answer from the Administration to the requests made within the terms that must be stated in the same article:

- To file action before the incumbent of the tax Administration, which is correlative to the complaint appeal provided as taxpayer right.
 - Consider that there is an implied denial, which will call for resorting to other instances so that the interested party may pursue the solution he deems he is entitled to.
- *Obligation of certainty of administrative acts (Art. 89).*

The necessary obligation of certainty of administrative acts is provided in individual resolutions. This forces the authority that considers that an administrative resolution illegally benefits an individual, to have a court determine, as appropriate, such illegality in accordance with the principle known in the doctrine as the “Prejudicial Appeal”. An exception is made with respect to cases provided in Articles 65 and 116 of the Model and which deals with the correction of factual or mathematical errors in acts of the Administration and errors originating from fraudulent taxpayer behaviors, respectively.

As for the modification of general resolutions of the tax Administration that authorize it to issue laws and regulations, these modifications shall not cover effects generated prior to the new resolution.

- *Obligation to protect the secrecy of tax information (Art. 90).*

The Model does not admit as contrary to the Treasury, several “secrets” found in other branches of the law, such as mercantile, banking and professional secrets. Nevertheless, to guarantee that the information obtained by the tax administration in exercising its powers shall be used exclusively for tax purposes, it strictly provides for tax reserve or secrecy.

Officials intervening in several procedures relative to the application of the tax provisions and the owners and employees of the hired collaborating entities shall be obliged to keep absolute reservation with respect to returns and data provided by the taxpayers, responsible individuals or third parties, as well as information obtained in carrying out audits. Such reservation shall not include cases in which the tax Administration must provide data to:

- 1) Judicial authorities in criminal processes or Courts dealing with alimony.
- 2) The other entities administering taxes, to the extent information is strictly related to verification and the collection of encumbrances of the respective jurisdictions.

3) The tax administrations of other countries in compliance with the exchange of tax information, agreed in international conventions and other assumptions provided by this Code.

c. Rights of the taxpayers resulting from other provisions of the CIAT Tax Code Model.

There are also certain general rules that also result in taxpayer rights. The following are worth mentioning:

- *Special domicile (Art. 29)*

In order to consider certain special taxpayer situations, there is the possibility that they may request the establishment of some special domicile before the tax Administration, other than the corresponding one according to the rules of Articles 26, 27 and 28 of the Model, though the administration may accept it or not at its discretion, and could even officially cancel it, after its acceptance.

- *Interest and surcharges for late payment (Art. 37).*

Also considered is the situation of payments and assessments corresponding to returns spontaneously filed by the taxpayers, which will not be subject to sanctions provided in the Model for out-of-term filing or for delinquency and which will only be applicable when there is previous request from the administration. Likewise, the amount of surcharge is determined in accordance with the time elapsed until filing, as a way of encouraging a faster spontaneous regularization.

- *Application of payments (Art. 38).*

Taxpayers and responsible third parties are authorized to indicate the taxes or periods to which payments should be applied, when these are not made through receipts issued by the tax administration.

- *Offsetting (Art. 40).*

Taxpayers are allowed to request the offsetting of their debits with tax credits they may have with the Treasury, while the administration is allowed the power to officially perform such offsetting, by observing the same order of imputation established for partial payments.

- *Audits (Art. 113).*

External audits at the domicile or establishment of the taxpayers or responsible parties will be carried out, among other things, according to the following rules:

- 1) Every external audit must be based on the order of action originating from the competent tax administration authority, from which there may arise the individualization of action, taxpayers or responsible third parties involved, as well as places where the audit will take place, in addition to the identification of the acting official(s).

When the occupant of the property or office in charge of its custody would object the entry of the auditors, they may perform their duties by directly requesting assistance from public law enforcement officials. It is the home of the taxpayer or responsible third party, a judicial writ must be previously obtained.

- *Request for reconsideration against determinations made by the tax administration (Art. 140).*

Those having a legitimate interest may file a request for reconsideration against resolutions determining taxes and additional amounts, imposing sanctions or objecting the reimbursement or refund of taxes, before the authority issuing the administrative act.

- *Judicial appeals against determinations of the tax administration (Art. 141).*

There is the possibility that the taxpayer may directly opt for the legal process, by filing the action before the judicial or administrative courts, given that many countries have administrative courts that are independent from the tax administration, with competition to try these cases.

In case the request for reconsideration may have been previously filed, this action should be filed within the same term of days, as of the date of notification of that resolved with respect to the request for reconsideration, or expiration of the term for solving granted to the administration.

- *Breach of duties by officials and employees (Art. 183).*

As taxpayer guarantee, sanctions are established for the tax administration official or employee who in violation of the duties of his position, which are not framed within those provided in article 184 of violation of tax secrecy, cause or may cause an economic damage to the Treasury or the taxpayer, ranging from fines of \$ to \$..... and suspension fromto, or dismissal, as appropriate.

- *Disclosure of information subject to tax confidentiality (Art. 184).*

As a way to guarantee taxpayers the confidentiality of information in the hands of the administration, imprisonment is anticipated for the official or employee of the tax administration and the owners of collaborating entities and their employees who disseminate information on facts or documents they may be aware of, by reason of their functions or activities, thus infringing the obligation to maintain secrecy with respect to the tax information provided in article 90 of the Model. In addition, such offense may be the cause for dismissal of the official or employee or annulment of the service contract with the collaborating entity, as appropriate.

2. Duties of the taxpayers

As in the case of rights, one should not only consider as duties of the taxpayers those originating from rules that explicitly establish them, but also those arising as counterpart to the functions assigned to the administration and other provisions.

a. Explicitly established duties.

With respect to the provisions of the CIAT Model Tax Code, which explicitly provides the duties of the taxpayers, these comprise Chapter I. Duties of taxpayers and third parties, of Title II. Duties and rights of taxpayers and third parties, of said Model.

The following are the provisions that explicitly describe the duties of taxpayers and responsible parties.

- *General provision (Art. 49).*

The direct or substitute taxpayers, responsible third parties and third parties are obliged to comply with the substantial tax obligations and the formal duties corresponding to them, as provided in this Code or in other rules.

The exemption from compliance with substantive tax obligations does not release the taxpayer from compliance with formal duties to which he is obliged, unless the law or an administrative rule expressly releases him therefrom.

- *Duty of initiative (Art. 50).*

The duty of initiative of taxpayers and responsible third parties is provided, where by they must assess the tax when self-assessment is appropriate, or provide the necessary information when the corresponding tax may be a combined or administrative assessment.

- *Duties relative to facilitating the audit process (Art. 51).*

Detailed obligations are provided with respect to collaborating with the collection and verification processes of the tax administration, registering, maintaining and providing the documents that support transactions dealing with tax events and proving the veracity of the self-assessed tax. The description comprises specific modalities of for the registration and maintenance of information in computer systems, and authorization for the use of audit tools from systems belonging to the tax administration.

- *Duty to register (Art. 52).*

It is provided that individuals and corporations and entities and groups without juridical personality, which by reason of their activity or condition may be potentially subject to tax obligations, must register in the National Tax File, by providing the data requested and keeping them permanently updated in the manner and conditions determined by the tax administration.

- *Duty to inform (Art. 53).*

Provides the duties of individuals and official entities with respect to the provision of information and background data. The article precludes any form of noncompliance of duty based on bank secrecy or internal regulations or statutory provisions of the entities required to give information. Otherwise the fight against evasion would be futile, and the administration would be barred from reaching private organizations which, because of their involvement in providing commercial reports or the like, gives them access to information relating to economic and financial transactions and behaviors of individuals or corporations. Private, non-financial information of professionals known to them by way of their relationship with their clients is protected.

Confidentiality of information of an individual's wealth is guaranteed through the regulations contained in Title III. It establishes the confidential nature of the information that is on record with the administration and also a system of penalties applicable to officials and entities that use it for purposes other than for the collection and examination of taxes.

- *Duties and formalities for registration, assessment and furnishing of information (Art. 55).*

The incorporation and communication of subsequent innovations to the Tax File and assessment of taxes by taxpayers and responsible third parties should be made through returns which they will prepare and file on the information supports, terms and places determined for such purpose by the tax Administration. The same conditions shall apply to third parties who are obliged to provide information on a regular basis.

b. Duties originating from the powers of the administration.

As for the powers of the tax administration, they are provided in Chapter I. Powers, of Title III. Powers and obligations of the administration of the CIAT Model Tax Code.

The powers of the administration that give rise to taxpayer duties are the following:

- *Appointment of substitute taxpayers (Art. 64).*

The Model follows the general trend in Latin America of considering that the individuals intervening in taxed acts or transactions may be obliged to act as withholding or collection agents.

c. Duties of the taxpayers resulting from other provisions of the CIAT Model Tax Code.

There are also certain general rules from which taxpayer duties likewise originate. Worth mentioning are the following:

- *Notification and change of domicile (Art. 30).*

This article, in addition to stipulating the duty of taxpayers to report their tax domicile and change thereof to the tax administration, delegates to the latter the determination of the timeliness and formalities with which this should be done in order to become effective. On the other hand, the tax administration is given the power to officially rectify the domicile declared by the taxpayers when it determines through its verification activities, that it does not abide by the legal provisions.