50th. CIAT General Assembly

CIAT·2016
50 ASAMBLEA GENERAL
MÉXICO

PAST, PRESENT AND FUTURE OF THE TAX ADMINISTRATION

Mexico City
April 25 to 28, 2016

SAT
Servicio de Administración Tributaria

INTER-AMERICAN CENTER OF TAX ADMINISTRATIONS
CIAT
ESTABLISHED IN 1967

About CIAT

CIAT is a public, nonprofit international organization established in 1967, with the mission of providing an integral service for the modernization, strengthening and technical development of the Tax Administrations of its member countries. Its membership currently consists of 38 member and associate member countries from four continents: 31 countries from the Americas, five from Europe, one from Africa and one from Asia. India is an associate member country.

The Web site: www.ciat.org includes information of a technical and institutional nature, as well as on the various activities carried out such as international meetings, tax studies, publications, training, technical assistance and information technology.

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PROGRAM 50th CIAT General Assembly MEXICO April 26 to 28, 2016 "Past, present and future of the Tax Administration"				
Tuesday, April 26, 2016				
Hour			**Topic**	
From	**To**	**Time**		
9:00	**9:50**	**0:50**	**Inaugural Ceremony**	
		0:05	Presentation of the Executive Council Members	
		0:05	CIAT 50th Anniversary Video	
		0:10	Statement by Mr. Márcio F. Verdi, CIAT Executive Secretary	
		0:20	Statement by the Excecutive Council Presidente, Mr. Aristóteles Núñez Sánchez, Head of the Tax Administration Service, México	
9:40	10:10	0:30	Official photograph, coffee and integration	
10:10	**11:25**	**1:15**	**Topic 1: CIAT - 50 years working toward better tax management in Latin America - A historical vision of the CIAT Executive Secretariat**	
10:10	10:20	0:10	Moderator	Jan Christian Sandberg, Acting Executive Secretary, IOTA
10:20	10:50	0:30	Speaker	Márcio F. Verdi, Executive Secretary, CIAT
10:50	11:10	0:20	Commentator	Alberto Barreix, Senior Tax Economist, IDB
11:10	11:25	0:15	Participants´ comments	
11:25	**12:25**	**1:00**	**Subtopic 1.1: Taxation in Latin America in the past 50 years**	
11:25	11:35	0:10	Moderator:	Santiago Menéndez Menéndez, General Director, State Agency of Tax Administration, Spain
11:35	11:55	0:20	Speaker:	Miguel Pecho, Tax Studies and Research Director, CIAT
11:55	12:10	0:15	Commentator	Ricardo Martner, Senior Economic Affairs Officer of the Economic Development Division, ECLAC
12:10	12:25	0:15	Debate	
12:25	13:45	1:20	Lunch	

Hour			Topic	
From	To	Time		
13:45	**14:50**	**1:05**	**Subtopic 1.2: What has been achieved and is yet to be achieved in tax management**	
13:45	13:55	0:10	Moderator:	Natasha Avendaño Garcia, Director of Organizational Management, Directorate of National Taxes and Customs (DIAN), Colombia
13:55	14:15	0:20	Speaker:	Gilbert Terrier, Deputy Director and Senior Personnel Manager, Immediate Office, IMF
14:15	14:35	0:20	Speaker:	Arturo Herrera, Practice Manager, World Bank
14:35	14:50	0:15	Debate	
14:50	15:10	0:20	Coffee and integration	
15:10	**17:10**	**2:00**	**Round Table 1**	
			Topic: CIAT, The First 50 Years (Title of the Book)	
			Moderator	Raúl Zambrano, Technical Assistance and Information and Communication Technology Director, CIAT
			Participants: International Specialists	Alberto Barreix, , Jorge Cosulich, Paulo dos Santos, Andrea Lemgruber, Socorro Velázquez

Wednesday, April 27, 2016				
Hour			Topic	
From	To	Time		
8:30	**10:00**	**1:30**	**Topic 2: The present - Current situation of tax management and governance of the Tax Administrations**	
8:30	8:40	0:10	Moderator:	Jeffrey Owens, Director Wu Global Tax Policy Center, Institute for Austrian and International Tax Law
8:40	9:00	0:20	Speaker:	Santiago Menéndez Menéndez, General Director, State Agency of Tax Administration, Spain
9:00	9:20	0:20	Speaker:	Vincent Mazauric, Deputy Director General of DGFiP, France
9:20	9:40	0:20	Speaker:	Lizandro Núñez Picazo, General Collection Administrator, Tax Administration Service, México
9:40	10:00	0:20	Debate	
10:00	11:00	1:00	Keynote Speech by Mr. Luis Videgaray Caso, the Secretary of Finance of Mexico	
11:00	11:20	0:20	Coffee and Integration	
11:20	**12:30**	**1:10**	**Subtopic 2.1: From the Taxpayer File to the Current Account to Enforced Collection**	
11:20	11:30	0:10	Moderator:	Kennedy Oyonyi, Director, ATAF
11:30	11:50	0:20	Speaker:	Olga Pereira, Deputy General Director of Collection, Tax and Customs Authority, Portugal
11:50	12:10	0:20	Speaker:	Victor Gomez De La Fuente, Deputy Director General of Large Taxpayers State Undersecretariat of Taxation, Paraguay
12:10	12:30	0:20	Debate	

Hour			Topic	
From	To	Time		
12:30	**13:40**	**1:10**	**Subtopic 2.2: Auditing and Compliance Control**	
12:30	12:40	0:10	Moderator	Miriam Guzmán, Minister, Income Administration Service, Honduras
12:40	13:00	0:20	Speaker	Horacio Castagnola, Director, General Directorate of Taxation, Argentina
13:00	13:20	0:20	Speaker	Ernesto Luna Vargas, General Administrator of Federal Tax Auditing,Tax Administration Service, Mexico
				César Edson Uribe Guerrero, Deputy Attorney General, PRODECON
13:20	13:40	0:20	Debate	
13:40	15:00	1:20	Lunch	
15:00	**15:50**	**0:50**	**Subtopic 2.3: The use of Information Technology**	
15:00	15:10	0:10	Moderator	Joaquín Serra. Director, General Directorate of Revenue, Uruguay
15:10	15:30	0:20	Speaker	Aloisio Almeida, Coordinator , Secretariat of Federal Revenues of Brazil
15:30	15:50	0:20	Debate	
15:50	16:10	0:20	Coffee and integration	
16:10	**17:20**	**1:10**	**Subtopic 2.4: Human Resources and the professionalization of the Tax Administrations**	
16:10	16:20	0:10	Moderator:	Didier Cornillet, Secretary General, CREDAF
16:20	16:40	0:20	Speaker:	Christian Hansen, Deputy Director, Internal Revenue Service, Chile
16:40	17:00	0:20	Speaker:	Judith Smith Richards, Chief Human Resource Management and Development Officer, Jamaica
17:00	17:20	0:20	Debate	
17:20	17:35	0:15	Presentation of UN Activities in the Americas	

Thursday, April 28, 2016				
Hour			**Topic**	
From	**To**	**Time**		
9:00	**10:10**	**1:10**	**Topic 3: Future challenges in tax management in the XXI century**	
9:00	9:10	0:10	Moderator:	John Njiraini, Commissioner General, Kenya Revenue Authority
9:10	9:30	0:20	Speaker:	Adrián Guarneros, Planning General Administrator , Tax Asministration Service, Mexico
9:30	9:50	0:20	Speaker:	Martín Ramos, Superintendent, National Customs and Tax Administration Superintendency, Peru
9:50	10:10	0:20	Debate	
10:10	10:30	0:20	Coffee and integration	
10:30	**11:40**	**1:10**	**Subtopic 3.1: The digital economy**	
10:30	10:40	0:10	Moderator	Corina Küsei, Resident Director, GIZ - Mexico
10:40	11:00	0:20	Speaker	Stefano Gesuelli, Head of the Permanent Italian Mission at CIAT, Guardia Di Finanza, Italy
11:00	11:20	0:20	Speaker	Jaco Tempel, Advisor to the Commissioner, Tax and Customs Administration, The Netherlands
11:20	11:40	0:20	Debate	
11:40	**12:30**	**0:50**	**Subtopic 3.2: Social Behavior, Ethics and Tax Morale**	
11:40	11:50	0:10	Moderator	Abel Cruz, Collection and Management Intendant , Superintendency of Tax Administration, Guatemala
11:50	12:10	0:20	Speaker	Michael Snaauw, Assistant Comissioner and Kerrie Lawn, Assistant Director, Values and Ethics, Canada Revenue Agency
12:10	12:30	0:20	Debate	

Hour			Topic	
From	**To**	**Time**		
12:30	**13:40**	**1:10**	**Subtopic 3.3: New Models of International Transparency, multilateralism and situations and challenges after BEPS**	
12:30	12:40	0:10	Moderator:	Carlos Vargas Duran, General Director of Taxation, General Directorate of Taxation, Costa Rica
12:40	13:00	0:20	Speaker:	Pascal Saint-Amans, Director Centre for Tax Policy and Administration, OECD
13:00	13:20	0:20	Speaker:	Theodore Setzer, Deputy Assistant Deputy Commissioner, Internal Revenue Service, USA
13:20	13:40	0:20	Speaker:	Sushil Kumar Sahai, Member, Central Board of Direct Taxes, India
13:40	14:40	1:00	Lunch	
Round Table 2				
Topic: The Tax Administrations in 2025				
14:40	16:40	2:00	Moderator	Márcio F. Verdi, Executive Secretary, CIAT
			Participants: International Specialists	Argentina, Alberto Abad; Chile, Fernando Barraza; Paraguay, Marta González Ayala; USA, John Dalrymple;
16:40	17:10	0:30	Coffee and integration	
17:10	**18:10**	1:00	Closing	
17:10	17:20	0:10	Invitation to 2016 Technological Fair, Miami, Florida. CIAT Secretariat	
17:20	17:30	0:10	Invitation to 2017 GA in Paraguay, Paraguay	
17:30	18:10	0:40	Closing Ceremony Executive Council President, Mexico	

Topic 2.1

FROM THE TAXPAYER FILE TO THE CURRENT ACCOUNT AND ENFORCED COLLECTION

Olga Pereira
Deputy General Director of Collection
Tax and Customs Authority
(Portugal)

Contents: 1. The register of taxpayers in Portugal. 1.1. Tax Identification Number (TIN). Chronology of the implementation and evolution of TIN. 1.3. TIN Assignation. 1.4. Significant facts in the management of the Taxpayers' Registry. 1.5. Elements of identification and activity in the Taxpayers' Registry. 1.6. Registry update. 1.7. Automatic exchange of information between agencies. 1. 8. Integrated vision of the taxpayer. 2. Current account - financial flows management system. 2.1. Management system of financial flows (SGEF). 2.2. Current Account of the taxpayer. 2.3. Compensation. 2.4. Main budgets of the SGFF. 2.5. Circuit of Single Enforced Collection Document (Portuguese: DUC). 2.6. Reimbursements and Refunds. 2.7. CIT refunds. 2.8. VAT Refunds. 2.9. New apps related to payments and refunds.

1. THE REGISTER OF TAXPAYERS IN PORTUGAL

The Tax and Customs Authority (TA) ensures the integrity and management of the register of taxpayers in the tax and customs area.

This information is essential since it supports the management of all taxes administered by the TA, allowing a complete and integrated view of each taxpayer, as well as relations between taxable persons and the segmentation of taxpayers. This information is continually updated, by the taxpayer himself, or at the initiative of the Portuguese public administration, (The various entities that are responsible for the collection, processing and data management are closely interconnected).

1.1. Tax Identification Number (TIN)

An essential part of register of taxpayers is the tax identification number of the taxpayer, in the form of a sequential unique nine-digit number, the last of them being a control code, intended exclusively for the treatment of tax information, covering both individuals and legal entities.

The TIN is the "Key" for the connection between the various TA systems, being used for all *tax purposes.*

On Dec 31, 2015, the database identifying all individual and collective taxpayers (resident and non-resident) managed by the TA comprised approximately 16.2 million taxpayers (15.7 M individuals and 0.5 M active legal entities).

1.2. Chronology of the implementation and evolution of TIN

- 1979 - Beginning of the allocation of the tax identification number (TIN) of individuals, provisional or definitive, by the Ministry of finance;
- 1986 – Beginning of the tax computerization, in the implementation of the value added Tax (VAT) in Portugal;
- 1999 - Unification of the various registration systems, with the creation of the Single Registry-;
- 2007 - Restructuring of the Taxpayers' Registry Management System (SGRC), to improve its response capacity to the growing demands of operational activity in the tax area through technological migration to web architecture;
- 2013 - Systematization and harmonization of legislation concerning the Tax Identification Number (TIN), with the creation of the figures of "Cancellation and Suspension of the TIN" and "Taxpayers Electronic Notification (Via CTT)".

1.3. TIN Assignation

Legal Entities (residents or non-residents) -in the context of the process of its creation / recognition, the National Registry of Legal Entities (RNPC) of the Ministry of Justice assigns them the Legal Entity Identification Number (NIPC), which is considered by the TA as TIN. Both the NIPC and other identification data are transmitted daily to the TA, via *web service*.

Individuals Taxpayers (nationals and foreigners) - The TA (Ministry of Finance) is in charge of allocating the TIN for these taxpayers. In the case of foreign citizens, this identification number is included in a taxpayer's card issued by the TA. In the case of Portuguese citizens, the TIN and three other identification numbers for the fields of Justice, health and Social security, are part of the Citizen Card since 2007, a physical and electronic document issued by the Ministry of Justice (for this purpose, the TIN is generated by the TA and communicated to the Ministry of Justice).

1.4. Significant facts in the management of the Taxpayers' Registry

Digitalization of returns -the development of new technologies has made possible since 2007, the replacement of the filing of returns by verbal statements provided physically by taxpayers at the TA local services counters (*front office*). It has also allowed the provision of certain services by electronic transmission of data, in particular with regard to changing tax domiciles and identifying the IBAN.
Initial statements, change and cessation of activity statements are today completely dematerialized and can be sent through the Portal of Finance (Internet channel), allowing a faster delivery and more efficient service by the tax administration and resulting in greater comfort and efficiency for taxpayers.

TIN Annulation -in case of detection of multiple registrations by the same person or the execution of judicial decisions, the TA can erase the TIN, if applicable, from the respective registry.

TIN Suspension – it is also possible for the TA to suspend the TIN, if there is strong evidence of tax fraud crime (and such suspension is necessary to avoid the continuation of criminal activity), as well as in some cases of waiver of tax representation. (Situations in which representation is assumed as obligatory and the representative has seemingly adopted provisions in the sense of the replacement of the represented, but has not implemented them. The TA may suspend the TIN of the representative until the fulfilment of this obligation).

Electronic notification to taxable persons (Via CTT) and Electronic Postal mailbox (CPE). –The Portuguese law allows the TA to proceed with electronic notification of taxpayers, being legally established that the electronic postal mailbox creation and its communication to the TA are mandatory to all taxpayers of the normal VAT regime and to taxable persons for the tax on income of legal entities - CIT (residents and non-residents with a permanent establishment). The electronic postal mailbox is a service that allows taxpayer to receive mail in digital format (PDF), which automatically sends an alert via e-mail or SMS to the taxpayer when a document arrives at that mailbox. For the segment of taxpayer legally obliged to own a CPE and that fulfill the obligation to notify the AT, notices issued by the Tax and Customs Authority are sent in electronic format. It is considered, for legal purposes, that the taxpayer was notified when he access his electronic postal mailbox, or 25 days after sending the message, if the taxpayer has not accessed his mailbox.

1.5. Elements of identification and activity in the Taxpayers' Registry

Identification data of individuals contained in the TA database: identification data (full name, birthplace, nationality, date of birth, sex) contact details (address, email, electronic Postal mailbox – Via CTT, phone) and other data relevant for tax purposes (tax status, international bank account number - IBAN, degree of disability);

Activity data of the taxable persons (individuals and legal entities): frameworks for VAT and IT, economic activity code (CAE), turnover, corporate entities, IBAN, insolvency data, data on dissolution and termination of companies.

1.6. Registry update

The correct operation of the TA's computer systems is completely dependent on the continuous updating of the cadastral information. The registration of taxpayers is updated via the following three ways:

- initiative of the taxpayer to the local services of TA or electronically in the finance Portal;
- intercommunication with other public entities, as in the example of the communication for change of identification data (address), transmitted to TA by the Ministry of Justice and the Business Records, after having been declared by taxpayers and collected in the process of creating / changing the citizen card or trading companies statutes;
- Initiative of the TA, about which the automatic process of registry cleanup is worth noting. The TA proceeds annually to the official cessation of activity of individuals and legal entities that do not have returns for more than two years and for which there is no evidence of the exercise of any activity. This procedure aims to remove from the universe of taxable persons who did not submit to the registry the statement of cessation of activities in the trade registry. The Statement of official cessation of activity does not release to the covered entities from complying with the respective tax obligations, if it occurs or has occurred in the legal sphere, any taxable event and the cessation of activity is published on the finance Portal to prevent a possible misuse of tax identification numbers. In the same way, eliminated taxpayers cannot use anymore their TIN to carry out intra-Community acquisitions.

1.7. Automatic exchange of information between agencies

Based on objectives of rationalization, increasing the effectiveness of services and cost reduction for citizens, the intercommunication between public agencies is promoted, mainly based on the transmission of data via *web services.* In the field of tax-relevant data, it is worth noting the exchange of information between the TA and the agencies belonging to the Ministry of Justice, observing the duty of the secret tax laid down in the General tax law.
The legislation also provides for specific situations in which this duty of secrecy is suspended, in particular for the implementation of mutual assistance and cooperation of tax authorities with the tax administrations of other countries derived from international conventions to which the Portuguese State is bound, as long as there is reciprocity.

1.8. Integrated vision of the taxpayer

The Taxpayer Integrated Vision (VIC) is an application available for the officials of the tax administration in order to facilitate attention. It allows, through a single access, the visualization of information that characterizes taxable persons at the level of their activity, the assets they possess and their behavior to the TA. This system interacts with the various existing applications and allows the issuance of notices and alerts about any failures or delays in the fulfilment of the obligations of return and payment. It also provides information relating to the ongoing or concluded verifications, as well as the existence and status of executive processes.

The TA is governed by criteria of transparency, so the information available in the VIC can be accessed also by the taxpayer, on the finance portal, under an option called "Integrated Tax Situation".

2. CURRENT ACCOUNT - FINANCIAL FLOWS MANAGEMENT SYSTEM

2.1. Management system of financial flows (SGEF)

The System of Financial Flows Management (SGEF) emerged in 2004 as a concerted response to the growing challenges of improving the quality of the service provided, with emphasis on the taxpayer (to the detriment of the approach based on taxes) and relief of the financial relations established with the taxable persons under law.

The process model designed to achieve this solution has as main guidelines:

- facilitate communication between financial flows of different taxes, in particular through the application of compensation between debits and credits of the taxpayer;
- contribute to the specialization of functions, which would provide productivity gains for the Organization and improvements in the quality of the service provided to the taxpayer;
- Create a Taxpayer Current Account, to provide an integrated view of information of the financial flows between the taxpayer and the tax administration.

2.2. Current Account of the taxpayer

The current account allows checking the information on the financial flows associated with a taxpayer / representative, in an organized and coherent way at the level of different taxes, in accordance with double entry accounting logic, based on a specific “Plan of accounts”, and adapted to current needs.

The idea is to maintain a data repository where the movement of financial flows are registered; maintaining a structure of united releases and at the same time of intermediate balances at levels of quota aggregation/discrimination, which are demonstrated as necessary.

On the adopted model of the Accounts Plan, the classes are defined by types, registering the tax information by tax at the lowest level of the sub-account. This model allows to simultaneously meeting the needs of integrated management of taxpayers (in which their relationship with the tax administration can be viewed, independently of the tax imposed) and the internal management needs of the TA (which requires information by tax).

This logic allows the implementation of compensation actions, in which the debt of a taxpayer are regularized, through the identifying and applying the credit balance of an element to another that this showing a pending balance.

2.3. Compensation

The concept of compensation means the use of credit (rebates or refunds) by a taxpayer for the regularization of tax debts. The compensation can also be activated to pay amounts owed to a third party, if the taxpayer who possess the credit balance has left an explicit indication in this sense. To determine the hierarchy in which debts may be regularized, the compensation procedure is governed by rules that consider the period, type of tax and nature of the debt.

2.4. Main budgets of the SGFF

A modular treatment of the different taxes through the existence of common processes and functions (dealing of refunds, issue no previous liquidations, etc.), based on a logic of specialization by functions was established in the system design, in particular:

- separation between processes of payment and recovery - the tax payment calculates the cash amount, while any quota of interest is calculated in enforced collection (in favor of the State or on behalf of the taxpayer) and the settlement of accounts (in which interest fees and advance payments are calculated, which can take the form of withholdings at source, payments account, special payment account and self-payment, since only amounts actually paid are considered in the account adjustment);
- separation between the collection document and the respective means of payment - this approach is reflected, in particular, in the definition of data structures for the individual management of refunds and notes of enforced collection (in terms of collection documents) and the respective means of payment which are used;
- Concentration of different types of calculation of interest in a single process - based on the finding that, by itself, any calculation of interest could be translated in the application of a percentage to a base of incidence, taking into account a specific period.

2.5. Circuit of Single Enforced Collection Document (Portuguese : DUC)

The State Treasury regime approved in 1999 established the model and instructions for completing and processing the Single Collection Document Circuit (DUC). This document is a fundamental element in the management of the State Treasury, considered from the perspective of revenue entry, essential for the proper functioning of the collections of the State system.

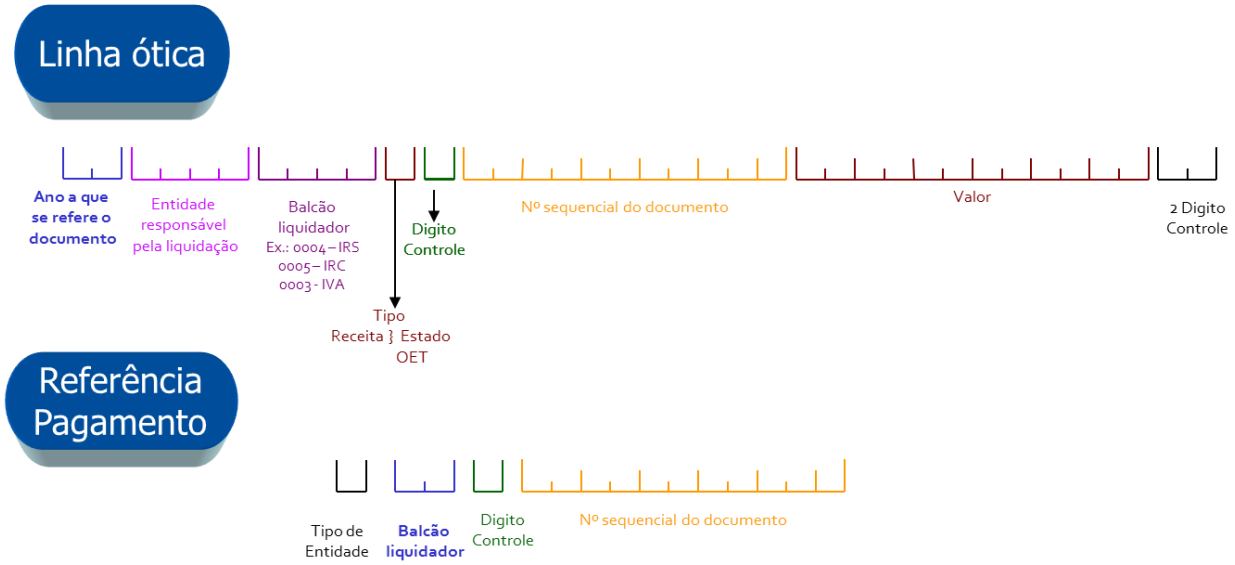
As expressing the economic relation between the state and the taxable subject, the DUC is a dematerialized document consisting of the standard set of information relevant for the payment. (It includes the payment reference that enables the identification of the subject by the enforcing entity and the amount to pay) It is the object of the collection transmission and treatment among the different systems involved in the management of the State collection, allowing an automatic process of the act of payment.
The payment reference, when completed, is broken down as follows:

- Collection entity / counter - 3 positions;
- digit of control - 1 position;
- Sequential number - 11 positions.

In addition to the payment reference and in cases involving the settlement document, the DUC has an optical line with the following composition:

- year - 2 positions;
- Collection entity / counter - 8 positions;
- type of income - 1 position;
- control digit - 1 position;
- sequential number - 11 positions;
- separator - 1 position;
- controlling entity of collection - 4 positions;
- separator - 1 position;
- value - 12 positions;
- Control digit - 2 positions.

The payment reference may also contain a barcode.



The use of dematerialized DUC allows the collection of revenues from any entity through the State Collection Network, which includes, in addition to tax obligations, the Post of Portugal (CTT) and Credit Institutions. DUC can also be paid via ATM machines. – The multibank ATM network (SIBS), or through the Internet (*home banking*), increasing the comfort of the taxpayer and reducing costs.

2.6. Reimbursements and Refunds

Refunds of tax credits result generally from amounts of income tax received in excess through advance payment (withholding at source or payment on account). They are automatically calculated in the SGFF within the scope of "Account settlement" process. The origin of a refund may also be a payment made incorrectly or duplicated; these situations are also automatically detected but the system redirects the amount to a credit of the respective value.

After having identified the right to a credit, with the issuance authorization through the associated payment, the system proceeds to the automatic verification of the existence of debt of the same taxpayer. If it finds debt, it applies the credit as compensation for the debt payment; if a credit balance remains after the operation, a refund will be issued for the remaining quantity.

The existence of a transversal collection system that supports different taxes and enforced collection phases (voluntary and mandatory) presents the advantage of allowing the application of a credit balances on a particular tax to the payment of other outstanding tax balances of the taxpayer.

2.7. CIT refunds

In the case of the Corporate Income Tax (CIT), the liquidation is made by the taxpayer in the annual tax return, filed by electronic transmission via the Finance Portal, and the amount calculated must be paid afterwards.

The SGFF calculates the accounts through the analysis of the movements registered in the Current Account of the taxpayer. They may result in tax payable (if the amount paid by the taxpayer is less than the one calculated by the TA) or tax refund (when the amounts paid in advance or at the time of the liquidation are higher than the amount of tax calculated by the system).

Since 2015, CIT refund procedures are under new rules aimed at the introduction of mechanisms to strengthen the fight against fraud and tax evasion. Among the changes, the TA implements checks prior to the issuance of refunds, to identify situations of risk (in particular, manifested in the practices of non-compliance) and resolve undue tax refunds. Whenever the TA detects difference between the value of the CIT withholding at the source listed in the income statement and the values reported to the TA by withholding agents, the period of refund provided for in the tax legislation is suspended. The payment of compensatory interests established by the existing standard does not take place.

There are also other situations likely to determine the suspension of the refund term, including:
(a) The taxable person has not complied with the VAT return, the CIT or PIT return, including the accessory obligations of declaration and communication.
(b) The taxpayer is not holder of a bank account.
(c) The existence of communication, by the taxable person, of the respective electronic mailbox (Via CTT);

When any of the conditions listed above take place, the taxpayer is notified to rectify or justify the breach within a period of 15 days, the suspension ending with the fulfilment of the obligation in default or acceptance of a justification by the TA.

For example, in 2015, under a TIC campaign regarding the 2014 tax period, 12,327 TIC refunds were suspended for a total of 56.9 million euros, due to the application of this legislation. Most suspensions were due to the "non-existence of IBAN" or greater emphasis on the origin of the suspension (56.8% in terms of number of situations and and 29.5% in terms of the amount of the suspended refund).

2.8. VAT Refunds

Situations in which the VAT determination method leads to the generation of tax credit are included in the regulations. The most relevant are the projects / phases of investment (in which purchases usually exceed sales), the sales approach oriented to the external market (exports and intra-Community movements of goods), or cases where, due to the nature of the activity, the taxpayer performs operations where the tax determination is an obligation of the purchaser.

When, in a determined tax period (month or quarter), the taxpayer determines that the deductible tax exceeds the tax paid, he may, by rule, inform of this credit calculated for the following period, or, alternatively, he may request a refund if he has submitted cumulatively the Periodic Statement (PD) within the legal deadline and meets one of the following conditions :

- consecutive tax credit has existed during 12 months and the calculated quantity is greater than 250 euros, but less than $ 3,000;
- There is a suspension of activity and the specific credit is greater than 25 euros;
- The calculated credit exceeds EUR 3,000.

In the granting of VAT refunds, the verification of formal requirements by taxpayers is performed automatically. Some are verified at the time of submission of the periodic statement and others at a later stage of processing. This benefit depends on the cumulative verification of the legal requirements, in particular:

- The taxable person must not be in a situation of non-compliance in the field of VAT and IT or CIT (according to the case) with reference to previous tax period. He must have informed of all invoices issued during the period or previous periods and no differences between the reported numbers and the reported values of tax paid and deducible tax are detected;
- existence of a bank account owned by the taxable person, confirmed by the relevant credit institution;
- Inform the tax administration of his electronic mailbox (Via CTT).

The Non-verification of the referred conditions determines the suspension of the rebate concession period and interest calculation, the taxable person is notified to regularize the issue within the deadline, under penalty of rejection of the refund and the consequent automatic notification of credit to his Current Account.

Once the formal and legal aspects are verified, refunds are subject to a "risk matrix" with the purpose of identifying possible cases of fraud. All refunds located within the danger zone by the analysis are subject to supervisory action by the Tax Inspection Department.

The conclusion of the analysis by the Tax Inspection services is crucial to the decision on the refund request: If the action does not identify needs of correcting the values declared by the taxpayer, a favorable VAT refund is obtained. If corrections have to be made, these shall be deducted from the refund amount originally calculated.

2.9. New apps related to payments and refunds

The TA aims to ensure a high level of quality in the services provided to the citizen / taxpayer, aiming at being a modern and proactive public administration.

To achieve this objective, mobile technology applications will soon be available, through which information will be accessed in real time, about current payments, pending tax debts and refunds.

TAX AUDIT AND COMPLIANCE CONTROL

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INTRODUCTION

We understand that the fundamental purpose of tax administration is to manage the application of the tax system and to seek ongoing improvement in the tax behavior of citizens.

In general, tax administration takes place in many diversified cultural, financial and social environments that significantly condition the strategies to be applied.

In countries with reasonable compliance level, control is mainly performed by detecting and sanctioning exceptional cases that negatively move away from the average compliance of the population.

Sanctions for significant noncompliance of cases with great public impact are an important factor to help us remember that the capacities for action of the tax administration are still active.

In contrast, societies with significant and permanent noncompliance levels have to face different challenges.

In order to achieve significant improvements in the behavior of most of the responsible parties, a set of strategies different from the strategies used in the previous situation has to be implemented.

In these cases, it is necessary to intensify tax education and a large-scale dissemination of current tax obligations, in addition to verification activities.

A subject legally obliged who is unaware of regulations will be less likely to comply with them. It is very unlikely that these subjects will positively modify their behavior if they perceive no risk as the result of their non-compliance.

Basic actions to achieve significant compliance improvements include the creation of dissemination routines with adequate social communication programs, the inclusion of non-registered taxpayers and the control in a timely and systematic manner of formal and material obligations.

Putting these differences to one side, all revenue bodies -notwithstanding the diversity of contexts in which they operate and the differences concerning relative magnitudes or complexities- should always manage the processes within their responsibility in an efficient manner.

While it is, true that revenue bodies develop many different and multiple tasks, unquestionably it is tax collection, debt recovery, auditing, and services to taxpayers the functions that make up the operational core of tax administration and, in our view, these functions should not be considered in isolation. An inaccurately interrelation of these processes may seriously limit the potentialities and impacts of management.

The first powerful idea that we wish to emphasize is, therefore, that revenue bodies should consider the functions mentioned as a set of permanent and interdependent activities, whose reciprocal interactions have an increasingly obvious relevancy.

Strengths and weaknesses of each of the component parts of this single system feed each other and thus must be addressed as an integrated whole, where the efficiency of each part is fundamental to improve compliance.

The purpose of this presentation is to provide a view of tax audit deemed as part of the integral verification process of the tax administration, which includes all basic functions of management.

This systematic approach of the tax audit activity differs from the traditional approach, which placed the audit process as almost the exclusive focus of risk generation capacities perceived by taxpayers and responsible parties.

This view will be at the centre of the strategies implemented to improve the tax behavior in our country and the basis adopted to face our control activities in the near future.

1. AN EVOLVING PROCESS

In the last decades, the contribution of both the economic theory and sociology has allowed tax administration to incorporate more knowledge about the behavior of the different social and economic aggregates. Progress has also been achieved regarding increasing knowledge of decision-making mechanisms in the light of the different incentives received by people by other economic agents, including the State.

This improved understanding of the social behavior-and of the persons individually considered-has led us to the conclusion that the excessively simplified visions about tax control are usually insufficient to positively modify the tax behavior of citizens.

In our view, the traditional model of risk generation must be enriched by a vision that enables to integrate in a single strategy the different instruments used by revenue bodies to encourage improvements in tax behavior.

We refer precisely to elements such as tax education, services to taxpayers, technical and logistical support, improved internet services and any other action tending to facilitate compliance. We include in this broad concept the timely and strict primary control of obligations of presentation and payment.

Obviously, this conception does not imply ignoring the fundamental importance that the audit function has in order to achieve an improved compliance control, but it differs from the classical view in the sense that it does not limit the audit function as the almost exclusive tool available to improve compliance.

From the moment the taxpayer is “born” upon his registration in the revenue body, there are elements that are critical for all later interactions.

The accurate identification of domiciles, the business type adopted or the correct classification of the economic activity developed, as well as the classification of other elements characterizing people become relevant in subsequent steps of the process, such as the tax collection or audit phase.

In the different stages of the chain of activities that may take place in the relationship between the revenue body and taxpayers, tax officials must be clearly aware of the importance of their roles, not only regarding the performance of their specific duties but also in connection with their relations with the other areas of activity.

Tax audit, in this view, then becomes a fundamental element regarding the entire verification process; however, it should not be analyzed in isolation from the other elements that make up the administration’s management chain.

In line with the above, we will present these considerations about the audit function and compliance control.

1.1. Establishing the context

The aforementioned approach also requires a thorough knowledge of the context in which the tax administration takes place.

Taxpayers and other responsible parties interacting with the tax administration encompass a continuum varying from small units, with minimum obligations and small economic size, to huge conglomerates with a multiplicity of activities and a wide range of operations.

In some countries, the huge geographical dispersion and the tax behavior differences observed in large urban centers in contrast with very distant rural populations also demand different responses in the light of the implicit challenges inherent to those so different realities.

It is worth mentioning that in the last decades the economic and financial globalization has intensified this need of adequately knowing the local and international environment in which our organizations operate.

Taxpayers and tax administration are affected by those contextual circumstances, including not only economic and financial conditions but also political, cultural and educational issues.

This requirement of knowing the environment in which organizations interact demands monitoring this reality so as to be aware of changes they may produce, in order to be able to design and implement adequate strategies.

An exclusively technical view may weakness the position of the tax administration activity in the eyes of society and may seriously limit its capacities of action and influence.

The elaboration of a strategic plan implies knowing the environment and the capacities of the administration itself being clearly aware of strengths, weaknesses and risks faced.

It is only on the basis of having precise knowledge about the institutional approach required that it is possible to outline a plan of verification activities that may reasonably impact the environment to progressively improve compliance by the various universes of responsible parties.

A lack of objective knowledge of the risk posed by the various industries and economic activities, and of the responsible individuals making up each universe, weakness the respectability of the administration to taxpayers and society.

Our experience regarding the elaboration of sector studies, through the creation of areas of Specialized Audit allowed for a deeper understanding of the various economic areas, their production, business and financial practices and the structure of the markets in which they operate. Progress was also made regarding taxation of the sectors and any possible maneuvers tending to non-compliance, which may take place.

This specialized knowledge is reflected in sector handbooks and work guidelines that train audit officials, strength their presence, control capacity, and allow for the development of structural measures that prevent focal points for evasion.

1.2. Knowledge of management capacities

To the same extent as that of a correct understanding of the external reality in which the tax administration operates, another core element is required for an efficient compliance control.

It is a hard task to define verification strategies about a specific universe of taxpayers if the operational capacity of the administration itself is not known.

In order to achieve this objective we timely define and implement what we call the DNA of each internal jurisdiction.

Fundamentally, the aim is to measure the quantity and complexity of the obligations that have to be fulfilled by the various universes forming each internal operating jurisdiction, in terms of tax registration and the complexity inherent to them.

This quantification allows to rationally asses the quantity of human resources and the various levels of training required.

In this way, the quantity of possible verification actions can be defined and the jurisdictions with staffing not suitable with the extent of obligations and the type of taxpayers to be managed can be reinforced.

This platform also allows us to measure the productivity of each internal jurisdiction and to perform any comparison as may be necessary to assess the management carried out.

1.3. Technological platform

The capacities presented by Information and Communications Technology (or “ICT”) provide the platform necessary to build the various control strategies.

A more widespread use of electronic tax returns, electronic payments and invoices, the ability to identify and designate third parties to act as information and withholding agents, together with improved access to banking transactions, are all key elements that have enabled to build rich and powerful databases available for their use regarding tax verification and audit.

However, this remarkable progress regarding the availability of useful data for control purposes is not a panacea by itself.

We usually find here the first challenge regarding the improvement of quality control.

Often, the analytical capacities of our officers and agents are not up to what is required to achieve an optimum use of the potentialities provided by the excellent databases now available to us.

Knowing how to adequately look at millions of items of data requires specialization levels that may exceed the average training of our officers.

Transforming these huge databases into useful and relevant information requires building risk analysis models that entail skills and training in areas of knowledge that we usually lack.

The experience observed in complex organizations like international financial entities and even in large advertising agencies may indicate challenges posed to us in order to make a maximum and effective use of all this data.

The creation of those large amounts of information and their provision to the tax administration activity imply costs that must be supported by the private sector of our economies. Thus, a rational use of the information is required so that the competitive ability of our businesses is not adversely affected as a result of unnecessary parafiscal charges.

The use of this potential source of information must imply clear improvements in control so that noncompliance levels are reduced and the tax situation in our countries is thus effectively strengthened.

The identification of patterns of behavior through the exploitation of aggregated information or BIG DATA provides new opportunities of knowledge of the economic and social reality.

Revenue bodies have large amounts of information that enables them to move forward quickly in this field provided that they have staff technically trained to exploit this information in an intelligent way.

Furthermore, as mentioned before, seeing the entire process as a continuum enables us to put the information produced in the various stages of the verification chain together into useful elements to characterize and rate taxpayers in terms of the risk implied, thus strengthening all risk management processes and the collection of taxes due.

An adequate model of risk profiles makes it possible to assign a value to the taxpayer, not only based on his own tax returns or the information provided by third parties, but also on the patters provided by the formal behavior of the taxpayer.

Events including non-filing or late filings of tax returns or irregularities in payments may provide data helping to rate the behavior and may be used in subsequent verification stages.

The possibility of assigning a risk value also strengthens the formal verification itself. If taxpayers know this association between formal behavior observed and the risk of being audited, they will probably improve their behavior in these basic stages of the taxpayer-tax administration relationship.

Based on the availability of timely and reliable information, revenue bodies will be in a position to design control strategies enabling the creation of risk conditions suitable for the various universes of responsible parties.

Timely and reliable information and its intelligent use in turn allows us to address another important challenge faced by tax administration; that is, substantially reducing the degree of discretion of all operations by granting reasonability and objectivity to their criteria and selection mechanisms of taxpayers to be audited, thus reducing opportunities for corruption.

The creation of mechanisms for assigning an objective risk to responsible parties and manage control activities in line with these valuations is a key element to substantially reduce the possibility of activities involving the ethic behavior of tax officials.

The experience obtained in our country with the SIPER system (Risk Profile System) was an initial progress that made it possible to introduce in our administration the rating of taxpayers, taking into account their formal and material behavior and to achieve progress on the objective selection methods of taxpayers for audit.

The SIPER system is a tool that allows the classification of taxpayers in accordance with the level of compliance of their tax obligations.

This tool integrates all the available tax information and assigns relative values to each variable, with the purpose of segmenting universes of taxpayers to define differentiated actions on each of them.

The result of the examination of the variables defined by the SIPER System allows us to compare and assess taxpayers in terms of the risk assessed in an objective way, thus creating homogeneous tax behavior universes. A correct allocation of resources and priorities can then be made regarding verification, audit and collection duties.

The system reflects the category assigned to taxpayers in accordance with the relative value of each variable, which should be regularly reviewed.

The objectives of a qualification mechanism are to reflect the fiscal behavior of taxpayers over a time period.

Its practical use is an objective and complementary element in the selection of cases for audit and makes it possible to generate targeting strategies in the different stages (collection, recovery, audit and service to taxpayers).

This further seeks to identify and examine the risks of the behavior of taxpayers, with the aim of reducing non-compliance levels and facilitating an in-depth analysis of the most recommendable actions to be implemented in each group or segment of taxpayers in accordance with their characteristics.

Moreover, close consultation was implemented through the Online Office, which enables each taxpayer to know his risk profile assigned by the revenue body in connection with his tax behavior and thus to be able to infer the possibility of being audited due to his risk profile.

To sum up, risk rating leads taxpayers to move to lower risk rating subgroups or categories by improving their behavior, and as a consequence to achieve a spontaneous improvement of their behavior.

2. THE AGENCY MODEL

The implementation of the *Single Agency* concept, which integrates the responsibility to administer internal taxation with social security obligations and Customs control, made it possible to explore new ways in the quest for an improved tax control.

Even though the experiences obtained and the level of success of integration processes were diverse, it should be noted that the synergy produced as a result of having a unique database with all the information available regarding all obligations of a single economic subject makes it possible to ascertain with greater accuracy his behavior and the risk implied for compliance.

While the verification processes and procedures applied may differ in the various contexts, the visualization of the economic agent as a single operational unit makes it possible for the information obtained related to the various aspects of the relationship with the tax authorities to enhance the knowledge of the economic agent and thus the control capacities.

We know that the integration processes of cultures as different as Customs, taxation and social security obligations are not easy to consolidate but the overall balance, in our view, continues to have positive results.

2.1. Verification process and audit

In general, tax systems operate with self-reporting of obligations.

Undoubtedly, this is the strongest evidence on the limitations we face for the revenue bodies to perform the tax assessment themselves.

We have notably improved our available information but, with the exception of a few countries, we are not-yet-in a position to “invoice taxes”.

This limitation has led to the need to create sufficient risk conditions to induce taxpayers to self-report their obligations taking into account the risk involved in tax authorities having access to the necessary information and the verification techniques suitable to know and sanction omissions, mistakes or willful misconduct.

This, in essence, is what “voluntary compliance” means.

Once this principle has been recognized, we further need to examine whether that risk is the exclusive responsibility of the tax audit or the final result of all the entire tax administration activity.

We believe that the second option is the most sustainable and powerful.

We understand that each and all of the activities that we perform are fundamental to achieve appropriate and reasonable compliance.

This is the reason why in the first place we mention the need for an adequate disclosure of the regulations and a continuing, systematic and permanent process of tax education of the population.

We also noted the importance of the registration process.

The registration process should provide very accurate information regarding the identification of the basic elements that characterize taxpayers; that is, business type, domicile, business activity, registered taxes, membership of an economic unit, company shares, foreign trade operator category, company's authorities and so on.

Similar considerations may be applied regarding the accuracy of the performance of the various compliance control stages whether referring to the collection process -filing control and payment- or to the actual recovery of the various receivables held by the revenue body.

We call this interlinked chain of actions and control a "**Complete Cycle**".

Regarding specifically the audit function, it would be useful to achieve an important conceptual change.

Not long ago the central axis of tax control was the actions and activities of the tax auditor.

The simplest explanation of the importance of his role was the limited information of the revenue bodies themselves.

The revenue body did not know the taxpayer and, as a result, it was necessary to go to his domicile to have access to the required data in order to evaluate if the self-reported information minimally approached the material reality of his business activity and to verify if the rules were correctly interpreted.

2.2. The role of the tax audit

Traditionally the control relationship between the tax authority and taxpayers took place through the so called tax audit.

During the audit, a tax auditor or an audit team visited the domicile of a taxpayer with almost no information of the taxpayer and, by applying audit techniques, the auditor sought to identify observations in the light of what was shown in the accounting records and finally in the tax returns filed with the revenue body.

The traditional tax examination process started based on usually subjective or random criteria.

This approach to the taxpayer usually was subject to complaints received by the revenue body or was carried out at the discretion of the revenue body or by random selection.

In essence, this situation resulted in a general lack of objectivity and left the risk up to the tax auditor.

The possibilities offered by technology and the internal analysis carried out by the revenue body, based on both information from third parties as well as on what was self-reported by taxpayers, led to the initiation of a substantial change regarding the methods to manage the examination process.

As from a certain moment, the information was the main element of the whole process.

At the beginning, the methods used were fairly rudimentary, consisting of fairly simply cross-checking of data and the detection of inconsistencies in tax returns.
As the years have passed, we were able to build risk matrices and, even more importantly, to gather all available data in the revenue body-in the various stages of the “Life Cycle” of the taxpayer- and in the various verification phases in order to assess in an objective way the real tax risk involved.

This comprehensive view contributed to the enhancement of the role of each step, posing the need to recognize the importance each of them had in an integral verification process.

The quality and completeness at the time of registration, the interpretation granted to the tax legislation or the formal behavior related to filing and payments enabled all the activities of taxpayers to provide information that allowed for risk rating.

This change of approach results in the need of prioritizing the role of the investigation areas or the selection of cases to audit.

From a certain critical moment, when the information available becomes relevant, it is not only the inspector who has the primary obligation to know the risk. There is a previous and very important stage that makes it possible, based on a diversity of available judgment elements, to know whether the taxpayer poses a risk for the tax administration.

Those elements to be evaluated together may range from the economic sector in which the taxpayer operates, his formal behavior, the behavior of other taxpayers of the same sector, the relations and indicators that may be defined to objectively analyze the taxpayer, to the inconsistencies with the information received from third parties.

At this stage of the investigation, non-compliance hypotheses are defined based on the use of the databases that must be evaluated during the tax audit process.

In the current administration we have promoted the organization of workshops, so that officials from different investigation areas meet together to share criteria and experience about the best exploitation of databases and the different technical criteria to formulate non-compliance and evasion hypotheses.

2.3. Stages of tax audits

Thus, the sequence of the verification stages may be briefly summarized as follows:

Investigation: the activities of this stage include the following:

1. Consultation and analysis of data.
2. Selection of cases with probable risk and weight their relative importance.
3. Starting the audit process.
4. Registration of the case in a track or trace system- for consultation and review – (in our country we use a system called SEFI) where all participants of the audit process register all events and reports related to the progress of the case until it is completed.

To avoid starting cases lacking technical feasibility, at the beginning of the audit it is fundamental to know the criteria held by the legal and technical areas regarding the non-compliance hypotheses formulated and also to be aware of judicial decisions and criteria regarding the controversial issues.
A reckless action at this point may be time-consuming and, more seriously, costs may have to be paid by the State when a detrimental situation arises because of having made progress with not feasible technical or judicial criteria or criteria not validated by law.

In the absence of final judicial criteria, progress has to be made diligently to evaluate the sustainability of certain positions that seek only the expansion of actions when the courts start validating the criteria held by the revenue body.

In our view, the investigation area is one of the central pillars through which the tax audit is conducted.

The intensive use of information requires the investigation area to combine highly technical and specific tax knowledge with the support of officers trained in the analysis of information.

A conceptual and concrete approach towards the areas involved in contentious proceedings in court is also required, so as to be as updated as possible regarding court decisions. Cases started must have reasonable chances to be successful.

Revenue bodies are not in a position to detect ALL non-compliances.

Tax audit should be an instrument of tax administration with the ability to timely identify non-compliance cases and obtain sufficient solid evidence to adequately sanction non-compliances and give clear signals to society that a sustained and effective risk may be generated for non-compliers.

For decades, investigation areas had a merely administrative role in the management of cases, but the substantial change in the verification strategies led to a profound review of its role, position and quality of its members.

2.4. Tax audit areas

These areas are in charge of identifying in practice the hypotheses generated in the Investigation stage, collect –in the field work- the evidence to achieve this purpose and thus validate or not the hypotheses.

To this end, and in line with the working methodologies ruled both by the areas conducting the audit process (in our country, the Deputy Direction General of Tax Examinations) and the generally recognized accounting and tax audit methods, tax audit areas evaluate elements such as the security provided by the internal verification of the taxpayer himself or whether his everyday

practices differ from the economic sector in which he operates (as a result of the information provided by the sector studies).

Finally, these areas validate the truthfulness of the registrations and the validity of the receipts by evaluating their authenticity and their consistency with what was timely self-reported by the taxpayer and that, for some reason, resulted in a risk hypothesis in the investigation phase or in an inconsistency in the cross-checking of data or validations carried out by IT systems.

In our country, work is carried out by inspector teams (between 5 and 7 officials per team) under the direction of a supervisor. These teams are part of Divisions integrated by 5 or 6 teams.
There has been further progress in the use of modular audits to analyze concrete and specific aspects, thus reducing the performance of integral audits that seek to cover all aspects of the economic and tax reality of taxpayers. This modality increases the number of audits to be conducted, with more accurateness and objectivity.

2.5. Relevant cases

Apart from the audits generated by the process previously mentioned, during our administration we decided to establish an additional criterion.

Each internal jurisdictional authority -in our case the Regional Directors-, who are the highest administrative authorities in a certain geographical area and that control all the activities of AFIP/Tax Direction General in that jurisdiction must, in turn, be accountable to the Director General of a number of cases (between 5 and 10) that are their final exclusive responsibility.

The purpose of this decision is that the Directors are fully aware of the possibilities and difficulties of the tax control process, as well as of the need to conduct audits of high social impact dealing with aggravated evasion, fraud or tax-related illegal acts, that help to positively modify the behavior through the perception of a higher risk in their local jurisdiction.

The results obtained must be disclosed through the national and local media thus leveraging the position of the revenue body in that area.

In general, the results have been positive and when we initiated this new administration, we have decided to place an emphasis and special supervision by the maximum organizational levels to ensure effective performance of these procedures.

2.6. Review or administrative assessment areas

These areas are in charge of evaluating and reviewing the conclusions obtained by the tax audits when the tax returns are disputed and the taxpayers challenge the observations.

As we can see, it is only at this point of the verification chain that the self-reporting criterion is left aside and it is the revenue body that ascertains the amount of the tax instead of the taxpayer. Tax authorities also ascertain the amount when the taxpayer fails to submit his tax return.

The assessment on a real profit basis is performed based on the information provided by the responsible parties for their own debts or for the debts of others, through the direct action of the revenue body, which thus performs the duty of filing the tax return that should have been carried out by the taxpayer.

This modality is the general rule and it is only when the assessment may not be carried out on a real tax basis that a presumed basis can be used.

For that purpose, assumptions can be used, of known facts or circumstances related to the taxable event that in certain cases allows inducing the existence and extent of the taxable event through induction.

Giuliani Fonrouge mentions a few grounds in addition to the non-filing of the tax return that enable a tax assessment on a presumed basis.

Among them are the following:

1. that the taxpayer fails to keep accounting books
2. the taxpayer fails to have accounting elements or these elements are insufficient
3. the tax authorities were unable to obtain accounting books and elements of evidence
4. the taxpayer fails to comply with the duty to cooperate and makes it impossible to carry out the examination
5. the accounting records do not clearly establish the activities carried out
6. the tax return is doubtful regarding its truthfulness or is not backed up sufficiently

A valid ex-officio assessment must comply with the requirement of reasonable conclusions in connection with the information in the file, analyzing the capacity of the method to reconstruct the taxable matter and always considering the duty not to tax beyond what is provided by law.

Thus, the demand here is a highest technical capacity and deeper knowledge of those positions held by the revenue body and to evaluate that the criteria held by the audit stage may be held in the subsequent review stages.

But that is not its only essential role.

In our view it is here that there must be a sufficient level of connectivity with the areas that define the positions held by the revenue body in the courts, whether administrative or judicial, to balance the positions of the tax authority with the future development of the facts presented in the courts.

We all know that tax interpretations are always opinions that are only validated when the Superior Tax Court of the country issues a final decision on a certain subject.

It is also true that, in general, it is not advisable to make progress by maintaining criteria that is not maintained by Justice and rejected by the courts.

In these cases the possibility of positively impacting in terms of the level of risk perceived substantially decreases, and as a result it is advisable to moderate the quantity of disputed cases until one criterion or the other are validated.

This fine tuning in the audit process has to be channeled through the review areas which for this purpose must have an appropriate communication with both ends of the chain: the contentious areas that know what happens in the field of Justice, and the investigation areas that authorize the opening of new cases.

The final opinion that the citizens may hold about the actions carried out by the revenue body relies on that harmonious balance.

2.7. Evaluating the final impact of audit activity

Before making further progress regarding the analysis of other forms of verification that complement the actions carried out by the traditional audit, it is important to elaborate on what appears to be the central element of the entire risk process.

To see this central element clearly, let us put into the position of the person who makes the decision to be a non-complier or evader.
We can ask ourselves then: when is it convenient for someone to evade or not to comply with his obligations?

The obvious answer to this question, when there is no evident reason of force majeure that forces that person to do so -as might be the case in which compliance will result in the dissolution of his company or the impossibility of satisfying his basic obligations- it appears to be that someone will not comply whenever his probabilistic risk analysis determines that even if the non-compliance is detected and sanctioned, his economic or financial situation will be less adversely affected than if he does comply with the obligations.

This issue, which was originally raised many decades ago by an original work of Allingham and Sandmo, is the same issue faced everyday by thousands of taxpayers globally.

Evade? How much? How and by means of what mechanisms?

The dilemma posed by Hamlet taken to the everyday tax field.

It is here that the role of the revenue bodies and the control techniques and strategies become relevant.

It is here that many times we fail.

Why?

We think there are a few very relevant factors that determine the weaknesses of the control systems. Even when it is not possible to formulate an exhaustive list, we can mention some of them:

1. Not knowing the context.
2. Putting emphasis on internal procedures and the application of routines, and the fact that the inside of the administration has strict activity rules.
3. Putting more emphasis on the internal audit or in the internal statistics and management controls than on the external impact of our actions.
4. Carrying out isolated actions and not considering the verification process as a unique and continuous process.
5. Opening cases or making progress on them without the sufficient judicial or technical feasibility so as to be able to sustain the criterion sustained up to the last instances of the review process. Even in court.
6. Not closing the process with the application of fines and the recovery of omitted interest.

7. Not measuring the impact of our audit actions as effective modifiers of the change in behavior of responsible parties.

In our opinion, these 7 points determine a large part of the weaknesses in the audit process and it is them that we have to highlight for the activity developed in this field to start substantially modifying the risk perceived by non-compliers.

The experience gained from activities carried out in several countries of the region and the experience gained by the administration of my country make me think that if we do not attack these weaknesses, it will be hard for us to achieve the substantial changes in the tax control demanded by our societies and governments.

To exemplify this idea, I will simply describe a typical case that we face when we evaluate the efficiency of our management.

We have often consulted higher authorities from different revenue bodies, starting with the authorities of my own country, about the results obtained in tax audits that have already been completed.

The general answer received is that of approval due to the relevant adjustments achieved.

When consulted about the most important cases, revised and approved by taxpayers, several years after completion, we requested the authorities to bring their files in order to check if the famous adjustment, fines and applicable interest had been effectively charged.

We can say for certain that in most of the cases, the results were not as expected.

The effective recovery was, in many cases, significantly smaller than the amounts assessed and timely revised and approved by taxpayers.

This difficulty in completing the audit with the effective recovery of the tax assessed together with the applicable fines and interest show the restrictions to consider the audit as part of a process that transcends its administrative limits and that must always be linked with the rest of the processes.

It is indispensable to sensitize all the members of the revenue body on the significant role they all play in the control process.

It will be of little help to count on powerful databases, sophisticated analysis tools and many hours of technical training if the final evaluation and impact of our actions are not achieved.

There may be many and diverse reasons for these failures: 1) having initiated audits of taxpayers that do not have adequate financial capacity; 2) allowing for insolvency during the audit process; 3)having generated adjustments or challenges with technical and/or legal criteria not approved by the courts.

It is also fair to mention other reasons not attributable to the revenue body such as tax pardons or tax amnesties on previously undeclared assets.

The concept of “Complete Cycle” is aimed at erasing the boundaries between the various control stages placing the audit as an essential stage but not the only one of the entire administration machinery.

2.8. Other verification methods

Even though the traditional tax audit is, undoubtedly, the operational core of the whole audit process, the considerations exposed about the other stages of the process are aimed at pointing this basic and necessary interconnection for a successful audit process.

It is worth mentioning also other activities within the frame of the global tax audit process that are relevant to the verification environment.

Office or desk-related verifications have increased their importance during the last years based on the wealth of information available to revenue bodies.

The information provided by third parties contrasted with self-reporting by the taxpayer allows for cross-checking of data that when informed to the responsible parties enhance the level of the presence of the tax authority.

There is a point to be made here. Just as we mentioned, in the case of the traditional audit and the need to complete the control cycle up to the last stage –the recovery-, it is necessary that the verification function reaches the final stage.

There is no other notably harmful situation for the image of tax authorities than when it is the authorities themselves that point out to the taxpayer or responsible party about non-compliance, but the procedures started are not fully completed.

Unfortunately, we have found situations in which thousands of notifications were issued to the responsible parties that did not finish their cycle, thus resulting in the decline of the image of efficiency and seriousness of the revenue body.

Preventive measures have an important role and are essential for the whole verification process. These actions generally focus on the identification of omissions and verification of compliance with invoicing and registration rules. The activities performed by certifying public officers that help underpinning all the process of issuance and registration of operations may also be included among these actions.

Taking inventory, sales control through the so called “fixed point”, and the consequent application of closures are relevant in the tax verification activities and these preventive measures are the documentary and informative basis for the operation of the tax audit itself.

Progress on electronic invoicing will allow for the modification of some of the procedures but, in my view, they will never lose their strategic importance in the control networks.

2.9. Control of fake invoices

Even when there are diverse evasion modalities through different and innumerable fraudulent instruments and maneuvers, undoubtedly the use of false invoices is so important that such activity deserves a special paragraph in any analysis made related to tax audit.

Maybe this is the most widely spread instrument of evasion and it adopts diverse modalities among which we can mention: a) simple duplication; b) the issuance of invoices from inactive companies or companies created only to issue invoices; c) the so called "*usinas*" [companies created for the purpose of issuing fake invoices] that act as wholesalers by issuing the fake invoices placing them in the market through associations that use agents who charge a fee in order to sell them; d) false invoices to be used within a single economic group with the purpose of illegal transfer of gains or losses.

The use of fake invoices may or may not have tax purposes.

When used for tax purposes, they may be applied to intentionally increase the tax credit in the VAT or the expenses related to income tax. They may also be used to request false reimbursements in VAT refunds.
Among the non-fiscal uses, we can mention the use of fake invoices to justify irregular purchases, illegal outflows of cash or justification of expenditure not related with the real activity developed.

The most important change in the way of facing these instruments is to verify the real economic capacity of the issuers to perform the operations they claim and to keep track of the money to reach the final beneficiaries of the maneuvers.

In practice, in general terms, it is the expenditure of users that must be challenged and not to admit the simulation of challenging the issuers who are usually insolvent parties.

In the last years many complementary instruments have been used to try to identify these issuers of false invoices that start with the need to have invoicing regimes that provide minimum safeguards.

Withholding regimes and special registries with this same purpose have also been implemented.
The means of payment allowed have been defined.

The web pages of the revenue bodies are also available for consultations to verify the validity of the invoices or equivalent documents and also provide for specific guidelines to be applied in the tax audits.

The adoption of this set of measures has allowed mitigating the loss of tax revenue caused by the use of false invoices.

2.10. International taxation

The current globalization and high competitiveness context -where the geographical limits of the States are fading as a result of the increase in businesses of multinational companies and as a result of international changes of residence of individuals- is not the context where tax administration takes place.

Tax administration has a scope of action limited to the internal sphere of the relevant borders and as a result, International Taxation arises as a transcendent topic that cannot be absent in the work schedules of revenue bodies, which need a more effective partnership and coordinated actions to achieve fair and equitable taxation in each country and/or jurisdiction, in line with the effective generation of profit of each jurisdiction.

A successful implementation of International Taxation allows, on the one hand, facilitating the maximum level of compliance by taxpayers of their tax obligations regarding this field, through information and relevant services, while as a counterpart, allows the generation of higher risk perception, based on the detection of undisclosed foreign assets and income and the identification of harmful tax planning strategies that involve subjects and/or entities residing abroad, mainly in "non-cooperating" countries or jurisdictions and/or that use special tax regimes.

The impact produced by the implementation of actions in this field goes beyond taxes; nonetheless if we stick to this area (greater revenue from income and personal property taxes, with progressive effect), it is worth mentioning that, a higher risk perception impacts on the entire taxpayer's register, allowing for the identification and correction of weaknesses in the regulation that promote these practices (including weaknesses present in Double Taxation Agreements), as well as introducing and/or strengthening regulatory and operational containment mechanisms of these practices.
The following are among the main challenges of our tax bodies in this field:

- The existence of high demands regarding job profiles and the necessary training of officers for the performance of tasks related to this field. The complexity of the topic requires having officers who are up to the profiles of specialists of large advisory services.
- Breaking the constraints to access to the information relevant to identify the evasion and harmful tax planning practices referred to, mainly when the information is located in non-cooperating countries. The international harmful tax plans are the tip of an iceberg, and the major challenge is to be aware of the entire structure.
- Having suitable technology for the management and exploitation of the information. In addition, counting on efficient procedures allowing for the management of the information received, as well as providing other revenue bodies with the information that may be useful. Compliance with international standards for the management of this international information (including confidentiality and security rules in the management of data) are of essence.

As a consequence, revenue bodies should consider the following as priorities:

- Counting on a specific central area with responsibility in this matter in charge of the analysis and selection of cases, definition of technical criterion, support to audit areas and management of exchange of information. Furthermore, the operational areas, mainly the area dealing with Large Taxpayers, should have special teams to conduct tax audits.
- Widening as far as possible the network of agreements and conventions for the exchange of information, even taking advantage of multilateral initiatives.
- The exchange of information is a key tool for revenue bodies to extend their actions beyond the borders of the relevant country and coordinate them with other revenue bodies. This tool should be effectively taken advantage of in all its modalities and especially regarding automatic exchange of information, currently strongly promoted based on the Automatic Exchange of Financial Account Information (Common Reporting Standard), FATCA, Country by Country Report and the exchange of Rulings (these two last items from the BEPS project) and so on.
- Adequate match between taxpayer's registries and the content of the tax returns to ensure a better and larger tax compliance and consequent control.

- Promoting synergies between tax and Customs control ("Single Agency"), taking advantage of the most evident benefits of this area.
- Encouraging and/or participating in the design of the rules related to international taxation, including the actions to prevent abuses.
- Active participation in international bodies and forums so as to get in touch with the latest updates, share experiences and strengthen cooperation links with other countries.

2. THE IMPORTANCE OF MANAGEMENT: THE ROLE OF THE OPERATIONAL AND TECHNICAL COORDINATION AREAS

Revenue bodies, in general, apply various verification and audit instruments.

In order to balance these actions, tax audit plans are designed to structure the work performed by the operative areas, in an attempt to achieve reasonable levels of coverage of the universes for verification, assigning the relevant verification actions and human resources based on criteria of rationality and efficiency.

Nevertheless, it is also true that daily management generates problems, uncertainties and reciprocal interactions among the different units and agents involved in the operations that require the performance of permanent monitoring and coordination activities.

The hierarchical structure composed of the different Directions that manage the processes is responsible for the supervision of the activities performed within said processes.

This supervision is fundamental to ensure the application of strategies and technical criteria regulating each activity.

However, a weakness frequently observed is lack of coordination and difficulties in the establishment of links between areas that enable speeding up the entire operation and facilitating more fluency of the interactions among them.

Another situation usually observed is that problems that arise as a result of the operational daily activity are not timely known by the areas that regulate the relevant processes.

Regulatory procedures of each process -in this case the tax audit process- should be contrasted with evidence arising from daily work.

Improving this communication among all the participants of the production chain of a certain process requires the existence of staff responsible for monitoring daily activity and providing warning on imbalances and situations not foreseen in the original planning so as to be able to make the relevant adjustments.

The practical implementation of operative coordination units that horizontally evaluate the operations' performance is an endless supply of information to improve the entire process.

Something similar occurs with the need to identify the technical issues that require better definitions or adjustments by the responsible areas to avoid issues that may weakness the tax authorities' position in the eyes of taxpayers or, simply, to clarify any possible issue.

3.1. Evaluation of impact

All this set of measures that may be used by a revenue body and the various verification actions applied may have different levels of efficiency for the achievement of the ultimate goal sought.

Therefore, it is appropriate to highlight the need to define and implement systematic mechanisms to evaluate the impact that the many verification actions and tax audit have in the progressive improvement of the behavior of responsible parties.

The necessary evaluation of the changes in the behavior of the different economic sectors and of taxpayers that compose them is then the final criterion to define the success or failure of our administration.

Topic 2.2

AUDITING AND COMPLIANCE CONTROL

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Contents: 1. Antecedentes. 2. Today. 3. Future of the control

1. ANTECEDENTS

The tax legislation in Mexico establishes as taxpayers' obligation the provision of information related to their activities and the payment of their contributions to the authority, in order to verify and determine their fiscal situation.

The control of compliance with the obligations of taxpayers is essential and represents the beginning of the audit process, since it is an entry to the audit, which leads, among other results, to spontaneous compliance, formality in the economy and necessarily improves the collection.

Insofar as compliance increases, it allows the authority to obtain the information needed to implement actions of tax intelligence on taxpayers with higher risk and presumption of tax omission or evasion.

The stages of the audit process related to compliance and audit control could be described as three temporal stages. The first when the compliance with obligations were fully paper-based, therefore both for control and for audit; the second stage, that we are currently experiencing with a transition from paper to digital compliance, and the future stage, when possible both taxpayer compliance, as well as control and audit will be electronic.

In the first stage, the administrative burden for the taxpayer was greater, so spontaneous compliance was low and therefore tax revenues were lower. The detection of a breach of obligations was inefficient and ineffective, so practically there was no perception of risk by the taxpayer to be required at the stage of obligations control and much less that the authority would verify their tax situation through an audit.

2. TODAY

Today, the tax audit and control of compliance with the obligations of taxpayers is in constant transformation and has the challenge of encouraging spontaneous payment through the following lines of action:

- **Approaching taxpayers directly**, through programs of compliance, that inform them of irregularities detected through institutional and external systems, allowing them at a certain time to correct their fiscal situation.

- **Creating a greater perception of risk**, through the exploitation of large and numerous databases, to detect breaches of representative taxpayers, which produces an effect on the rest of the taxpayers.

- **Monitoring full compliance with obligations**, using information technologies to carry out detailed control actions, many of them for exemplarity. We also control the registered public accountants.

- **Reviewing aggressive schemes of evasion**, through the analysis of large volumes of information, as well as developing risk models, for detecting companies that invoice simulated operations, practice aggressive outsourcing and other figures of evasion.

- **Controlling effectively refunds and compensations**, using the information of the institutional databases in which massive situations of risk are detected and allowing to analyze the operations until the last level of the taxpayers involved.

Beginning in 2014, derived from tax reform, electronic media have an important role in audits in Mexico; considering the following elements that will generate an efficient control:

- **Online digital tax vouchers (CFDI):** Timely follow-up for consistency between invoicing and compliance with obligations, according to risk profiles. From April 2014, it is the only valid tax voucher.

  The CFDI's can contain annexes that allow to include additional information regulated by the authority to a sector or specific activity, allowing the additional information to be protected by the digital seal of the electronic invoice.

- **Tax mailbox:** Online communication service, to interact and exchange digital documents with the tax authorities in an agile, timely, reliable, simple, comfortable and safe way.

- **Electronic accounting:** Obligation of taxpayers to send accounting information, catalog of accounts, checking balance (monthly), and policies and auxiliary (at the request of the tax authority), to date, over 2 million of balances control have been performed.

- **Electronic control:** Audit processes that consist of reviewing concepts or specific items through electronic means from the notification until the conclusion.

Therefore, in order to have an efficient compliance monitoring, the following axes have been considered in the medium term:

- **Massive and electronic Monitoring:** Verifying by large groups of noncompliant taxpayers by means of information systems, to detonate automatically and decentralized actions with the aim of obtaining quick, assertive interventions and high territorial coverage.

- **Strategic control:** Reviewing aggressive schemes, exemplary cases and the complex behavior of evasion, with the analysis of information focused on the taxpayers of higher risk groups.

Derived from advances in technology nowadays, it is necessary that audits be carried out using information technologies supporting the monitoring activity, as well as reducing the time of conclusion of audits, decrease the taxpayers' complaints and increase the aspects of control. Therefore, we consider:

- Providing technological tools with capacity for interaction and information exchange.

- Support the substantive operations and promote the use of risk models.

- Optimize existing applications and create new solutions for the tax administrative units, regarding tools, services and controls.

3. FUTURE OF THE CONTROL

Deep revisions: Desktop audits and home visits will be carried out with research and in-depth analysis prior to the start, submitting to risk models and crosses of information available to SAT (CFDI, payroll, returns, FATCA, electronic accounting, among others).

Returns and compensations will be also subject to risk models using the information described, which will trigger acts of control on the balances requested, refunded or compensated by the taxpayer.

Electronic reviews: One or more concepts or specific items will be reviewed, through fast procedures using electronic media, from the entries' reception, the control act notification, their development and conclusion will be reviewed.

Electronic revisions will allow significantly expanding the monitoring presence of the tax authority.

Electronic revisions processes will take the following forms:

- Tax mailbox sends a message to the email or the means of communication provided by the taxpayer to inform of a pending notification.

- If the documents (interim resolution and pre-settlement) are not open, the electronic notification shall be considered completed on the fourth day, counted from the day following the date that notice was sent.

- The notified taxpayers can provide documentation, self-correction, or not respond within the time limit of 15 working days granted by the provisional resolution.

- The tax authority appreciates the information provided by the taxpayer, and can issue requirements and orders, and reports the facts or omissions to the taxpayer, the legal representative and managing entities, and issues the final decision.

Topic 2.2

AUDITING AND COMPLIANCE CONTROL

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PRODECON

1.1. Contents: 1. History of the Conclusive Agreements. 1.1. Normative aspects of the Conclusive Agreements. 2.

INTRODUCTION

In Mexico, the verification procedures that tax authorities use to control the fulfillment of tax obligations are the home visits, the desk audits and the electronic reviews. These administrative acts are all provided in article 42 of the Fiscal Code of the Federation.

Since January 1, 2014, taxpayers have a new alternative for settling disputes, named Conclusive Agreements. This figure allows them to request assistance from the Taxpayer Defense Ombudsman (PRODECON in Spanish) to act as an intermediary with the tax authorities and try to solve in a consensual manner, the disputes with respect to the way the audit authority analyzed and assessed the facts during an audit procedure.

Conclusive Agreements guarantee transparency and respect for the fundamental rights of taxpayers facing control procedures.

1. History of the Conclusive Agreements

The antecedent of the Conclusive Agreements is the complaint procedure, attribution of PRODECON that turned out to be an ideal space for a direct communication between tax authorities and taxpayers, allowing in many cases to resolve disputes between them.

However, the complaint procedure has certain limitations regarding facts or omissions detected and qualified during the control procedure:

1. It does not suspend the terms for the conclusion of the said procedure, or for the issuance of the decisive resolution of the tax credit.
2. If they show violations of the fundamental rights of the taxpayer, the consequence is the issuance of a non-binding public recommendation unilaterally issued by PRODECON.

Given this scenario, PRODECON, investigated what would be the appropriate strategy for our tax system to develop a procedure of agreements in audits. Analyzing from the arbitration and conciliation, including the presence of an observer in control procedures,

and we proposed to the Executive Branch the creation of the figure of the Conclusive Agreements.

These agreements intend that PRODECON promotes, makes transparent and facilitates the early and consensual solution to disputes and litigation that may arise between taxpayers and tax authorities during the exercise of the powers of verification.

Thus, on September 8, 2013, the Federal Executive delivered to the Congress of the Union the economic package for 2014, along with the Tax Reform and Social Security initiative. The initiative proposed, among other things, the introduction of the Conclusive Agreements in tax legislation that was approved with some changes by the Chamber of Deputies on the October 15 ordinary session and by the Senate in the October 22, 2013 ordinary session. With this, a chapter II, named "of conclusive agreements" was added to the title III of the Fiscal Code of the Federation, effective on January 1, 2014.

The following presentation will explain the steps to reach a Conclusive Agreement; we will also mention some practical cases derived from the topic, and, finally, share statistics concerning the number of cases that have been resolved since the implementation of these agreements until December of 2015.

1.1. Normative aspects of the Conclusive Agreements

The regulatory framework of the Conclusive Agreements and their procedure (Spanish: *Procedimiento de Acuerdos Conclusivos* or PAC) is located in chapter II, title III, of the Fiscal Code of the Federation. It is named *"Of the Conclusive Agreements"* (articles 69-C 69-h), as well as in the tenth chapter of the guidelines governing the exercise of the substantive powers of PRODECON (articles 96 to 107).

To learn more about this figure, we will answer some questions that help us to define what conclusive agreements are, what their purpose is, who can promote them, and what the procedure to follow for implementing them is.

What is a Conclusive Agreement?

The Conclusive Agreement is an Alternative Mean of Dispute Settlement (MASC by its acronym in Spanish) on fiscal matters, specifically of mediation, that involves the willingness of both parties (i.e., the tax authority and the taxpayer) to resolve the conflict in a conventional/transactional manner. In this procedure, PRODECON serves as a mediator, facilitator and witness, helping the parties to reach a consensus resolving their differences.

What is the purpose of the procedure of Conclusive Agreement?

Through the procedure of Conclusive Agreement (PAC), taxpayers can express their disagreement with the qualification of acts or omissions by the Authority during the course of the home visit, the desk audit or the electronic review and indicate, if applicable, the qualification that they consider appropriate. They must provide the necessary elements to sustain their view in order to reach a consensus and resolve their differences definitively through the signing of a Conclusive Agreement. (PAC)

The PAC is an alternative procedure that may help the audited taxpayers with the total regularization of their tax position, in a simple and transparent manner, with benefits superior to those that could be obtained through the so-called ordinary "correction".

Who can sign a Conclusive Agreement and when?

The taxpayer can request it, or his legal representative, under oath, from the start of the audit and until the moment before the notification of the resolution that determines the amount of their omitted contributions, as long as the reviewing authority has already determined the acts or omissions.

When the agreement is requested through a legal representative, he or she must have a power for administrative acts, control, or special power to sign Conclusive Agreements on the terms laid down for this purpose in the Fiscal Code of the Federation.

Which legal formalities must conform the request for Conclusive Agreement?

The request for Conclusive Agreement must contain the following requirements:

Substantive requirements:

a. The facts or omissions qualified by the tax authority with which the taxpayer disagree;
b. The qualification that the taxpayer intends to give to such acts or omissions; and
c. The precise terms in which he requests the authority to accept the Conclusive Agreement.

Formal requirements:

a. Name, tax address and Federal taxpayers registry;
b. Authorization of representative and address to hear and receive notifications;
c. The letter containing the request is directed to the Public Office of the defense of the taxpayer and contains the autograph signature of the taxpayer or of his legal representative, and
d. The mention that the whole statement expressed the procedure is performed under oath.

What is the Conclusive Agreement Procedure?

1. The procedure starts with the written request to PRODECON that mention and identifies the acts or omissions attributed to the taxpayer, with which he disagree. It expresses the qualification that he aims to provide, with the supporting arguments of substance and legal reasons, as well as the precise terms in which he consider that the authority should accept the Conclusive Agreement , all under oath.

   The Conclusive Agreement procedure suspends the terms that the law gives the authorities for the conclusion or resolution with respect to the exercise of powers of verification. The suspension begins when the taxpayer files the application to PRODECON and ends until the review authority is notified of the conclusion of the procedure.

   It is emphasized that the said suspension, in contrast to other preventive measures or relief provided for in the jurisdictional means of dispute resolution, operates by Ministry of law. It does not require that PRODECON agree on the admission of the Conclusive Agreement request, to produce all its inhibitory effects on the exercise of the powers of verification available to the reviewing authority.

2. The application being received, PRODECON gives immediate notice to the reviewing authority, through e-mail, with respect to the request for Conclusive Agreement of the taxpayer, to effect a complete suspension of the review procedure and avoid, if applicable, the notification of the decision of the tax credit that corresponds.

3. Subsequently, PRODECON resolves on its admission within three business days.

4. If the request is admitted, the reviewing authority has to express if it accepts or not the terms proposed in the Conclusive Agreement; the grounds and reasons for which it is not accepted, or express the terms in which the adoption of such an agreement would proceed. This must be done within 20 working days from the request.

5. If the request is not admitted, a closing agreement by will be issued, reported to the authority and to the taxpayer, and the terms and deadlines resumes.

6. PRODECON, once it acknowledges the response of the tax authority, will have 20 days to conclude the procedure, which shall be notified to the parties.

7. During this time, worktables can be held. Worktables are a space for dialogue implemented and directed by PRODECON. In these, the parties have the opportunity to exchange points of view, both legal interpretation of tax laws, and accounting or technical aspects that affect the fiscal situation of the person or entity that has been the subject of the exercise of the powers of verification of the tax authority.

8. The procedure can be concluded in two ways, depending on if the authority accepts or not the Conclusive Agreement. (i) It accepts it, through the signing of the Conclusive Agreement by the reviewing authority, the taxpayer and PRODECON, or, (ii) it rejects it; in this case, PRODECON emits a closing agreement, notifies the parties and lifts the suspension of the deadlines to complete the audit or to issue the decision determining the tax debt to the taxpayer, as appropriate.

   In the closing agreement, PRODECON includes a safeguard clause in the sense that any kind of proposal, offer, recognition or acceptance that the parties have expressed within the PAC, regarding the facts or omissions, was carried out with the aim or purpose of reaching a Conclusive Agreement. So it not could be used in prejudice in any other kind of action or procedure. In addition and in case that the authority proceeds to issue and notify the decisive resolution of the tax situation of the taxpayer, it may not invoke as a basis the statement made in the PAC, but it must be strictly enforce the applicable law to the results obtained by the exercise of the verifying power.

What does a Conclusive Agreement contain?

In terms of its structure, the Conclusive Agreements consist of a header, background, statements and clauses.

In any Conclusive Agreement, it is possible to notice the existence of the following clauses:

1. ***Object of the Conclusive Agreement. -*** put an end to the disputes of the parties as to the qualification of acts or omissions which involve non-compliance with the tax obligations of the taxpayer and which are detected during a home visit, a desk audit or an electronic review.

2. ***Facts for which the taxpayer was able to clarify the fiscal situation. -*** Every manifestation of the reviewing authority in which there is no match with the way in which the taxpayer reported his or her operations for tax purposes.

3. ***Acts or omissions for which the taxpayer will need to adjust the compliance of his tax obligations-*** are those that own taxpayer admits that he or she should have considered in the determination of his taxes.

4. ***Calculation of the new base and tax payable -*** is the result of the two previous clauses that quantifies the total amount provided by the taxpayer, summing the historic tax, the update and the extra charges.

5. ***Payment in installments-*** when the taxpayer has obtained permission to perform the whole of the tax charge in installments, through fixed monthly payments previously determined by the tax authority.

6. ***Non-application of fines-*** reflects the amounts that were condoned to the taxpayer because of the signing of the Conclusive Agreement.

7. ***Conclusion of the verification powers-*** refers to the compliance of the parties to terminate, by virtue of the signing of the Conclusive Agreement, the procedure of tax revision, or in its absence, the mention that the procedure will continue, but only with respect to those facts or omissions which were not object of consensus within the PAC.

8. ***Lifting of suspension-*** is the completion of the CAP and, therefore, the lifting of the suspension of the time limits referred to in that article.

9. ***The Conclusive Agreement is final-*** the conformity of parts regarding the facts or omissions regarding the Conclusive Agreements are non-controversial and, therefore, no means of defense apply against the agreement signed.

I. Benefits of the Conclusive Agreements

Among the benefits of the Conclusive Agreements, we can mention the following:

- **Through the Conclusive Agreement, a procedure of control can be achieved and finalized**

The Conclusive Agreement allows the early completion of the review procedure, without need that the reviewing authority exhausts the time limits laid down in articles 46-A-50, first paragraph, of the Fiscal Code of the Federation. In case of consensus between the parties on the facts of qualification of the audit, the Conclusive Agreement is sufficient to finalize the respective process, making it practical and executable; there is no need to keep the litigation open.

- **The Conclusive Agreement is not challengeable**

The Conclusive Agreement does not represent, or contains a decision or act of authority by PRODECON, since this only acts as mediator of the PAC, that is, that instrument only reflects the will of the parties and, accordingly, is not challengeable.

- **The Conclusive Agreement is non-controversial**

When the facts or omissions object of the agreement serve as basis in the resolutions issued by the tax authorities, they will be non-controversial. In addition, authorities

cannot ignore the facts or omissions object of the agreement, not proceeding to the so-called "prejudicial effect trial" provided by article 36, first paragraph of the Fiscal Code of the Federation, unless it proves that the facts are false.

- **Non-application of fines**

The Fiscal Code of the Federation provides that the taxpayer who subscribes a Conclusive Agreement is entitled, the first time only, to the remission of 100 % of the fines *(both formal and substantive).* In further Conclusive Agreements, they may obtain the benefit referred to in the Federal Law of Taxpayer Rights, i.e., the remission of up to 80 per cent of them.

In the event that a taxpayer submit several requests of Conclusive Agreement, PRODECON can join them in a single file, so that the benefit of remission, mentioned above, could be applied to the greatest possible extent.
Whenever the Conclusive Agreement deals with aspects that do not involve imposition of fines, the right of the taxpayer to be subject of the remission is preserved, until the case where they need it.

- **Possibility of displaying evidence that were not included in the audit**

The Conclusive Agreement Procedure offers to taxpayers the possibility of displaying documentary evidence to support their proposed qualification of facts or omissions. Such tests can be provided and developed from the request of CAP, and during the process.

In practice, PRODECON has witnessed that in many control processes, the taxpayer has been unable to show all accounting documentation that was required during the review of his or her fiscal situation. (For example, when the documentary support operations is abroad; when the tax authority does not grant an extension for its display in many control procedures, or simply because it not could be annexed properly). The Conclusive Agreement give them a new opportunity to provide documentary evidence enabling them to clarify their fiscal situation and undermine the facts that led the authority to consider that the taxpayer is in breach of the tax provisions.

Examples of Conclusive Agreements

A. The purchase of certain input is rejected as deductible, because according to the authority, this input is not strictly necessary for the development of the company's activity. The taxpayer explains in the PAC his production process, his business model and the market segment targeted by his product, thus achieving the signing of the agreement.

A tax authority practiced a desk audit of a taxpayer in order to verify compliance with the tax provisions to which he was bound as the direct subject of the income tax, for the 2010 tax period.

By issuing their observations, the Authority said that the taxpayer unduly deducted the purchase of a mineral of certain characteristics, since it is not strictly necessary for the purposes of his business.

The authority argued that the rejection of this acquisition is strengthened with the fact that, according to information obtained in the exercise of its powers, none of the competitors used this ore, but they employed a different one, of much lower price.

Dissatisfied with this, taxpayer sought a Conclusive Agreement before PRODECON demonstrating that, contrary to what the authority says, the ore whose acquisition is in question is essential to carry out their productive process. This because the ore combined with various chemical elements, produces the raw material for the manufacture of supplements that strengthen the structure of a number of products that they sell.

The audited taxpayer said the fact that competitors use a material with different characteristics and much more economical, does not itself questionable its deduction, since the products that they market are aimed at a specific segment of market, different from its competitors. Therefore, it considers that the authority unduly questioned its business model without knowing fully the industrial and production process that takes place, or the needs of the sector that they attend.

With the foregoing reasons, the taxpayer proposed the adoption of a Conclusive Agreement in which the strict indispensability of the purchase of the input was recognized and provided further information through a worktable if necessary.

Disputing the agreement, the authority reiterated its position and supported the rejection of the observed deduction. However, they mentioned that they were open to holding the worktable proposed by the applicant of the agreement.

PRODECON convened and held the worktable, in which the audited subject widely exhibited its business model, the stages of its production process and the elements needed to carry it out; the authority, weeks later, recognized that the referred ore purchases were indispensable and therefore deductible expenses for income tax purposes. It was then proceeded to the signing of the Conclusive Agreement, the fiscal situation of the audited subject being clarified.

B. Declared VAT balances in favor are rejected since the tax receipts covering operations that generated them were issued by companies having invoiced simulated operations. The taxpayer is willing to correct his tax situation in the PAC, as long as the authority allows him to compensate different balances in favor that do not form part of the period under review. The Authority verifies the origin of these balances and sign the Conclusive Agreement, considering the tax situation of the auditee as regularized.

A fiscal authority practiced a home visit to a taxpayer in order to verify the compliance of tax provisions as direct tax subject to Value added tax, for the period from January 1 to May 31, 2013.

In the final act, the reviewing authority determined as improper the balances in favor declared in the months of January, February, and March. This was because it was found that the receipts covering the creditable tax, source of these balances, were issued by two companies that had invoiced simulated operations, whose names were published on the final list referred to in article 69-B, third paragraph, of the Fiscal Code of the Federation. For this reason, such operations are considered without tax effect.

Before such qualification of facts, the taxpayer requested a Conclusive Agreement in which he stated that the invoices refused by the authority covered commercial operations that were conducted with two of his suppliers. To prove this statement, he shows contracts proving the acquisition of goods, the provision of services, deliverables, as well as policies, accounting records and checks, whose analysis demonstrate the materiality of the operations.

However, in the event that the authority would not accept the proposed agreement, the taxpayer offered to regularize his fiscal situation, while being allowed to compensate various balances in favor generated during the months of August, September and October of the same year, upon verification by the authority.

In reply, the authority reiterated first the inadmissibility of the questionable balances in favor. However, with the intention of signing the Conclusive Agreement, a worktable was requested so that the taxpayer could show the documentation and the information proving the origin of the positive balances that he purported to compensate.

PRODECON called the requested worktable and required the audited taxpayer to show the documents that proved the origin and provenance of the recoverable balances that he purported to compensate, corresponding to the months of August, September and October 2013.

The worktable was held and the taxpayer exhibited the required documentation. A couple of weeks later, the authority, after analysis of the information provided, admitted the balances in favor intended to compensate and accepted the agreement, provided that the audited subject would formalized their correctness through the filing of notices of compensation and the respective supplementary statements.

After display of the corresponding records, the Conclusive Agreement was signed, and the fiscal situation of the taxpayer was regularized completely.

Comment

This case is an example of a regularization that could be performed because the parties compromised on their positions. Note how both the authority and taxpayer argued in

principle their criteria with respect to the materiality of the operations subject to dissent, but they relented in its claims to reach an agreement.

The taxpayer was willing to accept the qualification of acts or omissions made in the audit, if in return, the authority allowed paying the VAT charge through compensation of different balances in favor generated in periods that were not subject to home visits.

For its part, the authority respected the mandate of article 69-B of the Fiscal Code of the Federation, denying effects to the questioned tax vouchers, but agreed to check the listed balances in favor, speeding up the respective compensation procedure.

The regularization that took place in this case shows the flexible, safe and accessible nature of PAC, since the parties, under the stewardship of the procedure carried out by PRODECON, could design and implement actions necessary to overcome the disputes arising in the exercise of the powers of verification.

It is worth emphasizing how accessible it is for taxpayers to exercise their right to tax adjustments through the Conclusive Agreement. It manages to balance the roles played by the authority and the taxpayer to find solutions; this procedure does not reflects the hegemony of the authority to impose a method to be followed in order to correct the remark detected, but seeks to agree on coordinated actions to overcome dissent.

It is worth highlighting the legal certainty that this procedure has provided to the individual with respect to the compensation on base of which he could regularize his situation, since when reaching the Conclusive Agreement level, it becomes settled and non-objectionable by the authority.

C. Through the CAP, the timely return of temporarily imported goods credits is achieved, without displaying the proper request procedure. The customs status of the goods is regularized through documents issued by foreign authorities.

A fiscal authority practiced a home visit to a taxpayer in order to verify the legality of a foreign trade operation carried out under cover of a motion for temporary importation, with date of June 10, 2005.

In the Final Act, the Authority noted that during the exercise of the powers of verification the audited subject failed to provide documentation that proved that the goods imported temporarily, consisting of an aircraft, was returned abroad within a period of 10 years as referred to in article 106, fraction V, subparagraph (b)), of the customs law (LA).

It was also reported that the taxpayer said that the audited aircraft had been supposedly returned abroad without following the corresponding customs procedures, so it had no return request. Therefore, the Authority considered that the aircraft was illegally in the country; therefore, it proceeded to determine the respective tax credit.

Before the qualification of facts, taxpayer requested a Conclusive Agreement to PRODECON, stating that although he did not have the application required by the Customs Law, he had complied with his substantive obligation, i.e. he had returned abroad in a timely manner the aircraft imported temporarily, as he showed with the documentation displayed in the PAC.

Indeed, he showed a public documentation issued by the authorities of the United States of America, duly certified by authorized notary and with Apostille, which proved that aircraft came out of Mexico to enter the foreign country dated on June 30, 2010.

These documents include a certification made by the *Federal Aviation Administration* (FAA), American aeronautical authority, which details, among other data, the application for registration of international flight, the precise data of the aircraft and a report of airworthiness where is specified the exact day when the aircraft came out of Mexico and entered the United States.

The audited subject said that by special provision of law in that country, the authority could not issue this type of certifications without viewing the aircraft, reason why it is indubitable that its return had been carried out.

Derived from the above, proposed the adoption of a Conclusive Agreement in which the authority took into account the evidence offered and the arguments put forward, to reconsider its original position embodied in the Final Act and had for regularized the product subject to temporary importation.

In reply, the Authority agreed with subscribing the Conclusive Agreement in the proposed terms, since it considered that the evidence adduced was sufficient and suitable to accredit the return of the aircraft in question.

Therefore, the Conclusive Agreement was signed, by which the customs status of the good of foreign origin was regularized and the fine was waived, and the home visit was terminated.

Comment

This case is interesting, since the principle of substance over form prevailed in an audit of foreign trade. It is not simple that a customs authority admits this prevalence, especially in view that in the particular case, to return the aircraft abroad, the authority had to perform a series of customs procedures specifically established by law for this purpose.

The taxpayer acknowledged that he had not complied with the formal requirements of customs formalities for the return of the aircraft. These were the return application required by the Customs Law. However he could exhibit a different public documentation that was reliable to credit the return of the plane, and hence the case

was accepted by the authority, giving, as stated, value to the substance – the effective return of the aircraft, above the form – the formal Customs procedure.

By proving the return, and pursuant to the signing of the Conclusive Agreement, the taxpayer was waived from having to pay the corresponding contributions of foreign trade, cancelling also the fine.

3. CONCLUSIONS

The inclusion of the figure of Conclusive Agreements in the Fiscal Code of the Federation has been very useful to make the control procedures of the SAT more effective, shorter and less costly. This results in benefit for the authority as well as for taxpayers.

Topic 2.3

THE USE OF INFORMATION TECHNOLOGY

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Contents: Summary. 1. Introduction. 2. Systems for compliance with the final activities of RFB. 3. Attention System for RFB's support activities. 4. Conclusion

SUMMARY

This document provides an overview of some of the main systems used by the Secretariat of Federal Revenue of Brazil in its basic activities in the context of the tax administration current situation.

The document is divided into sections that are the main projects of the Secretariat of Federal Revenue of Brazil, as well as their relevance for the development of the institution's primary functions.

The projects presented were created with a focus on the improvement of collection, control and customs administration processes. They display the use of information technology in the quest for efficiency and effectiveness in the tax administration.

This document is intended to be a source for exchange of information with other tax administrations, oriented to the dissemination of best practices and the establishment of new channels of communication with other institutions.

1. INTRODUCTION

The Secretariat of Federal Revenue of Brazil (RFB) considers as a priority the use of information technology to create instruments that can reduce bureaucracy and provide the controls related to compliance with tax obligations, generating positive impacts not only on tax revenues, but also in the reduction of costs and time for the taxpayer.

Therefore, solutions are planned and implemented in order to not only carry out the tax administration in a fair, balanced and effective manner, but also to simplify and make more flexible the tax payment by the taxpayer, and simplify tax and customs processes within the federal administration.

In this sense, this document offers a short description on some of the most relevant systems regarding tax administration issues and the relationship with taxpayers and users of customs systems, among others, managed by the Secretariat of Federal Revenue of Brazil. These aspects were here grouped into two sets: Assistance systems for final activities and assisting support systems. Assistance Systems for final activities are grouped in three thematic areas: collection, control and customs administration, and are described below.

2. SYSTEMS FOR COMPLIANCE WITH THE FINAL ACTIVITIES OF RFB

A. Collection

The issue of collection and Control has a determining factor for the provision of information by taxpayers, which are used by the Secretariat of Federal Revenue of Brazil for the verification, and release of the tax credit. Next, this information is analyzed and processed in order to verify its consistency and allow action in order to avoid damage to the collection.

Therefore, some systems of the administration are notable for their scope in terms of volume of processing, technological evolution and importance for the collection. They are:

1. Return on Personal Income Tax - DIRPF

The design of the architecture of the DIRPF model was oriented to develop an ICT solution that will allow the taxpayer speed and ease of use in order to complete and submit his tax return, using cloud computing and the development of several integrated applications.

In this sense, a progress in the use of the technology in 2015 was the integration among the filling devices of the income tax return of individuals[1] (IRPF), whether they are mobile or desktop, devices that allows a real mobility. I.e. The user has now the freedom to begin to prepare the return from a device, continue in others and, in the end, transmit their return from any convenient location.

Another important solution in 2015 was the use of the draft of the personal income tax, for the first time in the preparation of the income tax return of individuals. The application allows the taxpayer begin providing data for the future return as the events happen. With a simple registration at the time in which the expenditure or income occurs (a medical bill, for example) reduces the risk of loss of data for the submission of the return. This implies that data that remained isolated now can be stored in the draft income tax application until the return submission, and then imported into the DIRPF program of the year.

The technological evolution of the DIRPF began in 1991, the year in which it ceased to be submitted on paper. A version of the application for computers with the operating system DOS - *Disk Operating System* was made available to the interested parties. In 1996, the application evolved into the Windows operating system and in 2004, it was offered in all operating systems.

Taking into account the volume of DIRF data received, the use of ICT is of fundamental importance in the capture, processing, analysis and dissemination of information, since, by 2015, more than 29.5 million returns were processed[2].

During the implementation of solutions related to DIRPF, the main challenges were technical issues such as assessment of the requirements of data security, existing tools with the preservation of data to be accessed by taxpayers or their representatives, the high performance integration between the different databases of the institution. Finally, the design and acquisition of sufficient infrastructure to support online access by taxpayers. Aspects such as the work for the dissemination of the new available solution and he culture change involved are also highlighted, given that the previously existing solution was widely accepted by the society in general.

[1] The tax on the income of natural persons is applied on income and earnings of taxpayers resident in the country or residing abroad who receive income from sources in Brazil. The same no-show rates varying according to the income of the taxpayer, in such a way that those of lower income are not achieved by taxation.

[2] http://idg.receita.fazenda.gov.br/noticias/ascom/2015/dezembro/receita-abre-amanha-9-de-dezembro-consulta-ao-setimo-lote-de-restituicao-do-irpf-de-2015, acessado em 11/02/2016.

The benefits obtained with the innovations implemented in the DIRPF include:

- The strengthening of the RFB's image as a technologicaly advanced institution;
- Improvement in the relationship between federal income and the citizen, to provide services that facilitate the process of fulfilment of the obligations of verification;
- Fast, agile and secure access to information anytime, anywhere, enabling rescue and retrieval of information *online*;
- The reduction of the additional activities for the taxpayer and for the various areas of the RFB (attention, control, collection and processing of tax procedures).

2. Electronic Auction System - SLE

Another important tool for the institution is the system of electronic auction (SLE). Implemented in 2010, initially only for individuals, it is a tool that allows the sale through the Internet of the goods seized, abandoned, or handed over to the National Treasury, with a public follow-up of all stages . All the procedures necessary to carry out, manage, or participate in an auction are held electronically, using the digital certificate.

In November 2012, a new version of the system entered into production in order to expand the clientele of auctions, which also include the participation of individuals. In this case, for specific batches, the bidding became open to all, so that both individuals and companies now have the opportunity of bidding. This differentiation is based on the characteristics of the batches, such as the type and quantity, allowing the participation of individuals in the competition for the batches exclusively intended for use or consumption, their marketing being prohibited.

With the implementation of the electronic auction for individuals, the expansion of democratization and competitiveness in auctions is ensured, as well as the observance of the basic principles of bidding, such as equality and the selection of the most advantageous offer for the administration.

The popularization of electronic auctions can be illustrated based on the access data to the Federal Revenue Internet Site. The number of people visiting the batches grew between 2012 and 2015, an average of 154% per year, and the accesses made through digital certificate, representing possible bidders, increased from 64,700 in 2012 to 195,000 in 2015, an average growth of 132% per year. [3]

[3] http://estatisticas.receita.fazenda/. Accessed 11/02/2016.

In the same line, the growing number of bidders (Individuals and legal entities) between 2012 and 2015 indicates that, in fact, there was an increase in competitiveness and greater democratization of the participation in auctions. The total number of participating individuals increased from 15% to 45% of the total number of bidders[4].

It is important to note that traditional auctions with physical attendance required a costly human and logistical infrastructure, as well as the displacement of interested parties at the different administrative units of federal income promoting the bid. With the innovation brought by the SLE, an increase in the number of auctions and bidders took place, which resulted in an increase of competitiveness, the number of carried out auctions and lots sold. As a result, there was an increase in revenues. The SLE also simplified procedures, reduced costs and increased transparency, security and reliability of the auctions.

3. Simple national

The Simple national is a shared system of collection, payment and control of taxes applicable to Micro and small enterprises, provided for in the Complementary law No. 123, December 14, 2006. It includes the participation of all federal agencies (Union, States, Federal District and municipalities). It is managed by a Steering Committee composed of eight members: four from the Secretariat of Federal Revenue of Brazil, two of the States and the Federal District and two municipalities. The Simple national unifies tax payments (Federal, State and municipal) in a single document online, strengthening micro-entrepreneurs and helping to combat the economic crisis.

The national Simple system was completed in 2007 and since then more than 10 million businesses chose to participate and there was a significant increase in tax collection[5]. This increase was possible thanks to the constant investments in improving the IT infrastructure, in terms of the architecture of software and data inherent in the system, including support systems, such as the corporate DW and the system of Fiscal Intelligence (SIF).

B. Control

To carry out its basic functions the State needs to capture, manage, and execute public resources. Then, for fulfilling its objectives and the implementation of its activities, tax collection represents one of the instruments enabling the fullfillment of these essential functions.

[4] http://estatisticas.receita.fazenda/. Accessed 11/02/2016.

[5] http://www8.receita.fazenda.gov.br/SIMPLESNACIONAL/Arrecadacao/EstatisticasArrecadacao.aspx, accessed 13/02/2016

In this sense, some basic principles, such as the ability to contribute and tax equality, should be observed in order to ensure fiscal justice.

Being so, based on these principles, the control and fight against tax crime seek to ensure the proper and correct application of the legislation, in order to increase the perception of risk to those who promote irregularities, thus increasing both the level of voluntary contributions and increase revenues. This contributes to that taxes are paid by taxpayers in the proportion just and appropriate to their ability to contribute.

The tax administration deals with a huge volume of data and therefore the effectiveness of the control depends on an integrated set of information systems fed by cadastral data and financial transactions records among others, provided to the Secretariat of Federal Revenue of Brazil by taxpayers or third parties, through the provision of various types of information.

Therefore, integration is one of the key factors for the increase of efficiency in control, highlighting the conception and implementation of the following systems:

1. Public System of Digital Accounting - SPED

In the Audit Field, one of the highlights of the use of TIC is the public system of Digital accounting (SPED), established by Decree No. 6022 of 22 January 2007, that has revolutionized the relationship between the tax authorities and taxpayers through computerization of accessory obligations.

In general, the SPED consists in modernizing the current system of accessory obligations transmitted by taxpayers to the tax administrations and regulators, using digital certificates for signing electronic documents, thus guaranteeing their legal validity in digital form. It is important to note that the ease of access to accounting, even if it is not available in real time, extends the possibilities of taxpayers´ selection and, in the case of conducting audits, generates a significant reduction in the time of its execution.

The SPED began with three major projects: Digital Accounting (ECD), Digital Tax Accounting (EFD) and the Electronic Invoice (NF-e). Currently we are producing the EFD-contributions project, and studying E-Lalur[6], EFD-Social and Balances Central.

This system represents an integrated initiative of tax administrations in the three levels of Government (federal, state and municipal) and maintains alliances with 20

[6] LALUR e - book of determination of the taxable Base in electronic mode. E LALUR is the book of assistance and compulsory filling, liability of legal persons pursuant to the taxes levied on taxable income. It must include the information of Corporate Treasury, transactions, etc.

institutions, including government agencies, school councils, associations, and civil society organizations in the joint construction of the project.

It also seeks to sign protocols of Cooperation aiming at the development and joint work discipline. In total, 27 protocols have been already signed with private sectors companies involved in the pilot project. The Alliance between the tax authorities and companies has allowed the planning and identification of solutions to satisfy additional obligations in relation to the requirements of the tax administrations.

The objectives of the SPED are:

- Promote the integration of the tax authorities through standardization and exchange of accounting and financial information;
- Streamline and standardize the obligations of taxpayers with the establishment of the unique transmission of various accessory obligations of different regulatory agencies;
- Streamline the identification of frauds schemes with better control of processes, speeding access to information and more effective monitoring of the operations through data verification and electronic audit.

Among the benefits brought by the SPED to taxpayers, the tax authorities and society, we can highlight:

- Cost reduction, with the rationalization and simplification of accessory obligations;
- Standardization of the information provided by the taxpayer to the various federal units;
- Conservation of the environment and reduction of costs through the reduction of paper consumption;
- Reducing the time spent by the tax auditors on the premises of the taxpayer;
- Strengthening the control and supervision through the exchange of information between tax administrations;
- Faster access to information;
- Possibility of exchange of information between taxpayers themselves, from a designed pattern.

The universe of the SPED performance includes:

- Digital Accounting (ECD): also known as SPED - accounting, it is an integral part of the SPED project and aims to replace the traditional accounting on paper with its equivalent digital archive;

- Digital tax accounting (EFD): also known as Fiscal SPED, allows the RFB and the Finance States Secretariats and the Federal District access to all

fiscal documents issued and received by entities, as well as the verification data of the tax about the movement of goods and services, and industrialized products;

- Electronic invoicing (NF-e): the Finance States Secretariats and the Federal Revenue Secretariat developed the project jointly. Integration and cooperation between tax administrations have been issues hotly debated in countries with a federal system, especially those such as Brazil, which has a strong degree of tax decentralization. Currently, the tax administrations spend large amounts of resources to capture, process, keep and provide information on the invoices issuance by taxpayers. The volume of transactions and the amounts of managed resources are growing at an intense pace and the costs inherent to the need for the State to detect and prevent tax evasion are growing in the same proportion. Thus, the project is justified by the need for public investment to integrate the process of fiscal control, which allows a better exchange and sharing of information between tax authorities, the reduction of costs and bureaucratic barriers. It also facilitates the fulfilment of tax obligations and the payment of taxes and contributions, strengthens the control and supervision, reduces tax evasion and increases revenue. It also provides faster access to information, eliminates the use of paper, increases the productivity of the audit through the elimination of steps to collect files and allows the electronic crossing of information;

- FCONT: Is a double-entry accounting system for the assets and income statements, which consider accounting methods and criteria in force since Dec. 31, 2007;

- Electronic Bill of Lading (CT-e): System in development. It is the new model of electronic invoice that can be used to replace one of the following bill of lading: Road, waterways, air, train or the bills for services that are used for freight transportation;

- EFD-contributions: is a digital archive established in the public system of Digital Accounting - SPED, to be used by private legal entities in the accounting of the contribution to the Social Integration Programmer / Training Programmer for the Public Servant Assets and Contribution to the Financing of Social Security. With the enactment of law N ° 12.546 2011, the EFD-Contributions include also the digital accounting of the Social Security contributions on gross income, that affect the sectors of services and industries, and the determination of revenues related to services and products mentioned here;

- Electronic invoicing for services (NFS-e): is being developed jointly by Federal Revenue and the Brazilian Association of Cities Finances Secretariats (Abrasf). The electronic invoice for services (NFS-e) is a digital document that is generated and stored electronically in the national environement by the RFB, by el municipality or other entity hired to document the operations of services. This project aims to benefit the tax administrations, normalizing and improving the quality of information, streamlining costs and generating greater efficiency and greater competitiveness of Brazilian companies by simplifying the accessory obligations, in particular, the suspension of the issuance and storage of documents in paper.

- E-LALUR: the purpose of the system is to eliminate the redundancy of the information in the accounting, in the book of Calculation of the Real Profit and the Statement of Economic and Tax Information of the Legal Entities, facilitating the accessory obligation.

- EFD-Social: Is in phase of study, aiming to standardize the titles of the payroll and the layout, replacing the existing obligations in the field of Federal Revenue, the National Institute of Social Security (INSS) and the Ministry of Labor and Employment (MTE).

- Central of Balance: This project is part of the SPED, in initial stages of development, that will meet the financial statements and a series of public economic and financial information of the companies involved in the project. The collected information will be kept in a repository and published at different levels of aggregation. These data will be used to generate statistics, national and international analysis (by economic sector, legal structure and business size), credit risk analysis and economic, accounting and financial studies, among other uses. The Central aims to capture accounting and financial data (in particular, financial statements), the sum of both types of data and offer on magnetic media the original and aggregated data.

- SPED integration Module - set of tools used by the tax administration to cross data from different SPED systems, which allows risk management and the fight against fraud.

2. eSocial

On December 11, of 2014, the eSocial was created, through Decree 8.373. It is a Federal Government project involving Receita Federal, Caixa Econômica Federal, the National Institute of Social Security (INSS) Ministry of Social Security (MPS), the Ministry of labour and employment (MTE), and the Micro and Small Companies Secretariat.

The eSocial unifies the sending of information by the employer (individual or legal entity) in relation to his employees. It offers various advantages over the current system, such as attention to various agencies of the Government with a unique source of information; Automation in the transmission of information by employers; standardization and integration of iindividuals and legal entities records in the scope of institutions participating to the project. This simplifies and eliminates redundancy through the substitution of other sources of information[7], with gains for the Government, the employers and the employees.

The tool that enables the unified collection of taxes and the time of service guarantee fundw (FGTS) for domestic employers is available from November of 2015: It is the Domestic employer module. The tool allows the determination complementary law No. 150/2015, which established the SIMPLE domestic.

C. Customs Administration

The customs administration includes the control, collection and control of Foreign Trade, essential to the defense of national financial interests throughout the Brazilian territory.

It is a constant challenge to determine the right measurement between verification, collection and control, which comply with national financial interests, and the agility of fast procedures that facilitate activities related to Foreign Trade and benefit to the economy of the country as a whole.

Given the volume of transactions promoted by the trade of goods and products, computer systems play a key role for the achievement of the balance between oversight and control activities and the promotion of commercial activities in accordance with national and international legislation on the same topic. Thus, the systems involved in these activities have evolved as follows:

1. Integrated system of Foreign Trade - SISCOMEX

The integrated Foreign Trade system (SISCOMEX) is responsible for the integration of the activities of registration, monitoring and control of the foreign operations trade through a single and automated workflow of information.

Siscomex was established by Decree N ° 660/1992. In 1993, the export module was released. The import module was launched in 1997. In 2007 and 2008, were

[7] Guide of collection for the Fund of guarantee of the time of service (GFIP), annual relationship of social information (RAIS), tax income withheld at the source statement (DIRF), General Register of employees and unemployed (CAGED), payroll, employee record book, among others.

implemented, respectively, the Drawback Suspension Web and the Drawback green-yellow Web, which are linked to the Siscomex export and import. In April 2010, the integrated Drawback Web module started operating, and the Siscomex import Web entered into production in August 2012.

Created nearly two decades ago, the system has evolved continuously and transformed increasingly into a great system integrating different processes of the sector. Government agencies and private actors are among the registered users.

In the public sector, the Receita Federal, the Ministry of Foreign Trade and the Central Bank participate, as well as institutions such as Anvisa, the Ministry of health and the Ministry of agriculture and supply, among others. The universe of private users include export and import companies, customs agents, commercial banks of change, etc.

Composed of a set of systems, this solution enables timely follow-up of the exit and entry of goods into the country, since government agencies involved in Foreign Trade can, at various levels of access, control and interfere with the process of operations for better process management. Through the system itself, the exporter or importer exchange information in real time with the agencies responsible for authorization and supervision.

In summary, the system has many advantages: It harmonizes concepts and standardizes codes and nomenclatures. It expands the attention points. It eliminates the coexistence of parallel data collection systems and controls. It simplifies and standardizes documents; it significantly decreases in the volume of documents. It accelerates the collection and processing of information by electronic means; it reduces administrative costs for all those involved in the system; it assesses the data used in the development of Foreign Trade statistics; it eliminates the use of paper; it reduces the diversion of goods and foreign currency fraud.

The Siscomex, interacting with other databases, streamlines the formulation, analysis, documents registration and incorporation of images. These are advantages offered for payment and collection of taxes, administrative control of the operations and the load control (whether in transport, storage, transit or release). This allows the Government to define strategies for the integration of the country in the international market and stimulate the economic growth of Brazil. Technological innovations have contributed to the transparency of information and increasing the efficiency and competitiveness of the Brazilian Foreign Trade.

The evolution of the system to the Web version eliminates the need for installation of applications and a dedicated network, thus allowing access via digital certificate, from anywhere and at any time.

All systems comprising the integrated system of Foreign Trade (Siscomex) and other governmental systems designed to obtain permits, certifications and licenses for export or import, are present in the Siscomex Portal. Through it, Foreign Trade operators also have easier access to the rules governing imports, Brazilian exports, organized by agency responsible for editing or managing of the provision in question.

The Siscomex Portal is the initial stage of a large program of reformulation of the governmental action on the operations of the Brazilian Foreign Trade, the Foreign Trade Single Portal program. Along with the actions of infrastructure promoted by the Government, the Unique Portal program is presented as the second pillar for increasing the efficiency of the Brazilian Foreign Trade and export competitiveness of the country. Thus, Portal Siscomex figure as the space of interaction between the Government and the operators of Foreign Trade, which will present and implement important innovations, gradually in the coming years.

The Unique Foreign Trade Portal program is an initiative of reformulation of importation, exportation and transit customs processes. This reformulation seeks to establish more efficient, harmonized and integrated processes among all public and private stakeholders in Foreign Trade. Of the redesign process, the Unique Portal Program passes to the development and integration of information flows corresponding to them and the computer systems responsible for managing them. Thus, it is based on three pillars: integration of actors, redesign processes and information technology.

The first pillar is integration between the actors of Foreign Trade. There is first, cooperation among actors from Government and the private sector in the planning and development of the Single Window Program. A large public structure was formed under the joint coordination of Federal Revenue and the Ministry of Foreign Trade, under the supervision of the Civil House. This structure is composed of twenty-two government agencies operating in Foreign Trade. The cooperative integration of the private sector in the programme, through entities representatives of the different actors in the Foreign Trade operations (importers, exporters, agents from customs, port terminals, carriers, managers, etc.), is essential, since they are the beneficiaries of the improvements that the Unique Portal Program will bring.

The second level of integration of the programme refers to the integration and harmonization of trade procedures and the requirements of data and documents.
Currently, there are cases in which a same piece of information or document is demanded by more than one government agency to complete the same operation, and must sometimes appear differently to each one of them. This situation generates obstacles to Government and private sector, with the consequent unnecessary costs. With the integration of public agencies and private stakeholders, this situation will be gradually eliminated, in order to avoid duplications and redundancies.

Finally, the third level, which is essential for the achievement of the foregoing, is the integration of information systems. As a rule, Foreign Trade processes not integrated today are managed by information technology systems that do not dialogue among themselves. The integration of systems aims to recover and consolidate the central objective of the SISCOMEX, to be "the administrative instrument that integrates the activities of registration, monitoring and control of Foreign Trade operations through a single flow of computerized information" (Decree No. 660, 1992).

The second fundamental pillar of the Foreign Trade Single Window is the redesign of the Foreign Trade processes. The formulation of the procedural system of the operations of export and import in Brazil is based on a structure developed in the 1990s with the introduction of the SISCOMEX. With the significant increase in the Foreign Trade of Brazil in recent decades, new needs of governmental controls have emerged. In order to meet important public policy goals, several agencies and entities of administration are coordinated, in areas such as the environment, human health, food security, public safety and the safety of consumers. Each new control implies the creation of a new stage of procedure, not always in harmony with the overall process of an export or import. With the accumulation of these steps of procedure, along with the increase in the flow of goods to be controlled, bottlenecks of procedure are created, that brought delays and unpredictability in operations, increasing costs.

This situation implies a great effort of redesigning processes, with the participation of all stakeholders.

Last, the third pillar of the Single Foreign Trade Program refers to information technology. For the computerization of the redesigned processes, the most modern technological resources will be used. Several new tools will be developed to manage the processes and information flows. Many of the existing systems will undergo integration solutions in order to allow that certain information already present in a system are shared with others, which need it. Data entry for external users must also be unified, according to the concept of *Single Window* (Unique Portal).

It is expected that the Foreign Trade Unique Portal Program will reduce deadlines and costs, transparency and predictability, simplification and have the scope of a *Single Window*.

2. Project IRIS

Also on the Customs issue, over the past two decades the development of the country has imposed new challenges to customs units of the RFB, not only for the increase of the volume of work, but also in terms of the quality of the service offered. In addition to the growth in number of international travelers, based on projections of the Institute of applied economic research (IPEA), international events such as the Olympic Games of 2016, implies an additional flow of passengers in Brazilian airports.

The great challenge of the RFB is to strike a balance between the quick release of the passenger and the implementation of the customs without compromising their legal powers of control.

Therefore, the existence of the technological infrastructure and and human resources, in line with the flow of passengers at airports, is essential so that customs control is carried out in an efficient manner, with quality and safety.

Currently, the RFB server, based on information spread in various files of different formats and subjective criteria, generating inaccurate results, does the evaluation and selection of travelers for physical verification of luggage.

In accordance with the Special Customs Controls Division of the General Customs Coordination of the RFB, around 15% of the total number of International passengers are selected for a direct baggage inspection, and of these, only 3% have effective results, equivalent to 0.5% total passengers.

Data demonstrate the inaccuracy in the selection of passengers for physical inspection of their baggage with the methods currently used, based in the manual analysis of the data by the baggage control servers, which shows unequivocally the urgent need to adopt modern electronic technologies to identify risk management and segregate the flow of travelers selected for customs control.

The IRIS project integrates diverse technological solutions, covering "facial recognition biometric" market tool, or crossing of data derived from different institutions (federal income, Companias toreas and Federal Police). They include the application provided by the RFB for travelers (e-DBV - electronic statement of goods traveler) and change in infrastructure architecture of the computing environment with hybrid features (teams with decentralized servers in, airports integrated into tablets and database stored in a centralized datacenter).

This strategy is part of a wider action of development of new systems and modern technology solutions integrated to streamline the flow of international passengers at Brazilian airports, managing baggage control teams and speeding up the release of the remaining passengers.
Currently, the RFB has invested in the implementation of a customs control system that makes more precise selection and identification of passengers who pose a risk to the country (tax evasion, drug traffic, other illegal goods, etc.), while it accelerates at the same time the release of the remaining passengers.

In this process, the RFB will use the information provided in advance by airlines travelers (data passenger and flight identification), and those reported by travellers in e-DBV (Electronic statement of goods from the passenger) to analyze and select in

advance those who pose a higher customs risk, based on modular selection criteria, adapted to the profile of each airport unit.

After the selection of travelers coming from abroad by the risk management system, the selected passenger identification will be done through facial biometrics, which will allow their segregation from other passengers and their respective referral to the audit process, without prejudice in the release flow of others.

In addition to providing greater accuracy, agility and safety in the process of control of entry of travellers international at airports, this project allows a more effective allocation of the immigration agents, customs and phytosanitary inspectors. it, increases the efficiency of the different actors in the airport environment: Federal revenue, police, national health surveillance agency (ANVISA), International Agricultural Vigilance System (Vigiagro), among others.

The project mainly consists of the following macro:

- **Data collection System on passengers and flights**: This system is responsible for collecting data for reservation of air tickets in the PNR format (*Passenger Name Record* -registry of identification of passengers) directly from airline companies. It also collects passenger data collection shipped in the API format (*Advance Passenger Information*) directly from the information systems of the airlines or manually by the operators of these companies.

The system must also collect data on the timetable of scheduled flights. All the collected data must be entered in the travelers' databases to be used for risk analysis. The frequency of information transmission, updates and the National Civil Aviation Agency (ANAK), to guarantee the effectiveness of the project, regulates layouts of the files to be received.

- **System e-DBV**

Traveller Module:

The electronic system in which the traveler made and transmits the electronic e filing of goods of travelers (e -DBV) before his arrival in customs controls and being.

E-DBV is transmitted via Internet, by means of computer and mobile devices such as mobile phones and tablets, or even by means of self-service terminals in the international areas of landing.

Tax module:

This system manages the stored data of travellers in the risk management module and allows a frequency of data reported by the passenger, with data received in API/PNR file formats.

This module includes several features that allow streamlining the attention to passengers.

E-DBV contains information of interest to all agencies control border, such as taxable goods above the exemption limit; cash amounts carried by travelers; presence of fruits, perishable and vegetable in their luggage, possession of controlled entry drugs; weapons, ammunition and other materials of controlled entry; among others.

Risk management system:

System responsible for the processing of all data intelligence collected and identification of people that adhere to profiles of interest previously selected. For the identification of people with these profiles, alerts are issued so that government agencies can prepare actions in advance.

This intelligence also includes the collection of data from government databases on wanted persons, customs, national security and phytosanitary security.

Facial recognition ID system:

System responsible for the correct identification of each passenger using the recognition of facial features unique to each individual.

In this way, the supervisory servers can unequivocally identify individuals with potential interest (previously selected by the system of risk management) and direct them to a thorough control.

Among the e-DBV system modules mentioned previously, the traveler module and the tax module are already in production, at the date of drafting this report, while the risk management module is in the final phase of specification and initial construction.

The solution of the project for the improvement of customs control of passengers, with the modernization of the information crossings and intelligence systems, contributes to adapt services to international safety standards, providing agility in service to travelers and optimize the efforts of identification of passengers. In addition to protecting the industry and the national employment, the system combat the entry of goods for trade purpose, embezzlement, smuggling, international drug traffic and weapons traffic and other cross-border crimes.

It also allows the customization of control actions according to the profile raised in investigations of the travelers' database and the more efficient use of the available workforce.

As the premise of the project is the identification of passengers at customs risk, solutions were used with biometrics resources. Market trends were identified in the course of search technology and it turned out to be the most appropriate to the needs of the RFB was the "Facial biometric recognition", thanks to be less intrusive to the possibility of identifying a distance agility in the identification of travellers and available database of passengers.

It followed, then, began the bidding process the process of specification of the solution interacting with leading companies that offer this type of product in the Brazilian market and in November 2014. The project has a national server equipment, equipment for local servers, facial recognition modules (fixed and mobile) and provided recognition cameras with anti-vandal dome.

The process of implementation of this project, "Biometric Facial recognition", began in 2015 in progressive stages, with a deadline of completion of one year at the international airports in Brazil. The hope is to identify people who should declare and pay taxes on excess baggage, without having to stop all international flights passengers, further simplifying the process of entering the country.

This it solution, has even been praised by the magazine of the world Organization of Customs (OMA) - WCO News - published in June 2015, which emphasized the importance of this implementation for the international control of passengers, especially with regard to the gains made in combating and preventing illicit activities.
The planning of the project was of great complexity to cover several fronts of solutions, such as:

- Realization of agreements with external agencies to receive information and to increase the database of the Secretariat of federal revenue for information crossing;

- Search and acquisition of market tools;

- Adaptation to integrate the application of statement electronic of goods of the traveller (e-DBV) tool market;

- Implementation of architecture and technology infrastructure to support the solution with their respective contingency plan.

3. ATTENTION SYSTEM FOR RFB'S SUPPORT ACTIVITIES

Activities in support of the RFB can be understood as those that collaborate in a manner relevant to the final success of its institutional mission before the Brazilian state and the citizens/users.

Such activities, of fundamental importance, are also subject to constant innovations in relation to the deployment of ITC resources. This, particularly in relation to aspects such as the protection and security of information, and in connection with the agility and efficiency in the process procedures, ensuring not only a better management of the flow of information, but also the proper management of the content.

In this sense, some of the major systems developed to meet these needs are described below.

1. eSignature

E-FirmaRFB is a solution for the digital signing of documents, ensuring the integrity, authenticity, non-repudiation of the origin and allows the recipient to authentify the document received, in paper as well as in digital form.

The tool is used by agents of the Federal Revenue Secretariat of Brazil to sign documents, and can be used for external recipients, or the simple display (validation), or even for the signing of documents (through e-CAC, with access via digital certificate) if it has been requested by the issuer.

The system for signing digital documents, the e-firma RFB, represents a major progress in the management of documents of Federal Revenue of Brazil, since in addition to digital signature it adds several features that provide greater safety and agility in the process and validation of documents.

When signing a digital document, the issuer guarantees the recipient that theirs is the signature on the document, i.e. the document is authentic. It also guarantees the integrity of the document, since any change involves an invalidation of the signature. Finally, the issuer cannot deny the authenticity of the document with a valid digital signature, this so-called "non-repudiation".

2. e-Proceso

The e-Proceso system is an initiative of Federal Revenue to replace paper-based processes with documents in digital format and allows the practice of sequential administrative acts in an electronic environment. It is, therefore, a computer tool for

formalizing the practice of procedural acts, processing and management processes, documents and administrative procedures in the digital environment.
The e-Proceso guidelines involve responsibility and commitment to transparency and the traceability of every public act, allowing taxpayers to view what the RFB servers do when actions are performed. The various activities involved in the process are mapped and tools were developed to facilitate the flow and the process management.

In the system, agents can consult, move, print, copy, attach documents and develop all other activities needed to work on processes, with safety and transparency.

In addition, the elimination of the paper brings the possibility of adopting much more efficient and effective procedures for the execution of procedural acts. It is a significant reduction of administrative costs, increased productivity through reduction and elimination of accessory activities, de-bureaucratization of procedures for the taxpayer, reduced time for procedural processing and valorization of the server for ease in handling the process. The working environment is cleaner and more pleasant, without piles of dusty documents; the administration is approaching society through a two-way communication via the Internet, with the guarantee of tax secrecy.

Among the benefits provided by the e-Proceso, stands:

- Improvement in the relationship administration-taxpayer, thanks to greater agility, security and transparency in data transmission. The operations of electronic processes can be monitored by interested parties through the Virtual Center of attention to the taxpayer (e-CAC), on Internet.

- Greater efficiency and economy for the Administration, with the possibility of a better management of information and the reduction of expenses with the printing and transport of documents.
- Reduction of the environmental impact, with saving of paper thanks to the fully computerized document flow.

3. CONCLUSION

The basic inputs for the tax administration are the data and information obtained from different sources that have numerous characterics, with steadily growing volume. The analysis of a large amount of data and the timely availability of the results of this process would not be possible without the help of computational tools and the information technology.

The problem of processing a huge amount of data already has ceased to be a technological barrier. However, the main challenge posed today is the intelligent treatment of these data to ensure achieving the results expected by the Administration and optimizing the use of resources, producing the desired effects.

Thus, the Federal Revenue Secretariat works continually to ensure that security policies, tools and architecture of data in constant adjustment and adaptation to the progressive growth of storage capacity and analysis of a large body of data, to use them in a competent way, govern the information technology.

The intensive treatment of the information is focused on the goals of the institution and of the Brazilian State, which points to a growing trend of integration of the actions and projects that involve tax matters.

This integration takes place both on the technological aspect and on the political level. I.e. the prospective scenario is the one in which powerful ICT tools, allied to a systematic government data, can be instruments that promote and allow the tax administrations of the Union, States and Municipalities working together. The action also involves structures responsible for the conduct of policies relating to the economy and finance, industry and trade, Foreign Affairs, planning and budget, among others.

While processes and projects related to the information technology are traditionally seen as a support of the final actions of the tax administration, they have assumed a strategic role in this field. The data and information analysis has become an important aspect to take into account by public managers in the planning and definition of tax policy in conjunction with other State policies.

Therefore, the growing need for automation of complex activities makes essential the introduction of intelligence in work processes. This enables and facilitates increased efficiency, efficacy and especially the effectiveness of tax administration, both with regard to the tax justice, in relation to fighting with transparency against illegal activities, ensuring the protection and information security requirements and taking into account in a satisfactory manner the principle of legality and morality in public administration.

Topic 2.4

HUMAN RESOURCES AND THE PROFESSIONALIZATION OF TAX ADMINISTRATIONS

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Contents: Summary. 1. General background. 2. Professionalization of Human Resources at the SII. 3. Main advances of the people development division to date. 4. General conclusions

SUMMARY

As of 2014, the Chilean Tax Administration (SII) has been implementing the largest tax reform of the last 30 years, the purpose of which is to finance the most important fiscal policies, such as the Educational Reform, which aims for a fairer country with better opportunities for all of its people. This reform is in response to the commitments of the current government.

Due to the new government guidelines, which stem from commitments such as the Tax Reform and the Presidential Instruction on Good Labor Practices regarding People Development, the Chilean Tax Administration has redefined its processes and regulations in order to be able to address these challenges.

In this context, the institution has been strengthening a process of modernization and professionalization of personnel management, in order to position it within the strategic map of the institution, highlighting the development of civil servants as a central element to increasing the quality of taxpayer assistance and in reaching institutional goals.

This document addresses how the Chilean Tax Administration has been attentive to the changes and has responded in a timely, efficient and effective manner, considering the large scale of the challenges and the technical role of the organization.

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[1] On September 29, 2014, Law No. 20,780 was passed, which introduces a number of changes to the tax system, particularly changes to income tax, the creation of new mechanisms to incentivate savings and investment, as well as the creation of taxes related to environmental care, amendments to some corrective taxes and to some indirect taxes, and the creation of new measures to combat tax evasion and avoidance. Law No. 20,780 establishes, among the roles of the SII, the development of special policies and programs designed to provide support, information and assistance to smaller companies and other taxpayers of little economic activity,

which resulted in the creation of the Taxpayer Assistance Division. Meanwhile, Tax Auditing is given greater powers aimed at reducing evasion and avoidance.

[2] On January 26, 2015, the President of the Republic, Michelle Bachelet, issued the "Presidential Instruction on Good Labor Practices in People Development in the Government", with the aim of promoting better policies and practices regarding people management in government institutions, constituting a new milestone in the modernization of the Government and its employment relationships. This presidential mandate is based on four guiding principles: 1) A Modern Government for Chile, with equal opportunity, participation and dialogue; 2) Promotion of legal changes and management practices that contribute to progress towards a work that dignifies and allows the development of people; 3) Promote an Innovative Government with quality public services, good worker treatment, transparency and decent working conditions; and 4) To revaluate Public Service, *emphasizing* to citizens the prestige of this work, and generating good practices in people development. Also, the Presidential Instruction considers three main axes for which to develop policies and practices: labor rights, working conditions and working environments.

First, we will explain the country context in which this modernization process takes place and the powers that it gives the Chilean Tax Administration.

Then we will describe our strategic planning process and its components, such as Mission, Vision and Roadmap.

Finally, we'll be presenting the vision and practices that the institution has implemented in its process of professionalization of human resources, detailing the advances in 2015 and the main challenges.

1. GENERAL BACKGROUND

In addressing the professionalization of human resources in public institutions, we must take into consideration that they are highly influenced by the context in which they operate.

In the case of the SII this process began more than two decades ago. This process has at least two distinct stages, the first one between 1980-1990 which was geared towards rationalization and administrative restructuring of the SII and, the second, from 1990 to 2005, was characterized by the modernization of management and of computer control and auditing systems, process based on the development and improvement of information technologies. It is in this period that the Commissioner at the time, along with a team of advisors, takes on the task of modernizing management, particularly through the development of a new IT platform and an organizational redesign.

Between 1994 and 1999, a Government Modernization process was carried out. In this process, the modernization of the Public Management became more relevant Its objective was to bring citizens closer to a Government concered with increasing social efficiency and effectiveness.

Specifically, in the year 1997 a Strategic Plan for the Modernization of Public Administration was approved. This Plan considered the incorporation of planning and management control, generation of indicators, greater transparency and process improvements, as some of its priorities. In this sense, the SII was one of the first public services that voluntarily adhered to these transversal modernization initiatives.

In the early 2000s, the SII already had a significant number of civil servants with professional training in tax matters. In terms of recruitment, the SII began to incorporate new professionals with engineering backgrounds, so as to incorporate highly qualified professionals to perform internal tasks. In 2001, the approval of the "Norms for combating tax evasion" gave the SII the legal framework to search for and recruit professionals qualified to perform tax auditing. Thus contributing to professionalize the work of the SII.

Between 1990 and 2008 the staff of the SII increased by 76%, increasing the rank of tax auditors. Along with this, the SII begins to incorporate computer technology into its operating systems and launches its website. In 1997, various electronic tools are incorporated so as to facilitate tax processes and improve service to taxpayers. This is the beginning of the design and implementation of a set of new applications and IT developments designed to improve and expedite the online relationship with taxpayers. Some examples of this are: Online filing of Income Tax Return (1999), electronic signatures (2001); electronic invoicing system for public entities (2004) and the creation of the Mypimes (SMEs) Portal, among others. In this scenario of changes and internal developments, the SII, along with the increase in the number of professional staffing, also had to develop intensive training programs in order to develop in their civil servants the skills needed to meet the new challenges.

In recent years, the enactment of Law 20.727 which introduces amendments to the Tax Code in matters regarding Electronic Invoicing for all taxpayers, and the enactment of the Tax Reform Law 20.780, impels the SII to assume new responsibilities to ensure greater effectiveness in auditing, strengthen the SII and improve services and assistance to taxpayers.

Taking this into consideration, we present the most important elements below, regading both external and internal context, that allow us to understand the variables which are present so as to deal with their challenges. *(Source "SII Training and Development in Chile: An Institutional Analysis", authors Wormald and Cárdenas 2008)*

1.1. External Context

In the current external environment, as of 2014, there have been three relevant elements that have driven the changes taking place in the SII. The first element was the tax reform, then the SII Strengthening Law and finally the Presidential Instruction on Good Labor Practices on People Development in the Government.

1.1.1. Tax Reform

The 2014-2018 Government Program of President Michelle Bachelet contains important changes aimed at increasing public spending in the country significantly. To this end, in order to have the necessary resources, the Tax Reform Law 20.780 was passed on September 29, 2014. This law has four objectives:

- Increase the tax burden to finance, with permanent income, the expenditures of the educational reform, other policies in the field of social protection and the structural deficit in fiscal accounts.

- Advance in tax equity, improving income distribution. Those who earn more pay more taxes, and income from labor and capital should have similar treatments.

- Introduce new and more efficient mechanisms that promote saving and investment.

- Ensure that taxes are paid in accordance with the laws, advancing in measures to reduce evasion and avoidance.

In this context, some of the challenges posed by the Tax Reform to the Chilean Internal Revenue Service are the following:

- Increase the effectiveness of tax auditing.

- Provide more resources and strengthen the tax administration

- Improve services and assistance to taxpayers.

In this context, and so as to implement the Tax Reform, the following actions are carried out:

- The Tax Code is amended by granting new tax auditing powers to the Chilean Internal Revenue Service, enhancing its ability to combat tax avoidance and evasion and to facilitate taxpayers' voluntary compliance.

- It is determined that it is necessary to increase staffing, invest in new technologies and develop new training programs, in order to strengthen the SII, to ensure that the skills and knowledge needed to address these new tasks is acquired.

- Law 20.853, which strengthens the Internal Revenue Service, is passed. This law was developed jointly by the Directorate of the SII, the Undersecretariat of Treasury and Civil Servant Associations.

1.1.2. Strengthening Law

As indicated in the draft sent to Congress along with Law 20.853 for the Strengthening of the SII, the SII is expected to modernize and strengthen its high standards of effectiveness, efficiency and integrity that have characterized the institution, in order to achieve the necessary collection levels and decrease evasion to thus successfully fulfill its commitments to the country in accordance with the Tax Reform.

To achieve this it was deemed necessary to gradually increase the staffing 'de planta' of the SII; to strengthen all civil servant careers; update and modernize the conditions for admission to the institution; improve the functional organization of the SII and the restructuring of wages.

Due to this Law, the institution is currently gradually increasing its staff by 740 civil servants, by public tendering from 2014 until the end of 2016.

These provisions therefore allow the SII to integrate into their ranks new staff with performance profiles and professional training in line with the technical demands that the institutional modernization processes require, while at the same time acknowledging through a new carreer development model the skills and capacities of its current staff in order to develop the various levels of work with greater professional expertise.

1.1.3. Presidential Instruction on Good Labor Practices regarding People Development in the Government

On January 26, 2015, the President of the Republic Michelle Bachelet signed the Presidential Instruction No. 001 on Good Labor Practices regarding People Development in the Government, thus defining the agenda 2015-2018 on this matter, for public institutions to carry out.

The Presidential Instruction commits government institutions to advance in a determined and participatory manner in the generation of better policies and practices for people management, so as to produce a better 'Public Employment' and thereby strengthen the work contribution of civil servants in the fulfillment of their duties and increase citizen satisfaction. It contains three guiding axes: rights, environment and working conditions.

In this regard, this Instruction is considered an opportunity to identify and redefine key aspects of people development within the SII, as part of the change process the institution is currently going through. From the aforementioned, and considering the guidelines issued by the Civil Service, the SII has defined its Triennial Plan 2015-2018.

1.2. Internal Context

In the internal context there are two important elements driving the transformations that take place in the SII; the first was the development of an Institutional Strategic Plan

2015 – 2020, and the second is the development of the Strategic Roadmap for the same period, which fully reflects the Strategic Plan, based on four strategic axes.

1.2.1. Institutional Strategic Plan 2015-2020

An Institutional Strategic Plan for 2015-2020 was developed which took into consideration the objectives set by the SII to respond to the challenges described in the external context. This Plan was jointly developed by all the civil servants of the SII, including Civil Servant Associations.

The creation of this plan was carried out in two stages: the first stage was an Institutional Assessment covering all areas of the SII and the second stage, based on the results of the assessment, was the making of the Strategic Plan of the SII, comprised of Vision, Mission, Institutional Values and Strategic Projects:

Institutional Mission

"Ensure that each taxpayer fully complies with their tax obligations, taxing and auditing internal taxes effectively and efficiently, with strict adherence to the current law and seeking to facilitate compliance within the guidelines that establish the principles of probity, equity and transparency, in a work environment conducive to the overall development of civil servants, so as to achieve performance excellence that contributes to the country's progress."

Institutional Vision

"We will be a recognized public institution, at national and international level, because of:

- The effectiveness, efficiency and autonomy in its functioning;
- Increase and improve the control of evasion and avoidance, keeping them at historic lows, and enhance voluntary compliance;
- Fairness, probity and transparency in the exercise of its public role;
- Provide innovative technological solutions for tax auditing, taxpayer assistance and support of other state agencies; and
- Have highly trained civil servants that are committed to the country's progress. "

1.2.2. Strategic Roadmap

The new Directorate of the SII, which took office in August 2015, commits to the statements in the Strategic Plan and determine the main topics they will emphasize. These cover the current context and organizational culture, dealing with both daily operations as well as the implementation of the Plan and the associated Strategic Projects:

1. Institutional Modernization: "It is the constant strive of the SII to be national as well as international leaders through technological innovation, research and development applied to the organization."

2. Management Excellence: "Strengthen the internal performance of the SII, integrating and making more effective processes, products and services necessary for the achievement of institutional objectives".

3. People Development: "Implement good labor practices within the institution, in order to contribute to the continuous development of civil servants, valuing the work they do every day, acknowledging their contribution and commitment to the organization."

4. Strengthen Communications: "Communicate the state and functioning of the institution, both within the SII and to the external public. For this it is essential to align the key messages within the institution; the internal communication and promotion of the products generated within the institution in order to foster a culture of continuous improvement in the Service; and to actively work with the mass media to position our messages in the environment meaningful to the SII ".

The Strategic Roadmap helps to achieve, in the short term, the shared vision that was determined for the SII and reposition it as a leading institution among those that comprise the Central Government Administration and also among tax administrations internationally by excelling in performance innovation and good practices regarding people development.

Have a strategic plan to guide the actions of the SII with a look to the future, with people as key priority in the aspects to develop which evidences not only a willingness to be consistent with what is declared in the institutional mission and vision; but also along with it, defines the meaning and importance of the professionalization of people's performance for its realization.

2. PROFESSIONALIZATION OF HUMAN RESOURCES AT THE SII

Why is it important to professionalize the management of human resources of Tax Administrations?

- Because it allows to think of the job from a technical perpective of management and not oriented to clientelism, allowing a more autonomous vision of institutional management and not depend on the current government.

- Because this technical perpective allows employment policies to be bound towards results, efficiency and productivity.

What conditions are required to achieve this professionalization?

- Have a Model for People Development that aligns with institutional goals, so that this position will play a key role and is considered as a strategic partner in achieving results, for they are who develop the plans and objectives.

- Develop, train and maintain within the organization the technical expertise required in the institution. Thiis a distinctive feature compared to other public organizations. It should be actively involved in training and acquiring the talents the SII needs to achieve its goals and objectives.

- Position people development strategies through training and career development; as central aspects of the modernization of business processes, contributing to civil servant development with higher levels of preparation (skills) and commitment (personal management) in the fulfillment of medium and long term objectives.

- Have plans for evaluating and developing careers in accordance with the different characteristics of a tax administration and thus allow the development of people within the institution.

- Promote strategies for improving the quality of work life (decent job), that allow Tax Administrations to be in line with the labor market and current labor standards. Tax Administrations cannot disregard the developments in labor rights.

- Professionalize the staff of the Human Resources Division, with competent civil servants specialized in their áreas. People Management and Development is a discipline in itself and should be carried out by personnel specialized in these areas.

- Train leaders that are committed and able to carry out the technical vision in their search for results.

- Strengthen mechanisms that foster integration, internal communication and generate mechanisms to promote and improve the internal climate.

- Ensure that their civil servants are governed by the principles of transparency, adequacy, strict adherence to the law and promptness in their actions.

Specifically, for the SII, this professionalization has been taking place for over two decades, and, specifically, the last year has resulted in actions linked on three levels, which are explained as follows:

2.1. Changes in Structure and Staffing

2.1.1. Rotation policy for upper management

In order to enhance the functioning of the organization through a renewal of the upper management and to generate an effective mechanism of promotions and to incorporate in the institutional policies the international recommendations on rotation and time in the same jurisdiction, the SII made during 2015 adjustments to its management team in 13 of the 19 Regional Offices and in 5 of the 11 Divisions.

2.1.2. Adjustments in the organization and names of the divisions

- To strengthen the comprehensive view and cross coordination of internal work, the Corporate Affairs Division is created. Its main functions will be to advise the Commissioner on internal coordination matters about the SII, in areas and issues requiring cross-disciplinary and transversal corporate treatment within the institution.

- Due to the current modernization of People Management in the SII, the name of the Human Resources Division was changed to the People Development Division, thereby positioning the civil servants of the SII as the main asset of the institution and giving an internal and external message about the priority that the processes aimed at the integral development of those working in the institution have.

- In order to successfully carry out the Roadmap and the Strategic Guidelines defined by the Upper Management, the Tax Studies Division changed its name to Strategic Management and Tax Studies Division, focusing on the development and implementation of management processes within the institution.

2.1.3. Policy and regulation adjustments

During 2015, the SII developed three internal regulations, in order to establish the specific regulatory aspects concerning career development for tax auditors, technicians, administrative staff and auxiliary staff; career development for professionals, and tenders for heads of offices and fourth hierarchical level.

Meanwhile, a decree having the force of law is being procesed that establishes the new SII planta[1] staffing and defines entry requirements.

2.1.3.1. Changes in practices and challenges

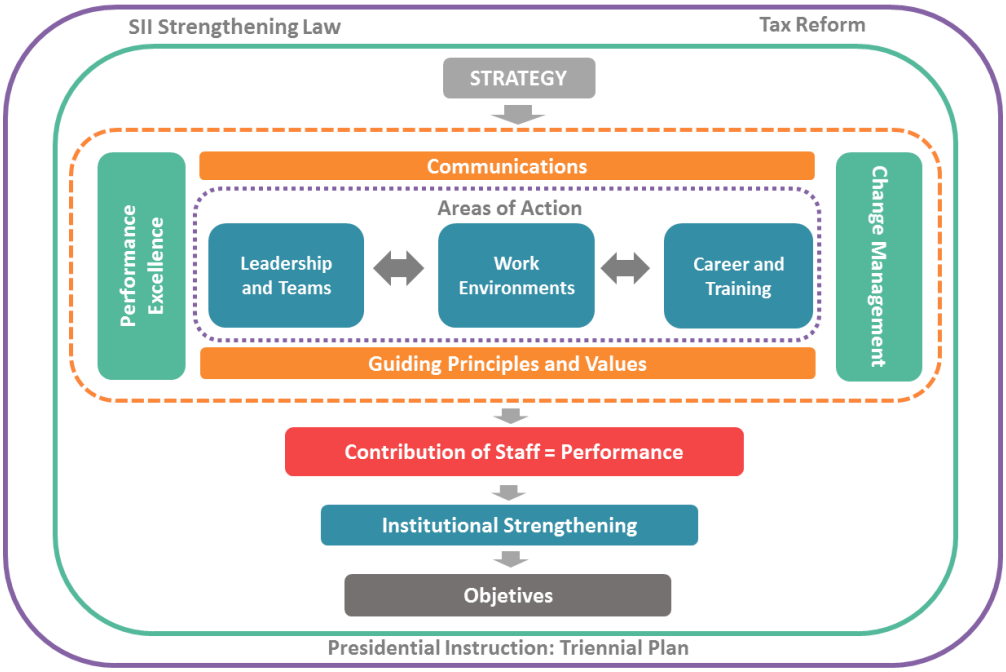
2.1.3.1.1. SII People development model

[1] **Planta (Permanent Position)** defined as: “The permanet staff assigned by law to each institution”. And states: “…for the purposes of the civil servant career, each institution may only have the following permanent personnel: 1. Executives (including senior positions), 2. Professionals, 3. Technicians 4. Administrative, 5. Auxiliary”.

The People Development Division, under the SII National Headquarters, has defined its mission as: "To contribute as strategic partners, to the continuous development of the people who work in the SII, with a systemic view of our internal processes, aiming for continuous improvement, innovation and excellence for the SII, so as to facilitate organizational changes and compliance with institutional guidelines."

Considering the challenges that the Institutional Strategic Plan and the Roadmap impose on the SII, it was necessary to modernize the Model of Human Resources defined in 2006, for a new People Development Model, in order to give efficient responses to these demands, concentrating its efforts on improving people management processes and on incorporating best practices within the SII.

Figure N° 1: Model of People Development Division



The Model reflects this unique context that creates opportunities for this time period and that the strategy of the SII incorporates. It seeks, through a systemic approach, to guide the efforts of people management towards the continuous improvement of individual and group performances in order to promote the achievement of the institutional objectives.

Three strategic axes, areas that consolidate the work of the People Development Division, were identified:

2.1.4. Strategic axes

Leadership and Teams:
It is defined as the promotion and development of a new style of leadership that contributes to institutional management, enhancing results and increasing levels of work satisfaction.

Work Environments:
It refers to developing a work environment based on respect, trust, mutual acknowledgement and cooperation, promoting motivation and commitment of civil servants when faced with organizational objectives and goals.

Along with this, fostering actions that contribute to the personal development of civil servants and their family groups, highlighting the importance of different areas of their lives.

Career and Training:
This is defined as promoting the development of SII civil servants, efficiently performing the processes involved throughout the work cycle of a person. With special emphasis on their training and career development.

Along with axes, transverse priority guidelines for the implementation of the model were defined:

Transversal Main Topics

Performance Excellence: it entails instilling a vision of Performance Excellence through continuous improvement of policies, procedures and services to meet the expectations and requirements of internal clients, seeking with this to impact positively on the achievement of organizational objectives.

Change Management: It refers to facilitating organizational change processes, implementation, monitoring and consolidation, thus the Division becomes a strategic partner within the SII.

Communications Management: To participate in the communication strategies to promote and activate the various changes and institutional projects. It establishes an effective model of communication within the Division and to the rest of the organization, with the purpose of generating greater internal synergy, as well as a constant promotion of projects and initiatives to the rest of the institution.

Guiding Principles and Values: In addition to the practice of institutional values, the People Development Division adopted as distinctive features of its performance, the following values:

- Trust
- Collaboration
- Innovation
- Goal Oriented

2.1.5. New Competencies

The strategic challenges, the policy and procedural changes that the Tax Reform imposes, require new institutional competencies, for managers as well as for civil servants. These competencies mainly relate both to technical tax matters, as well as with computer support systems and relational skills.

To develop these skills, the following strategic projects were designed:

Competency-based Management: which aims to define and update both institutional competencies and competencies specific to positions, in order to link them to subsystems of personnel selection, performance, training and career development.

Modernization of Training in accordance with the Institutional Challenges: the purpose of which is to design and implement a comprehensive training strategy in the SII, thus adapting the norms, policies, procedures and methodologies to the challenges of the SII, to provide training that facilitates the civil servants the acquisition or development of knowledge, skills and attitudes for better individual, group and institutional performance. The aforementioned will result in the creation of a Tax Training Center, whose work will focus both on training and on tax research and studies.

Development of High Performance Teams: which seeks to have high performance teams that can respond to the institutional demands, achieving permanent balance between productivity, goal achievement and effectiveness with an appropriate work environment and institutional excellence.

Development of a New Style of Institutional Leadership: which aims to promote and develop a new style of leadership that contributes to the management of institutional activities, allowing the enhancement of results and increase the levels of job satisfaction.

3. MAIN ADVANCES OF THE PEOPLE DEVELOPMENT DIVISION TO DATE

During 2015, the People Development Division led the design and development process of Law 20.853, which strengthens the SII for the Implementation of the Tax Reform. To that end, an SII modernization plan was developed which, with the approval of all the relevant actors of the organization, resulted in a series of policy instruments. To the aforementioned Law 20.853, we add three internal regulations and the development of a Decree with forcé of Law that establishes the number of SII staff and defines the entry requirements.

All of these new regulations result in a significant increase in the staffing of the SII, improvement of the civil servant career throughout the work cycle and in all echelons of the institution, more rational distribution of wages, updating and modernization of the conditions to enter the institution and improvement of the functional organization of the SII, among other things.

Under the "Presidential Instruction on Good Labor Practices in People Development in the Government", the Division prepared a Triennial Plan for the period 2015 - 2018, reporting 100% compliance with the commitments of 2015. It is important to note that this process integrated a broad spectrum of actors, fulfilling the presidential guideline of developing from a participatory and inclusive approach.

In terms of personnel selection, the SII:

- During 2015 selection processes were carried out to fill management positions, through 90 calls to cover 194 vacancies, according to the following detail:

TYPE OF TENDER	CALLS	OPENINGS FILLED	TOTAL APPLICANTS
Upper Management (3rd level)	21	20	1.421
Group Managers	39	39	122
Office Managers	14	14	101
Area Managers	4	4	111
Internal Professionals or Tax Auditors	7	20	91
Movement of Contrata[2]	5	97	350
TOTALS	**90**	**194**	**2.196**

- Recruitment and selection processes were carried out to fill 501 openings, due to the increase in positions because of the Tax Reform, which filled 428 positions as of December 31, 2015.
-

TAX REFORM 2015-2014			
HIERARCHY	**OPENINGS**	**FILLED**	**% ADVANCE**
Assistants	13	13	100%
Administratives	51	34	66%
Professionals	125	77	62%
Technicians*	21	14	63%
Tax Auditors	270	270	100%

[*] **Contrata (Temporary Contracts)** defined as a “temporary staff established as part of the total personnel of an institution.” This kind of employment will last until December 31st of each year and can be renewed.

Tax Auditor Appraisers	19	18	95%
Upper Management	2	2	100%
TOTAL	**501**	**428**	**85%**

* Selection of Auditing Technicians will be carried out during 2016, after the publishing in the Official Chilean Gazette of the Law that establishes the New SII Planta Staff and the entry requirements.

In relation to training:

- During the year 2015, 15.022 training quotas were covered with 574 courses, which meant 327,578 class hours for civil servants of the SII.

- At the same time, Regional Training Plans at a national level were carried out, designed to meet the training needs of each Regional Office, due to their specificity, they can not be covered by the National Training Plan.

- In addition, access to funding increased, for Divisions as well as for Regional Offices for the hiring of external agencies and thus covering training needs not met by internal training.

- The Diploma in Leadership and Management Skills for management has continued to be carried out, it is now in its seventh installment.

- A new version of the Ethical Leadership Workshop was carried out, attended by aproximately 300 managers. This program strengthens the ethical leadership skills of SII managers in the management of their respective teams, promoting the awareness of the norms that govern the conduct of SII civil servants.

- Specifically considering actions supporting the implementation of the Tax Reform, during 2015 a total of 147 internal and external courses were carried out, with 4,771 participants, producing a total of 111,595 class hours.

- 2 Induction Programs for New Managers were carried out, with the participation of 38 new managers, where they are given tools to exercise their leadership effectively.

- Six specific Induction programs were carried out where a total of 608 civil servants participated in the 12 versions of the courses.

N°	Program	Duration	Versions	Civil Servants
1	Tax Auditors	3 months	2	364
2	General Induction	4 days	4	113
3	Attorneys	1 week	2	66
4	Help Desk	1 month	2	25
5	Tax Auditor Appraisers	2 weeks	1	22
6	Risk Managers	1 week	1	18
TOTAL			**12**	**608**

Regarding Performance Management:

- The Project for the Modernization of the Performance Management System seeks to implement a more effective Performance Management System. During 2015, actions were carried out to identify the major milestones of the project, to be developed in the period 2016-2017, thus complying with the deadlines and challenges indicated in the Presidential Instruction on Good Labor Practices regarding People Development in the Government.

Regarding Organizational Development:

• Seeking to comply with the Presidential Instruction on Good Labor Practices in People Development in the Government, the work of the Technical Committee of the Triennial Plan 2015- 2018 of the SII, was coordinated. This also involved the design of products promised for 2015, which are mentioned as follows:

- Presidential Instruction Communications Plan
- Exempt Resolution that updates Norms regarding the Functioning of the Bipartisan SII Training Committee
- Institutional Procedure for the entry of people to the Contrata[3], Temporary Substitute and Honorarios[4] staff.
- Institutional Procedure for ending employment
- Retirement Accompanying Program
- Sexual and Labor Harassment Complaint Procedure

[3] **Contrata (Temporary Contracts)** defined as a "temporary staff established as part of the total personnel of an institution." This kind of employment will last until December 31st of each year and can be renewed.

[4] **Honorarios (Non-Contract Employees):** Temporary employees that are not legally considered a civil servant since they do not perform permanent functions in an institution.

• The Communication Program for the Institutional Strategic Plan was carried out. The protocol and communication materials were designed, and the communication of the Plan was coordinated and carried out at a national level. The communication was done through group meetings, between the months of December 2015 and January 2016, organizing the civil sevants into 367 working groups comprised of more than 3,600 civil servants, belonging to all Regional Tax Offices, the Large Taxpayer's Office and the SII National Headquarters.

3.1. Main challenges that the People Development Division is addressing to date

- **Deepening of the Tax Reform Training Plan:** incorporating changes in norms both in the Initial Specialized Training for new civil servants who continue to enter the SII as well as in updating and designing new courses for those already working in the institution.
- **Design of the programmatic basis for a Tax Training and Research Center:** delving into, facilitating and complementing the training processes of the SII, establishing technical training relationships with other agencies linked to the work of the SII and generate research and communication of tax matters.

- **Last recruitment due to the Tax Reform:** in 2016 we must complete the hiring of the new civil servants, increasing the SII staff by 740 officers, in order to meet the new requirements imposed on the SII by the implementation of the Tax Reform. In 2016 we expect to hire the last 208 civil servants to complete our staff and thereby complete the recruitment process required to strengthen SII's internal staffing so that it can meet the challenges of the Reform. We highlight one last promotion of tax auditors and a massive call to complete the openings for tax auditing technicians.

- **Implementing a new career development model in the SII:** Implement the structural adjustments corresponding to Law 20.853, which strengthen the SII for the Implementation of the Tax Reform, normalizing the number of civil servants of the institution in accordance with the new staffing requirements, and implementing a new internal career development model focused on merit, equal opportunities and recognition of the experience and performance of those working in the institution. At the same time, the general and specific regulations will be formalized, thus strengthening and updating policies and procedures regarding recruitment, development and modernization of the internal structure of the SII.

- **Development of a new Organizational Leadership Style:** A project will be carried out that aims to promote and develop a new style of leadership that contributes to the management of the institution while promoting results and increasing satisfaction levels. This project involves the development of a new

policy for Managers at the SII, updating of profiles, selection procedures and its link to manager performance evaluation.

- **Development of High Performance Teams:** Design and implementation of a model for the development of High Performance Teams in different business areas. This, with the purpose of having teams to respond to the institutional demands, achieving permanent balance between productivity, goal achievement and effectiveness, with a suitable working environment and institutional excellence.

- **Modernization of the Performance Management System:** Upgrading of the current Performance Management System, linking it with other critical People Development processes like Training and Career Development.

- **Implementation of the Presidential Instruction on Good Labor Practices regarding People Development:** Design and implementation of commitments acquired due to the Triennial Plan, for 2016 and beyond, aimed at developing best practices in the areas of worker rights, working conditions and environments.

- **Development of Healthy Work Environments:** Carry out actions to develop healthy work environments through the prevention and/or treatment of topics or situations that affect them. This, in order to increase the satisfaction, motivation and commitment of the civil servants to the organization.

- **Strengthening of the Specific Training Plan:** which will complement the internal training through access to training activities carried out by external education agencies.

- **Update of internal regulations related to the training of civil servants:** through the design of a new Training policy that promotes the improvement of the performance of individuals and teams.

- **Update and implement a new methodology for the assessment of training needs:** to collect information on the short and medium term training needs of the SII civil servants, to underpin the SII Training Plan.
- **Implementation of a Competency-based Management system:** Implementation of an Integrated Competency-based Management Model that will be the guiding basis for the various people management subsystems: recruitment, selection, performance appraisal, internal mobility, promotion, training, etc. Thus seeking to align people management in the SII with a framework based on personal skills, work skills and institutional values that allow us to observe the entire cycle of civil servant development from the same competency-based model, in order to maximize performance and foster the achievement of the goals and objectives of the SII.

4. GENERAL CONCLUSIONS

- Economic and social contexts impact organizations in different ways. The biggest challenge is to harness these conditions as opportunities for growth and improvement. This means being vigilant, adapting and responding in a timely, efficient and effective manner, understanding the large scale of the challenges and the technical role of the organization.

- The SII has been able to respond completely to the challenges entailed in the implementation of the Tax Reform, for which it is developing changes in policy, processes and, above all, development of its civil servants, providing the necessary tools to reach the institutional goals.

- Considering the technical role of the SII, the management of knowledge becomes relevant, defining and implementing actions that allow continuous learning and the transfer and generation of new knowledge.

- Organizations require people management models tailored to their needs and priorities. These models not only aim to organize the internal management of matters but are, above all, a roadmap that guides towards the achievement of the challenges, placing people at the center of the processes of institutional change.

- To take on the above implies developing coherent and concrete actions based on permanent and accurate assessments, in order to identify the necessary competencies and resources.

- Finally, the professionalization of human resources, is achieved with a strong commitment from Senior Management to People Management, and with a model that aligns with the institutional goals so that this position plays a key role and is considered a strategic partner in achieving results.

Topic 2.4

HUMAN RESOURCES AND THE PROFESSIONALIZATION OF THE TAX ADMINISTRATIONS

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Contents: Summary. 1. Definition of Terms. 2. Background. 3. Conclusion.

SUMMARY

The human resource of any organization is considered its most important asset as this is the primary vehicle through which the organization's objectives will be achieved. While the job of a Tax Administrator is unique to Government, it can become a profession.

In 2006 the IMF and the IBM reviewed the operations of Tax Administration Directorate, which was operating as five distinct departments within the Ministry of Finance and Planning. A recommendation was subsequently made for the organization to reform its operations to a Semi-Autonomous Revenue Authority (SARA) type organization. In May 2011, the Customs and Appeals functions were removed and the organization was named Tax Administration Jamaica but still operated under a Central Government structure. In 2013, the Tax Administration Jamaica Act, 2013 was passed which established TAJ as a SARA and appointed by the Minister of Finance on **November 3, 2014.**

Tax Administration Jamaica (TAJ) is charged with the responsibility of collecting domestic taxes in a fair and cost effective manner. To accomplish this task, the Board of Management and Executives demands greater accountability, efficient processes; professional service delivery through an engaged staff supported by robust technological solutions.

The professionalization of Tax Administration is a process, not an activity and has to be managed carefully. The process for TAJ starts with a rigorous recruitment and selection process to ensure best fit, this is complemented by on-going training and development interventions delivered internally or via external sources. These interventions pave the way for an employee to establish a career path within the organization, which is encouraged, supported and rewarded. To this extent the job of a Tax Auditor is recognized as a profession within the Authority with an established career path and attending pre-requisites for movement along that career ladder.

The Tax Audit and Revenue Agent (TARA) post graduate scholarship programme offered by the organization since 1986 sets the stage for a professional career as a Tax Administrator. Three (3) of the five (5) members of the current Executive team are graduates of the TARA programme.

The organization prides itself for being able to attract, develop and retain a competent and engaged group of professionals.

1. DEFINITION OF TERMS

Merriam Webster defines human resources as *"A group of people who are able to do work"*, or "*a department within an organization that deals with the people who work for that organization*." Pivotal to these definitions is that, these groups of people working for organizations collectively need to possess the skills, knowledge and abilities required to realize the organizations' mandate. Consequently, the human resources of any organization is considered its most important asset.

According to Wikipedia *"professionalization, also called credentialism is the social process by which any trade or occupation transforms itself into a true "profession of the highest integrity and competence."* It is also said to be, *"a social process whereby people engage in an activity for pay or as a means of livelihood."* This process tends to establish the group norms of conduct and qualification of members of a profession. There is also a tendency to insist that members of the profession adhere to the established procedures and the approved codes of conduct. Jobs designed to perform the core functions of a Tax Administration are held to similar basic principles and standards as any other profession.

Tax Administration is defined in the Handbook on Tax Administration - IBFD as, "Tax Administrations administer taxes. They implement and enforce tax laws, and receive their mandates by law. Tax Administrations, like private companies and other organizations, have a core business. The core business of Tax Administrations is the levying and collection of taxes imposed by law. It is important that Tax Administrations establish a clear definition of their core business from the outset and make it known to their stakeholders. The core functions of a Tax Administration include inter alia:"

- registration of taxpayers, including detection of non-registration and false registration;
- processing of tax returns, withholdings and third-party information;
- verification or examination of the correctness and completeness of received information (including audit activities);
- process of enforced debt collection;
- handling of administrative appeals and complaints;
- provision of service and assistance to taxpayers; and
- detection and prosecution of tax fraud.

These core functions drive the requisite skill sets and ultimately determine the jobs to be performed in order to deliver the overall mandate of these tax organizations. The competencies for these jobs are not readily available in any local job market. Consequently, it is critical for prospective employees to possess the foundation

qualification that will support development. Based on this, basic entry requirements for each job have to be established.

Collection of taxes is considered to be one of the oldest profession which has not lost its existence but has evolved to become a critical professionalization of every public service and in recent times referred to as tax administration. The widely used Handbook of Tax Administration sees these entities as organizations of great importance for societies, employing significant numbers of highly qualified staff thus requiring modern, dynamic and professional staff management. In addition, similar to other professions it is necessary to review and improve the guiding principles, codes of conducts and norms of the tax administration profession.

This paper will discuss the theme "human resources and the professionalization of Tax Administration," in the context of the current transformation of Tax Administration Jamaica (TAJ) while taking account of our past experience. The focus will be on the reasons for the transformation, the areas targeted for change, the expected impact on TAJ's overall mandate and the strategies employed to build and maintain a cadre of mission critical professionals.

2. BACKGROUND

TAJ prior to May 2011 operated as five distinct departments under the umbrella Tax Administration Directorate, within the Ministry of Finance and Planning, and managed by a Director General. These departments were streamlined as functional independent entities as indicated below:

- Director General's Executive Office (DGEO) – coordinated the activities of the five (5) departments;
- Inland Revenue Department (IRD) headed by a Commissioner and had responsibility for the collection of all revenues and filing of taxes;
- Taxpayer Audit and Assessment Department (TAAD) headed by a Commissioner and had responsibility for audit and assessment of taxpayers;
- Tax Administration Services Department (TASD) headed by a Commissioner and had responsibility for providing legal services, property management, general training and procurement;
- Customs Department (CD) headed by a Commissioner and had responsibility for international taxes, border protection and agency function;
- Taxpayer Appeals Department (TAD) headed by a Commissioner and had responsibility for taxpayer appeals cases;

The IMF in its 2008 report after a review found that the organizational structure at the time was characterized by the following:

- the Tax Administration directorate was a *coordinating body* with limited executive authority; the tax laws referred to the Commissioners for IRD, TAAD, TASD and TAD—which were semi-independent in relation to each other and the directorate;

- these Commissioners effectively exercised the operational powers in implementing the registration/taxpayer service, accounting, audit and enforcement functions; and
- the lines of responsibility were blurred because of considerable overlaps in the discharge of the core functions.

In principle, the core activities should have been distributed as follows: IRD (registration, accounting collection); TAAD (audits), TAD (appeals) and TASD (support services). In practice, however, the Table below depicts how the departments operated.

Tax Administration Directorate Functions by Department

Departments	Registration & Taxpayer Services	Assessment Filing & Processing	Collection Enforcement	Audit & Investigation	Objections & Appeals
IRD	x	x	x	x	x
TAAD	x	x	x	x	x
TASD	x	x	x	x	x
TAD					x
CUSTOMS	x	x	x	x	x
DIRECTORATE (Advisory)	Advisory, coordination and quality control through "Specialist" (Director General special assistants)				
Waiver					

Source: Compilations IMF Mission

The organization in the form it was had a number of challenges that hindered optimization of its efforts, some of which included:

- The cost of compliance for taxpayers was high because they had to relate to separate departments with overlapping responsibilities;

- The cost of administration was also high because of the excessive duplication and lack of effective executive direction for domestic tax operations.

- The structure was not efficient because of the intense competition and rivalry that existed among the semi-independent departments.

These and other compelling reasons such as the lack of adequate and relevant revenue laws, the dated operating systems and processes were the catalysts for the Directorate to be transformed. The recommendation for the organization to reform its operations to a Semi-Autonomous Revenue Authority (SARA) type organization was in line with international best practice. This was one of a number of recommendations emanating

from reviews and studies conducted by the IMF and the IBM since 2006 with the intention to improve TAJ‘s overall performance in tax administration.

TAJ‘s transformation to SARA began in earnest following a cabinet decision. SARA in the Jamaican governance structure is a public authority governed by the Public Bodies (Management and Accountability) Act and the Financial Audit and Administration Act and Regulations. This new status requires very high standards of efficacy in the measurement of performance. It also affords the Commissioner General (CG), title given to the new head, greater flexibility in the management of its human and financial resources and is expected to facilitate the achievement of the performance targets.

In order to establish TAJ Authority the Tax Administration Jamaica Act, 2013 was passed, and the Minister of Finance appointed **November 3, 2014,** the effective date for this Act to come into operation. The general administrative process for transforming TAJ included a re-engineering of organizational processes and functions, re-defining of roles and responsibilities and streamlining of business processes. This paved the way for enhanced taxpayer education and improved service levels.

TAJ was reorganized to support improved and efficient service delivery with clear and distinct accountability, and reduction in duplication of services. The organizational structure was expected to facilitate the efficient end-to-end flow of work with seamless and non-duplicative work processes. TAJ (as an organization with consolidated function), will focus on ensuring that the business of domestic tax administration is:

- Recognized as a single entity with highly integrated business functions that report to a Commissioner General;
- Organized around the taxpayer versus around tax types or business functions;
- Able to deal with the taxpayer holistically, that is, to have a global view of the taxpayer’s profile at any point in time; and
- Equipped with significant organizational capacity to support key functions included in the Concept of Operations (e.g. client relationship management, outreach/education, risk management, etc.).

The expected outcome of the transformation is to improve voluntary compliance and increase revenue collection through improved taxpayer service, simplification of administrative and business processes, enhanced communication and information channels, by using robust cutting edge technology and effective resource planning and allocation.
TAJ Authority manages its human, material and financial resources in accordance with modern standards and practices of sound financial management and good corporate governance through a Management Board which was also established under the TAJ Act.

The Board is responsible for overseeing the general administration of the Authority by:-

(a) ensuring that its operations where applicable conform with the necessary legislative documents such as:-
    - Financial Administration and Audit Act and any Financial Instructions given under that Act;
    - Public Bodies Management and Accountability Act;
    - any other law relevant to the management of public bodies;

(b) reviewing, evaluating, approving and monitoring the implementation of the Authority's:-
    - corporate policies;
    - operational, strategic and other corporate plans;
    - annual budget proposals and submissions; and

(c) reviewing, evaluating and approving the financial statements and major expenditure proposals for the Authority.

*The Board also has among other things the authority to:-
(a) establish policies for:-
- human resource management, including a code of conduct and a system of performance-based evaluation;
- financial management;
- employee benefits;
- property management; and …….

This provided the backdrop for a fully streamlined workforce that is supportive of Tax Administration Jamaica's vision, mission, core values and overall objectives.

2.1. Tax Administration Jamaica - Vision

'A world-Class Tax Administration' - *(this connotes aiming for standards, processes and the way we conduct business aligned with international best practices)*

Tax Administration Jamaica – Mission

'To collect the Revenues due in an equitable and cost effective manner, foster voluntary compliance, provide excellent service to our customers through an engaged and empowered staff'

2.2. Core Values

The conduct of the employees is also guided by TAJ's core values and form the acronym *IMPACT.* These are *Integrity, Mutual Respect, Professionalism, Accountability, Customer Centric and Team Work.* The core values are the fundamental beliefs and principles that guide the decisions and behavior of each employee in the performance of his duties.

2.3. **Strategy for Building Tax Administration Professional –** through the eyes of TAJ

TAJ's strategy to develop, maintain and retain the mission critical professionals involves a determination of the:

- critical jobs that will support the core functions and deliver its mandate which are similar to those defined in the TA Handbook (example: audit, compliance, taxpayer education; taxpayer service, intelligence, investigation) ;
- basic qualifications required of new entrants for these jobs and these are stated in the job description;
- skill set and competencies that will enable optimum performance (are outlined in the job descriptions);
- requisite training that will equip the employees with the required competencies;

In the design of TAJ's new structure although emphasis was on greater efficiency and effectiveness consideration was also given to creating career path for each mission critical job. In addition, the HR policies and Codes of Conduct which outline the rules, regulations and standard of behavior expected of each employee was developed and approved. These documents form part of the employment contract for the employee and are geared towards compliance and maintenance of integrity in the Tax Administration profession. This approach captures some of the critical underpinnings of a professional group.

The core human resource management functions (which are guided by the HR Policies) as listed below are also essential to this process of professionalizing tax administration core jobs:

- Recruitment, selection and orientation
- Learning and Development
    - ✓ Building Leadership Capacity
- Performance Management
- Communication
    - ✓ Soliciting Feedback
- Employee Relations (which includes maintenance of discipline)

2.3.1. Recruitment, selection and orientation

The process of recruitment and selection is crucial to the identification of the 'right' candidate for the job. It therefore requires a purposeful and determined focus on attracting talented employees whose interest is aligned to the organization. To achieve this TAJ employs effective workforce planning utilizing various methods, channels and tools to attract, identify and select the most suitable talents. These include:

1. Advertising job vacancies internally (that is within TAJ) and externally. The advertisements usually outline TAJ's vision, mission and core values plus the

basic qualification, competencies, knowledge and a summary of the duties of the job.

2. Partnering with universities to maintain and establish a network that is mutually beneficial. Career Development presentations about TAJ's operations are made to accounting and audit students at some of these universities. Also, in partnering with these universities TAJ facilitates internship for some of these students for periods of up to six weeks.
3. Utilizing various recruitment tools such as panel interviews, case studies/test and presentation. This facilitates the selection of a rounded employee, one who in a limited time is able to develop and present strategies to address a given case study as well as being able to respond to questions pose by a panel of persons.

To transition the staff from the old organization to the new TAJ SARA entity two approaches were adopted. One was the selection of employees for supervisory, managerial and new (did not exist in the former structure) positions using the competitive process employed for external candidates. To assist supervisors to prepare for this process a number of workshops on Resume Writing & Interviewing Techniques were conducted by TAJ HRD Unit.

The other approach was the use of a merit based assessment system to select employees for non-supervisory positions. This process requires the preparation of a profile on the respective employee which captures the following factors:

- Qualification
- Training – in-house and external
- Experience
- Performance Criteria (for the last 3 years)
    - KRA Scores (Performance targets achieved)
    - Employee Performance Factor Scores
        - Quality of Work
        - Job Knowledge/Technical Competence
        - Customer Service
        - Team Skill
        - Communication Skills
    - General Deportment/Conduct Scores
        - Punctuality
        - Attendance
        - Disciplinary Matters

The profile is assessed using an instrument that calculates the overall score by multiplying the actual score by the weights (scores assigned to each factor based on importance) and divided by the maximum attainable score. This overall score indicates the suitability of the employee for selection. An important element to this approach is that the employee is required to have the experience of performing similar duties in the previous organization (appendices 1and 2 are relevant).

The entire recruitment and selection process is also geared towards the alignment of the candidate's values, skills and abilities to those of TAJ and the particular job.

Upon acceptance of the offer of employment the candidate is vetted by the Revenue Protection Division (RPD) to verify his suitability for employment with TAJ. This is a requirement for employment and confirmation.

On the first day of work the employee is taken through an induction by HR which provides information about TAJ's governance structure the management team, the HR policies, the Codes of Conduct, the various divisions and the particular job. The employee is then assigned to the area for which he was employed. The supervisor is required to set the performance targets, outline the expectations from the employee as well as the processes, standards and procedures for the job. The supervisor is also required to coach the new employee based on the steps needed to perform the job.

Using audit as an example, TAJ's entrance level for this group requires the employee to have at least a Bachelor's degree in accounting or auditing. The employee is also required to have the highest degree of integrity, good customer services qualities, must be a team player, meticulous and analytical. TAJ's transformation to a SARA facilitates higher pay scales outside of the general pay structure and scales in the wider public service. This positions TAJ to compete in the job market for some of the best.

2.3.2. Learning & Development

TAJ management team recognizes that developing its employees is necessary for capacity building which ultimately improves performance and provides career advancement for the employee. For this reason, skills gap is considered a risk to excellent performance and attainment of goals for Tax Administrators. To reduce the risk, TAJ takes a structured approach to the development of its employees especially those employed in mission critical jobs.

The learning and development strategy involves identifying skills gap through various means, developing/identifying the requisite training programmes to address these gaps and evaluating to ensure efficacy of the programmes implemented. Identification of skills gap may be determined based on:

- The required set of training programmes for the new entrants depending on the function and area of employment;
- Identification of areas for development through performance planning and appraisal;
- Changes in procedures, processes or system;
- Career development for an employee or succession planning that will facilitate seamless transition where a vacancy is created.

TAJ has a well-established in-house Human Resource Development Unit that coordinates, develops and delivers core, soft-skills and managerial programmes. These programmes include a number of courses such as:

- Tax laws for the various tax types (PAYE, GCT, Excise);
- Auditing (audit technique, audit induction, audit by tax type)
- Legislative Amendments
- Arrears management
- Microsoft Applications training
- In-house Applications (INCRS, Property Tax)
- Taxpayer service
- Supervisory management
- Performance management
- Report writing
- Time management
- Team building
- Conflict management
- Leadership training

Included as part of the transformation, is the requirement to complete certain in-house course in order to be promoted to positions in the technical stream. This is evident in the career ladder which was developed by the Talent Management team. The career ladder shows the structure for each unit. The main function/s of this unit is identified along with the various levels of positions from lowest to highest. The entry requirements at each level are also identified as well as the requisite training that supports progression through the levels. The next step is to have each position hyperlinked to the job description which outlines duties to be performed, knowledge and skills required, the authority that comes with the job and the standards by which performance of the duties will be measured.

This career ladder will assist employees to identify areas of interest and the requirements for the various stages. Career counselling is also available to assist employees in their choice of career and the required actions to progress.

While the in-house training is relevant for elevation to certain positions and levels, the employee has a responsibility to also improve his qualifications. Consequently, provision for study leave and time-off subject to certain criteria are available to the employees.

Also, training programmes from external sources are identified where necessary and arrangements made for the relevant employees to attend. Evaluation of the courses delivered is conducted to determine their impact and relevance and where necessary changes are made for improvement.

2.3.3. Training for promotion in audit

Throughout the first year of employment the entrance level auditor is required to participate in a suite of core training course which includes:

- Basic audit induction
- Introduction to tax laws
- Audit technique
- Taxpayer service C
- Report writing
- Computer training (depending on the employee's level of proficiency).

Progression for this auditor to the next level requires a certification from the Tax Audit and Revenue Administration Post Graduate Diploma Programme (TARA). This is a thirteen (13) months accredited programme that TAJ contracts the Management Institute for National Development (MIND), the public sector training institute to coordinate. The programme contains six (6) months of classroom training to include Audit Techniques and Investigation, Tax Laws; Commercial Law, Public Finance and Tax Administration, Communication Skills, Taxpayer Relations and Contact, Advanced Accounting Computer Application and Statistical Sampling Techniques and Report Writing. The technical courses are conducted by TAJ's experienced tax officials while some of the other courses in the programme are delivered by MIND facilitators.

The remaining seven (7) months period for the programme is devoted to on-the-job training (OJT) where the participants are assigned in teams to a Revenue Service Centre (RSC). The participants are assigned simple Audit cases for them to apply the knowledge garnered from taught classes. The expectation is to see the application of the Audit process supported by documentation (working paper) and not necessarily the closure of a case. This OJT structure includes:

- The assignment of an OJT Coordinator to oversee the OJT operations.
- A structured programme with rotations through various core functional areas and involves all the stages of a compliance audit.
- The assignment of supervisors to provide close supervision to the trainees.
- A group presentation, where topics are assigned based on current tax matters, this is assessed by targeted facilitators from TAJ and MIND
- Evaluation of the trainees at the end of the programme by the supervisors. This evaluation also takes account of the trainee's conduct, attendance and aptitude.
- The submission of a summary report on the programme along with individual trainee's report.

Since the inception of the programme in 1986, twenty nine (29) groups (an average 25 participants) have been trained resulting in approximately 631 graduates from the programme.

The career paths in the audit stream are captured in the tables below. They indicate the career opportunities available to auditors in either the managerial or specialist streams.

Audit stream leading to managerial levels

Entry Level Auditor →	Auditor →	Senior Field Auditor →	Audit Manager →	Assistant General Manager, Audit
Entry Qualification: Bachelor's Degree Training: Audit Induction Introduction to Tax Laws Audit Techniques Taxpayer Service C	Entry Qualification: Bachelor's Degree Training: TARA Post Graduate Diploma Programme	Entry Qualification: Bachelor's Degree Training: Tax Laws (All tax types) Interpretation and Analysis of Financial Statements	Entry Qualification: Bachelor's Degree Training: Supervisory Management Performance Management Conflict Management	Entry Qualification: Master's Degree Training: Leadership Coaching & Mentoring Workshops Seminar Conferences (International Organ.)

This stream indicated above has the potential for promotion to the levels of Deputy Commissioner General, Operation or the Commissioner General.

Audit Stream Leading to Senior Levels (without supervisory function)

Entry Level Auditor →	Auditor →	Senior Field Auditor →	Audit Specialist →	Technical Specialist →	Senior Technical Specialist →
Entry Qualification: Bachelor's Degree Training: Audit Induction Tax Laws Audit Technique Taxpayer	Entry Qualification: Bachelor's Degree Training: TARA Post Graduate Diploma Programme	Entry Qualification: Bachelor's Degree Training: Tax Laws (All tax types) Interpretation and Analysis of Financial	Entry Qualification: Master's Degree Training: Computer Based Auditing Industry Specific	Entry Qualification: Master's Degree Training: *(honing skills)* Base Erosion ad Profit Shifting and	Entry Qualification: Master's Degree Training: *(honing skills)* Transfer Pricing and its Implications

Service		Statements	Auditing	Exchange of Information	Seminars Workshops (International Org.)

This stream has the potential for promotion to the level of Chief Technical Advisor.

The table below depicts tax administration professionals who are graduates of the TARA programme. These officers have all made a profession out of their jobs as Tax Administrators; they are at the pinnacle of their career as they are currently serving in various executive, senior management and expert capacities.

TAJ's Professionals

Cohort	Year	Progress in TAJ	Level
1	1986	Commissioner General	11
5	1990	Chief Technical Advisor	9
10	1995	Chief Technical Coordinator	9
10	1995	DCG, Operations	10
7	1992	DCG, Management Services	10
3	1987	Technical Assistant, Operations	9
7	1991	General Manager RSC, Kingston	9
2	1987	General Manager RSC, Montego Bay	9
11	1996	General Manager RSC, Mandeville	9
12	1997	Chief Programmes Officer	9
5	1990	Senior Technical Specialist	9
4	1988	Senior Technical Specialist	9
1	1986	Senior Technical Specialist	9

2.3.4. Building leadership capacity

Leadership is the ability of the management of an organization to make sound decisions and to inspire others to perform well. Effective leaders are able to set and achieve challenging goals, to take swift and decisive action even in difficult situations, to take calculated risks and to persevere even in the face of failure. A good leader has strong communication skills, self-confidence, the ability to manage others and a willingness to embrace change. Effective leadership assists in promoting the brand of the organization, a critical factor to the engagement, development and retention of its professionals.

TAJ recognizes the need for strong leadership as a result of which significant importance is placed on Leadership Development. This process of development focuses on persons at the executive, senior management and middle management levels. The building of leadership competencies in TAJ is linked to its core value system which serves as the guiding principles. The programme includes:

- **Leadership Induction** – is a specified period of time used to assist potential and new manager to gain the critical knowledge and skills required to transition successfully in leadership role.

- **Self-Assessment in Leadership Readiness** – involves the use of a detailed questionnaire to measure leadership competencies (providing direction, interpersonal skills, communication, championing change, emotional intelligence, fostering teamwork) of a potential or new manager and to identifying areas of strengths and weaknesses. The findings of this evaluation indicate readiness for upward mobility and assist in determining areas for development (appendix 3).

- **360 degree Leadership Assessment** – is an evaluation of the manager's skills and effectiveness utilizing an instrument to solicit feedback from a number of stakeholders (manager, peers and supervisees) with whom this manager has to interact. The findings of this evaluation also help to determine the employee's level of readiness for leadership and inform the types of interventions required to address the areas for development (appendix 4).

- **Preparation and implementation of the development plan**. This may include training, seminars, coaching and mentoring. The manager's progress in the programme is also monitored and evaluated.

2.3.5. Performance Management (PM)

Performance management is critical to the success of any organization and TAJ is no exception. An important element of managing performance in TAJ is the establishment of the appropriate standards and measures for the targeted objectives. These standards are also good indicators of the "how" the targets were met and the level of adherence to those standards. The overall performance of an employee is a good indicator of that employee's level of readiness for promotion. It is also critical for appointment or promotion and the minimum acceptable overall score for such consideration is 75%.

Employees whose overall score is at 90% and over are recognized for exceptional performance. These high performers are targeted for further development and in many instances are successors to employees who have vacated positions at higher levels. This affords TAJ's employees growth as tax professionals.

2.3.6. Communication

A key component of PM is the monitoring of the performance. This requires structured and constant communication between employee and supervisor. These communications may be one-and-one discussions or scheduled meetings to give feedback or receive updates on performance. The scheduled meetings are also a source of providing information to employees and management about matters affecting the operations of the organization. In addition, employees appreciate being kept abreast with the happenings in their organization. TAJ being cognizant of the potential 'rumour

mill' utilizes the intranet, periodic newsletters, ne (RevNews, SARA Update) frequently asked questions with responses and staff meetings as means of communicating to the employees. Also, at the start of the transitioning process of the employees sensitization sessions were conducted islandwide.

Constant communication with the employees keeps them engaged and engenders commitment to the organization.

2.3.6. Soliciting feedback - Staff satisfaction survey

A new feature of TAJ to get feedback from employees is the Employees' Satisfaction Survey. A survey will be conducted at least once each fiscal year. The survey is expected to indicate the level of employees' satisfaction with accommodation, equipment, leadership and management, communication, resources, benefits, work, etc. and to recommend strategies to address the issues identified. An important component of this exercise is to monitor and ensure that areas identified for improvement are addressed.

Exit interviews completed by employees who are separating from the organization are also a good source of information about areas or functions in the organization that work very well or may require improvement. TAJ's exit interview tool seeks to ascertain feedback about the reason for leaving, management and leadership (at the level of the respective supervisor and organization wide) and the employee's opinion of the organization (that is, processes, procedures, policies, rules, accommodation, resources and equipment). The strategies implemented as a result of the findings from these documents augment the retention of the employees and supports promotion rather than separation.

2.3.8. Employee relations

Employee Relations is concerned with building and maintaining relationships that contribute to high productivity, motivation, and morale amongst all stakeholders. Employees need the support and guidance of their supervisors and fellow workers to come out with great ideas and deliver their best. It is also imperative that the environment in which people have to work is conducive for work and the requisite resources are available. The organization also has a responsibility to develop the rules, standards and policies that guide employees' behavior at work and ensure adherence.

TAJ's management endeavours to maintain a healthy work environment through:

- constant upgrading, repairs and maintenance of its facilities;
- maintenance, repairs and replacement of equipment;
- provision of the essential resources used for work;
- recognition of birthdays and important personal milestone;
- hosting of recreational activities such as sports day, end-of-year functions, hat day, tie day, after-work 'lyme', etc.

These events and activities engender camaraderie amongst the employees and support the notion of retention of its valued professionals.

2.3.9. Maintenance of discipline

TAJ adopts a no nonsense approach to indiscipline. Included in the code of conduct are the sanctions to be applied to breaches of the codes and standards. It has a robust disciplinary process that operates utilizing two committees. There is an internal committee chaired by an in-house attorney with two senior officers as members. This committee hears matters classified by the Code of Conduct as misconducts and are considered not with a view to dismissal. There is also an external committee chaired by a retired judge from the court system with two retired senior public servant as members.

This committee hears matters classified as gross misconduct and are adjudicated with a view to dismissal. Matters that are criminal in nature are referred to the Revenue Protection Division or the police.

Categories of Offences

MISCONDUCT (Not with a view to dismissal)	**GROSS MISCONDUCT** (with a view to dismissal)
Poor time-keeping and absenteeism	Offences relating to dishonest conduct, theft, fraud or corruption.
Offences relating to unsatisfactory work performance	
Offences relating to indiscipline or disorderly behavior	

3. CONCLUSION

As a general rule, the professionalization of any field, in this case Tax Administration is associated with creating a shared body of knowledge, along with credentialing systems to evaluate that knowledge, norms and systems of application. It also requires strong membership associations similar to the Inter-American Centre of Tax Administrations (CIAT) but with a direct focus to spread and share the knowledge. In addition, professions often hold a set of shared values that align with and underpin the field's formal knowledge. In tax administration, these shared values include a set of normative principles explicitly contained in the handbook of tax administrators and in respect of TAJ the HR policies, the Code of Conduct and importantly its core values.

TAJ's value system puts the taxpayer at the center of its operation, hence the term customer centric. This necessitates the frontline staff conducting themselves in accordance with the policies, standards, rules and regulations for TAJ's professionals when interfacing with the taxpayer. Other equally important values for TAJ include employees operating with integrity and professionalism, treating all stakeholders with the greatest respect and being the consummate team player.

Professionalization also involves the engagement of full-time, career-length, employees with specialized and formal training. TAJ's commitment to training and career development for its employees is evident in its training standard for each employee to receive at least five (5) days of training each year and the design of the structure to facilitate promotion for various groups of employees.

Globally, tax administrations need to work together to determine the universal qualifications, standards, norms and beliefs that should govern its professionals. Efforts should also be made to establish a body that will 'credentialize' the knowledge and work of Tax Administrators.

Finally, professionalization of tax administration helps to create a cadre of professionals whose skills are unique to tax administrations and also increases the level of commitment and retention in these organizations.

APPENDICES

Appendix 1

Sample Profile - John Doe (3).docx

Appendix 2

Merit Based Assessment Form 3 y

Appendix 3

Self-Assessment in Leadership Form - Ap

Appendix 4

360Degree LeadershipAssessmer

Topic 3

Tax management of micro and small enterprises: Facilitating tax compliance

Matin Ramos
Superintendent
National Customs and Tax Administration Superintendency
(Peru)

Contents: Overview. 1. Context of MSES in Peru. 2. Main features of the tax regimes for MSES in Latin America. 3. Tax administration challenges regarding MSES. 4. Lines of action implemented in the management of MSES in Peru. 5. Characteristics of a special tax regime for MSES. 6. Benefits for the tax management. 7. Conclusions.

OVERVIEW

In our countries, some outstanding issues need to be addressed with urgency. Due to the globalized world, in the last few years, we have placed a special emphasis on international taxation. This is undoubtedly a very important topic today for countries and tax administrations. However, given the reality of the countries of Latin America, it is not the only problem to resolve. An important issue that we need to address is related to the micro and small enterprises.

The design and implementation of articulated State policies to promote the development of Micro and Small Enterprises (hereafter MSEs) constitute one of the major challenges for our countries. This is not only because of their importance as a dynamic market agent and as a source of employment, but also because that business segment operate in an informal environment. They suffer from limited or no access to sources of financing, low productivity, limited ability to trade on favorable terms with larger enterprises, lack of knowledge of policies and procedures, which is why they engage in administrative breaches. This situation hinders their growth and threatens their permanence in the market.

The development of economic activity and the fulfilment of the derived tax obligations should not increase these problems through higher costs of compliance; in this context, the tax administration has set a goal to develop solutions that, taking advantage of progresses in information and communication technologies, would facilitate and substantially reduce the cost of tax compliance.

Even if the tax administration can optimize procedures and services to improve tax compliance, they are limited or conditioned to the different tax structures that are currently applicable to MSEs. However, these have not succeeded as options or alternatives that will help the formalization, at least not completely. Therefore, it is necessary to develop an ad hoc tax scheme, which take into account the particular characteristics of these

enterprises and achieve a tax structure characterized by simplicity in the determination of the amount of the tax liability and payment.

This new scheme supposes the elimination of those formal obligations, which, far from facilitating control of the tax administration or the self-control by the taxpayer, generate higher costs of compliance, or the use of information technologies that facilitate voluntary compliance and the formalization, at least from a tax perspective.

In this context, the challenge for the Peruvian Tax Administration is to streamline the support towards the formalization of MSEs through solutions and services that facilitate compliance. In the same way, to reach a tax scheme proposal for this segment of taxpayers. The rules for this segment of taxpayers must provide for the use of information and communication technologies to facilitate compliance in order to trace their operations and offer tailored services.

1. CONTEXT OF MSES IN PERU

The important role of MSEs for the economy and employment in Latin America is undeniable. According to the International Labor Organization Report called "Small business, large breaches"[1], MSEs generate 47% of the jobs in Latin America and the Caribbean; i.e., they offer employment to about 127 million people in the region.

The definition of MSEs is not uniform among the countries of Latin America; in general, it has been based on quantitative criteria related to the economic activity of the company, such as the number of employees, the level of assets available, annual income or obtained annual sales, etc. In Peru, the MSE is defined as the economic unit formed by an individual or legal entity that aims to develop activities of extraction, processing, production, marketing of goods or provision of services. They are classified as a micro or small enterprise only based on their annual sales levels, as shown in table N ° 1, in Peruvian Tax Index Units (Unidad Impositiva Peruana, UIT):

Table n ° 1

TYPE OF COMPANY	ANNUAL SALES	$
Microenterprise	Up to 150 UIT	172,740
Small business	From 150 to 1700 UIT	1,957,725

[1] Panorama tematico Laboral; Pequeñas empresas, grandes brechas, International Labour Organization, 2015, seen in:

http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_398103.pdf (19-02-2016)

Source: TUO of MSE Act, D.S.N ° 013-2013-PRODUCE.

Like many developing countries, Peru is an economy where MSEs have acquired a key economy role since here almost all companies (99.5%) are in this category, of which the 94.9% are micro-enterprises while small enterprises constitute 4.5%, as shown in table N ° 2:

Table n ° 2

BUSINESS TYPE	**N ° OF COMPANIES**	**%**
Micro companies	1,518,284	94.9
Small companies	71,313	4.5
Medium-sized companies	2.635	0.2
Large companies	8,388	0.5
Total	1,600,620	100

Source: Ministry of Production

Considering their percentage of participation in the gross domestic product (GDP), these companies are mainly concentrated in the trade sector (45.2%), followed by the services sector (40%), manufacturing (9.1%), construction (3.1%), agricultural (1.5%), mining (0.8%) and fishing (0.2%).[2] At the end of 2014, the companies that were registered in the single registry of taxpayers of the tax administration amounted approximately to 1,600, 620 taxpayers.

[2] Information from the MSMEs in 2014 figures, prepared by the Ministry of Production.

Most of these companies have a very low productivity, employ mostly unpaid relatives or family members; they represent some sort of self-employment and in many cases, they generate income to subsistence levels. According to information from the Ministry of Production, 49.4% of persons start a MSE by economic necessity.

In general, MSEs are considered minor fiscal taxpayers since they provide a very small collection percentage, 0.5%; However, they represent the largest number of companies (99.5%); this dimension generates the need to give greater emphasis and interest in facilitating their development, even more so considering that they are the main source of employment in the country.

In Peru, there is no specific tax regime for the MSEs. Existing regimes were not created exclusively for this sector, but they were generated as alternatives for small businesses, such as the new unique simplified regime (NRUS) and the Special Income Tax Regime (RER), which coexist with the General Regime of Tax Income, taxation system more complex than the previous ones. According to their conditions, income and type of activity, the MSE can join any of these systems. Table No. 3 shows the main characteristics of the tax regimes for entrepreneurial activity:

Table n ° 3

<table>
<tr><th>Concepts</th><th colspan="4">New unique simplified regime (nrus)</th><th>Special regime of income (rer)</th><th>General regime of income</th></tr>
<tr><td>Individual</td><td colspan="4">Yes, can join</td><td>Yes it can join</td><td>Yes it can</td></tr>
<tr><td>Legal entity</td><td colspan="4">Only EIRL can join</td><td>Yes it can join</td><td>Yes it can join</td></tr>
<tr><td>Income limit</td><td colspan="4">Up to $ 105,170.91 per year or $8,741.26 per month</td><td>Up to $152,972.03 per year</td><td>Unlimited</td></tr>
<tr><td>Limit</td><td colspan="4">Up to $ 105,170.91 per year or $8,741.26 per month</td><td>Up to $152,972.03 per year</td><td>Unlimited</td></tr>
<tr><td>Proof of payment can be issued</td><td colspan="4">-Sales vouchers
-Tickets that do not give right to tax credit, expenses or cost to the purchaser.</td><td>Invoices, vouchers and all the others allowed</td><td>Invoice, vouchers and all the others allowed</td></tr>
<tr><td>Annual tax return i. Income</td><td colspan="4">No</td><td>No</td><td>Yes</td></tr>
<tr><td rowspan="6">Payment of monthly taxes</td><td>Category</td><td>Revenue $ up to</td><td>Purchases $ up to</td><td>Fee $</td><td rowspan="6">Income: Fee of 1.5% of monthly net income
VAT: 18%</td><td rowspan="6">Income: Pay monthly account. The resulting coefficient or 1.5%, according to the income tax act
VAT: 18%</td></tr>
<tr><td>1</td><td>1.456</td><td>1.456</td><td>6</td></tr>
<tr><td>2</td><td>2,330</td><td>2,330</td><td>15</td></tr>
<tr><td>3</td><td>3,787</td><td>3,787</td><td>58</td></tr>
<tr><td>4</td><td>5,826</td><td>5,826</td><td>117</td></tr>
<tr><td>5</td><td>8,740</td><td>8,740</td><td>175</td></tr>
</table>

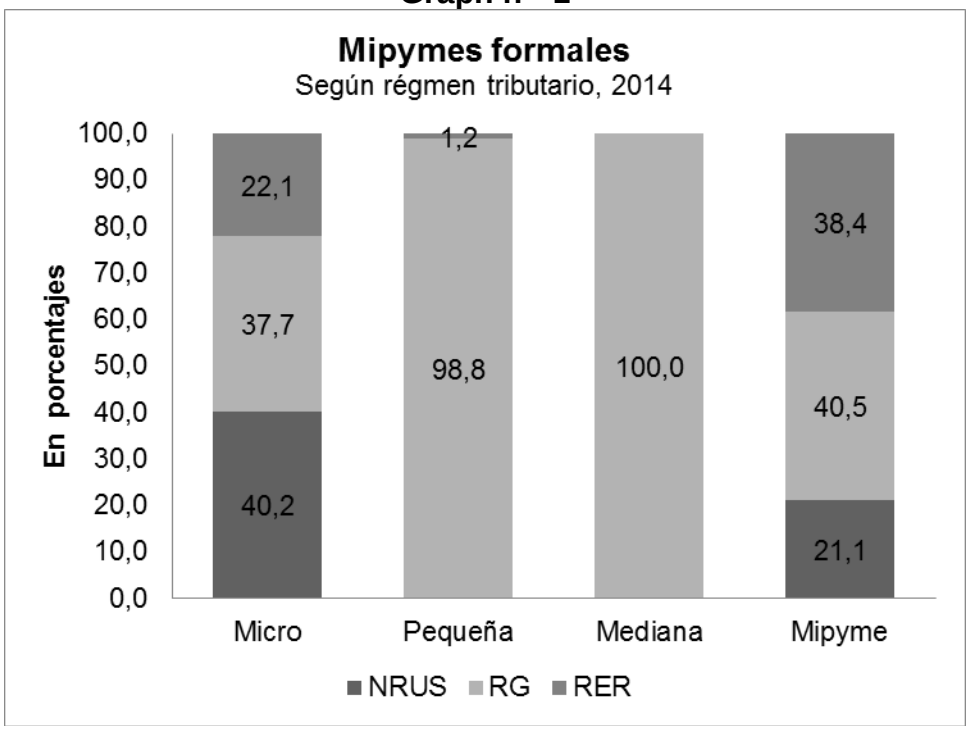
Workers	Unlimited	Maximum 10 per period	Unlimited

Source: SUNAT

As a reference, to December 2015, the number of taxpayers registered to the NRUS was approximately one million, to the RER 352,000 and to the General regime 590,000 taxpayers.

According to the report of "SMEs in numbers, 2014,"[3] 40.2% of micro-enterprises are registered to the NRUS, 37.7% to RER and 22.1% to the General regime. As for the small companies, 98.8% are in the General Regime and 1.2% in the RER, as shown in the following graph:

Graph n ° 1



Source: Produce

2. MAIN FEATURES OF THE TAX REGIMES FOR MSES IN LATIN AMERICA

[3] Developed by the Ministry of Production.

In Latin America, there are various special tax regimes for the SME segment. It is to note that they are based on both qualitative and quantitative criteria. The qualitative criteria are restrictions by type of taxpayer (individual or legal entity) or by type of activities (commerce, services, industry, etc.), while within the quantitative criteria are the amount of revenue or annual sales, the amount of assets or inventories and number of workers. It is important to point out that the quantitative criterion most used by the countries of Latin America is the annual revenue, and the most commonly used qualitative criteria is limited to individuals and essentially in trade and industry.

We should keep in mind that most special tax regimes for of this segment of taxpayers only includes the income tax of legal entities or corporate income tax , and very few have fixed or aliquots or progressive quotas that include in addition the Value Added Tax or the Social Security Contribution.

Some countries in Latin America such as Mexico, Argentina and Brazil have implemented simplified systems for small taxpayers that are part of MSEs. Thus, in Mexico we have the recent creation of the Tax Incorporation Regime (Régimen de Incorporación Fiscal - RIF). This model consist of the total discount of IT during the first year of operation of a company, followed by a discounted annual percentage decreasing progressively - ranging from more to less - on the total amount of tax payable until reaching the top tier of 10%. After 2 years of having been implemented, it has achieved the incorporation of more than one million taxpayers, who previously operated in the informal economy.[4]

In the case of Argentina, we have the single tax, which - according to the January 2013 data from AFIP was able to register 2.7 million taxpayers, representing an increase of 16% over the previous year in terms of revenues.

Table n ° 4

	Mexico	**Argentina**	**Brazil**
Special schemes	RIF-Fiscal incorporation regime	Single tax or simplified regime system	Simple national
Type of Taxpayer	Individuals with business activity.	Individuals or natural and societies in fact.	**(i)** micro and **(ii)** small companies
Conditions	Annual income up to 150,461 USD.	Gross revenue from activities below or equal to USD 29,417 USD and up to 441,125 USD.	Microenterprise: gross invoicing of up to BRL 360 thousand per year (USD $89,193) Small business: gross invoicing between BRL 360

[4] See Third Government Report 2014-2015. Consulted on February 18, 2016

http://cdn.presidencia.gob.mx/tercerinforme/3_IG_2015_PDF_270815.pdf

	Mexico	Argentina	Brazil
			thousand and 3.6 million/ year (USD $891,936).
Formal obligations / requirements	-Enroll in the RFC. -Submit bi-monthly statements, including withholding. -Keeping accounts simplified using the register of its revenues and expenditures, using the system called 'My account'. -There is no obligation to submit annual declaration	Monthly payment obligation composed of integrated tax, social security resources. Quarterly informative return	A single annual declaration simplified for the payment of taxes and contributions from federal, State and municipal jurisdiction.
Considerations	The regime came into force in January 2014. To June 2015, more than 4.41 million taxpayers have joined this regime. More than 115 million electronic invoices have been issued.	Integration to the tax and pension system in force, leaving aside the informality. Having a social and universal basic protection	Between 2007 and 2012, the national tax collection through the SIMPLE went from BRL 8.3 billion to 46.5 billion

Source: Inter-American Center of Tax Administrations – CIAT

3. TAX ADMINISTRATION CHALLENGES REGARDING MSES

Among the main challenges in the tax administration, are:

3.1. Tax regime for MSEs

The challenge for countries is to implement a taxation for MSEs and tax administrations that use the different technologies of information and communication available to facilitate tax compliance, reduce compliance costs and encourage the formalization.

A very important constraint for MSEs is the difficulty to access lines of credit that finance their activities. This limitation is mainly caused by the difficulty they have to demonstrate revenue streams that could serve as guarantee of payment, because the economic activity is developed at informal levels. It is also caused by certain tax schemes, whose payment obligations is given by fixed fees without detailing the achieved revenues, does not accredit the income levels to third parties with the assurance of having been declared to tax authorities.

The origin of the systems or guarantee procedures arises from the need for a guarantee of the "company value" that reduce or limit the credit risk perception when facing a financing entity or sustain their economic capacity.

Accordingly, the tax regime ad hoc for MSEs must provide tools to the segment to access financing, for example through the accreditation of revenues with the tax returns submitted to the tax administration, which could be used for credit evaluation against financial institutions.

3.2. Reducing informality

Informal activities in Peru represents 19% of GDP[5,6] and occupy 61% of the economically active population; in theory informality is a deficient allocation of resources that limits the advantages offered by legality: access to labor rights, formal credit, ability to participate in broader markets, ability to grow to the extent of operating with formal enterprises , among others. The study of causes and consequences of informality in the Peru[7], attributes the excessive normative regulation and the inadequate provision of public services as an important cause to remain in informality

This means that many companies prefer informality rather than positioning themselves within the formal scheme, in which they would be also submitted to tax compliance.

3.3. Reduce the tax transaction costs

According to research by the World Bank (2012)[8] these costs for MSEs in Peru are approximately equal to 10% of their sales. These costs are associated with: retribution to a tax advisor or accountant, processing and file the accounting records, the time required to comply with obligations, which involves understanding and applying regulations, meet requirements of information requested by the tax administration , training for the compliance due to the complexity of the rules, etc. Taxpayers must assume those costs, regardless their level of income, their activity or the transaction performed.

These costs do not have the same effect in MSEs as for large taxpayers, due to the volume of operations and income; i.e., they are regressive and affect disproportionately the smallest enterprises.

At the same time, the tax administration also incurs in administration costs required for the tax management, such as human resources, physical and technological infrastructure. These costs can nowadays be reduced thanks to the progressive incorporation of technology. In such sense, achieving further easing through the reduction

[5] According to the document " Producción y Empleo Informal en el Perú " INEI 2013, the informal sector refers to all production units that are not registered by the tax administration (SUNAT).

[6] https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1154/libro.pdf

[7] Prepared by Norman Loayza from the World Bank with support of Economic Studies of the Central Reserve Bank of Peru.

[8] Quoted by Alfredo Thorne in "Pesca de informales". Magazine Caretas, January 14, 2016, p. 22.

of paperwork and tax transaction costs constitutes a major challenge for authorities. Using information and communication technology certainly plays a key role for both purposes.

4. LINES OF ACTION IMPLEMENTED IN THE MANAGEMENT OF MSES IN PERU

Towards the end of the year 2013, the Act to impulse productive development and business growth (MiPyME Act)[9] was approved to reduce the tax burden. It provides social security and health coverage through the integrated health system for the workers of these companies, and pension coverage at lower costs.

As a State policy, Peru has incorporated the Negotiable Invoice as an instrument that promotes the access to financing to MSES and medium-sized enterprises. The state converts the invoices for these companies in securities and gives them the ability to negotiate them and receive advance payment of their invoices (accounts receivable - credit sales), facilitating their collections by delegating this function to the bank and using their invoices as a guarantee for credit operations.

Another measure that has been adopted, as a tool for promotion of MSEs, is the creation of a system of advance recovery of General Sales Tax (VAT)[10], which purpose is allowing small businesses the refund of VAT paid in new capital assets acquisitions. This benefit aims to provide cash to these companies, be an incentive for the purchase of capital goods, and thus improve productivity.

For its part, the tax administration, in a permanent effort to facilitate tax compliance, has developed the following solutions using information and communication technologies:

- **Electronic Invoice and e-books**

As part of technology benefits, SUNAT has included the use of the virtual environment for issuing the proof of payment and for the generation of electronic books in lieu of physical documents. This is a step in easing procedures for the issuance, shipment, registration, file and control of payment vouchers, which in turn reduces printing costs, administrative costs, storage cost, among others.

The MSEs will benefit from electronic invoices not only for their lower issuance costs, but also because these documents can become negotiable bills, and this way, become a means of financing. This system of issuance of proof of payment does not necessarily

[9] It corresponds to the Supreme Decree No. 013-2013-PRODUCE published in the newspaper El Peruano 28/12/2013.

[10] Law No. 30296, that promotes the reactivation of the economy.

imply implementation cost for the taxpayer since this issuance can be done through the SUNAT Portal. Based on this, electronic books (revenues or sales) can be generated. Currently 70,298 taxpayers issue electronic vouchers and more than 122 thousand taxpayers are registered with the electronic books system.

The following table shows the number of taxpayers affiliated with the system of electronic books from January 2013 to date:

Picture n ° 5

N °	**AFFILIATED 2 /**	**Affiliated since**	**Quantity 1 /**
1	PRICOS (Main taxpayers)	January 2013	13,945
2	Income exceeding 500 UIT ($ 531,760) From July 2012 to June 2013.	January 2014	20,798
3	Income exceeding 150 UIT ($ 166,084) From January to December 2014.	January 2015	41,572
4	Equal income or higher than 75 UIT ($ 84,135) From January to December 2015	January 2016	46,111

Source: SUNAT
1 / includes information from voluntary members.
2 / used exchange rate: S / 3.432 soles.

- **Pre-filled return**

The return that the taxpayer files to the tax administration constitutes a monthly obligation; this process was generated through the registration of receipts for payment of sales and purchases in order to determine the tax to pay for VAT for his subsequent report to the Treasury.
Considering that the tax administration has a permanent task of facilitating tax compliance using technological tools, we have implemented the so-called "suggested return" (or pre-filled return or shadow return). Via this mechanism, a proposal of tax return is available to taxpayers for their review and compliance. This proposal is built through information contained in the electronic books submitted by taxpayers each month to SUNAT.

Taxes that may be reported with this tool are the General Sales Tax (VAT), the Income Tax payment, the monthly payments of the Special Income Regime and the Milled Rice Sales Tax (IVAP).

In conclusion, this return constitutes a significant change in the way tax statements are submitted, as the tax administration does not wait for the taxpayer to determine the amount that must be declared. With the implementation of computer tools and using the information from the vouchers and e-books, the tax administration is in condition to suggest the return to the taxpayer and thereby facilitate compliance.

By December 2015, more than 122 thousand taxpayers affiliated with e-books could use this tool for the preparation and presentation of their returns.

- **New annual online return**

It is a new tool for legal entities and individuals required to file annual corporate income tax with income up to 300 UIT (US $ 345,280). This type of return will reduce the time that taxpayers need to prepare, file and pay their tax obligations since it has reduced the amount of information to be presented in the return, selecting only what affects the determination of the tax in the case of small enterprises.

- **New automatic Tax Fractioning**

It is usual that MSEs have liquidity problems that prevents them from completing their payment obligations in due time, because of problems that arise when they operate against larger enterprises where they end up accepting less favorable payment terms; while their purchase have to be paid immediately, their sales are often conditioned to deferred payments.

In this context, the tax administration has implemented a new procedure that will allow them to present requests of installments through the SUNAT Portal. This is coupled with an automatic evaluation procedure will allow small businesses have access to the fractional mechanism of payment of the tax debt. This new installment process is accompanied by a new installment regime, which allows to request more than one installment agreement and reduce approval time from 45 days to 5 days, all this in order to prevent the taxpayer from entering in a procedure of enforced collection.

Among the benefits, we find that debts are payable in up to 72 shares and do not require guarantees for their provision in the case of low-risk taxpayers (Good taxpayers). Approval is automatic in case of requests for debt up to 3 UIT (US $ 3,453) and with less than 12 months of installments.

- **Training sessions**

The tax administration is empowering taxpayers through talks that aim to provide the necessary guidance so that they can understand and apply the tax rules correctly and, at the same time, learn about the benefits of the tax regime to which foster children are given.

Therefore, SUNAT carries out nationwide lectures on topics of interest to the MSE sector. Between the year 2014 and 2015, there were 10,342 sessions with 544,079 participants.

Specific booklets for the MSE sector are also available, enabling them to know, in a quick way and in simple language, the steps to follow for the formalization of their businesses and the options of tax regimes available according to the type of organization and business activities.

- **Diffusion through the micro-site**

The new Portal of the SUNAT includes the construction of a micro-exclusive site for MSEs, in such a way that the specialized information is consolidated in one place, and virtual services assistance services are provided according to needs. This environment offers a structure simple, agile, user-friendly, and content with clear and simple language, accessible for all browsers and adapted to the different mobile devices.

5. CHARACTERISTICS OF A SPECIAL TAX REGIME FOR MSES

In most of Latin American countries, there is still a high degree of informality, high costs of tax compliance and weak management capacity of the MSEs segment. It is therefore important to propose a tax system that will support the needs of this segment of taxpayers, with reduced costs and simplified processes, for which the use of the information technologies play an important role.

- **Characteristics of the Scope of Application**

The regime should consider a simple quantitative criterion to support on the needs of the taxpayers in this segment. At the same time, their management must not be complex; therefore, we propose to define this segment by using as a quantitative criterion the annual income or sales volume of the financial year (12 months). As qualitative criterion, it should include activities of trade and industry in general, as well as some service activities (it should be limited to activities that do not generate high additional value or that could hamper the control).

- **Characteristics of the Taxable Base and Tax Rate**

The regime must allow an easy determination of the tax base and tax rate and for this, we determine taxes involved in this regime. It is proposed that this regime involve the income tax of legal entities or business income through a determination of the rate through a fixed rate or fixed quota that would replace the determination of the general income tax.

In addition, the regime must take into account the management of VAT, without affecting the nature of the value added tax. That is why other countries, except Mexico, have a deferred VAT. The consequence is, often, that MSE taxpayers cannot comply with timely payment, because their operations, when they are not the final consumers, take place under constraints from large buyers who make deferred payments for such operations. Therefore, if the taxpayers only perform operations with end consumers, the quota or amount paid must contain the VAT and the tax income of legal entities, as a one-time payment.

However in the case of taxpayers who require issuing invoices that give right to a tax credit and costs or expenses for the purposes of the tax on income of legal entities, the treatment must allow a timely payment related to the financial flow in order to not affect the MSEs' costs.

In relation to social security contributions, we believe that the single payment must include subsistence micro-entrepreneurs or those who operate with end consumers only.

- **Characteristics of the tax payment**

The settlement of the tax should be very simple; for this reason it is proposed that for micro-enterprises that perform operations with end consumers, the payment must be bi-monthly or quarterly with a lump sum calculated according to the income for the income tax of legal entities and VAT. It must include the social contribution of the micro entrepreneur and an additional fee for every additional worker, with a maximum of two additional assistants.

For those taxpayers requiring to give tax credit or cost or expense for purposes of the business tax, the liquidation of the income tax and VAT to be determined shall be submitted monthly, even if the payment is bimonthly for the micro and small taxpayers. However, contributions to social security must be cancelled on a monthly basis.

- **Benefits of a special tax regime for MSEs**

The issue of proof of payment, submission of statements, records and accounting, tax and compliance with reporting requirements is within the obligations of these taxpayers; for this reason, a regime for this segment must offer a strong element of facilitation of voluntary compliance, supported by information technologies that allow the reduction of compliance costs.

In line with the above, we propose that this system authorize taxpayers who operate with end-consumers to issue physical or electronic vouchers with minimal information and not deductible for tax purposes, except those that may be issued electronically through the website of the tax administration. They would not require carrying books or electronic records; they are exempt from submission of tax returns and can carry out bi-monthly payments free of interest penalties.

For taxpayers operating with others that require deducing their acquisitions for tax purposes, they will issue pay stubs by physical or electronic means. In case of using physical mechanisms of proof of payment issuance, they must submit details of their sales and purchases on a monthly basis in order to propose the tax return for VAT (only for those who perform operations taxed exclusively), except those who are subject to withholding for operations for which the withholding will provide clearance and be final. MSEs that issue pay stubs electronically will have at their disposition the suggested return for the taxes involved and the payment that they should carry out, which may be bimonthly, except for the social contribution.

For this reason, this regime create no obligation of bookkeeping and accounting records for tax purposes.

Through these mechanisms of compliance, taxpayers should not be further controlled by tax administration, since inconsistencies could be detected virtually by the online validation service, pending only verification of the causality of the expenditure or the authenticity of the operation, which can also be simplified if the expenses are determined objectively.

6. BENEFITS FOR THE TAX MANAGEMENT

The need to define an optimal tax system and a follow-up by the tax administration to facilitate voluntary compliance of MSEs is important and encourage the formalization of taxpayers in our countries, so the benefits of the new tax administration may be:

- **Tax morale**

The change in strategy in the management of the Mypes segment must strengthen the actions to generate greater confidence of society in the role of the tax administration to apply a fair tax system, allowing thus the legitimacy of the actions of the administration.

- **Control and assistance to taxpayers**

A tax system that recognizes the needs of MSEs will allow the tax administration to provide, thanks to the technologies of information, assistance systems that permit to guarantee the voluntary compliance with tax obligations and a timely and efficient control mechanism to prevent taxpayers from this segment to generate omissions or sanctions.

- **Use of information technologies and communications**

This aspect seeks to maintain simple and timely communications, able to generate alerts or preventive communications that encourage the timely compliance, and inductive communications seeking the correction of any omission. For all this different channels of communication will be used such as text messages to cell phones, e-mails to the

taxpayer's mailbox and mailbox personal representatives, as well as phone calls and physical letters, all of them seeking voluntary compliance.

- **Risk management**

Every system should be supported by Risk Management. While voluntary compliance by taxpayers is sought, it is important to manage information that allows implementing corrective actions in a timely manner and this is based on an efficient system of risk management in order to promote voluntary compliance but also to be capable in due time of sanctioning failure to comply .

7. CONCLUSIONS

- In Latin America, MSEs play a determinant role in the economy. They make the market more dynamic and are a source of employment; despite their minor tax importance, since they percentage of collection is small, this sector represents almost all of the business universe and therefore the design and implementation of State policies to promote their development constitutes one of the major current challenges.
- Peru has developed State policies that aim at developing the MSE sector, among which we find: benefits such as coverage of social security in health, pension coverage, the implementation of the negotiable invoice and anticipated regime for the VAT recovery. The Tax Administration, in its permanent efforts to facilitate tax compliance using information and communication technologies, has developed the following solutions: invoice and e-books, suggested pre-filled tax return, online annual return, new automatic tax scheduling, assistance in training, among others.
- Currently the Peru does not have a specific tax regime for MSEs, which have tax systems that are applicable to them but they have failed to stimulate their regularization or facilitate tax compliance by not considering their needs in some cases.
- The challenge for the countries is to implement a specific tax regime for MMSEs that accompany their development according to the needs that they face, and for the tax administration to use various Information and Communication technologies and information channels available to facilitate the tax compliance, reduce their compliance costs and encourage their formalization.

Topic 3.1

ADDRESSING THE TAX CHALLENGES OF THE DIGITAL ECONOMY, THREATS AND CHANCES FOR TAX ADMINISTRATIONS

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All of our economies are in a process of transformation. Some 30 years ago, typing machines were normal. Five years later, in the end of the eighties, digitalization started with the introduction of the computer and the nowadays already old fashioned fax machine. But the big change was the internet. People nowadays communicate daily with others through What's App, use Facebook to share their experiences, use Instagram to share photo's. There is a continuously exchange of digital information back and forth. These phenomena are used in the private lives of people but also in the business area.

The question is, how these developments affect our economy and how we propose to deal with these in the daily practice of our own tax administrations. A blue print with the solution to for this challenge is unfortunately not available, but everybody knows that we live in a time of change that will affect our daily lives and work hugely.

Some of these questions were addressed in the BEPS Action Plan. Action one of this plan was *Addressing the tax challenges of the Digital Economy*[1]. Actually this is a remarkable part. Whereas all BEPS-reports have very concrete subjects, like strengthen CFC rules or prevent treaty abuse, this report has a more economic and general outlook. It was also prepared by a different task force, the task force on the digital economy, a subsidiary body of OECD. Goal was to identify the main difficulties and challenges that the digital economy poses for the application of international tax rules and develop detailed options to address these. So there is the link to taxation again. I will use in my presentation much information from this report, a report which is quite substantial, but also very rich in facts and thinking.

The *evolution of information and communication* technology is affecting for instance

- Personal computing devices
- Telecommunication networks
- Software
- Content

[1] OECD (2015), Addressing the Tax Challenges of the Digital Economy, Action 1-2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

http:/./dx.doi.org/10.1787/9789264241046-en

- Use of data
- Cloud based computers

Personal computing devices continue to be innovated, a relatively recent development are combined packages of hard and software, such as smart phones and tablets. Internet service providers became central to the digital economy because they power and operate the infrastructure of the telecommunication networks. Software and content bring new market players, like You Tube and Wikipedia in the field. More content than ever has been available to the user but it offers also business opportunities in the form of getting customer information, through cookies for example. Data can be collected, stored, analyzed and used for instance for tailor made offers to customers. Cloud based processes offer services delivered wherever you want.

Emerging and potential developments continue, like for instance:

- Internet of things
- Virtual currencies
- Advanced robotics
- 3 D printing
- The sharing economy

One of the most interesting of these developments is the Internet of Things, as opposed to the 'Internet of people'. People communicate with each other by sending digital information back and forth, this is called the 'Internet of people'. Below the network of interconnected people, a much larger domain is emerging, of devices owned by these very people. A device of pivotal importance is the smart phone. This has enabled people to communicate any place and any time, thus greatly expanding the Internet of People's range – both in terms of geography and frequency. The defining characteristic of the Internet of Things, is that all devices now communicate directly with each other, via their unique IP numbers. This gives vast possibilities for individuals and organizations to use their resources more accurately, making informed purchasing decisions, a growing productivity and a faster adaption to changing environments. Or as tax administrations, endorse compliance on a large scale.

Virtual currencies offer many possibilities, they can be used sometimes only in online games or be general, like bit coins, and exchanged for real currency. There are disadvantages also, because transactions have an anonymous nature, which makes it difficult for tax administrations to levy taxes.

Advanced robotics could lead to growing productivity and lower prices. 3D printing can bring manufacturing closer to the customer and could mean a move away from mass production. In the health industry 3D printing is already used for hearing aid earpieces. Again, taxation may require a different form.
The sharing economy gives a rise to the informal economy, even more when adopting non-monetary models. Furthermore the rise of new service models, such as Uber and Airbnb, based on facilitating services between citizens instead of providing these

services themselves, provides new opportunities for the economy but also challenges our tax administrations. Many of the major digital companies are young and were designed from the beginning to operate on an integrated basis at a global scale. These new business models in the economy don't fit in the regular formats we've known so far, have a different operating model and ask for new and flexible responses from tax administrations. A data-driven approach, co-operation with suppliers in the value-chain and implementation of business systems that include taxation seem directions to explore. As these developments have to a large extent a cross-border nature, co-operation between tax administrations may be part of the solution.

All these developments lead to *the emerging of new business models*. Electronic commerce, like

- Payment services
- App stores
- Online advertising
- Cloud computing
- High frequency trading
- Participative networked platforms

Most people have purchased through the internet, goods or booked tickets. Children prefer buying on line to going to shops. New payment services offer the possibility to travel or to order coffee without real money. Online advertising has opened a complete new market for advertisers which can now reach a more targeted user group. Cloud computing can be used for email, photo storage and social networks, just to mention a few. High frequency trading is used for exploiting small price movements, thus changing the whole security and stock market. Participative networks make it possible to collaborate and contribute to develop, extend, rate, comment and distribute content. They can be used as social networks, but also for designing fashion, toys or computer games.

The digital economy is part of the real economy, and alas, where there is *tax avoidance* in the real world, there is also tax avoidance in the digital economy. Some forms of these are:

- Avoiding a taxable presence
- Minimising income
- Avoiding withholding tax
- Eliminating or reducing tax in the intermediate country
- Eliminating or reducing tax in the parent country of residence
- Avoiding VAT

Even more so, because of typical key features. There is the mobility of intangibles, such as software. Furthermore there is a mobility of users and customers. Advances in ICT and the increased economy that characterizes the digital economy, mean that an individual can reside in one country, purchase an application in the second and use the

app in a third. Proxy servers may intentionally or unintentionally disguise the location at which the ultimate sale took place. Businesses can now integrate their business on a central location that may be far removed from the location where their customers are located. So we can draw the conclusion that the digital economy poses a challenge to compliance. This is not a threat per se through the development of the digital economy - it could have happened also in the old economy - but digital developments offer far more possibilities for tax avoidance and evasion.

Can we define this threat? Where are the greatest risks? This article is not the place to give a briefing about the technical possibilities for tax avoidance or evasion. But these are there for sure and are also mentioned in the OECD report about *Addressing the Tax Challenges of the Digital Economy*. Some of the possibilities to avoid taxes have already been summed up. The digital economy places less reliance on a physical presence in a country. A quote from the invitation of a TPA global newspaper: “the majority of multinational companies are now organizing their sales payments and consumer communications online, with information being obtained online and the overall commercial process being undertaken mostly through technology platforms.

From the supply chain perspective reach has become an important variable. With online consumers coming from all around the world companies are able to sell in many jurisdictions. These new digital or online business models are harder for the tax authorities to understand and are considered to leave open doors for profit shifting and tax avoidance in this new digital economy.”

You can sell your products through a website or through an app and domestic laws of most countries require some degree of physical presence in a country. When you combine this with strategies that eliminate taxation in the State of Residence, a company may succeed in not paying taxes anywhere.

But the main question is, can you do something about this? And then you get to the conclusions of the BEPS-action plan. Action 2 of the package dealt with hybrids, action 3 with CFC’s, action 4 with interest deductions, action 6 with treaty abuse, action 7 with permanent establishment, action 8 till 10 with transfer pricing issues and action 11-13 with transparency. Solutions of all the actions of the BEPS package were also presented, ranging from models, to transfer pricing guidelines of proposals for domestic law.

The Fifteen Technical Area of OECD's Action Plan on BEPS [3]

The fifteen technical area of OECD's Action Plan on BEPS are outlined in the table below.

Action Plan	Key Technical Area
Action 1	Address the tax challenges of the digital economy
Action 2	Neutralize the effects of hybrid mismatch arrangements
Action 3	Strengthen CFC rules
Action 4	Limit base erosion via interest deductions and other financial payments
Action 5	Counter harmful tax practices more effectively, taking into account transparency and substance
Action 6	Prevent treaty abuse
Action 7	Prevent the artificial avoidance of PE status
Action 8	Moving intangibles among group members
Action 9	Transferring risks among or allocating excessive capital to group members
Action 10	Engaging in transactions which would not or would only very rarely occur between third parties
Action 11	Establish methodologies to collect and analyze data on BEPS and the actions to address it
Action 12	Require taxpayers to disclose their aggressive tax planning arrangements
Action 13	Re-examine transfer pricing documentation
Action 14	Make dispute resolution mechanisms more effective
Action 15	Develop a multilateral instrument

2

The conclusion of the report itself is clear:

- The digital economy enlarges BEPS-risks
- The digital economy is becoming the economy itself
- New issues being raised, new solutions needed.
- Continuous evolution, so keep monitoring impact

There is no clear separation any more between the economy as we used to know and the digital economy. They are already fully integrated. BEPS risks were already there, but in this new economy, BEPS risks are aggravated by the technical innovations. And

3. Release of OECD Action Plan Final Report and it's Tax Implications to China and Hongkong, Oct. 2015

these continue in a fast pace. We will not see this stop, we will not be given much time to evaluate and to contemplate all solutions, but have to make a rapid reaction to developments and come up with a quick implementation of the BEPS action plan.

Monitoring developments will be necessary. But we need also a change of tax administrations.

So far technological developments have only be presented as threats for taxation. The good part of all these technical developments are that they offer many *possibilities for tax administrations* as well. To mention four of them:

- Big Data & advanced analytics
- Mobile computing
- Internet of Things
- Cloud Computing

The first of them is *big data and analytics*. They can offer:

- Better insight in compliance behaviour by monitoring real time and forecasting activities
- Effective 'customized' interventions
- Optimized resources
- Risks: security, privacy, (perceived) ownership of data

Organizations are more and more 'data-driven'. Data from business operations, machine-generated data and also unstructured data such as e-mail and tweets, hold a wealth of information about for instance business operations or customer behavior, previously often untapped sources, leading to new service possibilities. For us that means we can optimize our resources. It allows us to proactively offer customized tax solutions. Advanced analytics also make it possible to target businesses with different interventions and rapidly assess the effectiveness of these interventions. The risks involved are worth mentioning: there are issues as privacy and ownership, but also increasing expectations of public on tax administrations to safeguard the data, and being perceived as 'Big Brother'.

The second is *mobile computing*. It offers:

- Better insight in compliance behaviour by monitoring real time and forecasting activities
- Effective 'customized' interventions
- Optimize resources
- Risks: security, privacy, (perceived) ownership of data

The development of mobile payment systems introduced by mobile service providers are opening up new forms of payment by SMEs, using their mobile phone. There is a growing use of such digital wallets and money transfer systems such as M-Pesa, which

is used in many countries in Africa. Looking from a tax compliance point of view it is noteworthy that the use of mobile payment systems both can be an opportunity as a threat. The use of payment systems can lead to a better registration of payments and transactions, which opens opportunities for 'real time reporting' that didn't exist in the 'cash era'. The governance and security measures that are part of payment systems make it more difficult for businesses to underreport, i.e. hide or disguise sales income (e.g. through the use of sales suppression software). The use of third party information from financial institutions will make detection of such practices easier. However developments such as block chain solutions may as well be less transparent and more difficult to include in the tax reporting processes. For tax administrations, seeking further cooperation with providers of financial services, this can bring new challenges. Taking a system perspective is even more important and looking at the system-as-a-whole, that is the chain of processes including invoicing, payment, accounting and reporting. Again there are security issues: privacy and security have to be secured and the quality of data has to be guaranteed.

The third is the *internet of things*. It offers:

- Increase of digital solutions in servicing businesses
- Better information sharing by using tax information from third parties through M2M communication
- Increased end-to-end processing of data between businesses, tax service providers and tax administration with minimal intervention
- Possible risks: privacy and security, ownership of the data, quality of the data and standardisation

On a transactional level, the multiple connections enabled by the Internet (of things) offer possibilities for real-time data transmission from businesses and government agencies to the tax administration. This makes it possible for interactions to take place with minimal intervention from the businesses, which will result in greater convenience, better information and swifter procedures.

An example of an opportunity which has arisen from the IoT is the online cash register, which records all transactions and links with the tax system(s) and TSPs. This will help businesses in record keeping and meeting their tax obligations and provide a good basis for correct reporting. As the system is connected with the tax administration's systems, it could support dealing with taxes more real-time. Tax administrations ánd tax payers can develop tax applications that provide this interconnectedness. Again security issues…

The fourth and last is *cloud computing*. It offers:

- Improved services for SMEs in reducing compliance burden (e.g. more accurate pre-filled tax forms, automatic preparation of tax liabilities etc.)
- Seamless provision of data from other sources (e.g. SBR)
- Automation and simplifying the workflow

- Simplifying interactions with TSPs and/or SMEs
- Possible risks: privacy and security, quality of the data and difficulty of detecting fraud in automated computer environments

Cloud computing, also known as 'on-demand computing', is a kind of internet-based computing where shared resources, data and information are provided to computers and other devices on-demand. It has become an established concept for operating data centers and building new kinds of business software. The main advantage is that the initial investment for the users is low and they pay per use. Cloud computing allows tasks such as bookkeeping and reporting to be to largely automated, which leads to more efficiency, better quality and easier access to information. Using cloud computing offers opportunities to improve tax compliance. A high level of automation leads to better controls (including full audit trails), while every transaction or modification will be logged. It also enables tax administrations to offer more accurate pre-filled tax forms and automatic preparation of tax liabilities. The use of *standard business reporting* (SBR) software will enable seamless provision of tax return information to tax administrations.

In the Netherlands the Tax and Customs Administration is having big changes implemented. It comes from the same new thinking on the use of technology which was mentioned earlier. Generally speaking: the Netherlands tax administration is doing the job well, but has to adapt as a result of the digital economy. The proposals for a new tax administration were presented last year. The reactions were positive. The 5 *main ingredients of the Investment Agenda* are:

- Improvement of the interaction with tax payers. Development of portals
- Information driven treatment
- Massive investment in IT systems, recasting compliance risk management
- enhancing the use of data and analytics capabilities
- Development systematic management information

The first is *improvement of the interaction with tax payers, development of portals*. An average citizen in the Netherlands, at least the young ones, is 24/7 on line, but the tax and customs administration is still communicating with letters and brochures. The Netherlands banks and insurance companies have individual portals, but the tax administration has not, at least not yet. The administration is now changing our interaction model with the tax payer. Letters sent to tax payers lead to telephone calls with our call centre, because letters are often not well understood and therefore raise additional questions. Too much effort – at least how NTCA sees it - is now put into procedures dealing with complaints from tax payers. The tax payer nowadays wants something else, he or she wants an online up-to-date and complete insight in his fiscal position. Goal is to develop new methods of interaction and to have a portal available in five years time.

The second is *information driven treatment*, which can be done much better with the new technology. We are recasting our compliance risk management strategy.

Everybody gets the treatment which he or she deserves. On one hand there are the self servers. The tax administration is planning to make it for them as easy as possible. There will also always be tax payers who need help but don't mean any harm. The tax administration will provide that service. But the tax payers who don't want to comply, will get a different less tolerant treatment. It will be far more easy to find this group.

The third is a *massive investment in our IT-systems*. In the Netherlands the tax organization was one of the early adopters, but it is now more or less to hampered by complex IT-systems. Investment programmes with use of the most modern technology look very promising. The prefilled income tax return has been a big success in the Netherlands. The tax administration is now researching possibilities to provide prefilled tax returns for SME's based on their financial information stored in the cloud. Tax providers could play a good additional role in setting up the necessary standardization for their clients.

The fourth is *to enhance the use of data and analytics capabilities*. The first is *data analytics*. Tax administrations have a wealth of data, but in the Netherlands they are not used in the most optimal way. This is an area that gets extra attention in optimizing and actualizing the ways of working and approaches of NTCA. Enforcement can be more efficient than the regular approach through data analytics which was mentioned earlier.

The Netherlands Tax and Customs Administration has developed a new data layer on top of all the different sets of data coming from the regular IT-systems, so now all available information can be combined. Through the link in the systems possibilities for paying tax debts are easily seen and up-to-date. Profiling can also reach a next and higher level. Mathematic risk models using random sampling, prove to be at least as effective as professional judgment, and this is only the first phase of development. Now the tax administration is monitoring dynamically the tax debts. A development related to this is the growing transparency worldwide. Through this transparency even more information comes available, like through CRS and CbC. Compliance can be even more supported.

Last point is the *systematic management of information*. There will never be enough means for the Dutch tax administration to do everything which is necessary. So the right choices have to be made to make optimal use of the available capacity. With systematic management information, up to date, comparable, complete. Again, a new use of technology. This is also necessary to convince society that the tax administration is an efficient and effective organization.

As predicted, at least five years are necessary to develop this mind shift further and realize this new type of tax administration. It is also important to take time in getting on board the loyal and able colleagues who have taken care all these years for the well functioning Dutch Tax Administration. Like it was said earlier: the tax administration is doing the job well, but it has to adapt to this new digital era.

Topic 3.2

SOCIAL BEHAVIOR, ETHICS AND TAX MORALE

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Contents: Introduction. 1. Tax administration Integrity. 1.1. Ethics in tax administration. 1.2. Trust between tax administrations 2. Integrity in the Context of the International Tax Agenda 2.1 Base Erosion and Profit Shifting. 2.2 Automatic Exchange of Information. 3.3 Impact on Tax Administrations. 3. CIAT: Looking Ahead.

INTRODUCTION

While taxpayers are legally obligated to pay tax, it is widely understood that the willingness of taxpayers to transfer their resources to the state through taxation is highly dependent on their having confidence in the tax administration. To maintain this relationship, tax officials must remain diligent and impartial in carrying out their duties with the aim of protecting their organization's reputation for ethical and professional conduct. In other words, integrity is an unchanging pre-condition to effective tax administration.

However, what does change is the context in which tax administrations operate, which in parallel brings new challenges that tax administrations must navigate. This dynamic has perhaps never been more pronounced that it is currently. Given the unprecedented focus on improving the international tax system over the last several years, tax administrations are becoming increasingly interdependent and are now on the cusp of unprecedented levels of international tax cooperation to put those improvements into practice. In turn, this is amplifying the dialogue around the role of, and risks to, integrity in the face of greater operational complexity. In particular, the recent work on base erosion and profit shifting (BEPS) and automatic exchange of information (AEOI) has important implications in terms of the way tax administrations interact both with taxpayers and with one another. As these measures are implemented, the increase in information sharing and exchanges alone is expected to be significant. How a tax administration ensures that it carries out its duty to protect taxpayers' rights to privacy, confidentiality and fair treatment in light of these changing dynamics is a question that merits due consideration.

These important principles are a vital part of why integrity is a core and enduring component of CIAT's work. In 1996, CIAT member countries agreed on a

comprehensive list of *Minimum Necessary Attributes for a Sound and Effective Tax Administration* (Minimum Attributes – see Annex 1); together, these attributes establish the underpinnings of a culture of integrity. Nine years later, members signed a Declaration on the Promotion of Ethics in Tax Administrations. This year, as CIAT celebrates fifty years of work to improve tax administration practices, it is fitting that its vision for the future continues to emphasize the importance of tax administration integrity.

This paper briefly explores the implications of increasing international tax cooperation on integrity and the need for continued vigilance and strengthening of ethics and trust in a tax administration context. Further, it offers a starting point for CIAT to consider how it can build on its experience and leadership in this area to further advance dialogue and practice on this critical tax administration matter.

1. TAX ADMINISTRATION INTEGRITY

Tax administrations are powerful institutions by virtue of the considerable powers granted to them to exercise their mandate. These powers come with great responsibility. Tax administrations are called upon to carry out their duties with integrity by serving in the public interest and building trust. Trust is much easier to build, than it is to rebuild once it has been lost, and it is, by its nature, fragile. A tax administration, therefore, can never take public trust for granted, and must pursue organizational integrity continuously, and vigorously.

Tax law compels taxpayers to provide some of their most private information to tax administrations. Tax administrations have the obligation to safeguard this information against unnecessary intrusions and use of information for purposes other than those allowed by law. The protection of privacy and confidentiality rights is therefore a central and inherent aspect of integrity; even a single breach can cause a tax administration to suffer significant reputational harm. Likewise, a tax administration's powers to enforce tax law must be balanced by a corresponding obligation for consistency in the application of that law. This notion of a taxpayer's right to fair treatment is one that is embedded in CIAT's Minimum Attributes, which in part establish that the 'guarantee of taxpayer trust…requires that an administration…guarantee the fair, reliable and transparent application of the tax policies and laws.'[1]

1.1. Ethics in tax administration

All tax administrations require an ever-improving system of rigorous checks and balances to ensure that the trust placed in them is well-founded. Rules are essential for clarifying the standards for employee conduct, and can (and should) be complemented by preventative measures like transparent processes and operational procedures. However, as effective as these measures can be, alone they are unlikely to enable a tax

[1] Minimum Necessary Attributes for a Sound and Effective Tax Administration, CIAT. 1996

administration to build and sustain a culture of integrity. Studies show that both clear rules and shared values positively impact the ethical behaviour of employees. The effectiveness of rules is enhanced by also focusing on values-based approaches, such as ethical culture building, and supportive leadership. Shared organizational values can help to establish a common philosophy and orientation and serve as an ethical compass. It is imperative that a tax administration seeking to influence ethical employee conduct, balances its necessary rules and controls with strong shared values.

Ethics can be regarded as standards of behaviour that instruct actions in different situations.[2] They describe one's orientation relative to what is considered 'right' or 'wrong' behaviours, the former being ethical, and the latter, not. For agents of government, as tax officials are, being ethical in one's professional capacity requires that one's individual actions, decisions, words, and purpose, align with public service values. In other words, the daily decisions and actions of tax officials must sustain, not sacrifice, public trust and confidence. The notion of ethics is also relevant at the organizational level. A tax administration's ethics are reflected in the policies and practices that govern and characterize its dealings with those with which it has relationships, and can be observed in how it responds to internal or external events.

CIAT has been at the forefront of work is this area. The Minimum Attributes developed in 1996, and agreed to by CIAT member countries, have stood the test of time, remaining relevant throughout the numerous challenges and transformations tax administrations have undergone during the past two decades. Further, in 2005, CIAT's commitment to the minimum attributes was refreshed and restated in a Declaration on the Promotion of Ethics in Tax Administration (the Declaration). Among its key points, the Declaration recognized 'that integrity is a fundamental value for all nations… [and] that the promotion of ethics must be at the heart of all policies of the tax administration.'

1.2 Trust between tax administrations

As taxpayers are ultimately responsible for their compliance with tax laws, the notion of integrity tends to be considered most relevant in the context of the relationship they have with their tax administration. However, there are other relationships, to which the notion of integrity could potentially apply: such as the relationships between tax administrations that arise by virtue of cross-border taxation. The smooth functioning of the international tax system relies on effective cooperation between tax administrations. That said, effective cooperation does not occur without effort; rather, good working relationships between tax administrations are arguably built on the understanding that partners will collaborate in a way that builds trust and is consistent with the principle of integrity. In other words, effective collaboration requires each partner to extend trust to

[2] http://www.ibfd.org/sites/ibfd.org/files__/content/pdf/ethics_for_tax_administrations.pdf?utm_source=WhitePapers&utm_medium=Download&utm_campaign=Integrity

others, as well as to interact with others and carry out their responsibilities in a way that meets a certain standard of behaviour.

Around the world, taxation is largely governed by various agreements, rules and standards, many of which are supported by internationally endorsed guidelines. A proven commitment to adhere to signed agreements and endorsed standards is characteristic of a trusted tax administration, and shows a willingness to cooperate transparently with other tax administrations. It is equally necessary, however, to demonstrate the capacity, both technically and institutionally, to honour these commitments. For example, the inability to safeguard taxpayer data would undermine an effective working relationship between tax administrations for the purposes of information exchange.

1. INTEGRITY IN THE CONTEXT OF THE INTERNATIONAL TAX AGENDA

It is acknowledged that a robust and efficient international tax system is an important element of global economic resilience. International and regional organizations continue to work together to advance a set of interrelated priorities, substantively aimed at countering tax avoidance, specifically BEPS, and reforming the international tax system; and, increasing tax transparency through AEOI. In recent years, overwhelming international attention has been focused on this agenda, and it continues to occupy a central position in international tax dialogue. CIAT has been highly engaged in this work, including through its ongoing role as a BEPS regional network.

Over the past year, the focus of work on both BEPS and AEOI has shifted from policy toward practical implementation, placing tax administrations at the heart of efforts to implement key outcomes. With the settling of policy issues, tax administrators now must answer the question of how measures can be made to work in practice.

1.1. Base erosion and profit shifting

BEPS refers to legal tax planning arrangements undertaken by multinational enterprises (MNE) that exploit the interaction between domestic and international tax rules to shift profits away from the countries where income-producing activities take place. After two years of policy discussion, the Organisation for Economic Co-operation and Development (OECD) released the final BEPS package in October 2015, which received G20 endorsement in November 2015. Comprising 15 actions aimed at strengthening international tax rules to prevent tax avoidance by MNEs, the package offers the following:

- reinforced international standards to ensure better alignment of the taxation of profits with the jurisdictions where economic activity takes place;
- improved availability of information for tax authorities through reporting and exchange of information between treaty partners;

- strengthened tax treaty provisions to prevent abuse and provide for early resolution of cross-border tax disputes; and
- recommended best practices for the design of domestic legislation.

Importantly, the BEPS package includes new minimum standards, including those on country-by-country (CbC) reporting and curbing harmful tax practices. With the implementation of these minimum standards, countries will be required to exchange information related to:

- For large MNE's, under CbC reporting, the amount of revenue, profit before income tax, income tax paid and accrued and other indicators of economic activities for each tax jurisdiction in which they do business; and
- the details of new tax rulings, including those pertaining to tax incentives.

While more than 40 countries participated directly in the work on BEPS, for the project to be truly representative, it was necessary to receive input from as many countries as possible. By hosting regional consultations and attending OECD Committee on Fiscal Affairs (CFA) meetings, CIAT and other regional organizations played an important liaison role — keeping member countries abreast of BEPS developments and ensuring their priorities and concerns were heard. This need to ensure broad engagement and involvement was further reflected in the development of an inclusive framework for BEPS implementation, which was endorsed by G20 Finance Ministers in February 2016 in Shanghai, China.

Implementation of BEPS has started, with a number of countries having already adopted legislative changes to implement a number of measures. With respect to these changes, the recent *OECD Secretary General Report to G20 Finance Ministers* notes that:

…This is particularly the case with respect to hybrid mismatch legislation, but also for country-by-country (CbC) reporting. Many countries have already enacted legislation or regulations to require companies to file their CbC Reports in accordance with the requirements included in the BEPS Action 13 Report...Further 32 countries have already signed the multilateral Competent Authorities Agreement which provides the legal mechanisms to exchange CbC Reports automatically… information concerning 2016 accounts of MNEs should be filed in 2017, and then exchanged as planned in 2017 or 2018.[3]

2.2 Automatic exchange of information

In 2014, the G20 endorsed a global Common Reporting Standard (CRS) for AEOI, which, when implemented, will give access to foreign financial account information to all

[3] OECD Secretary-General Report to the G20 Finance Ministers, February 2016

participating jurisdictions. Jurisdictions committing to use the CRS will automatically have access to standardised information on residents' financial accounts abroad. So far, 96 jurisdictions, including 19 CIAT member (or associate member) countries, have committed to undertaking the first exchanges under the CRS by 2017 and 2018.[4] The OECD, through its Forum on Tax Administration, is currently working on the development of a common transmission system (CTS) for AEOI, which will allow participating countries to transmit tax information electronically, in a secure environment. Several CIAT member countries are involved in this work.

As with any exchange of information, exchanges under the CRS can only take place provided the proper legal framework is in place. The Convention on Mutual Administrative Assistance in Tax Matters (MAC), which provides a legal basis for AEOI, is the principal instrument by means of which committed jurisdictions will implement the CRS. The CRS also sets out clear requirements that must be met by all jurisdictions participating in AEOI with respect to confidentiality, data safeguards and proper use of the information.[5] Moving forward, the existing legal and administrative framework for AEOI, including the CTS, may be used for other types of tax-related exchanges, as part of the implementation of the BEPS package.

3.3. Impact on tax administrations

Deepening dialogue on the implications of BEPS and AEOI implementation has revealed a number of integrity issues and challenges for tax administrations including:

- data security;
- appropriate use of data
- consistent application of new rules, and;
- capacity

Data security

Tax administrations implementing BEPS outcomes and AEOI will face the challenge of handling a significantly increased volume of data, including data from a range of new sources, which will be sent to and received from new exchange partners.

As previously noted, tax administrations have a duty to protect the privacy and confidentiality of those to whom the data belongs, so implementing rigorous safeguards over storage and access are considered necessary investments. For some tax administrations, the challenge may lie more with building the right measures whereas

[4] Ibid.

[5] Standard for Automatic Exchange of Financial Information. Common Reporting Standard. OECD https://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-financial-account-information-common-reporting-standard.pdf

for others, it may be more an issue of the scalability of existing protocols to meet the demands of vastly expanded data sets. With respect to AEOI specifically, the Global Forum's AEOI Working Group is currently reviewing jurisdictions' confidentiality and data safeguards, with a view to future peer reviews of AEOI capacity. These safeguard reviews will help provide CRS signatories with some degree of assurance with respect to the readiness and reliability of potential exchange partners.

Appropriate use of data

As custodians of new data sets, tax administrations will also need to ensure that this data is only used for authorized purposes. More particularly, information received from other countries may only be used for the purposes provided for under the treaty pursuant to which the information has been exchanged. It would be a serious breach of most exchange agreements, and potentially a conflict of interest, for a tax administration to share information received from another jurisdiction with, for example, private corporations, or to make it available to the general public. Likewise, the sharing of taxpayer information with other government departments and agencies is typically prohibited, unless explicitly permitted in information exchange agreements.

There is also the important – and perhaps more pressing – question of appropriate use of data within the tax administration. This is particularly relevant in the case of CbC reporting. The framework and guidance for CbC reporting restricts tax administrations to using the provided MNE data only to assess high-level transfer-pricing risks or other BEPS-related risks.

Further, because CbC reporting includes an element of exchange between tax administrations, it is anticipated that respect for the conditions established through the guidance developed will inform the extent to which a given tax administration can be considered a trusted exchange partner. Putting appropriate internal protocols in place is likely to form part of the solution. Through their joint membership in the FTA, several CIAT members are already participating in work to address this issue.

As countries proceed with implementation, it will be important that tax administrations work together through the various multilateral fora to share best practices and help build capacity in this area.

Consistent application of rules

Beyond data security and use considerations, there is also the much broader issue of the appropriate application. Presuming sufficiently widespread adoption of new measures (itself a policy matter) the challenge for the tax administration community lies in ensuring a common understanding and approach to the application of rules and guidance themselves. However a difference in the interpretation and application of any rule has the potential to be seen as inconsistent with the notion of fairness.

Tax administrations need to be confident that peer administrations can, and will, implement and apply new international tax standards in a consistent and equitable way.

Capacity

Demanding deadlines and competing priorities present challenges for tax administrations, particularly in the allocation of resources, the development of expertise, and the maintenance of relationships with external stakeholders, including taxpayers and tax administrations of other countries. As we navigate this environment, it will be important that tax administrations continue to collaborate and seek opportunities to support capacity development through the sharing of knowledge, expertise and tools to increase the efficiency, effectiveness and fairness of tax administrations.

In a context where integrity is a pre-condition to effective tax administration, the CIAT Declaration on Promotion of Ethics in Tax Administration, as referenced in Section 2.1 of this paper, contains eight key elements that are essential to an effective tax administration integrity program. In summary, these are:

1. Leadership and commitment, for the safeguarding and promoting of integrity in tax administration;
2. The presence of a clear, precise, public and easily accessible legal framework;
3. Fairness in law and how it is applied;
4. Prevention of inappropriate access or use of tax information through automation;
5. Management autonomy, to guarantee the impartiality of the tax administration;
6. Efficient accountability mechanisms, which allow for oversight and control;
7. The use of codes of conduct to unambiguously set out expected standards of behaviour for tax officials; and
8. The application of sound human resource management practices.

As the only tax organization with a consistent, dedicated focus on tax administration ethics, CIAT members explore these important foundational issues through the Permanent Committee on Ethics. Over the years, the work of the Committee has resulted in a range of products designed to assist CIAT member (and observer) countries to explore best practices in tax ethics, and examine methods for building integrity within their respective organizations.

Notably, these materials include a self-assessment guide and accompanying ethics toolkit, an ethics training course, fact sheets, and an integrity matrix that enables member countries to share how they address the minimum attributes. Annual Committee meetings have also provided attendees with an unequalled opportunity to learn from peers in other tax administrations, to explore best practices and to discuss pressing ethical issues, increasing the awareness and capacity of all participants. Moreover, the Minimum Attributes and Declaration have enduring relevance and appeal. CIAT is well-positioned to build on its expertise and contribute substantively to

the dialogue on ethics and integrity generally, but also in the context of international cooperation.

3. CIAT: LOOKING AHEAD

CIAT has been at the forefront of work on ethics in tax administration over the past twenty years.

Canada, as sponsor and Chair of the CIAT Permanent Committee on Ethics, has a keen interest in the ongoing relevance of work in this area. CIAT's recent decision to refresh and renew the mandate and membership of the Committee is a positive step in ensuring that this important area of work remains relevant to members, while maintaining CIAT's international leadership in this area.

As the new Committee considers work priorities for the coming years, its members may want to consider how to leverage its unique position, experience, and expertise in the context of increasing international collaboration. For instance, as integrity and ethics have universal appeal within the tax administration community, CIAT may wish to explore opportunities for broader engagement with others, beyond its membership and that of the Ethics Committee. This could include joint work with other organizations with whom CIAT has collaborative arrangements, and leveraging technology (e.g. through CIAT's partnership with Canada on the Knowledge Sharing Platform) to extend the reach of CIAT's collective ethics and integrity knowledge, expertise, and innovative practices, to the global tax administration community.

As CIAT embarks on its next 50 years promoting the evolution, social acceptance, and institutional strengthening of tax administrations, the time is right to take stock of our current efforts and needs. We must ensure that this important area of work remains relevant to our membership and is reflected in CIAT's future priorities.

Annex 1 - Minimum Necessary Attributes for a Sound and Effective Tax Administration

Approved by the CIAT General Assembly held in Santo Domingo, Dominican Republic on March 19, 1996

INTRODUCTION

This charter-document defines the attributes considered desirable and necessary by the CIAT member countries in order that a tax administration may be considered efficient, effective, modern and professional.

The charter includes fundamental principles whose achievement and permanence must be pursued by the CIAT tax administrations for guaranteeing the integrity, impartiality and continuity of their actions, and which may evidence the most strict observance of ethics in their performance, to thus promote the taxpayers' respect therefor. On offering these guarantees, the tax administrations will not only render their customers a good service, but will also inspire the public's trust in the Government and the institutions.

Whereas the common acceptance of these attributes by the tax administrations of the CIAT member countries is of utmost importance for committing them to their full application in those administrations;

Therefore, THE GENERAL ASSEMBLY

Declares

THE FOLLOWING MINIMUM NECESSARY ATTRIBUTES FOR A SOUND AND EFFECTIVE TAX ADMINISTRATION as a common objective for all the tax administrations of the CIAT member countries, which should be pursued by promoting compliance with the requirements provided for each of the attributes herein established:

1. GUARANTEE OF THE INTEGRITY AND IMPARTIALITY OF A TAX ADMINISTRATION

Requires:

1.1 A strict code of behaviour that defines and promotes the ethical and professional standards of performance and behaviour of all officials, specialized entities controlling such performance and behaviour and expeditious procedures for effectively detecting and sanctioning infringers.
1.2 Absolute incompatibility of the managerial and technical staff for carrying out taxpayer counseling activities or participating, in any capacity, in professional consulting companies or boards of directors of private companies.
1.3 Legislation providing for a precise administrative career and regulating the requirements for recruitment, admission and promotion exclusively on the basis of merit

and by means of competitions.
1.4 Staff remuneration in keeping with that offered in the market for similar technical qualifications, duties and responsibilities, that may allow for attracting and retaining individuals with the necessary capability for the performance of their functions.
1.5 Independence of the tax administration for determining its policies and strategies for controlling compliance with tax obligations, through strict application of the law, without concessions or favors for interference of senior level authorities or other members of the political power.
1.6 That the administration protect the privacy and confidentiality of information provided by the taxpayers, ensuring that such information be used solely for purposes of administering the tax system, without allowing access thereto, by individuals or entities unauthorized by Law.

2. GUARANTEE OF CONTINUITY OF A SOUND TAX ADMINISTRATION

Requires:

2.1 That managerial and executive positions below the level of the senior head of the service be filled on the basis of experience and professional merit.
2.2 That, except for the senior head of the service, all officials be guaranteed a career position, free of political influence. However, it should be possible to expeditiously remove from governmental service, officials showing unacceptable performance or inadequate ethical behaviour.
2.3 That long and short-term plans be executed for:

- Maximizing voluntary compliance with the legislation and reducing tax evasion.
- Improving productivity oriented toward quality of service and taxpayer satisfaction, while reducing the cost of compliance with their tax obligations.
- Simplifying procedures through the elimination of stages and processes that add little value to the expected result.

2.4 That the tax administration develops internal control processes for guaranteeing compliance with the established procedures, evaluating their adequacy and diagnosing the needs for modification.
2.5 That there be available human, financial and technological resources for ensuring an effective tax administration.
2.6 That the tax administration be consulted and may participate in the formulation of norms of superior hierarchy, dealing with the taxes under its responsibility and the management thereof, by contributing its experience through the presentation of proposals covering the needs inherent in the performance of its functions.
2.7 Capability and knowledge for adapting programs, services and organizational structures in order to effectively respond to legislative, technological and administrative policy changes.
2.8 Development of training plans that may ensure the technical improvement and permanent updating of the officials.
2.9 That the officials have sufficient authority for carrying out their duties and

responsibilities, and that they account for the way in which they use their authority.

3. GUARANTEE OF THE TAXPAYERS' TRUST

Requires:

3.1 An administration that may guarantee the fair, reliable and transparent application of the tax policies and laws, access, reliable service and taxpayer inquiries.
3.2 That the administration ensures the expeditious processing of taxpayer requests (refunds, extensions, etc.), solution of appeals and precise and timely answer of inquiries.
3.3 That the administration and the rest of the Government collaborate for developing tax consciousness, by making taxpayers aware of their tax obligations through the implementation of an integral communications strategy that includes forms, guides, public information, education and assistance in a simple language.
3.4 That the administration guarantees the rights of taxpayers, by diffusing them among the latter, and among its officials and ensuring respect therefor.

Topic 3.3

NEW MODELS OF INTERNATIONAL TRANSPARENCY, MULTILATERALISM AND SITUATIONS AND CHALLENGES AFTER BEPS

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Contents: Summary. 1. Introduction. 2. The IRS approach to transparency. 3. FATCA and expanded exchange of information. 4. Base erosion and profit shifting work. 5. Conclusion

Summary

It is often said, "Knowledge is power."[1] That comment is as valid with tax knowledge as with other types of knowledge. Tax administrations gain knowledge through transparency, that is, by learning as much as possible about the tax affairs of its taxpayers. Achieving transparency, however, may be difficult. The increasing globalization of activities allows individuals and entities to transfer assets outside the borders of their home jurisdiction in ways that may make it more difficult for the tax administration to locate the assets. Rights to privacy also may make it difficult to learn the location or amount of unreported assets. As a result, jurisdictions lose the power to enforce their own duly enacted laws, and, as a result of the consequent loss of tax revenue, also suffer a reduced ability to provide essential government services to their citizens.

If a tax administration can learn about all the assets or income of a taxpayer, wherever those assets may be located, then it can use existing compliance enforcement tools to ensure that the appropriate tax has been paid. Acquiring this information often requires multilateral cooperation. Nearly two years ago, the Internal Revenue Service Commissioner John Koskinen stated that

> "One of the most exciting aspects of our current times is to see governments working so closely together to ensure that taxpayers comply with the tax obligations of their home jurisdictions. With respect to individual tax compliance, we see this collaboration in the process by which FATCA[2] will soon go into effect, and it is younger but already bigger sister, the Common Reporting Standard, or CRS, will soon be adopted globally. The cornerstone of these efforts, of course, is the automatic, multilateral exchange of information, which signals quite clearly

[1] This phrase is generally first attributed to Francis Bacon. See http://www.bartleby.com/100/139.39.html.
[2] Foreign Account Tax Compliance Act.

that international tax transparency is no longer a distant hope, but rather an immediate reality.[3]

This paper will discuss U.S. approaches to achieving transparency. Some approaches require only unilateral actions – that is, statutory or regulatory rules that result in the availability of information useful to the U.S. nternal Revenue Service (IRS). Other approaches require cooperation among jurisdictions, as each country seeks to collect the proper amount of tax revenue to which it is entitled. The paper first discusses the history behind the need for increased transparency and early steps to achieve transparency. Then it discusses a major step in the U.S. goal to achieve transparency – the implementation of the Foreign Account Tax Compliance Act (FATCA). The work necessary to implement FATCA, especially the development of an electronic transmission platform, also demonstrated the feasibility of working in a multilateral setting to exchange information automatically and supported the subsequent development of a more widely applicable common reporting standard for the automatic exchange of information and the agreement of over 90 jurisdictions to work to implement this common reporting standard. Finally, the paper will discuss the Base Erosion and Profit Shifting (BEPS) project of the Organisation for Economic Cooperation and Development (OECD), which culminated in the development of 15 actions to address BEPS, as well as actions that the United States has taken to comply with the requirements of three BEPS Actions that are designed to increase transparency and encourage multilateral engagement.

1. Introduction

Tax administrations are facing unique challenges as they address an increasingly global taxpayer community. Multinational enterprises (MNEs) represent a large proportion of global gross domestic product with intra-firm trade now representing a growing proportion of overall trade.[4] Improvements in technology and the increase in global activity allow businesses to operate in geographic locations that are distant from their customers and provide services or digital products over the internet. Experience demonstrates that sophisticated tax planners are taking advantage of the current environment by identifying areas for legal arbitrage opportunities – that is, taking advantage of differences between the laws of two or more countries to prevent income from being taxed anywhere at all. These factors have led to MNEs feeling more confident in their ability to take aggressive tax positions.[5] Large MNEs are not the only ones benefiting from the current international tax system. At the root of all enterprises are individual taxpayers, who are also navigating today's international tax environment and seeking to take advantage of potential gaps between their home jurisdictions and

[3] www.irs.gov/PUP/irs/Commissioner%20Koskinen's%20Remarks%20at%20US%20CIB%20and%20OECD%20Int%20Tax%20Conf%20June%202014.pdf.

[4] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing, 7, available at http://www.oecd.org/tax/beps/action-plan-on-base-erosion-and-profit-shifting-9789264202719-en.htm. [hereafter "2013 Action Plan"]

[5] *Id.* at 7-8.

other countries.[6] Vast amounts of money are kept by taxpayers outside of their home jurisdictions and go untaxed to the extent that taxpayers fail to comply with their tax obligations.[7]

Underlying this behavior are the inevitable mismatches that result from variations in domestic laws. While taxation is at the core of a country's independent sovereignty, the interaction between the laws and regulations of various jurisdictions creates gaps and even friction in certain cases. The G20 finance ministers asked the OECD to develop an action plan that would aim to address such issues in a coordinated and comprehensive manner. The 2013 OECD/G20 BEPS Action Plan outlined 15 actions to address international tax avoidance. At its core, the OECD/G20 BEPS project identified where "the interaction of different tax rules leads to double non-taxation or less than single taxation."[8] The Final BEPS package was presented to the G20 Finance Ministers in October 2015 for approval.[9]

The Forum on Tax Administration (FTA), an organization comprised of 46 countries at different levels of income and capacity, is looking to support the work of tax administrators who are now faced with implementing the Final BEPS package and its recommendations. The FTA was created in 2002 and is a unique forum focused on tax administration for Commissioners from 46 OECD and non-OECD countries, including every member of the G20.

As tax administrations work to implement the 15 actions identified in the OECD/G20 BEPS project they will rely on mechanisms to encourage transparency through unilateral and multilateral relationships to reinforce innovative approaches to addressing today's ongoing challenges. The United States has taken steps to proactively address areas of concern and achieve greater taxpayer compliance. The United States strives to achieve greater transparency through the implementation of FATCA and its multilateral engagement in the OECD/G20 BEPS project. In addition to its work supporting Actions 5 and 13, the United States supports the FTA Mutual Agreement Procedures (MAP) Forum's efforts at implementing Action 14, which aims to improve dispute resolution mechanisms.[10] Each of these efforts is a step towards achieving the United States' goals of improving international transparency through multilateralism and adapting to the situations and challenges after BEPS.

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[6] *OECD presents outputs of OECD/G20 BEPS Project for discussion at G20 Finance Ministers meeting*, available at http://www.oecd.org/tax/oecd-presents-outputs-of-oecd-g20-beps-project-for-discussion-at-g20-finance-ministers-meeting.htm. [hereafter "BEPS discussion at G20"]

[7] *Automatic Exchange of Financial Account Information, Background Information Brief*, updated January 2016, 2, available at http://www.oecd.org/tax/exchange-of-tax-information/Automatic-Exchange-Financial-Account-Information-Brief.pdf.

[8] 2013 Action Plan, *supra* note 4, at 10.

[9] BEPS discussion at G-20, *supra* note 6.

[10] Alison Bennett, "Financial Institutions: IRS Watching for High-Risk FATCA Cases As Implementation Gears Up, O'Donnell Says" Daily Tax Rep. (BNA) No. 27, at GG-1 (February 10, 2015). [hereafter "IRS Watching for FATCA Cases"]

2. THE IRS APPROACH TO TRANSPARENCY

A. Background

The United States relies on a voluntary system of tax compliance. Taxpayers report and pay their taxes on the basis of a self-declaration system and with minimal interaction with the government.[11] The voluntary compliance rate overall is approximately 84%.[12] A "tax gap" exists when taxpayers do not pay voluntarily and on time the taxes that would be due if the tax law were correctly applied to the facts of the taxpayers' situations.[13] The tax gap for 2006, the most recent year for which reliable information is available, was determined to be over $300 billion.[14] Part of this tax gap results from unpaid U.S. tax liability on cross-border transactions by U.S. or foreign persons.[15]

While it is perfectly legal for U.S. taxpayers to hold money offshore, it is illegal for a taxpayer to fail to disclose substantial offshore holdings, or to fail to report income earned in the United States but "hidden" offshore, or to fail to report income earned offshore.[16] Over the past 15 years, there have been many stories about the use of offshore accounts. Congress, primarily the Senate Permanent Subcommittee on Investigation of the Committee on Homeland Security and Governmental Affairs, has held hearings on the use of private banks for anonymous account holdings.[17]

B. The Beginning of Transparency

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[11] U.S. Department of the Treasury, *A Comprehensive Strategy for Reducing the Tax Gap*, 2 (September 26, 2006), available at https://www.treasury.gov/press-center/press-releases/Documents/otptaxgapstrategy%20final.pdf.

[12] U.S. Department of the Treasury, *Update on Reducing the Federal Tax Gap and Improving Voluntary Compliance*, 2 (July 8, 2009), available at https://www.irs.gov/pub/newsroom/tax_gap_report_-final_version.pdf.

[13] *Id.*, Appendix, "Understanding the Tax Gap," i.

[14] IRS, *Tax Gap for Tax Year 2006* (2012) available at http://www.irs.gov/pub/newsroom/overview_tax_gap_2006.pdf. Although the gross tax gap for 2006 is actually estimated at $450 billion, the IRS expects to recover about $65 billion eventually through late payments and enforcement actions.

[15] Treasury Inspector General for Tax Administration, *A Combination of Legislative Actions and Increased IRS Capability and Capacity Are Required to Reduce the Multi-Billion Dollar U.S. International Tax Gap*, Ref. Number 2009-IE-R001, p. 1 (January 27, 2009), available at https://www.treasury.gov/tigta/iereports/2009reports/2009IER001fr.pdf [hereafter, TIGTA, *International Tax Gap*].

[16] Government Accountability Office, *Additional Time Needed to Complete Offshore Tax Evasion Examinations*, GAO-07-237, p. 4 (March 2007), available at http://www.gao.gov/assets/260/258529.pdf.

[17] Report titles include *Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities* (November 1999); *Role of U.S. Correspondent Banking in International Money Laundering* (March 2001); *Tax Haven Abusers: The Enablers, The Tools, and Secrecy* (August 2006); and *Tax Haven Banks and U.S. Tax Compliance* (2008).

Effective transparency provides increased information. Transparency for U.S. tax purposes involves knowing about the taxable income of U.S. taxpayers, both individuals and businesses alike, wherever the income is earned or located. Increased knowledge about taxable income increases both compliance and enforcement efforts, which, in turn, should increase tax revenue.

There are several approaches to the work needed to achieve transparency, from unilateral to bilateral to multilateral approaches. In the unilateral approach, the United States acquires the information in a one-way transaction – such as from the taxpayer or from a third party custodian of records, such as a bank with whom the taxpayer may maintain an account. In the bilateral approach, the actions involve the exchange of information between two jurisdictions as a result of a bilateral agreement. These bilateral agreements include double tax conventions and tax information exchange agreements. Multilateral transparency occurs when jurisdictions enter into an exchange of information agreement with more than two jurisdictions. The result of a multilateral agreement can be a uniform platform for providing information, although the information still flows in a bilateral manner, that is, from one jurisdiction to another. Achieving multilateral transparency requires active engagement in multilateral engagements to produce pragmatic mechanisms for effective and efficient results.

The IRS has collaborated on many multilateral projects designed to increase transparency. The largest multilateral group working to increase transparency is the Global Forum on Transparency and the Exchange of Information for Tax Purposes (Global Forum).[18] The Global Forum has 132 members on an equal footing, and it is the premier international body for ensuring the implementation of the internationally agreed standards of transparency and exchange of information in the tax area. Through an in-depth peer review process, the Global Forum monitors that its members fully implement the standard of transparency and exchange of information that they have committed to implement. The Global Forum first focused on the exchange of information on request. However, it has now expanded the scope of its work to include the automatic exchange of information.

The United States is a signatory to the convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention).[19] The Multilateral Convention was developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010. The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all countries. The United States also participates in other multilateral groups

[18] See http://www.oecd.org/tax/transparency/.

[19] Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters, available at http://www.oecd.org/ctp/exchange-of-tax-information/Convention_On_Mutual_Administrative_Assistance_in_Tax_Matters_Report_and_Explanation.pdf. The United States signed the Protocol to the convention, available at http://www.oecd.org/ctp/exchange-of-tax-information/2010_Protocol_Amending_the_Convention.pdf, in 2010, but the Protocol has not yet been ratified by the U.S. Senate.

designed to increase transparency, including OECD working parties and other international groups.

Whichever approach is used to achieve transparency, the United States wants the information to be available for use by tax administrations and wants the information safeguarded to the maximum degree. It can then build upon the relationships and approaches of sharing transparency to engage in further multilateral efforts such as in preventing and resolving disputes between jurisdictions.

3. FATCA AND EXPANDED EXCHANGE OF INFORMATION

A. The Development of FATCA

The Foreign Account Tax Compliance Act, or "FATCA," was enacted in March 2010 as part of the Hiring Incentives to Restore Employment Act of 2010.[20] The enactment of FATCA represented an almost-10-year legislative effort to address the problems associated with a lack of transparency that resulted in assets being transferred or maintained offshore without the appropriate amount of tax being paid. FATCA requires separate reporting about specified foreign financial assets by both the U.S. account holders and the financial institutions where these accounts are maintained. Financial institutions that do not comply with the reporting requirements could be subject to a 30 percent withholding tax on the payments of most types of investment income, such as interest and dividends, paid to the financial institution.[21]

The effect of FATCA is two-sided transparency. U.S. taxpayers with foreign financial accounts must report information about those accounts to the IRS.[22] Foreign financial institutions must report to the IRS information about accounts held in the foreign financial institution.[23] In this way the IRS can determine if there is a risk that U.S. taxpayers are holding assets offshore where either (1) the U.S. taxpayer did not declare and pay tax on the assets originally used to establish the account or (2) the U.S. taxpayer is not reporting and paying tax on the annual earnings of the account.

The IRS recognized the substantial challenges that foreign financial institutions would face in complying with the requirements of FATCA in areas such as registering as a foreign financial institution with the IRS and providing the information to the IRS in a quick, safe, and secure fashion. It developed an on-line registration process,[24] an on-line search tool for withholding agents to use to determine if the financial institution had

[20] Pub. L. No. 111-147, Title V.
[21] Internal Revenue Code (IRC) section 1471(a).
[22] These taxpayers use Form 8938, Statement of Specified Foreign Financial Assets, to report assets.
[23] Foreign financial institutions report online and provide the information outlined in Form 8966, FATCA Report.
[24] https://www.irs.gov/Businesses/Corporations/FATCA-Foreign-Financial-Institution-Registration-Tool.

complied with the registration requirements,[25] and a secure International Data Exchange Service to transfer the information to the IRS.[26]

B. The Exchange of Information Under FATCA

The United States recognized that privacy laws existing in the financial institution's jurisdiction might limit the foreign financial institution's ability to comply with the provisions of FATCA. As a result, the foreign financial institution would face the imposition of the 30% withholding tax referred to earlier for noncomplying foreign financial institutions. The United States also recognized that the reporting requirements may impose other burdens on FFIs as they try to comply with FATCA. To help address these concerns, the United States collaborated with other governments to develop two basic models for intergovernmental agreements (IGAs) designed to facilitate the implementation of FATCA.[27] Some of these IGAs require bilateral reporting, that is, the United States provides information to the IGA partner in a reciprocal fashion, although the contents of the exchanged information may not be the same.[28]

Under the terms of the IGAs, the first reciprocal exchange of FATCA information was to be completed by September 30, 2015. The IRS announced soon after that date that it had successfully both sent and received information.[29] This is the first wave of information from foreign financial institutions that may be compared in the future with the foreign account information reported by U.S. taxpayers, which should result in improved identification of unreported offshore accounts.[30]

Outreach about FATCA and greater awareness of the obligation to file reports about foreign financial accounts have increased the amount of information the IRS receives to use in its compliance programs. U.S. persons have had an obligation to report interests in certain foreign financial accounts for many years.[31] As a result of information learned

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[25] https://www.irs.gov/Businesses/Corporations/FATCA-Foreign-Financial-Institution-List-Search-and-Download-Tool.

[26] https://www.irs.gov/Businesses/Corporations/International-Data-Exchange-Service.

[27] The various model Intergovernmental Agreements as well as IGAs that have been signed or agreed to are available on https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

[28] For example, see the reciprocal Model IGA at https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Reciprocal-Model-1A-Agreement-Preexisting-TIEA-or-DTC-11-30-14.pdf. Reciprocal reporting is available only for those countries where the United States has a double tax convention or a tax information exchange agreement and where the United States is satisfied that the country has appropriate safeguards for confidentiality in place. See TD 9584, 77 Fed. Reg. 23391 (April 19, 2012), and Rev. Proc. 2012-20, https://www.irs.gov/irb/2012-20_IRB/ar11.html, as updated by Rev. Proc. 2014-64, https://www.irs.gov/irb/2014-53_IRB/ar11.html, and Rev. Proc. 2015-50, https://www.irs.gov/irb/2015-42_IRB/ar08.html.

[29] https://www.irs.gov/uac/Newsroom/IRS-Announces-Key-Milestone-in-FATCA-Implementation;-U.S.-Begins-Reciprocal-Automatic-Exchange-of-Tax-Information-under-Intergovernmental-Agreements.

[30] http://www.taxpayeradvocate.irs.gov/2013-Annual-Report/downloads/REPORTING-REQUIREMENTS-The-Foreign-Account-Tax-Compliance-Act-Has-the.pdf.

[31] Taxpayers with an interest in, or signatory authority over, certain foreign financial accounts have had an obligation to report that interest since 1970. See, for example, Form 1040, Schedule B, for 1976, where Part III, question 1, asks if the taxpayer has an interest in or signature or other authority over a foreign financial account and

about UBS and the use by U.S. taxpayers of Swiss and other banking secrecy laws to evade their U.S. reporting obligations, the IRS began to focus attention on improving the enforcement of existing laws regarding disclosure.[32] The IRS developed an Overseas Voluntary Disclosure Program (OVDP) in 2009,[33] which it refined in later years, to encourage taxpayers to voluntarily disclose offshore assets and pay related taxes and penalties.[34] The IRS also introduced streamlined filing compliance procedures for taxpayers whose failure to report foreign financial assets and pay all tax due in respect of those assets did not result from willful conduct.[35] All of this outreach to increase awareness about reporting obligations has had a significant impact on the number of taxpayers reporting financial assets, including reporting on the FBAR. For example, in 1991, fewer than 117,000 FBAR disclosures were filed; by 2007, this number had risen to more than 322,000.[36] In 2015, FinCEN received a record high 1,163,229 FBARS, continuing the trend of a 17 percent annual increase during the last 5 years.[37] In addition, filings of Form 8938 have increased, with more than 300,000 forms filed for the tax year 2014, up from the 200,000 forms filed for the tax year 2011, the first year taxpayers were required to file the form.[38]

C. The Development of the Common Reporting Standard

In February 2012, the IRS and Treasury issued proposed regulations outlining actions that foreign financial institutions had to take to comply with FATCA.[39] At the same time, the U.S. Treasury issued a Joint Statement from the United States, France, Germany, Italy, Spain, and the United Kingdom on an intergovernmental approach to improve tax compliance and implement FATCA.[40] The Joint Statement heralded the U.S. willingness to reciprocate in collecting and exchanging information on an automatic basis.[41] All parties acknowledged a willingness to work with other FATCA Partners, the OECD, and

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indicates that such account may have to be reported (on Form 4683, filed with the tax return at that time, and, beginning for tax year 1977, on TD Form 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), filed separately with the Department of Treasury. See https://www.irs.gov/pub/irs-prior/i1040--1977.pdf). TD Form 90-22.1 was replaced with FinCEN Form 114 in 2013, which is filed electronically with the Treasury Department's Financial Crimes Enforcement Network (FinCEN). FinCEN Form 114 must be filed by any U.S. person that has a financial interest in or signature authority over foreign financial accounts if the aggregate value of the foreign financial accounts exceeds $10,000 at any time during the calendar year. See the filing instructions for FinCEN Form 114 at https://www.fincen.gov/forms/files/FBAR%20Line%20Item%20Filing%20Instructions.pdf.

[32] http://www.nytimes.com/2008/05/15/business/15tax.html.

[33] https://www.irs.gov/uac/Statement-from-IRS-Commissioner-Doug-Shulman-on-Offshore-Income.

[34] https://www.irs.gov/uac/2012-Offshore-Voluntary-Disclosure-Program.

[35] https://www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures.

[36] http://www.nytimes.com/2008/05/15/business/15tax.html.

[37] https://www.irs.gov/uac/Newsroom/Foreign-Account-Filings-Top-1-Million-Taxpayers-Need-to-Know--Their-Filing-Requirements.

[38] *Id.*

[39] See https://www.federalregister.gov/articles/2012/02/15/2012-2979/regulations-relating-to-information-reporting-by-foreign-financial-institutions-and-withholding-on.

[40] Available at http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Joint-Statement-US-Fr-Ger-It-Sp-UK-02-07-2012.pdf [hereafter the "Joint Statement"].

[41] *Id.*, A (5); B(2)(e).

where appropriate the EU on developing a "common model for automatic exchange of information, including the development of reporting and due diligence standards."[42] This commitment to work toward such a model was coupled with a recognition of the need to keep compliance costs as low as possible for financial institutions and other stakeholders.[43]

To facilitate FATCA reporting the United States developed the International Data Exchange Service (IDES) as a secure platform where a foreign financial institution or host country tax administration (HCTA), the sending jurisdiction, can transmit and exchange FATCA data with the United States.[44] The sender encrypts the data and IDES encrypts the transmission pathway. The development of IDES demonstrates how the procedures to provide for the automatic exchange of information can be implemented in a uniform fashion.[45] HCTAs and foreign financial institutions securely upload and download FATCA data using the IDES Gateway, a web application.[46]

Exchanging information on an automatic basis is not a new concept.[47] Both CIAT and the OECD have manuals on the exchange of information that include a module on the automatic exchange of information.[48] The United States has exchanged information on a bulk basis for years, transmitting Forms 1042-S, Foreign Person's U.S. Income Subject to Withholding, to foreign jurisdictions. Similarly, foreign jurisdictions transmitted information in bulk to the United States. However, the information was often provided in paper format or on a CD, based solely on the reporting format of the sending jurisdiction, and it could be difficult for the receiving jurisdiction to use the information effectively and efficiently. The OECD noted in 2012 that standardization of reporting (what is collected by one country and used by another country) and the accurate transmission of information will help reduce compliance costs and improve the quality of the information.[49]

With the implementation of FATCA and the recognition that it was possible to develop a reporting platform that could be entirely electronic, standard, and secure, other jurisdictions recognized that the automatic reporting of information in an electronic

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[42] *Id.*, B(4)(b).
[43] *Id.*, A(6).
[44] See https://www.irs.gov/Businesses/Corporations/International-Data-Exchange-Service.
[45] For more information on IDES, see the *IDES User Guide* at https://www.irs.gov/pub/fatca/p5190idesuserguide.pdf.
[46] *Id.*, Chapter 10.
[47] For example, the OECD developed a Model Memorandum of Understanding on Automatic Exchange in 2001 for use as a basis for an operational working agreement between tax administrations.
[48] *CIAT Manual for Implementing and Carrying Out Information Exchange for Tax Purposes*, Module on Automatic (or Routine) Exchange of Information (2006); *OECD Committee on Fiscal Affairs, Manual on the Implementation of Exchange of Information Provisions for Tax Purposes* (2006), Module 3, Automatic (or routine) exchange of information. *See also* OECD Toolkit on Automatic Exchange of Information (2012).
[49] OECD, *Automatic Exchange of Information: What it is, how it works, benefits, what remains to be done* (2012), 23-24.

format was possible and could be useful.[50]At the same time as the United States was negotiating IGAs to implement FATCA, other jurisdictions also signed agreements providing for the automatic exchange of information with each other.[51] In April 2013, France, Germany, Italy, Spain, and the United Kingdom announced a pilot automatic information exchange program modeled on the FATCA IGA provisions.[52] In 2013, the G20 expressed both its support to develop a new multilateral standard on the automatic exchange of information and its support for the OECD work on the automatic exchange of information as the new global standard.[53] At the Global Forum meeting in Jakarta, Indonesia, in November 2013, the Global Forum agreed to establish a new group on automatic exchange of information that would assist the Global Forum in taking forward the Global Forum's work to monitor and review the implementation of automatic exchange of information consistent with the G20's call.[54]

In response to the decision made in Jakarta, the OECD established a program on the Automatic Exchange of Information (AEOI) that would develop a standard reporting mechanism.[55] In February 2014, the OECD issued a single global standard (the "Common Reporting Standard") for the automatic exchange of information. [56] It sets out the financial account information to be exchanged, the financial institutions that need to report, the different types of accounts and taxpayers covered, and the common due diligence procedures to be followed by financial institutions. The OECD indicated at that time that the new standard "recognises the catalytic role that implementation of the US Foreign Account Tax Compliance Act (FATCA) has played in the G20 move towards automatic exchange of information in a multilateral context."[57] The Common Reporting Standard (CRS) was incorporated into a lengthier publication, *Standards for Automatic Exchange of Financial Account Information*, issued in July 2014.[58] Under the CRS procedures, account information would be uploaded by the reporting jurisdiction and downloaded by the receiving jurisdiction. This AEOI program used as a beginning resource much of the evaluative and IT support work that had been completed in

[50] Transmitting data automatically and electronically is not a new concept. For example, members of the EU have been transmitting information in interest paid on accounts under the European Union Savings Directive.

[51] For example, the Isle of Man and the United Kingdom provide an early example, having negotiated a new agreement closely modeled on a U.S. FATCA agreement. Their agreement will require Manx financial institutions to provide Manx tax authorities with a broad range of information on the investments of U.K. residents, for automatic transmission to the United Kingdom. See Teare, *Isle of Man Treasury Official Provides FATCA Update*, 2013 WTD 34-22 (February 20, 2013).

[52] Stewart, *EU Members Announce Multilateral Automatic Information Exchange Pilot,* 2013 WTD 69-1 (April 9, 2013).

[53] Communiqué of G20 Finance Ministers, April 2013, paragraph 14, available at http://www.g20.utoronto.ca/2013/2013-0419-finance.html; G20 Leaders Declaration, September 2013, paragraph 51, available at http://www.g20.utoronto.ca/2013/2013-0906-declaration.html.

[54] Statement of Outcomes, available at http://www.oecd.org/tax/transparency/about-the-global-forum/meetings/ENG%20Jakarta%20Statement%20of%20Outcomes.pdf, paragraph 15.

[55] See http://www.oecd.org/tax/transparency/automatic-exchange-of-information/.

[56] http://www.oecd.org/tax/oecd-delivers-new-single-global-standard-on-automatic-exchange-of-information.htm

[57] *Id.*

[58] http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters-9789264216525-en.htm

connection with the FATCA work: an evaluation of the confidentiality in a jurisdiction, the IDES common reporting standard, etc. Over 90 jurisdictions have already agreed to implement the Common Reporting Standard, with some jurisdictions reporting as early as 2017.[59] The G20 recently reaffirmed its commitment to support the AEOI program.[60]

An "early adopters" group of jurisdictions committed to the early adoption of the CRS, with the first exchange of information on new accounts and pre-existing individual high value accounts scheduled to take place by the end of September 2017.[61] The most recent list of jurisdictions committed to automatic exchange of information using the CRS includes a footnote that the United States is undertaking automatic information exchanges pursuant to FATCA and that the Model 1A (reciprocal) IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. The footnote states that the IGAs also include a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.[62] Even though it has not committed to implement the CRS at this time, the United States participates in the Global Forum work on the automatic exchange of information in recognition of the importance of increasing transparency.[63] For example, the United States has been working closely with the OECD to implement a Common Transmission System for the exchange of financial account information called for in the Common Reporting System.

4. BASE EROSION AND PROFIT SHIFTING WORK

At the G20 meeting in Los Cabos, Mexico, in June 2012, the leaders indicated that "In the tax area, we reiterate our commitment to strengthen transparency and comprehensive exchange of information…We reiterate the need to prevent base erosion and profit shifting and we will follow with attention the ongoing work of the OECD in this area."[64] The OECD issued a report on *Addressing Base Erosion and Profit*

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[59] http://www.oecd.org/newsroom/global-forum-on-tax-transparency-pushes-forward-international-co-operation-against-tax-evasion.htm. Although the United States has not committed to the implementation of the Common Reporting Standard, a footnote to the March 2, 2016, *AEOI: Status of Commitments* update notes that "[t]he United States has indicated that it is undertaking automatic information exchanges pursuant to FATCA from 2015 and has entered into intergovernmental agreements (IGAs) with other jurisdictions to do so." *See* http://www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/AEOI-commitments.pdf .

[60] http://www.g20.utoronto.ca/2016/160227-finance-en.html.

[61] http://www.oecd.org/tax/transparency/AEOI-early-adopters-statement.pdf.

[62] http://www.oecd.org/tax/transparency/AEOI-commitments.pdf.

[63] However, IRS Commissioner Koskinen recently stated that the United States should use the OECD's common reporting standard instead of the Foreign Account Tax Compliance Act reporting requirements so the country is operating on a common transmission system. See Laura Davidson, "Information Reporting: Koskinen: U.S. at Disadvantage Without Common Reporting," Daily Tax Rep. (BNA) No. 50, at G-5, (March 15, 2016)

[64] G20 Leaders Declaration, paragraph 48, available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/Los%20Cabos%20Leaders%27%20Declaration.pdf.

Shifting[65] in early 2013 and indicated that it would develop an action plan to deal with BEPS. It published the *Action Plan on Base Erosion and Profit Shifting*[66] in July 2013 and provided a timeline for the work. The plan was organized around three pillars: 1) introducing coherence in the domestic rules that affect cross-border activities; 2) reinforcing substance requirements in the existing international standards, to ensure alignment of taxation with the location of economic activity and value creation; and 3) improving transparency, as well as certainty for businesses and governments.[67] At the G20 Meeting of Finance Ministers and Central Bank Governors in Moscow on July 20, 2013, the G20's communiqué fully endorsed "the ambitious and comprehensive Action Plan submitted at the request of the G-20 by the OECD aimed at addressing base erosion and profit shifting (BEPS)…"[68] The G20 encouraged further work at the G20 meeting in St. Petersburg, Russia, in September 2013.[69]

All final action plans were completed by October 2015 and presented to the G20.[70] At the recent G20 meeting in Shanghai, the leaders endorsed the inclusive framework proposed by the OECD for the global implementation of the BEPS project and encouraged all relevant and interested non-G20 countries and jurisdictions, which commit to implement the BEPS project, including developing countries, to join in the framework on an equal footing.[71]

A. BEPS Action 5: Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance

The OECD has been concerned about Harmful Tax Practices for many years. The OECD's Committee on Fiscal Affairs established the Forum on Harmful Tax Practices (FHTP) in 1998 to support the OECD work to encourage an environment in which fair competition can take place.[72]

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[65] http://www.oecd.org/tax/addressing-base-erosion-and-profit-shifting-9789264192744-en.htm. [hereafter "Addressing Base Erosion"]

[66] 2013 Action Plan, s*upra* note 4.

[67] BEPS discussion at G20, *supra* note 6.

[68] http://www.g20.utoronto.ca/2013/2013-0720-finance.html.

[69] Tax Annex to the Saint Petersburg Leaders Declaration, paragraph 5, available at https://www.whitehouse.gov/sites/default/files/image/files/g-20taxannex.pdf.

[70] BEPS discussion at G20, *supra* note 6.

[71] http://www.g20.utoronto.ca/2016/160227-finance-en.html.

[72] *OECD's Project on Harmful Tax Practices: The 2004 Progress Report*, available at http://www.oecd.org/ctp/harmful/30901115.pdf, 4 [hereafter "2004 Progress Report"]; The FHTP published *Harmful Tax Competition: An Emerging Global Issue*, available at http://www.oecd-ilibrary.org/taxation/harmful-tax-competition_9789264162945-en, in 1998. This was followed in 2000 by *Towards Global Tax Co-operation: Progress in Identifying and Eliminating Harmful Tax Practice*, available at http://www.oecd.org/tax/transparency/about-the-global-forum/publications/towards-global-tax-cooperation-progress.pdf, and in 2004 by *Consolidated Application Note: Guidance in Applying the 1998 Report to Preferential Tax Regimes*, available at http://www.oecd.org/ctp/harmful/30901132.pdf.

The OECD identified the availability of harmful preferential regimes as a key pressure area relating to base erosion and profit shifting in the 2013 report *Addressing Base Erosion and Profit Shifting*.[73] One of the actions identified for the comprehensive response to BEPS was to develop "solutions to counter harmful regimes more effectively, taking into account also factors such as transparency and substance."[74] In the 2013 Action Plan, the OECD again identified preferential regimes as a continuing key pressure area.[75] To further the goal of addressing this area, the 2013 Action Plan stated that the work of the FHTP would be refocused "to develop more effective solutions."[76] This requires a priority on improving transparency, which includes the compulsory spontaneous exchange on rulings related to preferential regimes.[77] It also identified the need to work with non-OECD members on the basis of the existing framework.[78] In the *Explanatory Statement* to the 2015 Final Reports, the OECD indicated that "Current concerns on harmful tax practices are primarily about preferential regimes which can be used for artificial profit shifting and about a lack of transparency in connection with certain rulings."[79] To improve transparency, a framework was agreed for the mandatory spontaneous exchange of information on rulings that could give rise to BEPS concerns in the absence of such exchange.[80]

Action 5 identified two priority areas relating to harmful tax practices: (1) requiring substantial activity for any preferential regime and (2) improving transparency.[81] The second priority focuses on improving transparency, including the compulsory spontaneous exchange of information on certain rulings.[82] The first step in this work is to develop a framework for the compulsory spontaneous information exchange in respect of ruling related to preferential regimes.[83] The Action 5 report acknowledges that "there is no suggestion that a unilateral advance pricing arrangements (APAs) program is by itself a preferential regime."[84] However, exchanging rulings facilitates making fully informed decisions.[85] The framework for exchange should provide a balance between ensuring that the information is relevant to the other tax administration

[73] Addressing Base Erosion, *supra* note 65 at 48.
[74] *Id.* at 53.
[75] 2013 Action Plan, *supra* note 4 at 17.
[76] *Id.*
[77] *Id.* at 18.
[78] *Id.*
[79] OECD (2015), *Explanatory Statement*, OECD/G20 Base Erosion and Profit Shifting Project, available at https://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf, 14.
[80] *Id.*
[81] OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 – Final Report*, OECD/G20 Base Erosion and Profits Shifting Project, OECD Publishing, Paris, 23, available at http://dx.doi.org/10.1787/9789264241190-en. [hereafter "Action 5: 2015 Final Report"]
[82] *Id.* at 45.
[83] *Id.* at 45.
[84] *Id.* In fact, in the 2004 Progress Report, *supra* note 72, the FHTP considered both the Netherlands Advance Pricing Agreement/Advance Tax Ruling Practice and the Belgium Advance Tax Rulings Practice and concluded that these regimes are not considered by the FHTP to constitute harmful tax practices.
[85] *Id.*

and that the exchange does not impose an unnecessary administrative burden on either the country exchanging the information or the country receiving the information.[86]

There are six categories of taxpayer-specific rulings that could give rise to BEPS concerns in the absence of exchange: (1) rulings relating to preferential regimes; (2) unilateral APAs or other cross-border unilateral rulings in respect of transfer pricing; (3) cross-border rulings providing for a downward adjustment of taxable profits; (4) permanent establishment (PE) rulings; (5) related party conduit rulings; and (6) any other type of ruling agreed by the FHTP that in the absence of spontaneous information exchange gives rise to BEPS concerns.[87] The absence of exchange can lead to BEPS if countries have no knowledge or information on the tax treatment of a taxpayer in a specific country and that tax treatment affects the transactions or arrangements undertaken with a related taxpayer resident in their country.[88]

Action 5 requires the spontaneous exchange of taxpayer rulings, including unilateral Advance Pricing Arrangements and other single-taxpayer rulings. The IRS will consider unilateral APAs and letter rulings as the type of document that may be required to be released to a foreign jurisdiction in accordance with the provisions of BEPS Action 5, although such exchange is not intended to infer that either APAs or letter rulings are part of a preferential regime.

1. Advance Pricing Agreements

The IRS introduced the Advance Pricing Agreement (APA) program in 1991.[89] In the APA program, the taxpayer and the IRS work together to resolve transfer pricing issues in a principled and cooperative manner on a prospective basis. If the taxpayer complies with the APA terms and conditions, the IRS will not contest the transfer pricing adjustments for the transactions covered in the APA.[90] The APA process increases the efficiency of tax administration by encouraging taxpayers to come forward and present all the facts necessary for a proper evaluation of their proposed covered issues and to work towards a resolution of such issues in a spirit of openness and cooperation. The APA process lessens the burden of compliance by giving taxpayers greater certainty regarding covered issues and promotes the principled resolution of these issues by allowing for their discussion and resolution in advance, before the consequences of such resolution are fully known to either taxpayers or the IRS.[91]

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[86] *Id*. at 46.
[87] *Id.*
[88] *Id.*
[89] Rev. Proc. 91-22, 1991-11 I.R.B. 1.
[90] Rev. Proc. 2015-41, 2015-35 I.R.B. 263, available at https://www.irs.gov/irb/2015-35_IRB/ar11.html. The scope of the APA program has expanded over the years and now includes the resolution of transfer pricing issues as well as other issues arising in income tax treaties or the Code or Regulations where transfer pricing may be relevant, including the determination of income effectively connected with a trade or business within the United States. See the definition of "coverable issues" in section 1.04 of Rev. Proc. 2015-41.
[91] *Id*. at section 2.02.

There are three types of APAs: a unilateral APA is an agreement between the IRS and the taxpayer only; a bilateral agreement is between the IRS and a foreign jurisdiction; a multilateral agreement includes an agreement between the IRS and more than one foreign jurisdiction. In a unilateral APA, the transfer pricing method that the taxpayer must use in preparing its federal income tax return is agreed on. However, this does not settle the transfer pricing method in a foreign country where the taxpayer operates. BEPS Action 5 considers that a unilateral APA is an example of a harmful tax practice. In this case, for example, the United States and a company have agreed on a transfer pricing method. However, in the absence of transparency, unilateral APAs can create distortions and may give rise to BEPS concerns and either directly or indirectly impact on the tax position in another country.[92]

Since the program began in 1991, the IRS has entered into 509 unilateral APAs, with another 62 pending, through the 2014 tax year. To compare, the IRS has entered into 878 bilateral APAs and 14 multilateral APAs, with 268 bilateral APAs and 6 multilateral APAs pending.[93] Overall statistics are available for APAs by country and by industry, for example, but the statistics do not provide more information.

2. Letter Rulings

A "letter ruling" is a written determination issued to a taxpayer in response to the taxpayer's written inquiry about its status for tax purposes or the tax effects of its acts or transactions.[94] In general, the request for a ruling must be filed before the taxpayer has filed the tax return or reports for the year the status or tax effect is relevant.[95] A letter ruling interprets the tax laws and applies them to the taxpayer's specific set of facts and is issued when appropriate in the interest of sound tax administration.[96]

The IRS issues revised procedures to request letter rulings each year.[97] Those procedures include information about the issues on which the taxpayers may request

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[92] Action 5: 2015 Final Report, *supra* note 81, at 49.

[93] *Announcement and Report Concerning Advance Pricing Agreements (March 27, 2015),* Table 2, available at https://www.irs.gov/pub/irs-utl/2014%20APMA%20Statutory%20Report.pdf.

[94] Rev. Proc. 2016-1, section 2.01, available at https://www.irs.gov/irb/2016-01_IRB/ar07.html; also see IRM 4.8.8.12 (1).

[95] *Id.*

[96] *Id.* A letter ruling to a taxpayer, which relates to a particular case, may not be applied or relied upon as a precedent in the disposition of other cases. However, it provides insight with regard to the Service's position on the law and serves as a guide. IRC 6110(k)(3); IRM 4.10.7.2.10.

[97] See Rev. Proc. 2016 -1, *supra* note 94, and Rev. Proc. 2016-2 through Rev. Proc. 2016-7, available at https://www.irs.gov/irb/2016-01_IRB/ar08.html; https://www.irs.gov/irb/2016-01_IRB/ar09.html; https://www.irs.gov/irb/2016-01_IRB/ar10.html; https://www.irs.gov/irb/2016-01_IRB/ar11.html; https://www.irs.gov/irb/2016-01_IRB/ar12.html; and https://www.irs.gov/irb/2016-01_IRB/ar13.html for the procedures in 2016.

letter rulings.[98] The IRS also indicates every year the matters on which the IRS will not issue letter rulings.[99]

The IRS is required to make the text of written determinations such as letter rulings and any background file document open for public inspection.[100] However, before it makes such a disclosure, the IRS must delete all identifying details and information.[101] Therefore, it would be impossible for a foreign jurisdiction to determine whether the situation described in the letter ruling applied to a taxpayer in its jurisdiction.

B. BEPS Action 13: Transfer Pricing Documentation and Country-by-Country Reporting

The OECD issued Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations to provide guidance on the application of the "arm's length principle" for the valuation of cross-border transactions between associated enterprises for tax purposes.[102] Since these Transfer Pricing Guidelines were first adopted by the OECD Council in 1995[103], many countries have established their own transfer pricing documentation rules. Governments have responded to the increased volume and complexity of intra-group trade through greater scrutiny of transfer pricing activities, resulting in significant taxpayer compliance costs.[104] Yet, tax administrations often find transfer pricing documentation to be less than fully informative and not adequate for their tax enforcement and risk assessment needs.[105] To resolve some of these issues, Action 13 of the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan, OECD, 2013) is the effort to re-examine the existing Transfer Pricing documentation and establish a system of reporting an MNE's group allocation of income, taxes, and business activities on a tax jurisdiction-by-jurisdiction basis. [106]

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[98] Rev. Proc. 2016-1, *supra* note 94, at Section 3. The issues under the jurisdiction of the Associate Chief Counsel (International) are listed in Section 3.04.

[99] For the matters under the jurisdiction of the Associate Chief Counsel (International) on which the IRS will not issue letter rulings, see Revenue Procedure 2016-7, *supra* note 97. For example, ordinarily the IRS will not issue a ruling on whether a taxpayer has a permanent establishment in the United States for purposes of any United States income tax treaty (section 4.01(10) or on whether an intermediate entity is a conduit entity under IRS regulations (section 4.01(31).

[100] IRC section 6110(a); IRM 11.3.8.1.

[101] IRC section 6110(c).

[102] See http://www.oecd.org/ctp/transfer-pricing/transfer-pricing-guidelines.htm.

[103] There have been subsequent updates in 2009, to reflect new developments in dispute resolution, and 2010 to substantially revise sections related to selecting the most appropriate transfer pricing method, applying transactional profit methods, and how to perform a comparability analysis. The 2010 changes also added in a Chapter related to business restructuring. See http://www.oecd.org/ctp/transfer-pricing/transfer-pricing-guidelines.htm.

[104] Action 13: 2015 Final Report, *Transfer Pricing Documentation and Country-by-Country Reporting, 11* available at http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm. [hereafter "Action 13: 2015 Final Report"]

[105] *Id.*

[106] *Id*. at 9.

Working Party 6 was tasked as the OECD group to oversee Action 13 with the focus on the development of "rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules include a requirement that MNEs provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template."[107] To ensure consistent and effective implementation of the transfer pricing documentation standards countries participating in the OECD/G20 BEPS Project agreed on the core elements, including that the master file and the local file are to be delivered by MNEs directly to local tax administrations.[108] Country-by-Country Reports are to be filed in the jurisdiction of tax residence of the ultimate parent entity and will be shared between jurisdictions through automatic exchange of information, pursuant to government-to-government mechanisms such as the multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties or tax information exchange agreements (TIEAs).[109]

The new Country-by-Country Reporting requirements are to be implemented for fiscal years beginning on or after January 1, 2016 and apply, subject to a review in 2020, to MNEs with annual consolidated group revenue equal to or exceeding EUR 750 million (approximately US$ 821 million). The Action 13 Final Report acknowledges that some jurisdictions will need time to make the necessary adjustments to law in accordance with their particular domestic legislative process.[110] The United States, which is the world's largest economy and is home to some of the world's largest MNEs, will participate in the Country-by-Country reporting process.

1. Obtaining Greater Taxpayer Transparency

The Action 13 Report includes a three part approach to transfer pricing documentation in an attempt to obtain greater taxpayer transparency: First, MNEs will need to be prepared to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a "Master File" that will be available to all relevant tax administrations. Second, MNEs will need to be prepared to provide detailed transactional transfer pricing documentation in a "Local File" specific to each country, identifying material related party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations regarding those transactions. Third, large MNEs will be required to file an annual "Country-by-Country Report" that will include for each tax jurisdiction in which that MNE does business the amount of revenue, profit before income tax, and income tax paid and accrued.

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[107] *Id.*
[108] *Id.* at 10.
[109] *Id.*
[110] *Id.*

Through the Country-by-Country Report MNEs will report on their number of employees, stated capital, retained earnings and tangible assets in each tax jurisdiction. MNEs will need to specify each entity within the group doing business in a particular tax jurisdiction and will provide an indication of the business activities each entity engages in. When providing these three documents (Master File, Local File, and Country-by-Country Report) taxpayers will need to articulate consistent transfer pricing positions.

As a result of these reports, tax administrations will have enhanced information to assess transfer pricing risks, make determinations about where audit resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries.[111] The expectation that MNEs will be called upon to articulate their transfer pricing positions through these three documents will encourage a taxpayer culture of compliance.[112] Well-prepared documentation will give tax administrations some assurance that the taxpayer has analyzed the positions it reports on tax returns, has considered the available comparable data, and has reached comparable transfer pricing positions.[113] These efforts will improve transparency efforts. However, at the same time, it will be critical that all jurisdictions understand their responsibilities when exchanging and using the Country-by-Country Reports.

2. Country-by-Country Reports: Exchange and Use

In December 2015, the IRS and Treasury published proposed rules on how Country-by-Country reporting would be implemented in the United States.[114] The 90-day period to provide input through comments ended on March 22, 2016, and the finalized regulations are now under development. The finalized regulations will apply to tax years beginning after the date the regulations are finalized.[115] The U.S. Treasury Department and the IRS believe that the information required under these proposed Country-by-Country reporting regulations, like the data provided under FATCA, will assist in better enforcement of U.S. tax laws by providing greater transparency regarding the operations and tax positions of taxpayers. Also like FATCA, the Country-by-Country reporting exercise can only achieve transparency by first addressing issues related to protecting the data and analyzing it appropriately. These concerns extend beyond how the United States will approach Country-by-Country reporting into how other countries exchange and use these reports.

Tools for the implementation of the government-to-government exchange of Country-by-Country Reports have revolved around two issues. First, model legislation requiring the ultimate parent entity of an MNE group to file the Country-by-Country Report in its

[111] *Id*. at 9.
[112] *Id*. at 16.
[113] *Id*. at 12.
[114] See https://www.federalregister.gov/articles/2015/12/23/2015-32145/country-by-country-reporting. The rules will apply to taxpayers with annual consolidated group revenue equal to or exceeding US$ 850 million.
[115] Kevil A. Bell, "Profit Shifting: U.K. to Accept "Surrogate" U.S. Country-by-Country Filings," Daily Tax Rep. BNA) No. 30, at G-6 (February 16, 2016).

jurisdiction of residence has been developed so that countries can adapt it to their own legal system as necessary. Second, the international agreements required for the automatic exchange of the Country-by-Country reports have been developed. These model competent authority agreements offer multilateral and bilateral model language to assist countries as they engage with each other in establishing exchange procedures.

There are other implementation concerns that are still in progress, such as those around use of the data while protecting confidentiality and understanding the strength of protections and safeguards needed to maintain data safely. In this area, there are many existing tools to build upon. Like FATCA and Action 5, Action 13 provides for the exchange of information with the aim of facilitating a tax administration's risk assessment abilities. As a result, the United States will use its experience with FATCA to guide its approach to Country-by-Country Reporting.

A platform for sharing this information, such as IDES or the Common Transmission System, will need to be able to safely transmit encrypted information to an intended recipient. To evaluate whether a system can do this, the United States has a set of safeguards related to automatic exchange in its FATCA standards.[116] As part of its efforts to ensure that FATCA was implemented in a safe way, the IRS developed an International Data Safeguards & Infrastructure Workbook for the reciprocal evaluation of FATCA partner data safeguards and infrastructure.[117] These resources and the successful deployment of IDES will contribute to the implementation of the Common Transmission System in an equally safe way. FATCA and the OECD's Country-by-Country reporting are also equally concerned with ensuring a balance in the usefulness of the data to tax administrations for transfer pricing risk assessment and other purposes with any increased compliance burdens placed on taxpayers.[118]

3. Ensuring Correct Use of the Data: Toolkits and Capacity Building

Another common area of concern between the FATCA work and Country-by-Country reporting has been around how to ensure appropriate use of the data. There are specific requirements regarding how Country-by-Country reporting data can be utilized by tax administrations including whether the data can be used in a tax examination and the responsibilities around confidentiality. The data exchanged through Country-by-Country reports should be used only to assess high-level transfer pricing risks rather than to make specific adjustments in individual cases.[119]

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[116] Alison Bennett, "O'Donnell: 'Frenetic' Work Continues on Efforts to Improve MAP Dispute Resolution," Daily Tax Rep. (BNA) No. 114, at G-1 (June 15, 2015). [hereafter "Frenetic Work to Improve MAP"]

[117] In developing the Workbook, the IRS relied on internal guidance, ISO 27000 standards, and the "Keeping It Safe" Guide prepared by the OECD and endorsed by the Global Forum on Transparency and Exchange of Information for Tax Purposes. The Workbook is available at https://www.irs.gov/pub/fatca/IntlSafeguardsWorkbook.pdf.

[118] Action 13: 2015 Final Report, *supra* note 104 at 11.

[119] Frenetic Work to Improve MAP, *supra* note 116

Country-by-Country Reports will be a helpful new tool for high-level transfer pricing risk assessment purposes and efforts to improve transparency. They may also be used by tax administrations in evaluating other BEPS-related risks and where appropriate for economic and statistical analysis. Countries have agreed that the information in the Country-by-Country Report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. The Action 13 Final Report emphasizes that the information in the Country-by-Country Report does not constitute conclusive evidence on its own that transfer pricing is or is not appropriate. As a result, the information in a Country-by-Country Report should not be used by tax administrations to propose transfer pricing adjustments based on a global formulary apportionment of income.[120] Instead, the data should only be used for assessing high-level transfer pricing, base erosion and profit shifting related risks, and where appropriate for economic and statistical analysis.[121] The setting of these expectations is only the first step in this process and additional tools to assist in practical implementation will be critical.

To this end, the Large Business Network (LBN), created under the auspices of the Forum on Tax Administration (FTA) and sponsored by the Canada Revenue Agency, is beginning to develop toolkits aimed at assisting tax administrations who are receiving information for performing risk assessments. The IRS is participating in this work to help create practical tools that can be used by both emerging countries and those with more extensive transfer pricing experience. These toolkits will supplement the material in Action 13 to create a fuller set of resources for tax administrators; toolkits can explain how to use data appropriately and strengthen the capacity of all tax administrations to analyze and understand transfer pricing documentation. While emerging countries may have less familiarity with transfer pricing overall, even those countries with transfer pricing expertise will benefit from toolkits that better describe what it means to use the Country-by-Country reporting data for a high-level risk analysis. Toolkits promote consistency and can also assist in preventing the misuse of data by establishing a common and clear expectation of how tax administrators will use reports.

As a result of the increased availability of information to the tax jurisdiction through the three new reports, the OECD has anticipated the need for additional dispute resolution mechanisms through Action 14. At the same time, there may be an increase in uncertainty as some jurisdictions legislate their own rules or interpret existing rules in novel ways.[122] As countries start more audits and take "increasingly aggressive positions" Competent Authorities must consider new challenges and whether there is a

[120] Action 13: 2015 Final Report, *supra* note 104 at 16.

[121] To ensure that the data is used for the intended purpose, Section 5 of the model Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports and the models for exchange on the basis of a Double Tax Convention and on the basis of a Tax Information Exchange Agreement require a Competent Authority to concede adjustment to tax resulting from the improper use of Country-by-Country information. See Action 13: 2015 Final Report, *supra* note 104 at 49, 62, and 68.

[122] Frenetic Work to Improve MAP, *supra* note 116.

growth in the amount of MAP activity related to BEPS.[123] The OECD recognizes that there will be a need for more effective dispute resolution as a result of tax jurisdictions having enhanced risk assessment capability following the adoption and implementation of a Country-by-Country Reporting requirement.[124] As a result, there are critical ties between the Action 13 and Action 14.

C. BEPS Action 14: Making Dispute Resolution Mechanisms More Effective

Competent Authorities are facing increased pressure as governments increasingly scrutinize cross-border transactional flows to assure a strong revenue base in times of fiscal constraint. Competent Authorities are expected to ensure that tax and international principles are properly applied to minimize incidents of double taxation, unintended double non-taxation and taxation otherwise not in accordance with applicable tax conventions.[125] To do so, they must often work together to identify and address areas of disagreement. Collaboration in a multilateral setting is an effort for countries to come together to get to the right answer in their problem solving work. The Mutual Agreement Procedure (MAP) is one mechanism for resolving such issues around double taxation by having Competent Authorities meet to discuss areas of concern and arrive at a solution.

MAP caseloads have increased in pure numbers as well as in the resulting average time it takes for jurisdictions to reach a resolution. The OECD maintains a set of MAP related statistics, which indicate that at the end of the 2014 reporting period, the total number of open MAP cases reported by OECD member countries was 5,423, an 18.7% increase as compared to the 2013 reporting period and a 130% increase as compared to the 2006 reporting period when there were 2,352 such cases.[126] This growth in caseload is leading to questions around the effectiveness of mutual agreement procedures. MNEs understand that to effectively address international taxation issues in the current global economic environment, dispute resolution models require cooperation and transparency. It is important for all tax administrations to collaboratively develop and share such models.

By working together to improve and expand upon existing programs for resolving tax issues effectively and efficiently countries can improve tax transparency.[127] In part this is because each Competent Authority's ability to realize success is closely dependent on the efforts of other Competent Authorities.[128] The establishment of the Forum on Tax Administration MAP Forum was to provide a venue for FTA-member countries to meet

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[123] *Id*.
[124] Action 13: 2015 Final Report, *supra* note 104 at 10.
[125] See FTA MAP Strategic Plan, OECD, at 1 available at http://www.oecd.org/tax/forum-on-tax-administration/map-strategic-plan.pdf.
[126] For a closer look at MAP Statistics as compiled by the OECD, see http://www.oecd.org/ctp/dispute/map-statistics-2014.htm.
[127] FTA MAP Forum – Strategic Plan, CTPA/CFA/FTA/BUR(2014)3, January 21, 2014, 2.
[128] *Id*.

regularly to deliberate on general matters that affect all participating countries' programs for conducting mutual agreement procedures.[129] Through the FTA Competent Authorities can share ideas and develop solutions and strategies to address problems and improve the effectiveness of the global tax environment.

Action 14 of the BEPS project, "Making Dispute Resolution Mechanisms More Effective", includes measures aimed at strengthening the effectiveness and efficiency of the Mutual Agreement Procedure (MAP) process. The aim of Action 14 is to minimize the risks of uncertainty and unintended double taxation by ensuring the consistent and proper implementation of tax treaties, including the effective and timely resolution of disputes regarding their interpretation or application through the MAP process.[130] Countries agreed to improve how they approach dispute resolution, including the adoption of a minimum standard with respect to the resolution of treaty-related disputes, committing to its rapid implementation and agreed to ensure its effective implementation. Thus, countries participating in the OECD/G20 BEPS project agreed that peer monitoring process documents would be developed as a joint project by the OECD Committee on Fiscal Affairs, through the Forum on Tax Administration MAP Forum (the FTA MAP Forum) and a Focus Group on Dispute Resolution formed by Working Party 1 on Tax Conventions and Related Questions.[131]

The implementation of the minimum standard will be evaluated through a peer monitoring mechanism to ensure that the commitments embodied in the minimum standard are effectively satisfied, and that all OECD and G20 countries, as well as jurisdictions that commit to the minimum standard, will undergo reviews pursuant to that monitoring mechanism. By participating in this evaluation process, multilateral engagement will offer a tool for bringing transparency to the dispute resolution process and provide a means for identifying areas of improvement.

The minimum standard includes specific measures that countries will take to ensure that they resolve treaty-related disputes in a timely, effective, and efficient manner. The elements of the minimum standard are set out below in relation to the following three general objectives: 1) Countries should ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner; 2) Countries should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes; and 3) Countries should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Convention on Income and on Capital can access the mutual agreement procedure.

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[129] *Id.*

[130] Action 14: 2015 Final Report, *Making Dispute Resolution Mechanisms More Effective*, available at http://www.oecd.org/ctp/making-dispute-resolution-mechanisms-more-effective-action-14-2015-final-report-9789264241633-en.htm, 9. [hereafter "Action 14: 2015 Final Report"]

[131] *Id.* at *43.* See also FTA MAP Forum – Strategic Plan, CTPA/CFA/FTA/BUR(2014)3, January 21, 2014, 2.

D. Post-BEPS Challenges and Situations

With the completion of the initial BEPS project, the next phase in multilateral work continues to evolve based on the changing needs and considerations of tax administrations and taxpayers alike. In particular, further attention must be given to the Inclusive Framework, encouraging whole of government approaches, and identifying additional areas for toolkits to facilitate broad capacity building. These steps are critical to ensuring the success of efforts to improve transparency and the implementation of the OECD's BEPS Actions 5, 13, and 14.

1. The Inclusive Framework

The final publication of the BEPS reports has marked a new phase where practical solutions will need to be developed to address the needs of both tax administrators and taxpayers. The OECD's focus has shifted to designing a new framework for monitoring and supporting implementation of BEPS, with all interested countries and jurisdictions invited to participate on an equal footing.[132] This effort includes emerging economies in an effort to reduce existing gaps in international rules. The OECD estimates that BEPS-related planning currently engaged in by taxpayers causes a loss of revenue for governments, estimated as between 4% and 10% of global corporate income tax. This can disproportionately impact emerging countries that may have greater reliance on this type of revenue. At the same time, the global nature of BEPS issues requires similarly global solutions as unilateral and un-coordinated actions could exacerbate international tax issues. Thus, the goal of this work is to support and monitor implementation of the different measures and examine their impact over time.

A new forum will provide for all interested countries and jurisdictions to participate as BEPS Associates in an extension of the OECD's CFA. As BEPS Associates, countries will be able to work with the OECD and G20 members on the remaining standard-setting items under the BEPS Project, and participate in the review and monitoring of the implementation of the BEPS package.[133] The Inclusive Framework's mandate will focus on the review of implementation of the four BEPS minimum standards, which are in the areas of harmful tax practices, tax treaty abuse, Country-by-Country Reporting requirements for transfer pricing and improvements in cross-border tax dispute resolution. There will be steps taken to ensure ongoing data gathering on the tax challenges in the digital economy and measuring the impact of BEPS, as well as monitoring implementation of the remainder of the BEPS package and finalizing the

[132] Taxing Multinational Enterprises, OECD Policy Brief, October 2015, available at http://www.oecd.org/ctp/policy-brief-beps-2015.pdf.

[133] http://www.oecd.org/tax/all-interested-countries-and-jurisdictions-to-be-invited-to-join-global-efforts-led-by-the-oecd-and-g20-to-close-international-tax-loopholes.htm.

remaining BEPS standard-setting work, notably as concerns work on tax treaties and transfer pricing.[134]

The Inclusive Framework offers a unique opportunity to further current multilateral efforts around transparency and dispute resolution, but will need to be approached thoughtfully and with consideration of the approach countries should use and the tools they will need for successful implementation. The success of the Inclusive Framework must utilize the existing multilateral relationships from previous work such as FATCA to further strengthen the relationships and cooperation between tax jurisdictions as they work to improve transparency.

2. Whole of Government Approach

As a complement to the continued support for international collaboration and transparency, individual governments must also match their internal positions and resources. Domestically, coordination helps to ensure practical results and an alignment of strategic priorities. By working together across different government agencies, a synchronized effort can ensure consistency and coordination. This work can also ensure that tax administrations and Competent Authorities are not unduly influenced or constrained by competing considerations within their jurisdictions. Competent Authorities must be empowered to reach and implement an agreement in every case that fully accords with the principles embodied in the taxation conventions concluded by their respective governments.

This type of consistency across an administration is also important when participating in multilateral engagements and efforts. For example, the IRS coordinates internally when preparing for its participation in multilateral venues such as the OECD so that it is on the same page as other parts of the Department of Treasury and the IRS's Chief Counsel Division to ensure that proposed outcomes in the BEPS arena are ones that can be administered. The United States approach utilizes strong collaboration between all three parties to ensure that all perspectives are taken into account.[135] This coordination helps to ensure that the BEPS project produces administrable measures.[136] The IRS works closely with Treasury and Chief Counsel prior to the sessions to ensure there is a unified voice during meetings and when approaching new work.[137]

Similarly, it has become critical for all staff to be well-trained personnel with increasing expertise in applying the principles embodied in tax conventions to resolve matters of double taxation, unintended double non-taxation and taxation otherwise not in

[134] *Id.*
[135] IRS Watching for FATCA Cases, *supra* note 10
[136] Tax Notes Today "FATCA Work to Provide Basis for CBC Exchanges O'Donnell Says" February 10, 2015.
[137] IRS Watching for FATCA Cases, *supra* note 10.

accordance with applicable tax conventions.[138] Having a common global awareness provides a fundamental understanding of international issues and a tax administration that is better equipped to confront today's challenges. The need for a globally aware staff extends to countries with all levels of capacity. Countries can all benefit from having their employees aware of fundamental international tax issues and having a strong foundation in global awareness as they approach their tax administration duties.

The situations and challenges of the next phase of efforts at transparency and effective tax administration requires governments to continue to work together to align their international resources as well as their domestic ones when considering their position as well as their needs.

3. Toolkits and Capacity Building

In an effort to address the need for pragmatic resources, the FTA and some Working Parties have begun to look for opportunities to create toolkits, such as in the transfer pricing space. By providing pragmatic resources, countries with varying capacity levels can become better equipped to implement BEPS and other efforts at increasing transparency, exchanging information and resolving disputes. Toolkits facilitate the exchange of knowledge and innovative solutions by providing practical tools that can be adapted to address the specific issues facing particular countries, such as emerging economies.[139] In the new Inclusive Framework, BEPS Associates will work to support implementation of the BEPS package through the development of these practical toolkits that will address the top priority issues that they have identified. Other capacity building initiatives can complement regulatory measures by identifying areas where emerging economies need additional action to fully benefit from the OECD BEPS initiative. For example, there may be a need to adapt or supplement specific BEPS actions.[140]

5. CONCLUSION

The United States continues to look for transparency through both unilateral action and multilateral cooperation. The recent implementation of the reporting provisions of FATCA is a major step in the goal to achieve transparency that helped demonstrate the feasibility of working in a multilateral setting to exchange information automatically. Lessons learned from FATCA implementation can facilitate the development of a common reporting standard for the automatic exchange of information and the Common Transmission System. Finally, the BEPS project included 15 actions, three of which specifically address increasing transparency and multilateralism: Action 5 on

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[138] See https://www.irs.gov/pub/irs-utl/Global_Awareness_Training_for_IEs.pdf for the "Global Awareness Training for International Tax Examiners" a training module on critical fundamental global concepts.

[139] Taxing Multinational Enterprises, OECD Policy Brief, October 2015, available at http://www.oecd.org/ctp/policy-brief-beps-2015.pdf.

[140] Two-Part Report to G20 Developing Working Group on the Impact of BEPS in Low Income Countries, available at http://www.oecd.org/tax/tax-global/report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf, 29.

spontaneous Automatic Exchange of Information, 13 on Country-by-Country reporting, and 14 on Effective Dispute Resolution. The implementation of these Actions will require countries to build on existing multilateral relationships to resolve problems, ensure consistent positions and collaborate to share knowledge through toolkits. Ensuring transparency requires more than just obtaining information, but protecting and using that information in thoughtful and efficient ways for the purposes of tax administration.

Topic 3.3

NEW MODELS OF INTERNATIONAL TRANSPARENCY, MULTILATERALISM, SITUATIONS, AND CHALLENGES AFTER BEPS

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Contents: Introduction. 1. Developments in international tax transparency. 2. New initiatives in multilateralism. 3. Situation and Challenges after BEPS. Final Observations.

Introduction

The last decade has seen significant developments in the area of international cooperation among tax administrations dealing with taxes on income and capital The most significant of these developments have taken place in respect of increased tax transparency, particularly exchange of information that is foreseeably relevant for tax purposes, between States, both on request, as well as by an automatic mechanism.

The success of common efforts for greater tax transparency, that have also been a priority area for the G-20 group, have now prompted the international community to explore greater cooperation in other areas, like addressing the cross-border tax avoidance by multinational enterprises, attempting coordinated multilateral action for amending tax treaties and exploring the possibility of joint coordinated work aimed at addressing tax evasion and avoidance.

This paper attempts to summarize some of the new models and mechanisms that have been attempted recently aimed at greater international tax transparency, addressing tax avoidance and evasion, multilateral efforts to jointly develop international standards and explore new avenues for such cooperation in unprecedented areas like amendment of tax treaties on a mass scale. The paper then proceeds to emphasize the major issues and challenges that have emerged in the process and sums up the contemporary situation arising from these developments. The paper is organized in three parts. First part deals with developments in the area of international tax transparency. Second part deals with new avenues where common action is attempted at a multilateral platform.

The third part deals with situations and challenges arising with these new models and mechanism.

1. DEVELOPMENTS IN INTERNATIONAL TAX TRANSPARENCY

1.1. Revised EOI Provisions, Multilateral Convention on Mutual Assistance in Tax Matters & Global Forum on Transparency in Taxes

Globalisation and consequent increase in cross-border transactions provided new opportunities for tax planning and tax avoidance by taxpayers having global operations. Global tax avoidance and evasion can be combatted through cooperation by the tax administrations of different jurisdictions. Necessity of this coordinated effort was felt even more after financial crisis of 2008 and a number of steps have been taken after that. G20 Leaders in April 2009 G20 London Summit declared that the era of bank secrecy is over. Global Forum on Transparency and Exchange of Information in Tax Matters (Global Forum) was restructured and mandated to ensure implementation of the international standard of transparency in tax matters. Membership of Global Forum is open to all countries who commit to implement the international standard in tax matters, agree to undergo peer reviews and pay the membership fee. Multilateral Convention on Mutual Administrative Assistance in Tax Matters has been opened up for non-OECD countries. India has also joined these global efforts by taking a number of steps including renegotiating existing treaties, entering into new treaties, making changes in domestic laws etc.

1.2. New Developments in Automatic Exchange of information:

1.2.1. FATCA

- In 2010, USA enacted the Foreign Account Tax Compliance Act (FATCA), with the objective of tackling tax evasion by obtaining information in respect of offshore financial accounts maintained by USA residents and citizens. The provisions of FATCA essentially provide for 30% withholding tax on US source payments made to Foreign Financial Institutions (FFIs) unless they enter into an agreement with the Internal Revenue Service (IRS) to provide information about accounts held with them by USA persons or entities (firms/companies/trusts) controlled by USA persons.

- Since domestic laws of sovereign countries (including India) may not permit sharing of client confidential information by FIs directly with USA, USA entered into Inter-Governmental Agreement (IGA) with various countries. The text of IGA between India and USA has also been finalized and agreed at official level. Under the proposed IGA between India and USA, the FIs will be providing the information to Indian tax authorities, which will be transmitted to USA automatically.

- The exchange of information between India and USA in the IGA, as of now, is not fully reciprocal. Briefly, as per IGA, the USA will be receiving information also about non-USA entities, which have one or more US controlling persons as determined after due diligence procedures. India, however, will be receiving information only about a resident person having an account in USA. No information about controlling persons or beneficial owners would be available. Thus, while FIs in India will have to carry out due diligence procedures, there would be no such requirement on USA FIs. Further, while USA will be receiving

information about account balance and value, India would get information only about the existence of the account and the income paid or credited.

- The first exchange under IGA has already taken place on 30th September 2015.

Information received from USA is currently being analysed for further action.

1.2.2. Automatic Exchange of Information (AEOI) based on CRS

- Automatic Exchange of Information (AEOI) is systematic and periodic transmission of "bulk" taxpayer information by the source country to the residence country, which is possible under most of the Double Taxation Avoidance Agreements (DTAAs) and Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC).

- Although exchange on "request basis" has resulted in improving transparency, its scope is limited since the offshore financial centres and tax havens are obliged to provide information only when the requesting State has some information already in its possession and investigation in the particular case has already commenced. The information on "request" may, therefore, have limited effect in identifying the financial assets hidden in offshore jurisdictions and tax havens through a complex web of entities.

- Accordingly, the Government of India took a leading role in international fora, including at G20 and Working Party 10 of the OECD, towards building an international consensus amongst major economies of the world that the problem of offshore tax evasion and flow of illicit money can be addressed only by the free flow of financial account information, exchanged amongst countries on an automatic basis.

- On the request of the G20, the OECD, working with all the non-OECD G20 countries including India, developed a single uniform standard for automatic exchange of information, the Common Reporting Standard (CRS) on AEOI. This new global standard was endorsed by the G20 Finance Ministers in their meeting in Cairns on 21.09.2014, and by the G20 Leaders in their summit at Brisbane on 16th November 2014.

- In keeping with its leadership role in this area, India has also joined a group of 48 countries as "early adopters" of the new standard and has committed to exchange information automatically by 2017. Some jurisdictions have joined later and the number of jurisdictions committed to first exchanges by 2017 has now increased to 55. 41 jurisdictions have committed to exchange information from the year 2018.

- Government of India is emphasizing at various international fora, including in G20, the need to ensure that every financial center commits to the new

reporting standard and further, that their implementation at global level is monitored by the Global Forum.

1.2.3. Multilateral Competent Authority Agreement (MCAA)

- As on Feb 2016, eighty (80) countries/jurisdictions joined a Multilateral Competent Authority Agreement ("MCAA"), which provides a framework for exchange of information on automatic basis as per the new global standards. They have signed a declaration to comply with the provisions of the MCAA with an intended date for commencement of exchange of information on automatic basis, which for most countries/jurisdictions is from 2017. After joining the framework of the MCAA, countries/jurisdictions need to enter into bilateral/multilateral arrangements for exchanging information subject to confidentiality and data safeguards requirements in the recipient country/jurisdiction. India signed MCAA on 3rd June 2015.

- The new global standards are very wide in scope and oblige the treaty partners to exchange wide range of financial information after collecting the same from financial institutions in their country/jurisdictions including information about the ultimate controlling persons and beneficial owners of entities. The financial information which would be exchanged would include account balance, interest, dividend and gross proceeds from sale and redemption of financial assets.

- AEOI based on CRS, when fully implemented, would enable India to receive information from every country in the world including offshore financial centres and tax havens and would be the key to prevent international tax evasion and avoidance and would be instrumental in getting information about money stashed abroad and ultimately bringing it back. The data received under CRS would be utilised for detecting tax evasion on income of Indian residents having financial assets abroad.

1.2.4. Implementation of AEOI and FATCA in India

- For implementation of FATCA and CRS, necessary legislative changes were made through Finance (No. 2) Act, 2014, by amending section 285BA of the Income-tax Act, 1961. Income-tax Rules, 1962 were amended vide Notification No. 62 of 2015 dated 7th August, 2015 by inserting Rules 114F to 114H and Form 61B to provide a legal basis for the Reporting Financial Institutions (RFIs) for maintaining and reporting information about the Reportable Accounts.

- A Guidance Note was released on 31st August 2015 to provide guidance to the Financial Institutions, Regulators and officers of the Income Tax Department for ensuring compliance with the reporting requirements provided in Rules 114F to 114H and Form 61B of the Income-tax Rules, 1962. The Guidance Note is

intended to explain the complex reporting requirements and provide further guidance wherever required. This Guidance Note was further updated on 31st December 2015 to address the evolving issues in the implementation. A Clarification was also issued on 19th Feb 2016.

- The Directorate of Intelligence and Criminal Investigation has been designated by the Government of India as the nodal Directorate for monitoring of compliance by the financial institutions under FATCA and CRS.

1.2.5. BEPS Action Point 13: Transfer Pricing Documentation and Country by Country (CbC) Reporting

- The Final Report on Action 13 of recently concluded BEPS project is aimed at developing rules regarding transfer pricing documentation to enhance transparency for tax administrations, keeping in view the compliance costs for business. The work under this BEPS action was completed in two phases. In September, 2014, a report on this action was finalized, which was accepted by the G-20 and OECD countries. Thereafter, work commenced on the implementation of the Country-by-Country (CbC) report. A report on the Implementation Package for the CbC Reporting was finalized in May, 2015, which was approved by the CFA and released in June, 2015. These two reports form part of a comprehensive final report that was endorsed by the G-20 leaders.

- The salient features of the new transfer pricing documentation regime, as captured in the BEPS final report and drafted as an entirely new Chapter V of the existing Transfer Pricing Guidelines, are as follows:

    - The new transfer pricing documentation regime would have a three-tiered documentation structure, comprising (i) a Master File, (ii) a Local File and (iii) a Country-by-Country Report;
    - Annexures I, II and III of the new Chapter V of the Transfer Pricing Guidelines have the templates of the three documents;
    - The Master File would provide high-level information about MNEs regarding their global business operations and transfer pricing policies and this document would be available to all relevant tax administrations;
    - The Local File would provide detailed transfer pricing documentation specific to each country;
    - The CbC Report is to be prepared by MNEs having annual consolidated group revenue of 750 Million Euro or more and the report shall contain, for each tax jurisdiction in which the MNEs do business, the amount of revenue, profit before income tax, income tax paid and accrued, number of employees, stated capital, retained earnings and tangible assets;
    - The implementation of the three documents and their efficacy is to be studied and a review of this new documentation regime would be carried out in 2020;

- The Master File and Local File is to be delivered by the MNEs directly to the local tax administrations whereas, the CbC report is to be filed in the jurisdiction of tax residence of the ultimate parent company and shared between jurisdictions through automatic exchange of information, pursuant to Government-to-Government mechanisms such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties or Tax Information Exchange Agreements (TIEAs);
- It has also been provided that in certain limited circumstances, a secondary mechanism like local filing can be used to deliver the CbC report;
- A Model Legislation has been developed to be used by countries to require MNEs to file the CbC report;
- Competent Authority Agreements have been developed to facilitate the implementation of the exchange of those reports among tax administrations; and
- Mechanisms will be developed to monitor the compliance by jurisdictions with their commitments and to monitor the effectiveness of the filing and dissemination processes.

- The above proposals in the Report in respect of Action 13 constitute the new transfer pricing documentation regime, which is expected to provide tax administrations with much needed information about MNEs in respect of the global allocation of income, economic activity and taxes paid among countries by such MNEs. These proposals are in accordance with the position of India that there should be greater transparency in respect of the operations of MNEs to enable the developing countries to carry out effective risk-assessment and transfer pricing analysis.

- Implementation processes of the new regime have been started by many countries and India has also initiated the necessary legislative changes in the Finance Bill, 2016, which has now been placed before the Indian Parliament.

- The Multilateral Competent Authority Agreement (MCAA) for automatically sharing the CbC reports has already been opened for signature. At the first signing ceremony at Paris in January, 2016, some countries have already signed it. India is likely to be sign it at the next signing ceremony.

1.2.6. Mandatory Disclosure Norms

- To enable tax administrators to receive information about tax planning strategies at an early stage enable them to respond quickly to tax risks either through timely and informed changes to legislation and regulations or through improved risk assessment and compliance programme (targeted audits). The Mandatory Disclosure Regimes (MDRs) would also act as a deterrence for taxpayers adopting aggressive or abusive transactions. The focus of the rules would be on

"international tax schemes" and the same may be shared by tax administrators using the mechanism of Exchange of Information.

- The BEPS Report recommendations on Mandatory Disclosure Regime (MDR) include the following:

    - A disclosure obligation on both the promoter and the taxpayer, or impose the primary obligation to disclose on either the promoter or the taxpayer;
    - A mixture of specific and generic hallmarks, the existence of each of them triggering a requirement for disclosure.
    - Generic hallmarks target features that are common to promoted schemes, such as the requirement for confidentiality or the payment of a premium fee.
    - Specific hallmarks target particular areas of concern such as losses;
    - Establish a mechanism to track disclosures and link disclosures made by promoters and clients as identifying scheme users is also an essential part of any mandatory disclosure regime.

1.2.7. Compulsory Exchange of Information on Rulings

- Action 5 of BEPS Action Plan required the Forum on Harmful Tax Practices (FHTP) to work on improving transparency, including compulsory exchange on rulings related to preferential rulings. In the final report for Action 5, a transparency framework covering all rulings that could give rise to BEPS concerns in the absence of compulsory spontaneous exchange has been agreed. It has been agreed that as a minimum standard, countries shall spontaneously exchange information on taxpayer specific rulings granted by them. The information shall be exchanged with all relevant countries that are committed to apply this transparency framework. The salient features of this transparency framework are as under:

    i. The obligation to spontaneously exchange arises on taxpayer specific rulings related to a preferential tax regime and other rulings such as (a) cross-border unilateral APAs or other unilateral TP rulings (b) cross-border rulings providing for a downward adjustment of taxable profits, (c) permanent establishment (PE) rulings, (d) related party conduit rulings, and (e) any other type of ruling that in the absence of spontaneous information exchange gives rise to BEPS concerns.
    ii. Relevant countries with which information needs to be exchanged has been indicated in the framework. The basic idea is to exchange rulings with all affected countries.
    iii. Legal basis for such exchange shall be the relevant bilateral exchange instruments, Convention on Mutual Administrative Assistance in tax matters, or any other similar instrument.

iv. Exchange of information under this framework should take place from 1 April 2016 for future rulings (issued after 1.4.2016). In addition to future rulings, those issued after 1.1.2010 and were still in effect on or after 1.1.2014 are also required to be exchanged. Exchange of information on past rulings may be done in phases, however, this should be completed by the end of 2016.

v. Information should be exchanged as quickly as possible and no later than 3 months after the ruling is available to the competent authority of the country that has granted the ruling.

vi. Information on rulings is required to be exchanged in the specified template. Information exchanged must include the information necessary to identify the taxpayer, accounting period covered by ruling, a summary of issues, transactions covered by ruling, etc.

vii. A country that has granted a ruling cannot invoke the lack of reciprocity as an argument for not spontaneously exchanging information with an affected country, where the affected country does not grant, and therefore cannot exchange, rulings which could potentially trigger the obligation to spontaneously exchange information. This assumes of course that the affected country is committed to applying the framework and to spontaneously exchanging information if it were to grant rulings which trigger the obligation to spontaneously exchange information.

viii. An ongoing monitoring and review mechanism will be put in place to ensure countries' compliance with the obligation to spontaneously exchange information under the framework. This will involve an annual review by the FHTP starting in 2017.

- Implementation of this agreed transparency framework has been initiated by many countries including India. This framework will enhance transparency in the operation of tax regimes or administrative processes that can give rise to mismatches in tax treatment and instances of double non-taxation.

1.2.8. Greater Cooperation among Tax Administrations under JITSIC

- The Forum on Tax Administration has initiated development of a new network called 'Joint International Tax Shelter Information and Collaboration' or JITSIC, which will be a global effort at coordinating tax administrations against tax avoidance, and base erosion and profit shifting. Each participant country is expected to appoint a Single Point of Contact (SPOC) for JITSIC who will serve as a node for cross jurisdiction coordination and collaboration. So far more than 30 countries, including India, have joined this network. The work of JITSIC involves identification and initiation by participating countries of collaborative projects relevant to the objectives of the Network and speedy exchange of information and coordinated action in specific cases amongst participating countries. This cooperation will be undertaken within the scope of existing legal instruments, including Double Taxation Avoidance Agreement s and the Tax

Information Exchange Agreements between countries and the Convention on Mutual Administrative Assistance in Tax Matters.

- The Communique issued by Revenue Heads of FTA member countries in 2014 [1]emphasized the commitment of FTA members to work more closely together, share knowledge, coordinate action and deal with tax administration aspects that may results from the BEPS work. It described JITSIC as representing their endeavour for systematic and enhanced cooperation based on existing legal instruments to focus specifically on cross border tax avoidance. The Communique opened the membership of JITSIC for all FTA Member countries on voluntary basis.

- One of purposes of FTA JITSIC Network is to provide a platform through which all participating jurisdictions can more effectively understand and address global risks and issues relating to BEPS and offshore tax evasion. It is expected to provide an opportunity for increasing international tax cooperation among interested member countries including cooperation, cross border collaboration and coordinated work for addressing tax evasion in specific cases.

- Currently, JITSIC is in the process of developing projects that can be taken by its members. These projects could be in the nature of cooperation, information sharing, best practices as well as coordinating working among interested parties on international cooperation already agreed by them under bi-lateral and multi-lateral conventions. Participating members in JITSIC can sponsor particular projects. The sponsoring Members will take all responsibilities of taking the initiative in that particular project and organizing various events like teleconferences, face to face meetings etc. for this purpose. While FTA Secretariat will provide necessary assistance for coordination of the projects and may play a role in aggregate reporting of the various projects as part of the FTA work, it will have limited role in the individual project for which the participating members and in particular, the sponsoring country would be responsible.

- The individual project taken up by FTA JITSIC can focus on increased understanding of cross border financial affairs of taxpayers, including constructing their organizational and functional charts, determining ownership and identification of income/gains in offshore financial centers. Projects can also be oriented towards coordinated case work of large taxpayers having significant cross borders affairs, to the extent permitted within the convention entered into by the Member countries. One of the purposes of international cooperation of JITSIC is to provide an opportunity for coordinated approach by Member countries that will reduce the compliance cost on the part of the tax payers.

[1] Prior to 2014, a similar platform called Joint International Tax Shelter Information Centre (also called JITSIC) had been set up by a group of countries including USA, UK, Canada, Australia and Japan.

2. NEW INITIATIVES IN MULTILATERALISM

2.1. Traditional Approaches

- Traditionally, interaction between countries on matters related to tax on income has been based largely on bilateral treaties, i.e. the comprehensive Double Taxation Avoidance Agreements (DTAAs) that divide the taxing rights between the source and the residence country, and the relatively more limited Tax Information Exchange Agreements. The comprehensive DTAAs provide an elaborate mechanism by which the two Contracting States limit their taxing rights in a manner that avoids double taxation of the same income in both jurisdictions. These treaties primarily restrict the taxing rights of the country from where the income is sourced, but a relative balance of taxing rights is aimed by obliging the country of residence to grant tax credits or exempt income that has already been taxed in the other Contracting State.

- These comprehensive agreements are based on two Model Tax Conventions, one developed by OECD and the other by a UN Committee of Experts. There are certain fundamental differences between the way these two Models are developed. The OECD Model Convention is developed exclusively by Governmental representatives of the OECD member countries, representing their Governments. On the contrary, the UN Committee consists of a number of tax experts that are nominated to the Committee in their individual capacity, and whose views do not necessarily represent the views of their Governments. Thus, while both Model Conventions and their respective Commentaries result from multilateral collaboration, the approaches adopted are somewhat different. The UN Model, although developed with representation beyond the developed world, is still not representative of the Governmental views and preferences of the developing world.

- It may not be wrong to say that UN Model has been derived by adopting a large number of features from the OECD Model Tax Convention, though certain provisions like those related to definition of Permanent Establishment, Attribution of Profits to the Permanent Establishment, Taxation of Royalty and Taxation of Capital Gains differ significantly between the two models. The Model for Tax Exchange Information Agreement as also the Multilateral Convention on Mutual Assistance in Tax Matters were also developed by the OECD, but have been adopted by a large number of developing countries as well.

- Another characteristics feature of these approaches is that the Model provides a guidance, but the individual countries are free to deviate from the Models. OECD Model Convention documents the reservations and positions of OECD as well as Non-OECD countries, thereby providing details of their respective preferences.

- Outside the OECD and the UN, several regional multilateral groupings do exist, such as in America (CIAT), Africa (ATAF), BRICS, SAARC etc. However, most of these regional grouping provide a platform for exchanging views and sharing experiences, but the substantial tax cooperation among the members of these regional groupings continues to be governed largely by the bilateral treaties among them.

2.2. BEPS Project: Participation of G-20 countries on Equal Footing with OECD

- One of the most significant developments in multilateral collaboration on matters relating to taxation of cross-border income has been the recently concluded Base Erosion and Profit Shifting (BEPS) Project that was taken up jointly by the OECD and G-20 countries. Unlike the work undertaken by OECD prior to this project, where several G-20 and other developing countries participate as observers, this project provided participation of G-20 countries on equal footing with OECD countries. In this manner, this endeavour provided probably the first instance where a number of developing countries outside the OECD had a unequivocal say in determining the outcomes in the same way as OECD countries. Although this did not include participation of the large number of developing countries, it allowed a more balanced view to be adopted in matters that can be significant for developing countries.

- The working of the BEPS project was undertaken by the respective Working Parties of Committee of Fiscal Affairs (CFA) of OECD, and some special groups such as the Task Force on Digital Economy, that was constituted for dealing with Action 1 related to tax challenges posed by digital economy. The supervision and overall guidance of these activities was undertaken by the CFA Bureau Plus that was formed by expanding the traditional CFA Bureau of OECD consisting of 12 of its members, by adding 4 Non-OECD G-20 countries. More important, however, was the fact that all decisions were taken by consensus, which provided a reasonable significant safeguard for the Non-OECD countries against the majority consisting of OECD members in this project.

- The prime objective of BEPS project was to address the cross-border tax avoidance that is leading to erosion of tax base across the world and often culminating in double non-taxation of income of MNEs benefitted by tax treaties, through somewhat dubious arrangements that exploit the legal loopholes existing in domestic laws as well as tax treaties. The 15 actions project provided several approaches for addressing such tax avoidance. The 15 point action plan that was presented to G-20 in July 2013 was endorsed by the G-20 and then taken up in September, 2013 with a very ambitious two year time-table. During the project, extensive consultation was held with stakeholders consisting of businesses, non governmental organizations and academicians. Seven reports were finalized by September, 2014 and Final Reports in all actions except Action 15 (for developing a Multilateral Instrument) have been finalized by September, 2015.

- An important feature of BEPS project has been the development of Minimum Standards, which represent a political commitment for implementing the outcomes in four of the actions. Probably the most significant of these commitments was in respect of Action 6 for preventing treaty abuse, where the minimum standard consists of changing the Preamble of the treaty to state that it is not meant for treaty shopping or double non-taxation, and inclusion of an 'Entitlement of Benefit' article aimed at denying benefits of the treaty to an entity that is not having sufficient economic substance in the country of which it claims to be a resident (the Limitation of Benefit rule) or to an arrangement that is created for the purpose of exploiting the benefits of a treaty (Principal Purpose test). These minimum standards represent a very strong broad international agreement of a sort not witnessed before in preventing treaty abuse by MNEs. The other actions where BEPS outcomes resulted in minimum standards agreed by OECD and G-20 are Action 5 on Harmful Tax Practices, Action 13 on Transfer Pricing Documentation and Country by Country Reporting, and Action 14 on Making dispute resolution more effective.

- The level of agreements that emerged under different action points of BEPS differed from action to action. The outcomes emerged more successfully in respect of matters that related primarily to tax avoidance and measures addressing such avoidance. Agreements emerged relatively more clearly on preventing treaty abuse (Action 6), Designing Controlled Foreign Corporation Rules (Action 3), Neutralizing Hybrid Mismatches (Action 2), Harmful Tax Practices (Action 5), Transfer Pricing (Action 8, 9 and 13) and Mandatory Disclosure Rules (Action 12). Outcomes were relatively more difficult to get to the agreement stage where they came closer to the contentious issue of source Vs residence taxing rights that was supposed to be outside the purview of BEPS project. No clear recommendations could therefore emerge on Action 1 for addressing the broader tax challenges on digital economy, in spite of the fact that the Final Report clearly acknowledged that it is a pressing issue, and even though three possible ways of addressing taxation challenges of digital economy were listed, elaborated and analyzed in great detail in the Report.

- The BEPS Project, in spite of the limitations, can be recognized now as a major step forward in expanding the multilateral process of developing international taxation and transfer pricing rules. It also provides avenues for developing countries that did not participate during the intensive project workings, but can now evaluate the outcomes and decide on joining in its implementation process, particularly the Action 15 that is still underway.

2.3. Ad Hoc Group on Multilateral Instrument (MLI)

- The BEPS Project has resulted in a number of tax treaty-related outputs which will require amendment of bilateral tax treaties. For the purpose of facilitating countries in amending their bilateral tax treaties in a cost efficient manner

expediently, Action 15 of the BEPS Project is aimed at developing a Multilateral Instrument which will contain these BEPS treaty-related outputs. An Ad-Hoc Group of interested countries has been established for this purpose.

- The feasibility of such an instrument was examined as part of the Action 15 work in the report titled "*Developing a Multilateral Instrument to Modify Bilateral Tax Treaties*" which concluded that such a multilateral instrument is both desirable and feasible. The decision for development of the multilateral instrument was approved by the CFA and subsequently endorsed by the G20 Finance Ministers and Central Bank Governors in February 2015. According to the mandate given by G-20, membership of the Ad-Hoc Group that will be developing this instrument, is open to all interested States and all members of the Group participate on an equal footing. 87 countries had joined the Group as members by September, 2015.

- The Ad-Hoc Group is expected to deal with both policy as well as technical issues, including differences in domestic legal requirements, international law obligations and constitutional procedures followed by different countries. Following the first procedural meeting in May 2015, 21 countries, including India, have been appointed to the Bureau of the Ad-Hoc Group, which will oversee the developments and provide guidance to the Secretariat for developing this instrument. The composition of the Bureau represents a good geographic balance and a good mix of small and large economies as it comprises OECD Members, G20 members, developing countries and non-OECD/non-G20 economies.

- It is envisaged that most of the decisions regarding the design and content of the multilateral instrument will be taken in the Plenary. The participation of international organizations and non-State jurisdictions as Observers is also envisaged so as to provide a broader base from where concerns of all stakeholders can be considered. So far a skeleton has been proposed, which is being developed further with inputs from participating countries.

- The development of this Multilateral Instrument, the first of its kind till date, marks a major step forward in growing multilateralism in international tax matters. Even though several significant issues related to its design remain to be addressed, the fact that such a large number of countries around the world have already joined this endeavour marks an important milestone in growing multilateralism in matters related to tax on income.

2.4. New Initiatives under FTA

- The OECD Forum on Tax Administration (FTA)[2] provides interested member countries opportunities to cooperate in matters relating to tax administration, by sharing of information and experiences and undertake joint initiatives for these purposes. During the last year, the FTA has been in the process of reorganization its works, as a result of which several new projects has been initiated by it. These include the following:

    - Network on Advance Analytics – It is a new network sponsored by Ireland, wherein work on Advance Analytics is being contemplated by FTA It would enable participating members to share experiences and thereby improve their capacity regarding the challenges of applying more sophisticated methods in information collection, risk assessment, data management and its use etc.
    - E-Services and Digital Delivery – This program for E-Services and Digital delivery, which is aimed at providing better taxpayer services and exploring other use of e-services in tax administration has been sponsored by Russia. Initial meetings of this program have been held in Moscow last year.
    - Capacity building initiatives – FTA is considering introducing initiatives for this purpose, which may be developed around existing capacity building programs like the Global Relations Program of OECD and Tax Inspectors without borders. One of the aims of such capacity building is also to enable developing countries to benefit from the BEPS outcomes.
    - JITSIC - 'Joint International Tax Shelter Information and Collaboration' or JITSIC, is a new initiative undertaken under FTA aimed at increasing coordination among tax administrations for addressing international tax avoidance. So far more than 30 countries, including India, have joined this network. It is expected that this platform will enable countries to undertake coordinated action against international tax avoidance.
    - Development of Common Transmission System (CTS) – One of the activities undertaken recently by FTA is the development of Common Transmission System for implementing the Automatic Exchange of Information under the Common Reporting Standards that have been developed for this purpose.

- The FTA has been there for some time, and as a member of the FTA and its Bureau, India has been participating in its activities. However, these recent initiatives mark an acceleration of the multilateral cooperation among countries

[2] The OECD Forum on Tax Administration (FTA) has 45 countries as members which include all 34 OECD countries, some G20 countries and selected other countries having modern tax administration system. The work of the FTA is directed and overseen by a Bureau comprising of heads of tax administration of 12 countries who are known as Commissioners. The current Governance system of FTA mandates that the Bureau membership is held by an individual for term of 3-5 years and if that individual leaves the post held by him for any reason, the membership position becomes vacant and his position is filled up by calling for expressions of interest. The Bureau positions are held by Commissioners in their individual capacity and not by countries.

around the world. Many of these initiatives, like JITSIC, CTS and capacity building initiatives can benefit many countries that are still constrained by resources and may not be able to fully benefit from the recent multilateral actions and their outcomes on their own.

3. SITUATION AND CHALLENGES AFTER BEPS

3.1. Overview of Contemporary Situation

- While OECD has always led the development of international standards, all of its standards have not been embraced by Non-OECD countries, as is evident from the adherence of most developing countries to the UN Model Tax Convention, and the persistent differences between the OECD & UN Model Tax Conventions. In particular, the differences remain significant when it comes to preferences regarding source based taxation or residence based taxation. Some of these differences are expected and arise from national interests.[3] In particular, these differences get emphasized further in respect of provisions that provide the definition of permanent establishment, and the attribution of profit rules for taxation of business income. Similar differences also exist in respect of taxation of Royalty and in case of some countries, like India, in respect of taxation of fee for technical services.

- Given the fact that UN Committee consists of experts nominated in their individual capacity and not as representatives of countries, there have not been too many occasions for governmental representatives of developed and developing countries to work together for developing international standards. In this regard, the recently concluded Base Erosion and Profit Shifting (BEPS) Project provided a first of its kind instance in recent times for developed of standards by OECD and Non-OECD G-20 countries. While this group may still not be fully representative of all developing countries and their interests, the participation of several Non-OECD emerging economies like China, India, Brazil, Argentina, Indonesia and South Africa provided a rare opportunity for developed countries and developing countries to work together, in spite of their differences, for developing measures to address international tax avoidance. In that sense, BEPS can be seen as one of the first attempts of its kind for of broader international community to come together to develop international tax standards.

- BEPS actions were largely focused on tax avoidance/double non taxation, which have been perceived as a matter of concern by all countries. The prolonged and

[3] Developed countries that are exporters of capital and technology may find residence based taxation benefitting their national interests, whereas developing countries that are importers of capital and technology may prefer more source based taxation of income.

intensive interaction in the BEPS project among representatives of OECD & Non OECD countries appears to have created a better understanding of perspectives & preferences, as well and may have also brought greater awareness of their differences. Importantly, the project led to the emergence of common approach in many areas for example, developing measures to prevent treaty abuse, Country by Country reporting norms etc. As can be seen from the greater cooperation in other areas, like FTA, it may have also increased greater cooperation in administrative matters.

3.2. Challenges

- While the positive outcomes and the newfound ability of developed and developing countries to work together with greater intensity and confidence in areas of common interest bodes well for the future of multilateralism in international taxation matters (including transfer pricing issues and administrative cooperation), there are still challenges that need to be addressed.

3.2.1. Differences related to Source Vs. Residence taxation

- The primary objective during the BEPS project was to address erosion of tax base and artificial shifting of profits leading to tax avoidance. Most of the actions of this project proceeded with an understanding that it will not disturb the existing balance of division of taxing rights between the source country and the residence country. This could be seen to have been a factor in Action 7 that aimed at addressing Artificial Avoidance of Permanent Establishment (PE) Status. Even though such artificial avoidance of PE status is a major cause of concern for most developing countries, and probably even some developed countries, this action could not lead to acceptance of any minimum standards. This could be seen in stark contrast to the Action 14 aimed at improving dispute resolution under Mutual Agreement Procedure (MAP) that led to the agreement on 20 minimum standards and 13 best practices by the countries, mainly on insistence of the developed countries.

- The follow up work undertaken in consequence to the Action 7 Report, on providing guidance on Attribution of income has further emphasized these differences, as the developed countries seek to insist acceptance of their 2010 Guidance on attributing profits as per the Authorized OECD Approach that was developed by OECD for the revised Article 7 developed by it in 2010 version of OECD Model Tax Convention, even though many Non-OECD developing countries have not accepted that version of Article 7 and documented strong reservation against it. India has also expressed reservations against 2010 version of Article 7 in OECD Model, and also expressed its inability to follow the OECD recommendation on following AOA guidance.

- Another instance of differences regarding division of taxing rights was witnessed in Action 1 on addressing broader tax challenges of digital economy, wherein too the Final Report could not come up with any clear recommendations, even though it recognized the extent of the problem and was also able to identify at least three possible solutions, each of which was developed and analyzed in great detail. The compromise between countries that wanted a solution and those that were reluctant to accept such a solution, could be found in the recognition of rights of a country to implement any of the recognized solutions either in its domestic laws[4], or in a bilateral tax treaty by mutual agreement between Contracting States. These limitations in arriving at an appropriate solution indicate that in spite of the significant progress made so far, challenges in the area of dividing taxing rights between source and residence are going to be of concern.

3.2.2. Differences in Capacity and Resources

- Another area of concern, particularly for smaller developing countries and least developed economies, can be constraints in capacity and resources. Most developing countries cannot match the capacity and resources that are at the disposal of the developed countries. In most countries, experts in areas of international taxation and transfer pricing are limited, and a number of activities are taken simultaneously, as happened in the BEPS project, they can find it difficult to keep pace with the rapid developments.

- Many developing countries may find it difficult to afford the resources that are required for implementing international standards recommended by developed countries. For instance, Action 14 Report has led to 20 minimum standards and 13 best practices, the implementation of which would require considerable resources. It could be a challenge for many developing countries to match the international standards sought and implemented by the developed countries.

3.2.3. Tax Avenues in Developing countries remains unaddressed

- The G-20 has been laying down a lot of emphasis on domestic resource mobilization as the primary means of financing economic and human development in developing countries. While the developed countries face tax avoidance related to the ability of enterprises to park their returns on investments in low tax jurisdictions, the primary nature of tax avoidance faced by developing countries largely relate to the capacity of MNEs to avoid permanent establishment and profit attribution. In this regard, Action 7, that was aimed at recommending measures for avoidance of PE status has not been able to recommend measures that will address such tax avoidance. The fact that no

[4] India has already proposed to implement one of the recognized options, i.e. the Equalization Levy in its domestic laws. The proposal has been placed before the Parliament.

Minimum Standards were agreed in this action could also make the implementation of recommended measures rather difficult for many developing countries. The follow up work on Profit Attribution consequent to this action has been largely OECD centric, and does not fully take into account the sensitivities or preferences of developing countries. Similarly, the taxation of income from digital economy (Action 1) remains an unfinished agenda, although the Final Report promises the situation will be reviewed in 2020.

3.2.4. Many Developing Country specific issues yet to be taken up

- Though the BEPS Project provided an almost unprecedented opportunity to the Non-OECD G-20 countries to participate in this intensive project, the agenda of the project was largely driven by the preferences of developed world. Recognizing the need for taking up issues that could be of greater significance to the developing countries, the G-20 has recommended further work to be separately undertaken in some such issues.

- One of the issues proposed for BEPS was tax avoidance of capital gains by indirect transfer, which is an issue recognized by several developing countries like India and China. Indirect transfer real property has already been recognized and the Model Tax Conventions already provide for addressing capital gains from such transfers.

  However, similar recognition has not been granted to indirect transfer of business ownerships, which constitutes a major avenue for tax avoidance, particularly in developing countries that prefer to tax capital gains from alienation of equity shares and comparable interests in the country of source.[5] This work, which was not included in BEPS, is now being undertaken by OECD, World Bank and the IMF, but the participation of developing countries, who are most affected by this problem, is not part of this work.

- Work also being undertaken on developing Tool-kits for Tax incentives and Capacity Building for developing countries on the recommendations of G-20. However, these issues are yet to be treated with same urgency as other BEPS actions.

4. FINAL OBSERVATIONS

- While BEPS has been an unprecedented example of joint working by OECD and G-20 countries, it has also highlighted the challenges that exist in expanded multilateralism in tax matters, particularly when it comes to division of taxing rights between the source and the residence countries. An important challenge

[5] OECD Model Tax Convention provides for taxation of capital gains from alienation of equity shares in the country of which alienator is a resident. UN Model provides taxation of such capital gains in the country in which the company is a resident, subject to certain conditions.

for the developing countries relates to the constraints in capacity and resources. For smaller developing countries, these challenges could assume even greater significance.

- Thus, the opportunity of expanded multilateralism as experienced in BEPS Project creates the possibility of expanding such multilateral collaboration and coordination in new avenues, but challenges remain, which will need to be addressed.

  From the experience so far, it may be possible to conclude that greater cooperation is more readily possible in matters related to tax transparency, administrative cooperation, joint actions against tax avoidance and tax evasion. At the same time, greater internationally coordinated efforts at capacity building in developing countries can bridge some of the gaps in capacity and facilitate greater cooperation.

- To sum up, recent experiences of joint initiatives in international tax transparency and other initiatives, including the BEPS project, have opened up new possibilities of greater multilateral cooperation among developed and developing countries. The G-20 countries, including India, have welcomed these developments, and have been calling for greater and wider participation of developing countries in these projects.

Inter-American Center of Tax Administrations - CIAT

50th. GENERAL ASSEMBLY

"PAST, PRESENT AND FUTURE OF THE TAX ADMINISTRATION"

PPT

Mexico City
April 25 to 28, 2016

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