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CIAT Technical Conference

Administrative Collection Process as Effective Mechanism for Increasing Revenues

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Tax Customs Authority

CIAT TECHNICAL CONFERENCE

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TOPIC 1

THE COLLECTION POWERS OF THE TAX ADMINISTRATIONS: ADMINISTRATIVE COLLECTION PROCESS VS. ENFORCEMENT FOR COLLECTION

Lecture

Topic 1

THE COLLECTION POWERS OF THE TAX ADMINISTRATIONS: ADMINISTRATIVE COLLECTION PROCESS VS. STATUTORY ENFORCEMENT FOR COLLECTION

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Directorate General of the
Tax and Customs Administration
(The Netherlands)

Contents: *1. Introduction.- 2. The organisation of the collection of taxes in the netherlands.- 3. Compliance strategy.- 4. Management of the collection.- 5. Collection at the expense of the tax debtor himself.- 6. Possibilities for collection at the expense of third parties.- 7. Measures within the context of the financial and economic crisis.- 8. International cooperation in collection*.

1. INTRODUCTION

This contribution to the CIAT Technical Conference 2011 in Lisbon describes the collection process in the Netherlands. Paragraph 2 is about the organisation of the Tax and Customs Administration of the Netherlands and the policy objective used by the Tax and Customs Administration. Paragraph 3 deals with compliance strategy and paragraph 4 with management of the outstanding assessments and its automated support. The legal possibilities of the Tax and Customs Administration for the collection of outstanding tax debts are discussed in paragraph 5. Paragraph 5 also deals with various facilities for tax debtors. Paragraph 6 focuses on the powers of the Tax and Customs Administration towards third parties. It mainly concerns the possibilities for holding third parties liable for the tax obligations of tax debtors. Paragraph 7 discusses the measures taken in connection with the financial and economic crisis. Finally, the 8th paragraph deals with international cooperation in collection.

2. THE ORGANISATION OF THE COLLECTION OF TAXES IN THE NETHERLANDS

2.1 General policy objective

The general policy objective of the Tax and Customs Administration is:

Individuals and businesses are prepared to meet their statutory obligations with regard to the Tax and Customs Administration (compliance).

According to international standards, there is compliance in case of:

1. Registration
2. filing a tax return (in time)
3. filing a correct/complete tax return
4. paying the tax stated in the tax return (in time)

The Tax and Customs Administration promotes compliance first of all by adopting a service-oriented attitude to ensure proper communication with individuals and businesses. Moreover, the Tax and Customs Administration adequately supervises the fulfillment of the statutory obligations, enforcing these with criminal sanctions where necessary.

The over 30,000 employees of the Tax and Customs Administration are responsible for a large number of various tasks. The most commonly known task is the levy and collection of taxes and contributions. Every year, the Tax and Customs Administration processes the tax returns of over 8 million private individuals and 1.2 million entrepreneurs.

The Tax and Customs Administration does not only collect, but also pays out. For instance, the Tax and Customs Administration ensures the payment of provisional refunds and of benefits that households may be entitled to for the costs of childcare, rent or care.

Other important work processes are:

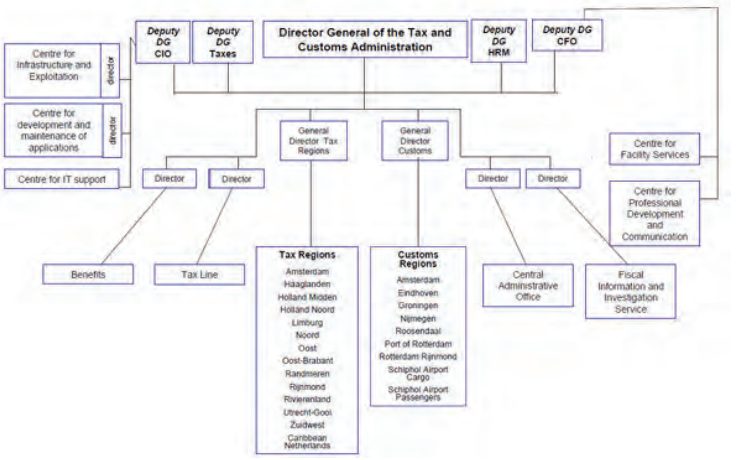
- detecting fraud
- supervising the import, export and transit of goods
- supervising compliance with tax laws and regulations.

2.2 Organisation of the Tax and Customs Administration

The Tax and Customs Administration is part of the Ministry of Finance and is led by the Director-General and his Management Team.

The organisation has the following structure:

Tax and Customs Administration of The Netherlands



The collection of taxes consists of mass and monitoring processes. The mass processes fall under the responsibility of the Tax and Customs Administration/ Central Administrative Office and the individual monitoring processes are applied by the Tax Regions.

2.3 The tax collector

The Tax Regions (the offices) are responsible for the collection of taxes at the expense of individual tax debtors. Within the Tax Regions, there is a separation of duties between employees who are charged with the levy of taxes (the tax inspectors) and employees who are charged with the collection of taxes (the tax collectors)[1]. This separation of duties was created for various reasons:

- Legal/substantive: the levy and collection of taxes are based on very different and various laws and regulations and each have their own process of legal protection
- Internal inspection: the tax inspector imposes the assessment and, in doing so, should be guided by law and not by payment capacity

Once the tax inspector has imposed the assessment (and any objection and appeal procedures have been completed), his work is finished. The assessment is the start of the collection process: this is the basis for the payment obligation of the tax debtor.

1 *Therefore, this contribution will mostly be about the tax collector from now on*

2.4 The tax bailiff

Under the responsibility of the tax collector, bailiffs are also active within the tax regions. It concerns special bailiffs[2] who are referred to by law as “tax bailiffs”. They only come into action if the fully automated system of payment reminder, demand and writ of execution sent by post have not lead to payment of the taxes due. The tax bailiffs are only authorised to perform activities for the collection of taxes and other amounts that must be collected through the collector of the Tax and Customs Administration. They are the ones who actually take measures to enforce collection. They are therefore engaged in attachment (or seizure) and execution law. The advantage of the Tax and Customs Administration’s own bailiff system is that the tax bailiffs:

- fall directly under the authority of the tax collector, allowing the tax collector to deploy them immediately at places where they are needed the most, and therefore
- are able to work highly flexible hours, and, furthermore,
- have knowledge of all processes of tax levy and collection, and, moreover,
- have a lot of expertise in the field of enforced collection (attachment and execution) because they spend all their working hours on taking measures to enforce collection.

3. COMPLIANCE STRATEGY

The Tax and Customs Administration works according to a fixed compliance strategy. This means that the Tax and Customs Administration structurally and systematically selects an instrument or combination of instruments that fits in best with the intended influence on the behavior of groups of taxpayers, on the basis of the effect the Tax and Customs Administration wants to achieve and the available capacity. Influencing behavior means that the Tax and Customs Administration not only assesses the underlying causes of non-compliance, but is also aware of its own behavior and its effects on taxpayers’ compliance behavior.

The set of enforcement instruments is broad and varies from tools that are aimed at prevention of non-compliance to the criminal prosecution thereof; for example:

- preventative measures (“right from the start”)
- enforcement communication

2. *These tax bailiffs have, on the one hand, a more limited and, on the other hand, a broader assignment and authority than the court bailiffs who act on behalf of other collection agencies and the courts. More limited: because they collect tax debts only for the tax collector and broader: because they can be deployed throughout the country (no regional limitations) and have additional powers.*

- incentives in case of good payment history
- working in the present (responsive)
- horizontalisation
- cooperation with other governments
- repressive measures

One of the instruments is Horizontal Monitoring; over the past few years, this instrument has continually developed and is a prime focus of the compliance strategy of the Tax and Customs Administration. The relationship between authorities and businesses has changed dramatically over the past few years. It is on a more equal footing now, and more focused on cooperation and making agreements. Furthermore, businesses - sometimes of their own accord, sometimes forced by laws and regulations - have become increasingly transparent in their operational management. The Tax and Customs Administration responds to these developments by sharing responsibility for compliance with laws and regulations with businesses and sector organisations, where possible. This shared responsibility is laid down in voluntary agreements. Businesses that make an agreement with the Tax and Customs Administration have the obligation to report significant tax risks and will no longer get intensive audits; in most cases inspection remains limited to a random check and/or thematic checks.

Only trustworthy businesses are eligible for this. This new form of supervision enables the Tax and Customs Administration to devote more time to investigate businesses that comply less scrupulously with the regulations. The payment history of partners to an agreement forms an important part of this cooperation.

The approach to the collection also takes place along the above lines. As far as horizontal monitoring is concerned, this can also mean that entrepreneurs do not wait until a writ of execution is served on them or - even worse - a tax bailiff is at their door, but that, as soon as they discover that there are or there is a risk of liquidity or solvency problems within the company, they inform the tax collector of this. This gives the tax collector the opportunity to form a sound opinion on the nature of the problems and to look for solutions in close consultation with the entrepreneur.

4. MANAGEMENT OF THE COLLECTION

4.1 Objective

The Tax and Customs Administration has defined the percentage of the backlog in collection for the year 2010 as a performance indicator; the objective is that the backlog may amount to 2.5-3% of the total. With a backlog in collection amounting to 2.5%, this objective was met for 2010; this means that 97.5% of the total tax amount to be collected was actually received. This percentage also

includes “old”, still unpaid assessments, but not the assessments for which a postponement of payment was allowed due to an objection or appeal. Managing backlogs prevents the occurrence of collection losses. For experience shows that as assessments are outstanding for a longer period of time, the chance that they can still be collected in full with the passing of time decreases inversely proportionally.

The Ministry of Finance (the central level) does not prescribe any more objectives. However, a tax region may make an internal agreement about certain objectives. For instance, the local management may agree with the collection department of this unit that a certain number of liability claims must be realised per period. Moreover, agreements can be made in order to take certain actions for certain sectors. Furthermore, it may happen that the local management agrees with its collection employees that only a certain (limited) part of the payment arrears may be older than one year.

4.2 Management of the collection process

4.2.1 Organisation of the collection process of the Tax and Customs Administration

The collection process of the Tax and Customs Administration distinguishes between (I) mass collection and (II) special collection. Below, the mass and special work processes are discussed in more detail.

(I) Mass collection (fully automated)

Mass collection is understood to be the complete collection process from sending the assessment notice to the attachment order based on the writ of execution. The mass processes fall under the responsibility of the Tax and Customs Administration/Central Administrative Office (B/CA). So the tax collectors that are established within the tax regions do not have a lot to do with these mass processes. This is the core business of B/CA. Among other things, B/CA ensures that the following is sent:

- Assessments
- Free payment reminders
- Demands (for which costs are charged) and
- Writs of execution (for which costs are charged as well)
- The attachment orders for the regional office[3]

3. *The attachment orders are sent to the regional office while the four documents listed above that (assessments, demands, payment reminders and writs of execution) are sent to the tax debtor him/herself.*

It concerns mass processes which are fully automated and which, in principle, do not require any manpower. In this phase of the process, a personal approach is only required if the tax debtor him/herself applies to the tax collector following an assessment, payment reminder, demand or writ of execution he/she received.

(II) Special collection (is almost fully managed by personal attention)

Special collection is understood to be the phase of the collection process in which automated support only takes place to a slight extent, because after the writ of execution is served (which, as it were, marks the phase of the enforced collection or - in legal terms - the enforcement of the writ of execution), a choice has to be made as to whether and, if so, how the collection should be enforced. These individual monitoring processes of which the special collection forms part are only applied by the Tax Regions. Depending on the question whether the tax debtor is an business or a private individual, choices are made as to how the enforced collection can be implemented. In doing so, it is first assessed whether or not the debt can be set off against refunds. The basic principle in this matter is that collection is enforced first and foremost at the expense of tax debtors and that as soon as it is clear as to whether or not this will have sufficient success, it will be assessed whether third parties can be held liable[4]. As indicated above, the collection method depends on whether it concerns a business or a private individual. The Collection of State Taxes Act 1990 [Invorderingswet 1990] was designed in such a way that it should first be assessed whether simple methods of enforced collection can be applied and, as they prove to be less successful, more serious collection options may be used.

Above, the more or less general principle was put forward that collection should be enforced as much as possible at the expense of the tax debtors. This principle is not used with regard to private individuals, because if it is more efficient for the tax collector to include third parties in the collection, this should be opted for. For this reason, the tax is almost fully collected at the expense of private individuals along the lines of government demands and wage demands[5]. The focus is now mostly on efficiency, more than it used to be, in case the tax debtor is a private individual. The collection method that is the quickest and easiest and/or cheapest for the Tax and Customs Administration is selected. For the “old” adage (first try to collect taxes without troubling third parties) still applies to businesses. It is therefore necessary when using the process-based approach to tax debtors to make a proper distinction as to which tax debtor is an entrepreneur and which tax debtor should be regarded as a private individual.

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4. See paragraph 6.1 for this.

5. See the text below the schedule of paragraph 4.3 and under the heading “measures” in paragraph 5.2 next to bullets nine and ten for a discussion of the terms “government demand” and “wage demand”.

4.2.2 Support by ETM (Enterprise Tax Management)

Currently, a new automation system is being created, in which even more information about tax debtors is gathered than is done today. The new system does not only bring together all kinds of technical gadgets but also stores full client profiles, providing the tax collectors with knowledge about what kind of tax debtor they are dealing with. The new system must ensure that the tax collector is supported by automation more and that he will be informed sooner and better about all ins and outs about the tax debtor. It is expected that the introduction of ETM will lead to smaller arrears in payment and a better service to tax debtors. The introduction of ETM extends the mass process as it were. A lot more work will be performed on a pro-active basis. After the introduction of ETM, the collection at the expense of private individuals will almost fully be automated. This means specifically that after the writ of execution is served, a government and/or wage demand[6] will be made and if, as a result, the tax debt cannot be paid off in full, this debt will be declared uncollectable. However, it should be noted that these uncollectable assessments may still be collected afterwards by means of a set-off or by means of certain collection proceedings.

4.2.3 Cooperation with other government bodies

The Tax and Customs Administration is not only responsible for the levy and collection of taxes, but also levies and collects national and social insurance contributions. Moreover, the Tax and Customs Administration also pays out rent benefits (allowances), healthcare benefits, means-tested child benefits and childcare benefits while any amounts owed by the person receiving these benefits due to overpaid amounts or amounts otherwise received in error are reclaimed by the Tax and Customs Administration. Amounts are also recovered or reclaimed for a few other government agencies. Furthermore, there is a lot of cooperation in the field of information exchange between other government and some non-government agencies. These other government agencies are other ministries, but also municipalities, the employee insurance agency, Customs services and furthermore - in the opposite direction - non-government agencies such as banks, insurance companies and many other institutions that provide data and information whether or not automatically.

6. *See the text below the schedule of paragraph 4.3 and under the heading "measures" in paragraph 5.2 next to bullets nine and ten for a discussion of the terms "government demand" and "wage demand".*

4.2.4 Risk profiles (payment history)

At present, tax debtors are subdivided into two categories. Generally speaking, a distinction can be made between those who cannot pay and those who can but do not want to or, in other words, “the good guys and the bad guys”. Still, these two categories are not the only ones. For instance, as regards attention, a distinction is also made between tax debtors with and without a large financial interest. Furthermore, large and very large enterprises on the one hand and small and medium enterprises on the other hand are treated differently in practice. For large and very large enterprises, banks often also use a form of financing that is more based on trust and continuity while for small and medium enterprises, a form of finance is used that is mostly based on securities. This, of course, also has consequences for the collection policy of the tax collector. A reasonably good rule of thumb used in the Netherlands is that as long as the bank(s) still believe in the continued existence of an enterprise, the tax collector does not have any real cause for (great) concern. Apart from said distinction between certain types of tax debtors, more distinctions can be named. However, this paragraph does not serve to be complete.

The Tax and Customs Administration has so-called client profiles. This is a collection of data which contributes to the forming of a picture of the tax debtor. The data collected makes it clear whether it concerns a compliant or non-compliant tax debtor. In short, it concerns information that shows whether the tax debtor can be trusted or not. The information available can determine the collection strategy to be used. Providing services where possible, being harsh when necessary. It was stated above that client profiles consist of large amounts of information about the tax debtors’ attitude. This information is obtained through previous experiences with the tax debtor; information from third parties such as other parts of the Tax and Customs Administration or investigative authorities or other third parties obliged to provide the Tax and Customs Administration with information. The information obtained is summarised and stored in a file. If information is required about the attitude of a certain tax debtor towards the Tax and Customs Administration or other government agencies, this information can be consulted.

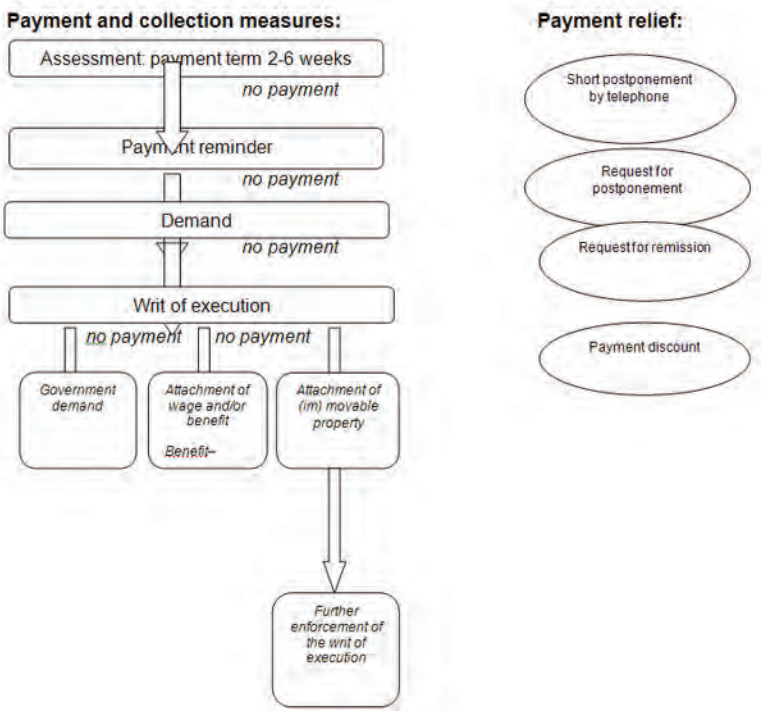
After the new computer system ETM (see above) has been put into use, the various client profiles and things worth knowing about certain tax debtors will have been stored in databases. The tax collectors will be provided with enormous amounts of information (much more information than currently available). The tax collector will automatically be provided with this information if the tax debtor enters (a next phase of) the process of enforced collection. In ETM, the information will be better categorised and more accessible. It is then stored in a clear system which can be accessed by each interested official. ETM will also include a kind of bonus-malus system which determines whether the tax debtor is known as a good or bad payer, depending on his payment history. This knowledge will induce the tax collector to respond to and act more quickly towards a certain tax debtor.

4.2.5 Distinction between personal/business debts

The taxes to be collected can be distinguished between private and business taxes. Business tax debts are, among other things, turnover tax and wage tax and also a few other types of tax connected with business. Personal taxes are taxes that do not need to have a direct link to entrepreneurship. Such a personal tax is income tax. In general, the collection of business taxes has a considerably stricter collection policy than the collection of personal taxes. Moreover, a deferment of payment and remission are more generously granted for personal taxes than for business taxes.

4.3 Diagram

The below diagram outlines the process of enforced collection. The left-hand side of the diagram under the heading “Payment and collection measures” shows the steps and measures that are part of the process of (enforced) collection within the meaning of actions to recover a debt. The right-hand side under the heading “Payment relief” shows the facilities available if one is unable or temporarily unable to pay the full tax debt.



4.3.1 Private individuals

The above diagram applies to private individuals who do not carry on a business. However, what has been stated about the "Further enforcement of the writ of execution" generally does not apply to private individuals. After a government demand on bank balances has been made and, if necessary, wage has been attached, any residual tax debts will be declared uncollectable. This means that, although no new initiatives for (enforced) collection will be started (as they generally have no effect anyway), set-offs against any future refunds may be made for a period of five years. The tax collector also has the possibility to extend this five-year period. In that case, he only has to take measures to prevent the tax assessment from becoming barred. The tax collector also has the possibility to take collection measures again if he suspects that the income of the tax debtor will improve in the (near) future. For example, if, in the second or third year after the tax debt has been declared uncollectable, the tax collector discovers that the tax debtor has received a large inheritance or has started a profitable business, he may still proceed to enforced collection. In case of ANPR[7] actions and other collection proceedings in which the tax collector finds recoverable property, he will also include the uncollectable assessments as well as the assessments for which an "obligation alert" has been added to the vehicle registration system.

It has been stated above that collection at the expense of private individuals is, in principle, limited to the government demand, the wage demand and any set-offs against later tax refunds. This does, of course, not apply to the tax debtor who cannot considered to be an entrepreneur but who has assets (whether or not acquired by criminal activities) and would be able to pay but is unwilling to do so. In short: those who can but do not want to pay are, even if they are private individuals, also dealt with severely - more or less comparable to the approach to entrepreneurs.

4.3.2 Businesses

Broadly speaking, the above diagram also applies to entrepreneurs, on the understanding, however, that entrepreneurs never receive a payment reminder (free of charge) for their business taxes, but instantly a demand (not free of charge). The payment reminder is left out because, in case of non-payment, entrepreneurs

(I) usually know that they are in arrears with the payment of their tax debt, and, at the expense of these entrepreneurs
(II) measures to enforce collection should be taken as quickly as possible because the chance that the full tax debt will still be paid decreases digressively over time.

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7. See paragraph 5.2 directly below the list of "measures" for a description of ANPR actions.

Furthermore, no government demand or wage demand is made at the expense of an entrepreneur. It is also important that, as far as the payment obligation is concerned, a short postponement by telephone is not possible and debts can be remitted far less easily than with private individuals. In short, the collection policy with regard to entrepreneurs is considerably stricter and there is less room to facilitate them. The Dutch view is that, in principle, banks and other providers of debt capital (or possibly the shareholders) should finance companies and not the Tax and Customs Administration.

5. COLLECTION AT THE EXPENSE OF THE TAX DEBTOR HIMSELF

5.1 Statutory framework

The Netherlands has a special collection act (the "Collection of State Taxes Act 1990"). Although there is also legislation for the Central Government which lays down more general rules for administrative money debts (which includes tax debts), this general legislation (the "General Administrative Law Act") also provides, apart from the general rules, that these rules may be departed from in case of special legislation. This is the case in the Collection of State Taxes Act 1990.

Apart from the Collection of State Taxes Act 1990, there is also "subordinate legislation" in the field of tax collection law. For instance, there is an implementation decree, there are implementation regulations and there is a policy document (the so-called "2008 Collection Guidelines"), which combines all policy rules in the field of tax collection law. The 2008 Collection Guidelines are very important to the tax collectors. In these guidelines, the State Secretary for Finance states his opinion on how the law should be applied. In doing so, he guarantees unity of policy and implementation within the Tax and Customs Administration.

An important feature of tax collection law is that it is based on civil law more than on other tax law.

5.2 Measures

The most striking feature of the Collection of State Taxes Act 1990 is that this act lays down additional rules and powers for the tax collectors. "Additional rules and powers" means that, apart from all legal means, possibilities and powers which each creditor has under civil law, he is also given additional possibilities, means and powers under the Collection of State Taxes Act 1990. So the tax collector has more options available to collect tax assessments as quickly and efficiently as possible than other creditors have when collecting debts from their debtors. Below is a general - incomplete - list of the "extras" the tax collector has compared to other creditors:

- the tax collector has his own tax bailiff system which can therefore be used in the best possible way
- the powers of the tax collector are not limited to a particular region but he (and the same goes for his tax bailiffs) is authorised throughout the country
- taxes can only be paid by automatic transfer and therefore not in cash
- the tax collector may, under certain circumstances, ignore the statutory possibility of payment in instalments so that the assessment will become immediately due and payable in full
- the collector has the right to summary execution, so he does not require the permission or approval from the court to take certain collection measures (attachment and forced sale of the property attached)
- the tax collector may serve a writ of execution by sending it by post
- in some situations, the tax collector may completely disregard the prohibition of taking measures to enforce collection at night or the weekend
- in case of proceedings which are instituted against the tax collector to have a default judgment set aside (before the civil court) and the purpose of which is to have the tax collector cease or suspend his collection measures, the tax debtor may, in principle, not rely on him having never received the assessment, demand or writ of execution.
- the tax collector has the possibility to have a simplified (extrajudicial) garnishment levied on the wage and/or pension benefits of private individuals. The procedure is as follows: the tax collector sends a letter to the employer or to the agency paying the pension. For each wage or pension payment, the employer or agency pays an amount to the tax collector that is so “large” that the tax debtor is only left with an amount of 10% below the social minimum (this simplified garnishment is called a “wage demand”)
- the tax collector has the possibility to have a very simplified (extrajudicial) garnishment levied on the bank account (this is the current account, not the savings account) of the tax debtor who is a private individual. This garnishment even includes any credit margin agreed upon with the bank (this form of garnishment is referred to as a “government demand”). The methodology of this instrument is that the tax collector provides its own bank with a file containing tax debtors/outstanding debts (of private individuals), after which any surplus money is removed fully automatically from the tax debtor’s bank account (without deploying any manpower)
- the tax collector may rely on a comparable very simplified garnishment with respect to third parties who are in possession of monies belonging to the tax debtor. At the request of the tax collector, they must immediately pay the monies they have in their custody
- tax debtors who are able but do not want to pay (the hardliners within the group of won’t pays) may be remanded in custody for no more than one year
- tax collection has high priority in the Netherlands (only pledge and mortgage have higher priority than the tax authorities)
- the tax collector is even authorised to seize and then sell certain property belonging to third parties but located at the premises of the tax debtor for

the purpose of the tax debt of the tax debtor (the tax collector may therefore completely disregard situations of retention of title, hire-purchase and certain lease contracts)

- the tax collector may completely disregard rights of pledge (and therefore ranks in priority) if the pledged property is located at the premises of the tax debtor (rights of pledge which are established on this property - which is located at the premises of the tax debtor - are therefore an uncertain security for the pledgee)
- the tax collector may recover the tax debtor's motor vehicle tax debts from the cars which have been registered in the name of this tax debtor, even if the actual owner is not the tax debtor. It therefore concerns a collection instrument for motor vehicle tax irrespective of who the actual owner of the car is. The tax collector may also recover other motor vehicle tax assessments which are in the name of the person in whose name the relevant car is registered from the seized car irrespective of who the (actual) owners of those cars are (for which motor vehicle tax assessments were imposed as well). The investigation into the actual owner of these cars is therefore irrelevant
- in the Netherlands, income realised by trusts are allocated to the settlor (who lives in the Netherlands). The trust itself is generally established in a tax haven the Netherlands has not concluded a (collection) treaty with. If the settlor does not or does not fully pay the taxes relating to the tax advantages obtained from the trust, the tax collector may seek recovery from the assets belonging to the trust and located in the Netherlands. It turns out that many assets of trusts which have been set up by Dutch citizens are located in the Netherlands, whether or not indirectly. These assets of the trust may be recovered for the settlor's tax debt
- the tax collector also has a right of setoff which strongly differs from civil law if the tax debtor is also entitled to certain refunds (quicker, easier and simpler). In addition, the tax collector may set off all tax types between participants who are part of a tax entity for corporation tax purposes
- there is a system of interest on overdue tax which applies if the tax debtor does not pay his taxes within the applicable period
- the tax debtor is obliged to immediately provide the Tax and Customs Administration with all information and documents asked from him by the tax collector. Moreover, he must also allow inspection of books and documents as soon as this is requested
- the tax collector also has far-reaching powers in the area of asking third parties for information as soon as the tax debtor does not meet his obligations in time. The tax collector may also inspect books and documents and documents must be submitted to him
- if the third party does not meet his obligation to provide information, a separate, rather strict regime of imposing punishments and fines applies
- finally, the tax debtor has a very broad range of liability provisions (it concerns more than 30 liability provisions). It concerns, for example, the liability of the managing director for the tax debts of the legal person managed by him;

liability of contractors for the tax debts of their subcontractors; the same goes for the temporary hiring of staff; liability of disposers of large blocks of shares (< 33%) for the corporation tax debts of the company in which they held shares; liability of civil-law notaries for transfer tax if the tax debtor did not pay the transfer tax, etc. etc.

Apart from these collection options based on the law, other novelties not provided for in the Collection of State Taxes Act 1990 are used as well. For instance, the Tax and Customs Administration often undertakes ANPR actions (ANPR means: Automatic Number Plate Recognition) whereby as regards owners of cars that get flashed, it is examined through data telecommunication whether these owners (in whose name the registration number is registered) have any outstanding assessments. If this is the case, the motorcycle policemen who are parked further down the road receive a sign to stop the relevant car/driver and to give him/her the choice: either pay tax or walk home! These actions do not only generate a lot of money, but also have a highly preventative effect.

Another option is to deprive tax debtors with over 5 outstanding motor vehicle tax assessments of the possibility to have new registration numbers registered in their name. For this purpose, a blockade is included in the vehicle registration system. This possibility is called the obligation alert. This option and the option before that have been reasonably successful in tackling behaviour resulting in the non-payment of motor vehicle tax.

A final possibility that should not go unmentioned is the authority of the tax collector to issue an alert regarding the passport of tax debtors. A tax debtor in respect of whom a passport alert has been issued can no longer obtain a new passport unless he still pays his tax debts. Moreover, the passport alert - in combination with the possibility to commit a tax debtor to prison - is a good tool to remand Dutch citizens who live abroad and in respect of whom a passport alert has been issued. This combination (passport alert plus being committed to prison) also has a highly preventative effect.

5.3 Postponement of payment due to payment difficulties

5.3.1 Private individuals

The Netherlands has a relatively flexible postponement policy as far as private individuals' requests for postponement are concerned. For instance, in the Netherlands, a private individual (who does not have a negative tax history) may be allowed to postpone payment of his income tax assessment for no more than 3 months without any form of security and without further information being required if this tax debt does not exceed € 20,000. However, if a postponement for a longer period or for an amount over € 20,000 is required, detailed information as well as security must be provided.

5.3.2 Businesses

Businesses who have payment difficulties may be allowed to postpone payment of tax debts related to their business for no more than one year if they provide 100% security. This means that the Dutch tax collector is extremely cautious when it comes to allowing postponement of payment to entrepreneurs due to payment difficulties. The reasoning behind this very cautious policy is that banks and other external financers in particular (for example shareholders and private equity parties) should provide risk-bearing capital to the market and not the Tax and Customs Administration. This policy is strictly enforced and if entrepreneurs are unable to provide security and pay the tax due, there are only two options:

1) Attachment of the assets of the business
2) Winding-up petition

Re 1) In case of attachment, the seized property should, in principle, be sold within 4 months. This means specifically that there should be a forced sale. The attachment and forced sale actually lead to business cessation. An advantage of business cessation is that the tax debts related to the business will not increase any further.

Re 2) If nothing or not much can be expected of an attachment followed by a forced sale or if a receiver is believed to have more means and possibilities to trace the tax debtor's assets and converting them into cash, a winding-up petition will be filed with the court. The ministry will check beforehand whether this serious means is justified. An advantage of a winding-up petition is that as soon as the liquidation is ordered, the tax debts related to the business (wage tax and turnover tax in particular) will not increase any further.

5.4 Bankruptcy

5.4.1 Private individuals (non-entrepreneurs)

Only rarely will the tax collector institute bankruptcy proceedings against a private individual. Bankruptcy proceedings will only be instituted against a private individual in situations in which a bankruptcy petition has clear and demonstrable added value. Private tax debtors who are in a hopeless debt position have various options:

1) remission of tax debts
2) out-of-court debt management
3) statutory debt management

In the Netherlands, benevolent private tax debtors are treated rather favourably. The purpose of the options to come to an extra-statutory (therefore amicable)

agreement with the tax authorities and the statutory options is to allow the debtors the possibility to make a new start. This means specifically that after a certain amount has been paid and/or a certain period has lapsed, the Tax and Customs Administration will no longer make any attempts to collect the taxes. This is also the major difference with bankruptcy. If a private individual is declared bankrupt and the bankruptcy is closed in due time while not all creditors have been paid in full, all individual creditors may again (after the end of the bankruptcy) try to recover their claims against the debtor. In fact, a creditor is there "for life"! Apart from private tax debts with a (more or less) criminal background or tax debtors who are otherwise not in good faith, the Tax and Customs Administration assumes that (debt management) arrangements should come to an end. In principle, the Tax and Customs Administration never institutes bankruptcy proceedings against a private individual.

The following explanation can be given to the above three options:

Re 1) in short, each private tax debtor has the right to have his debts remitted if he does not have any assets and his income does not enable him to pay the tax debt in full. For one year, the tax authorities will cream off his income in such a way that the tax debtor is left with only 90% of the social minimum. All income earned by the tax debtor and exceeding the 90% mentioned, will be creamed off for the benefit of the tax authorities. After this year, the tax authorities will not try to collect the outstanding part of the tax debt, because it is remitted. If the tax debtor does have any assets, these assets should be converted into cash for the benefit of the tax collector.

Re 2) If a debt management request is made for a tax debtor by a recognised debt assistance organisation, the Tax and Customs Administration will usually grant this request unless there are serious doubts about the good faith of the tax debtor. The basic rules agreed upon with the sector organisation of debt assistance organisations mean that, for three years, the tax debtor's income will be creamed off by the debt assistance organisation to about 105% of the social minimum income. That which the debt assistance organisation "saves up" this way for three years will be divided among the creditors (including the Tax and Customs Administration). The money will be divided in such a way that the amount to be divided/paid to preferential and ordinary[8] creditors will be paid in a ratio of 2 : 1.

8. *In the Netherlands, the Tax and Customs Administration is a preferential creditor and therefore has priority over ordinary creditors. Normally, the preferential creditors are paid first and once they have been paid in full, it will be the ordinary creditors' turn. In case of amicable debt management but also in case of statutory debt management (but not in case of a bankruptcy!), this system is abandoned and the money present is divided in the sense that preferential creditors receive twice as much as ordinary creditors.*

Example:

During the amicable debt management of X, an amount of € 60,000 was "saved up[9]" by the debt assistance organisation during the three-year period. X's total debt amounts to € 300,000. An amount of € 200,000 relates to ordinary debts while the remaining € 100,000 relates to preferential debts. Preferential creditors are entitled to double the percentage of the revenue when compared to ordinary creditors.

Division:		
Preferential creditors:	€ 100,000 x 30 % =	€ 30,000
Ordinary creditors:	€ 200,000 x 15 % =	€ 30,000
Total:		€ 60,000

So the result is that preferential creditors do not have complete priority over ordinary creditors but that they have "priority" in terms of percentage because, comparatively speaking, they are paid more for their claim against X.

Re 3) Apart from the amicable debt management scheme discussed above at "Re 2", there is also a statutory debt management scheme in the Netherlands. The statutory debt management scheme offers the possibility to force creditors who do not want to cooperate in an amicable debt management scheme to participate in a statutory debt management scheme. There is little difference between both schemes as regards content and outcome. The statutory debt management scheme is effected before the court and a statutory administrator is appointed over the debtor. The statutory debt management scheme forces creditors as it were to cooperate in an amicable solution.

5.4.2 Businesses

As already mentioned briefly above, a winding-up petition for businesses is filed with the court if this company's financial situation is hopeless. This means that the entity with tax debts:

- cannot continue to make payments
- leaves more than one creditor unpaid
- cannot survive by means of a debt rescheduling operation in which all creditors participate.

In short: the business cannot be saved. The liquidator appointed by the court when ordering the liquidation can often (not always) investigate (foreign) assets better and often also has a better knowledge of the various markets that could be of importance in case of a possible sale of (parts of) the

9. *The amount of the estate is the result of the monthly deductions from the tax debtor's wage, pension or benefit and the result of the sale of the tax debtor's assets by the debt counsellor.*

insolvent business. The law also grants more powers to the liquidator. In the Netherlands, the winding-up petition is the last resort. Practice shows that the Tax and Customs Administration does not file a winding-up petition without previous notice, nor does it hardly do so. However, a tendency can be observed in the Netherlands which shows that many creditors use (abuse?) a winding-up petition as a crude collection instrument. The question is whether this is desirable.

However, apart from the winding-up petition, Dutch regulations also offer the possibility to agree on debt rescheduling with all creditors. This can be done amicably, but it is also possible to request the court to impose a compulsory composition if one or more creditors do not want to cooperate in an agreement (= amicable settlement). In case of such debt rescheduling operations, the tax authorities demand that they receive twice as much for their claim than ordinary creditors do. For the elaboration of such a scheme, see the example at “Re 2) out-of-court debt management” which, in essence, discusses a similar solution. Remission in the sense that the Tax and Customs Administration is the only creditor who drops part of its claim is not possible. The basic principle is that all creditors participate. It is also important that certain creditors have not first considerably improved their own position right before the company ran into financial problems. However, the tax authorities demand from the entrepreneur who is in financial problems that the percentage of his tax debts to be offered to the tax collector is substantial in both an absolute and relative sense.

As already indicated above, the policy of the tax authorities for businesses is – apart from the willingness of the Tax and Customs Administration to reschedule debts – rather tough. Postponement due to payment problems without providing 100% security is not negotiable, nor is remission. Moreover, the willingness of the tax collector to not recover a previous attachment of movable and immovable property levied by the tax bailiff but to let it rest for a while (as security) is, in principle, not negotiable either. After four months, the attachment must have been recovered in full. The question may arise as to why the Tax and Customs Administration conducts a rather rigid policy when it comes to remission and postponement of payment for businesses. Is it not detrimental to the business climate? The Dutch government does not want to come into collision with European state aid regulations, but wants to propagate that it finds equal treatment and fair competition very important. One should also consider that if the Tax and Customs Administration would facilitate businesses who are not so strict when it comes to their tax obligations, this may result in distortion of competition or unfair competition in the sense that businesses who do meet their obligations in time and in full experience more difficulties that those who do not always meet their tax obligations in time.

5.5 Possibilities/conditions for payment relief

5.5.1 Postponement of payment

The tax collector is entitled to allow the tax debtor postponement of payment if requested. For postponement of payment due to payment difficulties, see paragraph 5.3.1 for private individuals and paragraph 5.3.2 for entrepreneurs. There are more generous postponement options for both private individuals and businesses if they have objected to the tax assessment or if they are awaiting a tax refund against which the tax assessment can be set off. See paragraph 7 for a special postponement of payment[10] in connection with the financial and economic crisis.

5.5.2 Remission of tax

See paragraph 5.4.1 for remission and debt management possibilities for private individuals and paragraph 5.4.2 for remission and debt management (im)possibilities. In summary, it can be stated that there is a rather favourable policy for private individuals while the policy for businesses is downright rigid. A partial remission of tax debts is only possible in the context of a rescheduling in which all creditors participate.

5.5.3 Payment discount

The Collection of State Taxes Act 1990 gives the tax debtor who receives a provisional assessment imposed in the year to which this tax assessment relates the possibility to receive a discount on the tax due if the assessment is paid in full immediately after it has been imposed, without the tax debtor using the statutory possibility to pay in instalments. The payment discount amounts to a certain percentage[11] of the payable tax.

5.6 Interest on overdue tax, costs and possibilities and conditions for payment relief

5.6.1 Interest on overdue tax

The tax debtor who does not pay his tax debts or fails to pay them in time owes interest on overdue tax for the period in which he is in default. The interest on overdue tax is not the statutory interest as provided for in Dutch civil law, but an interest-rate measure that is specifically tailored to the collection of tax

10. Only for businesses.

11. During the fourth quarter of 2011, the percentage of the payment discount amounts to 3% on an annual basis. The percentage is equal to that of the interest on overdue tax. See paragraph 5.5.1.

debts. The tax debtor owes (simple) interest as from the only or last due date of the tax assessment. The interest obligation will run from this only or final due date until the date of payment. The interest on overdue tax currently amounts to[12] 3%. If a tax debtor has paid a tax assessment while this assessment is subsequently decreased or even cancelled, the tax debtor is entitled to a refund of the interest already paid but also to a reimbursement of interest on the amount of the decrease as from the only or final due date of the assessment or from the date of (earlier) payment. This percentage is equal to the payable rate of interest on overdue tax. The rate of the interest on overdue tax is linked to a certain ECB interest rate using a complicated formula.

A disadvantage of the regulation on interest on overdue tax is that if the interest on overdue tax is lower than the interest calculated by the bank, taxpayers tend to pay the tax authorities last as they can “borrow” money cheaply here. During period in which the interest on overdue tax was higher than the interest banks were willing to pay on savings accounts and deposits, it often happened that taxpayers made rather high preliminary estimates of their income and immediately paid the resulting provisional assessment because when they would receive the final tax assessment, the overpaid amount would be refunded anyway plus an interest on this amount that is higher than the interest that could be received from a bank. It is rather difficult to tackle these forms of improper use. It is about finding an interest-rate level that does not incite taxpayers to use the tax authorities as an alternative source of income or as a financier.

It is currently assessed whether the system of interest on overdue tax can be improved.

5.6.2 Costs

It has already been discussed above that the collection process in the Netherlands consists of various phases. These phases are accompanied by specific measures or actions. It is the opinion of the Tax and Customs Administration of the Netherlands that those who are responsible for the costs incidental to the collection process (the defaulters) also have to pay these costs themselves (and no-one else!). In the Netherlands, it is considered to be unacceptable that the compliant taxpayer who always meets his payment obligations in time should indirectly share in the costs of the maintenance of the collection system. The costs incurred with respect to the maintenance of the collection system must be borne by the persons who are responsible for these costs: the defaulters. The Netherlands has thought up a system which ensures that the costs of the collection system are (more than) fully paid by

12. As from the fourth quarter of 2011

tax debtors who do not meet their tax obligations in time. It works as follows. Everyone who does not immediately pay his taxes after receipt of a free payment reminder will enter a procedure in which costs are charged for each step of the further collection process.

5.6.3 Cost calculation

Costs are charged by the tax collector (actually B/CA) for sending a demand. For a demand with a tax debt up to € 454, an amount of € 7 is charged. For tax amounts of € 454 and higher, an amount of € 15 is charged. If, after that, payment is still not made, a writ of execution is sent (usually by post).

For serving a writ of execution, an amount of € 38 is charged plus € 3 of each whole amount of € 45 that exceeds a claimed sum of € 45, on the understanding that the amount due does not exceed € 11,246. The "most expensive" writ of execution therefore amounts to € 11,246.

Example:

A tax debtor has to pay tax amounting to € 200. After he did not respond to the demand, he receives a writ of execution. The costs charged to him for this are:

The basic costs to be paid for a writ of execution are:	€ 38
For each whole amount of € 45 exceeding the first € 45, an amount of € 3 is charged; this means that an additional amount of three times € 3 must be paid	€ 9
Total:	€ 47

Apart from the costs for the demand and the writ of execution, the tax bailiff also charges other (smaller) costs. This work relates to the preparations for a forced sale and the sale of the attached property itself.

5.6.4 Result

The result of the approach described above is that the group of defaulters pay the collection costs themselves. It was recently calculated that the State of the Netherlands gains some tens of millions of Euros per year in the costs charged to the defaulters. The collection costs (both material and staffing costs) are fully offset by the cost calculation system. By opting for good rates, the government may therefore acquire additional income. The outcome of the system is also very sympathetic: compliant taxpayers do not have to contribute towards enforced collection procedures caused by large groups of defaulters.

6. POSSIBILITIES FOR COLLECTION AT THE EXPENSE OF THIRD PARTIES

6.1 Liability provisions

As already stated above, Dutch collection legislation includes quite many provisions which ensure that if tax debtors cannot pay the tax themselves, third parties who should be deemed more or less responsible for this will be held liable for the tax debtors' tax assessments. Below is a random list of the situations in which third parties can be held liable in the Netherlands:

Collection legislation includes the following liability provisions:

1. Liability of directors, permanent representatives and liquidators for state taxes owed by unincorporated entities, entities not established in the Netherlands and dissolved entities
2. Businesses that hire temporary staff are liable for the wage tax and turnover tax owed by the supplying company
3. Contractors are liable for the wage tax owed by their subcontractors
4. Clients in the apparel industry are liable for wage tax debts of those who manufactured the clothing
5. Under certain conditions, even the buyers of the clothing referred to under 4) can be liable for wage tax debts of the manufacturer of the clothing
6. Directors of incorporated entities are liable for, among other things, wage tax, turnover tax and excise duties owed by the company they manage
7. Directors are responsible for the corporation tax owed by their pension company if they do not keep to the rules for pension bodies with respect to this company's net assets
8. Directors are also liable for the liability debts of the business they manage
9. Directors are also liable for the turnover tax owed by a tax entity for turnover tax purposes of which the body they manage forms part
10. Foreign athletes, artists and businesses and other non-residents are liable for the wage tax and turnover tax owed in the Netherlands with respect to their performance
11. Furthermore, employees, foreign athletes, artists and companies are liable for any wage tax which has erroneously not been withheld
12. Prize-winners are liable for betting tax which has erroneously not been withheld
13. Bodies participating in a tax entity for corporation tax purposes are liable for the corporation tax owed by this tax entity
14. Disposers of large blocks of shares are liable for the corporation tax owed by the body in which they held shares for the past five years, the year of sale and the three coming years
15. Those transferring the registered office are liable for the corporation and dividend tax debts of the body they transferred abroad

16. Furthermore, civil-law notaries or disposers of beneficial ownership are liable for transfer tax
17. There are also various liability rules for turnover tax
18. Moreover, traders forming part of a chain within which carousel fraud has been committed are liable for the turnover tax
19. Participants in a tax entity for turnover tax purposes are liable for the turnover tax owed by this entity
20. Liability exists for packaging tax
21. Liability exists for income tax in case of income components allocated to a third party
22. Insurers are liable for income tax with respect to regular payments

Apart from this list, there are also other tax liability provisions. The most important ones have been briefly listed. The purpose of many of these provisions is highly preventative. It deters certain parties from fiddling and makes them more alert to take the interests of the tax authorities into account.

Apart from the above list of liability provisions included in collection legislation, the tax collector may also use all liability rules provided for in civil law under the so-called “open system”.

It is also possible for the tax collector to call a third party to account based on an unlawful act committed by this third party, as a result of which the tax collector received fewer taxes.

6.2 Procedure

The tax collector holds the tax debtor liable by means of a decision to which an objection can be lodged. The tax debtor is only held liable after he has been in default in the payment of his tax debt. The tax debtor is in default as soon as the period applying to the payment of an assessment has expired without the assessment having been paid in full.

7. MEASURES WITHIN THE CONTEXT OF THE FINANCIAL AND ECONOMIC CRISIS

After the fall of Lehman Brothers on 15 September 2008, which in fact marked the beginning of the financial crisis which lead to an economic crisis, a period started which resulted in uncertainty for many businesses regarding the continuity of their businesses. For the economic crisis lead to a drop in demand which, in turn, led to stagnating sales while, on the other hand, suppliers of, for example, raw materials pressed for earlier or faster payment than before or even for cash or prompt payment. In short, many entrepreneurs who in themselves were running healthy and viable businesses ran into liquidity and solvency

problems during the course of 2009. In order to prevent essentially healthy businesses from running into (major) problems or even going bankrupt based on the aforementioned rather rigid postponement policy - see paragraph 5.3.2 under the heading “Postponement of payment due to payment difficulties” - the choice was made to formulate specific policy which ensures that

(I) basically viable businesses which, as a result of the
(II) economic crisis, ran into
(II) liquidity problems and of which it can be assumed that they
(IV) will, in time, be able to proceed to full payment of their tax debts may be allowed postponement of payment of the assessments imposed on these businesses and even postponement of payment of current obligations for a period that is essential to this business.

This customised solution turned out to be a huge success. Initially, various employees of the Tax and Customs Administration were very sceptical about the measure, especially because in the policy decision on this, it was communicated with the Tax and Customs Administration that the question whether a business is viable had to be assessed by the external advisor or accountant of the business. The reason for this point of view lies in the fact that the employees of the Tax and Customs Administration do not have the expertise required in order to assess the viability of all businesses within the various sectors. For this requires a lot of knowledge of the relevant sector, the competitive position, the extent to which the drop in demand may occur and other information and expertise. The Tax and Customs Administration of the Netherlands did not want to leave the assessment of the viability of businesses to the entrepreneurs themselves. For entrepreneurs are generally known as optimists when it comes to their own businesses. For said reasons, the choice was made to have the external advisor or accountant make an assessment. However, the fear that these external advisers would tend to oblige the entrepreneurs and, for this reason, paint a more favourable picture of the viability than would actually be the case, was not so great. Advisers who would try to do so would quickly become known to the Tax and Customs Administration as unreliable intermediaries and would call their own reliability into question as a result of such ill advice. Practice shows that the arrangement has almost never been abused. Most payments for which a postponement was allowed have now been made and the Tax and Customs Administration of the Netherlands trusts that the outstanding payments will be made for the most part. “For the most part” because, in a number of cases, further setbacks will have occurred and liquidations may also be or have been ordered. It should be expressly noted that the Tax and Customs Administration of the Netherlands acknowledged beforehand that things would turn out badly for businesses in a number of cases. However, these cases cannot necessarily be regarded as failed arrangements. For these businesses continued to offer work to their staff during the period of postponement (which saves unemployment benefits) and also paid taxes and contributions during the period in which the

business continued its activities. In short, the arrangement worked very well during the economic crisis and also prevented a lot of destruction of capital (which always occurs to a greater or lesser degree in case of bankruptcies).
The experiences which have been gained and which are currently being evaluated in more detail justify the impression that in case of temporary economic setbacks, it could be prevented, perhaps by adjusting tax policy instruments, that businesses go bankrupt, with all the associated negative consequences for the Tax and Customs Administration, employees, banks, social insurance institutions and other parties. So the crisis has taught that, in an economic downturn for businesses, rough general policy should be abandoned, changing over to more tailor-made work. A customised solution will only come within reach more if sector-specific problems in case of a crisis can be taken into account more when drawing up policy.

8. INTERNATIONAL COOPERATION IN COLLECTION

The Netherlands deems it desirable to promote cooperation with other countries in the area of assistance in the collection of taxes. The Netherlands therefore aims at incorporating provisions with respect to mutual assistance in the collection of taxes into bilateral and multilateral treaties. This attitude has, of course, to do with:

(I) the absence of the authority to collect taxes outside the Netherlands and with
(II) the fact that a relatively large number of Dutch citizens move abroad for some time or emigrate permanently without paying their taxes before they leave the Netherlands and, furthermore, with
(III) the fact that the Tax and Customs Administration of the Netherlands expressly does not want to facilitate tax debtors who do not pay their tax debts in time and/or in full in the sense that tax debtors are actually “relieved” of their tax debts simply by emigrating.

Mutual cooperation is therefore essential. European cooperation clearly shows that mutual assistance in the collection of taxes is a welcome addition to the range of means available in order to force tax debtors residing abroad to pay. In this connection, some issues should be better arranged in Europe, but one can be reasonably satisfied at the moment. The new European directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (2010/24/EU), which will be introduced on 1 January 2012, aims to contribute towards the necessary improvements. A number of points for attention are: electronic communication between member states (requests for assistance in digital form), broader information exchange, wider research possibilities abroad and the use of inspectors abroad.

Also when it comes to the OECD, there are currently a lot of developments contributing to a better cross-border collection instrument. The Netherlands has concluded treaties with a relatively large number of countries which also include paragraphs on collection. During treaty negotiations, the Netherlands therefore tries to have a collection provision included which is based on Article 27 of the OECD model convention. In doing so, it is the wish of the Netherlands to include threshold amounts in new treaties which are used within Europe and, furthermore, the Netherlands wishes to make an effort to focus somewhat more on the legal protection with regard to non-residents. Although a lot of work still needs to be done, the Netherlands is on the right track.

Last year, the Netherlands signed the protocol amending the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The Netherlands wants as many countries as possible (non-OECD countries in particular) to become a party to this convention so that, through this way too, the possibility for assistance in the collection of taxes is created.

Furthermore, the Netherlands actively concludes TIEAs (Tax Information Exchange Agreements). The Netherlands has already signed almost 30 TIEAs. The information that is exchanged through TIEAs can also be used for the collection of taxes.

Case Study

Topic 1.1

COMPETENCY FOR ENFORCED ADMINISTRATIVE AND FRIENDLY COLLECTION: ADMINISTRATIVE STRUCTURE, SCOPE, ADVANTAGES AND DISADVANTAGES

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Contents: *Introduction.- I. A collection policy strategy that integrates a formal and developed friendly collection procedure.- II. The effective reform, creating the General Directorate of Public Finances on April 4, 2008 has been accompanied by a new organization and new services allowing a greater sharing of tax information and a better synergy between the tax base, the tax control and the tax collection.- III. The enforced collection: an important issue that requires particular powers and mobilizes significant human and computer resources in specific administrative structures.*

INTRODUCTION

Friendly and enforced administrative debt collection issues are important and are obviously an essential factor in improving the tax administration efficiency. The measures implemented in this framework serve three purposes:

- A deterrent purpose, through a coherent and well-balanced administrative action on the whole territory, aiming at improving tax compliance;
- A budget purpose consisting in maximizing the state tax debt recovery.
- A repressive purpose that aims, in the absence of recovery prospect, at ceasing the debtor's economic activity to stop the aggravation of the tax liability. The compulsory liquidation is an illustration of that purpose.

For France, and in a context of in-depth reform (Merger of the ex-General Tax Direction with the ex-General Direction of Public Accounts), taking into consideration this priority has led to the elaboration of a strategy for tax recovery and procedures standardization, resulting in legal, organizational and computer-related evolutions.

Beyond the presentation of this very recent experience affecting the administrative structures, the procedures and tools, my contribution will evaluate the results and indicate some lines of progression.

I. A COLLECTION POLICY STRATEGY THAT INTEGRATES A FORMAL AND DEVELOPED FRIENDLY COLLECTION PROCEDURE

A – Recover debts immediately after the failure to pay.

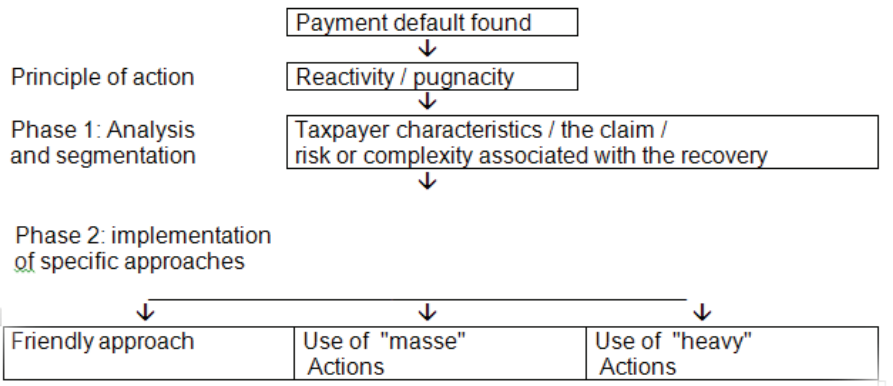
Two watchwords should guide the actions of administrative services responsible for the collection: reactivity and pugnacity.

A failure to pay must be processed very quickly: the more the action is taken immediately when a default is observed, the greater are the prospects of debt recovery.

Decisive action is especially needed for the enforced collection and demonstrates the willingness and ability to efficiently prosecute reluctant taxpayers.

A.1 - A review of the typology of claims and files analysis made using query tools (Computer applications SIRIUS Rec and MIRIAM) should allow classifying the taxpayers and assessing the recovery risks.

This process ensures a better adaptation of the measures to take in relation to the debtor behavior and situation. It can be summarized in the following way:



For example, according to local factors and risk assessment, the strategy can be described as follows:

- An friendly approach with a progressive tracking (telephone, letter or reminder, on-site visit...) will be preferred especially for first-time defaulters: individuals or professionals who face economic difficulties, in order to encourage them to settle their debt quickly and to offer them the conclusion of a settlement plan based on their financial capabilities.

- A taking of actions called “de masse” after a 30 days period from sending a letter of formal notice (actions that do not require judicial intervention, notice to third party holders, property seizure...) to usual delinquent taxpayers, or when the friendly procedure has been proven unsuccessful.

- A taking of heavy actions which requires the intervention of the judge (foreclosure, revocatory action, judicial action against business owner ...) in severe cases: outright fraud, organization of insolvency, chronic delinquency...

Thus, it appears desirable to conduct an early review of files so the relevant administrative services can implement the legal provisions adapted to the nature of the debt to collect (e.g. fiscal external control) or the behavior of the debtor (first-time defaulter or chronic defaulter).

A.2 – Administrative and friendly recovery: a regulated and efficient procedure which has been developed.

• Definition and terms:

- The friendly or incentive recovery is the administrative action preceding the implementation of a civil enforcement procedure.

In its friendly phase, the tax collection, for individuals as well as professionals, mainly follows a user relationship type of logic and is largely inseparable from the tax-base declaration process. Modernizing the relationship with taxpayers also means taking greater account of their constraints. Previously, the administration contacted the defaulting taxpayer late and with a heavy hand, taking immediate steps of tax adjustment or formal notice.

This procedure has appeared ineffective because too tardy and contributing to create a hostile climate with the user, contrary to the spirit of tax compliance.

The notification policy has now been entirely modified.

- Direct contacts should be preferred, particularly with respect to the first-time

defaulters, because they are an essential recovery step. However, to be effective, they must be taken as close to the finding of a failure, i.e.:

- In case of any amount not paid at the deadline or non-filing of a tax return or only partial payment in support of the tax return;

- From the moment in which action is taken in case of opening an external tax audit, on-site control, or administrative assessment;

- Immediately after the non respect of a payment plan deadline. It may consist in sending emails, a reminder letter, and a telephone contact or by taking an appointment. The administration has to demonstrate persuasive skills and to invite the taxpayer to meet the service, to explain the reasons for the failure and to provide remedy. This contact, which takes place in the fall for individuals, generally results in the conclusion of a settlement plan.

For professionals who have more frequent payment deadlines, monthly or quarterly, to be even more reactive is appropriate. The tax services contact by phone or email the companies that have not declared or paid on time in the days after the debt maturity. This is a very popular process, especially with small businesses because often the non-payment is the result of an oversight. In case of financial difficulties, settlement plans are systematically offered.

This process was particularly effective during the 2009 financial crisis and the support plan to businesses. In this context 52,000 settlement plans have been granted for an amount of 718 million euros with reduction of the corresponding penalties.

B – A new formal program for processing defaulters will be current on October 1st, 2011.

This is part of the reform, standardization and coordination of the procedural, the printed forms and scheduling processes between personal taxes and professional taxes.

In addition to the many contacts already mentioned, two procedures have been thus defined by law:

- Progressive reminders: sending a reminder letter followed by a formal notice to pay;
- A direct notice: sending a notice to pay without first sending a reminder letter.

The objective is to provide flexibility in the way the public accountant wishes to address the indebted taxpayer according to the situation and his/her tax behavior.

C- The results obtained in the friendly debt recovery framework are significant evidence of important and concrete actions.

Three indicators measure the effectiveness of the recovery action:

- The rate of on time payments: (For example 93.7% for the recovery of individual income taxes for 2010)

- Payment rates at “tipping point”: measuring recoveries at the end of the pre-litigation stage. The difference between the rate at tipping point and the rate at maturity measures the effectiveness of the friendly debt collection, especially the reminder letters. In 2010 it reached 96,92% for individuals and the gain therefore, amounts to +3.22% in regards to the due date payment rate

- The gross recovery rate which allows measuring the efficiency of the tax recovery by reporting the revenue collected and receipts recognized on the total amount of tax debt principal. The result for the 2010 tax collection from individuals amounted to +98.79%, a particularly high rate reflecting the importance of actions and procedures in the phases of friendly and coercive debt collection processes.

II. - THE EFFECTIVE REFORM, CREATING THE GENERAL DIRECTORATE OF PUBLIC FINANCES ON APRIL 4, 2008 HAS BEEN ACCOMPANIED BY A NEW ORGANIZATION AND NEW SERVICES ALLOWING A GREATER SHARING OF TAX INFORMATION AND A BETTER SYNERGY BETWEEN THE TAX BASE, THE TAX CONTROL AND THE TAX COLLECTION.

The creation of the General Directorate of Public Finances (DGFiP in French), resulting from the merger of the Tax General Directorate (DGI in French) with the Public Accounts General Directorate (DGCP in French) and the establishment of Regional and Departmental Public Finances Directorates have profoundly changed the context of pursuing the mission of tax collection. The tax management center (“pôle gestion fiscale” in French) are now in charge of this mission, with pre-existing services, such as the SIE and the Treasury, but also with new services, such as the services of personal taxes (SIP) and the teams of recovery specialists (PRS).

- The main objective of this reform was to improve the service to users. Before the creation of the DGFiP, the taxpayer had to reach multiple services, depending on the nature of his question: Tax bases issues were addressed in the tax offices and collection issues in the treasury offices. This separation of functions, not always well accepted by the public, was often a synonym of unnecessary travel and waste of time. In addition, the professional relations between services from these two Directorates were limited and poorly coordinated.

Through the fusion and the establishment of the single fiscal window service, all the tax-related issues are now grouped in one place: the financial center. All the steps (base and collection) concerning taxes and including individuals, are now performed at a same place.

This single tax window has two forms: in cities where there was a local tax center, a tax service for individuals (SIP), competent both in terms of tax base assessment and collection, is now established. In addition, on the whole territory and in every center of Public Finances ("centres des finances publiques", new generic name of the General Direction of Public Finances - DGFiP in French) charged with a tax mission, a local tax service ("Accueil fiscal de proximité" in French) is offered to users and ensures that all their important requests are handled at a single place, without further travel.

In addition, the Corporate Tax Service (SIE in French) deals with all applications from professionals.

The single tax window, true symbol of the reform, has largely contributed to:

- simplify the steps for the users;

- share the information on all the characteristics of a taxpayer;

- Better relate the officers working on the tax base and those in tax collection, and create synergies.

We must admit that despite all the organizational efforts and progress information, the General Tax Directorate and the Directorate of Public Accounts could not really address the serious problem for users of having two different directorates with distinctive roles for the tax base assessment and for the tax collection. Both directions had developed tools of information-sharing, including intelligence gathering (computer applications) to overcome the breach but these were only patches for the system.

The reform of administrative structures has encouraged the development of friendly administrative collection, which is in fact inseparable from the tax base assessment process for the self-payment of income taxes and constitutes the direct prolongation of the taxes on roll.

• With regard to the forced recovery, the creation of poles of specialized recovery (PRS in French, a departmental service): a service by department which has the main goal of improving the rate of complex tax debts and receivables recovery pursued after a fiscal control. The mission of enforced tax recovery for individuals and professionals operates with procedures that require high technical skills, know-how and a functional investment.

The improvement of the debt recovery issued from tax control is a strong orientation of the Direction in view of the difficulties encountered (An estimated 45% from the total amount of follow-up processes). It requires a strong collaboration between the control services and collection services, and as early as possible a detection of the cases were the risk of high recovery.

These collaborations are naturally favored by the establishment of the specialized recovery pole (PRS) which is the privileged interlocutor of control services.

The information collected should allow:

- To measure the composition and value of properties or assets of the debtor;

- To choose the appropriate provisional measure (strategy) to avoid impairing the activity of the debtor;

- To implement these measures.

III. THE ENFORCED COLLECTION: AN IMPORTANT ISSUE THAT REQUIRES PARTICULAR POWERS AND MOBILIZES SIGNIFICANT HUMAN AND COMPUTER RESOURCES IN SPECIFIC ADMINISTRATIVE STRUCTURES.

A – An important issue.

In tax matters, the amounts to recover resulting from a failure to pay are estimated to about 2% of the expected collection. On December 31, 2010, the total outstanding debt amounts to 19.3 billion euros in individuals and professionals taxes.

Beyond the financial issues, the enforced collection is emblematic of the ability to act on complex claims and with uncooperative taxpayers. As such, it is by its exemplary character, an instrument for fiscal citizenship consolidation and a constituent element of the tax justice.

B – A specific guidance and a significant mobilization.

Common to all taxes, enforced collection procedures have a very special sensitivity, due to their compulsory nature. They target a population that requires follow-up and a particular treatment.

Their enforcement is the duty and responsibility of each public accountant at the head of a specialized recovery center (PRS) of the tax service business (EIS) and personal tax service (SIP).

Within each departmental management of public finances, a special team responsible for orienting and enforcing the coercive collection policies for personal and professional taxes in the department, contributing to standardize the rules for processing the cases and improve the quality of work. Given its expertise and knowledge for the enforced recovery, the dedicated team provides legal and technical support to the accounting agents and assistance in the engagement of coercive procedures. It also ensures the monitoring of unrecoverable ratings and treatment of recovery litigation.

The enforced collection process mobilizes significant human and computer resources.

Approximately 730 officers in specialized collection centers, nearly 400 agents in departmental directorates' teams, without including the SIE agents from the SIP and the treasurers who also perform in the enforced collection processes.

C – Extended powers including certain existing procedures from "common law".

As part of the French experience and dealing with enforced collection, a distinction should be made in using:

1. "Masse"(automatic) actions: These actions are simple to engage as not requiring the intervention of a judge and allowing quick debt collection and at a lesser cost for the administration.

- The Notice to third party holder, which does not generate any expenses to the Treasury, is a widely used enforced collection procedure (5 million in 2009) and particularly effective. It is implemented as soon as bank accounts (through FICOBA computer application) reveal the third-parties in a business relationship with the debtor, such as clients, solicitors, receivers, lessees, but also employers.

However, using too systematically this "derogatory" common law practice could lead to its legal and political demise and affect the credibility of my administration.

Therefore, it should be used with caution and should not result in a mass mailing of notices for the same debtor and for periods in close proximity. The optimization of its use is based mainly on a careful targeting based on knowledge of the period when the third party holders are likely to have available funds to transfer to the debtor.

The systematic registry of the result of third party holder notices in the applications (MIRIAM and RAR) is used to assess the impact and effectiveness of the procedure on each taxpayer.

- **Seizures of (movable) property.**

Among the means of enforcement under the law of 9 July 1991, the sale of seized tangible assets remains the most widely used procedure.

However, it is necessary to question the widespread use of this expensive procedure (costs advanced by the Treasury with a high risk of nonpayment by the debtor), with a ridiculous number ending in the actual sale of the seized goods (of 408,000 seizures of properties made in 2009, only 1% were followed by the actual sale of seized items).

We must recognize, however, that the mere initiation of such procedures results in the reaction of the debtor and an alternative method of recovery.

Improving the quality and effectiveness of this seizure process, is also based on the search for information by the service (fixed assets in the balance sheet, right of communication ...), which may be shared with the bailiffs to guide them in their intervention.

2. "Heavy" actions: These are actions which, for their implementation, require the authorization of the judge and can have a significant impact on the activity of debtor or his personal situation (e.g. foreclosure).

- The engagement of Managerial responsibility under Article L.267 of the book of tax procedures aims at obtaining the conviction of the executives leading to their liability for taxes owed by a corporation.

It is reminded that the public accountant who engages the procedure must:

- demonstrate a serious and repeated attitude of noncompliance with tax obligations or the existence of fraudulent operations;

- report the attempts carried out by the administration to recover the tax due both at base level and at collection level;

- Establish the link between the proven noncompliance and the attempts at recovery carried out, leading to the finding of an impossibility of recovery.

- The seizure of (immovable) properties such as the main residence of the debtor.

- Assignment in judicial liquidation.

- The revocatory action (action for recovery of assets).

3. Cautions: All of these actions, friendly actions, actions “de masse”, and “heavy” actions, must be complemented, if necessary, with the taking of possible guarantees. These can also be used in prevision of future challenges.

- The legal mortgage.

Accountants can counts with legal mortgage of the Treasury for the collection:

- Of all kind of taxes and tax penalties (art. 1929 third of the General Tax Code)

- Of certain rights of free transfers (donations) (articles 1929 - 2 1929-3 of the CGI).

  The legal mortgage is valid only for the real estate property rights and the warranty consists in the value of the property. The accountant must therefore, ensure consistency of the properties prior to registration of the mortgage by consulting the computer applications (ADONIS, BNDP, SYNCOFI and FIDJI).

- **Caution.**

The caution has a triple benefit: rapid, free of charge for the subscriber and the choice in the prosecution in the event of failure of the principal debtor.

The modernization process completed with the reform, the implementation by the collection authorities of various legal provisions for the friendly and enforced debt collection processes, and for the selected strategies, has had positive effects on the compliance of individuals and professionals.

Thus the rate of tax payment on roll (individuals) increased from 97.6% to 98.5%.

The rate of spontaneous payment of self-assessed taxes (professional) remained more stable but it was already at high levels around 98%. It held up well in 2009 in a very unfavorable economic environment with the business crisis.

It must be stressed however, that the data shows that this improvement can not be infinite and we can see empirically that when the level of 98% passed, it becomes increasingly difficult to make significant progress.

D – Some lines of progression

- A good collection process is not the one that multiplies the actions, but the one which is engaged in a timely manner. Care must be taken not to accumulate procedures which would have for sole objective the interruption of the prescription.

- To consider and select the procedure in function of the debt amount. To this end, thresholds for judicial recovery were set out and procedures for recovery have been re-engineered because in some cases we found that the recovery costs exceed the amounts of the debt.

- Optimize the necessary coordination and collaboration between services including those in charge of collection but also with the tax control services. The recovery rate of debts emitted by fiscal control must be improved (46% in 2010).

- Good tracking of the litigious matters. This litigation, which includes all the challenges of a party against prosecution by the administration, is the last element in the chain of enforced collection and judicial decisions on theses matters by the various jurisdictions are an indicator of the relevance and quality of actions taken. We must recognize that litigation recovery is small and judicial decisions are mostly favorable to the administration (61% in first instance, 65% on appeal but this situation can be improved).

In France, there has been no experience of outsourcing in the treatment of friendly or enforced debt collection.

Several reasons justify this option:

- Confidentiality of the information to third parties in a very sensitive area with very important implications bearing on privacy of taxpayers or the sustainability of an activity;

- Essential connections between tax base, tax control and tax collection that imply sophisticated shared computer applications;

- The results (more than 98% collection rate) and a litigation characterized by a low volume and judicial decisions overwhelmingly favorable to the administration.

- A policy which integrates all tax aspects for the users. Unlike the “traditional” tax compliance based solely on the taxpayer’s confidence in the political process of tax ruling, the “new tax compliance citizenship” implies in addition a relation of mutual trust between taxpayers and the administration. This

> results in a shift of the acceptation of the tax from the political framework to the administrative framework. In other words, the consent to tax is now determined not only in the Parliament, but also, and for many, at the administrative practice level.

Thus the tax authorities in France, the Directorate General of Public Finance (DGFiP) becomes somehow the key vector in the acceptance of taxes and a slight shift in meaning seems to operate, tax compliance taking a dimension more administrative and managerial than political.

This design has also led some countries, such as Canada or Britain, to create tax agencies. These are relatively autonomous structures for their management and the achievement of their objectives. They are based on a culture of responsibility and the evaluation of results according to indicators that determine the actions to take;

Other experiments based on outsourcing can, however, lead to the same efficiency of the actions at a significantly lower overall cost.

Case Study

Topic 1.1

COMPETENCY FOR ENFORCED ADMINISTRATIVE AND FRIENDLY COLLECTION: ADMINISTRATIVE STRUCTURE, SCOPE, ADVANTAGES AND DISADVANTAGES

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Contents: *1. Taxation in Brazil.- 2. Collection of tax credit.-3. Persuasive measures.- 4. Persuasive indirect measures.-5. Enforced collection: Tax enforcement*

1. TAXATION IN BRAZIL

1.1. The Constitution, the Federation and the National Tax System

Brazil is a Federal Republic with political and administrative organization which includes the Union, the States, the Federal District and the Municipalities, **endowed with political, administrative and financial** independence, and their **attributions, limitations and responsibilities defined** by the Constitution of the Federal Republic of Brazil which also brings **principles and rules relevant to the Tax Law.**

The in-kind taxes in our tax law are taxes, rates, contributions of improvement, social contributions, contributions of intervention in the economic domain of interest to professional or economic categories, contributions to the financing of the pension system and the compulsory loans.

The limits to the power of the Union, the States, Federal District and the Municipalities, as well as the hypotheses of the incidence of each one of the taxes and limitations of the power to tax, are set in the chapter on “Tax National System” of the Federal Constitution.

It is the Union´s responsibility to impose taxes on:

- Import of foreign products (II);
- Export of national or nationalized products (IE);
- Incomes and gains of any nature (IR);
- Industrialized products (IPI);
- credit, exchange and insurance operations, or relating to securities or property values (IOF);
- Territorial rural property (ITR);
- Large fortunes, in terms of supplementary law.

The Union may also establish through complementary law special contributions if they are non-cumulative and do not have a fact generator or calculation basis prohibited by the Constitution.

Of course, in the case of war situation, the Union may impose extraordinary taxes, whether or not they are part of its regular tax responsibility, which would be gradually eliminated once the causes of their creation disappear.

It is the Union´s responsibility to establish social contributions, contribution to intervene in the economic domain, contribution in the interest of specific professional or economic sectors.

Finally, it is an exclusive competence of the Union, through complementary law, to impose compulsory loans to meet extraordinary expenditures in case of public disaster, war or imminence of war (without following the ex-post-facto principle); or for public investment of an urgent nature and of relevant national interest, following the ex-post-facto principle.

It is the States and the Federal District responsibility to impose taxes on the transmission *causa mortis* and donation of any assets or rights (ITCD), operations related to the movement of goods and interstate and inter-municipality transport services and communication (ICMS) and on the property of automotive vehicles (IPVA).

The municipalities and the Federal District are responsible for imposing taxes on property and urban land (IPTU), transmission *inter vivos* of property assets (ITBI) and on services of any nature (ISS).

It is also the States, the Federal District and the Municipalities responsibility to establish the contribution levied on their servants to pay for their own benefits, their pension system and the contribution for paying the public lighting service.

In spite that each political entity has its own tax competence, the Federal Constitution determines the way in which the **tax revenues should be allocated among the different entities of the federation**.

Within the framework of the division of tax revenues belongs to the States and to the Federal District:

- 100% of the income and gain taxes of any nature, incident at the source, on incomes paid by them, their local authorities and foundations; and
- 20% of the taxes raised by the residual powers of the Union.
- To the Municipalities belongs:
- 100% of the income and gain taxes of any nature, incident at the source, on incomes paid by them, their local authorities and foundations;
- 50% of rural land property tax, for the real estate located there, that could reach 100% in the case of arrangement with the Union for the Municipality to monitor and cover the tax;
- 50% of tax on automotive vehicles licensed in their territories; and
- 25% of tax on the circulation of goods and interstate and inter-municipality transportation services and communication.

The Union shall deliver 47% additional on the collected income and gain taxes of any nature and on industrialized products, which will be distributed as follows:

- 21.5 % will go to the States and the Federal District Participation Fund;
- 22.5 % will go to the Municipalities participation Fund; and
- 3 % will be applied in funding programs in the productive sector of the North, Northeast and Midwest regions.

There is still the passing on of 10% of the industrialized products tax to the States and the Federal District in proportion to the value of their exports of industrial products.

1.2. The brazilian tax burden and their distribution by level of government

In 2010 the Brazilian Gross tax burden reached 33.56% of the Gross Domestic Product (GDP) against 33.14 % in 2009 indicating a positive variation of 0.42 percentage point. This variation resulted from the combination of growth in real terms of 7.5 % of GDP and 8.9 % of revenue collection at the three levels of government.

The Brazilian net tax burden between the three government levels in 2009 and 2010 shows a greater concentration in the hands of the federal executive: 69.91% in 2010. The States participated with 25.23% and the municipalities with 4.87% in that year.

The Brazilian Tax Burden by Government Levels - 2009 and 2010

Government Level	2009			2010		
	R$ millions	% PIB	%	R$ millions	% PIB	%
Tax Revenue Total	1.055.440,23	33.14%	100.00%	1.233.491,32	33.56%	100.00%
Union	737.037,69	23.14%	69.83%	862.275,64	23.46%	69.91%
States	270.046,37	8.48%	25.59%	311.197,30	8.47%	25.23%
Municipalities	48.356,17	1.52%	4.58%	60.018,38	1.63%	4.87%

Source: RFB/Tax Burden in Brazil 2010
GDP 2009: 3.185,13 billons
GDP 2010: 3.674,96 billions

Source: IBGE

Each entity of the federation maintains their own tax administration within the framework of their tax responsibility, each one exercising the functions inherent to them. It should be noted that Brazil, in addition to the Federal District, has twenty-six states and about 5,600 municipalities which gives an idea of what this multiplicity of institutions represents to the tax administration in the Country.

1.3. The brazilian federal tax administration

The Secretariat of Federal Revenue of Brazil (RFB) is a specific and singular organization directly subordinated to the Minister of State Finance responsible for collecting the majority of the revenue tax imposed by the Union being excluded only by the administration of the Service Time Guarantee Fund (FGTS) managed by Federal Economic Fund.

The RFB is responsible for the federal revenue tax administration, for taxes on foreign trade, for social contributions, including social security contributions, for financing the General Social Security System and contributions due to third parties as well as for other entities and funds.

The task of collecting the tax credit is shared with the Attorney-General of the National Treasury (PGFN) which is the superior organization of the Union Attorney-General whose tasks lie, mainly, in the representation of the Union in tax causes, in judicial and administrative recovery of tax and non-tax credits and on the advice and consultancy in the context of the Ministry of Finance.

On tax matters, these are the PGFN main functions:

- Determine the liquidity and certainty of tax credits or from any other nature and register them into the Union´s Active Debt, for friendly or judicial collection purposes;
- To perform control for the legality of tax credits or of any other nature, to register them into the Union´s Active Debt, for their recovery, which may be recognized by prescription and decadence, among other causes of credit extinction;
- Represent the Union judicially or extra-judicially to execute their active debt;
- Represent the Union for the causes of fiscal nature, meaning the ones related to tax responsibility of the Union including offenses relating to the tax law, compulsory loans, seizure of domestic or foreign goods, decisions of the contentious administrative organizations, tax, benefits and tax exemptions, credits, and tax incentives to export tax liability of transportation and seafarers agents, and procedural incidents arising in fiscal nature actions.

1.4. Profile of the Federal Revenue of Brazil –RFB

The Secretary of the Federal Revenue of Brazil started to operate on May 02, 2007, as established by Law No 11,457 of March 16, 2007 from the unification of Federal Revenue Office (SRF) with the Secretary of Social Security Revenue (SRP).

It has for **mission**: to exercise the tax administration and the customs control, with fiscal justice and respect for the citizen, to the benefit of society; for **values**: respect for the citizen integrity, loyalty to the institution, legality and professionalism; and for **vision of the future**: to be an institution of excellence in tax administration and customs, to be a national and an international reference.

The RFB counts with 32,000 public servants, and 22,000 from the SRF and 10,000 of the SRP. It has one of the largest existing archives of information in the country with around 164 million records in the Records of Individuals - CPF and 12.5 million establishments registered in the National Register of Legal Entities - CNPJ.

The Secretariat of Federal Revenue of Brazil is composed by central units and 574 decentralized units, distributed throughout the national territory, covering an area of 8.5 million square kilometers.

The central units are primarily in charge of the normative function for the performance of the activities within their respective areas of competence, and are structured according to the main processes of the tax administration, basically reflected in the Secretariats of Inflow and Care (Suara), Taxation and Litigation (Sufri), Supervision (Sufis), Customs and International Relations (Suari) and Corporate Management (Sucor).

Subordinated to Sufri are the Commissioners for Judgments (DRJ) which are, above all, in charge of deciding, in the first instance, fiscal administrative processes for determining and collecting tax credits.

The decentralized units subordinated directly to the Secretary of the Federal Revenue of Brazil are the Regional Superintendence of Federal Revenue of Brazil (SRRF).

The SRRF within the limits of its jurisdictions has competence to plan, program, supervise, monitor, control and evaluate the tax activities, in collection and recovery, to care for the taxpayer, the administration of the property registers, supervision, customs control, technology and information security, programming, and logistics and management of people, as well as the related to planning, organization and modernization.

In the other decentralized units (police stations, provinces, customs and agencies) are developed, basically, activities related to the collection, control and levying of the tax credit; supervision; activities related to foreign trade and those related to personal assistance to the taxpayer.

In particular stand out:

- Special Commissioner for Tax Administration - DERAT
- Special Commissioner for Control- DEFIS
- Special Commissioner for Financial Institutions - DEINF
- Special Commissioner for Large Taxpayers - DEMAC

2. COLLECTION OF TAX CREDIT

2.1. Collection activities at the RFB

The collection function is one of the final functions of the Tax Administration, and in the case of the Federal Revenue of Brazil it covers the following activities:

- Monitoring and recording the tax revenue of the Union in a global form, regional form, and by sector of activity, with a view to detect default, omission and denial and contribute to the direction of effective actions for the recovery and control;
- Identification and monitoring of taxpayers with the highest tax potential, including the analysis of the sectors and economic groups to which they belong and proposition of goals for the units of the region, as well as drawing up estimates, monitoring and analysis of revenue;
- Imposition of fines for failure to submit return statements or non-payment of taxes in term or payment on due time;
- enrollment of assets and the commencement of fiscal precautionary measure;

- inclusion and exclusion of taxpayers in differentiated tax regimes;
- monitoring the regional and sectorial tax incentives;
- monitoring the Federal Tax collection in global, regional and sectorial levels, as well as by budget appropriations;
- elaboration of rules relating to the notification of the registry, the collection and the recollection of tax credits and the refund of revenue;
- control of the refund, as well as with compensation and the compensation arising from tax credits for taxpayers;
- grant calculation of the installments, monitoring and control of applications for debt installments and the respective collection;
- orientation and issue of collection notices and other documents of subpoenas for payment to the taxpayers, individuals, corporations and rural properties;
- programming and control of the registered tax credits;
- establishing routines and procedures for verification of the fiscal and cadastral situation relating to the issue of the Joint Clearance Certificate for individuals, corporations and rural properties;
- register the tax debtors in the Registry of non-compliance - CADIN;
- monitoring, collection and control of fiscal debts, with referral to the Prosecutor's Office of the National Treasury for registration as Active Debts, after the administrative collection has taken place.

2.2 General model for the collection of the taxes and federal contributions

The information on the revenues collected after an initial validation in the banking network are processed and classified by the RFB allowing the monitoring and analysis of the inflow and, subsequently, the control and the tax credit collection. The data of the federal collection are available to the Secretariat of the National Treasury (STN) to pass to the legal beneficiaries and to the constitutional funds (The Participation of States and Municipalities Fund, among others).

After opposing the debts (registration and admission of debt) with the credits (payment) there is debtor balance, this will be subject to collection in administrative phase. At that stage, the RFB ensures that the tax credit using persuasive instruments which the law provides such as non-issuance of the tax clearance certificate, inclusion of the taxpayer in the non-compliance registry, enrollment of assets, filing of precautionary measures, among other instruments (which will be described below) to ensure the credit is paid.

When the period for recovery is finished and there is no settlement (payment in cash or in installments) the debt is directed for inclusion in the Active Debts of the Union by - PGFN.

To receive the tax credit the PGFN performs the control of its legality and when there were no corrections to be made, it is registered to the Active Debt of the Union with the addition of a legal charge of 10% on its value.

It is then the beginning of the friendly collection stage in PGFN, where the taxpayer is warned to pay his debt. If the friendly collection doesn't yield results, the Prosecutor's Office verifies the assumptions for defaults (among others, values greater than 10 thousand reals) and issues the procedural documents.

The credit that did not pass the admissibility of the judgment continues in friendly collection. Already the admitted ones will have an increased of 20% in legal fees and continues in the action of tax execution before the judiciary.

The Brazilian Tax Administration does not adopt the collection outsourcing because it believes that it is an exclusive activity of the State which ensures the tax secrecy of the taxpayer.

2.3. Origin of the tax credit

In general, the tax credit is made by the registration, meaning the administrative procedure to verify the occurrence of the original corresponding obligation to determine the tax matter, calculate the amount of the tax due, to identify the taxpayer and, if necessary, propose the application of the penalty.

In the Brazilian tax system the registration may be made on the basis of the returns submitted by taxpayers when they need to inform the administrative authority of essential data for their constitution; it may be made on the basis of a letter; and, finally, can be made through the payment of the tax by the taxpayer and the subsequent approval by the tax authorities, the so-called Registration by Homologation.

However, the Brazilian Tax Law believes that the tax credit may also be formed by the admission of debt by the taxpayer. Thus, the tax legislation requires the taxpayer ancillary obligations which have as purpose the positive benefits and/or negative in the interest of the collection or tax control.

Some returns or statements are purely informative and are used for crossing the various data provided by the taxpayer. Other statements contain information on debts declared by taxpayers, being considered as a debt admission and used to fill out the Collection and the Tax Credit Control System.

At the federal level, the following statements are considered admission of debt:

- Statement of Federal Tax Debts and Credits - DCTF
- Statement of Individual Income Tax Return - DIRPF
- Statement of Rural Territorial Property Tax - DITR
- Guide to Recollection of the FGTS and Information to Social Security - GFIP
- Annual Statement of Simple National – DASN

2.4. Automatic collection

From March 2010, the RFB implemented the first step in the Automatic Collection Flow System which is characterized by a computer program on the basis of the data provided by the taxpayer. The DCTF performs internal audits, touches the systems of Negative Certificate of Tax Debits, and sends notices for collections.

The DCTF is a mandatory statement for all taxed legal entities on the basis of the Presumed Profit or Real Profit, it must be fulfilled and send monthly, with digital certificate, via the Internet for the RFB. The debits declared are considered admission of debt. Approximately 1 million DCTF are transmitted per month containing approximately R$ 37 billion of declared debts.

In the first half of 2010 of the total debits declared approximately 2.5 % were debtors, as can be observed in the table below.

DCTF			
Year 2010			
Tax	Declared Debts (D)	Debtors Balance (SD)	% (SD/D)
IRPJ	97.373.347.418	2.545.353.655	2.61%
IRRF	84.923.366.000	520.234.348	0.61%
IPI	30.356.104.307	851.364.505	2.80%
IOF	26.964.520.344	8.006.060	0.03%
CSLL	49.631.334.948	1.432.461.545	2.89%
PIS/PASEP	27.583.434.639	999.375.063	3.62%
COFINS	108.197.703.268	4.266.724.899	3.94%
Total	425.029.810.923	10.623.520.075	2.50%

(*) Values in reals

The information provided in DCTF is subject to the following internal audits:

- *Verification of payments made;
- *Binding the payments to the debts declared;
- *Validation of compensation;
- *Validation of installments;
- *Validation of judicial actions;
- *Verification of the debtors balance.

Once the debtor balance is verified, the system sends by electronic mail the collection notice to the taxpayer. An Electronic Mailbox is available for access by digital certificate for all taxpayers from the electronic services site of the RFB on the Internet; therefore, the communication is sent to the taxpayers e-mail.

The electronic mails have indefinite duration and their repeal or disability is not possible. The legal representative of the company can login directly or through an attorney with specific powers for this purpose.

AUTOMATIC COLLECTION FLOW

In the future, the automatic collection system will operate the automatic registration of debtors in the non-compliance registry (CADIN), the control of the collection results and will prepare the information for referral of not paid debts to register them in Active Debts of the Union by the PGFN.

The automatic collection system is advantageous because it streamlines the collection, fulfills the taxpayers debts control systems, it ensures the tax secrecy, saves resources with the sending of letters by traditional mail and generates data management.

3. PERSUASIVE MEASURES

In addition to the traditional preference of the State on the implementation of the tax credit (losses only for labor claims), the Brazilian legislation puts in the hands of the tax authority several resources that can help for the friendly collection.

Among those that stand out are the increases default, the attestation of the tax regularity, the registration of the taxpayer in CADIN, enrollment of assets and rights, the commencement of precautionary fiscal measure, economic tax monitoring differentiating individuals and legal persons and deleting legal persons from the National Register of Legal Entities – CNPJ - the declaration of unfitness and the application of penalties for delay in delivery of returns submitted by taxpayers.

3.1. Increasing the late payments

The amounts owed to the Union as a result of taxes and contributions managed by the RFB, which generates facts occurred from January 1st, 1997, not paid within the time limits provided in the specific legislation will be added to a fine of late payment calculated at the rate of thirty-three hundredth percent, per delay day, limited to 20 %.

The penalty for late payment shall be calculated from the first day following the expiry of the time period specified for the tax payment or contribution to the day on which the payment was made.

There will be interest rates from the first day of the following month to the expiration of the period until the month preceding the date of payment and one per cent in the month of payment.

3.2. Proof of the fiscal regularity

The proof of tax regularity in respect of taxes managed by RFB shall be made upon presentation of the joint certificate issued by the RFB and the PGFN with information of the situation of the taxpayer regarding the taxes managed by RFB and the Active Debts of the Union managed by PGFN.

In the cases of concessions of Incentives or Tax Benefit, the proof of regularity will be made through searching the fiscal and registration situation of the taxpayer in the electronic system for issuing certificates.

Joint debt certificate

The “Joint Debt Certificate related to Federal Taxes and the Federal Active Debt of the Union” will be issued when there are no pending matters on behalf of the taxpayer.

Joint certificate with negative effects

The “Joint Certificate with Negative Effects related to Federal Taxes and the Federal Active Debts of the Union” will be issued when, in relation to the taxpayer, appears a debt relative to the federal tax or to the registration in Active Debts of the Union, which is mandatorily suspended.

The certificate will be issued when, in relation to the taxpayer, there is a debt:

- On the federal tax which registration is within the legal term for appeal;
- Registered in Active Debt of the Union, guaranteed by seizure of assets which evaluation is equal or higher than the amount of updated debt.

This type of certificate shall have the same effects as the “Negative Joint Certificate of Debts related to Federal Taxes and the Federal Active Debts of the Union”.

The positive joint certificate

The “Positive Joint Certificate Jointly of Debts related to Federal Taxes and the federal Active Debts of the Union” indicates the existence of taxpayers´ pending matters.

Formalization and place for the submission of the application

The right to obtain the joint certificate and secure it to the taxpayer, duly registered in the National Register of Legal Entities - CNPJ, or in the National Register of Physical Person – CPF - regardless of the rate payment.

The certificates shall be requested and issued through the Internet, to the electronic addresses http://www.receita.fazenda.gov.br or to the http://www.pgfn.fazenda.gov.br

In the impossibility of issuance by Internet, the taxpayer shall submit an application for the joint certificate before the indicated organization in response to the request made on the internet.

The application must be submitted before the unit of RFB or the PGFN of taxpayer´s tax domicile, through a specific form provided by each entity.

The Positive Joint certificate will be issued by units of the RFB or the PGFN, exclusively through a specific computerized system.

The certificate only takes effect upon confirmation of its authenticity in the RFB or the PGFN sites on the Internet: http://www.receita.fazenda.gov.br and

http://www.pgfn.fazenda.gov.br, and the hour and date of issue and control code must appear.

Analysis for the application of the certificate request

The RFB or the PGFN unit will make the research of the fiscal situation of the taxpayer by directing him to settle any controversy. Once the pending is regularized in the control of the respective organization, the certificate shall be issued through the internet.

Only in the assumptions on which the taxpayer proves that he has settled the controversy and it is not possible to stabilize it immediately in the internal control systems, the unit will provide the release of the certificate that may be issued by the concerned party in the internet.

Other conditions

The certificate is sent in the name of the main offices and it covers the tax audit of all the establishments of the company (main and subsidiaries) and companies acquired by incorporation, division or merger.

The researches on the fiscal situation and registration of the applicant shall be restricted to the Electronic System for Issuing Certificates.

Competence to issue

If it is impossible to issue a certificate by Internet and there is no indication for the interested person to appear before the RFB, the taxpayer shall submit an application for the issue of a joint certificate to the RFB unit at his tax domicile. The competence to issue the Joint Certificate is the commander from the Federal Revenue of Brazil (FRD), the Commissioner of the Federal Revenue of Tax Administration (Derat) and the Special Commissioner of Financial Institutions (Deinf), in the cases of the RFB and the Prosecutor of the National Treasury under the PGFN, within their respective jurisdictions.

Period of validity of the certificates

The Joint certification validity period is 180 days counted from the day of its issuance.

Under the hypothesis of the existence of a mandatory debt suspended as a result of objection or appeal, in accordance with the laws governing the tax administrative procedure, the certificate issued during the period for appeal, when it is not yet presented, or brought, will be valid for 60 days.

The joint certificate will have effectiveness within the period of its validity, for proving tax regularity on federal taxes managed by the RFB and the Active Debt of the Union managed by the PGFN.

The joint certificate cancellation

The cancellation of the Joint Certificates is the responsibility of the competent authorities for its issuing.

The cancellation of the certificate will be made through an act to be published in the Official Gazette of the Union - DOU, - given the edition and publication in the cases of revocation or cancellation of a judicial decision that has justified its emission.

3.3. The information registry of credits not paid in the federal public sector - CADIN (Registry of non-compliance)

The Information registry of credits not paid in the Federal Public Sector - CADIN -is a database where the names of individuals and legal entities in debit with organizations and federal entities are registered.

The information contained in CADIN allows the Federal Public Administration to standardize procedures relating to the granting of credit, guarantees, tax and financial incentives, as well as the conclusion of arrangements, agreements, adjustments or contracts in order to encourage the selective management of existing resources. The office of the Secretary of the National Treasury is competent to issue guidelines of normative nature in respect to CADIN and it is the responsibility of the Central Bank of Brazil, in turn, administer and make available the information that compose the database.

The inclusion into CADIN will be performed 75 days after the communication to the debtor of the existence of a possible debt to be registered, providing him with all the relevant information regarding the debt.

Once it has been proven that the situation that caused the registration in the CADIN has been regularized, the organization or entity responsible for registering will proceed within 5 (five) working days the respective cancellation.

The lack of registration in CADIN does not imply recognition of regularity of the situation, nor elide the presentation of the documents required by law, decree or other normative acts.

THE CADIN shall contain the following information:

- name and registration number in the CNPJ or CPF
- name and registration number in CNPJ, address and telephone number of the creditor or the organization responsible for the registration;
- date of registration.

It is mandatory for the organizations and entities of the Federal Public Administration to directly and indirectly consult with the CADIN for the achievement of credit transactions that involve the use of public resources; the granting of tax and financial incentives; and the conclusion of agreements, adjustments or contracts that involve disbursement, for whatever reason, of public resources, and additions.

There is no previous consultation to CADIN in cases of:

- granting of aid to municipalities affected by public disaster recognized by the Federal Government;
- operations for the composition and settlement of debts and obligations subject to registration in CADIN, without disbursement of resources on the part of the organization or creditor entity;
- operations related to education credit and the seizure of assets for personal or household use.

The registration in CADIN will be suspended when the debtor proves that it has judged action with the aim of discussing the nature of the obligation or its value with the offer of a guarantee suitable and sufficient to the Judgment in the form of the law, or when the payment object of the registration is suspended in accordance with the law.

3.4. Enrollment of assets and rights

The enrollment of assets and rights of the taxpayer has the objective of monitoring the assets susceptible to be indicated as guarantee of the tax credit when the sum of the tax credits managed by the RFB under the responsibility of the taxpayer exceed the 30% of his known assets at the same time is more than R$ 500,000.00.

The sum of the tax credits that are guaranteed by the deposit of the full amount are admitted and liable to immediate entry into the Active Debt of the Union and the debits paid in installments are not included.

In the case of tax liability with plurality of taxpayers, the assets and rights of those whose sum of tax credits under their responsibility exceed, individually, those limits will be enrolled.

The assets informed in the last returns submitted by the taxpayer, and of the legal entity, the total assets in its last balance sheet recorded in the accountability or informed in the Declaration of Economic and Tax Information (DIPJ) are considered known assets.

The assets and rights of the Federal, State, municipal and Federal District Treasury and their respective municipalities and public foundations will not be enrolled as well as the assets and rights of a company with bankruptcy decreed, without prejudice to the enrollment of the ones who would be responsible.

The following assets and rights with enough value for the satisfaction of the amount of the tax credit under the responsibility of the taxpayer will be enrolled:

- if it is an individual, the parties to the assets subject to the public registry, including those who are in the name of the spouse or partner in free union, since it is not recorded with clause of incommunicability;
- if it is a legal entity, the real estate assets subject to public registry.

The assets and rights that are registered in the name of the taxpayer in the respective registry organizations, even if it is not declared to the RFB or recorded in the accounting are to be enrolled.

The enrollment will be conducted in the following order of priority: no taxed real estate, taxed immovable property and other assets and rights admissible in the public registry.

The enrollment can only reach other assets and rights of the taxpayer in case the ones susceptible to public registry are not sufficient for the satisfaction of the amount of the tax credit of their responsibility.

The enrollment will be carried out by a Tax Auditor from the Federal Revenue of Brazil whenever the existence of tax credits above the limits mentioned before and, are accompanied through a computer system environment of the RFB, by the Division, Department, Section or Core competent to carry out the activities to control and collect tax credit in the unit of the RFB at the fiscal domicile of the taxpayer.

The responsible of the RFB unit of the taxpayer fiscal domicile shall transmit to the competent registry organizations the relation of assets and rights for purposes for registry in the enrollment or its cancellation, regardless of the payment of costs or fees, as below:

- Registry of real estate, in relation to property;
- organizations and entities in which, by virtue of law, the property or rights are recorded or controlled;
- deeds and documents and special records of the taxpayer fiscal domicile in respect to all other goods and rights.

The registration organization shall notify the RFB unit the registration, within 15 days of the date of receipt of the related.

In the case of sale, encumbrance or transfer in any way including those arising from partial division, award in an auction or expropriation or total loss, of any of the assets or rights lawsuits, the registry organization shall notify the RFB unit from the taxpayer fiscal domicile, within 48 (forty-eight) hours the amendment promoted on the record. The disrespect for such communication implies the imposition of a fine**.**

The taxpayer shall be notified of enrollment by means of the terms of enrollment of assets and rights, passing to be obliged to notify the RFB unit of his fiscal domicile the encumbrance or transfer in any way of any of the assets or rights lawsuits within a period of 5 (five) days of the occurrence of the fact under penalty of commencement of tax precautionary measure.

In the cases of alienation, encumbrance or transfer of any of the assets or rights lawsuits, even if the communication was duly made and in the absence of assets and rights capable of enrollment with enough value to cope the sum of the tax credits under the responsibility of the taxpayer, the RFB must examine whether there is incidence of other hypotheses for the commencement of a tax precautionary measure.

The taxable person may require the replacement of the asset or right enrolled for one with enough value for the satisfaction of the amount of tax credits.

The replacement of the enrollment by deposit of the full amount can be admitted at any time.

Once there is an extinction before it is sent to register in the Active Debts of one or more tax credits that have motivated the enrollment, the RFB must communicate this fact to the real estate registry, notary, organization or entity responsible for the registration and control in which the term of enrollment has been recorded so that they cancel the effects of enrollment, provided that they keep sufficient assets and rights lawsuits for the satisfaction of the remaining amount of the tax credits.

Assumptions about the cancellation of enrollment are also considered as follows:

- by the expropriation by Public Power;
- by the total loss of the assets;
- by the expropriation order;
- by a court order; and
- by the nullity or rectification of the registration involving reduction of the sum of the tax credits for the amount that does not justify the enrollment.

3.5. Tax precautionary measure

The holder of the RFB unit of the fiscal domicile of the taxpayer shall transmit representation in the filing of tax precautionary measure to the corresponding unit of the General-Attorney of the National Treasury when the taxpayer:

- Without a right address tries to be absent or dispose of property without paying the obligation within the required time limit;
- having the right domicile is absent or tries to leave in order to delete the fulfillment of the obligation;
- falling into insolvency, alienate or tries to dispose of property;
- borrow or tries to create debts which may affect the liquidity of his assets;
- Notified in order to make the recollection of the tax credit:
  a) ceases to pay for it within the legal term, unless suspends its enforceability; or
  b) transfers or try to transfer, in any way, the assets and rights to third parties;
- Has debts, registered or not in the Active Debt, which, together, exceed 30% of the known assets;
- divest enrolled assets or rights without due notice to the organization of the Public Treasury;
- has its registration in the taxpayer registry declared to be unfit, by the Public Treasury
- Practice other acts that affect or prevent the satisfaction of the tax credit.

The representation for commencement of tax precautionary measure shall be appraised with the literal proof of the constitution of the tax credit, the documentary evidence of any of the situations that foster the measure and any other evidence produced for the identification of such situations.

The infraction Act, a notification of the registry or any act unequivocally, even if its extra judicial, which adds in recognition of the debt by debtor is considered to be literal proof of the constitution of the tax credit

The assets and rights will be related with the proof of ownership of the principal debtor, the jointly liable and the subsidiary ones.

The declaration of the tax precautionary measure will produce in the immediate future, the unavailability of the assets of the defendant up to the limit of the satisfaction of the obligation. In the case of a legal entity, the unavailability will fall only on the permanent assets, and can be extended to assets from the controlling shareholder and from those of that as a consequence of the company´s social contract or statute have the power to make the undertaking to comply with their tax obligations to the time of the generated fact, in the cases of issuance of summon letter or for nonfulfillment of tax obligation, in other cases.

The tax precautionary measure decreed shall be communicated immediately to the public registry of properties to the Central Bank of Brazil, to the Securities and Exchange Commission and to the other offices handling records of transfer of property, in order that they, in the context of their tasks, enforce judicial constriction.

The tax precautionary measure will be required to the competent Judge for judicial execution of Active Debt to the Public Treasury.

The Judge shall grant the precautionary measure and exempt the Public Treasury from prior justification and from providing a bond.

The defendant will be summoned to, within 15 days, respond to the application, indicating the evidence he intends to produce. If the summon is not answered, it is assumed that the defendant has accepted the facts alleged by the Public Treasury, in which case the Judge will decide in ten days.

If the defendant responds within the legal framework, the Judge shall appoint hearing and trial, and the evidence to produce.

The tax precautionary measure decreed may be replaced at any time in the provision of guarantee equal to the value of the benefit of the Public Treasury, as stated in Art. 9, Law N° 6,830 of September 22, 1980.

When the preventive measure is granted in the preparatory procedure, the Public Treasury should propose the judicial execution of the Active Debt within 60 days of the date in which the demand become not appealable in the administrative sphere.

The effectiveness of the preventive measure ceases if:

- the Public Treasury does not propose the judicial execution of the Active Debt within the specified period in the article 11 of this law;

- is not executed within 30 days;
- it was judged extinguished for the judicial execution of the Active Debt of the Public Treasury;
- the defendant promotes the discharge of the debt that is being executed.

The acts of the precautionary procedure shall be joined to the process of judicial execution to the Active Debt of the Public Treasury.

The rejection of the fiscal precautionary measure does not preclude the Public treasury from bringing the judicial execution of the Active Debt, nor influences in the trial, unless the Judge, in the precautionary process, admits the claim for payment for compensation for transaction, for remission, for prescription or decadence, for conversion of the deposit to rent, or any other form of extinction of the deducted claim.

The sentence that imposes the precautionary measure can be appealed, without suspense effect, unless the defendant offers a guarantee.

3.6. Differences in monitoring economy and taxation of companies and individuals

The differences in monitoring companies and individuals are in the collection monitoring, the analysis of the economic tax behavior and the differentiated treatment for actions, contingencies and tax liabilities related to the taxpayer.

The use of data and information available in the computerized systems of the RFB, collected in external sources and obtained on the basis of economic tax studies, including in relation to the respective segment or economic activity, in addition verifies periodically the levels of collection of taxes managed by the RFB depending on the economic tax potential of legal entities, as well as the macroeconomic variables influence.

The special monitoring of corporations consists in the execution of all the necessary actions to ensure priority and conclusive treatment of the demands and contingencies related to certain companies indicated for specific monitoring.

In 2010, the following companies are subject to differentiated monitoring:

- if subject to a real income, presumed or arbitrated, for annual gross revenues in the calendar year 2009 of more than R$ 90,000,000.00 (90 million reals).
- if the annual amount of debts declared in the Federal Tax Debits and Credits Statement (DCTF), relating to the calendar year of 2009 is more than R$ 9,000,000.00 (nine million reals).

- if the annual payroll amount informed in the Recollection Guides of the Guarantee Fund of the Time of Service and Information to Social Security (GFIP), relating to the calendar year 2009 is more than R$ 15,000,000.00 (fifteen million reals); or
- if the total annual debts declared in the GFIP relating to the calendar year 2009 are more than R$ 5,000,000.00 (five million reals).

Until the last working day of the month of December of each year, Comac will issue an internal act of approval of the relation of contributors indicated for special differentiated monitoring of companies for the subsequent year.

The individuals who are object of the differentiated monitoring are indicated by different Comac based on objective criteria and technical parameters.

The SRRF, the General Coordinators and the Special Coordination may propose the appointment of other companies or individuals to monitor differences following the guidelines issued by Comac.

Annually, the RFB keeps following up the indicated company until the last working day of January, about their registration in the monitoring differentiated, however, their registration there is independent of the actual receipt of the communication.

To monitor the actions for the differential treatment, the Delegates of the Federal Revenue of Brazil or the Superintendents of the Federal Revenue of Brazil should edit at local or regional levels, the creation of the Working Group (Eqmac), with the appointment of Fiscal Auditor of the Federal Revenue of Brazil who will be in charge of it.

The Eqmac will be linked directly to the authority that constitute it and shall be composed of the Career Audit officials of Federal Revenue of Brazil representatives of the areas of:

- Programming, control and evaluation of fiscal activity
- Control and tax monitoring;
- Advice and tax analysis;
- Monitoring, and
- Other, at the authority's discretion.

3.7. Cancellation of the registry in the CNPJ

The companies which being obliged to and do not present returns statements for 5 years or more may have their enrollment in the CNPJ cancelled in the case if summoned by edict, they do not regularize their situation within 60 (sixty) days from the date of publication the subpoena.

In the subpoena notice to be published in the Official Gazette, the companies will be identified by their registration numbers in the CNPJ.

After 90 days of the publication of the notice of summons in the Official Gazette, the RFB will publish the list of companies in the CNPJ that have regularized their situation, making automatically cancelled on that date, the registration of companies that have not provided the regularization.

May also be cancelled at the CNPJ companies that:

- in fact do not exist
- are declared unfit that have not regularized their position in the five subsequent years.
- are terminated, canceled or ceased in the respective registry authorities.

The act of being eliminated in CNPJ does not prevent later be released or charged for corporate tax debts.

Through the company´s request, its registry in the CNPJ can be restored under the terms and conditions defined by the RFB.

3.8. Disability statement

The company that being obliged to present returns statements does not do so in 2 (two) consecutive years may be declared unfit to register in the CNPJ.

It will also be declared unfit to register the company that does not show the source, availability and effective transfer, if any, of the resources employed in foreign trade operations. This proof will be to:

- prove the regular closing of the foreign exchange transaction, including the identification of the foreign financial institution in charge of the transfer of funds to the country;
- identify the sender of resources, understood as the person or entity holder of the funds remitted and members of the staff and corporate management, if it is a company.

The companies that are not located at their informed fiscal address can also be impaired from registering in the CVPJ.

In addition to other cases of no admissibility of documents required by the tax legislation, the document issued by a corporation which registration in the CNPJ has been considered or declared void will not have tax effects in favor of third parties.

4. PERSUASIVE INDIRECT MEASURES

4.1. Default fines

In case of default registrations, the following penalties are applied:

- 75% of the total or difference in tax or contribution in cases of non-payment or collection, no returns submitted or inaccurate statements;
- 50% required separately on the monthly payment amount:

    - not been done, even if the tax to be paid has not been discharged, in the statement of adjustment, in case of an individual;
    - which is no longer made, although the tax loss or negative calculation base for social contribution on net income in the corresponding calendar year has been purged in the case of companies.
    - the compensation claim arising out of improper or unauthorized or refused

The 75% fine will be doubled in cases of crime against the tax law, regardless of other administrative penalties or criminal sanctions. These values are increased by half in cases of non-compliance by the taxpayer, within the deadline set, the summons to:

- provide information;
- present files or systems required by law;
- present the technical documentation systems used by the taxpayer.

The penalties apply even to taxpayers who have caused improper tax reimbursement or contribution arising from any incentive or tax benefit.

4.2. Special control regimes

The RFB, by act of the Secretary, can establish special rules for fulfillment of obligations by the taxpayer in the following assumptions:

- obstacles to control, characterized by unjustified obstruction to books and documents from the bookkeeping activities of the taxpayer, and for non-provision of information on assets, financial transactions, business or activity, or to third party, when summoned, and other assumptions that authorize the request the aid of the police;
- Resistance to control, characterized by the denial of access to the establishment, to the fiscal domicile or to any other place in which the activities of the taxpayer are developed, or in any property of its own;
- Evidence that the corporation is formed with people who are not the true partners or shareholders, or the owner in the case of an individual firm;

- Completion of transactions subject to tax incidence without proper registration in the appropriate registry of taxpayers;
- repeated practice of violation of tax laws;
- Sale of goods with evidence of smuggling or embezzlement;
- focus on conduct that gives rise to criminal representation, under the law governing crimes against tax.

The special regime may also consists of, inclusively:

- maintaining continuous control on the establishment of the taxpayer;
- reduction by half of the assessment periods and deadlines of the taxes;
- compulsory use of electronic control of daily operations and payment of their taxes;
- systematic requirement to prove compliance with tax obligations;
- special control of the printing and issuance of documents and commercial and financial transactions tax.

The measures provided in this article may be applied individually or cumulatively, with enough time to comply with the tax obligations.

The imposition of a special regime do not affect the application of penalties under the tax laws.

5. ENFORCED COLLECTION: TAX ENFORCEMENT

The action is proposed by the PGFN, it is a special procedure for the execution in court of the debts registered in Active Debt of the Union.

The Active Debt of the Union will be calculated and registered in the Attorney of the National Treasury, and enjoys the presumption of certainty and liquidity, and under that presumption it may be rebutted in case of proven error by a third party or the interested one as to whom it may benefit.

The power to prosecute and judge the performance of the Active Debt of the Public Treasury excludes any other court, including bankruptcy, liquidation, insolvency or inventory.

5.1. Term for the registration in the active debt

The term for the Registration in the Active Debt shall contain:

- the name of the debtor, the co-responsible and, where known, the domicile or residence of one or the other;
- the original value of the debt, as well as the initial term and how to calculate interest and other charges required by law or contract;

- the origin, nature, legal or contractual debt;
- the indication, where appropriate, if the debt is subject to monetary update, as well as its legal basis and the initial term for the calculation;
- the date and number of registration in the Active Debt Registry, and
- the number of the administrative process or the breach notice, if in them is the calculated value of the debt.

Until the court's decision, the Certificate of the Active Debt may be amended or replaced, provided the running back deadline for seizures.

5.2. The debtor and the jointly responsible

The tax lien may be brought against the debtor, the guarantor's estate, the mass responsible for debts, being them tax debts or not, individuals or companies of private law and the successors in any title.

The liquidator, the commissioner, the liquidator, the executor and administrator, in cases of bankruptcy, receivership, liquidation, inventory, insolvency or arrangement of creditors, if, before the credits granted to the State, dispose of or give any guarantee on any of the managed assets responding jointly by the value of these assets.

The Active Debt of the Union, of any nature, follows the rules relating to liability under the tax, civil and commercial Law.

Those responsible may appoint assets of the debtor free and clear, as many as are enough to pay the debt. The assets from the responsible ones will be, however, subject to execution if the ones from the debtor are not enough to satisfy the debt.

5.3. Legal claim

The claim shall state the Judge to whom it is addressed, and request for summon. It will be accompanied with a Certificate of Active Debt, which will be part of it, as if it was transcribed, it could consist of a single document, prepared by an electronic process.

The production of evidence by the Public Treasury is independent of application of the complaint.

The value of the debt will be included in the certificate together with the legal fees.

The judge order who upheld the initial complaint in order to:

- summon by the successive arrangements provided in Article 8;

- proceed to seizure if the debt is not paid nor guaranteed by the execution of a deposit or bond;
- arrest, if the defendant does not have a domicile or is in hiding;
- registry of the seizure or arrest, without the payment of fees or other
- penses subject to the provisions of Article 14; and
- assessment of the seized or arrested assets.

5.4. Summon of the defendant

The defendant will be notified within 5 (five) days, to pay the debt with interest and penalty charges for late payment indicated on Certificate of Active Debt, or ensure the performance subject to the following standards:

- the summon will be send by mail with acknowledgment of receipt if the Treasury does not require otherwise;
- the summon by mail shall be deemed served on the delivery date of the letter to the defendants address, or if the date is omitted, in acknowledgment, 10 (ten) days after delivery of the letter to the post office;
- If the acknowledgment does not return within 15 (fifteen) days of delivery of the letter to the post office, the summon will be made by bailiff or by public notice;
- the notice for summon shall be posted at the Courts main office, published just once in the official organization for free, as a judiciary file, with the period of 30 (thirty) days and shall contain only the indication of the creditor, the debtor's and the co-responsible name, the amount due, the nature of debt, the date and number of registration in the Active Debt Registry, time and address of the Judgment.

The defendant absent from the country will be notified by edict with a period of 60 (sixty) days.

The Judge order that proceeds to the summon interrupts prescription.

5.5. The execution of guarantees

As a guarantee of amount of the debt, interests and penalty charges for late payment indicated on the Certificate of Active Debt, the defendant can:

- make a cash deposit to the judge's order at the official credit establishment to ensure monetary update;
- provide a bank guarantee;
- appoint assets to be seized, or
- indicate the seized assets offered by third parties and accepted by the Public Treasury.

The debtor can only indicate a third party property for the seizure with the express consent of the spouse.

The debtor attaches to the file the proof of the deposit or bank guarantee or the seizure of his assets or from third party.

A guarantee of execution by means of a cash deposit or bank guarantee has the same effects as the seizure.

Only the cash deposit ceases the responsibility for monetary update and interests for late payment.

The debtor may pay part of the debt as it deems incontrovertible, and enforce the unpaid balance.

5.6. Seizure or arrest of assets

Failing payment, and without guarantee of execution, the seizure may well fall into any of the debtors assets, except the ones that the law declares absolutely not seizable.

The seizure or arrest of assets shall follow the following order:

- Money;
- Title of the public debt, as well as debt securities, which are listed on the stocks;
- Precious stones and metals;
- Property;
- Ships and aircraft;
- Vehicles;
- Furniture and livestock, and
- Rights and shares.

Exceptionally, the seizure may be on commercial, industrial or agricultural, as well as plantations or buildings under construction.

The seizure made in cash will be converted into deposit.

The judge will order the removal of the seized asset in order to deposit it in court, particularly the Public Treasury creditor or, whenever it is requested so at any stage of the procedure.

In tax execution the summons of the seizure is given to the debtor, by the publication in the official publication at the term of the act or the seizure act.

If the seizure falls on a property, the subpoena is addressed to the spouse, subject to the rules on summons.

The summons for the seizure is done personally to the debtor, it is done by mail, and it should have the debtors or their legal representative signature.

The term of the seizure act will also include the assessment of seized assets, made by those who will make it.

Once the assessment is performed by the debtor, or by the Public Treasury, before the publication of the notice of auction, the Judge heard the other party, appoints the official evaluator to undertake the new assessment of the property seized.

5.7. Seizures

The debtor will offer seizures within 30 days from the filing of the evidence, from the bank guarantee, or from the summon of the seizure.

Seizures are not permissible before the execution of the guarantee.

Within the seizure term, the debtor must allege every matter useful to the defense, requires evidence and adduce as evidence the documents and list of witnesses, three, or at the discretion of the judge, up to twice this limit.

A counterclaim shall not be admitted, no compensation, and exceptions, except for the suspicion, incompetence or inability to act, be argued away as a preliminary matter and will be processed and adjudicated with the seizures.

Once the seizure is received, the judge will order a subpoena to the Treasury, to contest them within 30 days, appointing immediately, the hearing and trial date.

There will not be a hearing, if the seizure is based on matters of law, or being under law and in fact, the proof is purely documentary, in which case the judge will issue the sentence within 30 days.

If the seizures are not offered, the Treasury will manifest on the guarantee of execution.

Not being the execution seized or rejected in the case of third party guarantees, this will be summoned, under the sanction of proceeding against the acts, within 15 days:

- redeem the asset, if the guarantee is real, or
- pay the debt, interest and penalties on late payments and other charges indicated on Certificate of Active Debt by which it is mandatory to have a fiduciary guarantee.

5.8. Public sale

The auction will be preceded by public notice posted in the usual location at the Courts main offices, and published in summary, only once free of charge as a judiciary expenditure, in the official entity.

The period between the dates of notice publication for the auction may not be more than 30 days nor less than 10 days.

The legal representative of the Public Treasury shall be personally notified of the auction with the advance under the preceding paragraph.

The auction of any seized asset will be made at public auction in the place designated by the Judge. The Public Treasury and the debtor may require the assets to be auctioned globally or on lots as indicated.

It is the bidder to pay the auctioneer's commission and other expenses listed in the announcement.

5.9. Adjudication

The Treasury may award the seized assets before the auction for the evaluation price, if the execution was not seized or rejected, the auction will end if:

- There was no bidder for the valuation price;
- There are bidders with preference on equal terms with the best offer within 30 (thirty) days.

If the price or value of the valuation of the best bid is higher than the credit of the Public Treasury, the proceed will only be permitted by the Judge if the difference is deposited by the petitioner to the judge's order within 30 days.

Case Study

Topic 1.2

CLASSIFICATION AND MANAGEMENT OF DEBTS PORTFOLIO

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(Portugal)

PART I VOLUNTARY TAX DEFAULTERS. DEBTOR´S STRATEGIES VERSUS TAX CREDITOR STRATEGIES.

1. INTRODUCTION. THE PURPOSE AND DEFINITIONS OF THIS PAPERWORK

It is well known how taxpayers evade the respective voluntary tax payment, for the most diverse reasons but this is not the concern of this subtopic.

To get an idea of the reality in Portugal, in 2010 the voluntary collection represented about 90% of the total revenue, the voluntary adjustments under

the tax inspection about 5% and finally the forced or coercive collection about 5%. We also know that the voluntary collection will rapidly fall if we were not efficient in the Tax control particularly with the coercive collection.

In this work we do not want to get into the matters of the Subtopic 2 (Effective Mechanisms of Debts Collection: the precautionary measures, payment agreements and auction of assets) and neither get into the subject of the Subtopic 3 (Support tools for recovering debts).

Therefore, for reasons of time and space we will focus our attention on the subtopic-1 on voluntary tax defaulters, their classification and organizational structure, both in terms of specific methodology as well as in their practical action.

We will share the essentials of our model of organization, our strategic action, our difficulties and our past achievements and naturally our expected goals for the future.

2. THE EFFICIENCY VERSUS THE INEFFICIENCY OF THE ATP (PORTUGUESE TAX AUTHORITIES) ON THE MAJOR TAX VOLUNTARY DEFAULTERS. THEIR PROFILE.

In recent years, the DGCI (General Tax Directorate) has achieved significant increases of the level of efficiency and effectiveness of the forced or coercive collection, with special impact on small and medium debtors.

There is still a long way to go in increasing the efficiency of debt collection from the major tax debtors, who for the same reason, come to the DGCI and present themselves as DE (Strategic Debtors).

The amounts involved in contributions and taxes not voluntarily paid, and the profile and characteristics of these delinquent accounts, need a special monitoring by the tax administration, based on its own methodology and strategy, especially for this segment of tax debtors.

Compared to other debtors, they have the highest legal and tax knowledge, being very attentive to the various actions of the tax administration, through legal, economic and tax consultancy as well as the use of tactics to delay their tax obligations.

In 2009, these debtors represented 60% of the total value of the existing, due and unpaid tax debt.

Besides, the collection obtained from this number of debtors represented only 30% of the total revenue collected in a coercive manner.

With these indicators it is clear how the ATP (Portuguese Tax Authorities) and in particular, the DGCI had and still have some difficulties to collect the debts from the major voluntary defaulters, leading to have many of these debts to be left unpaid, either by prescription[1], by the lack of strategies or the lack of adequate resources.

In fact, most of the difficulties in collecting these debts came and still come, in some cases, from the major debtors that properly develop and design strategies for not complying. These strategies are well conceived and with a high knowledge of the laws and the functions of the administration.

In a significant proportion of cases, the causes of the existence and persistence of large debts are not the result of financial difficulties of debtor companies, but as a calculated attitude of major debtors. In many cases, these companies adopt secret procedures, through the incorporation of companies in cascade, to avoid the responsibility of the agents that determine the intent of these debtor companies.

In the majority of large tax debts, the intent of the debtor company is determined by a person duly advised, that dominates and is responsible for the conception and development of the company`s strategy for non-compliance, we can consider them as the "contaminating tax agent."

Often this individual goes to the ATP (DGCI) under the guise of various companies, installed in several counties and districts and in various Finance Services establishments, trying to explore the different rhythms of action and degrees of effectiveness between them.

3. STRATEGIES AND ACTIONS OF MAJOR TAX VOLUNTARY DEFAULTERS, VERSUS STRATEGIES AND ACTIONS OF THE ATP (DGCI).

Given these tax avoidance strategies by major taxpayers, with take advantage of the differences between the different services; the ATP (DGCI) can only be efficient with the effective collection of debts by adopting appropriate strategies and actions.

In order to have appropriate strategies for an effective collection, the ATP (DGCI) collects and makes available a set of indicators that allows it to have a better knowledge of these debtors.

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1. *Unless the causes of interruption and suspension under Article No. 49 of the LGT (Tax Code), and No. 1 of Article No. 48 of the LGT provides that "tax debts prescribed, except as provided in the special law, within eight years counted in the tax periods from the end of the year in which tax and verify the fact, the only tax obligation, from the date the tax actually happened, except for the value added tax and taxes when the tax return is done by withholding a final title, in this case the period is counted from the beginning of the calendar year that was verified, respectively, the enforceability of tax or tax made ".*

This also extends to third parties, that maintain relations with those taxpayers, with special emphasis on their tax behavior, and, that eventually, are found as guarantors of the regularity of that behavior. It's also important for us to know about their economic, tax and legal advice.

Only this knowledge allows the ATP (DGCI) to organize appropriate instruments to detect and dismantle schemes of fraud to the Treasury, and to know on time about intentional situations of the major tax defaulters.

The collection of the big debts requires from the ATP (DGCI):

- A strategy, which assumes a global knowledge on the tax situation of debtors and a comprehensive understanding of all the activities of these debtors.
- To know who the persons responsible for the non-compliance are, detect and identify their strategy, and which are the other companies and debtors that they dominate such as the "contaminating tax agent".
- A global diagnosis and the design of a more effective strategy against the debtor, than the one designed and implemented by the debtors to evade payment.

If the big debtors have a strategy of non-compliance and one person is in charge of it, the ATP (DGCI) must also have a strategy and a responsible person for its design and practical implementation.

This is why, a set of real actions are now taken, with the purpose to collect information as a starting point for the creation and further implementation of standard strategies, in order to ensure the effectiveness of the collection in any service of the country's finances.

This will encourage and is encouraging a deterrent effect in the delinquent taxpayers evasion or tax fraud behavior, as it increases the risk of being detected and in particular on taxpayers who comply (which represent the majority), encourages a sense of commitment for the ATP (DGCI) to achieve a fair taxation for everyone and not just for those who duly pay taxes to the Portuguese State.

4. THE VOLUNTARY TAX DEFAULTERS' PORTFOLIO IN PORTUGAL. TARGETING OUTSTANDING DEBT AND SUSPENDED DEBT. EVOLUTION FROM 2007 TO 2010.

- **The disintegration of the DE in the country and in the Directorate of Lisbon.**
- **Its importance for the respective managements.**

To have an idea of the reality of voluntary tax defaulters and their evolution in Portugal, here we show indicators of their disintegration at different levels.

As it is the interest of this sub-section, we present the following levels of disaggregation:

The first of which has to do with the values of the outstanding debt, the one that allows and requires processing by the corresponding departments and on the other hand, the values of debt legally suspended and which do not allow legal processing.

See the following graphic:

Tax Credits in Execution - Disintegration of the Debt Portfolio Evolution

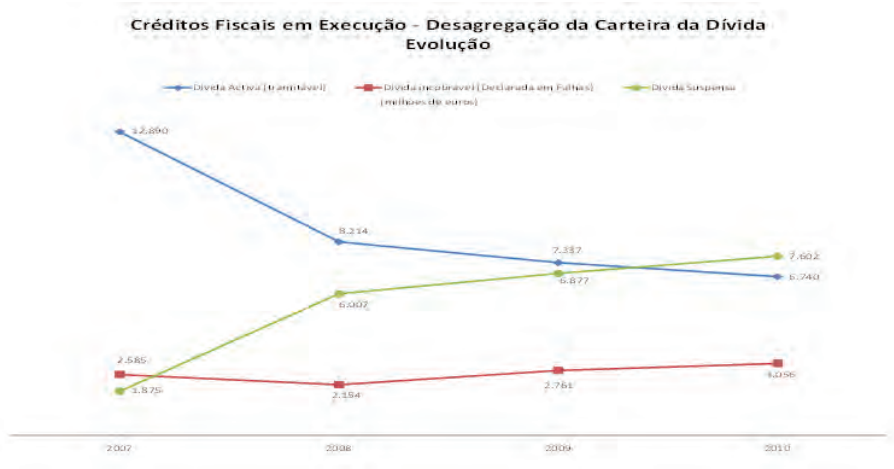


Fig. 1 – Overview of the evolution of active and suspended debt portfolio

As seen in the triennium 2007 - 2010, the outstanding debt (paperwork) went from almost €, 12.900M, to, € 6.740M, decreasing by about half, and the suspended debt went the opposite direction from €1.900M to €7.602M.

This means that, from a global portfolio of roughly €14.8 M on 1.1.2007 we evolved to an approximate value of € 14.342M on 31.12.2010. The total value of the portfolio decreased very little.

There is a still a qualitative change of the overall portfolio of the debt: the current debt fell slightly more than half and the suspended debt ascended more than half of the overall portfolio.

As we already know, this is due to the voluntary tax default strategies of the major tax debtors who use the legal procedures as shields, mainly administrative and judicial, in order to place their tax liability in suspension.

The chart above shows the evolution of the aforementioned debt portfolio from 2007 to late 2010[2].

A second level of disaggregation important for this subtopic has to do with the number of active PEF (Fiscal Execution Process), those that we could intervene in early 2010, reached 3.688.608 PEF; throughout this year 1.846.559 were filed and 1.668.771 were completed.

On 12.31.2010 and on 1.1.2011 we had 3.866.396 active PEF in the country.

A third level of disaggregation that must be done under this sub-topic, has to do with the number of major tax debtors, the DE are those who think of strategies and take actions for the voluntary tax default and this is why we give them special attention.

According to the three criteria defined in PAGIDE hereinafter [Aggregate debt just in one UPR (Regional Peripheral Unit, Finance Division) exceeding € 500,000; Aggregate debt over a UPR of € 250,000 and all major debtors not included in the above criteria, which has 80% of the debt portfolio of one UPR], On 30.04.2011, the Lisbon Finance Division, the UPR, which represents about 45% of the country's coercive collection reported the following situation:

- Of the nearly 3.867.000 active processes, 111.916 concern the strategic debtors (DE), representing about 3%.
- As per the number of DE, out of 10,100 debtors, nationwide, about 3,500 are concentrated in the activity area of the Lisboan Finance Division, which represents about 35%.

These 3,500 DE are the ones that demand more attention, monitoring and control from the Lisboan Finance Division through the DADE (Monitoring Division of Strategic Debtors).

The value of the debt portfolio of active (processed) of the DE in the country was € 3.576.471.869 on 21.6.2011, this means that corresponds to 45.33% of the national active debt which is € 7.889.863.395.

2. *Source: Activity report of the DGCI 2010*

Therefore, if we consider the suspended debt portfolio (not processed), we find that on the same date 06/21/2011 it was € 6.415.221.599 which 71.26% corresponds to the value of this suspended national debt which is € 9.002.181.196.

These indicators show the importance of debtors not only for the coercive collection area, but also in associated litigation.

Only the disintegration and classification of our debt portfolio management allows efficient methodologies for practical action on tax defaulters, particularly on the major ones.

PART II ORGANIZATION AND MANAGEMENT OF MAJOR VOLUNTARY TAX DEFAULTERS

1. THE PAGIDE – PLAN OF MONITORING AND INTEGRATED MANAGEMENT OF STRATEGIC DEBTORS

1.1 - Basic objectives of its implementation

By order of the General Director of Taxation, on 02.09.2009, the implementation of the PAGIDE was approved nationwide.

The implementation of this plan was assigned to the human resources division, with multidisciplinary expertise in various UPR - Finance Division, which led to the creation of DADE in the Lisbon Finance Division.

The UPR biggest task was to give the PAGIDE a high efficiency strategic management system for debtors.

Its purpose was the execution of a project to structure the permanent collection of the tax debts of all taxpayers, without exception, regardless of their size.

Since that provision in September 2009, the effort of the ATP (DGCI) targeted not only small and medium taxpayers, but also, and most particularly, the biggest debtors - the DE (Strategic Debtors).

These have been the target of the analytical and strategic efforts of the PAGIDE. Under the framework of this Plan these are the ones that are to be followed up.

Creating a project of this nature is essential, especially because the DE play a key role in achieving the purposes of the coactive collection.

Any positive performance has a significant importance to the ATP (DGCI) national results on coactive collection, on justice and tax equity.

1.2 The implementation of a methodology to achieve the purposes of the PAGIDE.

The methodology contained in the PAGIDE, has a strategic national importance, not only because of the interest in increasing the efficiency of ATP (DGCI) of the coercive collection of major debtors, but also for its importance in terms of income and tax equity.

The methodology underlying the PAGIDE involves promoting and ensuring the interaction between the various services that compose the ATP (DGCI), in two ways:

- Horizontal (coordination between different functional areas) and;
- Vertical (coordination with the central, regional and local services), having the GDE (Strategic Debtors Manager) as the key player.

The GDE is the one responsible to investigate the general situation of the debtors, and its officers make the diagnosis, devise a proposal for an action plan, monitor and ensure its practical implementation.

The GDE is the key element, coordinating all these functional areas, the axis of the horizontal and vertical coordination.

In general, the mission of the GDE is to analyze the constant information by computer systems, through the coordination with various areas and levels of the DGCI, a strategy for the DE which is in its sphere of competence.

The following image will help you understand:

Fig. 2 - Overview of the internal function of the GDE

The tax administration, through the GDE, guides the strategies and actions against individuals responsible for the establishment and maintenance of the companies which, in many cases, are creating and allocating tax liabilities. It is around this "tax contaminating agent" that the GDE should build its "cluster", proceed for its analysis, develop strategies that effectively stall the failure to comply and make these non-compliant offenders finally comply.

According to the methodology of the PAGIDE, the GDE globally evaluates the tax status of these agents and the "cluster" of companies that they dominate.

This evaluation covers all functional areas of the DGCI, from the analysis of the extent of statements of the "cluster", to the tax litigation, the inspection procedures and their conclusions, pending reimbursements, criminal proceedings and all other types of proceedings.

This methodology is based on the essential features of the SIGIDE (Integrated Information System Management of Strategic Debtors) previously mentioned.

1.3 The PAGIDE achievements in 2010: Results in the Lisbon UPR

The implementation of this project in the Finance Division of Lisbon in 2010 was finally made through their GDE. The diagnostic reports and action plan for all the DE of this district, contributed decisively to achieve the coercive collection goals. It also decreased the debt portfolio, according to the total revenue goals for 2011.

The DADE, with our GDE until the end of 2010, gathered from the database of the SIGIDE, 3448 action plans, of which 94.5% are strategic debtors.

Our GDE at the Lisbon Finance Division contributed to increase the 2010 coactive collection from € 417.751 million to € 46.037 million, surpassing the goal of 10.12%.

2. THE SIGIDE - INTEGRATED INFORMATION SYSTEM MANAGEMENT OF STRATEGIC DEBTORS

To implement the PAGIDE - a common strategy for all the DGCI directed to the DE - turned out to be very important for the creation of a computer application, SIGIDE, systematically dealing with all major taxpayers.

The SIGIDE operates only in the UPR, with three levels of action:

- National Level: National Coordination;
- Regional Level: District Coordination;
- Local Level: Strategic Debtor Manager.

It is based on the following main principles:

- Information: tries to gather and organize all the information on each debtor;
- Debtor Management: It not only processes the global information provided to the Department of Finance, but it also provides an integrated view of the tax status of the "cluster".

The characteristics of the Strategic Debtors covered by the SIGIDE are the following:

- With a global debt of one UPR exceeding € 500.000;
- With global debt, in more than one UPR, exceeding € 250.000;
- All major debtors, not included in the above criteria, whose amounts exceed 80% of the value of the debt portfolio of one UPR.

2.1 Listing and explanation of the advantages of the SIGIDE:

Among the browsers and exploration advantages of information provided to the GDE and to the DGCI Services we can mention the following:

• Standardization of the graphical interface: enables the user - the GDE - a common application to all UPR, which allows speeding up the processing of information and easy transmission of information between the GDE, where the taxpayer (DE) is a debtor in more than one district;

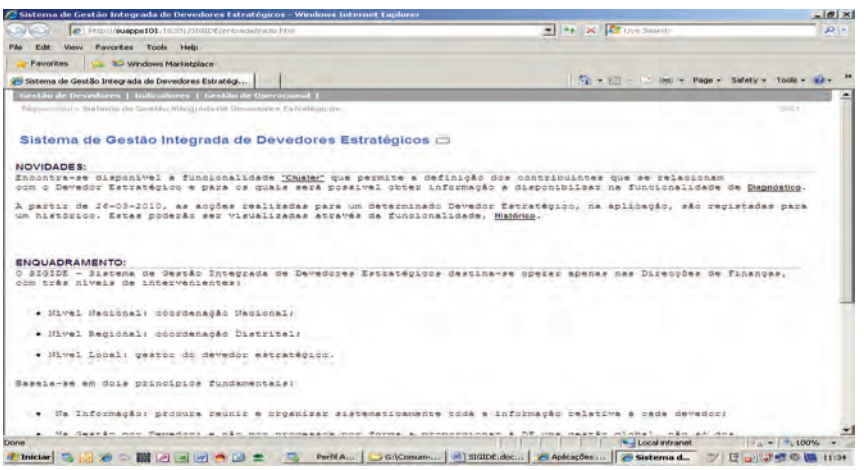


Fig. 3 - Overview of the web home page of the application SIGIDE

- Easy web surfing (Web Authentication): access to the system, with the introduction of the username and password, only occurs once, allowing access to various computer applications of the SEFWeb without authentication;

- Safety of the browser: The SIGIDE has an integrated security system which ensures that only the GDE and their superiors (Team Leader, Division Chief and Director of Finance) will have access to information about the DE under its command, including the action plans made by them and the diagnostic report;

- Ability to export the report in Diagnosis of the analyzed DE. This report allows to deal easier with the tax information and with the implementation of the Action Plans, once it empowers the GDE, in a systematic way, with key information that stands out: taxable inter- relations , financial flows, tax inspection, list of current processes; seizable assets, criminal tax investigations, administrative offenses, tax litigation;

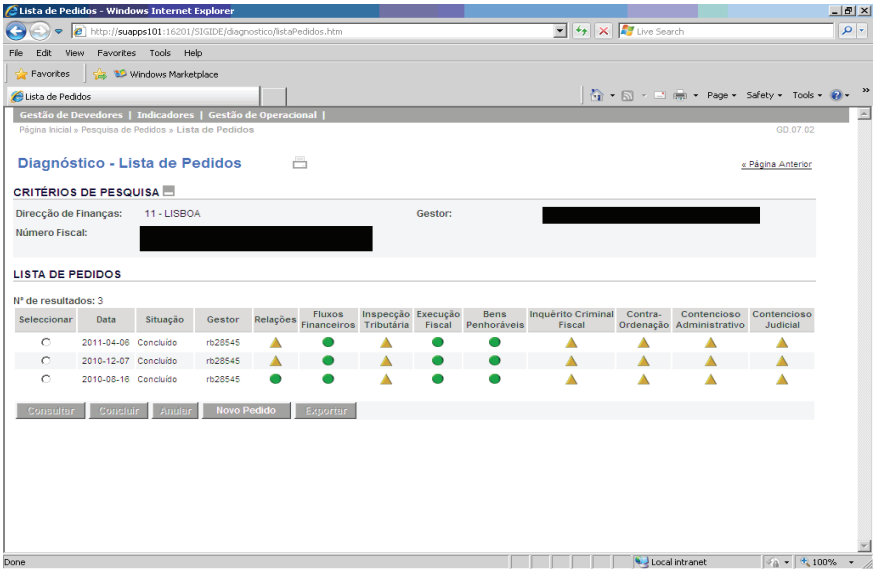


Fig.4 - Vision of the website which runs the Diagnostic Report

- Identification of new debtors: the system has an automatic data processing, where any taxpayer from the time it reaches a higher amount of tax debt to € 500.000.00 in one UPR or to € 250.000.00 in more than one UPR, is immediately included in the SIGIDE data base;
- Possibility of consulting the “history” of the DE: allows the GDE to know if a taxpayer went to the DE, and to design a strategy for a more effective action;
- Consultation of the Inter-Debtors Relations: this information allows determining whether there is another DE that has or had any relationship in the professional field, which is, an administrator, a manager, spouse, another company, etc.

2.2. The Diagnosis functionality

The power of SIGIDE to automatically produce a diagnostic report reveals undoubtedly the most important functionality of this software application.

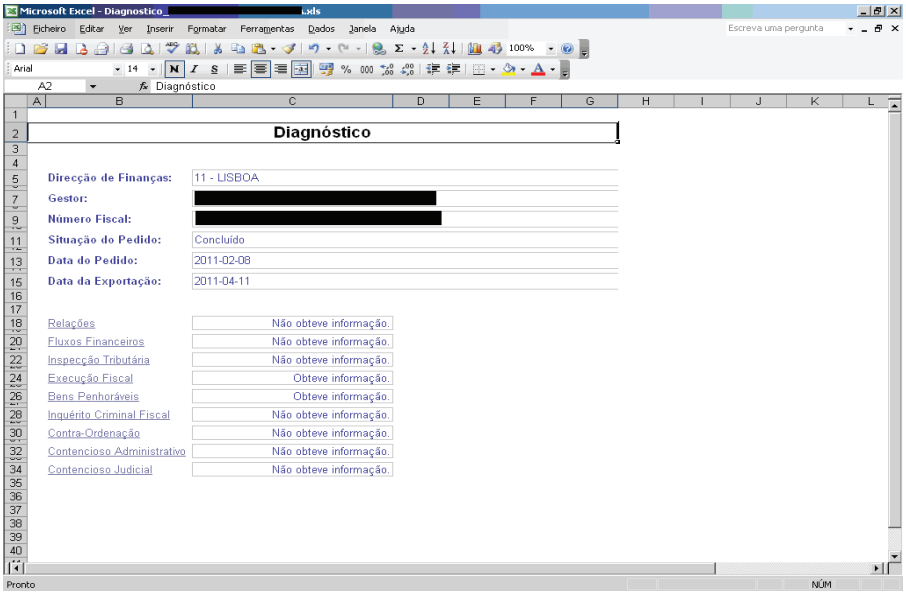
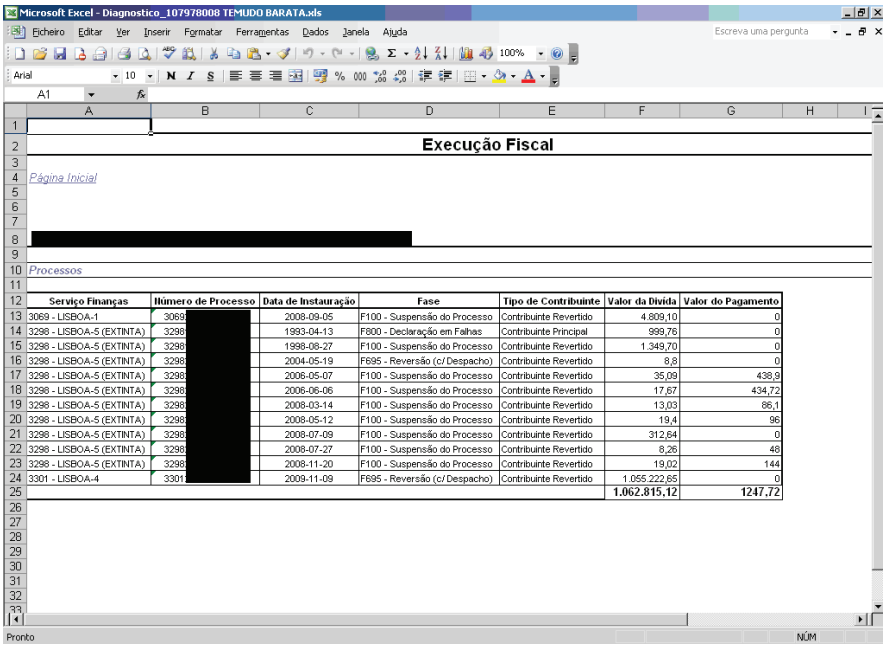


Fig. 5 - Overview of the Diagnosis Report front page taken from the SIGIDE in Excel format

In a more detailed form, the information that the Diagnostic Report provides is the following:

- Identification of the person or corporation, according to the nature of the DE that is being analyzed;
- Creation of a “Cluster”, creating a diagnostic report with the identification and association with others DE (individual persons and / or companies) with whom the debtor had or still has business relations (with the Tax ID, name and type of relationship);



Microsoft Excel - Diagnostico_107978008 TEMUDO BARATA.xls

Execução Fiscal

Página Inicial

Processos

Serviço Finanças	Número de Processo	Data de Instauração	Fase	Tipo de Contribuinte	Valor da Divida	Valor do Pagamento
3069 - LISBOA-1	3069[redacted]	2008-09-05	F100 - Suspensão do Processo	Contribuinte Revertido	4.809,10	0
3298 - LISBOA-5 (EXTINTA)	3298[redacted]	1993-04-13	F800 - Declaração em Falhas	Contribuinte Principal	999,76	0
3298 - LISBOA-5 (EXTINTA)	3298[redacted]	1998-08-27	F100 - Suspensão do Processo	Contribuinte Revertido	1.349,70	0
3298 - LISBOA-5 (EXTINTA)	3298[redacted]	2004-05-19	F695 - Reversão (c/ Despacho)	Contribuinte Revertido	8,8	0
3298 - LISBOA-5 (EXTINTA)	3298[redacted]	2006-05-07	F100 - Suspensão do Processo	Contribuinte Revertido	35,09	438,9
3298 - LISBOA-5 (EXTINTA)	3298[redacted]	2006-06-06	F100 - Suspensão do Processo	Contribuinte Revertido	17,67	434,72
3298 - LISBOA-5 (EXTINTA)	3298[redacted]	2008-03-14	F100 - Suspensão do Processo	Contribuinte Revertido	13,03	86,1
3298 - LISBOA-5 (EXTINTA)	3298[redacted]	2008-05-12	F100 - Suspensão do Processo	Contribuinte Revertido	19,4	96
3298 - LISBOA-5 (EXTINTA)	3298[redacted]	2008-07-09	F100 - Suspensão do Processo	Contribuinte Revertido	312,84	0
3298 - LISBOA-5 (EXTINTA)	3298[redacted]	2008-07-27	F100 - Suspensão do Processo	Contribuinte Revertido	8,26	48
3298 - LISBOA-5 (EXTINTA)	3298[redacted]	2008-11-20	F100 - Suspensão do Processo	Contribuinte Revertido	19,02	144
3301 - LISBOA-4	3301[redacted]	2009-11-09	F695 - Reversão (c/ Despacho)	Contribuinte Revertido	1.055.222,65	0
					1.062.815,12	**1247,72**

Figure 6 - Overview the Diagnostic Report spread sheet taken from the SIGIDE, with detailed reference to the PEF of the DE

- Detection and monitoring the DE new debt with the resource assigned to the Financial Flows Management (through assigned taxes, settlement period, value, date and payment due);
- Characterization of the DE debts (with the allocation of the tax by type of non-compliance - failure to report, lack of payment, reporting after the deadline, additional settlement or unofficial statement);
- Identification of the entities with which the DE have relations over the past 5 years (customers and suppliers with larger business volume) as well as with the Technical Officers and official accounts Auditors;
- Verification of the existence and collection of information on all pending processes and procedures to be delivered to the DGCI, referring to the DE, concerning criminal investigations, reckless claims, administrative appeal, outstanding claims and other claims procedures in progress (through the indication of the type and the Number of processes, date and status, tax year, identifying the organizational unit in which the process is located, date of the requests - if applicable);
- Analysis of the DE records, with their respective legal proceedings and knowledge of judiciary decisions;
- Identification and evaluation of assets to be seized, the DE performance, as well as per their legal representatives;

For example, the constant SIGIDE information concerning the existing DE in the Lisbon UPR, and the total amount of debt at the beginning of year 2011:

- 3,648 Strategic Debtors in the district;
- 106,885 outstanding PEF;
- € 6.697.163.269 of the total debt in the district (including reversed ones);
- 3199 are primary debtors;
- 1316 have values above € 1,000,000;
- 2984 have current processes in the system.

3. THE GDE - STRATEGIC DEBTORS MANAGERS. THEIR FUNCTIONAL CONTENT.

Currently, in the ATP (DGCI) the management of major debtors is affirmed through the figure of Strategic Debtors Manager (DSM).

The GDEs, by searching through the information systems, should develop actions and strategies that allows a fast and effective collection of due taxes.

Their mission is to support, coordinate and track the implementation of a collection strategy.

The functional contents of the GDE[3], are as follow:

A) In declarative matters

- To monitor the debtor´s behavior regarding his compliance with the obligation to submit tax returns (IRS, IRC) or VAT;
- To monitor the debtor´s behavior regarding the compliance with the duty to file taxes withheld at the source or that are in charge of third parties (VAT and Selo), or in terms of a new debt formation;
- To monitor the debtor´s behavior regarding the compliance with the duty of presenting accessory obligations, especially the third party control statements (annual declaration, Model 10, Model 11, Model 33, etc.) as well as all the other reporting obligations.

B) In procedural matters

- Making the diagnosis of all administrative procedures and the debtor's pending procedures in all departments of the tax administration and in the administrative and tax courts as well as in the Prosecutors Office and judiciary courts.

3. *It was transmited by e-mail on 22.06.2007, then the NMJT - Nucleus for the Modernization of the Tax Justice*

- Permanently follow up the progresses of the aforementioned processes;
- Organize together with the responsible of the technical departments, when a processing is a priority and coordinate these processes with the DGCI, considering their interest for debt collection.

C) On the external side

- Frequently discuss with the debtors, presenting the diagnosis of their entire tax situation and giving all the necessary and available information for the regularization of the situation;
- permanently collect from the debtor´s accounting books, all the updated information concerning his business, mainly the analytical balance, account statements from suppliers and clients, bank accounts, etc..
- Arrange all travels of officials to the debtors' facilities, primarily for inspection activities and external actions concerning the coactive collection.
- Promote the implementation of parallel actions in order to gather information on the debtor's accounts by the tax inspectors and technicians from the Finance Services to seize the identified assets.

The GDE functional content allows tracking the most important debtors of a UPR in a horizontal and inter-functional form, and certainly contributing to increase the efficiency of coactive collection.

- Manage and monitor the major debtors, taking into account the increase in coactive collection regarding the ones already executed;
- Increase the Strategic Debtors´ tax obligations and the effectiveness and efficiency of tax inspections actions to identify seized assets

In summary, the GDE supports, coordinates and monitors a strategy that should be conceived between the various areas, levels and responsibilities of the DGCI, contributing to the fast and efficient collection of due and overcome tax debts of major debtors.

4. OUR EXPERIENCE WITH THE DADE (MONITORING DIVISION OF STRATEGIC DEBTORS) IN THE LISBON REGIONAL DIVISION

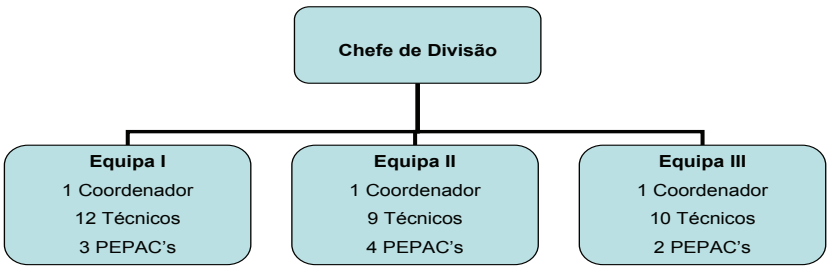
The DADE was created with the resolution No. 5595/2010 from the General Director of Taxation, published in the Journal of the Republic on 29.03.2010, start-from 01.04.2010.

With this new logistic and structure, a new cycle in the monitoring of major debtors began in this district. So, from the time that human resources and materials to this division were assigned, it was possible to track in detail the internal and external strategic debtors (DE) of the UPR, particularly the active one and whose assets are available.

4.1 Organizational model

For the best performance of the various activities of this Division, the acquisition of equipment, the definition of the work to develop and the appointment of human resources were essential.

The DADE was established since the beginning of 2011, with three teams, in accordance with its organizational structure.



Fig, 7 - organic view of the DADE
(Monitoring Division of Strategic Debtors)

To have a fast implementation on the ground, with a dispersion in the external action and a better understanding of the "clusters" that must be followed, it was decided to distribute the teams in geographical zones as per the Finance Services and its DE, allowing to make contact and relationships between the DADE officials and the Finance officials.

The following chart shows how the distribution was made:

EQUIPA I à SLF´s	EQUIPA II à SLF´s	EQUIPA III à SLF´s
Lisboa 1	Lisboa 5	Lisboa 3
Lisboa 2	Lisboa 6	Lisboa 4
Lisboa 9	Lisboa 10	Lisboa 7
Lisboa 11	Oeiras 1	Lisboa 8
Loures 1	Oeiras 2	Amadora 1
Loures 3	Oeiras 3	Amadora 2
Loures 4	Cascais 1	Amadora 3
Odivelas	Cascais 2	Mafra
VF Xira 1	Sintra 1	Torres Vedras
VF Xira 2	Sintra 2	Lourinhã
Alenquer	Sintra 3	Cadaval
Azambuja	Sintra 4	A.dos Vinhos e Sobral M. Agraço

4.2 The internal and external content of the DADE

The image that follows will help the perception of the material contained in the DADE, through our GDE, by coordinating the functional areas of the internal and external side together with the DE and its "cluster" of business partnership.

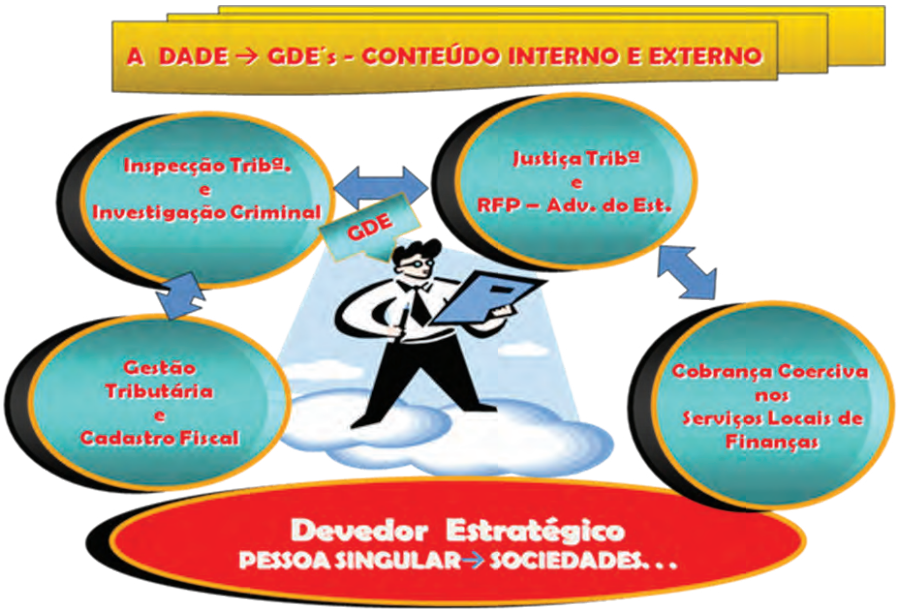


Fig. 8 - Overview of DADE´s functional content, internal and external, through the GDE

This Division, through the GDE teams, monitors, supports and collaborates with all the Local Finance Services of the UPR and simultaneously establishes the horizontal coordination of inter-functions: collection at the local level, management, inspection/ investigation and Justice / RFP at the district level.

The coordination between the various functional areas and this UPR is done at various levels:

- **With Coercive Collection (Management Division, Executive Debt Division and SLF):**

- Monitoring of new debts;
- Monitoring the legal procedures, formal aspects and compliance deadlines;
- Control of payments;
- Analysis of guarantees.

- **With the Tax Inspection and the Criminal Investigation:**

- The identification of strategic debtors;
- The identification of the cluster;
- In identifying the business / fiscal / legal strategies;
- In the assessment of the tax compliance risk;
- The update of the Census / Registration of Taxpayers;
- The identification of the organizational divisions / management / technicians;
- The collection of evidence for criminal prosecutions / or otherwise;
- Follow-up requests for reimbursement;
- The identification of assets / rights of the responsible under the organizational chart and the secondary responsible for seizures / collateral / precautionary measures - external signs of wealth;
- In support to minimize failures when formal acts and inspection processes are performed;
- For the existence of investigation processes;
- In tracking sentences conditioned on payment suspension

- **With the Tax Justice and the Representation of Public Finance for:**

- Monitoring all disputes and incidents in legal proceedings;
- Promoting and monitoring measures (arrests);
- Monitoring of bankruptcy proceedings / solvency and bankruptcy plans (business recovery);
- Monitoring impeachments filed by the SLF, in coordination with the RFP of this UPR, when this causes frustration with tax credits.

In the triangular actions - reversals and investigations for breach of tax confidence and tax management strategic debtors - this Division promotes the union between the services involved with the DE, subject to a reversal procedure or established as a criminal investigation, having as its final goal the payment of the debt with its accruals.
In this DADE´s triangle, emerges as the “link” the union between:

- The SLF of this UPR, the increase and support to the institution of reversal mechanism against those secondary and technical responsible under the tax foreclosure process and

- The DPCF (Tax Division of Criminal Procedure) of this UPR, through the support and monitoring of defendants in criminal cases for tax-related breach of confidence.

On the external functional side of the DADE through the GDE:

- Brings together the responsible of the DE, presenting all diagnoses of the tax situation and providing the necessary clarifications in order to reorganize and pay the debt and the processes.
- Collects from companies the evidence of the effective exercise of the activities and management / administration, for the management liability in terms of law.
- Evaluates the risks of future tax non-compliance through rigorous analysis of accounting tax elements.

PART III CONCLUSIONS, RESULTS AND PROSPECTS

The ATP (DGCI) reached in previous years a high capacity and efficiency in regards to the collection of debts of small and medium debtors; however, on the level of major debtors, it has had great difficulties and inefficiencies for the collection of debts of these types of taxpayers.

The DGCI had many difficulties - still has some - to collect the debts of the major debtors, leading to many of these debts to be left uncollected, either by their prescription or because of lack of strategies or lack of adequate resources for collecting them.

The economic and financial crisis facing our country, aggravated by the difficult access to credit, let foresee a serious risk of failure and underlines the purpose of the coercive collection.

The integrated approach of strategic debtors - PAGIDE - approved in 2009, was innovative and unprecedented in the DGCI. But its implementation has been affected by the lack of participation and commitment of all those responsible the various levels in several organizational units making up the organizational structure of the ATP (DGCI).

At this time, it is performing a titanic task by implementing this methodology throughout the country, much has been done and yet there is still much to be done to disseminate and standardize the strategy of this ambitious program.

The lack of human resources with multidisciplinary expertise to carry out this methodology has created some frustration with the implementation of the PAGIDE.

It will be impossible to have sufficient human resources to follow up the DE, since the role of the GDE is to ensure the efficiency and effectiveness in tax collection, justice and tax equity.

Since much as the GDE work is voluntary, and although their number was small, it would be humanly impossible to make a detailed diagnosis, a plan of action and monitor the implementation of the DE, which affects the tax collection of debts in terms of justice and tax equity.

From the analysis of the DE portfolio of this UPR, we find that it is essentially composed of three "types" of tax defaulters:

- The "**voluntary defaulters of the system**", are the ones that take all legal cases, particularly administrative and judiciary procedures, placing their tax liability in formal suspension.
- For DE or GDE the state of dependency of all tax litigation should be evaluated, advocating to speed up the analysis and decision, verifying the adequacy of security provided by these DE.
- The **"repetitive tax defaulters**," which act repeatedly, structured and planned, exploring inefficiencies in the structure and functioning of the ATP (DGCI), devising avoidance strategies and procedures by forming clusters of companies to prevent the agents responsible from determining these companies' liabilities.
- For these DE or GDE, the "cluster" should be identified and build around the single person who operates as a "*tax contaminating agent*," which is duly advised, responsible for the conception and development of non-compliance strategies.
- The "unintentional tax defaulters," due to the economic and financial crisis that we are facing, by not adjusting their corporate structure, lost ability to pay the debt which led to the creation of large tax liabilities
- The GDE must perform the diagnosis of the entire tax situation, schedule of meetings and dialogue with these DE, in order to outline the best strategy for an efficient collection of overdue tax debts.
- Let's now share some of the results achieved in the Finance Division of Lisbon through the DADE and by the intervention of its GDE:
- Amount collected in 2010 up to € 460.037 million euros, which helps overcome the objectives of the coercive collection of this UPR, in 110, 2%.
- About 94% of the No. of action plans and monitoring reports in 2010 were covered in this district.

Finally, we let some of the actions we have planned in this UPR running through DADE and our GDE with the purpose of increasing the coercive collection:

- Strengthens the coordination with the Tax Inspection to avoid large corrections to taxpayers unable to meet the values;
- In coordination with the Local Finance Services of this UPR, enlarge the scope of those responsible for debts;
- Through mechanisms of joint liability on invoice users that do not correspond to real tax operations, as well as the business managers of non-residents;
- Increase the qualities of returns against administrators/ managers;
- Increase the returns against Accounts Technical Officers and official account auditors.

Desperate diseases require desperate remedies.

It is essential to have a capable physician, an efficient medication and that the patient does not die from his own medicine.

If we reach this triangular balance, we will have a better justice and tax equity.

Case Study

Topic 1.2

CLASSIFICATION AND MANAGEMENT OF THE DEBTS PORTFOLIO

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SUMMARY

One of the tax administration main duties is the administrative tax debts recovery management coming from omission, late submission of statements by omitting the corresponding penalty amounts, and the incorrect determinations that generate the filling of incorrect forms/statements, either voluntarily or involuntarily.

It is a high priority strategic issue. Through friendly, effective or persuasive collection mechanisms, taxpayers can better perceive the risk of being detected for noncompliance, which in turn help increasing the tax base.

As for the debts portfolio classification and management, given the human, financial, and physical resources limitations available in tax administrations, it is important to establish criteria for optimizing them.

Among the classification criteria and management the evaluation of the taxpayers' characteristics should be included, considering for this purpose the income level, their assets or equities, and the potential tax contribution which they represent; an additional and necessary criteria is the debt ageing, for which it is necessary to consider the expiration periods, including important elements such as the estimated time need to be spent in the debt recovery process, which

has an impact on the recovery costs and risk perception. Another criterion to include is related to the tax type since there are certain tax debts that the tax administration can recover with less difficulty.

The creation/assignation of specific groups for the administrative collection programs handling and management could also be considered as an important element.

The administrative powers of coercive collection that the tax administration has are crucial to obtain relevant results in this stage, because when such powers are not available, the use of friendly or persuasive procedures is essential. For example, in the case of Guatemala, these powers are very weak and judicial collections processes are extremely long and costly for the Tax Authority; and therefore, the cost/benefit ratio is not always positive. So the administrative procedures are privileged.

1. DEBTS PORTFOLIO CLASSIFICATION AND MANAGEMENT

1.1. Legal basis

The Superintendence of Tax Administration – (SAT in Spanish) - created by the Congress of the Republic of Guatemala Decree 1-98, in its article 3 defines the SAT purposes and functions, establishing among others the following duties:

a) Organize and manage the collection system, collection, tax investigation and tax control.
b) Record maintenance and control, promote and implement administrative actions and promote judicial actions needed for collection and make taxpayers responsible for the taxes owed, interests and, if appropriate, surcharges and penalties.
c) Establishing and operate the procedures and systems that will facilitate taxpayers compliance.

The SAT Rules of Procedures (Board of Directors Agreement 07-2007), in its Article 32 delegates to the Tax Collection and Management Administration the development and application of powers that the SAT has in the planning, organization, evaluation and implementation of measures to facilitate, monitor and promote voluntary compliance; and in its Articles 48 and 50 provides verification and tax investigation in the Large and Medium Special Taxpayers Management and in the Regional Offices.

Resolution detailing the SAT branches organizational figures in second and third level issued at the Superintendent level, according to Resolution 467-2007, provides in its articles 19, 61, 66 and 73 that the functions related to administrative tax payment requests and customs obligations prior to

installing the procedure of tax determination or its coercive determination is the responsibility of the Administrative Collection Department and the Collection and Management Departments of the Special Taxpayer Management and Regional Offices.

1.2 Organizational Structure

For a better understanding of the internal organizational level occupied by the administrative collection management, the Organization Chart is presented in Figure 1. At the SAT first level can be located the Tax Collection and Management Administration, and Regional Offices and Special Taxpayers Offices. Within the Tax Collection and Management Administration, this is at the policy level, is found the Administrative Collection Department (Figure 2), and within the Regional Offices and Special Taxpayers (Figure 3), the Divisions of the Collection and Management are responsible for managing the administrative collection.

Figure 1

SAT Organizational Structure
Level 1

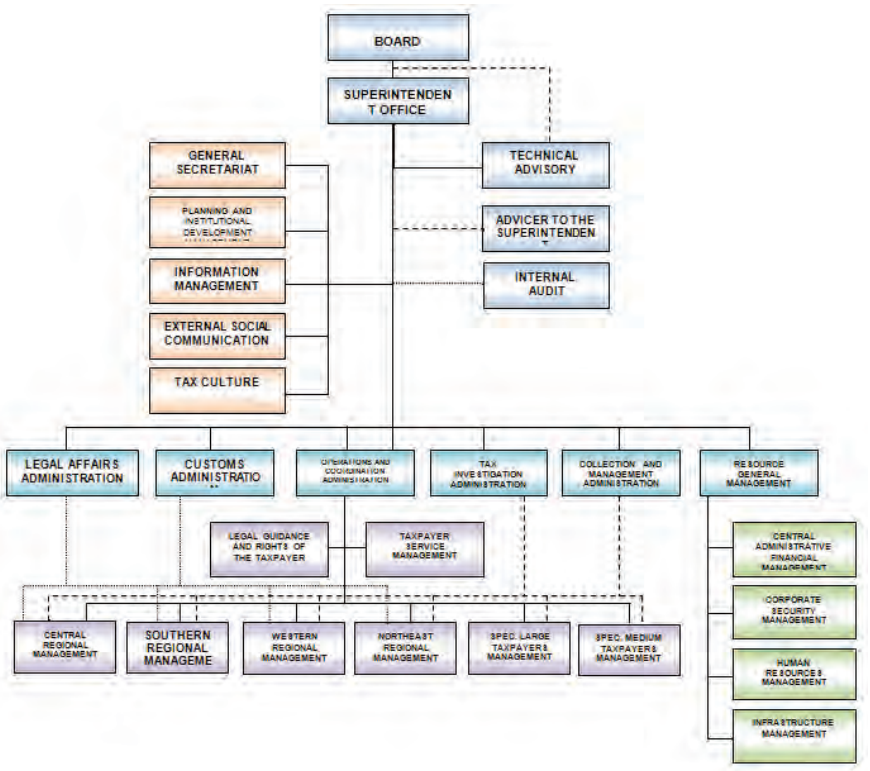
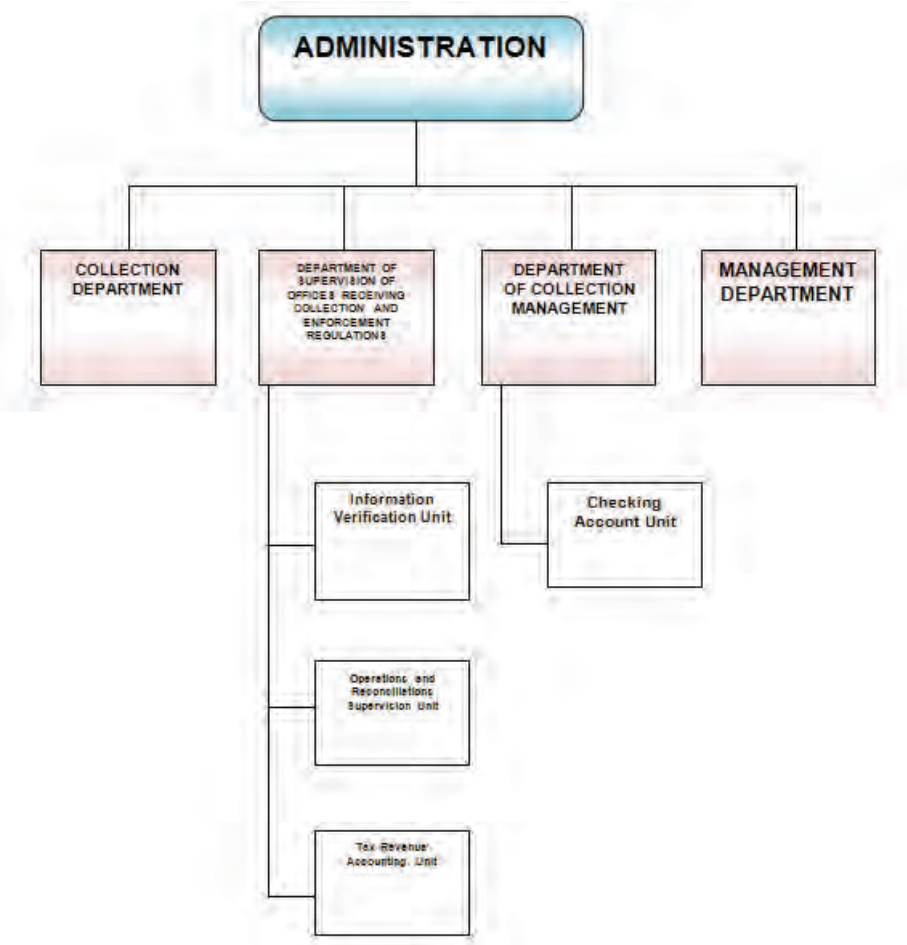


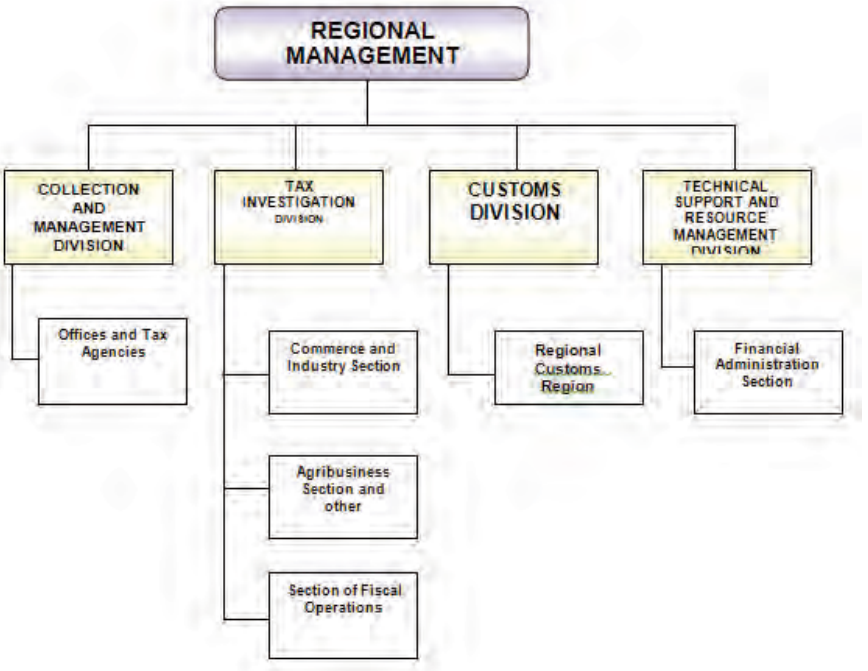
Figure 2

Tax Collection and Management Administration Organization Chart
Level 2



Graphic 3

Regional Offices Organization Chart
Level 2



1.3 Strategic Alignment

Within its 2011-2013 strategic plan, SAT defined three strategic objectives or main themes which are: to reduce tax evasion and customs fraud, improve the quality of taxpayer service, and improve institutional effectiveness.

Within the first strategic objective, “Reduce Tax Evasion and Customs Fraud”, general strategies were established including, among others, the increased perception of risk and increasing the taxpayer base; and as one of the specific objectives: “Strengthen and expand the massive and specific control coverage to reduce omissions, default and noncompliance.” This demonstrates the administrative collection importance at strategic level.

In addition to the above, it was determined that in general coercive processes - of tax investigation or legal - by the way in which tax legislation is written, allows taxpayers to file a series of appeals to the Tax Administration and to the courts which extend excessively the processes, and makes collection from these processes underperforming.

The above demonstrates the importance of the administrative collection management since it is one of the main means available to tax administrations to achieve a significant increase in the collection, regardless of the tax reforms adoption and implementation.

1.4 Debts Portfolio Classification and Management

1.4.1 Administrative collection system

Administrative collection system consists in the set of administrative units, processes, standards, procedures, and information systems or applications whose main objective is the tax debt and penalties (interests and fines) recovery and collection due to the failure to file and to pay statements and/or forms within the time specified or filing and paying them past due date.

1.4.2 Classification criteria for debts portfolio

The main criteria considered for the tax administrative collection portfolio classification includes:

a) Features of the Taxpayer´s characteristics,
b) Geographical location,
c) Tax type.

a) Features of the Taxpayer Taxpayer´s characteristics

The Tax Administration classifies taxpayers according to their assets, income and tax contribution amounts. In this sense, taxpayers are classified as Special Large Taxpayer, Medium Special Taxpayers and Normal Taxpayers. In a recent review of taxpayer types, the Big Regional Taxpayers category was added. As far as the number of taxpayers that are grouped in each type, there is a record of 2,000 special taxpayers of which 500 are classified as large and 1,500 as medium; the Big Regional Taxpayers are 4,100 and then we have 1,207,910 normal taxpayers. The collection of the 6,100 large taxpayers reached 78 percent of the total collection in 2010 (See Table 1).

Table 1

Taxpayers Classified by Type

Type of Taxpayer	** Number of Taxpayers	Total Contribution to the 2010 collection / accumulated amount
Special Large Taxpayers	500	60% - 60%
Medium Special Taxpayers	1,500	13% - 73%
Big Regional	4,100	5% - 78%
Normal (Other Taxpayers) *	1,207,910	22% - 100%

Source: GPD with information on the RTU, * = includes vehicle tax , without total normal ISCV 523,473; ** Effective taxpayers in 2010

b) Geographical location

Their geographical location, taking as reference the fiscal residence registered by SAT. In this regard, the Central Regional Management groups 47% of taxpayers classified as normal (See Table 2).

Table 2

% of Normal Taxpayers by Regional Management

Regional Management	% of Taxpayers with respect to Total Normal Taxpayers
Central	**47**
South	**16**
Western	**21**
Northeast	**16**

Source: GPD with information from the RTU

c) Tax Type

Another classification of the administrative collection is related to the tax type (specifically in the case of tax omissions). According to the July 2011 Report, from the total debt for omissions, 49.8% corresponds to the Income Tax -ISR-, 21.2% corresponds to the Value Added Tax - VAT, 14.8% corresponds to the Solidarity Tax - ISO, and 14.2% correspond to the Temporary Special Tax to Support the Peace Agreements-IETAAP (See Table 3).

Table 3

% of Debt by Tax

Tax	% Over total debt
ISR	49.8
VAT	21.2
ISO	14.8
IETAAP	14.2

Source: GPD with information from the omitted system

1.4.3 Portfolio Management by control type and debt management

For a better management of the debts portfolio, the tax authority has established in its management controls a classification by debt type, including debts by omission, the late submission without paying corresponding penalties due amounts, incorrect determination, requests for payment arrangements to meet tax obligations which had expired or will expire, and special collection programs that are based on the detection of inconsistencies derived from cross reference of information (See Table 4).

Table 4

Description of the Control Types and Debt Management

Control Type and Debt Management	Description
To omitted taxpayers	It groups taxpayers who have missed formal presentation of their obligations according to their affiliation.
To delinquent taxpayers	It groups taxpayers who have submitted their untimely statement paying the corresponding tax amount. However, they have failed to pay the amounts for the application of appropriate sanctions.
To debtors by incorrect determination	It groups taxpayers with incorrect determinations as miscalculation, over-accreditation, excessive pull and partial payment, which are detected from the checking account system processes.
For taxpayers who request payment arrangements	It groups taxpayers requesting easy payment terms to meet obligations due, or about to expire; payment terms that may be granted for a maximum of 12 months.
To taxpayers with inconsistencies detected by crossing	It groups taxpayers that report inconsistencies which are detected by using crossing information between the returns filed by taxpayers and the information obtained from other internal and external sources (suppliers, financial institutions, government institutions, etc.).

1.4.4 Debt ageing, expiration and amount

Debt ageing and expiration. The criteria in terms of debt ageing that are managed by considering the limitations established in the legislation defined by the Tax Code, which indicates a four years period for verifications, adjustments, corrections or determinations of tax obligations, and five years for tax violations and sanctions.

Recently, as a risk management strategy, the administrative collection has been directed to the recovery of more recent debts, since it implies a more rapid response by the Tax Administration to address any noncompliance. This strategy is additionally reinforced with the previous periods review to the period in which an inconsistency or a situation which creates doubts.

Amount. As for the amount, considering the limitations of available resources, collection management is giving priority to those debts of greater value and more feasible recovery.

1.4.5 Tools/computer applications

The debt recovery management is supported on integrated automated applications denominated the workflow manager (designed and implemented with the CIAT technical assistance), where the administrative collection processes are administrated and includes specific modules for the management of omitted, collection, payment arrangements and easy payment terms, exemptions control, and query modules such as integrated queries and the taxpayer fiscal situation.

The management flow and results monitoring allow to identify debts, create programs and allocate debts, according to parameters to classify them by taxpayer, tax and debt types; create massive and individual notices and management documents; manage users and profiles; register procedures; operate administrative closures; manage and control transfers to the enforced collection and generate reports about control and results.

1.4.6 Management process for debt recovery

The management method or process for debt recovery begins with the identification of debit balances, for which computer applications are used: the system for identifying omissions and the checking account for the identification of delinquent taxpayers or debtors by incorrect determinations, and also crossing of specific information is applied to carry out special collection programs. This process is carried out by the Collection Department of the Tax Administration.

Massive and specific programs are created from the identification of the debit balances, massive or specific programs are created.

For specific or custom programs of highest tax interest, the Special Large and Medium Taxpayers Managements, and the Managements in charge of the Big Regional Managements assign to each account officer an average of 100 taxpayers that they must contact by any mean, to urge them to rectify their situation and pay what is owed.

In relation to taxpayers who, once contacted, do not resolve their situation, their cases are transferred to audit services to notify them the beginning of an audit.

For massive collection programs, we proceed to send notices through mails and courier services, assigning the cases to collection officers for each of the Regional Offices, according to the fiscal interest, and the taxpayer type and location.

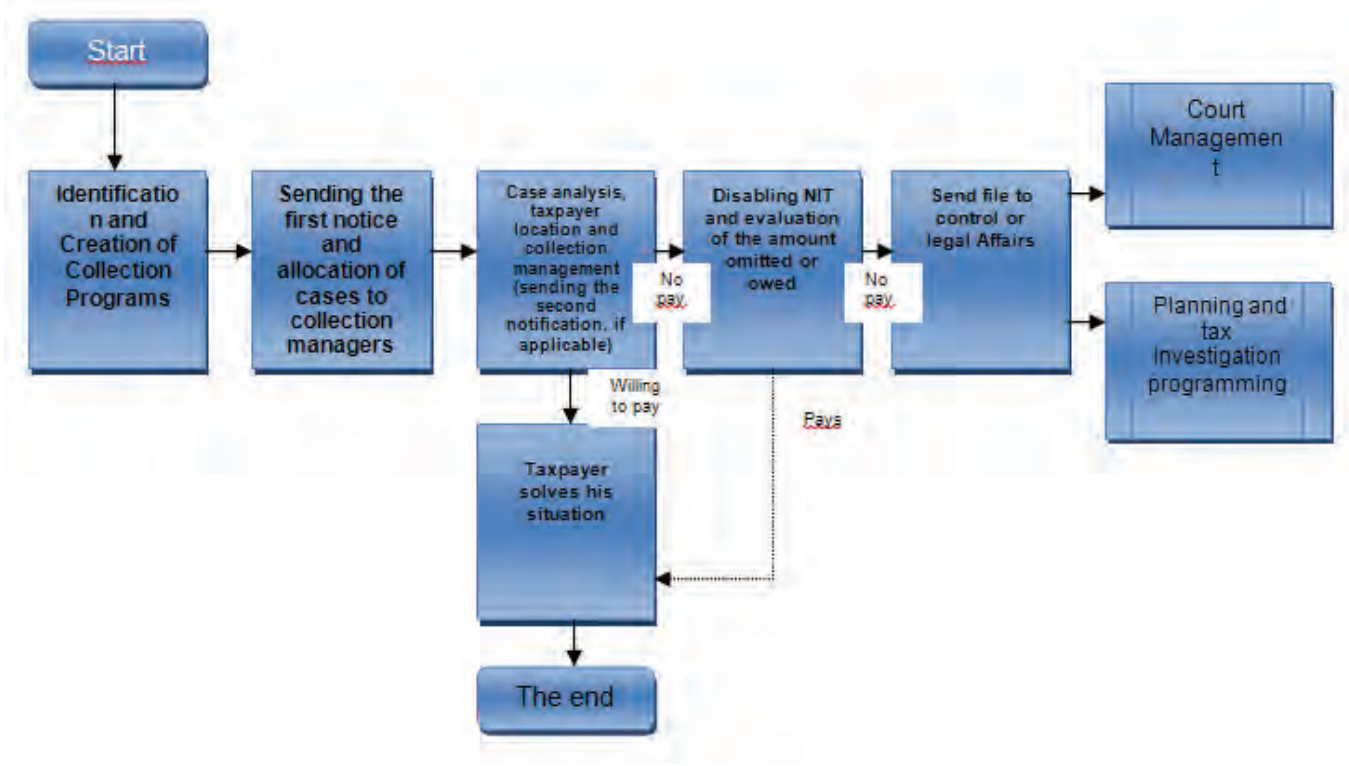
Once the notification receipt acknowledged, the collection officers provide a personalized follow up by phone calls, summons or emails to all taxpayers who received the notice until debt recovery or determination of taxpayer´s reluctance.

If the mail and messaging service report that the taxpayers could not be located, the collection officer will locate the taxpayer by an alternate information query such as through accountant information, legal representative, lawyers and notaries, related companies, third party information among others.

In cases where it is not possible to locate the taxpayers or that the taxpayer reluctance is determined, the case information with fiscal interest is transferred to the Tax Administration or Legal Affairs to continue with the administrative process (see Figure 4).

Figure 4

ADMINISTRATIVE COLLECTION PROCESS



Source: GPD

1.5 Data on Debts Portfolio Management

1.5.1 Recovered amounts

The results for debt recovery through administrative collection show an increase in 2010 compared to previous years, the most relevant control and management type being the omitted taxpayer (see Table 5).

Table 5

Amount Recovered by Administrative Collection
In millions of Q.

Control Type and Debt Management	2008	2009	2010	Total
To omitted taxpayer	326	317	453	1096
To no Delinquent taxpayers /debtors by incorrect determinations	6	27	22	55
Taxpayers who request payment arrangements	60	96	134	290
To taxpayer with inconsistencies detected by crossing	-	-	8	8
By Administratively process to judicial recovery.	-	31	22	53
Total	392	471	639	1,502

Source: IRG with information from Datawarehouse

1.5.2 Debts recovered on the total collection

By comparing the results obtained on debt recovery through various administrative collection programs with the collection of internal taxes, it may be noted that in 2010 it was registered a 2.9% increase to what it was recorded in previous years (see Table 6).

Table 6

Amount Recovered with Respect to Internal Tax Collection

2008	2009	2010
2.0%	2.3%	2.9%

1.5.3 DEBTS PORTFOLIO

ts portfolio classified from 2008 to 2010, there is a significant participation of debtors with payment arrangements. A total potential debt amount of Q. 393 million is registered. For these years. (See Table 7).

Table 7

Debts Portfolio Amounts per Year
In millions of Q.

Control Type and Debt Management	2008	2009	2010	Total
To omitted taxpayer	22	7	14	43
To delinquent taxpayers / debtors by incorrect determinations	53	54	48	155
For taxpayers who request payment arrangements	39	60	96	195
TOTAL	114	121	158	393

Source: IRG with information from Datawarehouse

2. CONCLUSIONS

1. The administrative collection represents one of the most effective mechanisms or means to increase tax collection increase the tax obligation noncompliance risk perception and improve the tax base.

2. A greater effectiveness of the administrative collection is linked to the administrative powers of tax administrations coercive collection.

3. debt administrative collection for tax liabilities requires different strategies and differentiated classification and management actions, which must consider the taxpayers characteristics, the debt ageing and prescription, granting payment arrangements; and of course, the tax administration management capacity.

Case Study

Topic 1.3

FORMS OF EXTINCTION OF THE ENFORCED ADMINISTRATIVE ACTION AND ITS CONSEQUENCES

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Social Security Resources
Federal Administration of Public Revenues
(Argentina)

Contents: *1. Introduction. 2. Grounds for extinguishment of obligations. 2.1. Payment. 2.2. Period of prescription. 2.3 Set off. 2.4. Uncollectable debts. 2.5. Debtor's debt. 2.6. Payment plans. Nature of payment plans. 2.7. Remedies before the courts. 3. Joint and several liability in social security matters 3.1. Procedural tax law (LPT) . 3.2. Specific rules . 3.3. Joint and several obligation assessment and demand for payment. 4. The Argentine experience: "Tools intended to assess a Social Security obligation". 4.1. Control and supervision. 4.2 MWI- Minimun worker's index.*

1. INTRODUCTION

Tax obligations- among which Social Security obligations are included-are created to be fulfilled and extinguished by a method of extinguishment.

The methods of extinguishment of an obligation are all those legal acts or facts through which obligations cease to cause legal effects, since they cease to have legal existence.

Due to the fact that one of the main features of tax obligations is that it consists of an obligation to give, it is obvious that their natural and most usual method of extinguishment is payment; that is, compliance with the financial obligation set forth by the substantive tax law regarding the subject-matter of the obligation.

In addition to the most usual method of extinguishment of obligations, there are other special methods that also terminate tax obligations. According to some authors, these methods only include set off and period of prescription,

and for the exceptional or very special case in which the active subject of the tax obligation becomes the taxpayer's universal successor, the merger would have to be mentioned.

It is worth recalling that regarding Argentina's Social Security matters, along with the specific Social Security applicable laws, certain laws from the Tax System also apply to Social Security matters. (Cf. Decree N°507/93- ratified by Law N° 24.447 and Decree N° 2102/93).

When dealing with the methods of extinguishment of tax obligations that terminate the coercive collection administrative action, we can not disregard that, as it was said before, said obligations arise from the taxpayer's -or person liable for taxpayer- self-declarations or, failing that, from the ex officio assessment performed by the Tax Administration, in both cases when the taxable basis has been declared and there are true elements to perform such tax assessment.

Now then, when said elements are hidden by a taxpayer's fraudulent maneuver, the tax obligation that has been externalized will be evidently insufficient and its possible timely discharge by the debtor will terminate the Tax Administration's persecutory action, without satisfying the object of the tax law.

This is a particularly major problem in Social Security matters, since usually the Tax Administration has to deal with taxable events that have already occurred and the labor relations giving rise to them are unlikely to be determined.

That is the reason why in the last point of this presentation, a brief description of the latest tools that have been recently adopted by the Argentine Tax Administration seeking to avoid non-compliance of Social Security tax obligations will be made.

2. GROUNDS FOR EXTINGUISHMENT OF OBLIGATIONS

2.1 Payment
2.2 Period of Prescription
2.3 Set off
2.4 Uncollectable debt
2.5 Debtor's death
2.6 Payment plans. Nature of payment plans
2.7 Remedies before the courts

2.1 Payment

2.1.1 Definition

2.1.1 Payment is the fulfillment of the obligation that constitutes the subject-matter of the main tax legal relation, which presupposes the existence of a credit for a liquid and enforceable amount in favor of the Tax Administration. Civil law rules are indirectly applied to payment, in order to resolve issues unaddressed by the tax laws.[1]

The principles governing this natural and ordinary method of extinguishment of tax obligations are the same applying to payment under private law. This is why regarding Social Security matters, and according to the definition provided for in the Argentine Civil Code, Section 725, payment is the performance of the obligation constituting the subject-matter of the obligation.[2]

2.1.2. Subjects of obligations

The passive subject of a tax obligation has to make the payment, but the obligation can also be fulfilled by third parties, as set forth by Section 727 of the Argentine Civil Code. This means that nothing prevents a third party from making the payment thus discharging the debtor. In such a case, the Tax Administration disregards the debt and the third party takes the place of the debtor acquiring his rights, guarantees, priorities and substantial privileges.[3]

2.1.3. Laws of the tax system applicable to the social security system

As it was anticipated, in Argentina, certain laws applying to the Tax System are also applicable to the Social Security System.

In this regard, a large part of Chapter IV “Payment” of the Tax Procedural Law N° 11.683 (LPT, in Spanish) is integrated into the legal frame of the Social Security System through Decree N° 507/93[4] and N°2102/93[5], as follows:

1) Overall due date of payment (Section 20 LPT)
2) Payments of advances (Section 21 LPT)
3) Withholding at source (Section 22 LPT)
4) Form of payment (Sections 23 and 24 LPT)

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1. *VILLEGAS, Héctor Belisario “Course on Finances, Financial and Tax Law” [“Curso de Finanzas, Derecho Financiero y Tributario”], Astrea Editorial, 9th edition, page 376, Buenos Aires, 2009.*
2. *Op. cit. on 2, page 174.*
3. *Op. cit on 3, page 376.*
4. *Cf. Section 22 Decree Nº 507/93*
5. *Cf. Section 1 Decree Nº 2102/93*

5) Place of payment (Section 25 LPT)
6) Imputation of payment (Sections 26 and 27 LPT)
7) Extension (Section 32 LPT)

2.1.4. Payment effects

Payment extinguishes the tax obligation, but only if said payment is accepted by the Tax Administration.

So far, and as repeatedly established in case law, bank slips used to deposit tax amounts do not qualify as payment receipts granted by the Tax Administration creditor, since banks are not empowered to determine if a payment is correct. (Argentine Tax Court, October 21, 1977, "AA, Abrasivos Argentinos SAIC and others". Tax Law, XXVII-1322).

In other words, payment extinguishes an obligation on condition that the Tax Administration hands in a receipt discharging the obligation. But there are cases in which payment itself does not discharge the obligation. Payment will have that effect, for example, if the taxpayer pays the amount requested ex officio by the Tax Administration, or in the event that the amount assessed by the Tax Administration were appealed, if the Tax Court and the Tax Court for Administrative Matters or the Social Security Federal Court issue a ruling confirming the assessment made by the Tax Administration.

However, in most of the cases, payment is made in compliance with the general procedure for cancellation of debts; that is, through the taxpayer's declaration. The amount paid as a consequence of this declaration remains subject to supervision and control duties by the Tax Administration as long as the action is not time-barred[6].

Since payment represents the natural fulfillment of the subject matter of the tax obligation, it discharges the passive subject from his tax obligation.

According to the judgments issued by the Argentine Supreme Court, the following requirements are necessary for the discharge of a debt through payment:

a) that the taxpayer -or his representative- acted in good faith, which is assumed except in the case of fraud or gross negligence on the part of the taxpayer- or his representative[7];

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6 Op. cit. on 3, page 377
7 Argentine Supreme Court Of Justice, May 28, 1953, Judgments 225:688

b) that payment were collected plainly by the tax obligee; that is, without raising any objection.[8]

Of course these principles do not apply in the event that payment fails to comply with the requirement of integrity, because it is understood that such a payment "does not meet the requirements to discharge a debt and there is no vested interest"[9]

Furthermore, and in accordance with the express provisions of Section 92 of the LPT, payments must be communicated to the Tax Administration. However, in connection with this point, it has to be mentioned that if a payment was not accurately notified, or was wrongly imputed, according to the abovementioned Section, said payment will still have an impact on the related discharge of the tax obligation.

In other words, a defective payment is not disregarded and it does not lose its ability to discharge the related tax debt; as it was ruled by the National Court of Appeals in Federal Matters, a defective payment only leads to a lack of ability to support a defense and the related costs are borne by the debtor. The debtor, due to his failure to comply with his formal duty to perform the required communication of his payment, gave rise to "an unnecessary expenditure of the jurisdiction, causing the opposing party to perform professional tasks that must be paid".[10]

2.1.5. Consequences

If payment is not timely made the debtor is in default, and in contrast with private law default provisions, the Tax Administration is not required to make a request or to take any action for the debtor to be in default. Non-compliance within the legal, regulatory or administrative deadlines, as the case may be, is sufficient requirement for the debtor to be in default.

Another side that has to be considered in connection with this issue is whether a default of a payment entails the commission of a type of infringement arising from a violation of a tax law, that is, if it falls within the scope of the Penal Tax Law; or whether it is a mere non-compliance with a substantive tax obligation and falls within Substantive Tax Law. Naturally, a default of a payment entails different effects depending on whether the law defines it as an infringement or as a mere non-compliance.

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8 Argentine Supreme Court of Justice, May 28, 1953, Judgments 225:719.

9 Argentine Supreme Court of Justice, December 27, 1977, Estancias Santa Clara SRL", "La Información", XXXIX-425

10 Division III of the Federal Court in Administrative- Contentious Matters in and for the city of Buenos Aires, October 16, 1979, "National Tax Administration (DGI) v. Tenas SA" "Taxes" XXXVIII -1371

The effects that arise from an event of default are the following:

a) Interest (compensatory and punitive): these types of interest are intended to compensate damages arising from a default of a payment. Even when their only purpose is to compensate the Tax Administration, the interest rate is fixed at the highest trade rate and even higher, because their aim is to discourage a default of payment and to avoid the opportunity to have cheap money when tax obligations are unfulfilled.

b) Punishment due to a default of payment: in the event that the default of a payment entails a tax infringement– as it is the case with Social Security matters in Argentina-a punishment arising from the infringement must be established, which usually consists of a fine or financial penalty. In many legislations-among them Argentina[11]- a limit is set on the amount of the fine when this amount is calculated on the basis of the periods of time computed from the default.[12]

In Argentina, the type of interest used as punishment as established by Section 37 of LPT[13] is the compensatory interest. Therefore, this interest is payable as compensation when the debtor has not made his payment timely. Without the need to prove damages arising from the delay, the debtor must pay interest because the creditor was prevented from using a capital that bears fruit; that is, “interest”.

Compensatory interest is fixed on the basis of a double proportion:

a) **Quantity-related proportion:** the amount due as interest is directly related to the amount not paid when due. For this purpose, a number of interest units for each hundred capital units is calculated (percentage calculation).

b) **Time-related proportion:** interest runs without interruption from the date the obligation was due and unfulfilled, increasing gradually over time. It is usually fixed on monthly or yearly periods.

At the national level, Section 37 of LPT states that non-compliance in full or in part with any payment on account including charges, withholding and remitting at the source, will bear compensatory interest as from their respective due dates and without the need of any demand for payment.

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11 Cf. Law N° 17.250 Section 15 inc. and (AFIP) General Resolution N° 1566 (substitutes text in 2010 as amended.).

12 Cf. Law N° 17.250 Section 15 inc. and (AFIP) General Resolution N° 1566 (substituted text in 2010 as amended.).

13 Applicable to Social Security matters cf. Decree N° 507/93 Section 23

Compensatory interest fixed by Section 37 of LPT accrues without the need of any demand for payment. This is the case of "statutory default of a payment".

Due to the nature of the infringement punished (mere non-compliance), a proof of debt instrument or certification issued by the competent tax authority will be sufficient to prove the existence of a default of a payment. If this is the case, the alleged punished infringer[14] will have to provide evidence stating that there was no delay (for example, because the payment was made or an extension was granted).

2.2. Period of prescription

2.2.1. Concept

Broadly speaking, a prescription period entitles a person to acquire ownership rights or to discharge the debtor from his obligation due to the lapse of a period of time and subject to the conditions set forth by the law. The "extinction of obligations by prescription" is the exemption that may be opposed by the debtor against the creditor's action, when the latter has failed to enforce his claim within the required time period. That is the reason why it is considered as a punishment to the negligent creditor and it is intended to consolidate and end legal situations that have not been timely solved, thus creating a condition of collective legal insecurity.

In Civil Law- in contrast with Tax Law- a prescription period is not particularly considered or treated as a method of extinguishment of obligations, but as a power of the debtor to suppress a right that was enforced out of time by the creditor. It is more clearly defined as the extinction of the action to demand payment, and the obligation remains as a natural obligation.

2.2.2 Specific treatment in social security matters

It is worth recalling that, in accordance with the Argentine legislation, the provisions set forth by the Tax Law are not applicable to Social Security taxes.

More precisely in Social Security matters, the prescription period is defined by Section 16 of Law N° 14.236, which sets forth the following: "The actions to collect contributions, payments, fines and any other obligation arising from Social Security laws shall have a ten-year period of prescription"

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14 Cf. op. cit. on 3, page 383 and subsequent pages.

Moreover, Section 23 of Law N° 23.660 deals with prescription periods related to payments and contributions to be applied to Health Care Providers, establishing the same prescription period than the law specified before.

Besides the above mentioned laws, there are no other Social Security specific laws defining or describing more accurately the various elements at stake when the application of prescription periods is under analysis.

It should be remembered that, even when Decrees N° 507/93 (and 2102/93 and more recently Law N°26.063) have made references to the Tax Procedural Law N° 11.683 (or LPT), thus extending the application of many specific tax laws provisions to Social Security matters, the issue of prescription periods as it was dealt with by said Law N° 11.683 was not specifically referred to, and therefore this Law is not a valid source to make the analysis proposed.

2.2.3 Date of commencement of prescription period

Due to the lack of specific laws, we need to resort to the general laws in this matter. In this regard, Section 3956 of the Civil Code establishes that “The prescription period for personal actions, whether or not bearing interest, starts to run from the date of the title of the obligation”.

In this way, as a general principle, regarding Social Security payments and contributions, it could be said that the prescription period starts to run from the date the obligation becomes enforceable; that is, from its due date. (Decree N° 413/1996 (issued by the Legal and Technical Division of the Social Security System)).

2.2.4 Tolling and interruption of prescription

As with the commencement of a prescription period, regarding tolling and interruption of a prescription period, there are no specific provisions applying to Social Security matters, which is why we should refer to the general rules set forth by the Civil Code.

When tolling occurs, it temporarily prevents the period of prescription from running, and it must be based upon a ground set forth by the law. Once the tolled period ends, the counting of the original period of time will continue running, which means that the period of time elapsed after the period was tolled has to be added to the time elapsed before it was tolled.

Apart from the specific cases described in Sections 3966 through 3983 of the Argentine Civil Code, the case in which the period of prescription extinguishing the obligation is tolled is contemplated by Section 3986, 2nd paragraph: “The period of prescription extinguishing the obligation is tolled, at one time only, when

the debtor is authentically declared to be in default. The tolling of the period of prescription will only run for a year or for the term that may apply to the period of prescription of the action, whichever is shorter."

In this context, the meaning of "debtor is authentically declared to be in default" should be clarified so that the concept can be accurately applied to our discussion.

In this regard, it has been construed that the law maker intended to refer to the concept of "demand"; that is, to expressly demand payment from the debtor, in an understanding that default by operation of the law does not toll the period of prescription.[15]

Having this in mind, it is worth noting that a mere notification, including the notification of an expiration of a payment plan liquidation, on condition that said notification does not contain a demand for payment, would not be sufficient notification to toll the period of prescription.

In contrast, if there is a demand for payment, and as long as this is the first instance of notification, said demand can be considered as a ground for tolling the period of prescription, both in the cases of a debt arising from the expiration of a payment plan or from the balance of an unpaid tax declaration.

It should be remembered that the tolling of the period of prescription is for "one time only" and from there on, provided that the debt is not renewed, the only notification that will toll the period of prescription is the first instance of notification, even when the reasons to declare the debtor in default changed afterwards.

The interruption of the period of prescription, in contrast with tolling, which entails a temporal suspension, implies that the running of the time limit will stop. This interruption can derive from an action carried out by a creditor, or even by a debtor himself.

Regarding the actions that the creditor has to perform in order to interrupt the period of prescription, the Civil Code deals with this issue in the first paragraph of the above mentioned section 3986: "The period of prescription is interrupted

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15 *(cf. BORDA, GUILLERMO A. "Treatise on Civil Law, Obligations" ["Tratado de Derecho Civil, Obligaciones"] Volume II, Perrot Editorial, Bs. As. 4th. edition, page 29; ALTERINI-AMEAL-LÓPEZ CABANA, "Law of Civil and Commercial Obligations" ["Derecho de las Obligaciones Civiles y Comerciales], Perrot Editorial, Bs. As., page 638; Civil Court of Appeals in and for the city of Buenos Aires, Division "H", regarding the case "De Luca, Román Sergio J. v. Del Negro, Alfonso for damages" dated October 29, 1999; Civil and Commercial Appellate Court in and for the city of La Plata, regarding the case "Battistuzzi, Guido Enrique v. Torrant, Juan Carlos for damages", judgment issued on September 23, 1997.*

by the demand against the possessor or debtor, even when filed before a court that lacks jurisdiction or is defective and even when the person filing the demand lacks the legal capacity to bring a suit."

This is the reason why it is necessary to investigate the scope of the meaning of "demand" so that the act or acts that the Tax Administration should carry out to cause the interruption of the period of prescription can be established.

We understand that the concept used by the codifier has to be construed in a broad sense, considering as a demand all claims made by a creditor externalizing his unambiguous intention to satisfy his credit, resorting to the procedural remedies provided for by the law for that purpose.

So, the administrative proceedings intended to collect the Social Security debt interrupt the period of prescription, because even though they are not a judicial demand in a strict sense, they are part of a legally regulated procedure that the Tax Administration needs to exhaust in order to clarify the existence and quantity of the debt claimed.

It should be considered that the procedure to determine the existence of a debt and its related administrative and judicial remedies, and as long as the debt is not final, prevent the coercive demand of the debt claimed, because said procedures suspend the issue of a proof of debt instrument entitling the execution of the debt - Section 12, Law N° 18.820.

This is why all administrative proceedings in the frame of which a claim for Social Security payments and contributions are at issue and, eventually, the application with the Federal Social Security Court, constitute a complex act of a continuing nature extending over time and forming a unit, which interrupts the period of prescription until the regulated proceedings end.

This case is contemplated by Section 3989 of the Civil Code that sets forth: "The period of prescription is interrupted by the express or implied acknowledgement made by the debtor or possessor of the right against whom it prescribed."

The legal authors recognize that an acknowledgement is taking place and therefore the period of prescription is interrupted, among other actions, by a request of an extension of time to pay.[16]

16 *SALAS - TRIGO REPRESAS - LÓPEZ MESA, MARCELO J. "Annotated Civil Code" ["Código Civil Anotado"], Depalma, 1999, with reference to judgment issued by the Civil and Commercial Court on December 7, 1939, LL 16-1231, f. 8603.*

In accordance with the Section referred to above, and due to the fact that the adoption of a payment plan basically implies an acknowledgement of the debt included therein and also a requirement to pay in installments, as per Decree N° 124/1997 (issued by the Legal and Technical Division of the Social Security System), the Tax Administration issued the opinion that "The submission to adopt a payment plan established by Decree N° 420/85 interrupts the extinguishing period of prescription set forth by section 16 of Law N° 14.236."

2.3. Set off

Set off takes place when the active and passive subjects of a tax obligation are reciprocal debtors and therefore both debts are extinguished up to the amount of the lowest. The balance has to be given back to the taxpayer or is applied to pay future tax debts.

For set off to operate as a method of extinguishment of tax obligations there must exist a legal provision in that sense, and there are some legislations that expressly reject it, for example Honduras and Venezuela.

These are the requirements for set off to take place:

a) Administrative declaration: in general terms, it is held that set off in tax matters should not take place by operation of the law, but that it is necessary for the administration to perform an act declaring the set off; the Tax Administration must act ex officio or at the request of a party, on an administrative or judicial basis.

Here, set off is related to the admission or dismissal of the amended declarations filed by the taxpayers, from which the incorrect or overpayment may derive.

Set off will operate only after it is acknowledged and declared by the Tax Administration.

b) Nature of debt and credit: for set off to operate it is also required that the debt is related to the compliance of a tax obligation.

   Regarding the credit against the active subject, it could have resulted from incorrect or overpayments of taxes, interest or pecuniary penalties.

c) Requirements of debt and credit: it is also required for set off to take place, that both the debt and credit be "final", "liquid", "enforceable" and "not prescribed".[17]

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17 Op. cit. on 1, page 323 and subsequent pages

In accordance with Section 818 of the Argentine Civil Code, a set off of an obligation takes place when two persons, based on their own rights, are reciprocal creditor and debtor, notwithstanding the origin of said credit or debit.

In tax matters, Section 28 of the LPT, allows the taxpayer (or authorized person) to use set off as a method of extinguishment of his debt with the State, through the compensation of said debt with existing balances in his favor, provided that these balances have been previously accredited by the Tax Administration in favor of the particular taxpayer, or that the taxpayer has included these balances in previous declarations which have not been contested.

Conversely, Section 29 of the Law referred to above, allows the set off in favor of the State, empowering the Tax Administration to credit the taxpayer's balances ex officio, for the amount equivalent to the tax debts declared by the taxpayer or assessed by the Tax Administration and related to periods not prescribed, starting with the oldest debts.[18]

Now, in Social Security matters it has been held that[19] "…even if Law N°11.683 (consolidated and amended text in 1998) sets forth the concept of set off, authorizing its application in the case of tax credits and debits arising from different taxes (cf. section 28), in Social Security matters it was only referred to by Decree UN 507/93- confirmed by Law N° 24.447-the current section 27 of the Law referred to in this paragraph, this being the reason why for any other cases, debts arising from Social Security payments and contributions on the list of employee's salaries held by taxpayers are not subject to be compensated with other credits that he may have in his favor.

In connection with this, the Tax Administration considers that regarding the compensation of Social Security debts, the Civil Code has to be addressed. Section 823 of the Civil Code establishes that debts and credits between taxpayers and the State are not subject to compensation, among other cases, when they arise from direct or indirect Social Security contributions.

This is the reason why set off can only be established ex officio. Therefore, only the State- the National Treasury- is empowered to use and regulate compensation. (Decree N° 2/97).

Accordingly, due to the fact that Decree N°507/93-confirmed by Law N°24.447-has not addressed the specific provisions regarding tax compensation (sections 28 and 29 of Law N°11.683, consolidated and amended text in 1998) to Social Security matters; the specific nature of Social Security resources; the scope

18 Op. cit. on 2, page 188 and subsequent pages.
19 Counseling and Technical Coordination Directorate(AFIP)Proceeding 393/07-

and meaning of General Resolution DGI N° 4339/97; the opinion held by the Argentine Supreme Court of Justice and the fact that the Federal Administration of Public Revenues has not provided for a compensation procedure in terms of Section 27 of current LPT, 2nd paragraph; it must be concluded that currently a taxpayer is not entitled to pay his Social Security debts by applying or imputing credits of a different nature.

2.4 Uncollectable debts

As part of another consequence of the rule of law principle and the "unavailability" of tax obligations, a tax obligation could not be declared "uncollectable" and not to demand further compliance; therefore those tax obligations that were unable to be collected and those that will not possibly be collected remain within the Tax Administrations over the years, representing thousands of useless debts, most of them for insignificant amounts probably lower than the amount required for their collection.

In view of this financial and administrative reality, it has been found convenient to entitle the Executive Power or the highest levels of the Tax Administration to declare tax debts "uncollectable" up to a certain limit. These debts can be pending debts or merely at default during a specific period of time and also debts that are uncollectable due to circumstances set forth by law. Among these are: lack of knowledge of property owned by the debtor, proved insolvency, obligations belonging to a deceased debtor without property, obligations of a person who is absent for a certain period and whose property is not known, and the like.

It is evident that legally, the "uncollectable status" of a tax obligation is a mere impairment to obtain an enforced collection and it is not a method of extinguishment. However, if this concept were adopted, the act declaring the impossibility to recover the debt should be vested with an extinguishment effect; however, if the debtor or sufficient property to collect the debt owned by the debtor were found, the same authority that issued the declaration stating that the debt was uncollectable must renew the obligation, provided that this action is performed before the period of prescription expires.

The uncollectable status of a debt is provided for by the Chilean Tax Code, Section 198, by the Mexican Tax Code, Section 34, and in some provisions of the Peruvian Tax Law.[20]

20 Op. cit. on 1, page 341 and subsequent pages.

2.5 Debtor's debt

In Social Security matters, in contrast with issues related to tax laws, the infringer's death does not extinguish the pecuniary penalties applied to the taxpayer. The reason for this is that Section 54 of the LPT is not addressed to Social Security matters.

In this sense, the Federal Administration of Public Revenues (AFIP) held that[21] "in analyzing who the responsible for a debt and fine assessed to a deceased taxpayer is…prior to the issue of the related administrative act… the infractions provided for by Law N° 17.250 currently regulated by General Resolution N° 1566 issued by AFIP, replaced text in 2004, do not have a criminal nature, thus the provisions about this issue set forth by Section 59 of the Penal Code do not apply and, by way of analogy, Section 54 of the LPT does not apply either.

2.6 Payment plans. Nature of payment plans

A particular extinguishment of the substantial legal tax relation occurs when asset-related adjustment laws are passed, which are also called "payment plans". They relate to tax debts unpaid when due, which are extinguished when the debtor is subject to said adjustment laws.

When a debtor adopts a payment plan, he declares his omitted debts and usually a reduced fee is applied over them, which results in a tax debt amount lower than the amount that had been due if the obligation had been normally fulfilled.[22]

That being said, the issue to clarify is to determine whether in these cases a novation of the debt operates, which is defined as an extinguishment ground taking place when an obligation turns into a new obligation, which substitutes and extinguishes the original one. (Section 724, Argentine Civil Code).

In connection with this issue, the Argentine Tax Administration has issued an opinion through Decree N° 783/95[23] by the then Labor and Social Security Standards Analysis Department, in which they concluded that, regarding the tax priority of tax and Social Security credits, this criteria is regarded as a public policy and therefore it does not constitute a novation.

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21 Notes N° 98/05 and 185/05 (Legal and Technical Counseling Directorate- AFIP).

22 Op. cit. on 3, page 381.

23 Official Bulletin N° 512 issued by the Tax Directorate (DGI). August 1996. Folder N° 18, page 81.

2.7 Remedies before the courts

Finally, it is worth recalling that regarding the issue of judicial remedies before the courts, the Social Security System has its own legal frame.

In accordance with its particular features, the remedy here described falls within the concept regarded as a “motion to appeal” by the most authoritative legal authors.

The admissibility of this remedy is subject to the following requirements:

a) Application within the time period set forth by law;
b) Written form
c) Signature of a registered lawyer
d) Compliance with a “previous deposit” (solve et repete)

Regarding this last requirement, the Federal Administration of Public Revenues holds the opinion that it involves a conditional payment.

A considerable body of case-law discharges the debtor from the requirement of a previous deposit on the basis of extinguishment grounds among which are included disproportionate importance of the deposit amount in connection with the financial ability of the appealing party; exceptional amount and no-fault and proved inability of the debtor to make the deposit; and implication of a persecutory purpose or power abuse on the part of the Tax Administration, and on the basis of substitution grounds (insurance surety).

Finally, it is worth stressing the conditional status of an appeal remedy in Social Security matters, both in the administrative and judicial instances, which leads to the conclusion that the Tax Administration is not empowered to issue a valid executive title until the debt is final.

3. JOINT AND SEVERAL LIABILITY IN SOCIAL SECURITY MATTERS

Regarding obligations, joint and several liability is a form of liability where a person is found liable for another person’s debt. This type of liability can have a statutory or an agreed upon basis. The rules applying to this concept in Social Security matters is analyzed below.

3.1 Procedural tax law (LPT)

The LPT provides for the specific cases in which a person is liable for another person’s debt. In general, this applies to persons acting on behalf of third parties

or persons who have been invested with the obligation to collect taxes on behalf of the Tax Administration. Their liability extends to the goods administered or held from those third parties.

In time, this law sets forth joint and several liability events, when it establishes that certain persons are personally liable for the taxes unpaid by third parties, providing for the respective ground.

Decree N°2102/93 stated which sections from the LPT are applied to Social Security in connection with this issue, and these are Sections 6 and 7.

Section 6 provides for the liability arising from the fulfillment of a third-party debt and states the obligation to pay taxes to the Tax Administration by applying the assets administered, collected or held, due to being responsible for the fulfillment of tax debts owed by the person represented, principal, creditor, holder of the administered assets or in liquidation, etc.

In time, Section 7 sets forth that these persons have to fulfill, on behalf of the persons they represent and holders of the assets they administer or liquidate, the duties that this law and other related tax laws impose to the taxpayers in general with the purpose of assessment, verification and supervision and control of taxes.

All persons liable for a third party debt are personally and jointly liable with debtors when due to their non-compliance with their tax duties debtors do not timely pay the taxes owed, provided they do not comply with the administrative demand for payment to adjust their tax situation within the period of time established for that purpose.

3.2 Specific rules

Now then, notwithstanding the application of the transcribed laws to the Social Security System, there are specific Social Security and Labor laws that also provide for joint and several obligations related to the payment of Social Security payments and contributions.

3.2.1 Law N° 14.236

Law N°14.236 sets forth the joint and several liability of the assignee, in connection with the obligations assumed by the assignor, in the cases related to transfer of goodwill.

3.2.2 Contract of employment law (LCT)

The Contract of Employment Law sets forth the specific cases of joint and several liability, in Social Security as well as in labor matters.

Regarding the transfer of an undertaking, the LCT contains a set of laws similar to the previously transcribed Section 14 of Law N°14.236, in its Sections 225,228 and 229.

Likewise, the LCT also imposes joint and several liability to the contractors of labor supply companies (temporary employment) or to the persons acquiring an undertaking including staff or persons acquiring preexisting staff and said joint and several liability includes the fulfillment of Social Security obligations.

3.2.3 Law N°26.063

One of the most serious threats facilitating Social Security tax evasion is the hiring of employees through labor cooperatives that violate the law. We are obviously addressing the cases in which the so-called associative tie between the members of the cooperative labor and the cooperative is not such and it is really the employment of labor through an inappropriate legal wrapping.

Law N°26.063 sets forth one of the legal measures intended to combat this irregularity by providing for joint and several liability of the person hiring labor through labor cooperatives and stating that businesses and individuals which hire labor cooperatives are jointly and severally liable for the Social Security obligations that are due in relation to the members of these cooperatives during the contract term, up to the amount earned by the cooperative.

3.3 Joint and several obligation assessment and demand for payment

In Social Security matters, the joint and several obligation assessment and the demand for payment of the debt to the joint and several debtor is subject to the same procedure that applies to the principal debtor; that is, the ex officio assessment performed through the inspection report, as provided for by Laws N° 18.820 and 26.063.

The joint and several oblige has the same judicial remedies against the debt assessment and demand for payment than the principal debtor; that is, to challenge the existence of the debt and the motion of appeal, provided for by Section 15 of Law N° 18.820 referred to above and Section 9 of Law N° 23.473 and related amendments, and by subparagraphs b), c) and d), Section 39 a) of Decree-Law N° 1285/5.

4. THE ARGENTINE EXPERIENCE: "TOOLS INTENDED TO ASSESS A SOCIAL SECURITY OBLIGATION"

As mentioned earlier in the introduction, and even when prima facie it would seem to go beyond the scope of the subject of this presentation, a brief description of the latest tools that have been adopted by the Argentine Tax Administration will be described. These tools are applied before the coercive administrative action phase and its possible extinguishment, and intend to prevent the non-compliance with the Social Security tax obligation.

Indeed, and as mentioned, when the elements making up the tax obligation are hidden through a fraudulent maneuver on the part of the taxpayer, the taxable base eventually declared will turn to be insufficient and its eventual timely payment by the debtor will terminate the persecutory action by the Tax Administration, without having satisfied the purpose of the tax law.

The tools designed to cope with this risk are made up by the effort of the control and supervision body and the elaboration and use of certain signs that help to assume, once certain real facts are proved, what the hidden taxable basis is.

There follow individual descriptions of the measures referred to.

4.1 Control and supervision

Since 2009, a control and supervision force specially designed for the Social Security System was created with the incorporation of the staff of former AFJPs (Pension and Retirement Funds Administrators, which are currently dissolved), who added to their labor profile the experience of the Tax Directorate (DGI) and the Customs Directorate (DGA), in connection with control and supervision duties.

4.2 MWI- Minimun Worker's Index

- Since 2009, the development of mechanisms intended to find illegal labor relations in spite of ending before the Tax Administration control procedure took place were deeply examined. Instant risk (in situ findings) of having hidden employees turned into permanent risk (presumed assessment) continuing over time (10 years)

- That is how the MWI developed, facilitating the creation of a permanent risk perception for those employers that plan unlawful ways to hire employees.

- AFIP has revealed 53 business activities
  - N° of established MWI: 32
  - N° of MWI under current analysis: 21

- Results achieved

  - N° of control and supervision procedures started: 277
  - N° of control and supervision procedures ended:122
  - N° of registered employees after control and supervision duties:268
  - N° of employees adjusted ex officio: 157
  - Level of illegality applying this tool: 59%
  - AR$ 5 million in adjustments.

TOPIC 2

EFFECTIVE MECHANISMS FOR COLLECTING DEBTS: PRECAUTIONARY MEASURES, PAYMENT FACILITIES OR AGREEMENTS AND AUCTION OF GOODS

Lecture

Topic 2

EFFECTIVE MECHANISMS FOR COLLECTING DEBTS: PRECAUTIONARY MEASURES, PAYMENT FACILITIES OR AGREEMENTS AND AUCTION OF GOODS

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1. PRESENTATION

Due to the current crisis and uncertainty situation there is currently a need for a new collection process in order to recover, wherein the objectives and functions assigned to the managing bodies are being fully renewed. Thus, fraud which becomes ever more complex in the collection phase, calls for rendering structures more flexible as well as for improving the means and techniques in the struggle against fraud.

In this regard, new techniques have arisen which, among others, are focused on the following aspects:

- Segmentation of taxpayers
- Analysis of Collection Risk
- Adoption of precautionary measures
- Flexibility and professionalized management of payment agreements
- Development of tax current accounts and electronic files

- Systems for automating collection
- Improvements in the disposal of seized goods
- Introduction of new tax responsibility figures
- Improvements in inter-administrative information exchange.

These and other improvements in the collection process are assisting the Tax Administration in a more effective and accurate recovery of public credit.

The main advantages of these modifications may be summarized as follows:

- The segmentation of the taxpayers and the automation of processes may allow for assigning human resources to the performance of more complex functions.
- On the other hand, the selection of taxpayers through the classification of their risk in the early stages of the procedure increases the possibilities of ensuring the risk as well as multiplying the legal collection options.
- In this sense, the adoption of precautionary measures has proven to be a very useful element whose results are clearly satisfactory. Nevertheless, one must take into account all legal precautions to avoid unnecessary detrimental effects. (Proportionality, equity avoiding detrimental effects that cannot possibly be recovered.).
- The adoption of new figures of responsibility (lifting of veil) has allowed for undertaking administrative collection actions that were previously prohibited, thereby speeding up and improving the collection processes.
- Also, improved inter-administrative and international information exchange measures are being adopted (mutual assistance in the EU sphere, OECD conventions, etc.).

2. EXPERIENCES AND REFLECTIONS IN THE SPANISH MODEL

- **The collection competency framework of the Spanish model**

The Spanish competency framework is based on the following legal system:

a) The Spanish Constitution
b) General Tax Law
c) Development Regulations
d) International Treaties and Conventions

Based on the foregoing provisions, the Spanish tax administration is in charge of collecting public debts bearing in mind that:

1º. - It is an **administrative function**, of an eminently procedural nature, carried out in accordance with the specific legal regulation.

2º. - It is directly derived from the **self-tutelage** power of the Public Administration.

3º. - The administrative acts ordered in exercising the collection function enjoy the **legality presumption and are immediately executive.**

4º. - We are faced with a **tax application** procedure.

5º. - **Revenues of a private nature cannot be the object** of this **collection function**, even though they may be earned by public entities, in which case judicial support is required.

6º. - The collection of debts pending payment, following conclusion of the voluntary payment period, shall be undertaken at the executive level through the corresponding enforced collection procedure.

The legal provisions directly applied in Spain in this respect are the following:

1º.- If public revenues belong to the **State or its Autonomous Entities**:

a) The specific laws that regulate each tax and other public resources that are the object of the collection function.
b) The General Budget Law (Law 47/2003 of November 26) for the collection of public revenues of a nontax nature.
c) The General Tax Law (Law 58/ 2003 of December 17): for the collection of public revenues of a tax nature.
d) The Treaties, Agreements, Conventions and other rules of an international nature or originating from international or supranational entities applicable to the collection of public dues.
e) The General Collection Regulations to the extent they are not contrary to the provisions in the Laws. It is worth noting that the regulation included in this norm considers not only the tax aspects that are common to its regulatory nature, but also those that deal with the collection of nontax public revenues that are under the competency of the same administrative bodies.
f) Norms of a lower development rank than the foregoing.

2º.- With respect to taxes and other public law resources corresponding to the Autonomous Communities, it is necessary to distinguish:

a) Taxes and other public law resources of the **Autonomous Communities** for which the Community's own law will be initially applied, and with the application of the General Collection Regulations being of a supplementary nature.
b) The assigned taxes will be governed by the provision of the General Collection Regulations.

In this sense, Law 22/2009, of December 19, which regulates the financing system of the **Common regime Autonomous Communities** and Cities with Autonomous Statute, provides in its article 57 that the collection activity which corresponds to assigned taxes will be adapted to the provisions of the State´s rules.

c) In the Autonomous Communities of the **Basque Country and Navarra**, the G.C.R. will only be applicable with a supplementary nature for lack of specific autonomic or regional regulation.

3º.- With respect to the public revenues of the **Local Entities**, the G.C.R. is directly applicable according to that provided in the Law regulating Local Finance Offices.

The rules in force on this matter, specifically the General Collection Regulations, clearly indicate the entity responsible for the collection of public law debts during the voluntary payment as well as administrative period:

Thus, the **collection activity of the State and its autonomous bodies** will be carried out:

a) In the case of resources of the **state tax and customs system**, during the voluntary as well as administrative period, by the State Agency of Tax Administration.
b) In the case of the **other resources of a public nature**:

1º) in the voluntary period, by the Economy and Finance Local Offices, unless the management of said resources may have been assigned to other bodies of the State's General Administration or its autonomous entities. (The Economy and Finance Local Offices are the entities in charge of managing in the voluntary period, all public law revenues other than taxes; e.g., Governmental Sanctions,. against public health, alien status, etc).

2º) in the administrative period, by the State Agency of Tax Administration, following remittance, as appropriate, of the corresponding certified reports of debts unpaid during the voluntary period.

The **resources of a public nature whose management is assigned to a public law entity other** than those indicated in the previous section will be collected during the voluntary period by the services of said entity. Collection in the executory period will correspond to the State Agency of Tax Administration when thus provided by a law or when it may have been provided in the corresponding agreement.

The collection of public resources from **other national, foreign Public Administrations or international or supranational entities** will be the

responsibility of the AEAT if it is thus determined in the corresponding Law or Agreement.

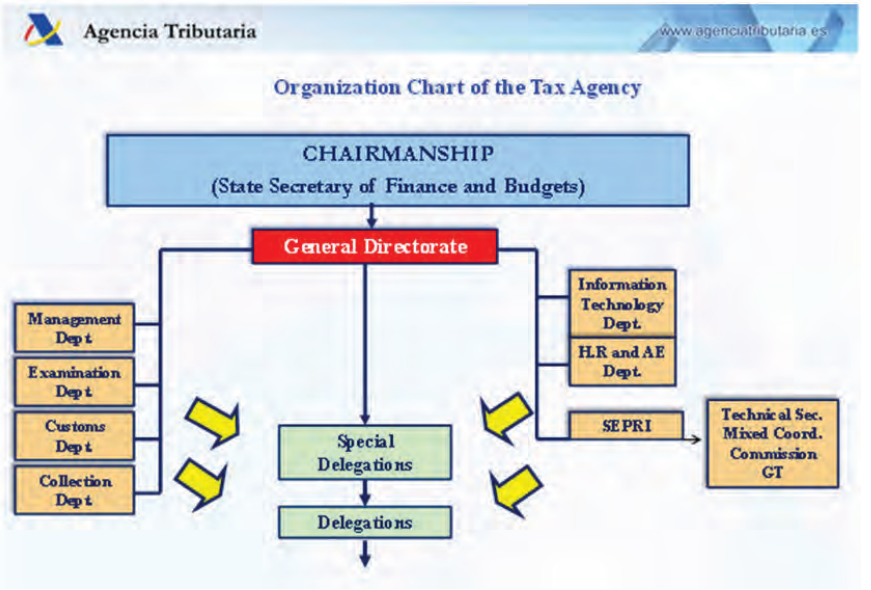
Special mention should be made of the collection of the **European Union's resources** by the Spanish Government. During the voluntary period, collection should be carried out by the entities of the General State Administration, autonomous bodies or state public law entities that have been assigned such competency and only in their stead, by the State Agency of Tax Administration. In any case, the latter should undertake collection in the administrative period.

The **State's collection bodies** are:

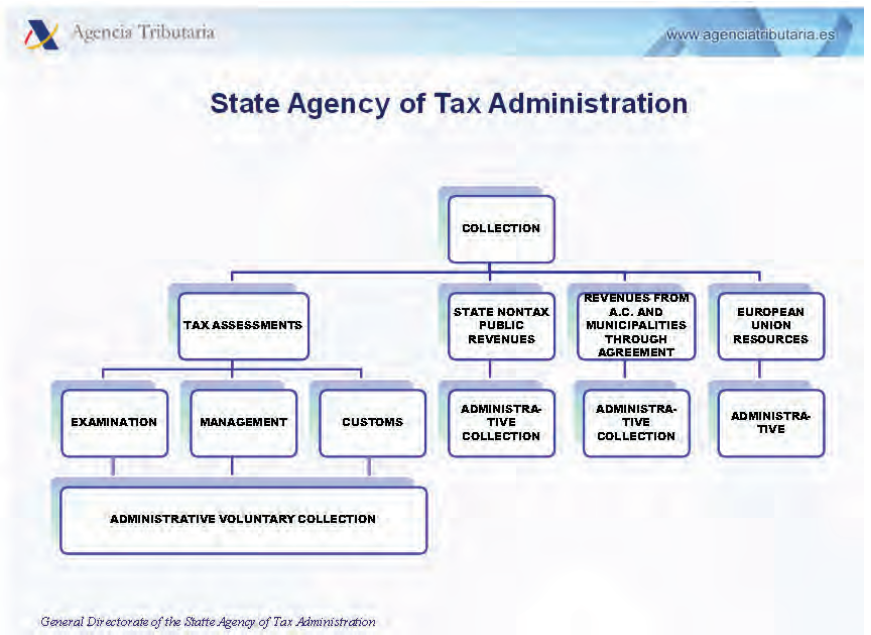
a) The central or peripheral administrative units of the State Agency of Tax Administration which have been assigned collection competency by the organic rules of said entity.
   The Minister of Economy and Finance shall assign competencies to said bodies or empower the President of the State Agency of Tax Administration to issue regulatory resolutions for specifically assigning competencies.
b) The administrative units of the State's Ministerial Departments and Autonomous Bodies in charge of collecting Public Law resources during the voluntary period.
c) The administrative units of public entities in charge of collecting Public Law resources during the voluntary period.
d) The General Directorate of the Treasury and Financial Policy.

Thus, in order to carry out the functions entrusted to it, the AEAT is structured according to the following organization chart:

2.1. Organization chart of the state agency of tax administration



2.2. Structure of the collection area



As shown, the A.E.A.T is entrusted the voluntary collection of all tax assessments and self-assessments, but, in addition, in the administrative period it is attributed by Law competency for collecting the rest of nontax public revenues, as well as those other specified through expressly signed agreement.

Because of this competency model, in the past years the volume of debt to be managed by the collection entities has been significantly increased, among others, for the following reasons:

- As a result of increased actions carried out by the AEAT's different assessing bodies in the struggle against tax fraud, there has been an increase in assessed debt that must be collected.
- In addition, it has been determined that increased investigative pressure is shifting fraud toward the collection phase: the assessed debt is not paid, there being ever more elaborate fictitious insolvency formulas.
- On the other hand, the economic crisis has caused a direct increase in delinquency in payment of pending debts:

    - Noncompliance with payment in the voluntary period has been perceptibly higher.
    - There has been a tremendous increase in business crises: insolvency proceedings.
    - In the past year, there has been a significant increase in tax returns filed with a request for postponement in the current economic context. In fact, the postponement or payment by installments of the tax debts is an important way of assisting businesses with cash difficulties.

All of the foregoing evidences that, even though the collection entities order the seizure of properties of those obliged to pay during the administrative enforced collection procedure, it is necessary to include other legal mechanisms for completing the possibilities of collecting the pending debts. To this end, the precautionary measures have become one of the most effective instruments in the struggle against the stripping of assets.

Lastly, in Spain, the auction sale of assets is an effective way of recovering the pending debt through the forced disposal of the debtor's properties, mainly through public auction.

3. SPANISH COLLECTION PROCEDURE:

3.1. Precautionary measures

The power for adopting precautionary measures in an administrative procedure is acknowledged in the Spanish legislation in general; that is, in the Spanish Constitution, as well as in the administrative laws:

- "once the procedure has been initiated, the administrative body with the authority to solve it may adopt officially or at the request of a party, the provisional measures deemed timely to ensure the effectiveness of the resolution that could be applied if there were sufficient elements of judgment therefor.

Before initiating the administrative procedure, the competent body, either officially or at the request of a party, in urgent cases and for the provisional protection of the interested parties involved, may adopt the corresponding measures in the assumptions expressly provided by a rule with the rank of law. Provisional measures should be confirmed, modified or lifted in the procedure initiation agreement which should be implemented within the fifteen days following its adoption and which may be the object of the pertinent appeal." LRJPAC ART. 72 (wording provided by law 4/99)

With a view to guaranteeing collection of the tax debt, the special law allows the entities of the Administration the possibility of undertaking official actions that may prevent the stripping of assets of a taxpayer obliged to pay, or even an individual or corporation that may not yet be so.

There are two previous assumptions or circumstances that justify the adoption of a precautionary measure:

Appearance of appropiate law ("fumus bonis iuris")

It is essentially identified through the existence of a valid title as creditor which, transferred to the administrative sphere, appears to be an administrative assessment or the mere initiation of a procedure intended to clear a debt or charge a tax obligation, or else the presentation of a self-assessment by the taxpayer, as recognition of debt on his part.

To adequately justify the concurrence of this procedure, in the agreement for adopting the precautionary measure reference should be made to the most determinant facts and justifiable juridical bases of the main procedure within which the precautionary measure will be adopted.

There are two essential characteristics in the juridical presupposition.

- Instrumental: Precautionary measures are an instrument for ensuring the effectiveness of the main procedure. Therefore, the changes affecting said procedure will affect the precautionary measures adopted which, as appropriate, will have to be modified or appealed.
- Provisional: The measures have a limited duration.

“Periculum in mora”

These are circumstances that could be indicative of the delinquency risk; among others, failure to make regular payments, the absence of social domicile, contempt (nonappearance at proceedings), lack of economic activity.

When there are a number of properties and rights to which the precautionary measures could be applied, these should be applied to those properties and rights whose limitation or seizure could least affect the taxpayer, without causing losses that are impossible or difficult to redress and in any case, in the amount strictly necessary for ensuring collection of the debt.

The following may be subject to precautionary measures:

- The taxpayers and those obliged to make on account payments
- The Persons Accountable
- The Successors of the debt

The duration of the precautionary measures shall in general be 6 months, from the time of their adoption. This term will expire after the time has elapsed, and the effects of the measure will automatically cease, regardless of their extension for another six months through motivated agreement. On the other hand, the effects may be maintained if they become seizures in the administrative enforced collection procedure or in the judicial precautionary measures. In any case, they must be lifted if the tax obligor submits joint guaranty from a credit entity or reciprocal guarantee company or surety bond insurance guaranteeing collection of the amount of the precautionary measure.

The precautionary measures to be adopted will always be of a provisional nature, motivated in the sense that if they are not fulfilled, collection of the debt could be seriously thwarted or rendered difficult and added to the harm one endeavors to avoid. The adoption must be notified together with its motivation to the interested party. The law forbids that they may cause harm that is impossible or difficult to solve.

Types of measures considered:

- The withholding of payment of tax refunds or other payments that should be made by the tax administration, even in the case of persons against whom denunciation or claim may have been filed for an offense against Public Finance or against whom there is a judicial process for said offense and in the amount that may be deemed necessary for covering the civil liability that may be agreed.
- Preventive seizure of properties and rights of which, as appropriate there will be a provisional notation.

- The prohibition to encumber or dispose of properties or rights.
- The withholding of a percentage of the payments which the companies contracting or subcontracting the execution of works or rendering of services corresponding to their main activity make to contractors or subcontractors, as guarantee of tax obligations relative to taxes that must be passed on, or amounts that must be withheld from workers, professionals or other businessmen in relation to the works or services that are the subject of the contract or subcontract.
- The preventive seizure of money and goods in sufficient amount for ensuring the payment of the tax debt that must be demanded for profit making activities carried out without establishment and which would not have been declared. One may also agree on the preventive seizure of revenues from public shows that may have not been previously declared to the Tax Administration.
- Any other legally provided.

The prohibition to assign, encumber or dispose of properties and rights clearly implies a limitation to the proprietary powers, without dispossessing the owner of his properties.

As for the withholding of a percentage of the payments which the companies contracting or subcontracting the execution of works or the rendering of services, make to contractors or subcontractors, it is a measure that is consistent with the assumption of legal responsibility which is provided by the general tax law and which must always be adopted by the Tax Administration, although regardless of the fact that between the company and the contractor or subcontractor, by virtue of the principle of freedom of pact, an agreement may be reached regarding the withholding of payments by the contracting company as guarantee of an eventual change of responsibility.

Special mention must be made of the adoption of precautionary measures on CUSTOMER CREDITS, bearing in mind that undoubtedly they are the most controversial to the extent it is essential to evaluate the damage on the level of solvency within short term which such measures could cause. According to what has been described, the seizure of customer credits will be a subsidiary measure to the provisional setback to other types of assets. In any case, the precautionary seizure of credits will require an analysis of the margin of liquidity left to the debtor, so as to avoid the financial follow-up caused by a provisional measure.

In the assumption that the tax debt has not been yet assessed, precautionary measures may also be adopted, provided that the assessment proposal in a verification or investigation procedure may have been informed to the interested party, or, in the assumption of amounts withheld or deflected, the precautionary measure may be adopted at any time of the investigation or verification procedure.

In the assumptions of change of responsibility, the precautionary measures may be adopted before the declaration. The implications of this power is very important within the collection framework, inasmuch as it allows the collection bodies to undertake precautionary actions on individuals or corporations, even before they assume the capacity of debtors through the assumption of the responsibility of others and without there being any restriction with respect to the origins of the debts.

With respect to competency, the incumbents of the Special Delegations must adopt the precautionary measures as well as agree on the extension of its duration.

Nevertheless, such actions must be undertaken in an orderly and sensible manner so as to avoid that in the subsequent review of collection actions in the jurisdictional process they may be rectified thereby leaving the measures adopted without effect.

3.2. Special formulas for devising the payment of debts: Deferments and installment payments.

The **deferment** or installment payment is a postponement of the time of payment and shows the following differentiating elements:

In the **deferment**, there is an extension of the term for payment, with the debtor being obliged to make full payment of the postponed amount at some subsequent time.

In installment the amount of the debt is divided into several fractions that must be paid at different temporary moments.

Installment payment is considered a deferment modality.

Deferments and installment payments imply the concession of longer terms for paying, without exempting the taxpayer therefrom. Precisely because of the extension of the payment term generated by deferments and installment payments, it is necessary to ensure the collection of the deferred or divided credit and that the debtor will pay the corresponding compensating interest for the delay in payment.

According to the regulating standards, tax debts may be postponed or divided following request from the tax debtor. First of all, it is clearly implied that the legislator excludes the possibility that the deferment procedure may be officially initiated by the Administration, it being essential that a request be submitted by the tax debtor or his representative. On the other hand, it is demanded that the request be made by the tax debtor.

All amounts owed to Public Finance may be deferred or divided into installments by virtue of a public law juridical relationship, of a tax as well as nontax nature.

In the case of nontax public law debts it will be necessary to bear in mind the standards provided in the specific regulations which also anticipate this possibility, in such a way that amounts owed to the state's Public Finance, by virtue of a public law juridical relation, in the cases, through the means and through the regulatorily established procedure may be deferred or divided into installments with the corresponding interest for the delay.

Such amounts must be guaranteed, except in the following cases:

a) Those of a lower amount when they are less than the amount determined by the Minister of Finance.
b) When the debtor lacks sufficient properties to guarantee the debt and the seizure of his assets will substantially affect the maintenance of the productive capacity and the level of employment of the respective economic activity, unless this would seriously affect the interests of the state's Public Finance.

The deferment and installment payment of amounts owed to the state's Public Finance by the Autonomous Communities and the local corporations will be governed by their specific legislation, which will take into account the necessary reciprocity between administrations".

The following cannot be deferred:

a) Debts resulting from taxes levied through stamped documents.
b) Debts corresponding to tax obligations that should be fulfilled by the withholder or debtor who must make on account payments. Nevertheless, these debts may be deferred according to specific assumptions.

Requests for deferment or installment payment may be filed in voluntary or enforceable period in the case of assessment previously made by the Administration, or at the time of preparing the self-assessment of the tax in question, when the regulation of the corresponding tax may thus provide it. In this latter case, the tax administration will not know the amount owed, until the taxpayer declares the debt to be paid and it will be at the time of filing the self-assessment when he may request the deferment or installment payment of the amount owed.

When the request for deferment is filed with respect to extemporaneous returns, assessments or self-assessments, the voluntary term ends on the same day it is filed, for which reason only the request for deferment or installment payment filed that same day shall be understood as made in the voluntary period.

With respect to the contents of the request, it must necessarily include the following data:

- Name and surnames, trade name or denomination, tax identification number and the petitioners tax domicile and, as appropriate of the person representing it. Also to be indicated is the preferred means and site for notification purposes.
- Identification of the debt whose deferment is being requested, indicating at least the amount, the Item and expiration date of the voluntary payment term.
- Causes originating the request for deferment.
- Terms and other deferment conditions requested.
- Guarantee offered.
- Order regarding bank domicile, indicating the customer's account code and data identifying the credit entity that must charge the account, when the competent Administration may have determined this form of payment as obligatory under these assumptions.
- Site, date and signature of the petitioner.

The request for deferment should also include:

- Commitment of joint guarantee from credit entity or reciprocal guarantee company or certificate of surety bond insurance.
- In appropriate, the documents accrediting the representation and site indicated for notification purposes.
- Other documents or justifications deemed timely. In particular, justification should be provided regarding economic-financial difficulties that temporarily prevent payment in the term established.
- If the tax debt whose deferment or installment payment is requested has been determined through self-assessment, the official form, duly completed, unless the interested party is not required to submit it, since it has already been given to the Administration. In such case, he will indicate the date and procedure through which it was filed.

In case some document were missing, the taxpayer will be allowed 10 days to provide it; if he fails to answer the deferment would be filed; if the response were not sufficient the request for deferment will be denied.

As for the guarantees for granting the deferment or installment payment of the tax debt, it should preferably involve the establishment in favor of the tax administration of guarantee from a credit entity or reciprocal guarantee company or certificate of surety bond insurance.

The ease of its execution, in case of noncompliance with the deferment or installment payment, give its almost immediate liquidity, motivates the Spanish legislator to promote its formalization, so that when the entire debt that has

been deferred or divided in installment is secured with a joint guarantee from a credit entity or reciprocal guarantee company or through surety bond insurance certificate, the required delay interest will be the corresponding legal interest until the date it is paid. This implies applying a more favorable interest to deferments guaranteed in this manner as compared to the rest.

Types of guarantees:

- Endorsement
- Credit or Surety Insurance
- Personal Property or Real Estate Mortgage
- Exceptionally: Precautionary Measure

Currently, it is not necessary to establish guarantees for deferments involving amounts equal to or less than 18.000€, whose solution is adopted through automated procedures that guarantee homogeneous solution criteria and speediness in adopting the corresponding decision. In any case, for their payment, these deferments must be entered in a current account opened in a credit entity.

The historical evolution shows that this tool is frequently used by Spanish taxpayers, with figures exceeding one million annual requests, thus currently becoming a very important management and control tool.

Deferments are processed by specialized units formed by officials from the Ministry of Finance's Technical Body which, following a motivated report, undertake the economic-financial analysis of the petitioners and determine whether or not the deferment is justified, as well as the terms to be granted.

In case of noncompliance with deferments, the following actions are taken:

1) Initially, if there were a guarantee, it would be executed; unless it were disproportionate, in which case the collection entity would opt for executing or changing the established guarantee.
2) If the deferment or installment payment would have been granted without guarantees, the compulsory procedure will continue.

3.3. The deposit and disposal of seized properties

In specific situations, it may be necessary to designate the site where the seized properties will be deposited and the person that would be in charge of them until the disposal.

The General Collection Regulation is in charge of the detailed regulation of this matter:

- If the seized properties are located at a site that affords the collection entities sufficient safety and solvency, they may remain where they are, at the disposal of the Tax Administration.
- Otherwise, some site for depositing them must be chosen from among the following:

    - In facilities of the Administration, if any, and if they meet the adequate conditions to be kept there.
    - In facilities of other public entities used for storage purposes or meeting the conditions therefor.
    - In facilities of companies regularly devoted to storage.
    - For lack of the foregoing, in facilities of individuals or entities other than the debtor which offer safety and solvency guarantees.

Only exceptionally may properties be deposited in facilities belonging to the debtor. This assumption considers properties that are difficult to transport or move, for which it would be advisable to adopt measures guaranteeing their security and integrity and in which case the debtor himself would be subject to the duties and responsibilities anticipated for the depository.

Whenever the properties will be deposited in facilities outside the Administration, a depository should be appointed and the latter shall be entrusted with the custody and preservation of the seized properties as well as return them when thus requested to do so. He should act with due diligence in exercising these functions.

If the functions to be performed involve actions exceeding the mere custody and preservation, authorization should be obtained from the Head of the Regional Collection Office.

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The rights of the depository may include the possibility of being given a compensation (provided it is not the debtor), and to be reimbursed of expenses he may have incurred in relation to the deposit.

They should account for and comply with the measures agreed for a better administration and preservation and the responsibility may be derived according to the provisions of article 42.2 of the GTL when they collaborate and agree to the lifting of the seized goods and up to the value of the seized properties.

Bearing in mind that it is desirable that the seized properties be in deposit the least amount of time possible, it is necessary to determine the way of disposing of or selling those properties to use the money from their auction sale to pay off the pending debts.

Thus, in order to participate in an auction sale, which in Spain is the usual procedure followed in these cases, it is necessary to make a monetary deposit that will attest to the solvency of the participants and their capacity for acquiring the property at issue.

When the bidder wishes to make the deposit by means of certified check, he must appear personally at the act and deliver it at the auction table.

Since these are direct bids and awardings used by the collection entities, on very few occasions the check will be included in the envelope with the offer submitted. Currently, there is the possibility of making the deposit electronically through the Tax Agency's web page (http://www.agenciatributaria.es).

Prior to the disposal, the collection entities, the AEAT's technical services, or even the specialized external services, will proceed to assess the seized properties as compared to market prices. This assessment shall be notified to the debtor who, if he disagrees with it, may submit a counter-offer within a term of 15 days. If the difference between one and the other does not exceed 20% of the lower one, the highest one shall be considered as the value of the properties. If the difference exceeds 20%, the debtor should be called to settle the differences and reach an agreement. If it is impossible to reach an agreement, the collection entity will request an assessment by a third expert that must necessarily be between the two assessments and shall be the one definitively applicable.

The disposal of the seized properties cannot take place until there is a resolute settlement of the debt, unless we are dealing with perishable goods, force majeure, properties where there is an imminent risk of loss of value or the taxpayer himself expressly requests their disposal. Even at this stage of the procedure payment of the debt must be made and, if so, it would force the Administration to lift the seizures.

In relation to the title deeds, if, on being notified of the seizure the title deeds of the real estate property, mortgage credits, real rights seized or any other type of property or right seized would not have been provided, the competent collection entity, along with determining the type for the auction sale, will request that they provide them within a 3-day term, as of the day following the notification of the request, if they live within the area and 15, if they live outside the area.

When there are no registered title deeds or the debtors have not filed them, the successful bidders must, if they are interested, substitute them for the means provided in Title VI of the Mortgage Law in order to achieve consistency between the registry and the juridical reality, it being incumbent upon them to undertake the corresponding procedure, without the State acquiring any other obligation

in this respect, other than the execution of the public sales document if the debtor fails to do so".

The Spanish law provides for three modalities of disposal of seized properties:

- **Call for bids.**

The disposal through call for bids involves reasons of public interest that must be adequately justified and those cases in which the sale of properties, because of their features or magnitude, may cause harmful disruptions in the market.

- **Auction.**

The auction is the regular disposal procedure. It should avoid, to the extent possible, the sale of properties whose value notoriously exceeds that of the debts. Once agreed, instructions will be issued regarding day, time and site where it is to be held, as well as the type of auction. Such instructions will be notified to the debtor, the depository, the mortgage and secured creditors, as well as to the debtor's spouse and should be announced at the offices of the collection entity where the debtor is registered. When the debtor is registered in a national level entity, the auction will be announced at the latter's headquarters as well as in the office of the debtor's tax domicile.

The auction announcement should include:

- Day, time and site where it will be held.
- Description of the properties or lots, type of auction for each and brackets for the bid, facility or facilities where the properties or instruments available are deposited and days and time wherein they may be examined, until the day prior to the auction.
- The possibility of participating in the auction via telematics, if it were thus agreed.

In the case of properties that should be registered in public registries, it will be stated in said announcements that the bidders must accept the title deeds that have been contributed to the file, with no right to demand others and, if the properties are not entered in the Register, the awarding deed may be used for registration purposes.

- Obligation to submit at the auction table the guarantee deposit, which shall be at least 20 per cent of the type thereof, with the warning that such deposit shall be entered in the Treasury if the successful bidders do not pay the auction price, regardless of the responsibilities in which they will incur due to the greater harm which the ineffectiveness of the awarding will cause to the amount of the deposit.

- Indication of the charges, encumbrances and juridical situations and ot its holders which, as the case may be, may affect the properties and subsist.
- Obligation of the successful bidder to deliver at the awarding act or within the following fifteen days, the difference between the deposit paid and the price of the awarding.
- Acceptance of offers in closed envelope or automatic bids via telematics.
- Possibility of holding a second bid, when, upon concluding the first, the Table may deem it pertinent, as well as the possibility of direct awarding of the properties that have not been awarded at the auction.

When the action is carried out through Companies or specialized professionals, such circumstance and the specialties will be put on record.

There should be at least fifteen days between the publication of the announcement and the holding of the auction.

On the date of its holding, the Table should consist of the president, a secretary and one or more members designated among the officials. The act should begin by reading the list of properties or lots and other conditions that will govern the auction. Thereafter the chair will call upon those wishing to participate as bidders to identify themselves and to provide the required deposits.

Also, envelopes with bids made in writing must be opened to verify if they fulfill the requirements to make proposals.

If following the first bid there are properties not awarded, the table must decide the convenience of entering into a second bid, where 75% of that which served for the first one will serve as prototype, or else the procedure will be direct awarding.

There is currently the possibility of holding bids in real time via Internet, to thereby afford this procedure greater speediness and publicity. Nevertheless, in the current situation of the real estate market, it is tremendously difficult to promote attendance and successfully conclude the auctions.

Lastly, if the properties are awarded and following payment of the auction price, instructions should be issued for the cancellation of no preferential charges in favor of Public Finance at the request of who may have been the successful bidder. Such instruction shall indicate what corresponds as to whether or not the credit pursued was cancelled and in case there were a surplus, it should be allocated in favor of the subsequent creditors as holders of the credit or encumbrance which is to be paid off, or, if there is none, in favor of the debtor. The preferential charges in favor of the State shall subsist, without the possibility of applying the auction price to its payment.

o Direct Awarding

This possibility regarding the disposal of properties is considered as final phase of the very auction or bidding contest that would have been totally or partially declared void or else, in the case of perishable goods, reasons of urgency or when it is not convenient to promote attendance.

In this assumption, the property or properties will be awarded to the most advantageous offer, in economic terms, without minimum price, provided that the properties would have already been the subject of two auction sales.

They are carried out by means of closed envelope or via telematics and are awarded provided that the acting entity may consider such awarding adequate, thereby weighting the revenues and harms that could result from non-awarding of said properties.

Although those properties whose offers are considered significantly insufficient with respect to the initial value shall not be awarded.

Lastly we would like to conclude by saying that all these auction processes are currently standardized through the AEAT's web page, with all procedures being carried out via telematics, including the auction that is carried out on-line on the pre-determined date.

In this regard, the platform allows for receiving proposals, informing on-line the development of the auction, as well as the number and offers submitted. In addition, the deposit must be previously submitted (via telematics to be able to participate in the auction via Internet). In this way, currently 100% of the auctions are on the network.

Case Study

Topic 2.1

PRECAUTIONARY MEASURES, THEIR APPLICATION AND TIMELINESS

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SUMMARY

Since its implementation, Administrative Collection has experienced necessary change aimed at obtaining the best results for the optimum and timely recovery of the tax debt. This challenge has called for developing efficient and effective strategies. They must be efficient because organizations, especially public ones, must be aware of correctly channelling their efforts for achieving the objectives. In this sense, institutional self-criticism must be a tool for the constant evaluation of the objectives determined for an efficient collection.

Within this perspective, an organization that endeavors to be effective, establishes flexibility mechanisms aimed at change, by equipping itself with new administrative and technological instruments that may be adapted to a new debt recovery tax environment. Institutional creativity must be oriented at using our administrative and legal powers for achieving the objectives determined at reasonable cost and timeliness, taking into account that the specialized creative human resource is very necessary.

Throughout the years experiencing with the administrative recovery of the tax debt, there has been an evolution from manual administrative collection toward computerized procedures. Such process allowed for expanding actions toward a larger universe of tax debtors. Likewise, the intensive use of technologies contributed to devote technical human resources to the direct collection action.

The State's presence, through the Tax Administrations must be understood as the most direct form of risk generation, because noncollection would tacitly imply condonation of the tax debt, thereby generating a deficit in collection, with unforeseeable consequences for the State. Therefore, collection should be actively present in the population, which will perceive that its resources are oriented toward the recovery of taxes for achieving its purposes. This effort aims to involve programming mechanisms from economic, intelligence and information gathering sectors from different public and private entities. Obviously untimely collection will generate greater costs and time in the recovery of the unpaid tax, but in this regard the legislation must make provisions for new tax avoidance behaviors. The doctrine admits the Joint, Vicarious Liability and the Succession of Businesses as instruments for combatting the transfer of assets and net worth concealment.

Peru has developed collection strategies aimed at specializing enforced collection functions, thereby directing the dynamic nature of collection toward an administrative re-engineering that has brought about encouraging results.

Administrative Collection has proven its efficiency and effectiveness, but at the same time it is necessary to admit that static administrative processes, without critical evaluation of the results are nonviable, because assuming paradigms and working schemes that lack critical analysis would only lead to ineffective collection.

1. INTRODUCTION

The National Superintendency of Tax Administration of Peru – SUNAT – within its Institutional Vision, recognizes that compliance with tax obligations is one of the guiding values that direct its objectives. It is intended that said vision be materialized with such values as Integrity, Excellence and Commitment with a view to establishing mechanisms aimed at reducing tax noncompliance by means of strategies aimed at reducing the noncompliance and delinquency gaps.

In this respect, Collection in Peru is divided into two main segments.

1.1. Inductive collection or pre-collection: It has been approved through Superintendency Resolution N° 015 -2010/SUNAT, whose objective is to work towards collecting the debt or debt balances or installment payments about to expire, by means of the processes of Control and Examination and Telecollection

Centers. In this stage, collection is undertaken by telephone or notification by letters in order that taxpayers may cancel their debt. The purpose is to reach a universe of taxpayers with low debts, through the intensive use of mass technological communication means as well as letters and notices urging them to pay their tax debts.

1.2. Enforced collection: Enforced collection is a power of the Tax Administration. It beings with debts whose collection may be enforced such as Payment Orders, Resolution regarding Assessment and Resolution regarding Fine which have not been objected within the Legal Term which include a mandate to pay off the tax debt within a seven working days term, with the warning of ordering the necessary precautionary measures for guaranteeing the payment of the tax debt. It is structured as follows.

1.2.1. Massive enforced collection: Initiates massive seizures from taxpayers whose debt balances may be coercively collected and represent, in general the first seizure action by the Collection areas. Some of them involve seizure of bank accounts via electronic means and seizure of the tax debtor's payments to customers and suppliers.

An important recovery and information management mechanism of public and private operators are seizures via telematic means which basically consist of integrated information systems, whereby the taxpayers' creditors report, prior to making payment, the existence of balances payable.

Enforced field collection: Aimed at direct seizures at the tax domicile or wherever the tax debtor's properties may be. These actions are undertaken when debt pay-off has been impossible, following massive electronic collection or other actions.

2. THE ENFORCED COLLECTION PROCEDURE IN PERU

2.1. Background

The history of enforced processes in Peru dates back to Law 4528 (29.09.1922) which provides from the Peruvian state's enforcement powers to undertake the collection of debts through of different nature by means of compulsory judges.

These powers had a mixed connotation: that is, administrative and judicial. This situation was maintained until the approval of Law 17355 (31.12.1968) when the compulsory Judge was assigned the duties of the Compulsory Secretaries appointed by the Judicial Power, who were also in charge of collecting different debts of the state entities.

It is important to note that this mixed model experienced serious deficiencies, not only at the procedural level, since the one in charge of administrative execution was “the political authority”, which following the initial seizure actions would transfer it to the Judicial Power for the corresponding assessment and auction sale. This situation of undefined powers continued until 1968 when Law 17355 was approved and the Compulsory Judge was placed under the jurisdiction of the Bank of the Nation, and who was assisted in his tasks by the Court Secretary appointed by the Judicial Body.

It is likewise pertinent to now that in both models of enforced administration of state debts recovery of the debt was extremely slow, fragmented, disorganized and lacking planning. To a good extent, the debtor would voluntarily pay and if he failed to do so, there were no administrative mechanisms to follow up and control those debtors who were reluctant to pay.

In addition, these collection models were not exclusive for tax issues, but were also used for other state debts of an administrative and judicial nature, thereby generating dispersion and absence of risk for the debtor. In this way tax collection was almost nonexistent, with extremely high levels of evasion and tax compliance which resulted in a tax pressure of 5.4% at June 1990.

This unsustainable situation had to be changed. Thus in 1991, a Tax Reform is implemented and the institutional restructuring is undertaken to face high levels of tax evasion. Under this premise, some tax measures approved, among others are: Law 25859 (18.11.1992) which structurally modified the former Tax Code by incorporating new powers and facilities as well as clear rules for compliance with the tax obligations.

Thus, currently, the collection processes model is mainly administrative, except in the case of real estate where judicial authorization is required. In this way, it is recognized that the processing of the due debt must be carried out under an autonomous procedure other than the judicial one which, together with the procedural stimulus adhered to its functions will promote the pertinent specialization and timeliness in collecting the due debt, with the director as Enforcement Executor and responsible for the procedure.

2.2. Main actions

The selection of the administrative model for managing tax collection called for developing regulations that would provide it the assessment and executive action powers for determining the collection strategies according to the existing reality.

In this way the Sole Ordered Text of the Peruvian Tax Code approved through Supreme Decree N° 135-99 EF and amendments, provided that the Enforcement Executor is the director of the procedure and administrative stimulus. He should

be a Tax Administration career official who must fulfill legal requirements for his appointment such as: being an attorney with sufficient knowledge of Tax Law, Administrative Bankruptcy procedures, Corporate and Civil issues, who is recognized executive powers ranging from the verification of the due debt, the adoption of precautionary measures, as well as their variation or removal; enforced execution of seized properties, among others. In this regard, he counts on administrative and execution staff known as Enforced Collection Assistants who are also officials of the administration and must fulfill the requirements provided by Law.

2.3. Actions of the enforcement executor

2.3.1 Due debt

In the Peruvian tax legislation, the Enforcement Executor's actions involves the enforcement of due debts, for which purpose the Tax Code provides for what should be understood as due debt. In this regard, article 115 of the Peruvian Tax Code provides as follows:

"Article 115.- DUE DEBT UNDER ENFORCED COLLECTION

The due debt will give rise to enforcement actions for its collection. To this end, due debt is:

a) That determined through Assessment or Fine Resolution or that included in the Resolution on loss of authorization for making installment payments notified by the Administration and not objected within the term provided by law. Under the assumption involving the resolution regarding loss of authorization for making installment payments, the due debt condition will be maintained if, following objection within the term, installment payments are not made.
b) That provided through Assessment or Fine Resolution filed outside the term established for filing an appeal, provided that presentation of the respective Letter of Guarantee is not filed in accordance with the provisions of Article 137.
c) That established through Resolution not appealed within the legal term or appealed outside the legal term, provided that filing of the respective Letter of Guarantee in accordance with the provisions of Article 146 or that established through Resolution of the Tax Court has not been fulfilled.
d) That shown in the Payment Order notified in accordance with the law.
e) Costs and expenses incurred by the Administration in the Enforced Collection Procedure and in the application of nonmonetary sanctions according to the regulations in force."

It must be noted that enforcement regulations provide taxpayer guarantees whereby, after being notified of the amounts, they may previously exercise the right of objection according to the law.

2.3.2. Procedure

Alter determining the tax debt, the Procedure with the Enforced Execution Resolution, administrative resolution that orders payment of the tax debt, under warning of adopting precautionary measures or initiating forced execution, Article 117 of the Tax Code.

The Enforced Execution Resolution (EER) must include minimum requirements granting it the capacity of valid administrative act. These requirements are:

"Article 117º.- PROCEDURE

The Enforced Collection Procedure is initiated by the Enforcement Executor through notification to the tax debtor of the Enforced Execution Resolution, which includes the order to cancel the Payment Orders or Resolutions on enforced collection within seven (7) working days, under warning of issuing precautionary measures or undertaking their forced execution, in case these would have already been issued.

The Enforced Execution Resolution must include, under sanction of nullity:

1. The name of the tax debtor.
2. The number of the Payment Order or Resolution that is the subject of collection.
3. The amount of the fine or tax, as appropriate, as well as interest and total amount of the debt.
4. The tax or fine and period to which it corresponds.
   Nullity shall only refer to the Payment Order or Resolution which is the object of collection and with respect to which any of the previously stated requirements were omitted.

In the procedure, the Enforcement Executor shall not allow writs that may hinder or delay the procedure under his responsibility."

It is to be noted that the EER can only be declared void when it lacks one of the requisites expressly provided in the regulation; it being additionally provided within the power of the Executor, not to admit writs that may extend or distract executive continuity of the enforced collection procedure.

2.3.3. Types of precautionary measures

Having established the formality for initiating the enforced collection procedure and following expiration of the warning without voluntary payment by the taxpayer, the TC empowers the Executor to begin the adoption of: A) Precautionary measures or B) generic Precautionary Measures.

2.3.3.1. The precautionary measures expressly provided in the tax code are:

2.3.3.1.1. Seizure by way of examination whereby the Executor appoints reporting examiners in order to learn about the examine taxpayer's economic movement and net worth status.

This type of measures endeavors to be at the same time an effective mechanism for obtaining immediate information on the company's commercial flow and net worth; in addition to acting as a, dissuasive seizure by warning him of future enforced actions in case of noncompliance with obligations. These precautionary measures are notified directly to the Enforced Collection Assistants who approach the tax domicile in order to fulfill the mandate, while at the same time obtaining information on the properties that may be seized in future actions.

2.3.3.1.2. Seizure by way of Control in Collection whereby the Executor and Enforced Collection Assistant become the debtor's tax domicile in order to take over control of cash receipts by seizing them, except for the very necessary amounts for the continuation of the business, thus becoming a direct action measure for recovery of the debt.

2.3.3.1.3. Seizure by way of Administration of Properties. The purpose of this seizure measure is to obtain the proceeds or earnings from the administration of the debtor's properties throughout the mandate of the Enforcement Executor.

2.3.3.1.4. Seizure by way of Deposit with or without extraction. This measure affects all the properties or rights found in any commercial or industrial establishment, even if they are in the hands of third parties; even if the properties are being transferred according to the provisions of Article 118, numeral 2 of the Tax Code.

These Precautionary Measures are the ones generating greater risk, since they are implemented through an inventory of properties for their possible future extraction.

It is important to point out that as a guarantee for the taxpayer it is not possible to carry out seizures by way of Deposit with Extraction of properties from Production or Trade Units, without these having been previously seized as Deposit without extraction for a 30-day term, with the debtor even being allowed to offer other properties that may be sufficient to substitute those offered and guarantee the payment, Article 118, numeral 2 of the Tax Code.

2.3.3.1.5. Seizure by way of examination of registered Real Estate and Personal Properties belonging to the debtor that may be sufficient to guarantee the debt in case of Enforced Execution (Auction Sale).

This Measure has been reinforced with the signing of information exchange agreements with the National Superintendency of Public Registries SUNARP (Spanish acronym), national institution in charge of registering personal properties, real estate, corporations, etc. from whose data bases one may consult on line the existence of properties. This facilitates the timely adoption of measures for seizing properties of the taxpayer or their legal representatives in case of being attributed Joint Responsibility.

2.3.3.1.6. Seizure by way of withholding. This is one of the measures most widely developed given that it allows for directly achieving an immediate recovery. Some of them are:

2.3.3.1.6.1. Seizure by way of Bank Withholdings.- The measure is ordered against taxpayers with due debt without contingencies and is sent electronically through an electronic intermediation service with the use of digital signature certificates in order to guarantee sending, confidentiality of the information included, nonrejection and nonmodification of the message. It is notified to several entities of the national financial system which must report the existence or not of balances in favor of the tax debtors and subsequently, if the answer is positive, it must be turned over to the Enforcement Executor.

2.3.3.1.6.2. Seizure by way of Withholding from third parties.- This form of seizure covers the universe of the debtor's customers, whether from the private or public sector.

There is the possibility of seizing the credit rights which the tax debtor may have with respect to third parties. That is, when, with the information available of the seizures resulting from Examination, Information or other means, these suppliers are notified that if there is any credit in favor of the debtor, it should be withheld in accordance with the executor's mandate.

In this regard, the Tax Administration has developed a series of computerized procedures and resources adapted to various types of operations between tax debtors and third parties. In this respect, we may mention the following:

1.- System of Seizure by State entities through the Integrated System of Financial Administration of the Public Sector (SIAF-SP).

The system allows for applying a seizure measure via electronic means to this type of tax debtors which, in turn are suppliers of goods or services to the State. The objective is to avoid such suppliers of collecting from the State while they fail to comply with their obligations.

2.- System of Seizure by Entrepreneurial Treatment Entities.

The measure allows for applying the seizure via electronic means to this type of tax debtors which in turn are suppliers of goods or services to the State.

3.- System of Seizures by Telematic Means –Large Buyers (SEMT-GC).

The measure allows for applying seizure via electronic means to tax debtors who, in turn, are suppliers of goods or services of the main Private Sector enterprises. These enterprises make available the amounts withheld for the payment of the respective tax debt.

4. System of Seizures via Telematic Means – Credit Card Administrators (SEMT-ATC).

This measure allows for applying seizure via electronic means to tax debtors which, in turn are establishments affiliated to, Credit Card Operating Companies in Peru. It allows for seizing amounts charged to credit and/or debit cards and delivering the funds withheld to SUNAT.

5.- Collection Module via Refunds of Customs Operations (Drawback).

This application allows for electronically seizing Drawbacks (restitution of taxes requested by exporters) which may have been requested by tax debtors to the respective Customs Intendance.

In addition to the seizure measures involving withholding via electronic means, another procedure has been implemented for applying seizure measures by way of registration before the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI, Spanish acronym) whereby seizure measures may be electronically notified, with respect to distinctive signs, copyrights and registered patents before the aforementioned institution.

In this way systems have been implemented for exchanging information regarding credits to be paid by these operators in order that they may inform SUNAT prior to making payment.

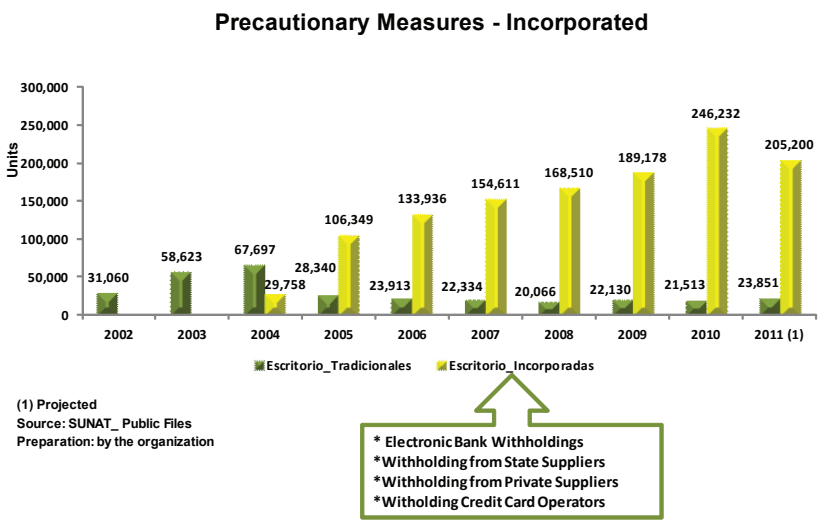
2.3.3.2. The Generic Precautionary Measures represent other measures not included within the previously mentioned ones which may be the appropriate jeans for adequately ensuring the payment of the tax debt being collected. (Article 118 of the Tax Code).

3. NATIONAL COLLECTION PERSPECTIVE

It is important to point out that in the area of Collection at the national level, there has been significant progress, but there is yet the need to close the great gap of tax noncompliance by debtors that simulate net worth insolvency or undertake successions of businesses by transferring production units among companies, thereby avoiding the payment of their tax debts.

Notwithstanding, the increase experienced in the past 10 years has been significant as evidenced in Chart 01: Electronic Precautionary Measures at the national level.

Chart 01

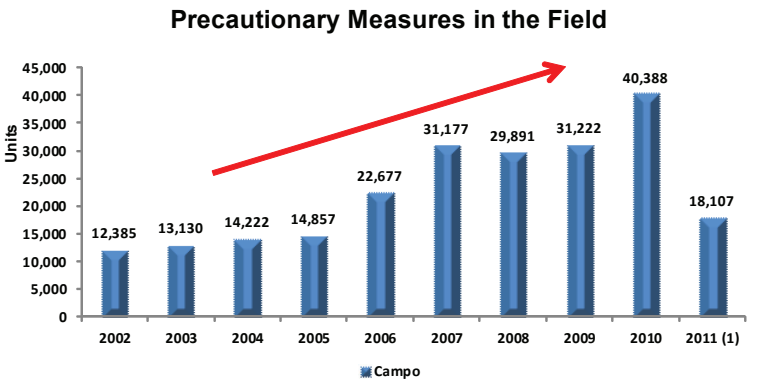


It is important to highlight the significant increase in massive seizure in the past 10 years. This is due to the implementation of electronic seizure systems and the incorporation of a larger number of state and private entities that report, via integrated information systems, the existence of credits in favor of possible tax debtors.

Collection, considered globally, not only focuses on the massive level but essentially involves recovery of debts in individual cases. In this way, the implementation and execution of strategies at the level of Precautionary Measures in the Field have experienced significant advances in these past years.

Chart 02 shows the evolution at the national level of Precautionary Measures in the Field, with a sustained growth up to the year 2010.

Chart 02



(1) Projected
Source: SUNAT_ Public Files
Preparation: by the institution

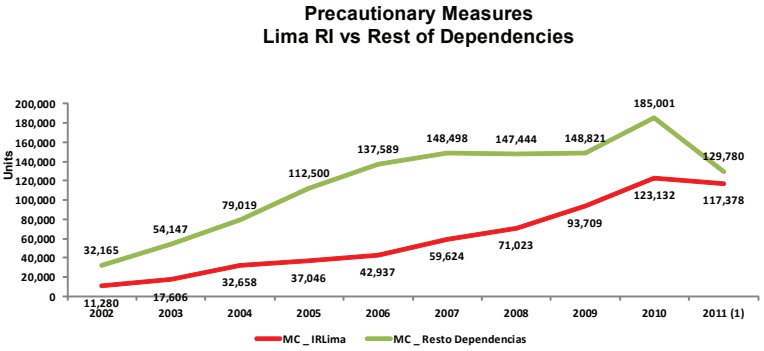
Since Lima continues to be the country's main commercial and financial development pole, la the Lima Regional Intendance (IRL, Spanish acronym) concentrates the greater number of precautionary measures (90% at the national level), with the greatest casuistry and experience with good innovative practices and with an ever more complete knowledge of the behavior of taxpayers.

4. THE EXPERIENCE OF THE LIMA REGIONAL INTENDANCE IN THE AREA OF COLLECTION

The national importance of the Lima Regional Intendance lies in the fact that it is the entity that concentrates the largest number of taxpayers at the national level. In Chart 03 one may observe the incidence in the amount of collection actions as compared to the rest of the country. Considering that the larger number of debtors is concentrated in the Lima Regional Intendance. The projection at 2011 would be 117,378 precautionary measures only in Lima.

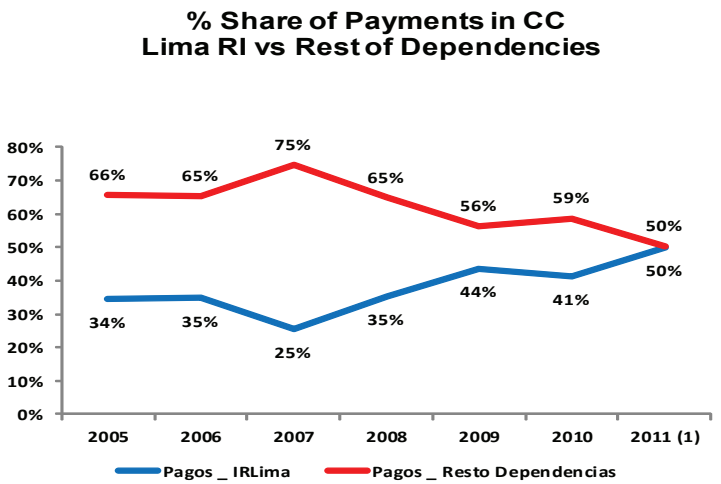
Chart 04 determines the proportionality of payments collected as a result of the precautionary measures and only in the Lima Regional Intendance it represents 50% of the national total.

Chart 03



(1) Projected
Source: SUNAT_ Public Files
Preparation: by the institution

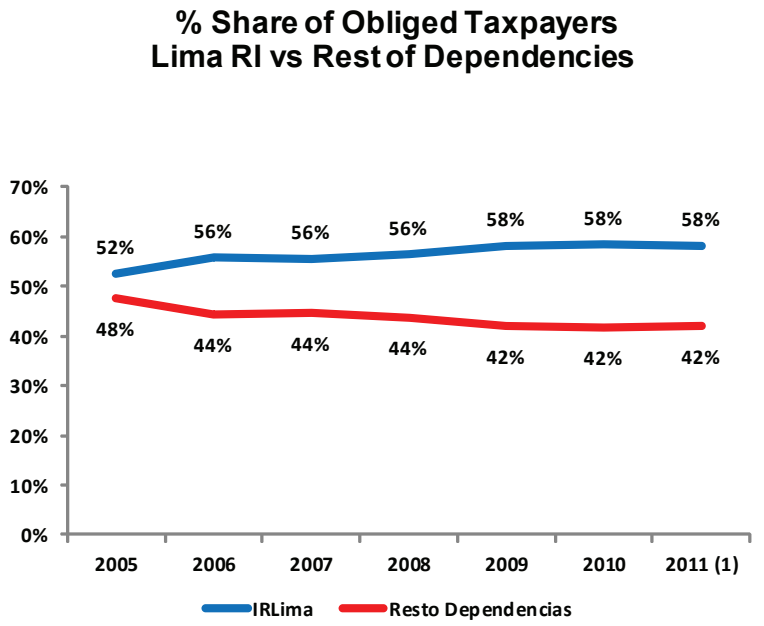
Chart 04



(1) Projected
Source: SUNAT_Public Files
Preparation: by the institution

The Collection Section of the IRL, considering the large number of taxpayers that appear in its directory (see Chart 05), has been aware that the strategies to be implemented must be creative in terms of an effective collection in cost and timeliness.

Chart 05



(1) Projected
Source: SUNAT_Public Files
Preparation: by the institution

4.1. The necessary internal re-engineering

Given the dimension of the due debt in the enforced stage, as starting point it is necessary to optimize resources to a maximum; that is, staff as well as logistics, in order to reach a larger universe of taxpayers and achieve a better recovery of the debt.

It is in this way that we begin to evaluate the productivity of administrative and management processes in force to date, it being determined that the model followed was not admissible for achieving the purpose of greater coverage and better collection.

Following the initial analysis of the processes, an evaluation was made of human resources available; it being determined that there was duplicity of functions; others were unnecessarily disaggregated and the information obtained on debtors was not systematically transmitted at the internal level; thereby deviating too much time and staff in administrative tasks.

It was thus that the Collection Section of the Lima Regional Intendance decided to undertake a total re-engineering of its organizational scheme, by evaluating the skills of each of the members of the Section and thus determine the profile of the predominantly technical function.

In this way it was decided that there was a need to create teams according to specific functions and specialties that would allow for greater productivity and reduction of the terms, given that specialization releases resources that are beneficial in other tax recovery actions. Teams were organized with specific functions such as the following:

- **Information technology team.** In charge of the programming and massive evaluation of due debt balances for which they debugged the contingencies debt not duly entered. This information technology problem generated the cost of seizing debts that probably had alternate stages that warned about the suspension of collection due to various contingencies; thereby involving an expense in resources resulting from inadequate management of the information. In view of this situation, a programming and debt quality evaluation team was established to thereby provide certainty that what was been collected was actually due. This team is in charge of preparing the information so that the Enforcement Executors may proceed to seize via electronic means Bank Withholdings and likewise prepares the data bases for seizures from third parties with credits in favor of the debtors.
- **Taxpayer assistance equipment for collection via telephone or electronic mail.** Taxpayers may provide information regarding objections to collection or payments made for the lifting of the seizures. In this way an effective channel was provided for direct taxpayer assistance, for which purpose the Assistant in charge had to compile the information requested from the teams involved in order to respond within short term to the request or requirement of the recurrent debtor.
- **Assistance teams for responding to taxpayer writs and resources of complaints before the tax court.** This team is in charge of responding according to the information appearing in the enforced collection files regarding questions and statements dealing exclusively with the enforced collection procedure and its execution. It is also in charge of responding to requests for information in order to solve Complaints due to actions common to Collection posed by the taxpayers before the Tax Court, which is the last administrative instance in tax issues in Peru.
- **Teams for the allocation of checks and various procedures.** These are in charge of receiving and allocating the checks that are delivered as a result of bank withholdings or third party withholders who fulfill the mandate of making available to SUNAT said seized amounts. In addition, they are in charge of refunds for undue payments originating from procedural costs or administrative expenses.

- **Previous precautionary measures team.** In the Peruvian legislation it is provided that if there are reasons or behavior that may presumably show that collection may turn out to be fruitless, prior to initiating the Enforced Collection Procedure it is feasible to apply exceptionally, Previous Precautionary Measures to taxpayers who may qualify in assumptions determined by law.
- **Filing team.** In charge of sending concluded files to be kept and facilitating files at the request of the Enforcement Executor for his attention.
- Auction sale team. In charge of actions for continuing with the Procedure in the enforced execution stage and also in charge of summoning the appraisal experts as well as of the public auction sale of the seized properties.
- **Field teams.** Are in charge of scheduling seizure actions by way of Examination of Information, Collection, Deposit with or without Extraction and to carry out Examination in Collection by economic sectors, as well as to carry out Mobile collection operations along the highways. Their functions are aimed at evaluating the debt condition; the company's net worth background information, the compilation of information through working groups for locating the taxpayers or his legal representatives, in case they have not been located.

One of the main strengths of Collection in the past years has been the consolidation of Field Teams, which have acquired the experience of recognizing, detecting and facing maneuvers for avoiding payment carried out by debtors for not complying with their tax obligations.

It is important to point out that in this process of direct contact with taxpayers, some strategies have been included, such as managing online information in operational field actions that allow for identifying multiple taxpayers who with the same tax domicile endeavor to hinder enforced actions by stating that the properties which may be seized belong to third parties. With the online information, through the use of computerized and portable electronic equipment they may face these situations, thereby managing to undertake seizures from taxpayers that were not necessarily scheduled, but given the existence of the tax debt and the finding of net worth that is executable, such action may be carried out in situ.

4.2. Previous precautionary measures, their application and timeliness

Among the powers of the Enforcement Executor in the Peruvian legislation there is the option of applying Previous Precautionary Measures prior to the notification of the Enforced Execution Resolution, which is the administrative act that initiates the enforcement procedures. Such exceptional power is expressly regulated by the Tax Code and is applied only in cases where due to reasons or behavior of the tax debtor, collection may turn out to be fruitless, according to Article 56 of the Tax Code.

The timeliness for the adoption of this measure, generally originates from an analysis by the examination areas which already have the net worth information when undertaking the audits, being able to detect these irregular behaviors or conducts and warning the Enforcement Executor thereof, following sustained report regarding the need to apply the Previous Precautionary Measure. In this way, with the corresponding motivation, it is feasible to adopt a Previous Precautionary Measure indicating as essential requisite the existence of any of the behaviors indicated in the Tax Code. In our regulations, the evaluation of this exceptional power involves parameters that do not allow for exercising discretionality in its adoption; but rather they should be based on objective and verifiable facts that justify its execution.

The behaviors provided in the regulation are:

a. The filing of false, falsified or fake documents that may total or partially reduce the tax base.
b. Total or partial concealment of assets, properties, revenues, income, proceeds or products, liabilities, expenses or disbursements, or deposit assets, properties, liabilities, expenses or disbursements that are total or partially false.
c. Carry out, order or consent to carrying out fraudulent acts in the accounting books or records or other books or records required by the law, regulation or Resolution of the Superintendency, accounting statements, sworn returns and information included in magnetic means or of any other nature to the detriment of the treasury, such as: alteration, scratching or crossing out notations, entries or evidence recorded in the books, as well as the registration or recording of false entries, accounts, names, amounts or data.
d. Totally or partially destroy or conceal accounting books or records or other books or records required by the tax regulations or other books or records required by law, regulation or Resolution of the Superintendency or the documents or information included in magnetic support or other means of storing information related to taxation.
e. Failure to show and/or not submit the books, records and/or documents that support accounting and/or which may be related to events susceptible of generating tax obligations which may have been expressly required by the Tax Administration, at the tax offices or before authorized officials, within the term stipulated by the Administration in the application wherein they may have been requested for the first time.
   Likewise, to fail to show and/or not submit the documents dealing with events susceptible of generating tax obligations, at the tax offices or before authorized officials, in the case of those tax debtors not obliged to keep accounting records.
   For purposes of this paragraph one shall not consider the case in which failure to show and/or submit the aforementioned books, records and/or documents may be due to causes not attributable to the tax debtor.

f. Failure to provide to the tax creditor the amount of the withholdings or receipt of taxes that would have been made upon expiration of the term for doing so set by the pertinent laws and regulations
g. Obtain tax exemptions, reimbursement or refund of taxes of any nature or any other tax benefit by simulating the existence of events that would allow for enjoying such benefits.
h. Use of any other trick, deceit, craftiness or other fraudulent means in order not to pay all or part of the tax debt.
i. Pass on to the status of not being located.

It is important to warn that the proceeds from seizures through Previous Precautionary Measures cannot be allocated to the assessed debt, since they are still not demandable inasmuch as they may be objected at the national tax administrative instances, which implies, that as long as the objection is in force, the amounts withheld shall be deposited and the registered properties cannot be executed until their conversion to the Definitive Precautionary Measure.

The Previous Precautionary Measures are governed by the provisions of Article 57 of the Tax Code:

Article 57.- TERMS APPLICABLE TO THE PREVIOUS PRECAUTIONARY MEASURES

“The precautionary measure will be maintained for one (1) year, estimated as of the date it was applied. If there were a resolution overruling the tax debtor’s claim, such measure will be maintained for an additional two (2) years. Upon expiration of the previously mentioned terms, the precautionary measure will expire without the need for an express declaration, (…)”

Practice has shown that correctly sustained Previous Precautionary Measures represent a tool for preserving the net worth that may guarantee the issued debt, and once the latter becomes demandable, its collection may be carried out.

4.3 Final balance

In this way, new strategies are being developed. Their main premise is to always be flexible to changes, since debtors modify their behaviors in accordance with the actions of the Tax Administration. In this way, the Joint Responsibility of the Legal Representatives that simulate net worth insolvencies or transfer important assets of their businesses must be the subject of a more direct treatment that may allow the State to recover tax debts at the enforcement stage.

It goes without saying that the scarce human and logistic resources vis-a-vis the magnitude and quality of problems detected force the Collection areas to be dynamic and flexible to change, because only thus can one endeavor to follow the pace of the changing tax and enforcement panorama.

5. RECOMMENDATIONS

1. One should discard administrative or organizational paradigms. The success of an efficient collection implies exercising self-criticism in the processes in force, while at the same time it calls for proposing creative and innovative models. In any new scheme there will always be risks, but the greatest risk is to maintain a model that may prove its inefficacy.

2. The development of a qualified working team committed to collection is essential for the success of any strategy. In this way, the evaluation of the potential of each enforcement operator by identifying the profile of his potential, will contribute to increased productivity and achievement of the team's goals. Specialization and feedback of the best practices developed will contribute to a better yield and savings in time and resources that may be used in other enforcement tasks.

3. The computerized support and appropriate management of the information available is a tool that contributes to the purposes of Collection. It is not only important to count on the tools, but to know how to use them correctly. Many times, their inadequate use leads to erroneous perceptions and analyses that affect the State's collection.

4. Developing alliances not only with state but also private entities, allows for expanding the coverage of the Collection action. Tax Administrations should promote a systematic management of the information of different market operators. Currently, whoever manages information best and counts on greater sources will have a more efficient vision and scope for optimum collection.

6. CONCLUSIONS

1. Efficient and timely Enforced Collection requires the necessary support of a legal nature, wherein one may incorporate the new figures of enforcement and have the option of being flexible vis-a-vis the tax situation, since in the enforcement practice different payment avoidance mechanisms are detected.

2. The effectiveness of Collection requires defined strategies and goals, as well as being open to change, since the enforcement reality is permanently changing and calls for a timely reaction for ensuring the recovery of the debt.

Case Study

Topic 2.2

PAYMENT FACILITIES OR AGREEMENTS: TIMELINESS, CONDITIONS AND APPLICATION

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Contents: *Executive summary. 1. Introduction. 2. Overview of the KRA debt position. 3. Current treatment of debt in the authority. 3.1. KRA powers relating to tax debt. 3.2. Administrative structures scope and advantages/disadvantages. 4. Support tools for the recovery of debt: Role of information technology systems. 4.1. International administrative cooperation. 4.2. Strategic alliances with third parties for obtaining information. 5. Challenges faced in administrative collection and initiatives to mitigate these challenges. 5.1. Challenges facing the customs debt office. 5.2. Domestic taxes department. 5.3. On-going and planned interventions to tackle these problems. 6. Recomendations. 7. Conclusions.*

EXECUTIVE SUMMARY

Introduction

Debt is generated when tax is assessed but not collected. Revenue bodies who attempt to collect debt together with requisite penalties and interest normally have the option of using administrative collection – previous action prior to application of enforced procedures- or enforced procedures including resort to the courts. Administrative measures are advantageous in countries with lengthy court procedures.

Overview of KRA debt, administrative arrangements

By June 2011 KRA's total tax debt stood at Kshs. 93.5 billion (US$1.1 billion) or 14.7% of the total collections for the 2010/11 fiscal year compared to a targeted

5%. Poor performance is particularly concentrated in the medium and small taxpayer segment handled by the Domestic Revenue (DR) department and in Post Clearance Audit (PCA).

Debt is dominated by penalties and interest which exceed principal debt. Debt management is not centralised but is managed by the 3 revenue departments. Under performance in debt management cannot be attributed to a weak legal framework since KRA enjoys most of the powers found in typical OECD revenue collectors.

As is common with most revenue bodies, KRA has adopted information technology (IT) as a key component of its strategy to improve efficiency in revenue mobilization.

However, automation of KRA processes has barely touched debt management. The automation of debt management will be carried out as part of Phase II of the Integrated Tax Management System (ITMS).

KRA has also been able to use international administrative cooperation in tackling tax evasion and pursuing tax debt. The country has entered into several double taxation agreements (DTA's) as has now legislated to provide for Tax Information Exchange Agreements (TIEA's). Though these arrangements have been beneficial, they pose challenges, including the need to have a framework for collecting or accessing the information to be exchanged, the need for legislative and administrative amendments within the cooperating countries and the need to deploy considerable resources to assist partner agencies in revenue collection.

With respect to strategic alliances with partner agency institutions, KRA's main partners are regulatory bodies, the ports authority, local authorities and ministries all who collect information relevant to revenue collection. However, a major constraint has been asymmetrical development of IT systems which has meant that KRA's IT systems are often unable to access information from partner agency data bases in a timely manner.

Challenges faced by KRA debt units and proposed interventions

The following are key challenges faced by KRA in its administration of the debt programme:

- Debt Data Records: There is gross dearth of debt data in the unit records. Database reconstruction is, therefore important to identify, collect, collate, document and computerize the department's debt data in an appropriate format which includes debt inventory, classification and harmonization. Thus, there is a high prevalence of doubtful debt,

- Dispute Resolution: Debtors' preference to seek redress in court instead of using the Departmental dispute resolution mechanism is costly and time wasting. Taxpayers should be sensitized on the need and benefits of following the Departmental channels.

- Non-compliance by Commercial banks, who are appointed as enforcement agents,

- Delays in processing of debt including delays in processing waivers,

- Delay in developing modules for new tax rates or incentive regimes.

Recommendations

From KRA's experiences there are certain recommendations that may assist revenue departments in similar positions who want to strengthen their debt management processes:

1. It is important not to treat automation as panacea but ensure that the processes are reviewed and modernised before they are automated and also take a realistic view with respect to capacity to utilise the IT capacity already existing,
2. International information exchange is critical in this day and age. However there is need to consider the country's capacity, both legal and administrative, to handle and process the requisite information and in particular the massive investment in IT that may be needed. In addition, Kenya has found that use of TIEA's may provide a credible alternative to a full blown mutual assistance agreement or double taxation agreement,
3. With respect to strategic alliances, the revenue bodies should, if possible, ensure that their partners are modernizing and automating in a synchronised manner if they are to reap full benefits from the process.

1. INTRODUCTION

Debt is generated when tax is assessed but not collected. It is the responsibility of the competent authority to ensure tax debt is collected together with penalties and interest where applicable. To ensure this is done in an efficient and expeditious manner, revenue authorities normally have recourse to administrative measures as well as recourse to the courts. The collection procedure undertaken by the tax authority has been referred to as administrative collection as opposed to the process carried out by the courts. The expected advantage of administrative procedures over court action is that given the lack of technical expertise in tax matters of many judicial officers and the delays inherent in the court process, administrative measures may provide an advantageous approach to debt recovery.

In this regard friendly or administrative procedure can be defined as the administration's previous action, prior to application of enforced collection procedure[1]. As such, it should enable the tax authority to save resources and time that would be required by the enforced administrative process and can also be considered a more friendly way of recovering what is owed.

Kenya Revenue Authority has used administrative procedures as provided for in law to enforce tax debt collection. Debt collection has to date not reflected the success rates we have recorded in other endeavours and indeed our debt collection has not kept pace with overall revenue mobilization. KRA has also been re-structuring its administrative structures and automating its processes and this will impact on debt management going forward.

KRA's status as a restructuring organization that has not fully automated or completed transition to functional form means that it has not fully utilised the opportunities made possible by advances in information technology. In addition, KRA encompasses both a traditional customs function with a 'real time' and direct physical control of its transaction environment and a domestic tax administration which relies substantially on secondary information and controls. This has led, in the case of debt to separate debt units among others. This needs to be taken into account as the paper is read.

The rest of this paper is structured as follows:

1. An overview of the tax debt situation in KRA, its source and characteristics,
2. The administrative arrangements relating to debt management in KRA including the scope and limitations of persuasive methods,
3. The support environment for debt management focusing on the nascent Information technology systems,
4. A review of the limited scope and utilization of international administrative cooperation,
5. KRA's use of strategic alliances for information gathering and enforcement and the limitations caused by the existing environment,
6. The challenges faced by the revenue department in their debt management activities and proposed solutions,
7. Recommendations and conclusions.

2. OVERVIEW OF THE KRA DEBT POSITION

By the end of June 2011 total debt outstanding in KRA's books totalled Kshs. 93,486 million (US$.1,133 million at the average June 2011 exchange rate of Kshs. 82.47 per US dollar) in the following departments:

1 CIAT technical profile

TABLE 1: KENYA REVENUE AUTHORITY TAX DEBT
(Values in Kshs. mn)

DEPARTMENT	TOTAL DEBT	Total revenues (2010/11)	Debt as % of revenue collected
CUSTOMS SERVICES DEPARTMENT (CSD)	10,424	223,468	4.7%
LARGE TAXPAYERS OFFICE (LTO)	25,108	295,214	8.5%
DOMESTIC REVENUE (DR)	57,954	111,573	51.9%
ROAD TRANSPORT DEPARTMENT (RTD)	0	2,648	N/A
TOTAL	**93,486**	**634,903**	**14.7%**

SOURCE: KRA data

KRA's objective is to conform to best practice by lowering debt to below 5% of revenues. This is to be achieved by reducing debt by 33% annually. As can be seen from table 1, only the Customs Services Department (CSD) has met the 5% requirement while the Domestic Revenue (DR) department which deals with medium and small taxpayers holds the bulk of KRA debt. KRA's Fourth Corporate Plan (2009/10-2011/12) envisioned the total debt/revenue ratio declining from 28% to 15% by 2011/12. Though technically this has been achieved, it owes more to the introduction of the in duplum rule in the 2009 Finance Act than to aggressive reduction efforts[1].

In addition, KRA suffers from an 'old debt' problem (pre 1992 income tax debt, pre 1996 VAT debt and pre 1994 PAYE debt) where records are unreliable. Thus, debt management and measures to reduce debt cannot be considered a strong point in KRA's recent performance.

2 *The in duplum rule limits interest and penalties to 100% of the principal. Following its introduction, KRA revised its debt downwards to comply with the law thus reducing the debt /revenue ratio.*

Table 2 below shows the composition of the KRA debt by source and department.

Table 2: Debt outstanding by 30th June 2011 by tax head
(Values in Kshs. million)

Department	Tax head	Principal	Penalty	Interest	Total June 2011
Large Taxpayers Office (LTO)	Non Self Assessed				55
	Self Assessed	1,421	100	305	1,826
	Add. Assessment	3,743	1,940	7,311	12,994
	Corporation	5,164	2,040	7,616	14,875
	VAT	1,879	34	3,777	5,690
	PAYE	1,638	208	200	2,046
	With holding	1,617	21	732	2,370
	Excise	27	0	99	126
	Est. Assessment	0.145	.04	0.767	0.952
SUB TOTAL		**13,851**	**4,343**	**20,041**	**25,108**
Domestic Revenue (DR)	Non Self Assessed	4,879			4,879
	Self Assessed	14,098	4,581	15,984	34,665
	Add. Assessment	5333			5,333
	VAT	2002			2002
	PAYE	640			640
	With holding	0			0
	Excise	0			0
	Est. Assessment	4,062	1,099	5,271	10,433
SUB TOTAL		**31,017**	**5,680**	**21,256**	**57,954**
Customs Services department (CSD)	Post Clearance Audit				**4,053**
	Other outstanding debt				**6,374**
SUB TOTAL					**10,424**
TOTAL					**93,486**

Source: KRA departments' reports

From the table the following can be seen:

1. The largest single source of debt is self-assessed debt in DR, with penalties and interest exceeding the principal debt[3],
2. Of the large corporate covered by the LTO, corporation tax is the principal source of the debt,
3. Corporation tax in LTO, self-assessed tax in DR and estimated assessments in DR constitute almost 2/3 of the total debt portfolio;
4. Accumulated interest in the LTO debt exceeded the principal an indication of a slow debt recovery process.

3. CURRENT TREATMENT OF DEBT IN THE AUTHORITY

3.1 KRA powers relating to tax debt

KRA's legal and institutional powers relating to tax debt can be compared to those in typical OECD countries with the OECD serving as a benchmark[4], KRA's enforcement powers with respect to debt collection can be analysed as follows:

- **Granting further time to pay:** the various revenue Acts have provisions allowing commissioners to enter into payment arrangements with debtors as part of the enforcement provisions,

- **Waiving tax debt:** in Kenya, principal debt can only be waived by the Minister with approval of Parliament. The Commissioner may recommend to the Minister to write off tax due from a person due to uncertainty of law of fact, hardships or equity, impossibility or undue difficulty or expense of recovery of the tax. The Taxpayer can also make an application to The Minister for write-off due to uncertainty of law and fact, hardship or equity. With respect to the EACCMA Section 133(2) provides that when the Commissioner believes that the debt is not recoverable, they shall notify the EAC council in writing and, with the approval of the East African Legislative Assembly, write off the duty,

- **Waiving penalties and interest:** The various revenue statutes (section … of the income tax Act, section … of the VAT Act, section … of the EACCMA) provide for waivers of penalties and interest.. The penalties and interest which will attract application for waiver are Customs Act Sec. 139,158B and 35, VAT Sec 15 and 25, 6th & 7th Schedule and Income Tax 37,72(1), 72(c)(1), 72(D),94(1). The granting of the waiver will depend on the circumstances

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3 Despite the introduction of the in duplum rule, this applied to the debt post the effective date. Hence debt that had accumulated penalty and interest exceeding 100% of the principal pre the in duplum rule did not have their debt reduced

4 Tax administration in OECD and selected non OECD countries: Comparative information series 2007

under which justification for waiver is advanced with emphasis being placed on the co-operation of the taxpayer in recovering the principal sum in question, compliance with all legal requirements and tax compliance. The maximum waiver that KRA can waive is Kshs. 1,500,000 (approximately US$16,850 at June 2011 exchange rates) while waivers above this figure have to be referred to the Minister.

- **Collection from third parties:** KRA issues agency notices to third parties when the period given on a demand notice has expired and the debtor has not responded. The third party must acknowledge receipt of the agency notice within 7 days or they themselves run the risk of having the tax owed recovered from them. Agency notices require the notified agent to pay within 30 days of the notice,

- **Restricting overseas travel by debtors:** under Section 98 of the Income Tax Act, the Commissioner may by notice in writing served to a person assessed require the payment of the whole or part of tax assessed. When he has reason to believe the assessed person is about to leave Kenya without paying the tax or providing adequate securities, he may issue a warrant of arrest and bring the person to court to show cause why he should not pay the requisite tax or provide security to the satisfaction of the commissioner,

- **Arranging seizure of debtor's assets:** KRA can recover taxes by distraint. When the taxpayer is in possession of distrainable goods, agency notices have failed and the sums involved are large. Other considerations such as the taxpayer being on the verge of leaving the country or going bankrupt also come into play. In addition, sections 103, section 132 and 22 of the Income tax Act, East African Community Customs Management Act and VAT Act respectively provide for the enforcement of security on property. This is used where a person being the owner of land or building fails to make payment. The Commissioner may notify that person in writing of his intention to apply to the Registrar of Lands to be the subject for the tax amount specified in the notice.

- The Commissioner may require a person to give security for the tax owing by that person. **Notice of not less than 30 days** has to be given. To secure the charges, caveats and charges will be placed- the former to secure the interest of the Authority the latter to sell immovable property,

- **Closing business and cancelling licenses:** where specific businesses require licensing by KRA – such as clearing and forwarding agents under the EACCMA and excise operators- the commissioners have powers to suspend or revoke licenses,

- **Off-set tax debts on tax credits:** provisions in the KRA Act allow for off setting tax debts against tax credits,

- **With hold government payments to debtors:** The revenue statutes provide provisions allowing for agency notices to be served on government agencies in the same manner as for other organizations,

- **Tax clearance for government contracts:** KRA issues Tax Compliance certificates for both individuals and institutions. These certificates are a requirement (pre-condition) for application for any public tender, for liquor licensing for registration as a customs clearing agent among others. The compliance certificate is also now a requirement for appointment to state offices. As such it becomes a bar to both public contracts as well as key public appointments. KRA has developed a generic tax compliance certificate as well as a data base to host details of all tax compliance certificates with a view to enabling interested parties to confirm authenticity of the certificates. This Tax Compliance Certificate checker was developed in February 2011 and is online.

- **Impose tax debt on company directors:** this provision would require lifting of the corporate veil to identify who are the actual owners of the companies and will need to be carried out under the provisions of the companies Act. It is thus not specifically provided for in the Revenue Acts,

- **Publish name of debtors:** Kenya's tax laws place severe limits on the extent to which information on taxpayers can be shared with third parties (including state agencies) or publicised. These restrictions are further underpinned by constitutional provisions regarding privacy. Hence it is unlikely that the Authority can resort to publicising the names of tax debtors,

- **Initiate bankruptcy proceedings:** Section 38 of the Bankruptcy Act provides that in the distribution of the estate of a Bankrupt or the assets of a company in liquidation, certain debts shall be paid in priority to all other debts. Tax due to the Government is one of these preferential debts. In addition, as a legal person, the Authority can also initiate bankruptcy proceedings in exceptional circumstances. However, when bankruptcy proceedings are filed only taxes due in the last 12 months can be recovered.

It can thus be argued that the Kenya Revenue Authority has at its disposal powers that would be expected to be available for most modern revenue Authorities.

3.2 Administrative structures scope and advantages/disadvantages

Debt management in the KRA is handled by individual department debt units – the CSD has it own debt management unit while the 2 domestic taxes departments (DR and LTO) have individual debt units but share compliance and debt policy unit. This is in line with the functional structure of the Authority.

3.2.1 Domestic taxes department (DTD) debt management

In DTD debt management is part of the compliance programme. The two departments within the larger department (LTO and DR) have a head of debt and compliance and head of debt respectively. The two departments share a compliance and debt policy unit. Debt arises from audits, compliance checks, refund audits, recruitment of new taxpayers, estimated assessments and payment returns not accompanied by payments among others. The functions of the debt management units include establishing the level of outstanding debt and categorising it by age, classification of debt by tax head, principal and interest characteristics such as collectability, existence of court cases or waivers, following up on payments including by cheque, maintaining a register on management of waivers, identify and review write of cases and compile and update monthly expectation requirements.

The primary sources of DTD debt are:

- Value Added Tax (VAT) arrears,
- Payment return without cheque,
- Underpayment return,
- Assessment arrears (from audit and compliance),
- Interest on unpaid tax (maximum 100% as per 'in duplum' rule)
- Penalties including for late payment,
- Fines on offences,
- VAT with holding (VAT withheld but not remitted),
- Self-assessments and additional assessments,

Procedures for debt management generally include procedures to validate debt (i.e, ensure the debt is actually legally owed), issuance of demand notices (usually for 14 days followed by a 7 day notice) and a final demand when the taxpayer does not honour demand notices. The final notice will be followed by a shift to enforcement activities including agency notices, recovery of tax by distraint and securing property. Tax can also be collected through civil suit or criminal prosecution as established by law.

In Domestic taxes, debt is classified as either collectible or hard core. This classification helps in the collection and emphasis applied in each class. With respect to prioritization, the most recent debts are fast tracked followed by hard

core debt and other debt depending on the nature of the case. Priorities are established by the respective debt units in the 2 departments.

With respect to outsourcing of debt collection, the Commissioners would use provisions of existing laws which provide for outsourcing of functions. For example, the Value Added Tax (VAT) Act Cap.476 section 3(3)(b) has provisions that can be used for outsourcing of debt collection in the case of VAT debt. The specific provision provides '… subject to the approval of the Board of directors, of the Authority, by notice in the gazette, appoint such other persons as he may determine to perform any of the Commissioner's functions under this Act requiring expert knowledge or skill subject to such limitations as the Commissioner may think fit'. In addition Bailiffs can be used to collect debt. Despite these provisions, KRA does not outsource debt collection and indeed Kenya does not have a good record of public institutions who do so benefitting from the process.

With respect to friendly collection, DTD's normal methods include one on one interview between staff and clients, telephone calls and issuing of demand notices. This process is more likely to lead to cooperation, help the authority collect debt in a cordial way and may at times enhance compliance. It has the additional benefit of keeping taxpayers in business which may not always be possible in the case of enforced collection. On the other hand, it is a time consuming process and taxpayers may be un cooperative at times or even ignorant of their obligations. There is also the risk of default and/or disappearance of debtors.

3.2.2 Customs services department debt management

Debt Management Unit (DMU) is a unit within the enforcement Division of CSD. The main objective of the unit is to ensure the department's obligations to reduce and maintain acceptable levels of debt stock are met through prudent, effective and efficient debt recovery and reduction strategies and capacity building. The Unit's functions are currently based in Head Office but the long term strategy is to roll out the functions to selected Divisions and regions within the CSD offices. The functions of the unit include maintaining a reliable data base of all the department debt, development of debt recovery strategies, verification and reconciliation of debt figures, debt recovery and reduction. The DMU receives inputs in form of outstanding debt reports originating from the Post Clearance Audit (PCA), the Trade facilitation division including on outstanding Security Bonds/Fines, outstanding entries approved for payment and from the Petroleum Monitoring Unit (PMU) on petroleum products. Other debt may be generated from post parcels, the various export promotion schemes (Export Programmes Promotion Office (EPPO), Manufacturing Under bond (MUB), the Export Processing Zones (EPZ) and Tax Remissions for Exports Office (TREO)), diversions and conversions, detected under declarations, un-perfected Prior

releases, overdue temporary importations, penalties and Interests, offences and fines and warehouse rent

Because debt Management operations are currently manual, a premium is placed on ensuring debtors' reports to DMU are timely, complete and supported by all relevant source documents under cover of the prescribed form referred to as Debtors Information Sheet. Crucial information to be included in the sheet includes: Debtor's name and location; Brief history of the debt; Type of business; Physical, mailing and telephone address; Contact persons; Bankers; all known assets including major debtors and suppliers, as this will help the unit to make an informed recovery decision.

Once the debt information is received debt recording takes place. This entails assignment of a unique identification number on all debt folders for ease of reference, recording and analysing basic debt data, reconciliation and validation of debt data, classifying based on risk profiling, debtors into 'quick –win cases', collectable debt, doubtful debt and bad debts. Debts are classified on the basis of age, value, collectability, cost of collection, debtor and source. This approach provides for a unique approach to every category of debtor, enhances proper use of work plans and enhances efficiency and risk profiling. The downside is the process is tedious and time consuming.

Prioritization is then done on the basis of risk- the higher the risk the higher the priority.

After profiling of the debt, a notice of intention to enforce is served in respect of all cases where tax is found to be validly payable. The debtor is allowed seven (7) days from the date of service of the notice to respond. A period of ten (10) days is usually allowed for service.

Where payment is received within the notice period, the case is closed and the debt register updated accordingly. In some cases debtors will raise objections to the demand. If the issues raised cannot be resolved within the Unit, then the case is referred to the relevant authority for the appropriate decision.

Follow up by way of phone or any other suitable method is done on those who fail to respond

If no response has been received from the debtor after expiry of the seven days' notice, or any other agreed timeline, immediate enforcement measures are instituted.

Enforcement tools available for use include the following instruments:

- Agency Notice: Section 131 of the EACCM Act. 2004 which allows the commissioner to require an agent to pay duties on behalf of their principle when the agent owes money to the principal, holds money on account of the principal, has authority to pay money on behalf of the principal or holds goods for the principal, which goods are liable to duty which has not been paid,

- Recovery by distress: Section 130 of the EACCM Act. 2004 which allows for summary legal proceeding to recover duty on goods,

- Security on property for unpaid duty: Section 132 of the EACCM Act. 2004.

- Suspension of agents: This is provided for under section 145 (3) of the EACCM Act. 2004.

- Sale by public auction on customs warehoused goods: (Section 42(1) of the EACCM Act 2004). This provides for goods that have not been removed from a customs warehouse within 30 days of notice to be auctioned. Section 42(4) provides the order in which the costs accruing from the process are to be met starting with the duties, expenses of removal and sale, rent and charges due to customs, port charges and freight and other charges, in that order, with balances to be paid to the owner (If the goods were not restricted in the first case)

- Section 42(6) stipulates that Where any goods are offered for sale…. and cannot be sold for a sum to pay all duties, expenses…….. They may be destroyed or disposed of in such manner as the Commissioner may direct. This means that if any goods are not sold then they can be destroyed.

- Calling on guarantors to security bonds to honor the outstanding obligations: Section 109 of the EACCMA 2004 allows the commissioner by notice to require the person who gave the security to pay within 14 days when the conditions of a bond are not met,

As shown in table 1 the CSD has managed to maintain its debt levels below the targeted 5% of its revenues. This however is substantially due to the nature of customs management where, having the physical custody of goods, the CSD is able to ensure the bulk of the dues are paid prior to the release of goods. However, a particular challenge for the CSD has been converting taxes assessed through the Post Clearance Audit (PCA) programme into revenue. Table 3 below shows key statistics for PCA:

Table 3: PCA debt characteristics and status June 30 2011
(Values in Kshs. mn)

Total yield for 2010/11	1,436
Total collections for 2010/11	261
Collection as % of yield	18.1%
Amount under dispute	2504

Source: CSD data

With respect to the potential for out sourcing, there is the absence of a legal framework which must be put in place to create a legal mandate for third party executors to apply enforcement measures without the necessity of seeking judicial orders. However, should this be put in place there is potential to reduce debt turn around due to the effectiveness of non-bureaucratic operations and achieve increased cost effectiveness as cost of collection can be structured to be matched to return. The process could result in KRA resources being released to participate in other revenue generating functions.

On the other hand out sourcing could compromise customer information confidentiality and customer service will cease to enjoy the advantages of centralised operations

4. SUPPORT TOOLS FOR THE RECOVERY OF DEBT: ROLE OF INFORMATION TECHNOLOGY SYSTEMS

As it envisions becoming fully automated, IT has the greatest promise to support the debt collection function. KRA' ICT strategy identified automation as an enabler to the Revenue Administration Reform and Modernization Programme (RARMP). The strategy is based on the commitment to effective leveraging of enterprise-wide information management and enabling technology for enhanced efficiency and effectiveness of services. KRA targets full automation of the Authority and ensuring that IT systems are fully integrated allowing for a single view of the taxpayer and full utilization of IT to enhance compliance. To date the automation strategy has resulted in the following major achievements:

- A modern online customs system the SIMBA system is fully operational and incorporates a Document Processing Centre (DPC), and various supporting systems including a valuation database (KRAVS), customs oil stock information system (COSIS), Cargo management information system (CAMIS) among others. The Authority has also been able to replace intrusive customs inspection systems with non-intrusive systems such as

cargo scanners and electronic cargo monitoring. The customs system also allows for regional data exchange through the RADDEX system. Live data on exports, ex warehouse and transit goods are exchanged between the SIMBA system and the ASYCUDA system common in other regional revenue authorities,

- An integrated tax management system (ITMS) has replaced the less modern or manual system. The objectives of the ITMS is to provide efficient & effective services to taxpayers & public and reduce interaction with staff, facilitate seamless sharing of information across KRA and relevant 3rd parties for data-matching purposes in order to detect non-compliance and to facilitate combined enforcement actions and thus provide a single view of a taxpayer. To date the online registration and filing modules have been completed while the next steps will focus on back office operations including implementation of a debt and enforcement (D&E) module,

- The Road Transport Department has the Vehicle Management system (VMS) which by being linked to the SIMBA system allows for vehicles to be registered as they arrive at the port, while its linkage to the PIN data base has allowed for PIN verification,

- A common cash receipting system (CCRS) which will ensure prompt update of taxpayers ledgers and reliability of bank reconciliation,

- KRA also established a call centre in February 2008 with the objective of presenting to the taxpayer (and other stakeholders) a single view of the organization and its core functions for the purpose of providing a seamless service. The aim of the KRA Contact Centre Project was to create – and maintain – a corporate approach to revenue collection and taxpayer service delivery by establishing a clear and published point of contact to improve consistency and quality of service to taxpayers and stakeholders by Increasing revenue generation through support of the Integrated Tax Management System (ITMS), improving operational efficiencies by offering a single point of contact for general enquiries and achieving and maintaining customer satisfaction through consistent service delivery. To date, the Contact Centre receives up to 18,000 voice calls from taxpayers and up to 9,000 emails on a monthly basis from stakeholders to the organization's core business. These incoming requests are addressed within 24 hours via the various business processes implemented as part of the Contact Centre's operational procedures

With respect to automation and debt, the domestic taxes department currently has modules for generating tax arrears (VAT and income tax) based on self assessment or additional assessment as generated by the department. The IT systems facilitate capturing of assessed amounts, computes the interest and

penalties and posts the computed debt amounts in taxpayer ledger. The IT system maintains data on debt monthly as well as provide debt status for each taxpayer, tax station and tax head. Payments are made corresponding to the specific assessments and year.

In the future, it is envisioned information technology will function like a utility. It will use a common backbone to link stakeholders, service providers, Government agencies, their functions and services, so they can achieve public outcomes no one agency can achieve alone. Customers who want to transact with KRA electronically will be able to do so. Emerging forms of technology – particularly web-based resources - will become vital tools allowing customers to work with the Authority to access information and solve problems. Taxpayers will file tax returns, receive refunds, make payments, and lodge queries without making an appointment, waiting in line, or driving across town. The customer, not the Authority will define the timing, nature and extent of access to services and information.

In addition KRA's enforcement strategy envisions the Authority working in close collaboration with other Government registration agencies including the Ministry responsible for immigration and registration, the registrar for companies and the National Registration Bureau among others to ensure inter connectivity of information systems. This measure will ensure that information in these systems is used to achieve compliance of unregistered persons.

It should be noted that the investment KRA has made in IT has largely been funded by the government of Kenya thus minimizing the delays and uncertainty inherent in donor funded programmes.

4.1 International administrative cooperation

As economic transactions are increasingly globalised international cooperation on tax matters has become more important. In this regard, agreements for the sharing of information on taxpayers across jurisdictions becomes important as transfer of funds across borders is a key means by which taxes are evaded. As a rule, African countries have not exploited the avenues for tax cooperation to the full. Thus, to review Kenya's experience in this arena, we need a comparator or benchmark case.

The Nordic Mutual Administrative Assistance in tax matters Convention of 1989 serves as a good example of international administrative cooperation and as such can be used to benchmark what arrangements are available for Kenya.

The Nordic convention covers:

- The service of documents, the supply of information on tax matters, supply of relevant forms, collection and transfer of tax and double taxation provisions,
- The existing taxes on which the convention applies in the contracting countries,
- Interpretations,
- Procedures for requesting and supplying assistance and information, limitations (determined by local laws) and quality control provisions,
- Provisions for automatic release of information relating to partner countries individuals to that country periodically, focusing on their earnings and payments,
- Provisions for simultaneous tax examinations of individuals that partner countries have interest in and provision for a contracting state's officers to present information in a tax matter in another state and confidentiality requirements relating to this information,
- Modalities for recovery of tax and
- Other special provisions.

Kenya lacks similar treaties since it has, as is common with developing countries, focused on Double Tax Treaties (DTA's) which have no provision of mutual administrative assistance. Kenya's DTA have been modeled largely along the UN Model Tax Convention which does not contain the Article on "Assistance in Tax Collection".

The UN reasoning is that most developing countries lack the capacity to collect their own taxes hence it would be burdensome for them to commit to collect taxes on behalf of another country. However, all our DTAs contain an article on exchange of information that obligates the Contracting Parties to exchange information on tax matters upon request. The DTA are often supplemented with Tax Information Exchange Agreements (TIEAs) or memoranda of understanding on exchange of information including one between the East African Community (EAC) member states.

DTAs and TIEAs provide platform of ensuring compliance through audit. They provide for:

- simultaneous audit where both jurisdictions can agree to audit a taxpayer (who has presence in both jurisdictions) at the same time;

- tax examination abroad where one country may permit tax auditors to carry out audit on a taxpayer domiciled in another Contracting state

- modalities through which the information is to be exchanged, such as the time frames and the manner in which the request is to be put.

However, Kenya has come to appreciate the challenges that go with these agreements. Firstly, for a country to be able to exchange information, it must be able to obtain that information within its jurisdictions. This means that there has to be a framework within the country that enables various agencies within that country to exchange information e.g. exchange of information between the revenue agencies and the law enforcement bodies, financial sector regulators, registrar of companies/persons/societies. Secondly the framework may require both administrative and legislative amendments which may prove difficult to put in place. Such legislation may include addressing the issues of professional-client confidentiality, bank secrecy provisions, disclosure requirement in financial reporting etc. Thirdly, the ability to handle (receiving, retrieving and sending) information requires massive investment in automation. Where this is lacking effective exchange of information would be severely limited. Thus, those jurisdictions who wish to enter into mutual administrative assistance, they should be ready to deploy adequate resources to enable not only to enforce collection of their own revenues, but also the revenue owing to their treaty partners. In less developed economies where such resources are inadequate, mutual administrative assistance would not be a viable option.

Although the use of information exchange clause in our DTA has been limited, useful information have been received from UK and Germany, through this arrangement, which have greatly aided our audits. In addition, recently Kenya initialed TIEA with the jurisdiction of Guernsey and Bermuda. Negotiations are also underway with other low tax jurisdictions- Liechtenstein, Jersey, Cayman Islands, the Isle of Man and Malta.

4.2 Strategic alliances with third parties for obtaining information

As a revenue body KRA is both able to acquire information using statutory powers as well as use relationships with other bodies to do so. In this regard, the authority uses relationships with other partner organizations to acquire information and simplify processes of registration, collection and verification of revenues. Strategic alliances include:

1. With Government agencies including the Registrar of Persons (critical for registration for Personal Identification Numbers (PIN), the Registrar of Companies (for registration of companies as well as information on directorships, ownerships, etc, the Ministry of Lands with which KRA has an agency arrangement to collect land rates: this provides valuable

information on property ownership, with line ministries who through the with holding system provide valuable information on their customers,

2. With state corporations these are mainly with bodies that KRA does business with and thus they have common interests. These include the Kenya Ports Authority with whom we electronically share manifests and other trade related data, with the TRADENET the new state corporation implementing the single window programme, with the Kenya Pipeline Corporation (KPC) and Kenya Petroleum Refineries Limited (KPRL) on oil products as well as several regulatory bodies with whom we have agency relationships (such as the bureau of standards, KEBS) which allow for easy access to information relevant to taxation,

3. With local authorities who hold information on properties of relevance to KRA, especially relating to small businessmen through their single business permit and to property through their rates databases and their utility rolls. This relationship has not to date worked out very well.

A key challenge KRA has faced in utilizing these strategic relationships is the asymmetrical development of ICT systems. With KRA being more advanced than partner agencies in ICT, it has meant that in many cases we have been unable to configure our systems to seamlessly share information and thus KRA has not been able to optimise on these relationships.

As is common with revenue authorities KRA also has powers to access the information held by banks and other financial institutions as a key source of third party information.

Various tax statutes also require taxpayers to provide information through registration requirements and filing. These are shown in table 3 below:

Table 3: Information reporting requirements for various taxes

TAX TYPE	REPORTING ARRANGEMENT	FREQUENCY	REMARKS
Value Added Tax	Registration for over Kshs. 5m (US$60,679 at June 2011 exchange rates		Online registration possible
	Filing	Monthly (all VAT taxpayers,20th of following month)	Online filing possible
Income Tax	PIN registration		Online
	Form IT1 for individuals	Annual	Online facility exists[5]
	Form IT2c for companies, clubs, trusts and IT2P for Partnerships	Annual	Online facility exists
	Instalment	Quarterly (20th of relevant month)	Form issued by banks (pay
Excise Tax	Registration (form E1) which needs annual renewal	Annual	No online registration. Certificate E2 issued when registered
	Filing	Monthly	

Legal sanctions exist for failure to register or file and normally include a penalty and interest. Confidentiality of the information is provided through the normal internet security systems including registration and passwords and the legal framework governing conduct of officers who access the information. KRA Act (Cap 469, 14(a), (b), (c) provides that 'Any person employed by the Authority shall be personally liable for any act or omission done or committed in the performance of his functions under this Act, if having regard to the circumstances of the case such act or omission is the result of dishonesty, negligence or in contravention of any law. These provisions apply to all written laws relating to revenue which place severe restrictions on unauthorised release of information and strictly limits the information the authority can release to be in such as a form as cannot be traced back to an individual company.

Costs of providing the information are borne by the relevant taxpayer.

5 *This return is no longer necessary for individuals who get 100% of their income from salaries and have only 1 job*

Whereas KRA's use of the law to extract information from tax payers and third party agencies is well established, the use of automated systems to support debt collection is less well established, especially extracting information from strategic partner systems. This will pose the main challenge going forward especially as we strive to use IT systems to process third party information.

5. CHALLENGES FACED IN ADMINISTRATIVE COLLECTION AND INITIATIVES TO MITIGATE THESE CHALLENGES

Because KRA is still in the process of transiting from a manual to automated environment and is also restructuring, it still faces considerable problems relating to its debt management that are expected to be resolved as the reform process reaches maturity with the authority becoming fully automated. In this regard KRA is yet to put into place many of the innovations such as SMS alerts and full utilization of the opportunities of IT.

5.1. Challenges facing the customs debt office

The following are the key challenges faced by the CSD in its debt management activities:

- Debt Data Records: There is gross dearth of debt data in the unit records. Database reconstruction is, therefore important to identify, collect, collate, document and computerize the department's debt data in an appropriate format which includes debt inventory, classification and harmonization,

- Dispute Resolution: Debtors' preference to seek redress in court instead of using the Departmental dispute resolution mechanism is costly and time wasting. Taxpayers should be sensitized on the need and benefits of following the Departmental channels.

- High prevalence of doubtful debt portfolio in relation to total value of debts translates to difficulties in debt recovery and therefore poor performance

- The practice of litigation by debtors to stop valid enforcement measures delays and frustrates collection of revenue.

- Disputed debts, most of which are based on frivolous grounds, are a risk to the revenue collection process whose impact affects revenue targets and a strain on the manpower.

- Non compliance by most Commercial banks, who are appointed as enforcement agents, affects the effectiveness of the enforcement process.

5.2 Domestic taxes department (DTD)

With respect to DTD the following are the main challenges:

- Delays in processing of debt including delays in processing waivers, administrative movement of overpayments with delays at cash office, delays in informing the debt unit of new collectible debt among others. In addition, additional assessments are not amended immediately after local committee and in High Court rulings,

- Taxpayer ignorance of mitigating grounds in the waiver application process,

- Delay in developing modules for new tax rates or incentive regimes: for example, newly listed companies (in the stock exchange) were granted lower rates of tax but there has been delays in developing modules to accommodate this in the system. Similar IT system challenges has led to the income tax system not transferring overpayments of corporation tax from one year to another after instructions to do so have been received.

It should be noted that whereas KRA's system challenges will be tackled through automation following appropriate process mapping, the challenges already experienced in operational IT systems makes it clear automation by itself will not be a final solution, but KRA will have to continue trouble shooting, system development and modification even after the ITMS is fully deployed.

5.3 On-going and planned interventions to tackle these problems

Planned interventions to improve KRA's debt management can be divided into departmental specific, related to enhancing the role of ICT in debt management and those cross cutting reform interventions that will not be specific to any department. The latter interventions are contained in the KRA Enforcement Strategy. This section focuses on the ICT and enforcement strategy measures as opposed to the administrative efforts to be made within the departments.

5.3.1 KRA enforcement strategy: debt management interventions

KRA intends to establish a Central Debt Management Unit staffed by specialized officers including lawyers, accountants, statisticians and auctioneers to deal with cases of debt recoveries in cases of hardcore debtors from all revenue departments[6]. The unit will be responsible for monitoring and analyzing the Authority's debt portfolio on an ongoing basis, engaging debtors and taking necessary steps to ensure hardcore debt is collected through available legal

6 *KRA enforcement strategy*

channels. The Authority is also intending to create a data bank of all debtors and the nature of debts for purposes of preparing an effective approach for each category that will ensure recovery that will ensure recovery of debt at minimum cost.[7]

5.3.2. Using ICT to improve debt management

As indicated above, the use of ICT to improve debt management is still in its infancy. Going forward, the Authority expects to use technology and automation of processes will to release it from the tremendous administrative burden it must currently endure as a result of the way in which the information processing and control tasks are carried out. Once the administration has the complete information in electronic format, it is possible to systematically undertake the control tasks by means of automatic and system-assisted monitoring of compliance, automated processes for control of non-filers, nil filers, late payments, refunds, examination and auditing, arrears collection, legal tax procedures, and automatic analysis and selection of cases. As the ITMS is implemented, it is envisioned that the Debt and Enforcement (D&E) module will be utilized by the administrations for collecting obligations in arrears, up to their total pay-off, including enforced procedures, which also covers review of taxpayer account, issuance of demand notices, evaluation of taxpayer information, sending of reminder notices, review of debts and application of enforcement measures.

The specific interventions envisioned include the following:

- ITMS through the use of the Taxpayer Account will perform automatic controls for detecting cases of Defaulters. All debt cases selected by automatic processes will be subjected to an automatic analysis to confirm the actual existence of the debt and its availability for collection and allow automatic issuance of automatic demand notices,

- The module will also automate case selection allowing debt to be segregated on the basis of age, region, sector and even KTA station as well as facilitate the assignment of selected cases to Stations or directly to Officers,

- For handling Request for Waivers and Request for Write-Offs, ITMS will allow the distribution of cases to the officials who will undertake the corresponding analyses and verifications. If the case is finally approved, ITMS will set up an option to register in the Taxpayer Account a credit adjustment for the corresponding amount, to be effective on a specific date, with which the Taxpayer Account will be reprocessed for updating the Taxpayer's definitive balance,

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7 *KRA enforcement strategy*

- Bankruptcy cases will be registered in the system as soon as there is news of the event and will be distributed to the officials that will analyze the situation and become part of the process until its conclusion. The amounts recovered will be registered in the system when they are actually paid and the amounts definitely not recovered will be registered in the system as a credit for the corresponding amount, to become effective on a specific date, with which the Taxpayer Account will be reprocessed for updating the Taxpayer's definitive balance.

As envisioned, the implementation of ITMS which is on-going will substantially reduce the workload currently being experienced by officers and enable KRA to systematically follow through on debt management initiatives, both friendly collection and enforced.

However, the caveats on over dependence on the IT systems alone should still be noted.

6. RECOMMENDATIONS

From KRA's experiences there are certain recommendations that may assist revenue departments in similar positions who want to strengthen their debt management processes:

1. IT will continue to be a prime mover of how revenue bodies administratively manage tax and debt. However, it is important not to treat automation as panacea- KRA officers have experienced problems in debt management due to IT failures. It is important to ensure that the processes are reviewed and modernised before they are automated and also take a realistic view with respect to capacity to utilise the IT capacity already existing. IT is also imperative for developing countries to pay for their mission critical IT- dependence on donors means decisions on the type of IT adopted and the speed of implementing key modules is no longer with the country,

2. International information exchange is critical in this day and age. However there is need to consider the country's capacity, both legal and administrative, to handle and process the requisite information and in particular the massive investment in IT that may be needed. In addition, requisite treaties take long to negotiate, especially when the negotiation is between a developing country and a developed on or a tax haven. Kenya has found that use of TIEA's may provide a credible alternative to a full blown mutual assistance agreement or double taxation agreement,

3. With respect to strategic alliances, the revenue bodies should, if possible, ensure that their partners are modernizing and automating in a synchronised

manner. KRA has found its modernization programmes delayed by the inability of partner agencies to keep pace with KRA.

7. CONCLUSIONS

This paper has reviewed KRA debt management practices taking into account the level of debt, the institutional management, partnerships and the proposed reforms to improve debt management. As is the case with many developing country revenue Authorities, KRA is rapidly modernizing its processes and automating. However, the need to work within a less automated environment undermines the ability of the Authority to fully exploit its IT potential. Friendly persuasion has also not proved to be a credible way to manage tax debt as shown by the prevailing high debt to revenue ratio.

International alliances while useful have been constrained by the need to enhance the Authority's capacity to provide information on a reciprocal basis and process the large volumes of information that will arise. KRA will continue to use institutional restructuring and prudent adoption of IT processes to improve its capacity to reduce debt in a credible manner.

Case Study

Topic 2.2

PAYMENT FACILITIES OR AGREEMENTS: TIMELINESS, CONDITIONS AND APPLICATION

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1. TO FACILITATE THE TAXPAYERS VOLUNTARY COMPLIANCE: A STRATEGIC OBJECTIVE OF THE DGI

Part of the Central Administration under the Ministry of Economy and Finance (MEF), the Directorate General of Taxation is the Executive Unit responsible for collecting taxes from the country's internal revenues and for the effective application of their rules.

The DGI is the largest collection agency of Uruguay and is responsible for more than 87% of the resources needed to finance the national budget. Because of its fundamental strategic importance to contribute to Uruguayans national

development and welfare and, in order to effectively and efficiently manage the new tax system introduced in 2007, since 2005 the national government has given priority to its modernization.

DGI's mission is to ensure the collection of State resources from the internal tax system through the effective application of the rules that sustain it, promote voluntary compliance required from the taxpayers within a framework of respect for their rights, with integrity, efficiency and professionalism to provide a good service to society.

For the purposes of full compliance, among its strategic objectives, the DGI prioritizes facilitating voluntary compliance by taxpayers. This objective is one of the two main lines of action of every tax administration, since more than 97% of the DGI collection comes from the taxpayers' voluntary compliance. To encourage this attitude of the taxpayers, information services and assistance are made available to enable them to fully meet their obligations and comply with them at the lowest cost possible. Procedures are also simplified; while a greater number of service channels are offered, exploiting the possibilities offered by ICTs.

2. APPROACH TO THE FOUNDATIONS OF VOLUNTARY COMPLIANCE

The tax liability is a legal relationship "ex lege", which arises between the State or other public entities and taxpayers, in which the taxpayer verifies the event abstractly described in the Law. To imagine a tax system composed of taxes of which, in most cases, the tax authorities would have to determine and collect the due amounts in function of generating facts produced by the taxpayers, highlights the complexity and breadth that this situation would imply for the development of the Administration functions and, consequently, the difficulty of achieving effective implementation of such a system.

Most of the taxes collected by the DGI are paid based on returns filed by taxpayers.

When the taxpayer is who pays off the tax through the filing of returns, we are in presence of what is called a self-assessment.

In other words, is the taxpayer´s obligation to use the correct interpretation of the tax legislation and its application to the legal fact liable to taxation, in order to determine the correct tax amount.

In the context of the Tax Administration, the voluntary acts of the liable persons are associated with the words "compliance of taxpayers" as a way to point out the administration tendency to achieve the tax collection purpose. This condition requires a model that includes the voluntary conception of taxpayers which

enables their participation in an institutional framework that takes into account their values and interests to motivate them for such compliance.

When tax obligations voluntary compliance is discussed, along with the taxpayers' attitudes towards their tax obligations, it is necessary to consider the existence of certain positive externalities that favor taxpayers in the effective implementation of the tax system.

In this sense, compliance is enhanced in a given fiscal climate. Maintaining a fiscal climate conducive to voluntary compliance is a dynamic and permanent work. The perception of taxpayers is not only modeled by the actions of the Tax Administration, but feeds on various political and economic climate factors of each country. This leads to a complex balance (Fiscal climate) based on standards both psychological, social and economic, that should warn the designer of tax policies on how, when and where to exert influence on that complex sociological component, which also - through globalization - is traversed by the political and economic trends of the world.

In short, although voluntary compliance with tax obligations by all taxpayers can be qualified as "utopian" to the extent that it would be unanimous law compliance, circumstances that are not fulfilled even in most advanced societies, promoting this total compliance is an overall objective which a Tax Administration should strive for.

3. PAYMENT FACILITIES AS "FRIENDLY" COLLECTION PROCEDURES

The collection is one of the main functions of any Tax Administration, perhaps its most important function.

In this way, once the payment of the tax debt by the tax liable person verified, the participation of the Administration in the collection procedure is completed.

In this regard, and for the purposes of fulfilling this main function, the tax administration seeks in all cases and in the first instance, a timely and voluntary compliance with tax obligations by the liable person.

Otherwise, once a non-compliance is verified, the Administration assumes the responsibility to take necessary measures in order to obtain payment of the tax debt by the tax debtor. To this end, it launches the different mechanisms provided by the law to achieve its aims. These procedures will vary according to the time, in the first instance we talk of "friendly collection" or at a later stage, and less desirable, it is called "compulsive or enforced collection."

Among the procedures or mechanisms provided in order to obtain the cancellation of outstanding tax obligations, facilities or arrangements appear as a convenient alternative to both liable to the obligation, especially because

it can be very economic and effective. It allows, among others, to avoid the expenses that each party would run in the pursuit of the collection through the courts, which additionally does not lead necessarily to the satisfaction of the claim by the Administration.

So the payment facilities are a convenient alternative for those taxpayers who, as a result of reassessments or inspection activities carried out, are credited with payment arrangement and intend to voluntarily proceed with their payment. These contributors probably find in the delay and the installments conceded, as well as in the removal of sanctions, the most viable alternative to settle the respective debts as long as it does not imply an outlay of such magnitude that it prevent him from fulfilling its current obligations of payment.

Thus, the facilities or payment arrangements allow the non-compliant taxpayer to demonstrate his willingness to pay when as a result of a tax control or a re-liquidation, a debt has been determined, and, they may cancel their tax debts within a time frame mutually agreed with the administration. They will find in the time allowed and the payments installments a viable alternative to complete their obligations.

This way the two obligations are met: For the debtors, to reduce their debt and for the Administration, to collect them.

The tax authority collects a credit that would hardly would have collected if had not given the time frame, and the taxpayer gets for his part, a longer period to cancel an obligation and eventually its removal. Both sides are benefit.

In this regard, as will be discussed later in this document, the legal rules governing the matter in Uruguay, and establishing the conditions indicated, provide not only the benefit of installments to the non-compliance taxpayer but also in some and particular cases, provide important rebates from the amount owed.

Usually in these regimes of agreements and payment facilities are displayed various legal phenomena, such as the cancellation or removal of debts and the phenomenon of extension of the payment facility itself. These patterns can appear together, but usually have significant conceptual differences.

The cancellation[1], also called write-off, remission, renunciation and abdication of the debt is legally recognized as one of the ways to extinguish the tax liability.

1 *1Art. 37 Tax Code of Uruguay (Remission).-"the tax payment obligation can only be condoned by law." Interest and penalties may be reduced or cancelled by administrative decision on the terms and conditions established by law."*

This way the State, by an unilateral Act, decides to forgive all or part of the tax liability (Including therein the principal debt repayment and / or interest and penalties that would have been accrued).

The remittal can be challenged from the point of view of right to equality, taking into account that the various fundamental rules recognize the need to give equal treatment to citizens in the area of taxation and in any case, exceptions that follow established reasonable causes, as could be, the use of amnesty an investigation means to determine compliance levels and improve control mechanisms available to the Tax Administration.

The credit facilities allow the debtor who failed to satisfy the obligation in the appropriate time and place to segment it or pay it in installments, increased by the financial penalties that may be brought for the non-compliance.

These measures, which lead to the extinction of the tax obligation, can be given in combination so that some debt can be forgiven (e.g. surcharges) and also some conditions can be altered (e.g. time limit).

4. THE IMPACT OF A GLOBAL ECONOMY IN TIMES OF WORLD FINANCIAL CRISIS EFFECTIVE MECHANISMS FOR DEBT RECOVERY

The last three decades have witnessed an unprecedented liberalization and globalization of national economies, and forecasts indicate that, at least in the next three decades, this process will continue to intensify.

The majority of countries have removed or limited controls on foreign investment and relaxed or eliminated foreign exchange controls.

We live therefore in a situation of open economy in which economic borders between the States have practically disappeared.

During the period between 2003 and 2008, Latin America registered an unprecedented sustained growth product, in average levels ranging between 4% and 6% of the GDP, which represented an exceptional situation in the past 40 years.

The international financial crisis which erupted, to quickly mutate into a global economic crisis, significantly impacted the region, transmitted by all channels through which Latin American economies relate with the rest of the world, including trade, capital flows, remittances and foreign direct investment. This led to various negative impacts on the economies of these countries, simultaneously in several aspects, among them a decrease in tax collection.

We are now, in what some experts have come to call a recession into the depression. The consensus of the various multilateral and private analysis indicate that the situation in large parts of the planet is heading back to the stagnation or possibly into a new recession, where the confluence of several types of problems at once: an abundance of investment reductions and cuts in public spending driven by austerity policies and fiscal consolidation, which accentuates the slow evolution of the economic situation, massive public and private debt, difficulties in some countries to repay their debt, and therefore with lower margins than in 2008 to turn over stimulus policies, macroeconomic imbalance, lack of liquidity and strong needs for recapitalization of banks, multiplied by the earlier debt crisis.

In this context, fiscal policy has to play a relevant role in order to avoid a downfall in revenues is a challenge for governments, in order to maintain sustainable spending, allowing the continuity of social policies, and the funding of anti-cyclical policies.

The General Tax Directorate, as a manager and enforcer of tax policy must effectively, in order to sustain and even increase its levels of efficiency and effectiveness, attempt to increase the tax base through increased coverage and a more efficient control compliance with tax obligations, considering the specific conditions that may impact the crisis in Uruguay (informality and tax evasion). The need to implement new procedures for the collection of debts must be weighed, suggesting opportunely to the “policy maker” legal alternatives that contain mechanisms to facilitate payment, which respond to the economic conditions of taxpayers (without significantly compromising their payment ability and their permanence in commercial or industrial activity), and made effective, provide the necessary human and material resources for their implementation.

One example is the recent Law 18.788 of July 19, 2011, article 1, which empowers the Executive to extend the time horizon for implementing the system facility defined in Articles 11 et seq of the Law N º 17.555 of 18 September 2002 (to be discussed in greater detail herein).

This regime of facilities applied for overdue tax obligations, which payment deadline was earlier than August 6, 2002. This exceptional solution was motivated in the deep crisis that affected our economy at the beginning of this decade.

While the crisis affecting the region and our country in particular, began to fade away in the year 2003, its financial consequences extended at least until 2006, so it was considered appropriate to extend the deadline for implementing the system facilities in a manner that includes tax obligations incurred until December 31, 2006, with the primary objective that taxpayers who had been excluded from the formal economy due to this deep crisis, can resume catching up with their obligations.

5. PAYMENT FACILITIES OR ARRANGEMENTS IN THE URUGUAYAN LEGAL SYSTEM

In the Uruguayan tax law, granting a delay in complying with tax obligations appears not only as a payment option for the defaulting debtor, i.e., one that did not satisfy the debt in the right place and time, but also as an option for those taxpayers who make a request for differed payment, prior to the verification of the payment deadline, in which case the interests of the financing will be added to the original amount.

Thus, the subscription to a payment facility in the Uruguayan legal system may involve the granting of a delay in tax payments which default can be verified or suppose the granting of a delay in the payment of tax obligations close to maturity, always with the indicated difference in the nature and amount of the sums to add to the original debt.

It should be noted that in all cases the delays conceded are expected to have a legal backing. This legal backing must establish the requirements for those seeking access to it, it must also define the conditions necessary for its implementation.

In the following pages are presented different types of delays implemented in the Uruguayan tax system, their particularities, as well as the benefits set forth in each case.

6. CURRENT REGIMES

Regulatory aspects. Legal and regulatory basis

In the Uruguayan Legal System, a number of options are offered to those taxpayers who, having committed a non-compliance of their tax obligations, express voluntary to pay and decide to pay later. This, plus the always necessary income of funds in the National Treasury led to the existence of different regimes that currently apply simultaneously.

First, we find the so-called “General Regime” under the Tax Code[2]. This type of agreement is not only the oldest in force, but the wider, as it supports to include any tax debt default, which means that the majority of delinquent taxpayers are eligible for it.

2 *Art. 32 Uruguay Tax Code, “The extensions and other facilities may be granted only when in the opinion of collector body there are causes that prevent the normal discharge of the obligation, the same shall not exceed thirty-six months.”*

Other forms of waiting periods, however, set certain limits on the debts to be included, as well as to who may rely on their rules.

Second, the so-called “Regime of law agreements” (“Convenios-Ley”), provided by law 17.555 denominated “Economic Recovery Law” gives the executive the power to grant special regimes of facilities[3] Please note that the approval of that rule was motivated by the deep crisis that affected our economy in the early 2000s, when the resulting economic situation prevented a large number of taxpayers from complying normally with their tax obligations.

This new facility regime sought to protect these taxpayers, allowing them to regularize their tax situation, granting important options to reduce or remove fines and fees generated by the unpaid taxes in the period to be determined.

The origin conceived for a limited period of time, at first could apply only those whose debts had been generated to August 2002 and presented until a certain date of the same year. Years later, the provision was extended to later debt, its application being currently applied to debts incurred until 2006 and the regulation is still in process.

Finally, the so-called Regime of Agreements (Regimen de Acuerdos) under the provisions of Law 17,930 authorized the General Tax Directorate to grant facilities - called “Tax Agreements - in cases of taxpayers who are liable to tax audit. It also applies to those who have voluntarily acknowledged their debt. In this way the taxpayer receives the opportunity to meet the tax obligations that were not paid in a timely and spontaneous form and that had to be determined under an inspection without initiating a legal action for the collection of debts.

In this regime, the legislation provides for double content agreement, on one hand, as to the amount owed and on the other, as to the payment thereof (by splitting in installments, or cash payments).

The advantages of the three types of facilities are clearly verifiable: the taxpayer pays his debts with large write-offs, as appropriate, avoiding all the costs and damages involving court proceedings. The Administration, meanwhile - in compliance with the principles of economy and efficiency - diminishes the cost generated by the enforced recovery of the debts and obtains an income which recovery was compromised.

3 *Art. 11 of Law 17.555 · Executive Power is entitled to give to the persons liable to the tax collected by the General Tax Directorate, a special facility for overdue tax obligations whose payment period is less than 6, August 2006, under the conditions set forth in the following articles “*

7. LIABLE PERSONS COVERED – DEBTORS INCLUDED

General regime agreements

The law does not distinguish which liable person may rely on the system of agreements under the Tax Code. There are no limits: all taxable persons may benefit from this regime. Even third parties may sign payment facilities agreements, in which case they are not required to comply with the formal obligations required from the taxpayer.

As for the debts covered, the Code does not distinguish either, therefore, all tax debtors are included.

Debts to settle may have originated both in the voluntary submission of the taxpayer, as in the settlement to come from actions taken by the Administration and even those managed in enforced collection processes.

The Tax Code also provides for the possibility to request an agreement to avoid falling into non-compliance, when the taxpayer is assumed to not be able to meet the payment of current obligations, on time, as noted above.

In this case, only interests are taken into account, there are no sanctions for default, since default hasn't occurred.

Finally, it should be noted that the existing law empowers the Executive to grant payment facilities in U.S. dollars.

Agreements established by law

In the case of the regime governed by the law 17.555 both existing legislation and regulations provide that all liable persons can benefit (both taxpayers and tax representatives). However, in the beginning, as its raison d'être had been motivated to protect companies from the economic crisis, it was forbidden to company holders to benefit from the regime to pay their debts in their quality of representatives or partners.

Bearing in mind the context in which the aforementioned law was passed, and the aim pursued by the regime of facilities resulting therefrom was - as we said- to allow taxpayers subsistence in time of economic difficulties caused by the crisis, debt allowed to be included in these facilities were temporally restricted.

In this sense, could be incorporated into this regime, the tax debts which term had expired before August 6, 2002 and debts for fines and surcharges, except fine for infringement of fraud, can not qualify for the regime those who maintain debts regime for this infraction. An essential requirement is that taxpayers are required to be current in meeting their obligations.

Recently the Law 18.788 was enacted, which extended this regime to debts generated on 31 December of the year 2006.

Regime of tax agreements

Finally, we have tax agreements, which are those relating to the debts of taxpayers who are under inspection by the tax administration. Also, as it was mentioned before, it applies to those who have voluntarily acknowledged their debt.

In this regime, first limitation about which liable persons are covered appears since "withholding agents" are expressly excluded from the possibility of being covered by the tax agreement. This limitation is consistent with the negative view that the national legislature has displayed for these figures and made impossible to grant a regime that provide them benefit.

As for the tax liabilities affected by this regime of agreements, are: a) If the tax determination was on base of presumption and the taxpayer recognizes expressly the settlement, the agreement includes both the tax, the penalties and surcharges; b) If the determination was made on a true basis, the agreement covers the fines and penalties, also requiring the express for the taxpayer consent of the settlement made.

The penalties for committing the offense of fraud are expressly excluded from the obligations contained in this regime. Neither are included the tax obligations covered by other regimes or facilities agreed upon prior to a certain date.

8. BENEFITS

On the issue of waivers and interests applicable to each scheme, this is where the differences between each of them are easily verified.

Agreements from the so-called general system regulated by the Tax Code: do not include the possibility that the Administration grant removals of fines and surcharges.

In relation to the rate of interest applied to these agreements, it results from applying the provisions of the same regulatory body[4], with the interest set by the Executive on an annual basis, which must be less than the rate for surcharges.

The other regimes do provide for the elimination of fines and penalties.

Regime of the so-called agreements by law In this case, the law empowers the executive branch to provide for a total or partial debt remission regarding fines, fines and late fees, which may not exceed the difference between the amount

4 *Art. 33 of the Tax Code, "If the application is filed before the deadline for payment For the payment, the amounts for which facilities or extension of facilities are granted bear only the annual interest rate fixed by the Executive and which will be less than surcharges.*

of penalties calculated according to the general regime and the ones resulting from applying taxes due to the Consumer Price Index between the month of maturity of the obligation and the one of the subscription of the corresponding agreement[5].

The regulating decree, complementing the above mentioned, provides that the referred remission will be the total of fines and late fee payments.

For financial interests, this regime presents specificity in regard to the other two being studied, in the sense that its generation is excluded, and debt becomes indexed units.

Debt is limited to liability by taxes and is expected to be set in indexed units.6

Regime of tax agreements: Also provides for remissions in debt financing through these instruments.

In this sense, the legislation provides that the General Tax Directorate may make a reduction of charges included in these agreements once the taxpayer: a) pay the total debt within forty-eight hours after the signing of the instrument, or b) constitute a bank guarantee or surety bond in an amount equal to the balance of the agreement. The regime also provides for the possibility of payment in installments.

Respect of interests, the same rate applies as in the case of the agreements of the Tax Code, which will be determined by the Executive on an annual basis and must be less than that for late fee payments. The quoted rate will be cleared from the implied inflationary component that recognizes the evolution of the Indexed Unit and will be capitalized on a quarterly base.

The executive branch is empowered to establish, within the limits referred to in the preceding paragraph, differential referral rates for different groups of taxpayers, considering their tax behaviors and the annual amount of their income"

[6]The Law 17.761 of May 12, 2004 mandated the creation of the Indexed Unit (IU) whose value is determined by the National Statistics Institute based on the Consumer Price Index in Uruguay. Its value is 2, 2794 on 1/10/2011 (Uruguayan peso two with two thousand seven hundred ninety-four ten thousandths)

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5 *Art. 13, law 17.555"In this case, the law empowers the executive branch to provide for the total or partial debt remission from the past due of the principal B) This remission may not exceed the difference between the amount of penalties calculated according to the general regime and the amount resulting from applying to the past due taxes the consumer Price Index between the month of maturity of the obligation and the one of the subscription of the corresponding agreement.*

9. EFFECT OF THE FACILITIES

Among the most important consequences of the signing of facilities is that they prevent the initiation of court procedures, in case they have not started yet, because it means that the Administration has granted a delay, splitting the payment of debt.

Similarly, the actions that would have been initiated will be suspended due to the signature to the extent that the facilities include debtors covered by the prosecution.

10. REQUIREMENTS TO BENEFIT FROM THE REGIMES OF FACILITIES

The regulation requires compliance with certain requirements prior to the signing of the agreement, which apply to all forms of facilities or arrangements provided in the regulations.

Notwithstanding the foregoing, and prior to make the relationship of the indicated requirements, corresponds to make a brief precision as to the general regimen.

In this regard, and as noted, the general regimen does not require any particular requirement its subscription. However, the normative states that facilities may be granted “when in the opinion of the collection agency there are reasons that prevent the normal fulfillment of an obligation”, what could be inferred that the rule requires the taxpayer to prove the causes that prevented him from fulfilling his obligations. Notwithstanding the foregoing, the doctrine has held that it is not necessary that the taxpayer proves the unpredictability of the impediment, resulting for that reason a discretionary power of the Tax Administration verifying such situations.

However, in order to avoid the application of conventions used by taxpayers as a way of delaying other proceedings (e.g. trial), the regulation requires compliance with certain requirements prior to signing the agreement which, as noted, are applicable to all three regimens studied.

In this regard, those who have made payments with returned checks due to insufficient funds in the last twelve months preceding the request for the payment arrangement will not be entitled to any facility. It is expected that in this case, the taxpayer rectifying the situation within a specific and short term could receive the benefit of the facilities.

Nor any facility will be granted to the applicant that has suspended or disabled the Annual Certificate of Good Standing, or has breached some or all of their due tax obligations, unless the suspension, disqualification or failure to refer to the obligations intended to be covered in the facility.

Another requirement is that whoever is present should have updated his/her registration data to the National Register Tax, especially owners and representatives, who should present the updated documentation.

Finally, it requires that those aiming to qualify for any of these regimes have completed on time and with the guarantees required by the Administration (bond, mortgage or other medium provides regulations to ensure compliance with the agreements). In respect to those liable persons who are under inspection, should have their application for facilities authorized by the Audit or Large Taxpayers Division.

11. METHOD OF PAYMENT (Initial delivery - installments)

In different regimes of facilities, the Tax Administration requires that, for purposes of granting them, initial deliveries are made prior to the subscription. In this respect, the Regulation of Conventions[7] states that the initial delivery should be equivalent to 20% of the amount owed in taxes. In the event that sanctions only include late fee payments, it states that the first installment must expire the next day after signing the agreement, and its amount should be equivalent to 20% of all concepts included in the correspondent facilities.

Notwithstanding the above, the rules state that a lower initial delivery may be authorized, equivalent to 10% of the taxes or penalties and late payment fees as applicable. Also, initial delivery may be allowed with a funding up to a maximum of 6 installments, with delivery of deferred checks, which payments bear financing interests.

In this sense, the General Direction may authorize initial deliveries of agreements that represent less than 10% of the taxes or penalties and late payment fees included in the facilities, as appropriate.

In other words, once completed the initial delivery referred to above, in proportion that the Administration has authorized and assuming that the other requirements were met, the subscription of the facilities will take place. On the other hand, different regimes enable the existence of a maximum number quota of financeable debt.

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7 *Striving to enhance the efficiency and effectiveness of the Administration regarding the process and procedures of the agreements, and considering the need to advance in the decentralization of agreements to the divisions that manage to individual taxpayers, the General Tax Directorate issued Resolution No. 1165/2011, of July 26, 2011 containing the Regulation of Agreements.*

On this point, there is the same limit on the maximum number of shares allowed under the scheme of the Tax Code and the law for the settlement of which is set up to thirty-six fees.[8]

However, in case of tax agreement regime, it is stipulated that they can be financed up to a maximum of sixty months.

Art. 14 of Law 17.555, " The amount of tax debt and that of the fines and surcharges are not subject to remission, and in accordance with the provisions of the preceding article, will be converted to index-linked (UI) to the date of signing the agreement and paid on these units up to **thirty-six months** without generating in this case the interests referred to in the first paragraph of Article 33 of the Tax Code"

The agreed upon fees may not be set lower than one thousand indexed units. However, this becomes relative to the Conventions of the Tax Code and regulated in agreements in which, with proper authorization can be agreed on less than 1,000 shares of index-linked.

As for the conformation of installments, it should be noted that they are integrated with the portion of interest and repayment of debt (including taxes and sanctions) according to the application of a linear interest rate from the date of signature and for all the agreed time.

12. COMPETENCE FOR THE SUBSCRIPTION OF FACILITIES

Currently the Uruguayan Tax Administration is working on decentralization in the authorization and execution of payment agreements, both with respect to those for the general regime as well as the agreements according to the law. Not so, in respect to tax agreements, since by express legal provision they can only be signed by the Directorate General.

Historically, the approval and signing of agreements is the competence of the Collection Division. This was extended to taxpayers across the whole country.

Currently, a first decentralization process has taken place, in terms of place of location of the UAG (Administrative Unit Management), so in short, everything that is not part of the UAG for Montevideo (capital of Uruguay) corresponds to the Interior Division, who has the administration of the remaining UAG.

8 *Art. 32 Uruguay Tax Code, "The extensions and other facilities may be granted only when in the opinion of collector body there are causes that prevent the normal discharge of the obligation, the same shall not exceed." Thirty-six months"*

In this regard, some responsibilities for the approval and signing of agreements are transferred in this decentralization process from the Division Revenue to the divisions that manage the taxpayers in question.

The following competences are granted:

Interior Division:

- approve and sign agreements payment facilities for taxpayers who belong to the UAG inside the country and whose amount of taxes and penalties do not exceed the equivalent of 500,000 IU, except taxpayers administered by the Division Large Taxpayers and agreements arising from actions of the Control Division.

The Control Division:

- Authorize requests for facilities initiated payment on account of their actions and until the issuing of the act of determination.

In all cases, when the total amount of the debt exceeds 4,000,000 IU, the agreement must be approved by the Directorate General.

13. QUANTITY OF SIMULTANEOUS AGREEMENTS

The coexistence of up to two facilities, whatever their origin, and up to three if at least one of them has arisen from an inspection activity. The Director General may allow the coexistence of more facilities.

14. REGIME OF GUARANTEES

The theme focuses on the requirement of the so-called specific guarantees for the purpose of strengthening the debt recovery chances which are the purpose of the facility. From the classic classification between real and personal guarantees, the Uruguayan Tax Administration has traditionally opted for the requirement of real guarantees.

These must be understood as the involvement of a thing (object), as a guarantee that binds it to the creditor. In our legal system, security interest types are the “prenda” (collateral pledge) and the mortgage.

In a “personal guarantee” (surety bond) is created a new obligation by which the creditor increases his possibilities for credit through a second subject required to respond if the debtor does not.

First, it should be noted that, normatively, it is not necessary to require a warranty as a condition to concede a regime of payment facilities.

For the general regime agreements there is no legal disposition that subordinates the granting of credit facilities, such as to the provision of security, as stated.

In the so-called law Agreements, a regime of guarantee is possible, as a faculty of the Tax Administration and if there is a risk as to recover the tax credit. In this case, if there are guarantees already established they remain in force up to the amount of concurrent sums for which they have been granted.

This provision aims to safeguard the administration from a possible breach of compliance to make possible that guarantees are kept for the amount originally owed.

It is also expected that when precautionary or executive measures have been taken through the courts, to be claimed on debts that have been placed under the facility, a stay of proceedings can be requested. Notwithstanding this, the Administration is empowered to authorize the lifting of the measures taken when sufficient guarantees are constituted for the payment of taxes, costs and expenses incurred.

In principle, the guarantees are maintained but, if the expenses incurred by the executive action are met, it is possible to close the court proceedings arising from the debt into an agreement that can be properly secured.

In the so-called Tax Agreements a reduction of surcharges is provided if, among others hypothesis, the taxpayer constitutes a bank guarantee or a caution insurance for the total of the debt within the term of 48 hours.

15. EXPIRATION OF CONVENTIONS

There are two types of expiration: expiration by law and expiration by administrative decision

In the national law both are expressly enshrined, according to what will be said:

General regime agreements: Administration is given the power to rescind the facilities granted in situations that are established in a very generic form.

Within the National Tax Code, the issuance of an administrative action to revoke the facilities provided is necessary. The Code does not impose such termination for having missed a number of fees, but the Administration is empowered to revoke the facilities in the cases before expressed, which are:

a. when the installments are not regularly paid and

b. when the taxes collected by the collection office that would have been beared after the signing of the agreement are not paid.

This is an administrative act by which can be appealed, confirmed the taxpayer non-compliance, is the option to rescind the signed agreement, the unpaid balance being subsequently liquidated, once performed the allocation of payments made during the term of the agreement.

Without prejudice to the foregoing, the vast majority of agreements entered under the provisions of the general regime provide for the automatic revocation clause, establishing that non-payment of three consecutive quotas will lead to the revocation of the granted ease, determining that the entire amount owed originally can be receivable.

Agreements-law. The law provides in this kind of agreements signed under the rules so favorable that no consecutive three payments or current liabilities, will determine that the agreement has been voided of right, making receivable the total debt originally owed. In cases that through administrative actions is determined that the debts had to rely to the present regime of facilities exceed the returns submitted by taxpayers, the agreement may considered also expired.

The agreement will be considered expired even for those liable persons who, in a reasoned decision, are notified of fraud, regardless of the time period it had happened.

That is, according to the legal dispositions, the agreements to be signed under this regime may expire and void by reason only of the situation occurred sanctioned by law or expire in cases where the administration makes use of this authority whenever any of the situations happens.

These cases will require, necessarily, the issuance of an administrative act by which the expected grant is repealed. In contrast, in the first case (this is, non-payment of three consecutive installments), may make an act which merely states that expiration occurred or directly execute the disrespected agreement to the extent that legal rules give it the quality of enforcement title.

When agreements granted under this regime expire, either by administrative resolution or by law, the regime is considered voided. In that case, the corresponding fines and penalties under the general regime are applied.

Tax Agreements: In these cases the expiration operates the following day of expiration of the second unpaid installment unpaid, as well as straight and thirty calendar days to maturity of the unpaid final installment, if so it had been agreed.

The regulation specifies the following grounds for revocation to minimize the effects of oppositions based on different interpretations, defining their respective dates: if the last two or the last installment of the agreement signed were left unpaid, when it had been agreed, the date of expiration will occur within thirty calendar days of expiration of the last installment unpaid. This is because the law only refers to the failure of 3 consecutive installments so that when there is less than two, the question is raised whether the expiry of the agreement is automatic or needs to be withdrawn by resolution.

This, far from being a merely theoretical issue has very important practical consequences in the field of determining the balance due and this because of changes in the system of allocation of payments made after an expiring of facilities. This conclusion further reinforces the case of agreements of law, given the important remission of fines and surcharges involved with fulfillment of the agreement.

Thus, should there be automatic expiration; the payments can not be attributed to the agreement since it no longer exists, so a context of revival of the charges generated applies to the tax debt.

If, however, a resolution is needed to operate the expiration, until the act is not rendered and become final, the agreement shall remain in force, so subsequent payments fees will be taken into account, not the expiration.

In practice, since the taxpayer was given the documents for all the installments at the time of signing the facility, it happened that he continued to make payments to the expired agreement, then pretending these to be imputed to payment of installments, which was not correct, causing many drawbacks also in the courts.

16. IMPUTATION OF PAYMENTS

It is first necessary to establish that when it comes to allocation of payments, we are referring to the way the expiration should be calculated, i.e., determining the balance due when the facility expired and not the conformation of the fees or how the debt gradually decreases over the life of the facility.

This being said, it should be noted that for purposes of determining the balance due, after a caducity, the payments made during the term of the agreement shall be allocated first to accrued interest and the balance to taxes and penalties; in proportion they integrate the installment.

The payments made after the expiration follow the general allocation system, i.e. go to the oldest taxes.

17. THE EXECUTIVE ACTIONS AVAILABLE TO THE URUGUAYAN TAX ADMINISTRATION

The enforced collection in the country is completely judicial, with no enforced authorities at administrative level. Another feature to note is that there are no specialized and exclusive courts, which determines that the legal actions undertaken by the DGI come together with regular civil claims of other citizens and public and private institutions.

These circumstances determine the length in time of the actions filed, to which must be added the delay of the administrative procedure itself, to obtain the enforcement instrument through the issuance of the respective resolution, if any. Both administrative and judicial procedures in order provide instances of defense of the taxpayers, which are unavoidable.

From the above we derive the result that until the Administration is in the legal conditions to obtain enforced collection, it takes a more or less extensive time. Therefore, given this reality, it seems clear that there is advantage of obtaining the collection of debts by signing facilities.

In order to clarify the steps by which the Administration must follow to be able to impose coercive collection, there will be a very brief summary of the different instances.

18. ADMINISTRATIVE INSTANCES

Once a tax debt is liquidated, the potentially affected (i.e., the company and representatives and members who are eventually bound to the taxpayer to pay the debt) are given notice of the effects of that, within the rules have, exercise their defense rights and offer proofs designed to prevent the issuance of the administrative act that will allow the coercive measures.

If they do not present their defense, or once exercised the same, analyzed the information provided by the administration and having concluded that no discharge is provided, the issuing of the administrative act (resolution) takes place, which, in turn, must be reported to the interested parties who have a term for challenging the liquidation of taxes practiced through the interposition of administrative resources, and can provide proof of discharges.

The administrative procedure has a period of time, according to the rules, for 200 days from the filing of the resources until the moment the act becomes a firm even if no confirmatory act has been issued. Having settled the opposition, or if debt is not disputed, the administrative act remains strong, enabling the initiation of enforcement action because the law gives it a quality of enforcement title. Against this executive title, of undeniable guarantees for the taxpayer,

Administration disposes of another title that is legally displayed and documents from agreements expired for failure to pay and those which come from taxpayers' returns.

These titles have the power of - if observed - the non-compliance to pay - immediately allow the foreclosure, without notification of payment or notification of any kind.

Their foundation is the knowledge of the signatory for the debts agreed upon in an affidavit included unpaid.

Currently, the Uruguayan Tax Administration has focused on the implementation of procedural changes and mainly in technology, necessary for management of these agreements, both in terms of compliance and expiration.

19. JUDICIAL INSTANCES

Whatever the title, resolution or document issued when a payment agreement expired, a judicial proceeding must be undertaken in which the first step is to lock the lien on the debtor's assets, and later to notify the start of the action, so that the right to defenses can be exerted.

Except in cases of enforceable actions filed in other support (vouchers or checks), general creditors have to obtain in first instance a judgment that recognizes their right and then they can exercise the seizure. This is indicative of the favor that the rules seek to protect the tax credit, through a judicial mechanism that is more agile than in the other cases.

Executive procedure characteristics

Enforced collection procedure is characterized by the limitation of the range of defenses that may be opposed by the defendants. Among other elements and mainly defenses can not be made about substantive aspects, having to do with the own taxes, or statements of responsibility, etc. Besides limiting the opposing defenses that can be labeled with a specific content of the law, outside which they cannot succeed.

The opposition is finalized with a sentence that will rise or not the objections, but allows the appeal by the loser, who can take the case to a higher court.

Finally, after obtaining a ruling by this Court, the road that remains is to initiate a regular demand designed to review what was discussed in the previous trial.

While opposing defenses are discussed, an embargo on assets that have been detected can be ordered, it is not possible to claim the payment by their execution, for which we must await the outcome of oppositions.

If seized property exists, once the act for the Administration is signed, the path of evaluation is initiated, through the appraisal (with the possibility of opposition from the party) with a view to the auction of the property.

Precautionary measures

The tax administration has an important tool for protecting the tax credit, which consists in the possibility of precautionary measures (that result in property, credits or any other seizure) where there is a risk for the collection tax credit and while it is in the process of determination. It tends to forestall the negative effects of the delay in the administrative proceeding and may not be maintained if the delay is attributable to such administration.

Is a judicial proceeding in which, at the request of the Administration, the measures for periods of not less than 6 months nor more than one year, renewable on the conditions established before. In these cases, taxpayers are notified of the drive, and can issue. It should be noted that while the tax credit is cautious not start implementing measures, mindful of the temporariness of both credit and responsibility statements.

Intervention fund

A widely used measure is the cash intervention, this instrument that allows the deduction of a percentage of revenues from operating companies, which is aimed to abate the particular tax debt.

It enables a monthly charge without legal restriction which operates to the case of payment arrangements, in which, unless special provisions can not exceed 36 months, as stated. Like all legal actions, it is subject to opposition, both in its origin, as well as in the time or their percentage.

If requested in the context of the precautionary measures the money earned is deposited to the court order and can only be collected by the DGI after obtaining the enforcement title or the consent of the contributor whose company funds are deducted.

20. JUDICIAL ACTIONS SURGING FROM EXPIRED AGREEMENTS FOR NON-COMPLIANCE

According to what we saw, the Administration has several enforceable procedures. First, and foremost, you have the issuance of resolutions, to comply with certain requirements, which are enforceable. These administrative actions arise from both the control activity as well as result of “massive” efforts to taxpayers.

In the case of debts included in credit facilities, as stated above, enforceable resolutions coexist with expiration resolutions, as well as other titles such as those resulting from documents emanating from the expired payment agreements

The advantage of the latter is precisely that they do not require the issuance of resolution, enabling the executive action with proof of the failure of the facility and the amount owed.

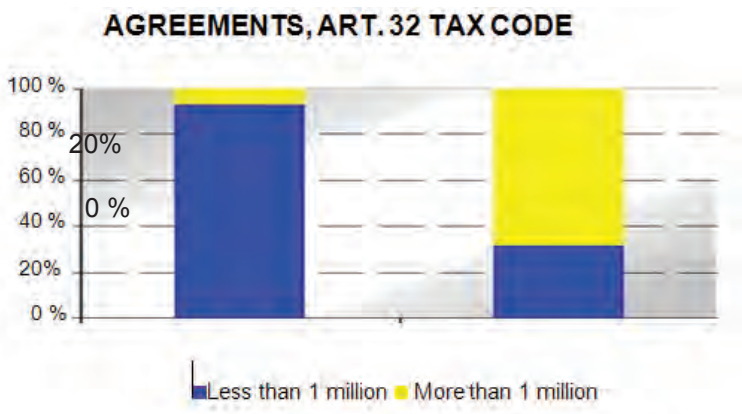
21. CURRENT STATUS OF THE CONVENTIONS

As indicated, and for the reasons mentioned, the general regime set by the Tax Code has proved to be the one to which most taxpayers have referred.

In this regard, and illustrative purposes, can be seen in the table and graphic presented below, during the period from 1 January 2007 and 30 June 2011, a total of 13,301 contracts of this kind have been signed, with 93% of them for amounts below 1 million pesos and the remaining 7% for amounts over that figure. Note that the latter account for 68% of the total agreed amount.

AGREEMENTS ART. 32 TAX CODE

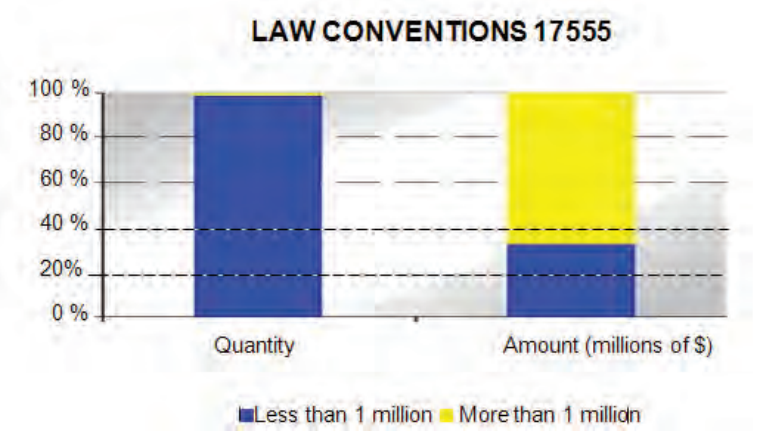
Amount agreed	**Quantity**	**%**	**Amount (mill.$)**	**%**
Less than 1 million	12.423	93 %	1633	32 %
More than 1 million	878	7%	3.501	68 %
TOTAL	13.301	100 %	5134	100 %



For their part, the agreements - Law 17555 subscribed in the same period, are lower in quantity and value compared to the undersigned under the general regime.

LAW CONVENTIONS 17555

Amount agreed	Quantity	%	Amount (mill.$)	%
Less than 1 million	1072	98%	42	33%
More than 1 million	19	2%	87	67 %
TOTAL	1.091	100 %	129	100 %

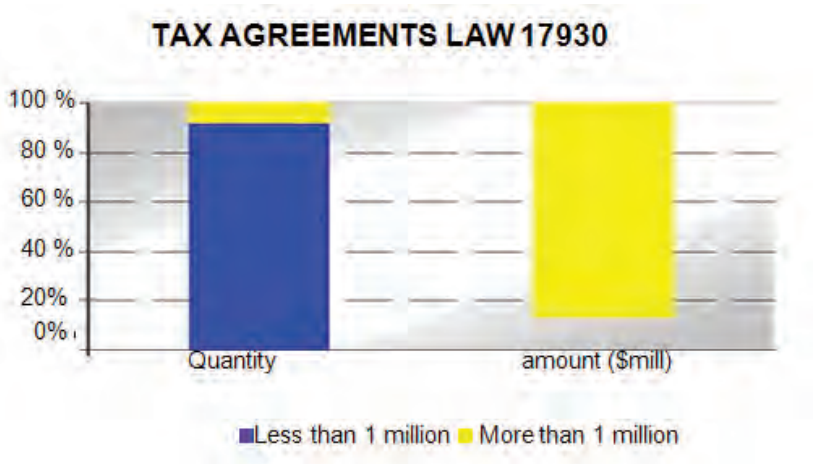


It can be seen, as in the previous case, that a significant concentration of amounts due in the agreements was signed in amounts exceeding one million pesos.

When it comes to tax agreements given by Law 17930, the total number of agreements signed during the period under review amounted to 1,514, with the distribution presented in the table below.

TAX AGREEMENTS ACT 17930

Amount agreed	Quantity	%	Amount (mill.$)	%
Less than 1 million	1.391	92%	156	14%
More than 1 million	123	8%	991	86%
TOTAL	1.514	100 %	1,147	100 %

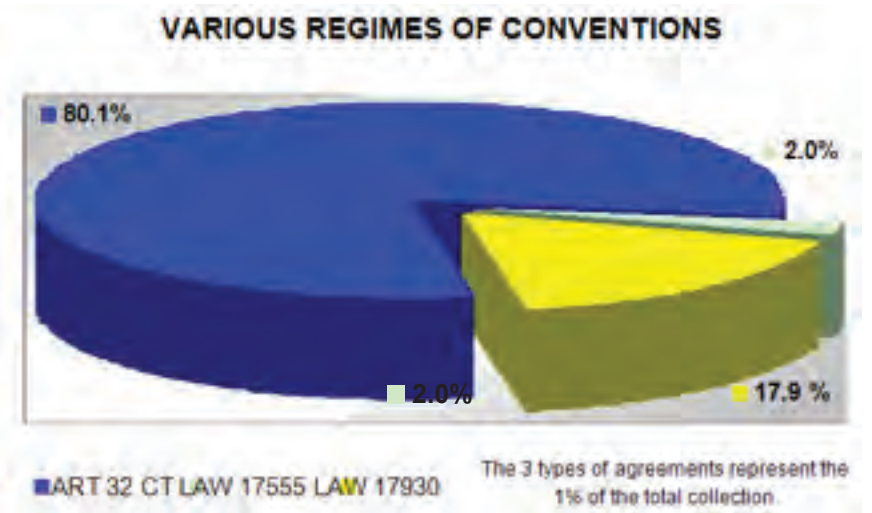


Again, the high level of concentration of the agreements signed for amounts greater than one million pesos can be noted.

The 3 types of regimes represent a very small proportion of total gross revenues for the same period, as shown in the table and graphic presented below.

VARIOUS REGIMES OF AGREEMENTS

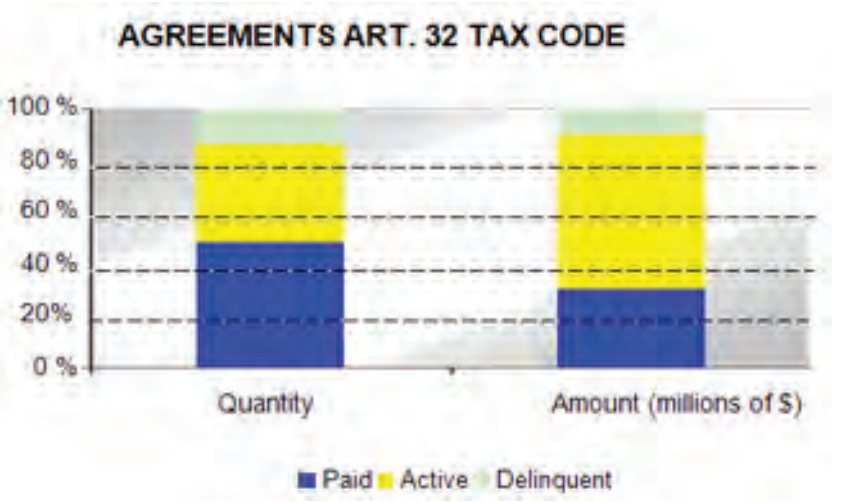
Type Convention	Amount (mill.$)	%	% on the Collection
ART 32 CT	5134	80.1%	0.86 %
LAW 17555	129	2.0%	0.02%
LAW 17930	1,147	17.9 %	0.19 %
TOTAL	6.410	100 %	1%



Below is presented in tables and graphics, the current status of all agreements signed, differing according to whether they have been fully settled, even current or delinquent in collection management, both with respect to the undersigned by the general scheme for 17555 law agreements. It also presents the state of the agreement of the terms of the amounts agreed.

AGREEMENTS ART. 32 TAX CODE

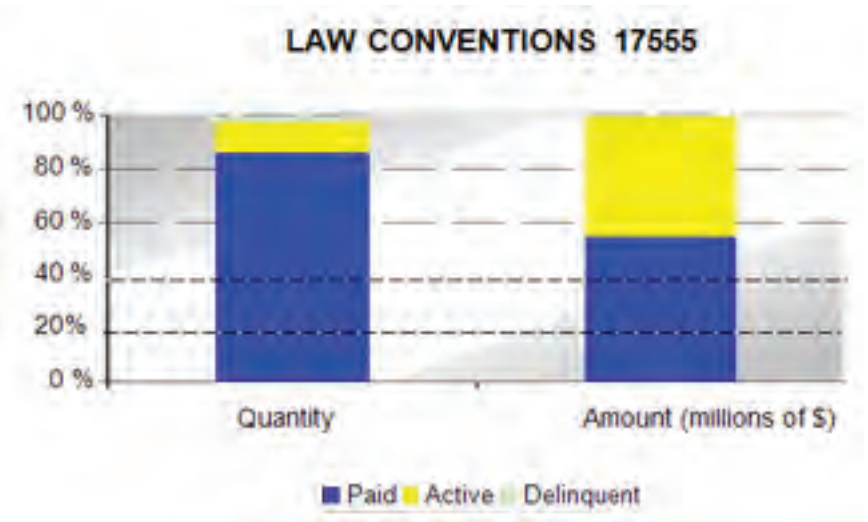
State Convention	Quantity	%	Amount (mill.$)	%
Paid	6.503	49 %	1.588	31%
Active	4998	38 %	3.034	59%
Delinquent	1.800	14%	511	10%
TOTAL	13.301	100 %	5.134	100 %



With respect to agreements signed under the general regime, shows that nearly half of them (6503), are paid to date, 38% are in force, and only 14% are delinquent agreements in recovery proceeds. If this distribution is analyzed considering the total agreed amount, the percentage of delinquency is even lower.

LAW CONVENTIONS 17555

State Convention	Quantity	%	Amount (mill.$)	%
Paid	940	86%	70	54%
Active	120	11%	58	45 %
Delinquent	31	3%	1	1%
TOTAL	1.091	100 %	129	100 %



About conventions Law 17555, 86% are paid, 11% are in force, and the remaining 3% are delinquent agreements in collections procedures. From the standpoint of the amount agreed, the default is barely 1% of the total amounts agreed.

Additionally, on the default, if the 511 million pesos of the general regime are added with the million dollars for conventions Law 17555, this figure represents only 0.1% of total gross revenues for the period analyzed.

From the descriptive analysis performed for the general regime agreement as well as Law 17555, it can be concluded that the benefits provided contributed greatly to the compliance of the taxpayer, since in both cases it appears that the delinquency rate is remarkably low compared to the total agreed values and insignificant compared to total revenues of the DGI.

22. CONCLUSIONS

In logic of capital accumulation based on a globalized and free moving market, the taxes will increasingly constitute a critical resource in the structure of budget and spending of the State. The recognition of the tax as a necessary institution to reduce market externalities, associated with the relocation of the profits and location of risks and losses, is the capacity from the financial resources of economic agents to be reinvested by the State the benefit of society as a whole.

The Tax Administration, in its advisory role in the design of tax policy, as well as the manager and executor of this policy, must become a dynamic player and fiscal climate modifier.

However the quest to make efficient compliance with the basic functions of the tax administration does not just happen by reducing costs, streamlining operations and concentrating efforts on segments of taxpayers greater contribution to the treasury, but also with the promotion of a proactive culture towards the conscious payment of the taxes, social behavior, which, once institutionalized, would greatly reduce the tasks of inspection and collection by the collecting body.

It is in that direction in which is oriented, as we detailed in this document, the Uruguayan tax law by introducing, in the tax system, a structure of regimes of facilities and payment arrangements that seeks to promote the “friendly collection” of the tax obligations.

From an economic viewpoint, facilities or arrangements for payments can be valued according to their positive effects; however we can not disregard the existence of possible negative effects which also can be generated. First, in regard to the positive effects of implementing them, must be taken into account: the increase in revenues, the possibility of identifying cases that do not comply with the tax liability, - such as learning tool to optimize the verification in future cases-, as well as the detection of similar cases that could lead to further settlement by way of omission.

However, tax regimes or agreements facilities can have a downside, such as: the possible deterioration in the level of compliance with tax obligations, resulting from the awareness that there may be future benefits to the defaulting debtors, the generation of costs in the transition - i.e. the need for the Administration to verify cases of taxpayers who are not covered in the event of access to the regime, penalizing them if applicable - and the need to allocate human and material resources to the enforcement of the facilities or agreements and the need to maintain strict surveillance on taxpayers benefit in the event that the maintenance of the franchise is conditioned upon timely compliance with future obligations.

But beyond the discussion in the tax laws, the effectiveness of such incentives for voluntary compliance with tax obligations shall be determined by factors related to the ability of the Tax administration in their implementation and management, as well as the recognition as such by taxpayers.

Case Study

Topic 2.2

PAYMENT FACILITIES OR AGREEMENTS: TIMELINESS, CONDITIONS AND APPLICATION

Cecilia Rico
Deputy Director of Collection and Recovery
Directorate of National Taxes and customs
(Colombia)

Contents: *Summary. Introduction. I. DIAN management by processes. II. Payment facilities procedure within the entity's quality system. III. Actions undertaken by the entity in the past three years to promote management of payment facilities. IV. Some figures regarding the payment facilities management. V. Adjustments that have been considered or made. VI. Recommendations and conclusions.*

SUMMARY

The payment agreement, understood as the debtor's possibility for paying off money owed by way of stamp, income and complementary, sales taxes and withholding at the source, interest and other sanctions that may be applicable, or any other tax administered by the National Directorate of Taxes and Customs of Colombia is one of the important mechanisms for portfolio recovery.

Payment facilities in Colombia operate within a systematic tax administration scheme. Processes are carried out through the integral execution of the procedures comprising them, with the payment facilities procedure being one of the seven (7) procedures that constitute the Portfolio Administration process.

Payment facility is granted through Resolution issued by the competent official. It should indicate: The term requested (in general, up to 5 years) and the periodicity of the payments; acceptance of the guarantee supporting payment of the obligation; total amount of the obligation (total amount of the main obligation plus updated sanctions and interest for delayed payment incurred until the date for paying off the total obligation, as indicated in the resolution).

The payment facility is granted following an analysis of the taxpayer's cash flow as well as the guarantees he may offer for ensuring recovery of the fiscal credit.

Within the Quality Management process the entity has developed for this procedure a risk map which facilitates the control, mitigation or elimination of the risks that may occur in its execution. In addition, a management indicator has been established for measuring the effectiveness of the mechanism, it being essential to control compliance with payment of the agreed installments.

The main advantage of the payment facility as collection mechanism is the recovery of the fiscal credit without affecting the debt-owing taxpayer's economic activity, thereby allowing companies that would eventually disappear, to continue in business. Since the signing of a payment agreement is preceded by a cash flow study of the taxpayer and a guarantee provided by the latter, the fiscal credit is recovered by maintaining the actual amount of the obligation and interrupting the statute of limitations of the collection action.

The following actions, among others, have been undertaken to promote this collection mechanism: National massive collection activities whereby the delinquent taxpayer is visited and informed about the possibility of paying off his obligations by means of a payment facility or agreement.

The use of technology is essential for the success of this mechanism. Currently work is in process for implementing an electronic computerized service to follow up the payment facilities, as of the time the request is filed by the delinquent taxpayer up to its full payment.

INTRODUCTION

Payment facilities granted to fulfill tax obligations must be understood as a payment mechanism which in addition to improving the State's cash flow reduces the risk of eventual loss of the fiscal credit.

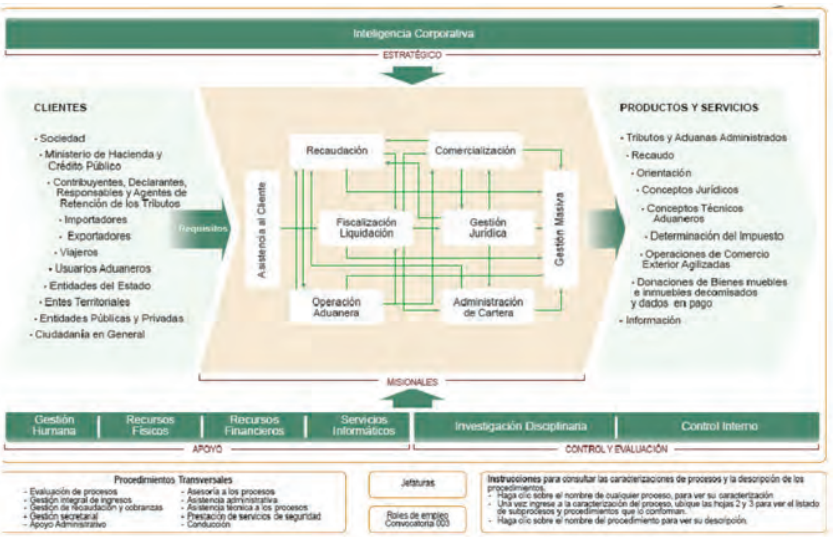
However, in its implementation it is important to distinguish the procedure by describing in detail the activities to be carried out; those responsible therefore; the regulations governing it, the management indicators and finally, the entity's mechanisms for ensuring a successful application.

Under this perspective and according to the quality standards, DIAN has done an important job of distinguishing this mechanism and its location within the tax and customs duties administration system.

Thus, this paper describes the procedure as well as its results in the Portfolio Administration process.

I. DIAN MANAGEMENT BY PROCESSES

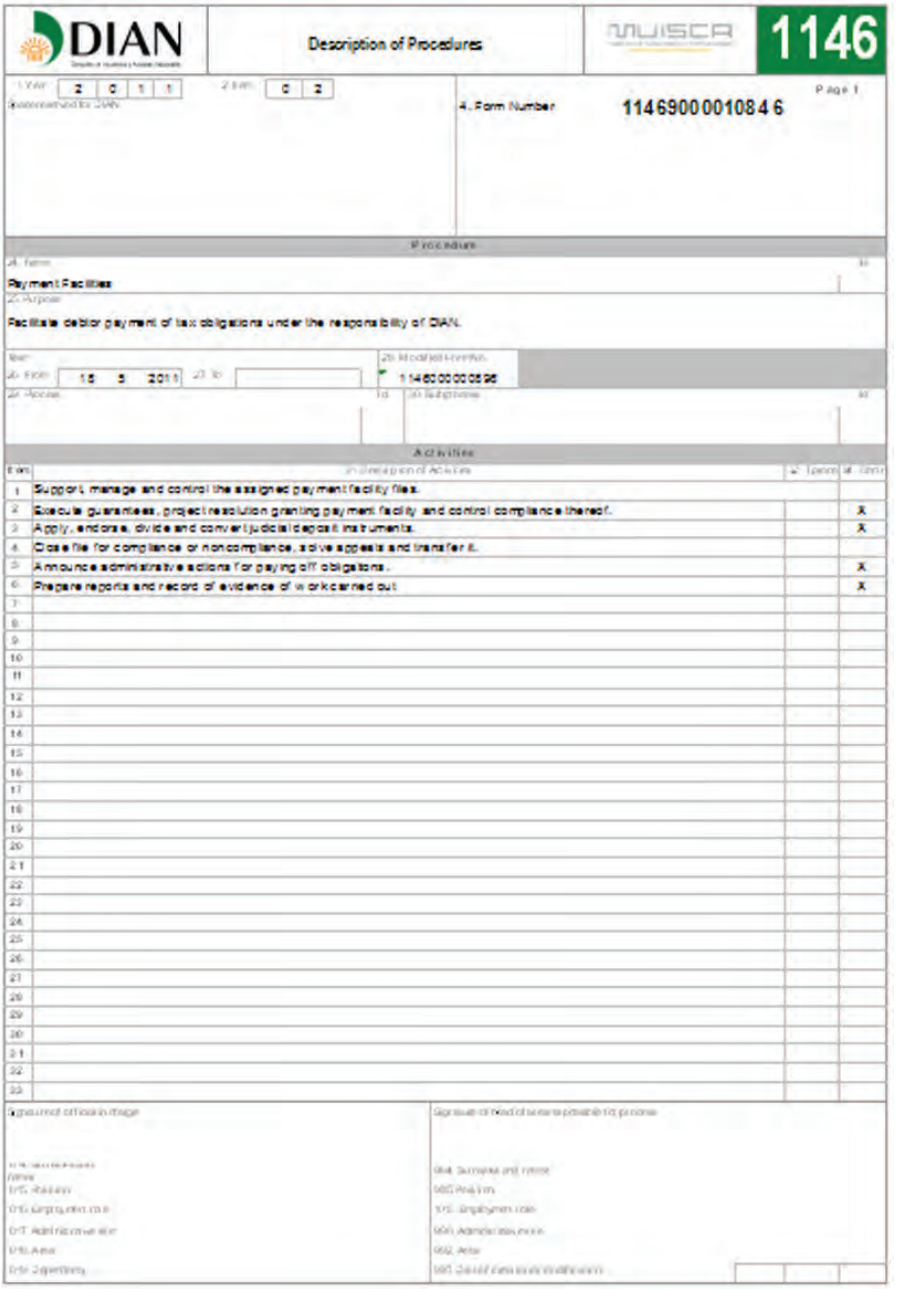
Payment facilities management in Colombia is carried out within a systematic tax administration scheme, for which reason it is necessary to present it in the same manner.



Within a system, every process is a series of activities that are mutually related or which interact to generate value and which transform input elements into results. At the DIAN, there are the following processes:

1. Strategic: their purpose is to guide the entity in fulfilling its mission, vision, policy and objectives and responding to the needs of the interested parties.
2. Mission: these have to do with the reason for existence and the responsibilities of the DIAN as State institution that is reflected in its mission, which calls for contributing to guarantee the fiscal security of the Colombian government and the protection of national economic public order by managing and controlling due compliance with tax, customs and exchange obligations and facilitating foreign trade operations under conditions of fairness, transparency and legality.
3. Support: assist the strategic, mission, measurement, analysis and improvement processes.
4. Evaluation: guarantee measurement, feedback and adjustment in such a way that the entity may achieve the proposed results.

The processes are carried out through the integral execution of the procedures that comprise it, with payment facilities being one of the seven (7) procedures that comprise the Portfolio Administration process. Its description is as follows:



DIAN

Description of Procedures

MUISCA

1146

1. Year: 2011 2. Form: 02

Page 1

4. Form Number: 1146900010846

Procedure

Payment Facilities

Purpose:

Facilitate debtor payment of tax obligations under the responsibility of DIAN.

From: 15 5 2011 To:

Modified Version: 1146000000696

Process: Id: Subprocess: Id:

Activities

Item	Description of Activities	Type	Id Item
1	Support, manage and control the assigned payment facility files.		
2	Execute guarantees, project resolution granting payment facility and control compliance thereof.		X
3	Apply, endorse, divide and convert judicial deposit instruments.		X
4	Close file for compliance or noncompliance, solve appeals and transfer it.		
5	Announce administrative actions for paying off obligations.		X
6	Prepare reports and record of evidence of work carried out		X
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
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25			
26			
27			
28			
29			
30			
31			
32			
33			

Signature of person in charge

Name

DIS. Position

DIS. Employment code

DIT. Administrative unit

DIS. Area

DIS. Dependency

Signature of head of business possible to process

Name and surname

MIS. Position

MIS. Employment code

MIS. Administrative unit

MIS. Area

MIS. Dependency

DIAN — Description of Procedures — MUISCA — 1146

1. Year: 2011 — Item/Concept: 02 — Page 2

Space reserved for DIAN

4. Form Number: 1146900001084 6

Procedure

24. Number: Payment Facilities — Id: 0

25. Purpose: Facilitate the debtor payment of tax obligations under DIAN's competency.

Term
26. From: 15 5 2011 — 27. To: 0 0 0 — 28. Modified Form No.: 1146000000596

Roles Required for Carrying Out Procedure

Item	33. Employee Role(s)	Code
1	Payment facilities agent	
2		
3		
4		
5		
6		
7		
8		
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12		
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34. Role(s) for Computerized Services / Particular activities

Item	Name	Code	Item	Name	Code
1	Financial Obligation		2	SIPAC	
3	Tmf		4	Current account	
5	LOCK		6	AGENT	
7			8		
9			10		
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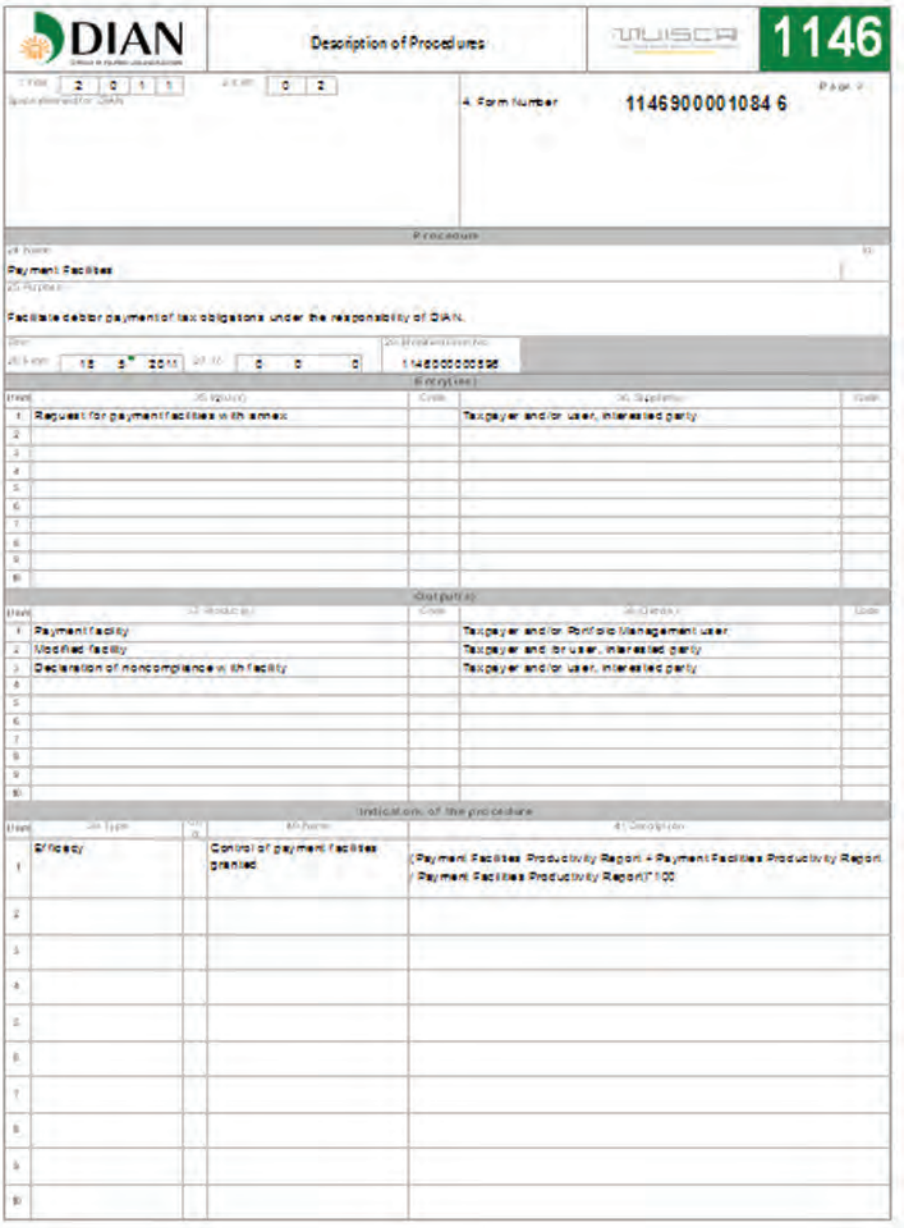
21			22		



DIAN

Description of Procedures

MUISCA

1146

Year: 2 0 1 5 Form: 0 2

4. Form Number 1146900001084 6

Page 2

Procedure

Payment Facilities

Facilitate debtor payment of tax obligations under the responsibility of DIAN.

Date: 15 9 2011 Hour: 0 0 0

Procedure Version No. 1146900000596

Entry (ies)

Item	Input(s)	Code	Supplier	Code
1	Request for payment facilities with annex		Taxpayer and/or user, interested party	
2				
3				
4				
5				
6				
7				
8				
9				
10				

Output(s)

Item	Product(s)	Code	Client(s)	Code
1	Payment facility		Taxpayer and/or Portfolio Management user	
2	Modified facility		Taxpayer and/or user, interested party	
3	Declaration of noncompliance with facility		Taxpayer and/or user, interested party	
4				
5				
6				
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8				
9				
10				

Indicators of the procedure

Item	Type	Unit	Name	Description
1	Efficacy		Control of payment facilities granted	(Payment Facilities Productivity Report + Payment Facilities Productivity Report / Payment Facilities Productivity Report)*100
2				
3				
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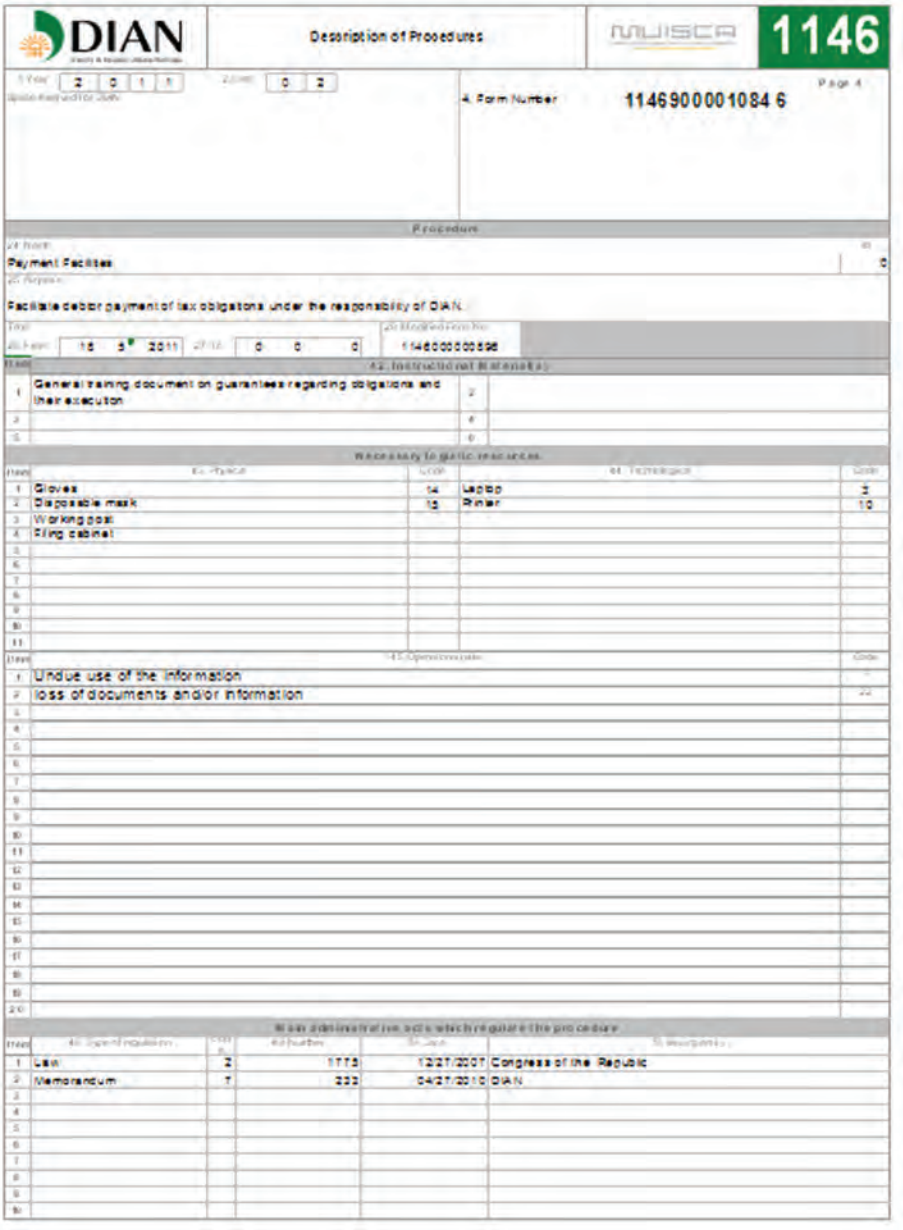

DIAN

Description of Procedures

MUISCA

1146

Year: 2011 Zone: 02 Page 1

4. Form Number: 1146900001084 6

Procedure

Payment Facilities

Facilitate debtor payment of tax obligations under the responsibility of DIAN.

15 9 2011 0 0 0 1146000000598

42. Instructional Material(s)

1	General training document on guarantees regarding obligations and their execution	2	
3		4	
5		6	

Necessary logistic resources

Item	43. Type	Code	44. Technological	Code
1	Gloves	14	Laptop	2
2	Disposable mask	15	Printer	10
3	Working desk			
4	Filing cabinet			
5				
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Item	45. Operational risks	Code
1	Undue use of the information	1
2	loss of documents and/or information	22
3		
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Main administrative acts which regulate the procedure

Item	46. Type of regulation	Code	47. Number	48. Date	49. Issued by
1	Law	2	1775	12/27/2007	Congress of the Republic
2	Memorandum	1	233	04/27/2010	DIAN
3					
4					
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DIAN | Description of Procedures | MUISCA | 1146

4. Form Number: 1146900001084 6

Page 1

Procedure

Payment Facilities

Facilitate debtor payment of tax obligations under the responsibility of DIAN.

Formats and forms used

Item	Code	Item	Code
1 Resolution releasing from attachment		2 Resolution Solving Appeal for Replacement	
3 Resolution granting Payment Facility		4 Resolution Amending Payment Facility	
5 Rejection of Request for Payment Facility		6 Resolution declaring the Facility without Force and Ordering to	
7 Writ Ordering Evidence		8 Resolution Annulling Administrative Act	
9 Writ for Filing / Conclusion of Processes		10 Writ Ordering Application of Judicial Deposit Title	
11 Report of Taxpayer Financial Analysis		12 Resolution Annulling Payment Facility	
13 Record of Property Inspection		14 Resolution Solving Exceptions	
15 Writ Clarifying and/or Adding an Administrative Act		16 Act Refunding Guarantee	
17 Modifying Resolution due to inclusion of Obligations		18	
19		20	
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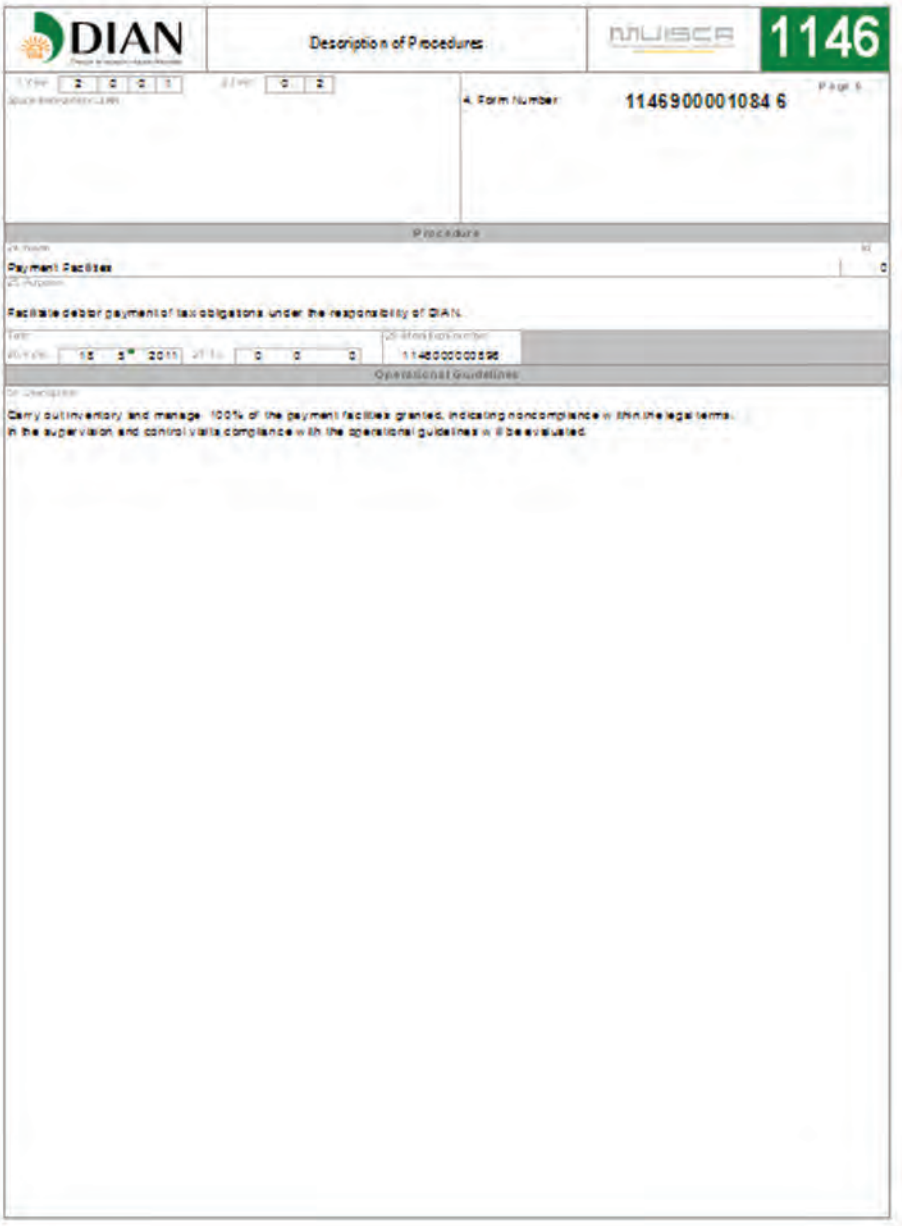


DIAN

Description of Procedures

MUISCA

1146

Year 2 0 2 1 Period 0 2

4. Form Number 1146900001084 6

Page 1

Procedure

Payment Facilities

Facilitate debtor payment of tax obligations under the responsibility of DIAN.

Date 15 3 2011 at 0 0 0

1146000000596

Operational Guidelines

Carry out inventory and manage 100% of the payment facilities granted, indicating noncompliance within the legal terms.
In the supervision and control visits compliance with the operational guidelines will be evaluated.

II. PAYMENT FACILITIES PROCEDURE WITHIN THE ENTITY'S QUALITY SYSTEM.

1. Definitions

A payment agreement allows the debtor to pay money owed by way of stamp, income, complementary, sales taxes and withholding at the source, as well as any other tax administered by the National Directorate of Taxes and Customs, as well as for paying off interest and other sanctions, as appropriate.

Through this payment mechanism there is an agreement between the administration and the taxpayer, whereby enforced precautionary measures continue to be applied in order to recover the fiscal credit.

2. Power of the tax administration

The Tax Statute which chronologically compiles the laws and decrees regarding the national taxes of Colombia, in force since 1930 empowers the National Directorate of Taxes and Customs – DIAN- to provide facilities for paying tax, customs and Exchange obligations, or any other type of obligations and/or credit administered by the DIAN.

The payment facility is granted through Resolution issued by the competent official and should indicate:

- Term requested and periodicity of payments.
- Acceptance of the guarantee
- Total amount of the obligation

3. Terms and obligations of the payment facilities

- Up to 5 years, starting on the month following notification of the resolution.
- An additional two (2) year term, at the taxpayer's request and granting by the Revenue Management Director, following approval by the DIAN General Director.

Overdue obligations which may be subject to payment facilities are:

- Stamp tax
- Income and Complementary taxes
- Sales tax
- Withholding at the Source
- Sanctions and interest, or
- Any other tax administered by the DIAN

4. Forms of payment facilities

The payment facility is granted for the total amount of the main obligation plus updated sanctions and interest for delayed payment, up to the date stipulated in the resolution for fully paying off the obligation. The general payment modality is:

- Initial payment of up to 30% of the total amount of the obligation.
- For the remaining balance and depending on the taxpayer's payment capacity, variable and periodic installments may be agreed.

5. Modification of payment facilities:

The taxpayer may request modification of the payment facility granted, for:

- Additional installments.
- Compensations.
- Expansion of term.
- Inclusion of new obligations.
- Change of guarantee.
- Replacement of facility.

6. Aspects to be evaluated in the requests for payment facility:

Every taxpayer having obligations of a tax, customs and/or exchange nature administered by the DIAN is entitled to request a payment facility as mechanism for updating his obligations with the country, provided there is no legal and express restriction in the law, regulation, order or internal instruction and there is a clear, express and payable instrument.

The terms granted are subject to the financial analysis made to the taxpayer, in order to ensure that his cash flow may be consistent with the amount of the periodic credit balance so that he may continue making the subsequent payments of the obligations. In this regard, after the payment facility resolution has been issued, he may not incur in arrears, since this will generate noncompliance therewith and accordingly, it will be left without effect and the guarantee will be enforced.

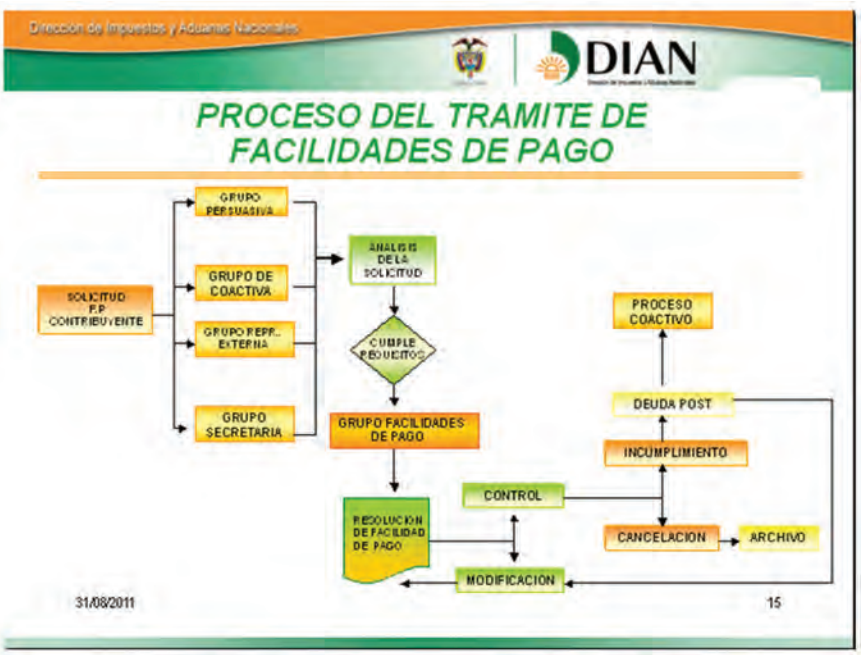
The accessible guarantee is an alternate source of payment which provides a legally effective support for paying the guaranteed obligation. It may belong to the taxpayer, partners (joint) or a third guarantor and the amount should cover as a minimum, the total amount of the main obligation, the updated sanctions and interest incurred until the date agreed for payment of the first installment and two (2) additional months.

Admissible guarantees

Given that in granting the payment facilities it is essential to protect the fiscal credit whose recovery is intended, it is necessary to classify the existing guarantees, with the following ones being admissible:

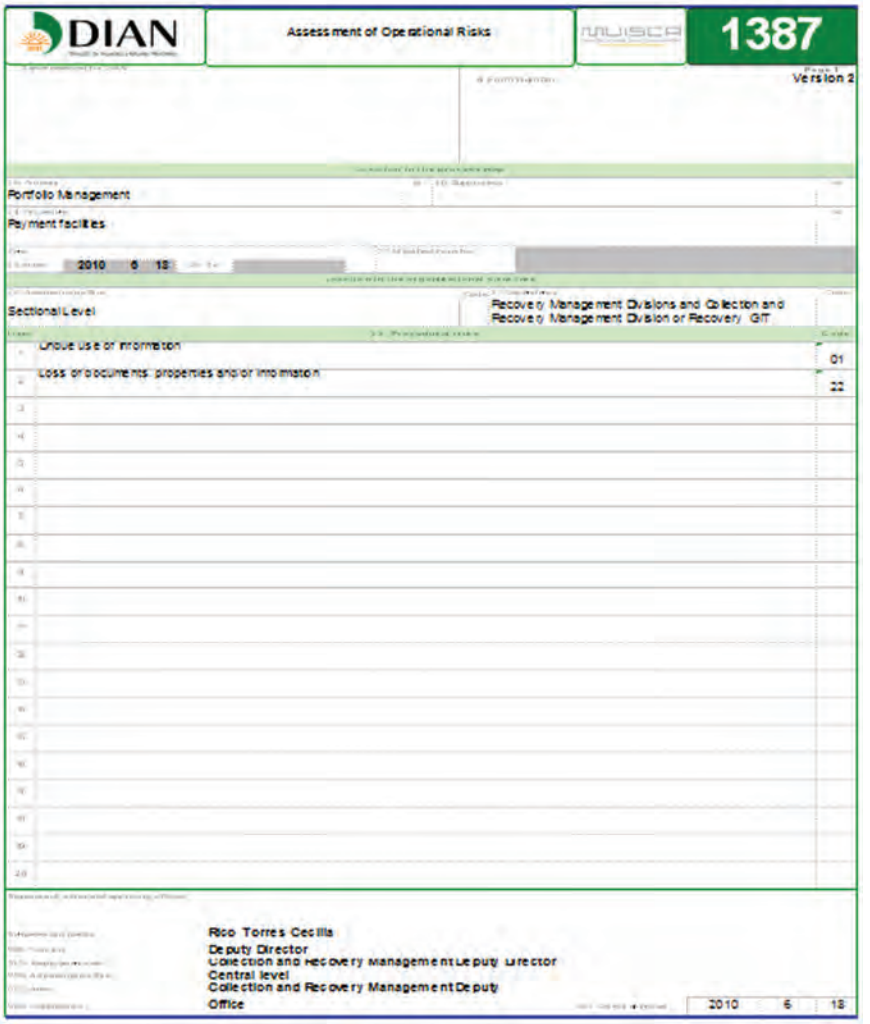
- Bank acceptance.
- Guarantee or endorsement from a bank or financial corporation.
- Insurance company policy.
- Mortgage.
- Collateral.
- Seizure of properties subject to registry.
- Trust as guarantee.
- Draft.
- Personal guarantees.
- Pledging of the nation's income intended for territorial or decentralized entities.
- Trust under administration and source of payments.

7. Steps of the procedure



8. Risk control

Within the quality management system operated by the entity and its focus on systematic operation, the DIAN has identified risks related to the procedures and has established periodic controls to reduce and administer them.



DIAN

Assessment of Operational Risks

MUISCA

1387

Version 2

Portfolio Management

Payment facilities

2010 6 18

Sectional Level

Recovery Management Divisions and Collection and Recovery Management Division or Recovery GIT

1	Undue use of information	01
2	Loss of documents properties and/or information	22

Rico Torres Cecilia

Deputy Director

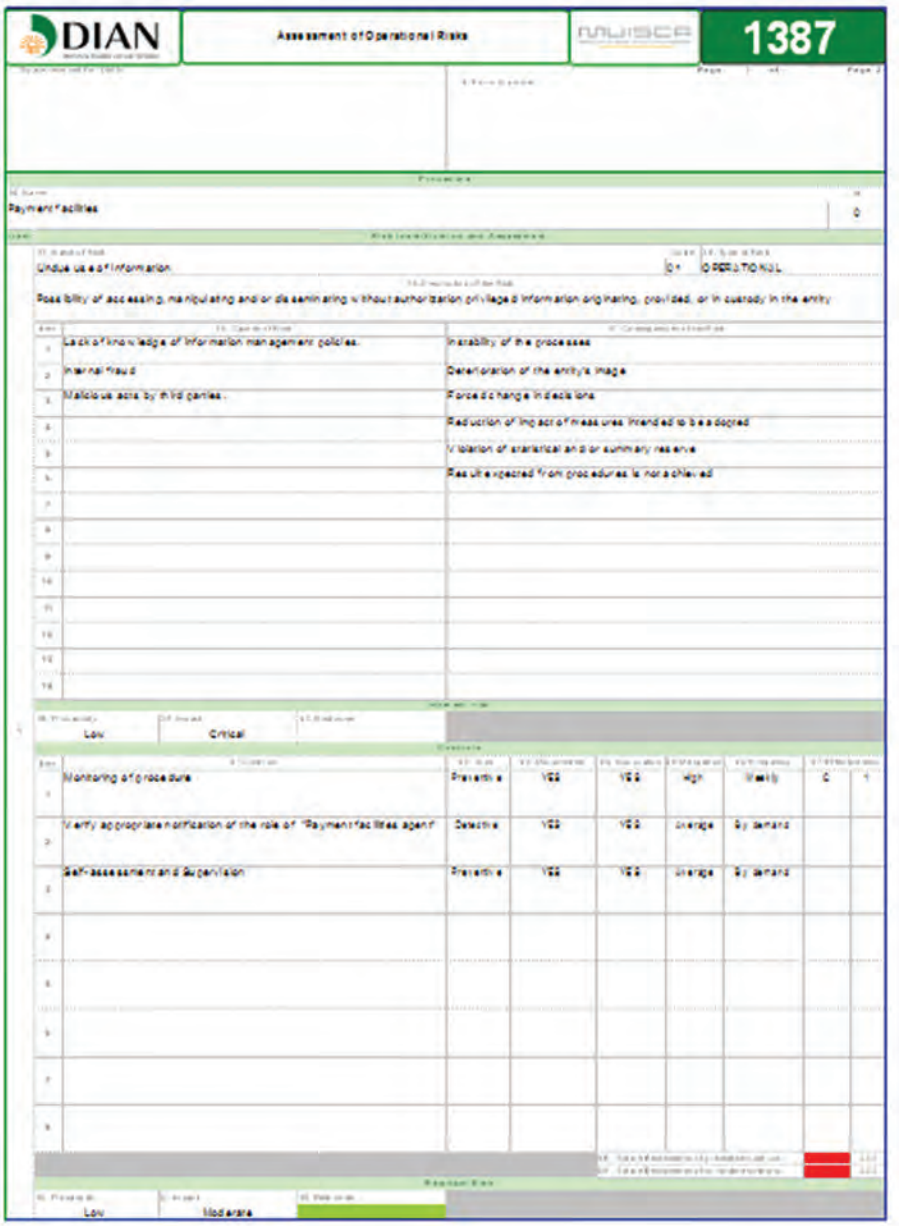
Collection and Recovery Management Deputy Director

Central level

Collection and Recovery Management Deputy

Office

2010 6 18



DIAN

Assessment of Operational Risks

1387

Payment facilities

0

Undue use of information

0 | OPERATIONAL

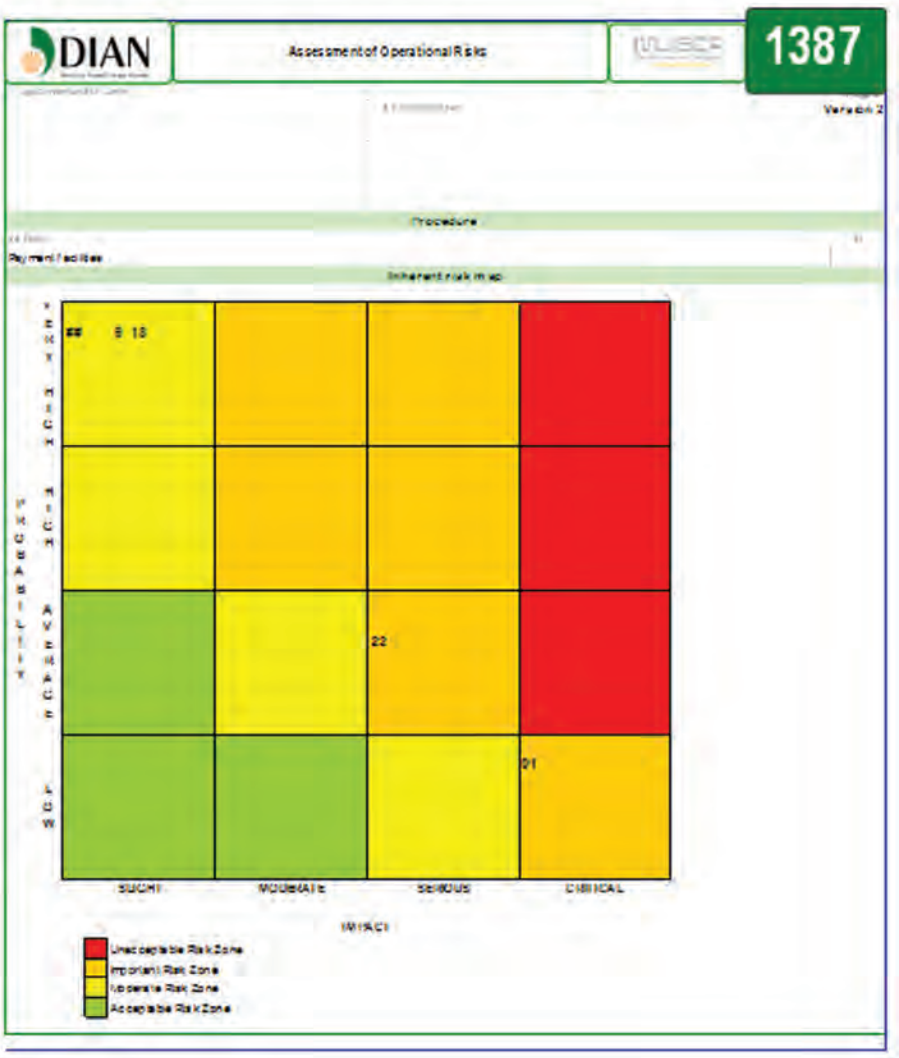
Possibility of accessing, manipulating and/or disseminating without authorization privileged information originating, provided, or in custody in the entity

1	Lack of knowledge of information management policies.	Instability of the processes
2	Internal fraud	Deterioration of the entity's image
3	Malicious acts by third parties.	Forced change in decisions
4		Reduction of impact of measures intended to be adopted
5		Violation of statistical and/or summary reserve
6		Results expected from procedures is not achieved
7		
8		
9		
10		
11		
12		
13		
14		

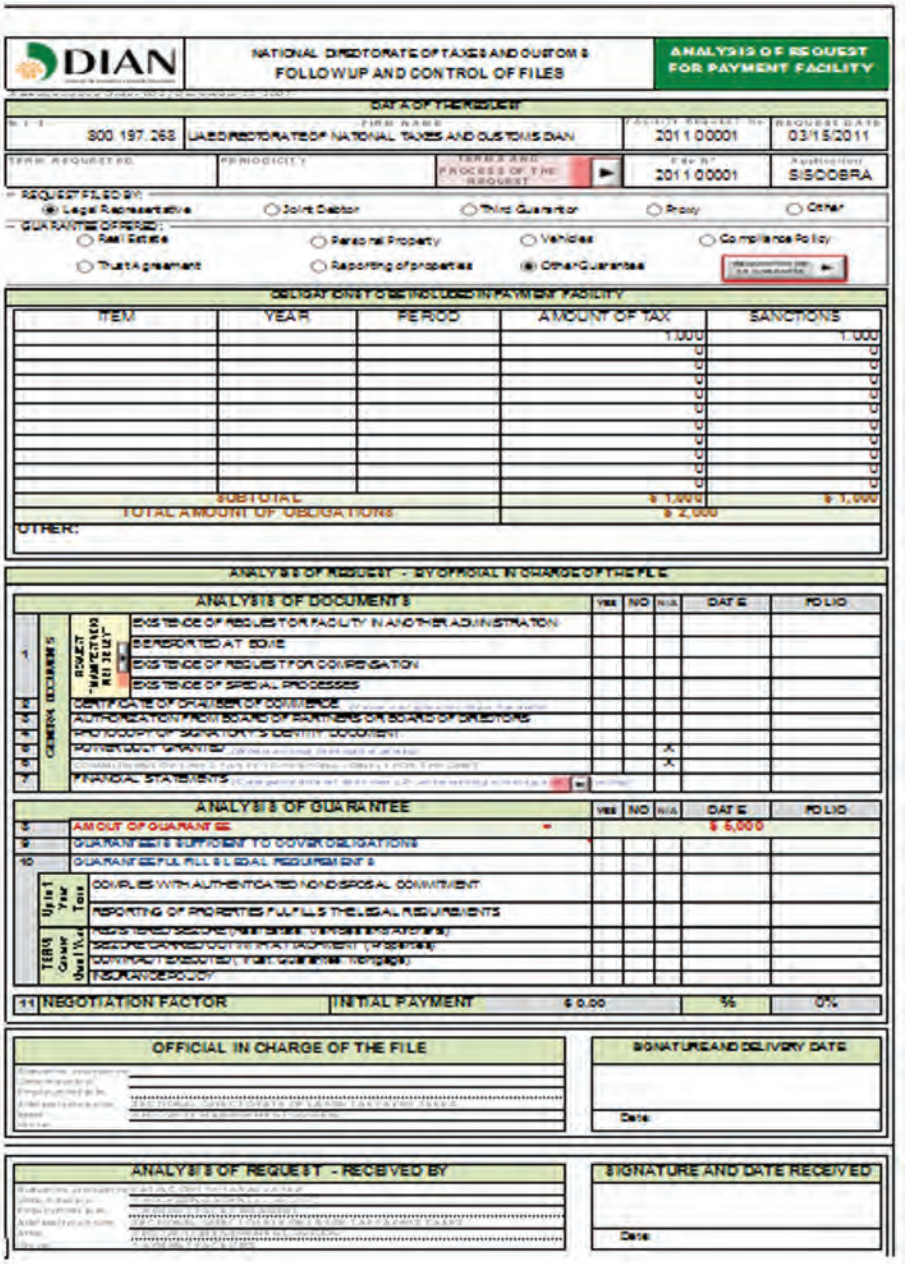
Low | Critical

1	Monitoring of procedure	Preventive	YES	YES	High	Weekly	0	1
2	Verify appropriate notification of the role of "Payment facilities agent"	Detective	YES	YES	Average	By demand		
3	Self-assessement and Supervision	Preventive	YES	YES	Average	By demand		
4								
5								
6								
7								
8								

Low | Moderate



In addition, for the analysis, follow-up and control of requests for payment facilities the following forms are used:



DIAN

NATIONAL DIRECTORATE OF TAXES AND CUSTOMS
FOLLOW UP AND CONTROL OF FILES

ANALYSIS OF REQUEST FOR PAYMENT FACILITY

DATA OF THE REQUEST

800.197.268	UAE DIRECTORATE OF NATIONAL TAXES AND CUSTOMS DIAN	2011 00001	03/15/2011

TERM REQUESTED | PERIODICITY | TERMS AND PROCESS OF THE REQUEST | FILE N° 2011 00001 | Application SISCOBRA

REQUEST FILED BY:
(•) Legal Representative ( ) Joint Debtor ( ) Third Guarantor ( ) Proxy ( ) Other

GUARANTEE OFFERED:
( ) Real Estate ( ) Personal Property ( ) Vehicles ( ) Compliance Policy
( ) Trust Agreement ( ) Reporting of properties (•) Other Guarantee

OBLIGATIONS TO BE INCLUDED IN PAYMENT FACILITY

ITEM	YEAR	PERIOD	AMOUNT OF TAX	SANCTIONS
			1.000	1.000
			0	0
			0	0
			0	0
			0	0
			0	0
			0	0
			0	0
			0	0
			0	0
SUBTOTAL			$ 1,000	$ 1,000
TOTAL AMOUNT OF OBLIGATIONS			$ 2,000	

OTHER:

ANALYSIS OF REQUEST - BY OFFICIAL IN CHARGE OF THE FILE

ANALYSIS OF DOCUMENTS

			YES	NO	N/A	DATE	FOLIO
1	COMMON DOCUMENTS	REQUEST PRESENTED BY SELECT					
		EXISTENCE OF REQUEST FOR FACILITY IN ANOTHER ADMINISTRATION					
		SENDER TED AT EDIE					
		EXISTENCE OF REQUEST FOR COMPENSATION					
		EXISTENCE OF SPECIAL PROCESSES					
2		CERTIFICATE OF CHAMBER OF COMMERCE					
3		AUTHORIZATION FROM BOARD OF PARTNERS OR BOARD OF DIRECTORS					
4		PHOTOCOPY OF SIGNATORY'S IDENTITY DOCUMENT					
5		POWER OF ATTORNEY GRANTED			X		
6					X		
7		FINANCIAL STATEMENTS					

ANALYSIS OF GUARANTEE

			YES	NO	N/A	DATE	FOLIO
8		AMOUT OF GUARANTEE				$ 6,000	
9		GUARANTEE SUFFICIENT TO COVER OBLIGATIONS					
10		GUARANTEE FULFILLS LEGAL REQUIREMENTS					
	Up to 1 Year Term	COMPLIES WITH AUTHENTICATED NON DISPOSAL COMMITMENT					
		REPORTING OF PROPERTIES FULFILLS THE LEGAL REQUIREMENTS					
	Term Greater than 1 Year	REGISTERED SECURITY (Real Estate, Vehicles and Boats)					
		SECURITY CARRIED OUT IN THE PAYMENT (Pledges)					
		CONTRACT EXECUTED (Trust Guarantee, Mortgage)					
		INSURANCE POLICY					

11	NEGOTIATION FACTOR	INITIAL PAYMENT	$ 0.00	%	0%

OFFICIAL IN CHARGE OF THE FILE

SIGNATURE AND DELIVERY DATE

Date:

ANALYSIS OF REQUEST - RECEIVED BY

SIGNATURE AND DATE RECEIVED

Date:

PAYMENT FACILITIES - CHECKLIST

TAXPAYER:
UAE DIRECTORATE OF NATIONAL TAXES AND CUSTOMS DIAN
TIN:
800,197,268

FINANCIAL STATEMENTS:

1 Balance Sheet year 1

2 Balance Sheet year 2

- Comparative Balance Sheet for the last two closing and balancing periods should include explanatory notes to financial statements.
- Balances heets should be classified, differentiating between current and noncurrent assets, as well as current and long term liabilities.
- Should be signed by the Accountant, Legal Representative and Fiscal Inspector.

3 Profit and Loss Statements year 1

4 Profit and Loss Statements year 2

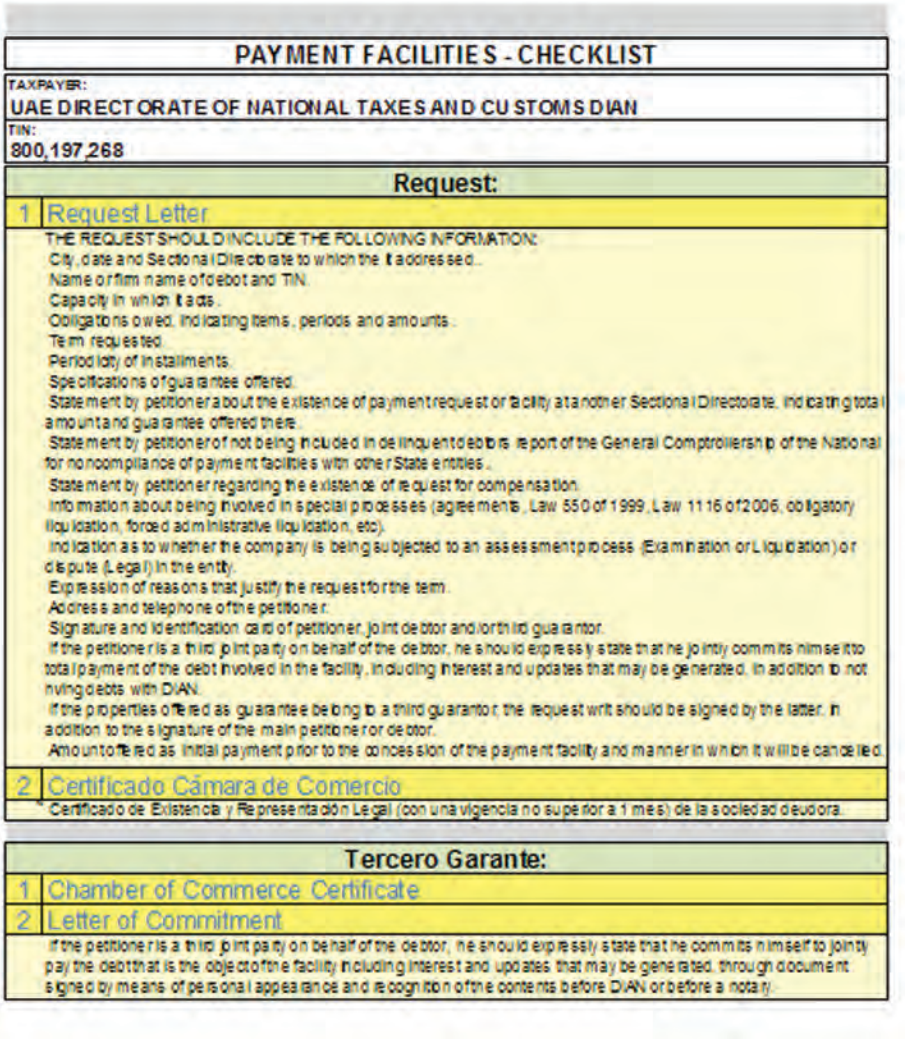
- Profit and Loss Statements for the last two closing and balancing periods should include explanatory notes to financial statements.
- They should be signed by the Accountant, Legal Representative and Fiscal Inspector.

5 Projected cash flow

- Projected cash flow for the time requested including, installments of the payment agreement and timely pay off of fiscal obligations that may arise after the signing thereof.

ANNEXES TO FINANCIAL STATEMENTS

- Photocopy of the Professional Card of public accountant certifying the Financial Statements.
- Photocopy of Certified Registration and Disciplinary Background of Public Accountant certifying the Financial Statements, issued by the Central Board of Accountants.



PAYMENT FACILITIES - CHECKLIST

TAXPAYER:
UAE DIRECTORATE OF NATIONAL TAXES AND CUSTOMS DIAN

TIN:
800,197,268

Request:

1 Request Letter

THE REQUEST SHOULD INCLUDE THE FOLLOWING INFORMATION:
City, date and Sectional Directorate to which the it addressed.
Name or firm name of debot and TIN.
Capacity in which it acts.
Obligations owed, indicating items, periods and amounts.
Term requested.
Periodicity of installments.
Specifications of guarantee offered.
Statement by petitioner about the existence of payment request or facility at another Sectional Directorate, indicating total amount and guarantee offered there.
Statement by petitioner of not being included in delinquent debtors report of the General Comptrollership of the National for noncompliance of payment facilities with other State entities.
Statement by petitioner regarding the existence of request for compensation.
Information about being involved in special processes (agreements, Law 550 of 1999, Law 1116 of 2006, obligatory liquidation, forced administrative liquidation, etc).
Indication as to whether the company is being subjected to an assessment process (Examination or Liquidation) or dispute (Legal) in the entity.
Expression of reasons that justify the request for the term.
Address and telephone of the petitioner.
Signature and identification card of petitioner, joint debtor and/or third guarantor.
If the petitioner is a third joint party on behalf of the debtor, he should expressly state that he jointly commits himself to total payment of the debt involved in the facility, including interest and updates that may be generated, in addition to not having debts with DIAN.
If the properties offered as guarantee belong to a third guarantor, the request writ should be signed by the latter, in addition to the signature of the main petitioner or debtor.
Amount offered as initial payment prior to the concession of the payment facility and manner in which it will be cancelled.

2 Certificado Cámara de Comercio

Certificado de Existencia y Representación Legal (con una vigencia no superior a 1 mes) de la sociedad deudora.

Tercero Garante:

1 Chamber of Commerce Certificate

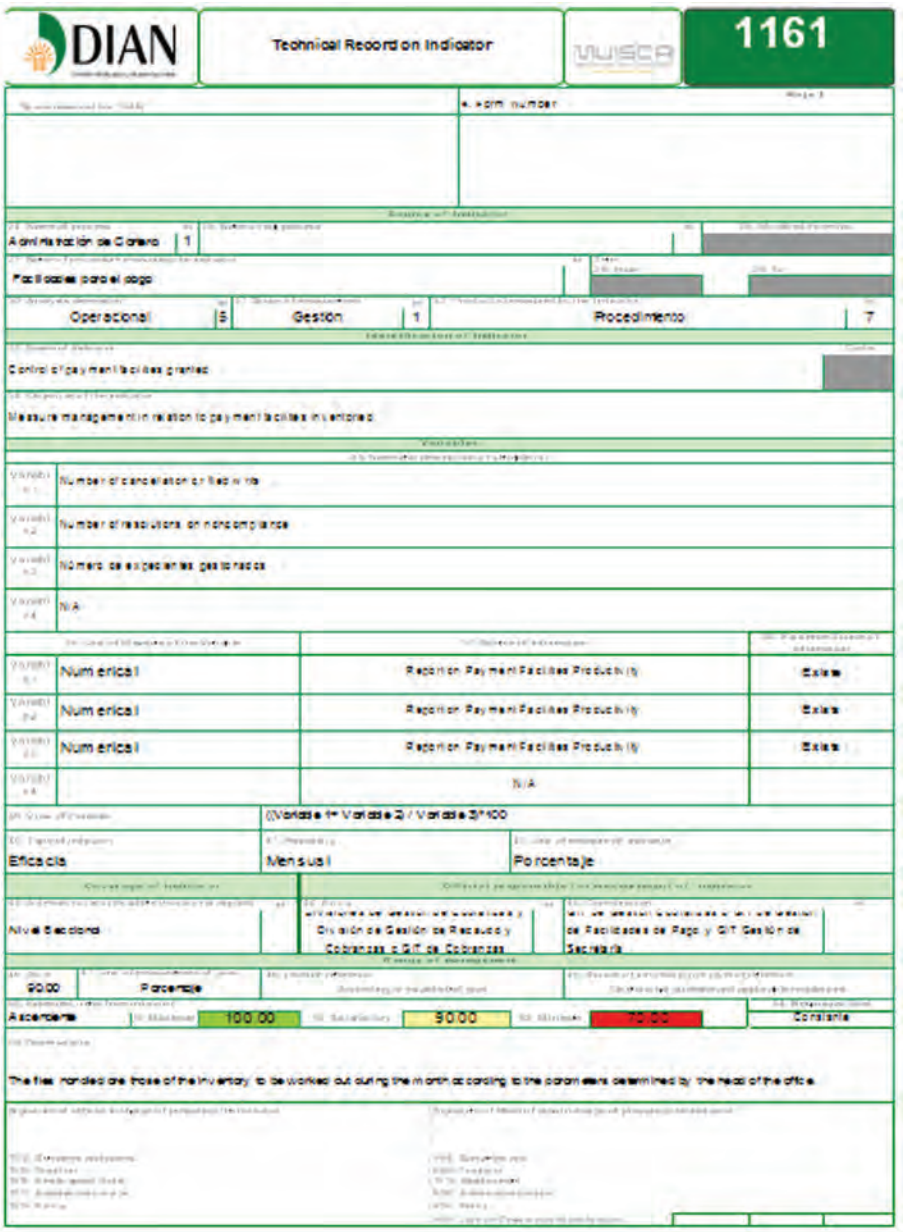
2 Letter of Commitment

If the petitioner is a third joint party on behalf of the debtor, he should expressly state that he commits himself to jointly pay the debt that is the object of the facility including interest and updates that may be generated, through document signed by means of personal appearance and recognition of the contents before DIAN or before a notary.

It is important to count on a select group of officials trained for analyzing the taxpayer's financial information, in addition to having sufficient authority to permanently follow up the payments and obligations that may subsequently arise; request payment in case of noncompliance; inform the taxpayer that he has fifteen (15) days for making payment; declare the payment facility without effect and that reinstatement is required, as well as order that the guarantee granted be made effective, at which time the process should be passed on to the enforcement group for executing the guarantee.

9. Management indicators of the procedure

Indicator form for measuring the management of this procedure:



DIAN

Technical Record on Indicator

1161

Administración de Cobro | 1

Facilidades para el pago

Operational | 5 | Gestion | 1 | Procedimiento | 7

Control of payment facilities granted

Measure management in relation to payment facilities in force

Number of cancellation or filed rule

Number of resolutions on non-compliance

Número de expedientes gestionados

N/A

Numerical		Report on Payment Facilities Productivity	Exists
Numerical		Report on Payment Facilities Productivity	Exists
Numerical		Report on Payment Facilities Productivity	Exists
		N/A	

((Variable 1* Variable 2) / Variable 3)*100

Eficacia | Mensual | Porcentaje

Nivel Seccional

Division de Gestión de Recaudo y Cobranzas o GIT de Cobranzas

de Facilidades de Pago y GIT Gestión de Secretaría

90.00 | Percentage

Ascendente | 100.00 | 90.00 | 70.00 | Constante

The files handled are those of the inventory to be worked out during the month according to the parameters determined by the head of the office

10. Advantages

The main advantage of the payment facility collection mechanism is the recovery of fiscal credit without affecting the debtor's economic activity, thereby allowing him to continue in the market and avoiding his eventual disappearance.

Since prior to the signing of a payment agreement an analysis is made of the taxpayer's cash flow and such agreement is supported by a guarantee contributed by the taxpayer, the fiscal credit is recovered at the actual value of the obligation with the interruption of the statute of limitations of the collection action.

11. Disadvantages

One disadvantage in the application of this mechanism is basically thie time frame in which the fiscal credit is recovered, since a payment agreement may be signed for up to five (5) years.

Additionally, the regulations governing the procedure only provide for tangible security, insurance or bank guarantees, thereby restricting economic support which could be used by the taxpayers.

Another situation affecting the procedure is the periodic change of interest rates for paying the installments, as well as follow up of the installments agreed in the facility, for which reason it is necessary to computerize the management of these tasks.

III. ACTIONS UNDERTAKEN BY THE ENTITY IN THE PAST THREE YEARS TO PROMOTE MANAGEMENT OF PAYMENT FACILITIES

First of all, it should be noted that the structure of the U.A.E.DIAN, seeks to ensure the rendering of the service throughout the national territory. Therefore, it is organized by Levels: Local (includes the 34 Sectional Directorates with competency for undertaking collection) and Central Level (General Directorate, Management Directorates, Management Offices and Deputy Directorates).

In the Portfolio Management process the Central Level is in charge, among other functions, of planning, organizing and controlling according to the Strategic Plan, the activities dealing with the collection of taxes administered by DIAN, as well as directing and evaluating the development of collection policies and processes.

The Sectional Directorates are in charge of initiating, supporting and concluding the collection, refund, examination and assessment processes in accordance with functional and territorial competency factors.

According to the above, the actions carried out by the entity, at both levels, for promoting the payment facility procedure during the past three (3) years are:

Actions at the Central Level:

1. Planning:

- Instructions for the collection process given by the Deputy Directorate or by the Collection Management Coordination offices:

    a. Issuance of internal regulations reiterating the execution of activities of the portfolio management process.
    b. Instructions to the Sectional Directorates on specific issues that were the subject of consultation.
    c. Operational policy regarding payment facilities.

2. Coordination of the activities of the management office, which in the past three (3) years were:

- National Collection Activities (logistic organization of the activities, protocols of action, instructional videos, guidelines before and after the activities).
- Activities aimed at compliance with the operational policies.
- Institutional Training Plan, where in-depth consideration is given to technical requirements expressed by the Sectional Directorates.
- Support from the Deputy Directorate officials to the executing officials of the Sectional Directorates.

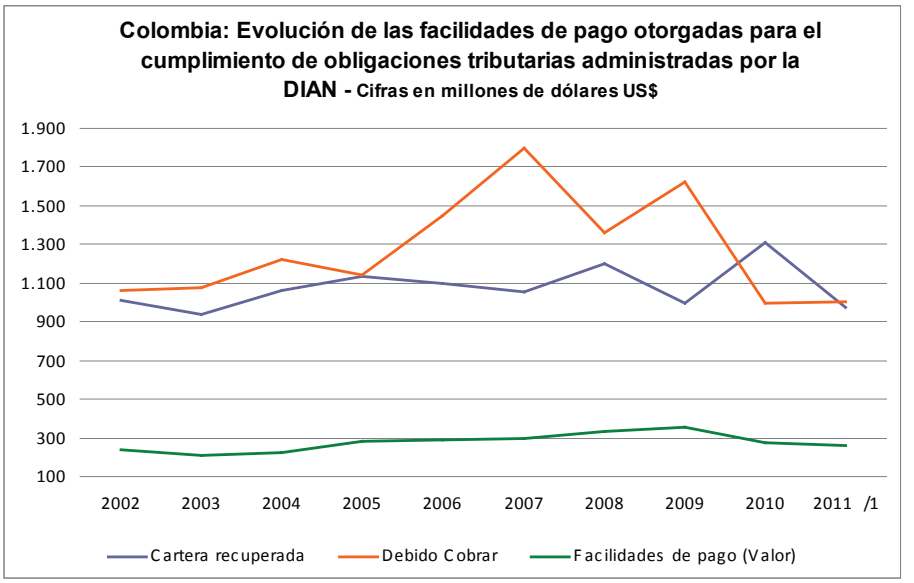
3. Supervision and Control:

Institutional follow-up and self-control policies.

- Preparation of the Annual Supervision and Control Program, according to the instructions of the Internal Control Office and whose objective is to verify the execution of procedures by the Sectional Directorates, among them, the payment facilities procedure.
- Preparation of the corresponding program and reports.

IV. SOME FIGURES REGARDING THE PAYMENT FACILITIES MANAGEMENT

As seen in the following graph and chart, the payment facilities represent a significant portion within the portfolio recovered by the DIAN in the past ten (10) years, constituting, in average, 26% of the recovered portfolio. As regards the amount due for collection, there is a similar representation, corresponding in average to 22% of the recoverable portfolio. These figures evidence the importance of this mechanism in the portfolio management process.



/1 data from January-June 2011

Colombia: Evolution of payment facilities granted for compliance with tax obligations administered by DIAN.
Figures in millions of US$

Year	Recovered portfolio	To be Collected	Payment facilities (Amount)	Payment facilities (Number)	% payment facilities /To be collected	% payment facilities / Recovered portfolio
2002	1,010	1,059	240	n.a.	23%	24%
2003	935	1,080	209	n.a	19%	22%
2004	1,064	1,223	224	n.a.	18%	21%
2005	1,138	1,145	284	n.a.	25%	25%
2006	1,102	1,452	290	n.a.	20%	26%
2007	1,057	1,801	297	2,076	17%	28%
2008	1,199	1,360	337	1,967	25%	28%
2009	993	1,620	358	2,153	22%	36%
2010	1,312	998	277	1,899	28%	21%
2011 /1	977	1,003	263	1,804	26%	27%

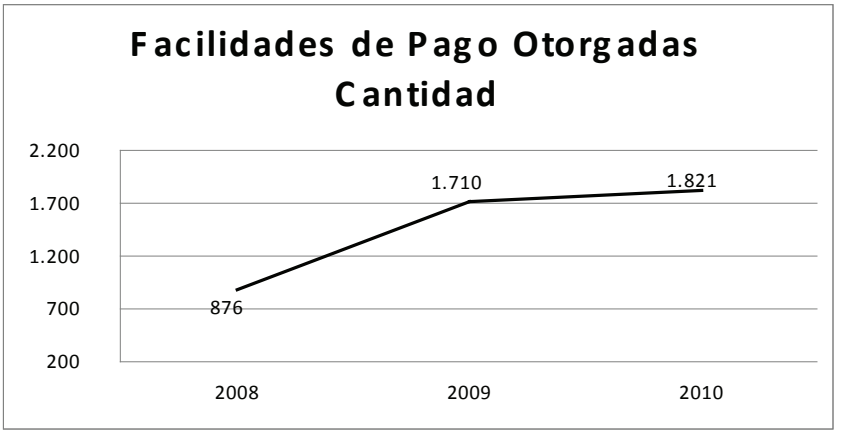
/1 : corresponds to January-June 2011 period; n.a. not available; massive collection activities in the country were begun in 2009.

The number of payment facilities granted was doubled between 2008 and 2010. In fact, these increased from 876 to 1.821. In the first semester of 2011, there were only 656 for a total amount of Col $ 96 billion (US$ 53.1 million), due to the special payment condition introduced in 2010, which reduced interest and sanctions by 50%, provided they were paid cash.

Facilidades de Pago Otorgadas

	Cantidad	Valor - Millones de $
2008	876	109.748
2009	1.710	265.905
2010	1.821	231.190
2011 - Acum. Junio	656	95.774

Fuente: Formato 14F Facilidades Pago - CGR
Elaboro: Coordinación de Control Básico de Obligaciones



V. ADJUSTMENTS THAT HAVE BEEN CONSIDERED OR MADE

The term of the payment facility should not exceed thirty six (36) months. Thus, even though it is an instrument that allows recovery of the fiscal credit, the signing of the agreement suspends the collection process, it being necessary to weigh the benefits of partial payments, as compared to the possibility of a faster recovery of the credit by applying the precautionary measures and/or continue with the actions of the process that lead to the payment of the obligations.

Given the possibility of a penal claim for obligations linked to the payment of VAT, many delinquent taxpayers opt for paying off the debt, while in the case of entering into payment facilities agreements, the first installments are paid to ensure suspension of the precautionary measures and subsequently declare themselves insolvent, thereby preventing recovery of the fiscal credit by means of seizures and confiscation of properties.

The computerized tools available are of great importance for a careful follow-up of compliance with the installments. In Colombia, the periodic changes of interest

rates render difficult the assessment of installments, as well as the follow-up of installments agreed in the payment facility.

For this reason, efforts are being made for implementing an electronic computerized service for processing the payment facilities, as of the time the request is filed by the delinquent taxpayer and their follow up until full payment has been made.

VI. RECOMMENDATIONS AND CONCLUSIONS

- The main advantage of the payment facility as collection mechanism is the recovery of the fiscal credit without affecting the debtor's economic activity, thereby allowing continuation in the market of businesses that would eventually disappear.
- Prior to granting a payment facility an analysis is made of the taxpayer's cash flow as well as of the guarantees offered for ensuring recovery of the fiscal credit.
- It is essential to control compliance with the payment of installments agreed in the payment facility.
- The use of technology is essential for the success of this mechanism.

TOPIC 3

SUPPORT TOOLS FOR THE RECOVERY OF DEBTS

Case Study

Topic 3.1

INFORMATION SYSTEMS AND THEIR SUPPORT IN MANAGING FRIENDLY AND ENFORCED COLLECTION

José María Fernandes Pires
Head Manager of the Mission to Implement the Strategic Plan
(Portugal)

Contents: *The Portuguese system of enforced collection: 1. The opening of processes. 2. Debtors' summons. 3. The seizure of the debtor´s assets or rights. 4. Sale of seized assets. 5. The classification of credits and payments to creditors. 6. The responsibility of administrators and managers for the payment of companies´ debts. 7. Debts compensations with reimbursements. 8. Cancellation and inhibition of the right to tax benefits. 9. The publication of the debtors list on the Internet. 10. The prevention of debtors from participating in public bids for providing goods and services for public services. 11. The Management of guarantees for the suspension of processes. 12. The management of procedural incidents. 13. Integrated management of strategic debtors. 14. Interaction with debtors and use of the Internet as privileged relational interface. 15. The networking within the tax administration. 16. Results.*

THE PORTUGUESE SYSTEM OF ENFORCED COLLECTION

The Portuguese system of enforced collection was the subject of a deep reform which began five years ago and just ended.

The new system is based on four main principles:

1. All the processes, activities and all back office functions, with massive resource for data crossing, are computerized, dematerialized and automatized;
2. Networking all services with the possibility of charging tax credits, eliminating the limitations imposed by the segmentation and territorial division of competences and allowing all the services to access information regardless of where it is generated.

3. The training and qualification of officials conducting the collection of tax debts;
4. The permanent interaction with debtors, making available online all enforced collection functions, betting on the Internet as privileged relational interface, as well as other channels such as ATMs, post offices and the entire banking network.

Currently all enforced collection processes are open and processed completely electronically until the end, through the interoperability of a network of computer systems that automatically execute all proceedings under the Law.

We will describe the procedural actions under the Portuguese legislation for handling tax enforcement aiming at the collection of tax debts. For the execution of each of these procedural steps a computer system has been implemented, that will also be described below. All computer systems are networked on line; so that the series of acts performed in each process is an electronic network that allows the development and monitoring of the work without manual intervention by officials.

1. THE OPENING OF PROCESSES

The detection of all non-compliance situations to voluntarily pay taxes by taxpayers is performed electronically by each tax income, liquidation, expenditures and capital management systems. The non-compliance detection is performed as follows:

i) In the case of income taxes withheld at source, withholding companies each month deliver a statement with the value of the retentions made. If that statement is not attached with any payment the system performing collection electronically notifies the system that carries out the management for non-compliance debt that a process for debt collection is opened;

ii) In case of self-assessed taxes by taxpayers, if the returns statement for self-assessed is delivered without some sort of payment the system that carries out the management for taxes electronically notifies the system that performs management for debt moratorium that there is a process for debt collection;

iii) In case of taxes collected by the tax administration and notified to taxpayers to make the correspondent payment, a system with the Postal Service of Portugal was implemented through which they electronically report to the tax administration the date on which the notice was delivered to the taxpayer. The system counts 30 days that the taxpayer has to voluntarily pay, at the end of which, if not paid, the system that carries out the management of non-compliance debts, electronically notifies that there is a process for debt collection;

The system that manages the debts and the enforced collection process is called SEFWEB (Tax Enforcement system in Web environment in Portuguese), it contains the updated record of all processes and all acts performed in them. This system works in all network services of the DGCI which records all acts performed in the processes by other systems by the officers conducting the process management and by debtors that directly operate with the system through the Internet.

The SEFWEB network electronic connects with all settlement systems and voluntary collection, as we saw earlier, which allows electronic and automatic initiation of all tax debt processes, after the non-compliance of a voluntary payment term, or when payment is not made, without any manual intervention of officials.

In permanent interface with the SEF, work the operating systems that automatize all enforced collection proceedings which will be describe below.

2. DEBTORS' SUMMONS

The debtors` summons informing them that there is an enforced collection process with a period of 30 days to pay the debt, this is the first step the Portuguese law orders to practice in the enforced collection process. This summons is made by the automatic issue of a postal letter or through electronic communication. The system that manages electronic summons is the **Electronic Summons and Notification System (SECIN in Portuguese)**, and also automatically sends all notifications and other communications to all entities acting in the scope of the tax foreclosure process.

The SECIN also has another important function: To interact electronically with the Post Office, receive feedback information on the status of the correspondence especially if it was delivered, the date of delivery, return, etc. This information is recorded in the SECIN which in turn insert it automatically in the process. The automation of the inclusion of this information into the systems instructs officials to perform a vast array of manual tasks and with no value added. But most important is that this automation allows the systems to count the time and prepares the procedures for the next phase without the officials' manual intervention.

3. THE SEIZURE OF THE DEBTOR´S ASSETS OR RIGHTS

The Portuguese law orders the tax administration services to proceed with the seizure of the debtor's assets or rights needed for paying the debt when 30 days have elapsed after the summons and the debtor has not made the payment.

From SECIN elements, the SEFWEB automatically counts those 30 days and once they are concluded, it selects the process to proceed to the seizure.

The seizure is a very simple act, is just a single “click” from an official on a computer screen where the information of the process, the value of the debt and the list of all assets and all rights available to the debtor.

The seizure is made in the Electronic Seizure Computer System (SIPE in Portuguese). To appropriately describe the system operation is necessary to analyze first how the assets and rights of debtors’ are detected and then determine the effect of the decision for seizure, as we saw, is performed with a “Click” from the official referred above.

The identification of assets and rights of debtors is done through an electronic network to obtain the assets and rights called REDET - Data Transmission Network of third parties.

The REDET recognizes the identity of the debtor from its interface with the SEFWEB; looks in various systems of tax administration and other public and private entities, which are the assets, shares or rights subject to seizure. The philosophy of this system is based on the principle that wealth acquired by the debtor by not paying taxes to the State is embodied in supports that the REDET must detect and bring to the system to provide support for the payment of debts.

The REDET electronically obtains the following data:

- From the banks: all shares and other securities registered or deposited there, bank accounts and other savings products;
- From the insurance companies: information on life insurance and savings plans, reform;
- From the Vehicle Registration office: the database of the light and heavy vehicles;
- From customs: the elements relating to entry of cars into the domestic market as well as imports and exports of goods;
- From the organization responsible for issuing public debt: all debt securities held by the debtors;
- From the Social Security: all pensions of debtors;
- From all companies: credit information related to and on third-parties as well as the identification of their suppliers and major customers;
- From employer organizations: all information regarding payments due from the wages of its workers as well as payments for professional services;
- From the statements of income of tenants and owners: all leases of their own;

- From the notaries and all entities that perform notarial acts: all information relating to the transfer of properties and holding all types of contracts, in particular the transfer of shares in companies;
- From the Port Authority: information concerning ships registered therein;
- From the property registry: information on all buildings, rustic and urban, in Portugal.

Permanently, every day REDET obtains updated data working only electronically, constantly interacting with the databases of other systems.

The REDET has also a manual function that captures information so that any official can enter into the system to identify the assets, rights or securities of the detected debtors.

All information collected through the REDET is channeled in the Electronic registry of Seizurable Assets (CEAP in Portuguese), which records and stores automatically and permanently all seizurable assets and rights of the debtors. The CEAP is an important consultation and information source for the departments; it mainly serves as support for automatic seizures through SIPE, as we will see below. Through it, the tax administration permanently recognizes all seizurable assets of debtors.

Once the assets and rights of debtors are being detected it would only need to perform a crossing with the processes, make the selection of assets to seize and provide departments with this information so that they confirm the decision to proceed to the seizure. These procedures are also performed electronically by the SIPE (Electronic seizure Computer System in Portuguese**)**. For each debtor, the total amount of debts and the list of all property and rights existing in the CEAP are made available to officials.

The official who runs management processes with a simple click on the system can indicate which of the assets or rights he wants to seize.

After deciding to proceed to the seizure, the SIPE automatically performs all the operations necessary to implement it. Thus, notices are issued to banks, when it comes to seizures of actions and bank accounts, employer organizations in the case of garnishments on wages, for customers in the case of seizure of credit, etc.

Currently, the issuance of such notification is made on paper and simultaneously electronically. The notified entities have access to the Internet website of the tax administration by introducing the access password. They may respond in the same way, confirming the seizure and transferring the funds involved, without having to travel to the departments.

In the seizure of buildings and vehicles which are subject to registration, the competent authorities have access through the DGCI website on Internet to the applications for the seizure registration which can be viewed and copied to an electronic document as well as registration requirements. Through the same way the confirmation of registration of the seizure can be confirmed.

Thus, without manual intervention of officials, seized buildings and vehicles can pass to the sale phase.

When the seizure affects properties or rights that are immediately convertible into money (bank accounts, wages and salaries, loans, rentals, etc.), the entities notified of the seizure through the Internet, make the transfer of the seized values. When it comes to buildings, vehicles, shares, property or other assets that require liquidation, it goes then to the sales phase.

4. SALE OF SEIZED ASSETS

The sale of the seized assets is the most important act in the enforced collection process because it concludes the process which is to liquidate the debtor's assets and use them to pay the debt.

The sale of assets is made by the Enforced Sales Management Computer System (SIGVEC in Portuguese)**,** which automatically handles the entire sale process of seized assets and makes available on the internet the ads for assets on sale. This system automatizes all of these events prior to the selection of sales, mainly previous to the publication of ads and the notifications for all interested entities.

All advertisements for the sale of assets are published on the internet, which can be consulted for anyone interested. The tax service also provides personalized mails to all interested parties upon request. This mail is always sent whenever a new sale of assets is marked with the features previously selected by the parties.

The sale of assets is conducted through electronic auction on the Internet; anyone interested and previously authenticated by the system can participate and can also pay online the assets they have purchased.

The Internet site that publicizes the sales offers several forms of navigation, including a geographical information system with aerial photography, through which all properties for sale are located.

5. THE CLASSIFICATION OF CREDITS AND PAYMENTS TO CREDITORS

After the debtor's assets become liquid, the law orders to distribute the collected values to public and private creditors that have guarantees on seized assets.

For that we need to notify creditors of the seizure or the completion of the sale in order for them to claim their credits. Then, the credits are classified in a hierarchy that determines who will receive, and the order in which they will receive the values. All verification and classification of credit is automatically done, the distribution of the values selected by the creditors is also done immediately. The verification and classification of credits process was judicial until year 2010 but it was very long and slow due to its complexity.

So, from 2011 it became the tax administration's responsibility, which is now automatized and fast.

6. THE RESPONSIBILITY OF ADMINISTRATORS AND MANAGERS FOR THE PAYMENT OF COMPANIES´ DEBTS

When companies with debts do not have assets with sufficient value to guarantee the payment of their tax debts, the Portuguese Law states that their respective administrators and managers are responsible for the payment of those debts.

The Computer Reversals Management System (SIGER in Portuguese), is the system that detects the companies that do not have enough assets to seize, through the crossing of data of SEFWEB with CEAP and by the electronic access to the files of the Commercial Registration. It also detects who are administrators and managers of these companies. The SIGER enables the departments the identification of company managers who may be object of responsible for the tax debt, in order for them to determine the reversal. Immediately, the system notifies the administrators and managers of the action to rule on the proposed reversion and on the notification. From this point on is when they become the debtors.

As soon as administrators and managers become debtors, all the procedures and practice of the acts described above, start against them.

The financial and asset responsibility of administrators and managers have a strategic value to prevent and fight the non-compliance of the obligation of companies to pay taxes because it allows attacking and making responsible the decision makers in companies, who are in all cases the administrators.

7. DEBTS COMPENSATIONS WITH REIMBURSEMENTS

The Portuguese law provides that when a debtor has to receive reimbursements from the tax administration these are necessarily to be used to pay debts held with the tax authority through compensation.

Compensation is made through the SISCO (for its acronym in Portuguese) - Compensation System which, in an integrated and automatized form, combines total or partial payment of debts repayments with all tax reimbursements entitled to debtors.

As long as the taxpayers of each tax are entitled to receive a reimbursement, the Compensation System automatically detects whether there are outstanding debts at the SEFWEB. If so, that reimbursement is applied to their payment. The system works *online* and in cases where the value of reimbursements is greater than the debt, that excess is also automatically sent to the owner.

8. CANCELLATION AND INHIBITION OF THE RIGHT TO TAX BENEFITS

The Portuguese Law prevents taxpayers that have tax debts to enjoy tax benefits. Thus, when a debtor requests the recognition of a tax benefit to the tax administration, the law prevents this recognition. Similarly, when a taxpayer that is benefiting from the tax benefits acquires a tax debt, the Law orders to cancel that tax benefit. The management of these two types of control of tax benefits made to debtors is done by the SICBEF - Control Tax Benefit Computer System (in Portuguese).

The SICBEF receives all requests to obtain tax benefits proceeds to register them automatically by crossing data with other systems and offers the process administrator data to support a decision. One of the crossings the system does is with the Foreclosure Tax System (SEFWEB) and if there were debts, the requested benefit is imperatively denied.

The system also has a function of property registration which records all the tax benefits that operate automatically, electronically from all liquidators systems.

After the recognition of tax benefits or the production of effects from those who operate the system automatically, a permanent online control of the budget subsistence for maintenance is done. For example, if the system verifies that a new debt was acquired, the SEFWEB automatically issues a notification to the taxpayer with the respective project to cancel the tax benefit. If no payment is made, the tax benefit is suspended or canceled.

9. THE PUBLICATION OF THE DEBTORS LIST ON THE INTERNET

In the Portuguese system, a list with the names of debtors with tax debts is published on the Internet, which is accessible for consultation by all the interested ones. The publication of the debtors' names is made after an administrative procedure which begins with the selection of debtors and concludes with the decision to publish their names, decision that is made after the notification of the decision to be published and a prior hearing with the selected ones.

The procedure is electronic, dematerialized, and captured by the SIPDEV - Publication of the Debtors Computer Management System. The SIPDEV automatically makes the selection of debtors who are subject to public disclosure by the tax administration. From 2006 the Portuguese Law started regulating and authorizing the tax administration to publish the list of debtors with pending tax enforcement processes. This computer system provides an interface with the SEF and performs the administrative procedure of publication, including the preliminary hearing of debtors and updates the list published on the Internet.

10. THE PREVENTION OF DEBTORS FROM PARTICIPATING IN PUBLIC BIDS FOR PROVIDING GOODS AND SERVICES FOR PUBLIC SERVICES

Portuguese Law prevents taxpayers with tax debts to compete in bidding to provide goods or services to the State. To ensure efficiency in the application of this principle, a computer system was implemented, which allows all public agencies to see if the companies participating in public tenders opened by them have or do not have tax debts. This consultation is done via the Internet at the site of the tax administration where the companies approved participants can also allow public entities to consult their tax situation.

Similarly, when public entities make payment of the goods supplied or services provided by the companies, they should do the same and verify if these companies have tax debts. In that case, the public entity is required to retain up to 25% of the value to be paid, obviously limited to the value of the debt. Likewise through the Internet, these public entities proceed to transfer the tax on the value of the deduction made.

11. THE MANAGEMENT OF GUARANTEES FOR THE SUSPENSION OF PROCESSES

When debtors judicially or administratively appeal the assessment of taxes due, the Law provides that the enforced collection process be suspended in the event that a guarantee is presented. To make the guarantee management, a rigorous control system was implemented in order to validate the value of the guarantees provided; carrying the system to automatically notify debtors about the need for strengthening the guarantees, and their replacement, as well as the control over the resumption of processing after the guarantee has expired.

The system also promotes the execution of guarantees in cases pending appeal presented to the court.

12. THE MANAGEMENT OF PROCEDURAL INCIDENTS

Given the rigorous control of all the tax, judicial and administrative processes filed by debtors, the Administrative Review Procedures Management System (SIGEPRO in Portuguese) and the Judicial Litigation Tax Management System (SICJUT in Portuguese) were implemented. These systems computerize and automatize all the processes in dispute. Both integrate the SEFWEB and automatically suspend the enforced collection process if a guarantee has been submitted. Likewise, terminating the litigation process, it is automatically replaced by the enforced collection process.

13. INTEGRATED MANAGEMENT OF STRATEGIC DEBTORS

Since 2010 the Portuguese Tax Administration has implemented an integrated monitoring methodology to large debtors. This methodology is based on the assumption that large debtors always have a tax avoidance strategy conceived and developed by an agent who is always an individual and that develops a complex and articulated operation to avoid paying the taxes owed.

The integrated methodology of large debtors is composed by a set of concepts elaborated for the internal tax administration actions, mainly:

i) The manager of the debtor. The tax administration appoints a highly qualified official that has transversal knowledge of the activity in order, to make a diagnosis of the situation and behavior of the debtor, to design and implement a strategy for debt collection;

ii) The global information. Information is the key source for the efficiency and effectiveness in fighting tax non-compliance of large debtors. For this reason strategic debtors managers must obtain all information, internally and externally to enable the tax administration actions to trigger specific, predetermined objectives, taking into account the debt collection.

iii) Integrated management. Just as large debtors adopt comprehensive strategies for non-compliance, both at declarative and accounting level as well as at payment level, the tax administration should adopt a concerted strategy among its various operating areas, primarily those that involve the exercise of powers authority, especially the tax inspection, the criminal investigation, application of bribes from the collection litigation and enforce collection, ensuring coordinated action of all tax administration services. That is the most important function of managers of debtors.

iv) The lifting of the veil. Many large tax debtors are collective persons, but in all cases behind these collectivities there is often same singular person who represents them to the tax administration. The monitoring integrated

methodology of large debtors is aimed to identify who is the “infecting tax agent” that hides behind the corporate debtors, then proceeding in an upward motion, determining the universe of companies, with or without debts which are dominated by it. This collection strategy directly addresses the singular person that is the “infecting agent”.

v) The permanent monitoring. The methodology of collecting the debts from large debtors requires a permanent monitoring of their business and their performance in fulfilling tax obligations, ensuring a permanent and concerted action of the tax administration on debtors.

The integrated methodology of large debtors is supported by implementing a computer system called SIGIDE - Integrated Management of Strategic Debtors Computer System, which operates in networks and allows the work of strategic debtors managers to be carried out in any tax administration service regardless of the place where they are physically installed.

14. INTERACTION WITH DEBTORS AND USE OF THE INTERNET AS PRIVILEGED RELATIONAL INTERFACE

All debtors can consult their debts, and they can proceed with their payment through the Internet. This payment can also be made in the ATMs network, by mail, in any banking institution and at the tax administration services.

Similarly, all entities involved in the seizure and sale of assets may use the Internet as a channel for obtaining and providing information to the tax administration.

The Portuguese tax authority possesses a Call Center (CAT) that provides support and information to debtors, about the status of their processes and their rights and obligations. The CAT runs on the network and has nearly 140 local services throughout the country, all with the same working philosophy and with the same level of style and quality.

The Portuguese Tax Authority permanently interacts with the debtors, sending a monthly letter to each one of them, informing them of the status of their processes, the advantages for the regularization of their non-compliance and disadvantages if they keep the non-compliance.

Similarly, electronic messages are sent via email to all debtors always informing them of every matter or action that will be performed in each process in which they are involved which have an impact on the debtor’s situation and if there could be additional costs in the process, taking advantage wherever possible, to recommend to regularize their tax situation.

Similarly, when a debtor is authenticated with his personal password at the site of the tax administration, a pop-up is issued with an alert, informing the debtor of his tax irregular status.

Also in the website the tax administration publishes the seized assets that are for sale, as well as auctions selling them.

All debtors can obtain, through the website of the tax administration, certifications of their tax situation.

15. THE NETWORKING WITHIN THE TAX ADMINISTRATION

Currently the Portuguese Tax Administration has an ongoing implementation of a computer system that makes all processes virtual, also allowing networking and access anywhere in the country or at any central, regional or local level services to all processes.

The network will allow a national distribution of the processes, moving them to services where there enough human resources is available, to analyze, process and decide.

Until now the Portuguese Tax Administration needed to move officials from one department, from services with more available resources or to other locations with greater needs with the corresponding costs. The implementation of this scheme is currently underway. It will enable a greater operation of the service level to a higher level of productivity of resources.

16. RESULTS

The Portuguese system of enforced collection that we just described is the result of the implementation of a Strategic Plan that was conceived in the last five years.

The implementation of this plan took place as a result of observations of non-compliance of tax obligations and the *stock* of outstanding debt collection accelerated growth, from the beginning of the decade from 1990 to 2005, when the Portuguese system of enforced collection reform began to be implemented.

Throughout this 15 years period, the value of overdue debts yearly increased consecutively and accelerated by a factor of six. At the beginning of 1990 the annual value of unpaid taxes by taxpayers in legal terms was about 900 million euros and as of 2005 it was approximately 4.5 billion euros.

The verification of this growth was a necessary consequence of computerization, automation and centralization of the clearance procedures and maintaining a database of manual processing, in paper and segmented by nearly 370 local services of the enforced collection process.

The perception by taxpayers of the tax administration's inability to process all tax enforcement process led to a substantial increase in tax non-compliance with a heavy loss for the Treasury and the State.

The investment in the information and communication technology in networking, the ongoing interaction with the debtors and in the training and qualification of officials, led to a growth in efficiency, effectiveness and quality of service of the tax administration without any precedent in history. The annual volume of tax debt began to decrease at the beginning of the implementation of the Plan, and as of 2011 is at the lowest level of the last 10 years, after decreasing steadily since 2005.

That way the stock of outstanding debt from enforced collection reversed its historical trend of constant growth and began to decrease in 2005. In that year, it reached 16.3 billion euros and started a downward cycle to reach a minimum in 2011 with about 13.8 billion euros.

In terms of productivity, a growth of about 20 times more seizures and sales processes was observed as well as a reduction by half of the average time for completing each process.

Portuguese Taxpayers now have a perception that the debt collection system has a high efficiency and this fact leads to a significant increase of voluntary compliance with tax obligations by taxpayers.

Case Study

Topic 3.1

INFORMATION SYSTEMS AND THEIR SUPPORT IN MANAGING FRIENDLY AND ENFORCED COLLECTION

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Contents: *Executive summary. I. Context. II. DGII information systems. III. The DGII's collection processes. IV. Collection support systems.*

EXECUTIVE SUMMARY

The main purpose of this presentation is to disseminate the Dominican Republic's experience in the use of information systems to support persuasive as well as enforced collection. To this end, consideration is given to regulatory provisions, information systems, status of collection and results achieved.

As far as taxpayer control is concerned, in these past years the Dominican Republic's Tax Administration has had significant advances in its strategic objective of "reducing evasion, improving compliance control processes and increasing the risk perception".

An essential element in achieving this objective has been the use of information and communication technologies (ICTs).

As part of the conceptual framework of the DGII's strategic planning, the ICTs are considered an element that renders compliance levels consistent in time. Technology should become a balance factor for designing simple and cost-efficient processes, with sufficient controls for ensuring the official's compliance and transparent action.

For this purpose, in 2005 the DGII designed the anti-evasion plan, focusing on the application of regulations that has fundamentally resulted in the

availability of a large amount of taxpayer information obtained electronically and the restructuring of examination processes, thus giving way to massive control.

Since then, delinquent debt cases have doubled, even though there has been a substantial increase in collection due to the new procedures and intensive use of technology as an essential element.

In order to explain the DGII's technological performance, the paper briefly describes the architecture of the computerized applications which includes a powerful transactional Tax Information System (TIS) with a unique data base. It performs a real time update of the current account as well as such tax control systems as: Information Crosscheck System (ICS) which shows all of the taxpayer's transactions and the Case Control System (SECCON) which controls the officials' action in this area.

The DGII is in charge of persuasive as well as enforced collection. There are two processes for handling persuasive or friendly collection: one is the individual identification of the debt when consulting the current account and the other is through massive identification by means of a computer system to make it part of the massive control plans.

Enforced collection ranges from the notification requesting payment up to enforcement measures at the administrative level, without the need for a judicial order. The technological support for collection is based on the electronic management of the basic noncompliance control cycle, which endeavors to exercise control with minimum intervention from the officials, using the DGII's Virtual Office (OFV) as platform for communicating with taxpayers. The Plan to be shown is intended to achieve:

a) The timely and massive detection of debts of any kind.
b) Speediness in the persuasive and enforced collection processes.
c) Control of procedures in the application of precautionary and enforceable measures.
d) Definition of the risk profile for collection.

Part of the actions carried out for these purposes include a system for collecting minor individual debts via the telephone. It is a reminder process which does not substitute the necessary measures for undertaking collection.

Another measure is access to the data bases of central credit offices used by private banking, which system allows the DGII to determine the debtor's location and some of his financial transactions.

Likewise, the DGII blocks the issuance of tax vouchers or invoices to tax debtors, which action practically constitutes the virtual closing of the taxpayer's activity.

For the enforced collection of debts the entity decided to acquire a computerized solution (Collector), used by private sector banks and collection entities, whose inclusion of the collection action as a good practice guarantees the official's productivity and timely compliance with the established policies.

Finally, the DGII's progress regarding electronic notification of noncompliances through the Virtual Office will also be shown.

I. CONTEXT

In recent years, the Dominican Republic's Tax Administration has shown significant advances in its strategic objective of "Reducing evasion by improving compliance control processes and increasing the risk perception[1]". The use of information and communication technology (ICT) has been an essential element in achieving this objective.

As part of the conceptual framework of the DGII's strategic planning, ICTs are understood as an element that renders compliance levels consistent through time. For the DGII consistency in compliance levels is fundamentally explained by: the organizational performance, the latter understood as the Administration's capability for fulfilling its short, medium and long term goals and objectives. It includes such aspects as society's perception with respect to effectiveness of the organization, the aptitude and attitude of its human resources, its organizational culture, the quality of its performance within the sphere of ethics, the taxpayers' risk perception and the credibility of the leaders of the institution for upholding their positions and influencing society.[2]" It also considers technological performance which comprises "the effective use of technology for improving Tax Management activities, thereby guaranteeing compliance with taxpayer obligations and return on the investment within short or medium term. Technology should constitute the balance factor for designing simple and cost-efficient processes with sufficient controls for ensuring compliance and the transparent action of the officials.[3]"

This, in sum, is what is meant by applying Technologies for improving examination, collection, services, assistance, internal control and, of course, enforced collection.

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1 *See DGII plan at www.dgii.gov.do*

2 *Juan Hernández. COMPLIANCE CONTROL PRESENTED BY THE GENERAL DIRECTOR OF INTERNAL TAXES, 40TH GENERAL ASSEMBLY OF THE INTER-AMERICAN CENTER OF TAX ADMINISTRATIONS (CIAT). Florianópolis, State of Santa Catarina, Brazil, April 2006*

3 *Ídem*

In the diagram[4] which is shown below, it is observed that a high level of technological performance results in greater consistency.

The reason for this relationship originates from the conviction that the more automated the tax procedures, the less risk of the official's biases, interpretations or subjectivities in determining the results that may be obtained in complying therewith.

The rules or parameters of the systems govern compliance with a process. Definitely, the challenge is in the rules being capable of interpreting the Law for achieving the efficiency and effectiveness of the Administration and in this way advancing in the level of technological performance.

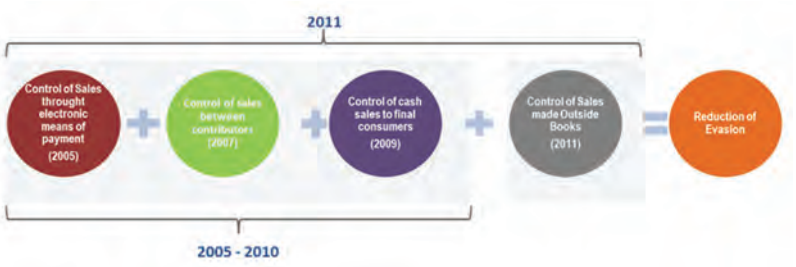
Based on this weighting of ICTs, their use for improving the collection process with technological tools or solutions has become a priority at the DGII in recent years.

Such prioritization results from an increase in accounts receivable due to increased control actions or examination coverage. The DGII's approach to the increase in control actions, whose purpose is to improve the perception of risk for in turn, improving compliance levels, has brought about an increase in debts. Therefore, it has been necessary to introduce systems that may maintain the debt at acceptable levels with regard to the collection levels.

4 *Prepared by the DGII*

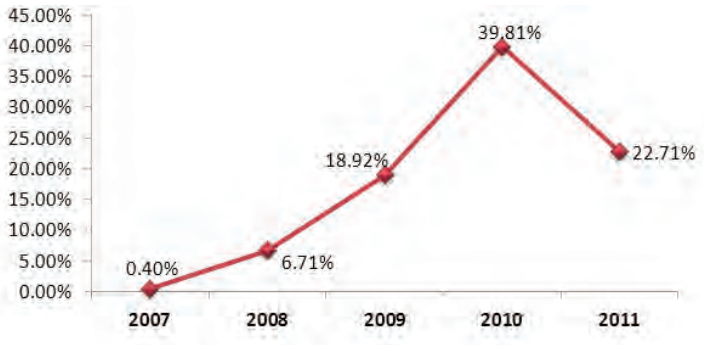
The DGII designed an Anti-evasion Plan, based on the implementation of Rules that are supported by technological solutions.

It began in 2005, with the first rules on VAT[5] withholding, continuing with the implementation of controlled tax vouchers or invoices, electronic remittance of information from sales and purchases records, installation of fiscal printers at the retail site, generation of electronic sales records from the fiscal printers and remittance via electronic media, among other measures.



The availability of information (on purchases, sales, stock, vehicles, real estate, sales through electronic payment media, etc.) and the restructuring of the examination processes gave way to massive control measures and accordingly, to increased coverage, as shown in the following graph.

GRAPH 1
Total Coverage[6]

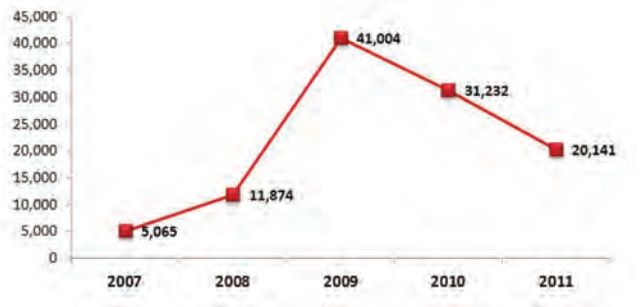


5 *In the DR, it is known as the ITBIS*
6 *Until June 2011*

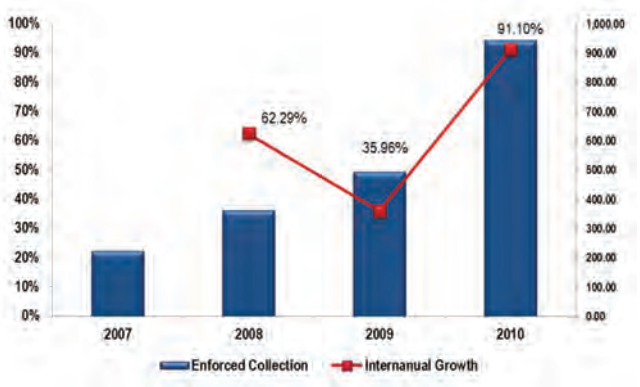
Control measures determined by the DGII are: integral or intensive audits, precise or specific audits, cases selected within the framework of massive examination programs, visits for verifying compliance with formal duties, closing of businesses and the verification of addresses and premises carried out by the DGII in keeping with its annual Plan.

Delinquent debts that become part of the enforced collection process have doubled since 2007. Nevertheless, the percentage of debt recovery or collection of such debts has been substantially improved, with an over 90% increase in 2010 with respect to 2009, while the projection for 2011 will exceed collection in 2010. This is due to the implementation of a collection improvement plan based on new procedures and the use of technology.

GRAPH 2
Number of Periods passed on to Enforced Collection[7]



GRAPH 3
Enforced Collection in millons of DR$



7 *The 2011 information is updated through July*

The Plan for improving enforced collection to be described in this presentation has been based on the use of technological tools and includes four fundamental components; namely:

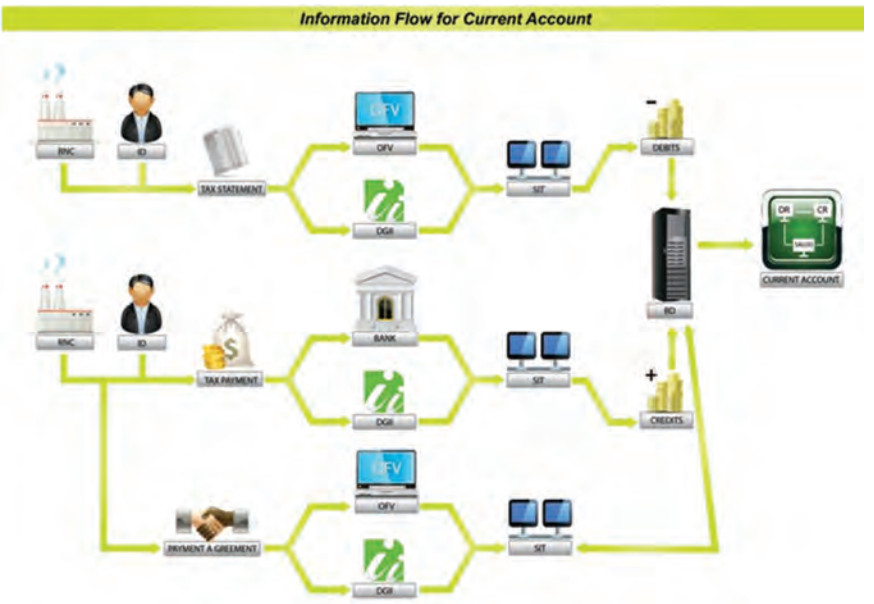
a. Timely and massive detection of debts of any kind.
b. Speeding up of persuasive collection and initiation of enforced collection processes.
c. The control of procedures dealing with the filing of precautionary and executory measures.
d. Determination of the collection risk profile.

Although improvement of the managerial capabilities of the units involved in the enforced collection process is not part of the scope of this paper, it is important to note that for the adequate operation of the technological tools designed and implemented, it has been necessary to organizationally adapt the areas involved in the Enforced Collection processes.

II. DGII INFORMATION SYSTEMS

Prior to analyzing the Enforced Collection support systems, a technological overview of the DGII is required. The DGII has a transactional tax information system (TIS) with a single Data Base which covers taxpayer registration, capture of returns through the Virtual Office, self-assessments as well as adjustments or estimates resulting from assessment or examination processes, registration of payments made at the banks or through any other means, the tax current account, among other operations common to the DGII's mission.

A relevant characteristic of this computerized system is its real time operation. That is, transactions are registered as they occur. For example, the returns (15%) and payments that are received at the DGII offices (25%), the returns which taxpayers file through the Virtual Office (85%) and payments received through the banks (75%), update the taxpayer's current account as they take place. This is a relevant fact when referring to the basic management processes of a tax administration.



This system (TIS) feeds the rest of technological applications or tools available at the DGII for supporting particular functions or processes. All are integrated and use the same data base. This integration is another relevant characteristic of effective management.

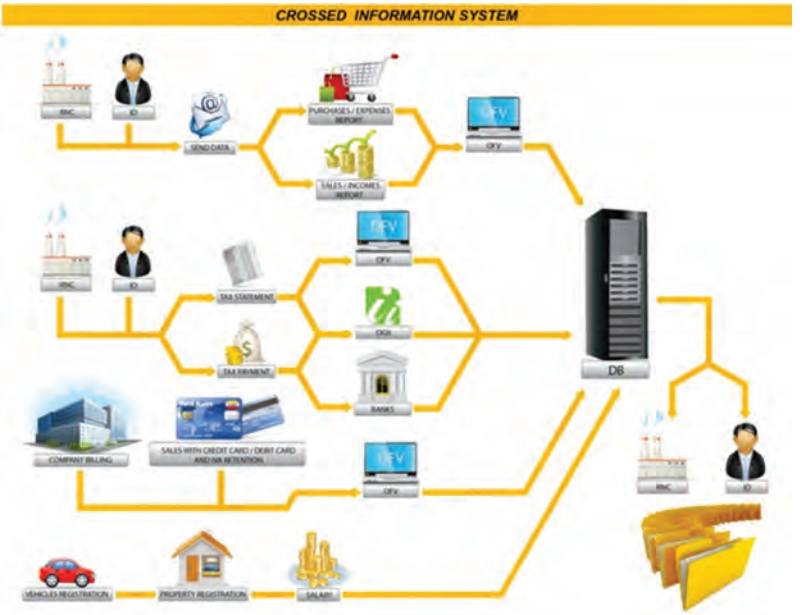
The vision regarding the integrated development of the systems, that is, based on the same standards and platform, using always the same data base and same identifier and evading the temptation of isolated solutions for solving particular problems has contributed to the systematic, safe and consistent evolution in the use of technology at the DGII.

The most important systems comprising the architecture of computerized applications for tax control are:

a) The Information Crosscheck System (ICS): it provides an integrated and summarized vision of all taxpayer operations, returns, net worth and transactions with third parties. The system receives information electronically filed by the taxpayers such as: fiscal vouchers[8] which taxpayers use as VAT credit and Income Tax expense, vouchers issued, payments received by businesses through electronic payment means, vehicles, stock, registered real estate, etc.

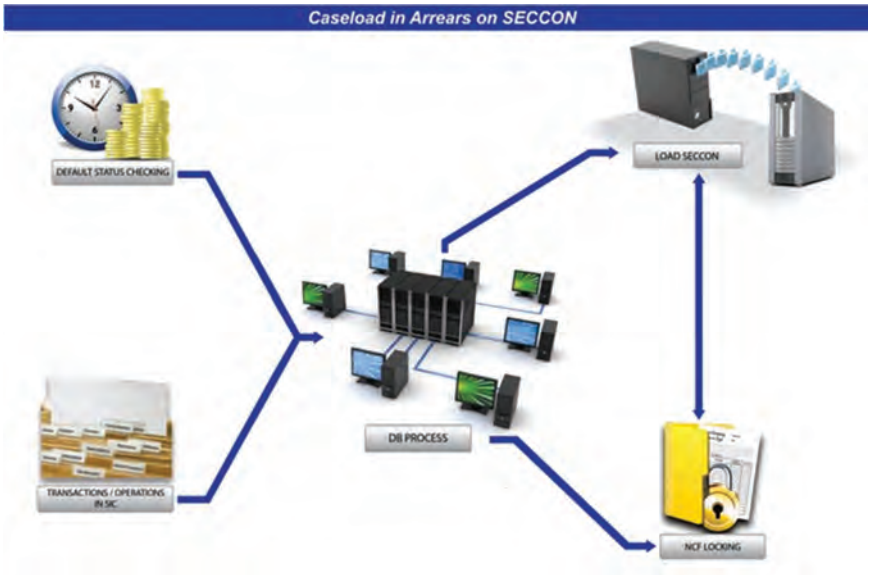
8 *Regulated invoices valid for use with credit for VAT purposes or expense for Income Tax purposes*

In addition to being useful for detecting noncompliance, the TIS also supports enforced collection by allowing access to information for identifying transactions or properties in order to avoid dilution of the net worth and achieve enforced collection. Being aware of its components as well as of its customers, allows for setting precautionary or preventive measures.



b) The Case Control System (SECCON). This system is particularly relevant. Plans for the massive detection of noncompliance, in this case, delinquency, are loaded in the system and allow for controlling the officials' performance, as well as for obtaining more reliable statistics on results.

The cases loaded in this system are those identified on the basis of verification programs which are determined by the areas responsible for the DGII's operational planning. They are distributed at the national level and goals are established for compliance with the corresponding procedure.



III. THE DGII'S COLLECTION PROCESSES

The DGII has two modalities for undertaking persuasive or friendly collection:

a) Individual identification of delinquent debts, which takes place when consulting a taxpayer's current account for fulfilling some assistance or control process.

   Individual detection acquires great relevance in the case of large taxpayers[9] and those known as local large taxpayers[10], for which there are officials assigned to individually follow up their compliance. The DGII's information systems include mechanisms for identifying such noncompliance.

b) Massive identification for cases generated by the Deputy Directorate of Collection and which are loaded in a Computerized System for the purpose of applying persuasive collection measures prior to undertaking the enforced process.

On the other hand, enforced collection which begins with turning over the debt to the specialized Enforced Collection unit consists of two centralized stages:

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9 ***National Large Taxpayers:*** *these represent less than 1% of the taxpayers registered in the country, which due to their operational levels, total taxes assessed and paid, are administered by a special office and represent approximately 70% or more of the DGII's total collection*

10 ***Local Large Taxpayers:*** *are no more than 3% of those Individuals or Corporations under the jurisdiction of the Administration of a specific area which represent approximately 70% of the Administration's collection.*

i. Sending of the notice of request for payment to the debtor and upon expiration of the term, application of precautionary measures that may guarantee recovery of the debt;
ii. If no response is obtained, executory measures will be applied from the administrative headquarters, without the need for a judicial order. Such measures may be executive seizures of personal property and real estate, even of those who are jointly and severally liable expressly recognized by the Tax Code.

The current debt persuasively processed by the DGII amounted to an average of 1.37% of its collection from 2007 through 2010, while the debt under compulsory or enforced collection represents an average 0.35% of collection in that same period.

IV. COLLECTION SUPPORT SYSTEMS

The Plan for improving collection, whose four components have already been mentioned and which is aimed at achieving a more effective collection, includes initiatives based on the electronic management of the basic noncompliance control cycle, an element whereby the DGII includes technology in the tax processes.

The purpose is to basically control compliance through automated initiatives that may reduce the intervention of individuals by using the Virtual Office as platform for communicating with taxpayers, with the support of information that is included in the Systems that are part of the DGII's integrated technological platform.

In other words, the Virtual Office, in addition to being considered a tool for reducing the taxpayer's compliance costs is seen as the basis of a scheme of interaction with the latter. In addition, the availability of information in the transactional systems allows for timely detection of noncompliance, in this case, delinquency.

1. Timely and massive detection of debts

Any omission or delinquency may be timely detected since, fortunately, there is real-time processing of filing and payment transactions at the DGII. This facilitates the preparation of reports for detecting noncompliance and also guarantees the reliability of current account data in identifying delinquent taxpayers.

Thus, an authorized official who consults the current account may at any time identify a debt, its source, the amount of taxes, surcharges and interest.

The timely detection of debts results from the DGI's development of a system based on real time transactions and integrated systems.

Massive detection is based on the creation of delinquency detection programs that generate and are executed in the SECCON System, which should be processed at the persuasive level by collection control officials disseminated throughout the country. These massive programs allow for prioritizing the process according to the amount and to follow up the persuasive process from the central level.

2. Speeding up of persuasive collection processes and initiation of enforced collection process

In order to speed up the processes, the DGII has focused on creating efficient mechanisms for sending messages and notifications to delinquent taxpayers, but also in some actions that may serve to exercise pressure for ensuring payment and which may become a deterrent for the other taxpayers.

In relation to the first aspect, as stated, the Virtual Office plays a fundamental role.

Within the Virtual Office[11] there is a mailbox for messages and notifications. The mailbox serves as mechanism for informing the taxpayer not only about normative and assistance aspects, but also for alerting him about noncompliance. Since July, following the launching of the new version of the VOF in April last year, every month the taxpayer receives information about his noncompliance, omission or delinquency, as previous step for undertaking collection actions as such.

Noncompliance identification parameters and a message format are determined. When detecting taxpayers that correspond with the conditions determined, a message is either sent or published. This tool has a tremendous potential for persuasive actions.

In that same mailbox in the Virtual Office, there is a section for notifications where Collection publishes notifications requesting payment, well as the official documents that initiate the Enforced Collection procedure. For such purposes, on April 4, of this

Year, the General Rule 03-2011[12] on the Use of Telematic Media at the DGII was published. Among other things, it provides for the mechanisms to guarantee the authenticity of operations carried out through the Virtual Office, it being possible

11 Virtual Office: telematic space where taxpayers may undertake tax procedures for facilitating compliance and reducing costs. It is available 24 hours a day, seven days a week, thereby allowing taxpayers to undertake procedures and consult on-line services, regardless of their geographical location.

12 See in www.dgii.gov.do link on General rules of the Legislation Section

to render valid the electronic debt notifications with the digital signature and the assessments following examinations, among other types of documents, thus improving the effectiveness and efficiency of the notification process.

It is estimated that by the end of this year, 40% of notifications regarding the collection process will be made through this procedure.

As of this year, as mechanism for increasing the perception of risk and increasing the number of contacts with delinquent taxpayers, the DGII hired a company for undertaking collection via the telephone of all debts below a minimum wage existing in the enforced collection portfolio. These represent 57% of the periods that must be processed at the enforced collection level, probably due to weaknesses of the persuasive process[13] and which only represent 1% of the current debt.

This type of process has been fundamentally considered for individuals with low debts who cannot be easily located and in which this type of business has experience. It is a process that involves payment reminder and warning which does not substitute the measures that could be adopted through enforced collection and which allows for reducing management costs, not only in the recovery of the debt but also in write - offs from the file.

This measure is perfectly compatible with the General Telecommunications Law No. 153-98, to avoid interference in the privacy and peace conferred by the Dominican Constitution as a right to all citizens.

In the first phase of this process (until July of this year) there has been contact with 52% of the taxpayer portfolio under consideration, with an 11% increase in attempts at making contact, arriving at a maximum of 4 attempts. Likewise, 70% of the contacted portfolio has been recovered and 77% of these payments have been received up to 30 days following contact.

Another means that has been beneficial in locating taxpayers and becoming aware of their financial status has been the access to the data bases of credit information centers used by private banking. Through this tool, one may learn more about the debtor inasmuch as there is access to his most recent locations and some of his financial transactions. All officials carrying out Collection activities have access to this tool.

Blocking or preventing the issuance of tax vouchers or invoices to delinquent taxpayers is another of the series of measures for speeding up collection.

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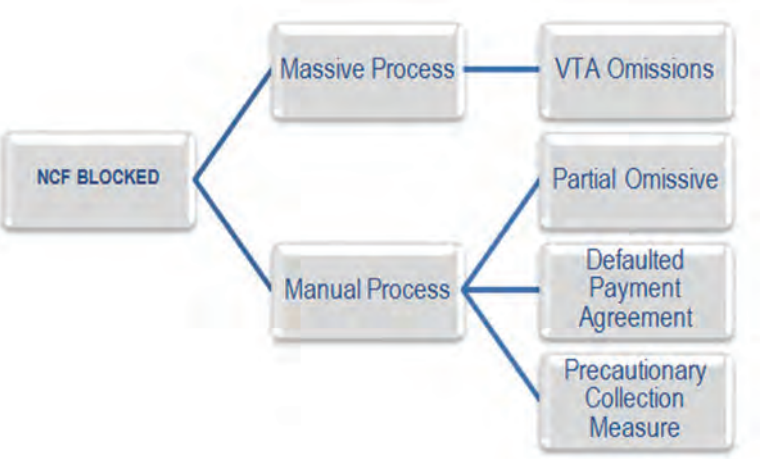
3 The policy in relation to this aspect provides that after three months of processing a monthly periodicity debt at the persuasive level, it should be "uploaded" in the enforced level

It actually involves the quarterly automatic detection of delinquencies with respect to withheld taxes, or individual cases of partial omission, payment agreements that have not been fulfilled, taxpayers with precautionary measures and blocking the possibility of issuing tax vouchers, which is a sort of virtual closing of the taxpayer.

In the Dominican Republic, all tax vouchers or invoices with a fiscal value sent by the taxpayers as part of the monthly VAT return must be validated and, in fact, there are massive and individual consulting mechanisms for such purposes. When there is a blockade, the taxpayer consulting about a supplier will find this message: "NCF BLOCKED. CANNOT BE USED FOR ANY FISCAL PURPOSE", which turns into an actual warning for the debtors, since their clients become aware that they cannot use the vouchers issued by them for fiscal purposes.



3. Control of procedures dealing with the application of precautionary and executory measures

For processing cases involving the Enforced Collection of debts, the DGII decided to acquire an off-the-shelf computerized solution generally used by Banks and private sector collection companies. A special characteristic of this type of computerized application is that it includes best practices in the debt management process, in addition to controls that guarantee the official's productivity and timely compliance with collection policies. In this case, an application called "Collector" has been selected. It is developed on the Microsoft framework which allows relatively easy information exchange with the DGII's Tax Information System (TIS).

It is important to point out from this system the automated management of a daily agenda. Every morning each collection official has a working agenda and the cases he must work on are placed on a tray. These are selected randomly according to the amount and age of the debt. This contributes to transparency and effectiveness of the process. Transparency is evident in the fact that the debts of the day's agenda must be processed by the collection official according to the established policy, without the possibility of manipulation, although being able to trace each of the operations carried out. On the other hand, effectiveness is observed through the number of cases assigned per day, per official in accordance with the experience.

4. Risk profile for collection

Currently, a Project involving a tax risk profile consisting of two components is being promoted: one as support tool for the selection of cases to be audited and the other, to prepare collection officials so that they may be capable of determining specific actions for effective collection in relatively homogeneous sectors.

This project takes into account a series of financial, economic and net worth indicators per taxpayer, to which a weight or importance is attributed, taking also into consideration the background regarding notifications, sanctions, etc., and thereafter a risk grading is determined.

Consideration is given to risk as warning in selecting cases to be audited, as well as to risk as indicator of precautions that should be taken into account for collection.

The collection component of this Project should be in operation by January2012.

Case Study

Topic 3.1

INFORMATION SYSTEMS AND THEIR SUPPORT IN MANAGING FRIENDLY AND ENFORCED COLLECTION

Richard Denis
General Director
Canada Revenue Agency
(Canada)

Contents: *Executive summary. 1. Introduction. 2. Background. 3. Challenges. 4. External scrutiny. 5. The integrated revenue collections project. 6. Project experiences and lessons learned. 7. Conclusions.*

Executive summary

In today's dynamic business environment, organizations are constantly searching for ways to become more effective. Tax administrations are not immune to this challenge, and a key measure of their effectiveness is not only how well they bridge the "collections gap", defined as the difference between what could be collected and what is collected, but also how effective the collection process and gap are managed.

Like all tax administrations around the globe, the Canada Revenue Agency continuously strives to improve its operations in order to meet the challenges facing it. The Canada Revenue Agency's debt management programs have made significant improvements to their operations in recent years in order to become more effective.

To meet the quintessential challenges associated with finite resources and the expectations of improved performance relating to collections or revenue generation, the Agency embarked on a business transformation agenda that was rooted in business solutions and technology applications. To this end, the Integrated Revenue Collections Project will deliver new business solutions that analyze behaviour, report on debt components, provide data for research and analytics, and assess risk, which when combined will enable a flexible risk-based approach to workload management.

All of these enhancements will allow the Agency to make more efficient use of finite financial and human resources with the goal of improving collection and compliance results, as well as, more effectively managing debt management program portfolios from a risk and investment perspective.

Making these changes has not been easy as it required participation and buy-in from several areas within the debt management programs and the Agency's information technology area. Robust governance that focused on scope and followed project management best practices has been key in ensuring the success of the project.

1. INTRODUCTION

This paper will articulate how the Canada Revenue Agency has incorporated new technology and processes to assist in addressing payment and filing non-compliance. It will identify the changes the Agency has experienced through the implementation of the Integrated Revenue Collections project as it relates to the subject.

Particular topics covered will be:

1. Why the need for change?
   - Increase in the rate of non-compliance and non-filing
   - Recommendations identified by the Auditor General of Canada
   - Increase in accounts receivables and limited resources
   - Limited flexibility in our collections information systems

2. How we managed collections in the past.
   - Collections process description
   - Our vertical-silo approach to managing collections based on value of debt

3. Introducing new technology and the change in business approaches.
   - Description of the new tools implemented and required areas of expertise
   - How we integrated these tools into our business processes
   - Legislative and privacy concerns
   - The resulting changes in the way of thinking

4. Project experiences and lessons learned.
   - Defining the scope
   - Areas of risk
   - Best practices
   - Acceptance of change

5. What were the outcomes and gains?
- Expected benefits
- Approach to measurement

6. Where do we go from here?
- Getting better at using these support tools
- Future enhancements

Our processes, systems and environment

To understand the Agency's approach to managing friendly and enforced collections, it is helpful to review the processes, systems and environment of the Agency.

2. BACKGROUND

Canada Revenue Agency (CRA):

The Canada Revenue Agency's mission is to administer tax, benefits, and related programs and to ensure compliance on behalf of governments across Canada, thereby contributing to the ongoing economic and social well-being of Canadians. The Agency has approximately 44,000 employees during peak periods and 48 Tax Services Offices and 7 Tax Centres across the country.

In the 2009/10 fiscal year, the Agency processed about $358 billion in taxes and duties and delivered over $17 billion in benefits and credits to millions of individuals and businesses on behalf of Canada's provinces, territories, other federal departments, and certain First Nations.

Debt management programs:

The Agency's debt management programs activities ensure compliance with tax laws for filing, withholding and, payment requirements, including amounts collected or withheld in trust on behalf of the Government of Canada, as well as provinces, territories, and certain First Nations.

The programs contribute significantly to the Agency's fiscal impact. In the 2009/10 fiscal year, the programs managed $33 billion in new debt intake, which represented approximately 10% of the Agency's total revenues.

The debt management program carries out its activities with an operating budget of approximately $650 million and 10,500 employees located in the Tax Services Offices, Call Centres, Tax Centres and Headquarters'.

3. CHALLENGES

Growth of the accounts receivable inventory

The Agency has experienced considerable growth of its accounts receivable portfolio during the past several years, a trend similar to other tax administrations. An average increase of 8% per year has been noted, notwithstanding, program performance exceeding expectations.

This growth can be attributed to many factors such as fluctuating economic cycles, growth in the value of new accounts, growth in the number of insolvency filings, compounded interest on existing accounts, growth in the tax filer population, and the impact of compliance activities undertaken by other areas within the Agency.

Based on the Agency's tax-filer population and workload volumes, the number of Canadian tax-filers has increased at an average rate of 3% per year over the past few years. This growth increases the pressure on the Agency to sustain the current levels of collection and compliance efforts. Furthermore, the debt management programs in the Agency have experienced a 5% decrease in funded program resources over the last 5 years. Although the debt management programs have managed to achieve a 3% average annual increase in productivity because of ongoing business renewal efforts the accounts receivable inventories continued to grow and age.

This growth in accounts receivable is not unique to the Canada Revenue Agency, and neither are the ongoing efforts to tackle this problem. An Organization for Economic Co-operation and Development (OECD) study *(*Monitoring Taxpayers' Compliance: A Practical Guide Based on Revenue Body Experiences, dated June 22, 2008) reported that tax administrations around the world have experienced increases in non-compliance and accounts receivable inventories. The contributing factors are acknowledged to be numerous and complex, as the impact of increased efficiencies in collection efforts are offset by large shifts in the intake of new debts. The OECD study suggests these new debts are due to variables such as changing taxpayer compliance patterns, economic factors affecting business viability, and the impact of heightened compliance activity.

A factor that was limiting the Agency's ability to achieve even greater effectiveness in its debt management programs was that technology hindered the organization's ability to fully address the growth in receivables. This restricted the organization's ability to understand taxpayer behaviour and the make-up of tax debts, assess risk related to taxpayers' non-compliance, develop more effective workload strategies, report on the effectiveness of the organization's strategies and actions, and maximize the potential of the Debt Management Call Centre.

It was recognized that further investment in new technology would enable the debt management programs to move away from existing sequential approaches, identify and apply the most effective and responsive strategies, and build the capacity to better handle its accounts receivable workload while maximizing a return on investment of resources utilized from a risk-based approach.

Non-compliance with individual and corporate filing obligations

Each year, millions of Canadians (individuals and corporations) file their income tax returns, and those that fail to do so are subject to enforcement action. Failure to obtain these returns would represent unassessed debits, which in turn, would result in foregone revenues...

The Agency's ability to understand the behaviour of individuals and corporations and to fully analyse, report and measure non-filer activity was limited due to availability of data, and a lack of automated facility to cross reference non-filer activity to accounts receivables. It was recognized that further investment in new technology to facilitate the analysis of behaviour, report and measure non-filer activity, and provide correlations would enable the debt management programs to identify and apply more effective, efficient, and responsive strategies, as well as, build a capacity to better handle the non-filer workload. This new intelligence would contribute to revenue generation through increased filing and reporting compliance.

4. EXTERNAL SCRUTINY

In May 2006, the Auditor General of Canada, whose responsibility it is to hold the federal government accountable for its stewardship of public funds, tabled a report on the Agency's debt management program. The report recommended that the Agency invest in debt management research in order to better understand the make-up of tax debt and the reasons for its growth. In addition, the report recommended improvements to the Agency's program performance information, risk scoring, file management systems, and business processes.

Technology limitations

The Agency's existing collections and compliance systems lacked the flexibility and responsiveness to accommodate changes in business processes driven by improved risk assessment and risk management practices. Furthermore, the underlying infrastructure, listed below, required improvements to allow flexibility, robustness and completeness to fully support the debt management programs for all revenue lines.

- Compliance and collection strategies (automated actions such as letters) were not sufficiently dynamic and reactive.

- Data essential to the decision making process was not tailored and/or did not provide the level of granularity required for the current needs of the Agency's debt management programs.
- Workforce management functions (forecasting, scheduling, monitoring) in the debt management call center were resource intensive processes.
- Risk scoring was linear in nature and narrow due to limited taxpayer information.
- In some cases, field officers were required to access multiple system applications to retrieve taxpayer data needed to arrive at, or manage case file decisions.
- Accurate measurement and reporting of activities required an undue amount of effort.
- The ability to understand taxpayer behaviour and the make-up of tax debts was limited.
- The ability to develop risk-based predictive models was limited due to incomplete taxpayer information.

These issues limited the Agency's debt management programs in regards to:

- performance measurement and reporting;
- debt management research;
- trend analysis of the accounts receivable and non-filer portfolios;
- workload segmentation;
- flexible case management and workload development treatment strategies across automated operations, the Debt Management Call Centre (DMCC), Tax Services Offices, and Tax Centres;
- understanding the make-up of tax debt, and taxpayer and non-filer behaviours; and,
- Predictive analytics and risk scoring.

Business drivers for change

To address the organizational and environmental factors noted previously, the Agency envisioned a business transformation agenda, which required a strategic plan in order to develop an integrated taxpayer-centric approach. This plan would focus on new business solutions, upgraded technology platforms, the pursuit of legislative amendments, increased support for employees, and strengthened debt management partnerships and new program business opportunities. The key components would target people, processes and the technology in order to modernize the way the Agency's debt management program conducted its business. The focus of this paper is on the technology solutions pursued which involved building or upgrading the technological platform to facilitate the migration toward a taxpayer-centric approach, as well as, how it provided the ability to strategically use the information collected.

Debt management processes (Prior to changes)

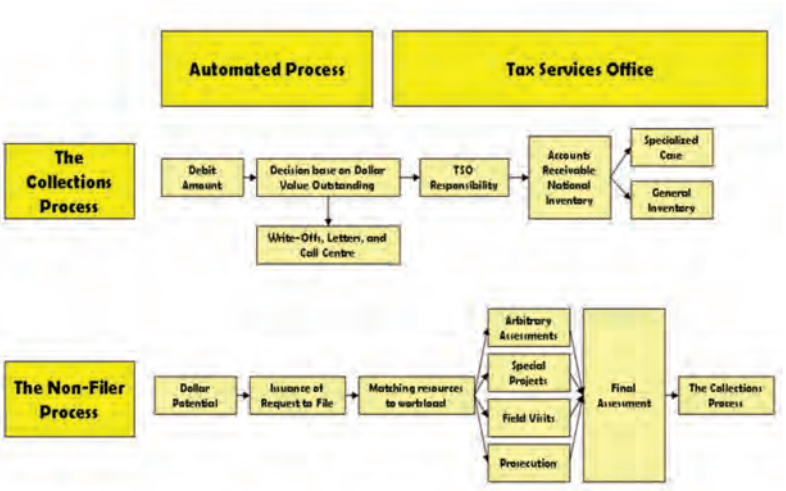
For all workloads, the standard method of operation was to allow the computer systems to manage cases for a pre-defined period of time, including routing accounts to the Debt Management Call Centre (DMCC). Cases that were not resolved during this period typically flowed to a field office, otherwise known as a Tax Services Office (TSO), for resolution, where they were routed to more senior level officers.

Based on certain criteria and the dollar value of the case, the computer systems would assign the account to a sequential set of actions (strategy). Depending on the value:

- a collections case could remain in the automated system, including the Debt Management Call Centre, or be sent to the Tax Services Office for immediate action; and,
- a non-filer case would flow to an officer for filing enforcement action, or would be de-activated if it was expected that filing enforcement action was not expected to generate revenue.

For all workloads, complex risk factors such as case history or associated debt were considered when the case flowed to the respective TSO for resolution.

As outlined in the process diagram below, program activities were accomplished through a mix of routine actions such as letters, notices and human intervention in the Debt Management Call Centre (DMCC), Tax Centre (TC), and Tax Services Office (TSO). The programs have two primary workload flows: the compliance non-filer and collections processes.



Technology platform (Prior to changes)

The supporting technology that underlies the business processes was built over many years using mainframe systems designed to accomplish work by the nature of the workload and in some cases, by revenue line (i.e., individual tax, corporate tax, GST/HST (VAT), payroll deductions, etc.). This created an environment where the business processes and supporting systems were not integrated leading to greater difficulty in accessing and analyzing the necessary information, enhancing or upgrading the processes to achieve improved program results was complex, and the ability to integrate new lines of business was limited.

In relation to the diagram above, there were three main support systems involved:

- One system managed the automated enforcement activities; no action for a set period of time, sending enforcement letters, sending accounts to the Call Center, routing accounts to the TSO, and writing off small dollar program accounts.
- Another system provided its users in the TSOs, with the ability to manage, follow-up and work their assigned workloads. In addition, it provided its users with the facilities to create and display a history of actions taken, refer and review actions taken, record specific data, and key transcripts or create and issue legal documents and letters.
- And another system controlled the enforcement of delinquent accounts as it related to outstanding returns. This system also processed and controlled all delinquent actions taken by the computer, TSOs or Taxation Centres.

5. THE INTEGRATED REVENUE COLLECTIONS PROJECT

Project Overview

The Integrated Revenue Collections (IRC) project was initiated to deliver new business solutions that would analyze behaviour, report on debt components, provide data for research and analytics and assess risk to enable flexible risk-based workload management, a departure from the existing sequential approaches. In addition, IRC assists in the identification and application of the most effective and responsive strategies in order to improve the Agency's debt management programs.

The collections and compliance workloads for individual tax was the first revenue line migrated to the IRC solution. The other major revenue lines (corporate tax, GST/HST (VAT), payroll deductions, excise tax) and other non-tax-based components, collection of benefits overpayments have or will be migrated to

the IRC business solutions/technology under a staggered approach in order to mitigate the risks of large scale implementation and to optimize the use of existing resource capacity and availability.

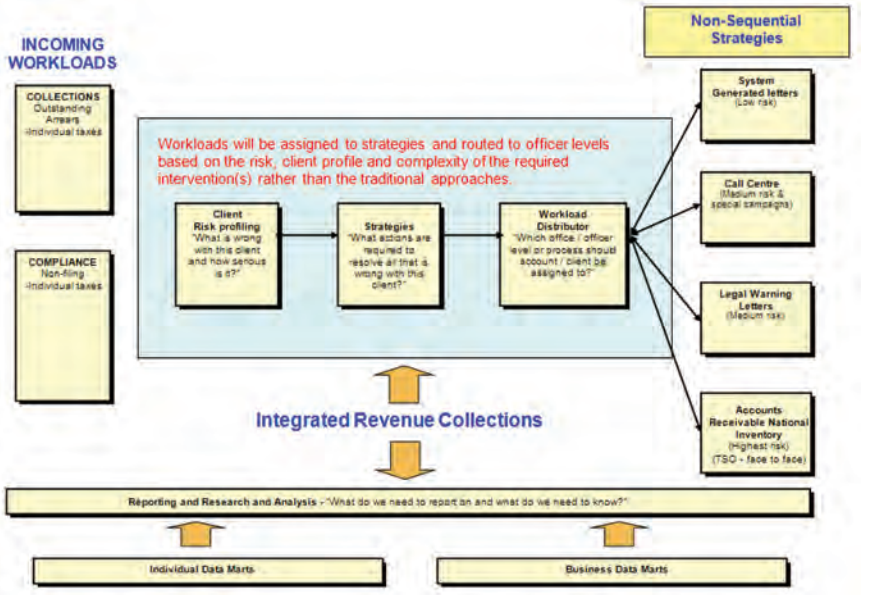
The IRC project focuses on improvements in the following five key areas:

- **Research and analysis** – Development of data infrastructure required to conduct effective research and analysis that would provide an ability to detect, observe, measure and report on segments of receivables and client / debtor population, actions, events or trends relevant to the Agency's debt management programs.
- **Data mining** – Exploration of data in regards to discovering meaningful new relationships, patterns and trends using pattern recognition technologies as well as statistical and mathematical techniques, which would support the improvement of business processes and the optimization of debt management workloads.
- **Risk management** – Development of a risk-based solutions environment providing a targeted use of available resources based on an accurate and timely assessment of the ability to pay and potential for loss factors, as well as, an ability to perform an accurate and timely assessment of the potential revenue at risk for tax returns outstanding.
- **File management** – Development of file management tools to increase the productivity of workers through case management support, automated tools to support time-intensive activities, and the monitoring of workload progress.
- **Performance measurement and reporting** – Development of additional monitoring, measurement, and reporting functionality that focuses on results and activities in respect of strategies and actions in support of a continuous program perspective.

The project was broken into two phases. Phase I of the project has introduced the technology that provides the ability to analyse an individual's behaviour, determine the make-up of the tax debt, perform research on debt components and assess risk. It also allows greater system flexibility to respond to changes and to target strategies for specific segments of debtors based on enhanced risk profiling for the individual revenue line. Phase I of the project was effectively completed in October 2009.

Phase II of the project continues to build on the accomplishments achieved during Phase I. It encompasses; technology upgrades in the Debt Management Call Centre, further development of the business intelligence (BI) environment (reporting, data mining and research & analysis) to allow more in-depth analysis and risk assessment of corporations and the GST/HST (VAT) line of revenue, and additional improvements to the collections/compliance systems as it relates to individual non-filers. Phase II is scheduled for completion in March 2013.

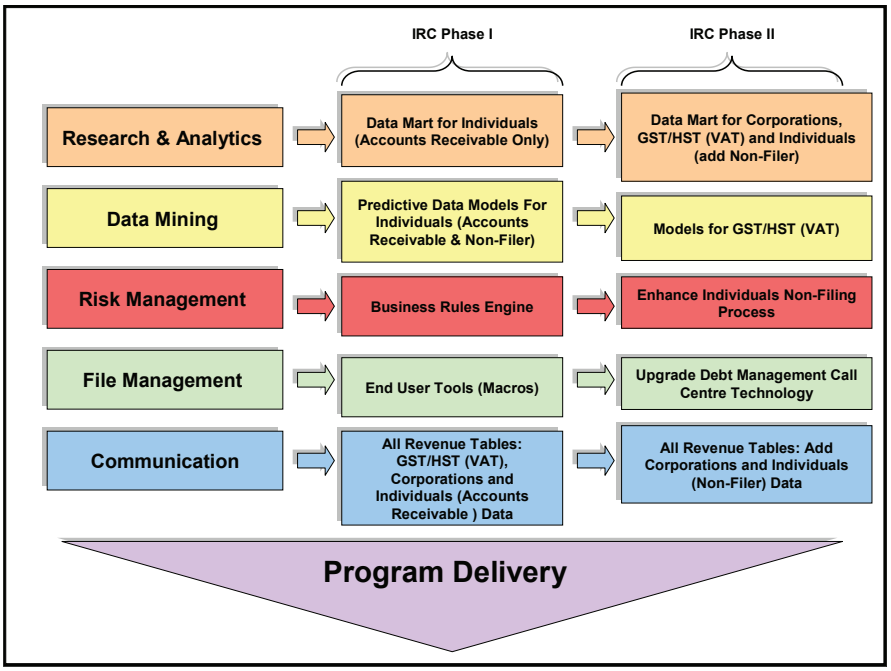
The figure below provides an overview of the change to the process as a result of the IRC project.



The new tools – Development and implementation

The implementation is a critical part of project delivery as it is the stage where the business solutions are operationalized and start to show value for money. Because the technology components were a significant part of the overall project delivery of the IRC project, the project and the program teams were heavily involved in the development of the implementation strategy to ensure a successful transition. As a result, the IRC project provided early, measureable, and sustainable process improvements, which contribute to the delivery of program outcomes.

In order to minimize and manage the risk associated with a large project of this nature and given the complex nature of delivering so many components, the project was split into phases. The figure below shows the key areas of progress made by the project.



Research & analytics

Solutions for the research and analysis are comprised of the data marts (a repository of data gathered from operational sources), which include accounting, assessing, information slips and collections/compliance systems data, and query tools to access/view the data.

The objective was to create data environments that would assist business research and analytics areas in the Agency's debt management programs to gain a solid understanding of the workload. The data in the data marts are used to run queries, which provide information to the business analytics, performance reporting and data mining areas. The information from the data marts provides the program area with a good understanding of the workload as well as vital information on trend analysis, including the shifting priorities within the workload, and the changes and growth within particular portions of the non-compliance population. This helps the program areas make informed business decisions on the best collection/compliance strategies and actions to utilize.

Data mining

This area required the building of an exploratory environment, and the use of data mining software tools to access the data and build models. Data mining finds patterns and relationships from large groupings of data and translates it into information, which can be used to make actionable predictions. The process

of data mining consists of three stages: (1) the initial exploration, (2) model building with validation/verification, and (3) deployment (i.e., the application of the model in an operational environment).

There are two distinct skills required for a data modeller: extensive knowledge of the data mining software tools and a working knowledge of the statistical process of data mining. After procuring the tools to build the models, each modeller received beginner and advanced level training on its functionality. Due to the specialized nature of data mining, the practical use of the software required the assistance of industry scholars.

Through one-on-one training sessions with PhDs in this field of study, the data modelers were able to create and ultimately build data mining models.

It is critical that the rollout process for these models follow a standardized process in order to ensure that each model is developed, evaluated and implemented in the same fashion and therefore raises no questions as to its reliability. The methodology used in this regard is the Cross-Industry Standard Process for Data Mining (CRISP-DM). The process is loosely defined as follows:

- Business Understanding - problem definition and preliminary plan;
- Data Understanding - initial data collection and familiarization;
- Data Preparation - transformation and data cleansing;
- Modeling - selecting the model technique, building and assessing the model;
- Evaluation - interpretation of the model, decision on the use of the data mining results; and,
- Deployment - determine how the results need to be utilized, who needs them, how often and ultimately deploy results.

The data mining models that were developed give the Agency a strong indication of the make-up and behavioral characteristics of its debtor population and thus provides the ability to make informed operational decisions to achieve taxpayer compliance.

Investing in data mining has and will continue to support the Agency's strategic outcomes where taxpayers meet their obligations and Canada's revenue base is protected by having:

- an intelligence-based risk assessment and robust workload prioritization; and
- the development and application of effective levers of influence to address filing and payment non-compliance.

There are a number of data mining models completed to date that are assisting the program with the strategic management of non-compliant accounts. These models are being used in several capacities such as pilots or implementation into the business strategies using a business rules engine.

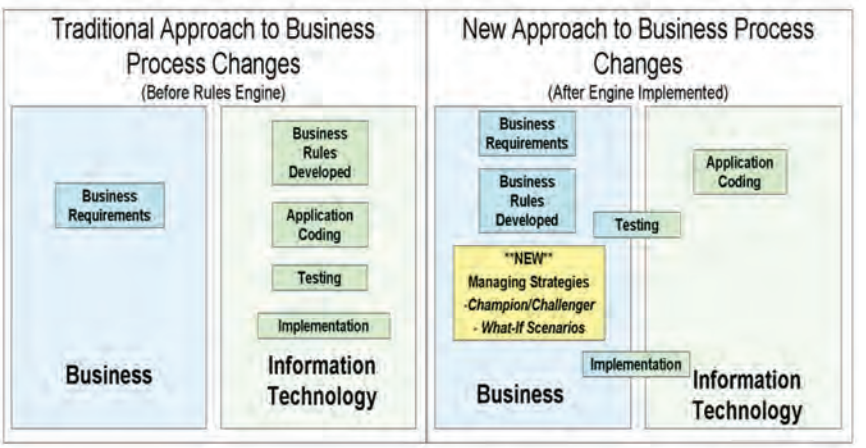
Risk management

There are two components, which have resulted in improvements to this area.

1. A business rules engine (BRE), which is a software system that allows the program owners/users rather than information technology specialist, to define, test and execute one or more business rules in a production environment. In addition, the rules engine provides the capability to run experiments in production or carry out hypothetical simulations.

The BRE has allowed the program owners to employ a new approach for implementing business process changes as part of the program's day-to-day operations. Previously, the program area would rely on historical information as the basis for change. The BRE provides the program area with the capability to conceptualize changes to their business processes using actual account information. This approach allows the debt management programs to complete an analysis of the results and make an informed decision prior to implementing a change to the business process. It also provides insight into what effects a change will have on the program as a whole (the end-to-end process).

The figure below illustrates the traditional and the new approach to managing changes for system-based business processes.



2. Enhancements to the collections/compliance systems for improved file selection and use of the debt management call centre as it relates to individual non-filers. Currently, the individual non-filer compliance workload is not sent to the Debt Management Call Centre. Modifications to the existing collections and compliance systems will now provide for high volume low complexity contact of taxpayers to arrange for the filing of their return and, if an accounts receivable issue exists, integrate the two issues into a single call transaction.

Today, a system process is used to identify individuals who have not filed their income tax return for a target year. This process calculates the tax potential for the missing tax return using various sources of data, ranks them by their order of tax potential, and assigns the account to a linear strategy for those who meet a minimum level of tax potential.

Shortly, the linear process will be replaced through the use of a predictive data mining model that has been developed to determine tax potential along with new risk scores for workload allocation. This will improve inventory management as the highest priority files will be selected and worked first. Furthermore, the models will allow for the identification of a segment of accounts based on specific criteria (e.g. construction workers), and will permit the allocation of an account to the most appropriate strategy.

These changes and resulting activities will allow the Agency's debt management programs to influence the taxpayer's behavior before they become a repeat offender.

File Management

1. There are two components, which have resulted in improvements to file management. End-user tools that interact with one or more of the Agency mainframe systems known as Mainframe Macro Applications (MMA). Through the IRC project, several macro-based solutions have been developed and deployed to automate routine workloads in order to gain productivity and create business process improvements.

Through consultations with the collections officers, several prototypes were developed to provide work tools that would help meet current and future needs.

One of the largest macros delivered was the Accounts Receivable Platform (ARP). This platform is a tool that improves productivity and is specifically designed to help collections officers analyze and manage their workloads. This new tool significantly reduces the time spent browsing, gathering data and updating accounts. It ensures that accounts are handled in a consistent and homogeneous manner regardless of where the account is worked.

All macros built utilize a graphical user interface (GUI). The GUI allows users to interact with electronic devices with images rather than text commands. GUI versus text-based interfaces results in:

- a higher output per work-hour through higher productivity,
- a higher output per employee through lower levels of frustration and fatigue, and
- a greater return on investment because users master more capabilities and require less training and support.

2. Incorporating new technology into the Debt Management Call Center (DMCC) to allow for an integrated inbound/outbound telephony environment, and the automation of workforce management processes. The previous system in the DMCC saw inbound and outbound portions of the workload handled by two separate telephony systems and two separate telephone agent queues. This dual system approach prevented telephone agents from answering different types of calls, when business priorities changed, without logging off and on to the separate telephone systems – a cumbersome process resulting in lost productivity and less than optimal service levels.

Implementing an integrated telephony environment at the Debt Management Call Centre has provided a seamless process for working multiple types of calls without logging off and on to the system. It has also leveraged Interactive Voice Response (IVR) applications that allow the taxpayer to key their personal information (i.e. account number etc.) prior to speaking with an agent. The pre-keyed information permits automated system generated file retrieval which is displayed to the agent (integrated for both inbound and outbound calls) once calls are connected.

Secondly, the DMCC currently utilizes in-house Workforce Management tools to forecast, schedule, plan, monitor, and report on program progress. The process is time consuming and the tools used for planning and scheduling are not always compatible resulting in further opportunity to optimize the process.

An automated workforce management tool is being procured. It will allow DMCC managers to maintain the appropriate staffing levels through more efficient scheduling by providing both historical and real-time information on schedule adherence as well as scheduling exceptions for better management and control of resources. Operating costs will be optimized by allowing for the creation of a set of schedules that normalizes staffing and minimizes periods of under and/or overstaffing, more accurate forecasting and improved operational efficiencies.

Reporting

One of the new reporting systems developed was the All Revenues Table (ART), which provides management and field users an integrated view of inventory at all levels. Prior to the implementation of ART two other reporting systems were used; however, these tools were not intended for reporting on workload management and were not user friendly.

With the implementation of ART, a view of the officers' collections and returns compliance inventory are now refreshed daily and provides users with detailed and summary information at the Tax Services Office Responsibility level. As such, offices can take advantage of more current information. It will assist in directing accounts to the most appropriate level of expertise thus leading to better decision making on strategies and actions; and improved reporting on the officer's inventory management.

6. PROJECT EXPERIENCES AND LESSONS LEARNED

Scope definition

A series of seven steps were taken to determine the scope of the project based on the context of the Agency .

- Understand Current Situation - Validate the strategic priorities to ensure that the program is focusing on the most beneficial and critical areas. Determination of the correct and/or most beneficial areas for improvement to set the foundation for a successful business transformation project.
- Assess "As-Is" Environment - Gain a complete understanding of the current environment for people, process and technology. This activity was essential in order to define the potential future state.
- Select Opportunities for Improvement - Obtain final approval of the prioritized opportunities for improvement.
- Define Future Vision - Define a future state that would allow the Agency to achieve its goals and objectives. Include a conceptual model for the future processes, organization and technology and the critical success factors for each area.
- Create a Case for Change - Confirm support and buy-in through the creation of a business case. Establish a solid case through an evaluation of the need for change based upon supporting rationales, financial and qualitative benefits, and the risks and resources required to implement it.
- Design "To-Be" Environment - Develop detailed and comprehensive To-Be models and requirements for the future processes, to ensure a successful hand-off to information technology developers.
- Develop Prioritized Roadmap - Develop a detailed and activity based project schedule, which includes milestones, phase and stage deliverables,

continuous monitoring and reporting, and issue management throughout to ensure a successful implementation of the future vision.

Through this exercise, the way forward for the IRC project was developed and approved by Agency senior management.

Lessons learned

The lessons learned are based on four perspectives necessary for a successful project *(see the Project Management Body of Knowledge (PMBOK) published by the Project Management Institute)*. The following are the four perspectives used:

- **Governance**: Did the processes used by the project team, to approve and manage a large IT project, increase the project's likelihood of success?
- **Business case:** Did the project team clearly define the business needs it expected the project to meet?
- **Organizational capacity:** Did the project team have people with the needed skills and experience to manage a large IT project, and did the organization have the ability to use all of a system's capabilities to improve the way it does business?
- **Project management:** Did the project team follow accepted best practices in managing the project?

Governance

The governance framework included the administrative structures, the processes, and the people that were involved in various aspects of information technology. The governance framework also provided clearly defined roles, responsibilities, and accountabilities. At the project level, governance also focused on delivery of business change at an affordable cost with an acceptable level of risk.
The project benefited from being able to take advantage of all available Agency resources such as internal procedures, guidelines and templates (these are all based on project best practices as developed by the Government of Canada), which facilitated the reporting of progress to Agency committees. Efforts were deployed to ensure that the vision, scope and the roles and responsibilities of directorates, divisions and the IRC project were understood by all project members.

Business Case

A business case for a project is a detailed investment proposal. It provides an analysis of the costs, benefits and risks associated with a proposed investment and offers reasonable alternatives. It provides information necessary to make a decision about whether a project should proceed. The business case is the indispensable first activity in the lifecycle of an IT investment.

One of the Agency's senior management committees, the Resource and Investment Management Committee (RIMC), has explicit responsibility to oversee major project investments and monitor their progress. The Agency has developed a six-stage project approval process, which involves a series of scheduled stages and decision gates: Business Problem/Opportunity Definition Stage, Options Analysis Stage, Detailed Planning Stage, Execution Stage, Project Closeout, and Benefits Realization Stage.

This multi-stage process:

- ensures that the project is clearly defined from the outset;
- helps the RIMC properly understand the various stages of the project;
- facilitates the estimation of costs and the measurement of benefits; and
- provides the RIMC with decision-making information in order to recommend the continuation, modification, or closure of the project.

Organizational Capacity

An organization's capacity is its potential to perform - its ability to successfully apply its skills and resources to accomplish its goals and satisfy its stakeholders' expectations. The aim of capacity development is to improve the potential performance of the organization as reflected in its resources and its management. In this regard, an incremental release strategy for functional and technical capabilities was used. The work was broken into smaller, more manageable components and as it worked well during Phase I of the project, it was incorporated into the approach moving forward with the next phase of the project. Moreover, co-locating of the project and information technology staff in one location has optimized the sharing of information, scheduling of activities, which reduced costs. Resource availability, and staff turnover had to be carefully managed throughout the project.

Project Management

Successful project management includes the development of a project plan in order to define and confirm the project goals and objectives, identify tasks and how goals will be achieved, quantify the resources needed, and determine budgets and timelines. It also includes managing the implementation of the project plan.

The implementation of walkthrough/checkpoint/alignment approaches for defining the requirements was a valuable method for information sharing and understanding. To strengthen the team's capacity in project management, we acquired external senior project managers to coach/mentor staff and transfer knowledge enabling the project to not only put the required processes in place but also strengthen project capabilities.

Build vs. Buy

Given the number of areas the IRC project was impacting, the need to determine what could be "purchased" from vendors and what had to be built internally was critical. Two of the five key areas presented an opportunity to use off-the-shelf software; data mining and risk management.

Data Mining/Risk models: In order to achieve this goal, the IRC data environment and data marts were developed internally and data mining software and services were acquired from an external third party. As a result, the software and associated services were acquired from an external source and integrated into the Agency's debt management operational infrastructure. This positioned the project to expand on its current capacity to analyze, implement and refine cluster risk models, and associate best strategies to deal with such clusters.
In addition, in order to refine the accuracy of risk scoring of the taxpayers, a pilot project was undertaken. This was a pilot to analyze and evaluate the benefit of integrating external third party data into Agency systems, processes, and decision points to better identify, allocate, and complete work. Integration of such data with the agency data could have a significant impact on the accuracy of risk scoring taxpayers. For example, the use of an external 'bankruptcy predictor' could be used to prioritize workloads for those cases that potentially have a higher likelihood of compromised collection outcomes. Another example would be the use of an 'income predictor' to enhance the ability to rank non-filers against potential income, which would in turn allow the Agency to prioritize its non-filer compliance workload in this regard.

Flexible business rules: The second opportunity for "commercial off the shelf" software was the Business Rules Engine (BRE), which has allowed program owners to develop and manage their own rules without the necessity of having information technology specialist, program software application code changes through annual system releases.

The implementation of the business rules engine was phased in over several years due to its technical nature. As this was new to the Agency, it required that the technology be assessed at each stage to ensure successful implementation into business processes. This phased in approach allowed the program owners of the business rules engine to gain knowledge and expertise. The users were trained over an extended period of time; this included mentoring from information technology specialists, completion of industry certified courses relating to business rules, and for some, attending conferences to gain an understanding of industry best practices.

Benefits

The Resource Investment Management Committee, the Agency's project oversight body, requires reporting on the extent to which anticipated benefits of investments have been realized. In order to achieve this, measurement is typically required at two points in time – before and after project implementation. A detailed Benefits Measurement Plan was developed which presented both the baseline data (pre-implementation) and the qualitative benefits related to the areas where the IRC project was intended to have an impact.

Through the use of IRC, program owners have started to refine the management of the growing tax debt through a variety of means, including an approach to addressing the underlying causes of payment non-compliance at the behavioural level. Attention on the need for earlier interventions with potential individual debtors to prevent debts from arising, or to proactively help taxpayers meet their obligations in a timely and fair manner is expected to increase both filing and payment compliance.

The benefits of the IRC project include:

- institutionalizing business intelligence efforts to assist in establishing an effective risk management framework that ensures risks are assessed earlier and accounts are directed to the right place in the collection continuum for effective and timely resolution;
- assisting efforts that will support undertaking a significant shift in how the debt portfolio is managed by focusing strategic efforts to address accounts before they become payment and filing non-compliant;
- the ability to detect and react to the continuously changing patterns of non-compliant taxpayers;
- the ability to identify and employ strategic actions to address repeat (chronic) non-compliant accounts; and,
- the ability to more effectively measure and report on the results of our collection and compliance actions.

To ensure success in meeting the stated benefits IRC has:

- implemented a dynamic business rules engine to implement changes in strategies and procedures through a controlled program change (champion/ challenger) environment including a capacity for and analysis of their effectiveness;
- developed data marts to enable research and analysis to better understand the make up of tax debt, and taxpayer and non-filer behaviours;
- implemented predictive analytics and risk scoring to action non-compliant accounts in either a more timely or different manner; and,
- utilized experiments to establish a champion (baseline) group whether to

initiate change to the organization's risk management processes, and or to accurately measure and analyze the outcome to determine the success (or failure) of the experiment.

Specific examples of the many uses of the technology delivered by IRC include:

- o utilization of the All Revenue Table inventory facility by field management and officers who now have up-to-date information for inventory management;
- o implementation of business rules without involvement from information technology specialist;
- o use of a Likeliness to Pay predictive data model resulted in changes to the strategy for handling new debtors (this was done using champion/challenger functionality in the rules engine and the experiment was performed on a select portion of the population and also included a control group to measure the results against);
- o production of several key research reports using data from the newly created data marts developed. For example, data now available can provide us with richer insights into factors affecting debt on initial assessment across demographic, administrative, and taxpayer behaviour elements;
- o the development, piloting and use of several data mining models, such as:

    - Arbitrary Assessment Response Model - This model will be used to select cases from the population of non-filer cases that do not respond to soft enforcement actions such as a request or reminder to file notice. The Agency would then complete an arbitrary assessment, on the taxpayer's behalf, using historical data to determine the potential tax owing.
    - Risk of Aging – This model is used to identify accounts where current processes are likely to result in continued non-payment of debt;
    - Tax Potential - This model will be used to score the entire population of identified non-filer cases for a given tax year, to assess the potential for each case, and determine which cases should be pursued through the non-filer enforcement process; and,
    - Likeliness of Loss - Avoiding potential loss by identifying accounts likely to become bankruptcies, receiverships, and write-offs;

- o Debt Management Call Centre agents handling calls without logging off and on to separate systems through the newly implemented blended inbound/ outbound environment. This includes new inbound pop-up screens which retrieves taxpayer information before the call is answered by the agent; and,
- o numerous macros (desktop tools) implemented for use in the field, most notable is the Accounts Receivable Platform, which enables an officer to view a large amount of information on a single screen without the need to go to several systems.

7. CONCLUSION

Beginning in 2006, with the proof of concept until now, the focus has been on the development of new technology to analyze behaviour, report on debt components, and assess risk. This has enabled the Agency's debt management programs to use a more flexible risk-based approach to workload management and to move away from the existing sequential approaches currently employed.

New tools such as the Champion/Challenger allow for the testing of theories on a segment of populations and the analysis of outcomes before applying, or not a change to the entire population. The Agency's debt management program now has improved its ability to analyze accounts entering its workload and to determine probabilities of success in resolving these accounts. With the Business Rules Engine, the program owners can implement changes to rules in a timely manner. By keeping a history of the actions and results, the program has been able to enhance its reporting and analytics.

The research and analytics environment delivered by IRC has also provided the Agency's debt management programs with enhanced research capabilities, predictive analytics, and the ability to make more informed business decisions. Data mining is being used to leverage knowledge from available data to develop models in order to predict and anticipate taxpayer behavior to improve workload selection and prioritization.

While the focus of the Integrated Revenue Collections Project has been on the delivery of technology, which has provided numerous benefits to the program areas, the skills development of the human resources necessary to support the changes in technology as well as the program usage of it has also been an integral part of the benefits achieved. IRC has delivered foundational technological components, which will assist program owners in managing and delivering program outcomes differently going forward - a difference that program owners are embracing

Case Study

Topic 3.2

INTERNATIONAL ADMINISTRATIVE COOPERATION: ASSISTANCE FOR COLLECTION

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Contents: *Summary. 1. Introduction: Scope/Content. Discussion: Historical perspective: Regional multi-lateral treaties. 2. What's happening today: Council of EUROPE/OECD Multilateral Convention on Mutual Administrative Assistance in tax matters 3. The US experience: Bi-lateral treaties. 4. Conclusions.*

SUMMARY

Taxes and tax collection have been a part of the world picture for millennia. We know the apostle Matthew was a tax collector and the Bible from that time has many references to paying and collecting taxes. In The Republic, Plato (427 BC – 347 BC) wrote, "When there is an income tax, the just man will pay more and the unjust less on the same amount of income." Collection efforts are one of the ways tax administrations increase the likelihood that the "just" and the "unjust" pay the correct amount of tax on their income.

This paper picks up the story of cross-border tax collection at the middle of the 20th century with discussions of regional multi-lateral treaties among the Benelux countries, the Nordic countries and members of the European Economic Community (also known as the Common Market).

In the 1980's, the Council of Europe/Organization for Economic Cooperation and Development (OECD) developed a Multilateral Convention on Mutual Administrative Assistance in Tax Matters which entered into force in 1995. A recent and interesting development is a 2010 protocol that opens this treaty to signature to all countries. Until this happened, the treaty was open only to

member countries of the Council of Europe or the OECD. This treaty contains an article about mutual collection assistance and the US reserved from that article at the time of its original signing and ratification. This paper covers some of the thoughts and reasoning behind this.

The US currently has bilateral treaties with collection assistance articles either in the treaty itself or in a protocol with five countries: Canada, Denmark, France, the Netherlands and Sweden. A comparison of the treaties from one to the other shows varying degrees of similarity. Within the Internal Revenue Service (IRS), two different Business Operating Divisions (BODs) have responsibility for implementing the terms of the treaties and each has developed procedures.

Globalization is with us to stay and will increase the complexities of international tax administration.

1. INTRODUCTION: SCOPE/CONTENT

Against the backdrop of ever increasing globalization and the increased need for cross-border cooperation, the Discussion of this paper has three parts:

- Historical Perspective describes the thinking behind some regional multi-lateral treaties created in the second half of the 20th century.
- What's Happening Today covers the collection articles in the Council of Europe/ Organisation for Economic Cooperation and Development's (OECD) multi-lateral treaty and the United States' (US) reaction to these articles.
- Finally, The US Experience goes into some detail about the US's five bi-lateral treaties with collection articles: Canada, Denmark, France, Sweden and The Netherlands

Discussion

Historical perspective: Regional multi-lateral treaties

After World War II, various countries entered into multilateral, regional treaties that included collection articles. These involved neighboring countries with strong economic, political or even cultural ties. Three examples are the 1952 Benelux Mutual Assistance Treaty; the 1972 Nordic Convention on Mutual Assistance in Tax Matters; and the European Economic Community (EEC) Directives.

The Benelux mutual assistance treaty

On May 9, 1952, Belgium, the Netherlands and Luxembourg signed the Benelux Mutual Assistance Treaty (Benelux Convention) for the recovery of taxes. This convention entered into force on August 11, 1956. As one of the earliest

examples of multilateral cooperation, it provided for assistance in the recovery of all direct and indirect taxes, including those levied by local authorities in the three States as well as social security agreements.

Under this convention, the Applicant State must first make every effort to recover the claim in its own territory. Each request for assistance had to include an official copy of the instrument permitting enforcement along with a copy of any final decisions on complaints or appeals. If an appeal was still possible, the applicant State could request the adoption of precautionary measures. The debts of the applicant State did not get priority in the requested State. Additionally, the requested State used only those legal provisions that applied to taxes similar to ones in the applicant State. There was no requirement to use any techniques for which there was not a similar counterpart in the laws of the Applicant State. In the case of disagreement on how to proceed, the requested State had jurisdiction.[1]

With regard to income taxes, Belgium and the Netherlands no longer use this convention as it has been replaced by the new double tax treaty between these countries.[2]

Nordic convention on mutual assistance in tax matters

Another convention frequently mentioned in discussions of the history of multilateral mutual tax collection assistance is the Nordic Convention on Mutual Assistance in Tax Matters. Ratified November 9, 1972 by Denmark, Finland, Iceland, Norway and Sweden, it is important because it was the first multilateral document binding on these countries.

On December 7, 1989, a new Convention on Mutual Assistance in Tax Matters replaced it. This added the Faroe Islands and Greenland and harmonizes with the Council of Europe/OECD Convention of 1988.[3] This agreement became effective the spring of 1991. In late 1997, these countries signed another treaty for the avoidance of double taxation that did not include an article on assistance in the collection of taxes because the Nordic Convention already dealt with this[4].

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1 *Grau Ruiz, Maria Amparo. Mutual Assistance for the Recovery of Tax Claims. The Hague: Kluwer Law International 2003), pp. 114-115.*

2 *DeTroyer, I. and Maus, M. Belgium: Answers to the Questionnaire on Mutual Assistance in Tax Affairs. Santiago de Compostela: Congress of European Association of Tax Law Professors 2009.*

3 *Grau Ruiz, Maria Ampara. Op. cit., p. 115.*

4 *Gustafsson Myslinski, Ulrika. Mutual Assistance in Tax Affairs: Swedish National Report to the Conference of the European Association of Tax Law Professors in Santiago di Compostela. Santiago de Compostela: Congress of European Association of Tax Law Professors 2009*

The current agreement has five parts:

- General Provisions
- Service of Documents
- Supply of Information
- Recovery of Tax
- Special Provisions

Many of the articles are similar to those in the Benelux Convention. For each country, this agreement lists the specific types of taxes covered – ranging from three in Iceland to eleven in Denmark.

Various articles cover the specifics about what may or may not happen under this agreement, e.g. assistance is available only if the requesting State:

- can show it could not otherwise recover the tax claim without considerable difficulty;
- could itself provide to the other State the type of assistance it is requesting;
- only requests services allowed by local laws of the requested State;
- does not involve disclosure of business, manufacturing or professional secrets.

The requested State may reject a request it sees as contrary to its public interest as long as it immediately notifies the requesting State[5].

Council Directives of the European Economic Community (EEC)

The European Economic Community (EEC) was established by the Treaty of Rome signed in 1957 by the three Benelux countries (Belgium, Luxembourg and the Netherlands) along with France, Italy, and (at that time) West Germany. Also known as the Common Market, its original purpose was to promote free trade and economic cooperation among its member nations.

In 1973, Britain, Denmark and Ireland joined the EEC and in the 1980's, Greece, Spain and Portugal joined. When the Maastricht Treaty came into force in 1993 to establish the European Union, the ECC became a part of it and changed its name to the European Community (EC)[6]. The ECC and EC addressed a

5 *Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters of 7 December, 1989.*

6 *From 1967 until the formation of the European Union, there was a consolidation of three European organizations, including the EEC, which were known as the European Communities (plural). A point of confusion is often that the EEC changed its name to the European Community (singular) after the Maastricht Treaty went into force in the early 1990's.*

variety of issues such as food additives, labeling and packaging as well as the elimination of tariffs among member states and the establishment of uniform tariffs when dealing with external states.

Within the European Economic Community/EC, a number of Council Directives call for mutual assistance for the recovery of various kinds of tax claims. Collectively, these are referred to as the EC Directive on Mutual Assistance for the Recovery of Claims.[7]

Council Directive Number	Date	Taxes Covered
76/308/EEC	1976	customs and certain agricultural duties
79/1071/EEC	1979	value added taxes
92/108/EEC	1992	certain excise duties
2001/44/EEC	2001	direct taxes; taxes on insurance premiums

Figure 1. EC Directive on Mutual Assistance for the Recovery of Claims

2. WHAT'S HAPPENING TODAY: COUNCIL OF EUROPE/ OECDMULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

On May 5, 1949, 10 countries founded the Council of Europe based in Strasbourg, France. Today, with 47 member countries, it covers nearly the entire European continent.

In 1960, the United States (US) and Canada joined with members of the Organisation for European Economic Cooperation (OEEC) to create the OECD which came into force on September 30, 1961. Today, the OECD has 34 member countries. Only 26 countries belong to both the Council of Europe and the OECD. The Organisation for European Economic Cooperation (OEEC) had been formed in 1947 to administer American and Canadian aid under the Marshall Plan for the reconstruction of Europe after World War II.

In 1988, the OECD and the Council of Europe developed a Convention on Mutual Administrative Assistance in Tax Matters (CMAATM). Its objective was to "…provide administrative assistance to each other in tax matters…." This included exchange of information, simultaneous tax examinations, participation in tax examinations abroad, assistance in recovery (including measures of conservancy) and service of documents.[8] They opened this convention to their

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7 *Organisation for Economic Cooperation and Development. Manual on the Implementation of Assistance in Tax Collection. Paris (2007), p. 6.*

8 *Council of Europe and the Organisation for Economic Cooperation and Development. Convention on Mutual Administrative Assistance in Tax Matters. Strasbourg (January 25, 1988), Article 1.*

members for signature in 1988 and on January 4, 1995 it entered into force for Denmark, Finland, Norway, Sweden and the US. As of June 01, 2011, this convention had entered into force for a total of 17 countries.

Unlike most bi-lateral treaties to which the US is a party, this Convention includes assistance for the recovery of taxes. Section II – Assistance in recovery includes Articles 11 through 16 of the 1988 Convention:

- Article 11 – Recovery of tax claims
- Article 12 – Measures of conservancy
- Article 13 – Documents accompanying the request
- Article 14 – Time limits
- Article 15 – Priority
- Article 16 – Deferral of Payment

Article 30 allows a Party signing the CMAATM to enter a reservation to reserve a number of rights.[9] The US reserved three rights including the right *not* to provide assistance in recovery of any tax claim. The other two rights involved the right not to provide assistance with taxes imposed by possessions, political subdivisions or local authorities and the right not to provide assistance in the service of documents for any tax.

On June 14, 1990, the US Senate Committee on Foreign Relations held a hearing about the Convention on Mutual Administrative Assistance in Tax Matters. The hearing included a discussion of whether the US should enter a reservation with respect to assistance in recovery of tax claims. There was concern the US might forego significant benefits by entering this reservation which could prevent the US from collecting the maximum amount of taxes due to it. Others believed the reservation was appropriate to prevent the US from being obligated to help all of the potential signatories collect uncontested tax claims against US residents and the signatory's citizens resident in the US.

At that time the US had only four bilateral tax treaties with collection assistance articles and did not have extensive experience using these provisions. There was concern that the US needed further experience before extending the network of US collection assistance obligations.[10] At the time of the January 30, 1991 deposit of the instrument of ratification with the Secretary General of the OECD, the US entered reservations for Articles 11 through 16. Article

9 *Ibid., Articles 11 through 16 and 30.*

10 *Staff of the Joint Committee on Taxation. Explanation of Proposed Convention on Mutual Administrative Assistance in Tax Matters Scheduled for a Hearing before the Committee on Foreign Relations United States Senate on June 14, 1990. Washington DC (June 13, 1990), p. 8.*

30 does allow for withdrawal of the reservations, but this would require the same US ratification procedures that apply to a change in any other terms of the Convention.[11]

According to the OECD, "The Convention was in many ways ahead of its time when it was drafted and its value to effective tax administration has only recently been recognized." [12]

In April 2009, the G20 called for action "…to make it easier for developing countries to secure the benefits of the new cooperative tax environment, including a multilateral approach for the exchange of information." This resulted in an update to the CMAATM which took the form of a protocol that opens the convention up to countries that are not members of the OECD or of the Council of Europe. It also updated the articles on tax information exchange.[13] The protocol opened for signature on May 27, 2010 at the OECD's annual Ministerial Meeting with15 countries -- including the US -- signing at that time. As of June 1, 2011:

- another 5 countries had signed;
- all signatories still consisted only of members of the Council of Europe and/or the OECD; and
- the protocol had entered into force for Denmark, Finland, Georgia, Norway and Slovenia.

Jeffrey Owens, Director of the OECD Centre for Tax Policy and Administration said of the amended Convention:

> This is another success story in the fight against offshore tax evasion. Once the Protocol has entered into force, the convention will be a very powerful instrument that will contribute to a fairer world where all taxpayers pay the right amount of tax at the right time.[14]

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11 CCH Tax Treaties Reporter. Treasury Department Technical Explanation of the OECD Convention on Mutual Administrative Assistance in Tax Matters. CCH Incorporated (2011), p. 232.

12 Organisation for Economic Cooperation and Development. OECD's Current Tax Agenda June 2010. Paris (2010), p. 34.

13 Organisation for Economic Cooperation and Development Press Release. A Boost to Multilateral Tax Cooperation: 15 Countries Sign Updated Convention on Mutual Administrative Assistance in Tax Matters. Paris (May 27, 2010).

14 Ibid.

3. THE US EXPERIENCE: BI-LATERAL TREATIES

As far back as 1939, the US had treaties with collection assistance provisions obligating it to assist in the collection of taxes from foreign citizens, corporations and persons:[15]

Country	Article	Effective Date
Sweden	XVII	March 23, 1939
Netherlands	XXII	April 29, 1948
Denmark	XVIII	May 6, 1948
France	27	July 28, 1967

Figure 2. Historical US bi-lateral treaties with collection assistance articles

Currently the US has five bi-lateral treaties with collection assistance articles:

Country	Taxes	Article	Effective Date
Canada	• Any type of tax	15 of Protocol 3	
Denmark	• Individual income tax • Other specified taxes	27	January 1, 2001
France	• Individual income tax • Estate and gift • Wealth • Other specified taxes	27	January 1, 1996
Netherlands	• Individual income tax • Other specified taxes	31	January 1, 1994
Sweden	Individual income tax • Other specified taxes	27	January 1, 2006

Figure 3. Current US bi-lateral treaties with collection assistance articles

From treaty to treaty there are similarities and differences – oftentimes simply a different choice of words for the same concept. All five treaty collection articles start with “The Contracting States” or simply “The States”, “Undertake to lend assistance to each other in the collection of taxes … [covered by the Convention] … together with interest, costs [and] additions to such taxes….”

15 *CCH Tax Treaties Reporter. Op. cit., p. 232.*

The treaties with Canada and Denmark go on to include civil penalties; those with France and The Netherlands add fines not being of a penal character and Sweden is silent about penalties. All of these treaties also say the requested state will use the procedures it would normally use to collect its own taxes.

For the US treaties with Canada and Denmark, Paragraphs 1-8 and 10 are exactly the same. Additionally, a Memorandum of Agreement (MOA) to a 2004 protocol with the Netherlands contains the exact same language as paragraphs 3, 4, 5, 6, 7 and part of 11 of the US treaties with Canada and Denmark as well as paragraph 12 of the US treaty with Denmark.

The treaties with France, the Netherlands and Sweden relieve the Contracting States from collecting from their own citizens. The treaties with Denmark and Canada are a little broader in that, under these treaties, the US, Denmark and Canada are relieved from collecting from taxpayers who were one of their citizens at the time the tax liability arose, regardless of what their citizenship may be now. An interesting twist is that the treaties allow collection against taxpayers who are currently citizens of those countries if the assessments arose when they were *not* citizens.

The chart on Exhibit 1 compares the various collection assistance paragraphs in the mutual collection assistance articles the US shares with these five treaty partners. The numbers in the columns refer to the paragraph in the treaty, protocol or MOA. These treaties, protocols and the MOA have links on United States Income Tax Treaties A to Z found on irs.gov at irs.gov/businesses/international/article/0,,id=96739,00.html

The IRS refers to its collection assistance program as Mutual Collection Assistance Requests (MCAR). Two IRS Business Operating Divisions (BOD) share responsibility for handling these requests: Large Business and International's (LB&I) Exchange of Information (EOI) office within the Office of the Deputy Commissioner International and Small Business/Self-Employed (SBSE) International Collection groups within the Field Collection Division. This division of responsibility requires coordination across organizational and geographical boundaries. In recent realignments that brought international examination programs into LB&I, the decision was to leave international collection in SBSE.

Figure 4. Organization Chart: Internal Revenue Service

The IRS Commissioner has a number of organizations reporting to him directly. Among them is the Deputy Commissioner for Services and Enforcement. It is within this part of the IRS that MCAR processes take place. This Deputy Commissioner also has a number of organizations reporting directly. Among them are the Business Operating Divisions charged with MCAR processes: Large Business and International and Small Business/Self-Employed.

Figure 5. Organizational Chart: Services and Enforcement

There are two types of MCARs – outgoing and incoming. All outgoing and incoming MCARs pass through the EOI office where the International MCAR Coordinator establishes it in LB&I's Information Management System (IMS), coordinates with SBSE and the tax treaty partner.

Procedures vary depending upon the type of MCAR.

Outgoing Requests[16]

Revenue Officers, who are trying to collect taxes owed by individuals residing and/or having assets in MCAR treaty partner countries, can generate outgoing MCAR requests. SBSE has detailed procedures for preparing an outgoing MCAR in Internal Revenue Manual (IRM) 5.1.12.25.1 Outgoing Mutual Collection Assistance Requests.

After exhausting the domestic collection potential the first step for the Revenue Officer needing mutual collection assistance is to complete the detailed Data Sheet shown on Exhibit 2 so the treaty partner will have adequate information. The information includes:

- Details about the taxpayer;
- Details about the tax assessment; and
- Explanations about each of the liabilities referred to the treaty partner.

The Revenue Officer uses a secure e-mail to forward the data sheet and any attachments to the manager who indicates approval by forwarding the request to the SBSE MCAR Coordinator.

The SBSE MCAR Coordinator reviews the referred case to ensure it meets the MCAR criteria. If it does, the Coordinator opens a case on a management control system. If it does not, the Coordinator returns the referral to the originator with an explanation. The individual Revenue Officer works through the MCAR Coordinator who handles all contacts with LB&I and/or treaty partners.

The MCAR coordinator prepares a transmittal letter for signature of the CA or a delegatee and forwards the entire package to the International MCAR coordinator in EOI. The International MCAR Coordinator:

- Reviews the MCAR for completeness;
- Establishes the case in the management control system;
- Ensures that the CA or a delegatee signs all correspondence requiring CA signature and transmits the request to the appropriate foreign tax authority;

16 *IRM 5.1.12.25 Outgoing Mutual Collection Assistance Requests on irs.gov at http://www.irs.gov/irm/part5/irm_05-001-012-cont02.html#d0e5303*

- Acts as liaison with the respective tax treaty partner CA offices;
- Provides guidance to the SBSE MCAR Coordinators.

Once the requested collection action is complete, the International MCAR Coordinator reviews the responses and sends copies to the SBSE MCAR Coordinator. The treaty partner sends the taxpayer's check directly to the SBSE MCAR Coordinator who processes it and credits it to the taxpayer's account.

Incoming requests[17]

The original incoming collection assistance requests go to the International MCAR Coordinator who reviews it for completeness, resolves any issues, establishes the case in the management control system and forwards a copy to an SBSE MCAR Coordinator. To expedite processing, the treaty partners usually send a courtesy copy of the MCAR to the SBSE Coordinator. SBSE has detailed procedures for working an incoming MCAR in IRM 5.1.8.7.7 Incoming Mutual Collection Assistance Requests. This IRM is available on irs.gov at http://www.irs.gov/irm/part5/irm_05-001-008.html. Note: it is necessary to scroll down to 5.1.8.7.7 because there is no direct link.

The SBSE MCAR Coordinator assigns a taxpayer control number to the taxpayer and establishes the case in the SBSE management control system.

Generally speaking, the Revenue Officer uses the same procedures for an incoming MCAR as he or she would for any collection of a domestic tax debt, such as sending a series of standardized notices or using internal or external locator sources to find levy sources and/or locate taxpayers.

Taxpayers have the option of paying by check or money order payable to the government of the treaty partner in the currency of the treaty partner or in US dollars. The SBSE MCAR coordinator processes all MCAR payments and forwards them directly to the treaty partner. The SBSE Coordinator also prepares a closing letter from the Competent Authority and sends it to the International MCAR Coordinator who gets the signature of the CA or a delegatee and forwards the closing letter to the treaty partner.

4. Conclusions

The ability to follow the money is necessary to the collection of taxes. Increasing globalization of the money markets and the rapid pace of technological change have added to this challenge and provide taxpayers with increasing ways to evade paying their taxes.

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17 IRM 5.1.8.7.7 Incoming Mutual Collection Assistance Requests on irs.gov at http://www.irs.gov/irm/part5/irm_05-001-008.html#d0e958 Note: it is necessary to scroll down to get to 5.1.8.7.7.

Countries that are parties to treaties with mutual collection assistance articles can "…pay themselves first…" by incorporating paragraphs that exclude collecting from their own citizens or from those who were citizens or residents at the time the tax liability was incurred. Countries receiving requests need to make sure their level of effort is justified by the benefit to the applicant country. They also need to make sure there is sufficient reciprocity to make participation in these kinds of agreements worth while.

The OECD's Jeffrey Owens has expressed a vision of "…a fairer world where all taxpayers pay the right amount of tax at the right time…." This is in sharp contrast to the vision Plato created more than 2000 years ago of a world in which "…the just man will pay more and the unjust less on the same amount of income." Taxpayers' morale will increase and they will become more willing to pay their fair share of taxes as they see a fairer world emerge as a result of increased international cooperation.

Exhibit 1 Comparison of Mutual Collection Assistance Paragraphs in US

Bi-lateral Treaties with Canada, Denmark, France, the Netherlands and Sweden

Concept	**Canada 2007 Prot 3 A 15**	**Denmark 2001 A 27**	**France 1996 A 28**	**N'lands 1994 A 31**	**N'lands MOA 2004 Prot**	**Sweden 2006 A 27**
Assistance to each other in the collection of taxes….	1	1	1	1		1
Claim has been finally determined	2	2	2	2		2
Collected the same as normal for the requested State	3	3			3	
Documentation that taxes were finally determined			3	3	2	3
Requested State treats the claim as an assessment under its own laws	4	4			4	
Measures of conservancy if claim not finally determined			4			
No collecting from own citizens, etc. except for treaty benefits to which not entitled			5	4		4
No administrative review of applicant State's finally determined claim	5	5			5	
Notification of loss of right to collect	5	5			5	
No obligation to carry out measures different from normal or contrary to sovereignty, security or policy	10	10				5
Forward amounts collected; ordinary costs borne by requested; extraordinary costs by the applicant	6	6			6	

Exhibit 1 (continued)						
Concept	**Canada 2007 Prot 3 A 15**	**Denmark 2001 A 27**	**France 1996 A 28**	**N'lands 1994 A 31**	**N'lands MOA 2004 Prot**	**Sweden 2006 A 27**
Shall not have priority	7	7			8	
No collecting from citizens/entities of requested State during tax period in question	8	8				
Applies to all categories of taxes of the Contracting State	9					
No benefits to those not entitled		9				
No limiting MAP	10					
CA's agree on mode of application of Article	11	11			10	
Ensure comparable levels of assistance	11	11				
May modify or supplement procedures					10	
Applicant pursues all collection actions available; no burden to requested greater than benefit		12			1	
Deferral of payment or installment payment if normal for requested state and OK with applicant					7	
May collect for deferred capital gains					9	

Exhibit 2. Outgoing MCAR Data Sheet

Outgoing MCAR Data Sheet
Data Sheet Content
(1) Treaty Partner:
(2) Date:
(3) Taxpayer Identification Number:
(4) Name of Taxpayer:
(5) Taxpayer's Address:
(6) Telephone/Fax Numbers:
(7) Provide either of the following: Date and Place of Birth (individuals)
(8) Has the taxpayer been identified as potentially dangerous?
(9) Specify any known income or assets the taxpayer may have in the treaty partner country.
(10) What is the basis for the liability? Be specific, e.g., tax on return, SFR, unreported income, disallowed items, etc.
(11) Notice of Federal Tax Lien Filing: When_____Where _____
(12) Delinquent Account Information:
(13) Is there any other information that the treaty partner should know?
(14) Originating Office:
(15) Name of Originator:
(16) Originator's Telephone Number:
(17) Originator's Signature:
(18) Group Manager's Signature:
(19) MCAR Coordinator's Signature:
This information is being provided pursuant to the Income Tax Treaty in force between our two countries. The use and disclosure of this information must be governed by the provisions contained in the Income Tax Treaty.

Case Study

Topic 3.2

INTERNATIONAL ADMINISTRATIVE COOPERATION: ASSISTANCE FOR COLLECTION

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(Finland)

Contents: *Summary. 1. Introduction. 2. Important character of international collection assistance agreements. 3. Scope of international collection assistance agreements. 3.1. Assistance covered. 3.2. Taxes covered. 3.3. Rules on treatment. 3.4. Rights and safeguards. 4. Challenges in implementation to overcome. 5. Main advantages and disadvantages. 6. Results achieved. 7. Recommendations.*

SUMMARY

This presentation is based on the Finnish overall positive experiences in the international tax recovery cooperation. It begins with the introduction to the Finnish background which is followed by categorical presentation of most common tax recovery related agreements and their character.

In the second part the presentation aims at introducing some advantages that can be achieved with the implementation as well as disadvantages to be conquered and it tries also to find some answers to the challenges rising from the practice of implementation.

The main focus in this part however is to find possible solutions and draw up some kind of recommendations for the fluent implementation of tax recovery related agreements in the future.

As far as the content of the Agreements in focus here differ somewhat from one agreement to another, this presentation will try to adopt a middle course in presenting common nominators as well as particular differences and developments as far as they have relevance to the international recovery practice.

1. INTRODUCTION

It is a well know fact that fast globalization has lead gradually to a situation where it is easier and easier for a person to cross national borders or move their assets around the world. Therefore it should be apparent that in order to ensure stable fiscal revenue and guarantee the proper functioning of existing fiscal systems also in non-compliance situations, the sovereign States have to start finding ways also to exceed their actions outside their own national frontiers. The most natural and legally safest way to carry out such improvements is to rely on official international cooperation between Sovereign States. In practice it would mean international agreements on assistance in the field of tax collection.

Taking into account the resent development in the world one could naturally only imagine that in order to keep up with the world, an immediate launching of wide range of mutual tax collection assistance would have already taken place. Especially since there exists already such international bases to commence the work as the Convention on Mutual Administrative Assistance in Tax Matters between the Council of Europe and the OECD and OECD model Convention Article 27 on which to directly build the agreements. There is also vast amount of encouraging practice deriving for example from the application of European Council Directive on Recovery and Nordic Convention on Tax Collection dating both back to the 1970s as well as practice gathered from several bilateral treaties. Unfortunately, in the international cooperation, however, the equation rarely is that simple to solve and that has proven to be true also in the field of tax recovery.

One could always try to trace down reasons, both general and politically related, in the international scene that may cause such difficulties to act. Although maybe a topic to include in discussions about international politics or differences in societies, those reasons are, however, disregarded here. As the current economical situation worldwide is serious, we simply need to take all actions to improve the financial situation of the States and their compliant tax payers. No stone should therefore be left unturned in finding ways to increase the State revenue and promoting the original legislative idea of distributing the tax burden evenly. One of these stones still to be fully turned could be international cooperation in tax recovery.

Finnish attitudes towards mutual assistance in recovery of tax debts in a form of exchanging information, providing assistance in service of documents or taking measures of conservancy or recovery measures on behalf of another party to an agreement, have traditionally been positive. In relation to the fact that Finland is a relatively young nation, we have practiced mutual tax collection assistance for quite long. Perhaps due to our size and historical background we have maybe not experienced the crossing of national legal

boundaries as unfamiliar as some others might have done and therefore the thought of international cooperation for example in the field of taxation has been quite natural.

Currently we are involved in the active mutual tax recovery assistance with 29 States and mainly on two multilateral bases. Those bases are the Nordic Convention on Mutual Assistance in Tax Collection dating originally back to 1972 (Sweden, Norway, Denmark and Iceland) and European Council Directive 2008/55/EC on Mutual Assistance for the Recovery of Claims relating to Certain Levies, Duties and Taxes that dates originally back to 1976, but which Finland became part of in 1995. However, our mutual recovery cooperation dates even further back as we have had fully working bilateral agreements on mutual recovery assistance for example with Sweden, Norway, Denmark, Belgium, France and Germany some of them originating all the way back to the 1930s and 1940s.

The latest bilateral agreement concerning tax recovery assistance on the bases of the OECD Model was concluded with Australia and entered into force in 2008.

In Finland, like in most other States, the prevailing principle in entering into Tax Treaties or any form of agreement on tax collection assistance is that the Party States' tax systems have to respond to certain extent to each other. The harsh reality however is that Finland has currently Tax Treaties with over 60 States, but despite the fact that adequate similarity in taxation has been established, less than half of our Tax Treaty Partners have been able to agree on cooperation in the field of tax recovery. We believe this to be a current trend internationally.

As a member of the OECD, Finland has also been committed to the work done on the OECD Model Tax Convention and welcomed the decision in 2003 to include Article 27 on Assistance in Tax Collection to the Model Convention. Finland is also among 8 nations that have ratified, not only the original Convention on Mutual Administrative Assistance in Tax Matters between the OECD and the Council of Europe, but also the amending Protocol in 2010 that entered into force in June 2011. With the current situation in ratification, the number of potential new tax recovery Partners States is however increased only by one, that being Georgia.

During the past year Finland has had also the possibility to take part in the preparations of new EU Council Directive on tax recovery (2010/24/EU) that will replace as from 1st of January 2012 the old Directive 2008/55/EC. The aim of the new directive is to take a big leap forward in the European tax recovery. It will not only broaden the scope of recovery to all types of tax and tax-based debts but also introduce a European unified instrument permitting enforcement (UIPE) together with a computer application that will provide both request forms and UIPE automatically in all 24 official languages. Efforts have been put also to unify

and simplify communication between Partner States. More unambiguous style is hoped to help the interpretation of nationally varying enforcement instruments and thereby safeguard better the rights of the States as well as individuals while at the same time speeding up considerably the process.

The preparation of these improvements on EU level marked also a beginning of a new era in the international scene of tax recovery in a sense that for the first time a wider consensus was actively sought to the improvements by involving also the representative of the OECD to participate in the preparations of request forms. This means that the new request forms could be taken into use also in any bi- or multilateral tax recovery assistance case provided that the base of agreement follows the guidelines of the OECD Model Convention. This could be seen as a step to indicate that according to EU Member States a successful tax recovery should no longer be considered a matter dependent of an organizational, geographical or national boundaries, but a matter of common interest to all the Tax Administrations in the world.

2. IMPORTANT CHARACTER OF INTERNATIONAL COLLECTION ASSISTANCE AGREEMENTS[1]

As the basic rule of international law each sovereign state has a defined territory, population, government and legal system. This means that within the territory of a sovereign state only the legal rules of that state apply. However there is still one important sign of a sovereign state that is of special importance here. A sovereign state has unquestionable powers to also enter into relations with another sovereign state and thereby conclude international agreements. Once the sovereign state enters into an international agreement accordingly, not only the national laws apply but also the legal rules set by the agreement. In the contradicting situation rules of an international law prevail.

There is mainly two ways to go about creating an international agreement. The one way is to create totally independent, international set of rules and thereby bring about a creation of legal system all on its own. The other, more realistic, way of making an international agreement in the recovery field is to simply agree on some basic international rules on the procedure of administrative assistance between Partner States and otherwise rely on States' national laws. As each sovereign state can only apply its' own national legislation and those international agreements that they have committed to, it becomes very important in practice to make a clear distinction which questions are solved according to which law.

1 *The presentation is based on the examination of OECD/European Council Convention, OECD Model Tax Convention Art. 27, Council Directive 2008/55/EC and new Council Directive 2010/24/EU and Nordic Convention, but applies to generally to other tax recovery agreements as well.*

The Mutual Administrative Recovery Agreements, as mentioned, belong characteristically to the latter category and are merely complementary in nature. They do not create independent recovery system as such but rather build simply a safe bridge for the national claims produced by one Partner State's legal system to be recovered in another Partner State in accordance with the procedural recovery rules in force there. The meaning of an international agreement is simply to agree on mutual assistance procedure and for that purpose create legal rules on how to organize the cooperation and to what extent, so that in combining two different sets of national legal rules the best possible efficiency is reached while not forgetting also to safeguard the rights of a tax payer in a cross-border tax recovery situation.

In practice this means that in cross broader recovery case three sets of rules will come into play. The law of the Applicant State applies to substantive matters i.e. questions concerning the claim e.g. existence, nature, validity, amount or the instrument permitting enforcement and therefore they have to be brought before the competent authority of Applicant State. On the other hand all the procedural matters i.e. Actions that concern the measures taken in the recovery process to satisfy the request will have to be examined according to the laws of Requested State and possible disputes have to be taken before their Competent Authority.

To many, it might seem unnecessary to bring up this seemingly obvious division which derives its bases directly from the principles of international law and has also been explicitly mentioned in e.g. the OECD Commentary of the Model Tax Convention (2005) and Explanatory Report on the Council of Europe/OECD Convention. In practice, however, this is still one of the matters in recovery cooperation causing confusion even in the national courts. There is still tendency, although not necessarily intentional, for the States to occasionally extend the application of their own national legal rules beyond their powers against the rules of agreement and principles of international law. There has been more than one case in practice where the tax administration of the requested Partner State has allowed national court to take up the applicant Partner State's tax claim under scrutiny and deliver even a decision on that. This should not be the case any longer in 2011 as such practice is considered a clear breach of international agreement and blurs unnecessarily the application practice in administrative tax recovery assistance and causes troublesome conflicts of powers that usually slows down the cooperation and sometimes even halts it all together for indefinite time.

The 3rd group of legal rules applied in cross broader recovery case is namely the international rules of the Mutual Recovery Assistance Agreement in question. Their purpose is to regulate the process of administrative assistance between the Party States and define the scope of it so that safeguards and rights of Party States as well as individuals are taken properly into consideration without

forgetting the efficiency of the process. As these agreements are quite often born as a consensus of several States and opinions, usually more specific technical agreement has to be drawn before the recovery cooperation can begin between Party States. It is important to keep in mind also that in international law situations the proper functioning in addition to interpretation of explicit rules in the Agreement requires also implicit interpretation deriving from the aims of the Agreement. This interpretation is to be done in accordance with the rules and principles of international law.

The most common explicit rules in organizing the international recovery assistance are those that in the agreements regulate,

- Scope of assistance,
- Scope of taxes covered,
- Rules of treatment,
- Rights and safeguards
- Secrecy

These rules are the very core of international recovery assistance and they will be discussed in more detail in the following chapter.

3. SCOPE OF INTERNATIONAL COLLECTION ASSISTANCE AGREEMENTS

3.1. Assistance covered

The interpretation of covered assistance may vary depending on the tax collection agreement. At a minimum assistance may mean that the Party States merely agree to exchange information in order to be able to foster more efficiently national recovery.

Naturally there are also Tax Collection Agreements that do not regulate only recovery cooperation but include for example international tax examinations and tax audits into the scope of measures. More commonly, however, the assistance in tax recovery has been understood to consist of exchange of information, service of documents, assistance in taking measures of conservancy on behalf of the other Party State as well as actual recovery assistance. So far In international recovery practice the exchange of information, service of documents and measures of conservancy have more or less played only secondary role.

As we all know, the exchange of information is currently given a very important role in the field of international taxation. There are many forms of cooperation built specifically to promote information exchange. Although not undermining the significance of exchange of information generally, it might become as a surprise to some, how small part it plays in tax recovery practice. Probably since the recovery phase already requires fast actions, the information is exchanged

only when and to what extent absolutely necessary. This is clearly evident at least in examining the cross-border recovery practice, both on Scandinavian as well as on European level.

This being said, the new European Union Tax Recovery Directive 2010/24/EU is a good example of more general international influences affecting the international legislation given on tax recovery. Despite the reasonably small role of exchanged information in the recovery practice, the general importance of topic was emphasized also in this new legislation by cutting off explicitly the umbilical cord between existing valid recovery case and exchange of information and by introducing Article on automatic exchange of information, although on voluntary bases, into the recovery cooperation. The words and the ideas behind all this derive directly from those more generally formulated taxation and tax collection related agreements. Although nobody can deny the significance of this advanced idea of introducing large scale exchange of information in all the tax related fields as such, it does not however necessarily entail only positive effects.

Unless the exchange and collection of information is organized realistically also from the practical point of view, it can cause extensive work load and uncontrollable information flow that in the end benefits nobody. When exchanging information, one should always keep in mind also the main purpose why the work is done and the information is exchanged. Very wide range of unorganized information exchange on many phases of international taxation related cooperation and a loose connection to the precise purpose of use may cause confusion as well as contradictions with the rules on secrecy, protection of individual rights and state safeguards.

The very questions that many of the States still considering their possibilities to join in the international tax recovery operation, worry about.

As far as the international recovery practice is concerned, it seems that even after the new Recovery Directive 2010/24/EU enters into force 1st January 2012, in practice very little will change. Deriving from the discussions about the topic the recovery officials seem to be very focused on their priorities.

Rules on service of documents are also a very significant part of properly proceeding recovery. The main principle in the most recovery assistance agreements however is that national notification of documents prevail and the notification of the agreements is used only as a secondary means. Nevertheless, as part of this general trend to broaden the field of international cooperation, also the rules on service of documents in a strictly tax recovery related agreements, have been somewhat mitigated in relation to the type of documents that can be served and their direct connection to recovery. To certain degree this development however brings forth also potential

advantages, from the point of view of better protection of individual rights, provided that also the secondary nature of these measures is always kept in mind.

As in the exchange of information, the intensity of practical recovery is also manifested in that so far the precautionary measures have not been used often in the international recovery. This is simply to do with their unreliability. Grounds for them, as well as, the phase they can be taken vary considerably in each Party State. Although without a doubt beneficial measures as such, the use in current circumstances would not meet the requirements of fast and secure action needed in recovery. The fact remains that in reality failed attempt to take precautionary measures often proves fatal to whole recovery.

The problem with the precautionary measures has been recognized on international level and there have been attempts to solve it, but so far no definite solutions have been introduced into practice. It is difficult to predict whether the new Recovery Directive 2010/24/EU will have any influence on the use.

In the preparatory phase there were attempts to facilitate the procedure. However plans to create a European unified instrument for precautionary measures failed as well as aims to try to find objective criterions for the applicant Party State to have the precautionary measures enforced in the requested Party State provided only that there is a national need and a decision to support it. Failure in this brave attempt probably meant that things were taken too far too soon. In preparations the proposal proved impossible to execute as the wide range of competencies in giving decisions on precautionary measures as well taking them meant that the matter was not only taxation related but would have involved larger scale issues. The Member States were simply not ready or properly authorized to renounce the right for the requested Party State to recheck the possibility to take the precautionary measures in that particular situation against their own national law. As there is a rainbow of legislation even within Europe on precautionary measures and the decision on when to take precautionary measures depend on the structure of each taxation and enforcement system as whole, the recheck against the criterions of the Requested State often empties realistic possibilities to take them. This categorical approach to precautionary measures in international law can be seen to constitute even somewhat unnecessary obstacle, since the objective criterions and reasons to provide precautionary measures in most common legal systems are probably more unified than many other legal criterions. The only problem is that due to differences in national taxation and enforcement laws, although the objective criterions meet, the secondary subjective criterions contradict. Could something be done about this, the time will show. The explicit attempts to improve the use of precautionary measures so far have failed but the preparations could have some implicit influences in the future. The fact

however remains that the pressure for proper efficient use of precautionary measures is getting higher in the field of recovery.

The basic idea of providing assistance in recovery, being the main focus of cooperation is in practice quite clear as far as one is talking about basic steps to enforce the tax claim in another Party State. Within the framework of the Agreement and it's rules on treatment, the Party State will take the foreign tax claim through their national recovery and enforcement process. There are however several particular unanswered questions also in this field. For example does the debt rearrangement or insolvency proceedings form a part of recovery process and how should it relate to the other international rules on insolvency proceedings etc. Most often the particular questions relate to the fact that the definition of recovery process is still in the hands of national law. Unfortunately in this presentation there is no possibility to go further into the fine tuning of these particular questions that at this stage are still hypothetical rather than practical in many countries. Nevertheless interesting and important questions to ponder and examine generally in the different international recovery forums. In all one may say that although recovery, as process of enforcement, faces borderline uncertainty from time to time it still is able to work and even solve some of occurring problems on practical level.

There is still one general aspect to keep in mind when defining overall assistance covered in each tax recovery agreement. This is namely that exact content is seldom determined only by mentioning the measures in an agreement. Due to the nature of international agreements the wording is almost always quite generally formulated seeking acceptance and consensus of several nations. It derives influences from the general scope of the Agreement, whether related strictly to recovery or more generally on tax matters, as well as from the fact that often the interpretation of specific rules tend to broaden as the field of cooperation generally broadens between the Party States. General social and political changes may also affect the interpretation. This means that the wording may be open for many interpretations. The OECD and the European Council have tried, in their part, to solve the problem of interpretation and control of developments by preparing explanatory notes to open up and give a more detailed definition to the Article 27 of OECD Model Convention and the rules of recovery on the OECD/European Council Convention. In practice, after the ratification of the basic agreement, the Party States usually also form a contact with each other in order draw up a more detailed technical agreement before beginning cooperation. If this technical agreement or explanatory notes are carefully prepared, then the application is naturally easier to initiate and keep under control. Despite the explanatory notes or technical rules the interpretations in the international environment, however, tend to change somewhat over the time. This type of development is natural and by no means a bad way to move forward little by little also in the field of tax recovery assistance.

However the changes do not always come about without some negative influences on for example originally intended reciprocity or protection of individual rights. Therefore it is important to keep the eye on the developments and bring the content of technical agreements as well as explanatory notes also under discussion from time to time even if the text in the main agreement remains unchanged.

3.2. Taxes covered

The scope of taxes included in international tax recovery assistance agreements vary somewhat. For instance tax recovery assistance rules included in the Tax Treaty drawn on the bases of the OECD Model Convention recovery assistance article cover normally income and capital tax recovery. Naturally as this Convention allows a wide range of flexibility on mutual bases, in reality the scope of taxes can be almost anything. Most commonly some of the direct taxes such as inheritance and gift tax are included in the scope. From indirect taxes value added tax and similar sales tax are quite often also recoverable through the agreements. So far the general key factor for Finland as well as for many other states to include or add any of the taxes in any form of assistance with another State has been the recognizable similarity in principles of relevant taxation or collection.

The scope of taxes included in the recovery cooperation has gradually broadened and for instance the OECD and the Council of Europe Convention on Mutual Administrative Assistance already covers nearly all kinds of taxes direct or indirect and regardless of whether they are state or local[2]. This has marked also a change of attitude in so far that now the flexibility worked in way of narrowing the scope by mutual agreement. Despite these gradual changes in attitudes up until very recently the fact has remained that the taxes covered have always been defined explicitly in inclusive manner. State by state more specific lists have been drawn stating exact national names of the tax included.

This is true as well with the Nordic Convention, current Recovery Directive 2008/55/EC, OECD/ Council of Europe Convention on Mutual Administrative Assistance as well as with most of the bilateral treaties based on the OECD Model Convention. This inclusive manner of defining the scope has traditionally been seen to increase the certainty of application as it provides the possibility also for the Party State providing assistance to check that the tax debt to be recovered in fact falls under the scope.

2 *The Convention allows each Party State to restrict the scope of covered taxes and therefore the scope offered is only potential and may vary considerably depending on the State.*

The new European Union Recovery Directive 2010/24/EU is the first to introduce a fresh, exclusive approach in defining the scope of recoverable tax claims. From the beginning of next year the scope of recoverable tax claims is defined simply to include all the taxes and duties levied by the state or its territorial or administrative subdivision.

Instead of inclusive list, there is only a short exclusive list of the type of payments that the Directive will not cover.

Although in the early stages of preparations the change of approach seemed somewhat difficult to adapt to mentally and let go of control, it became apparent quite fast that there are in fact advantages in this development. In practice this change facilitates and speeds up the process considerably at both ends as one can relinquish the process of control i.e. checking up and blocking out national tax claims that are not listed. This will also abolish definitely the problems that have emerged from differences in defining the nature of certain taxes, in current practice. It might be that some type of explanatory comments will have to be adapted later on to define more precisely the scope. This should be done, however, through the list of exclusions, not listing all the taxes included.

Could the exclusive approach be executed in the international tax recovery assistance more generally will remain to be seen. At least it is something worth thinking about in the future.

3.3. Rules on treatment

Like stated earlier the process of international recovery assistance is formed of three parts. National rules of the applicant state apply to the establishment and validity of a claim or instrument permitting enforcement while the national rules of the requested State are applied for the process of recovery. The rules on the interaction between Party States form the third group of rules and they derive directly from the Recovery Agreement in question.

The most common rules the Recovery Cooperation is built on are related to the acknowledgement of Party States tax claims, treatment of foreign claims and their relation to national priorities, generally accepted limits to the obligation to provide assistance and division of costs.

The principle of acknowledgement of each other’s tax claims namely confirm the fact that the requested Party State has no say in the content of the claim nor instrument permitting enforcement that is legally enforceable in the applicant state. This maybe more obvious to countries like Finland where the principle of direct recognition prevail.

The same principle however applies also to those Party States where, according to the national law, they have to formally take explicit measures to acknowledge or replace the original instrument from the applicant State in order to make the instrument and thereby the claim enforceable nationally. The acknowledgement and replacement process may not have an effect on the content but only on the form of the original instrument.

Another common international principle adopted in the recovery cooperation is the principle of equal treatment of tax claims. This means that the Party State has to recover the claims as if they were their own. The exception to this rule is the generally accepted principle that the Party States do not have to allow possible existing national privileges to the tax claims from another State. This does not mean, however, that explicit or implicit discrimination of foreign claims would be allowed at least on European level. The recovery process has to follow the same national rules whether the tax claim is national or foreign.

The renouncement of all reimbursement claims for costs of normal recovery is also the standard rule in the International Recovery Assistance Agreements. This has been accepted on the bases of original idea of reciprocity. Although in current agreements, especially the multilateral ones, the reciprocity de facto do not always realize to the full, it is still one of the fundamental principles included in the agreements. As the scope of international cooperation has broadened also the way to examine and realize the reciprocity has expanded.

Finally the international recovery agreements always include also explicit rules on limits to fulfill the obligations. These limits can be divided into two groups. The first group, which provides in fact safeguards for the state relates to so called general reasons and the content is pretty similar irrespective of the agreement. These reasons are connected to situations where the cooperation could danger public policy, state safety, reveal a professional secret or create serious economic or social difficulties. More tailor-made limits take more into account the specific underlying aims of each agreement in relation to such factors as the cost-effectiveness, availability of human resources and efficiency in promoting the aims. In practice this type of regulations on limits are for example rules that restrict the application on the bases of threshold amount or age of the claim.

3.4. Rights and safeguards

The international taxation and recovery agreements often balance between the fine line of, safeguarding state's financial interests effectively and protecting the individual rights.

So far it seems quite clear that the States have been more willing to promote the rights of individuals together with safeguarding state revenue in concluding double taxation agreements. Instead States willingness to enter into international

tax recovery cooperation have been more controversial maybe because the international tax recovery agreements do not bear any direct advantages to the individuals involved but are made usually solely in the interest of state revenue. Traditionally many States have therefore considered these latter treaties more dubious and clearly made their stand in the name of protecting individual rights. One reflection of this is also the protection of citizens against tax claims of other states that so far has unfortunately hindered some States to enter into recovery cooperation. A principle, although indeed very admirable, more generally applied would simply end the international tax recovery all together.

The rights and safeguards of individuals and states have rightfully been considered an important matter also in current international tax recovery assistance agreements. One has to remember however that eventually the fairness of the process has to do also with the fact how the two national processes have been integrated into one another in the preparations and technical agreements. In this respect we all have to also look ourselves in the mirror and ask how we have so far managed to protect these important values without losing essential efficiency. Although the Conventions and Models provide the proper means to act, good and fair international recovery cooperation between Parties States is in the end always results of good skills in negotiations, careful drafting of agreements and professional implementation and application.

The guarantees that for example the OECD Model Convention, OECD/European Council Convention, Council Directive 2008/55/EC (2010/24/EU) and Nordic Convention provide as options for safeguards differ in content due mostly to the fact that the means to safeguard tend to be wider when the group of participants is large and open. There are also somewhat different ideologies adopted for the Council Directive and the Nordic Convention as compared to for example the Council of Europe/OECD Convention as regards the use of measures in recovery. While the first mentioned agreements derive from the idea that after certain failed national recovery attempts, the claim will be sent to another state, which in turn is obliged to use all their effective recovery measures in their legal system to recover the claim, the approach offered in the latter Convention is totally different. This Convention forms its principles deriving from the avoidance of some type of possible exploitation ie. that the applicant State would seek assistance from the requested state because of the latter State's greater powers in recovery. This offered principle where the Party States would be obliged to use only recovery measures common to both parties, however raises many questions. One has to say that at this stage the idea of "forum shopping" in tax recovery seems very unfamiliar from the point of view of Finnish practical international recovery cooperation.

However, the benefits of the OECD Model Convention and OECD/European Council Convention are that they are flexible in nature and leave more space for the Party States to negotiate the exact extend of the cooperation in the field.

Therefore it is to a certain extent understandable that the scope of approaches to pick for protection of individuals and state interests are wider.

One aspect of protecting individual rights and safeguard state's interests is also the required confidentiality in dealing with the matters of international recovery. In the exchange of information, service of documents and recovery the officials often end up treating sensitive information that in wrong hands or too extensively used could lead to violation of individual rights or danger the safeguards provided for the States. The way to protect information in international Agreements is to regulate, at least on three points.

That is to take a precise stance on the following questions;

1. For what purpose the information may be used,
2. To whom it may be distributed, and
3. Whether to store or destroy the received information after the use and in case of storage how it should be done and who should have access to it.

The last point has become increasingly important since the storage of information on computers in internal information systems has increased. The storage and access for such information should be nowadays more clearly regulated in the agreements as currently the matter is still often approached in old manner assuming that the received information is on paper and the receiver has the explicit control over to whom to pass the information. As this conception contradicts clearly with the current national computerized Tax Administrations' ways to perform normally, there is a danger that information originally used and distributed according to the Agreement begins to live a life of its own unless some clearer rules for the computerized world are adapted.

Naturally, the situation changes if the Party States are willing to let the Party States Tax Administration to use the information as if their own in all contexts like sometimes have been suggested. From the practical point of view this latter option still seems little farfetched and would at least require very good knowledge of the Party States use of information and possible distribution contacts.

As mentioned already in the part dealing with the information exchange there is an acute need to start reorganizing information flows so that the information received is accurate and can be profited to the fullest for the intended purposes and yet take into account every steps of the way current technical developments and their relation to the protection of individual rights and state safeguards.

4. CHALLENGES IN IMPLEMENTATION TO OVERCOME

Creating working recovery assistance cooperation between States may face obstacles and challenges on varying levels. The first step naturally is to be able to enter into an agreement and afterwards also to implement it into the national practice.

There is an incoherent group of reasons why a State might not want to or is not able to enter into cooperation in tax recovery. Those reasons can vary from simply political reasons to legal considerations about the similarity of tax systems or concerns about the proper protection of individual rights. The reasons may also be more interest-related. Reciprocity and balance of benefits do not always meet in the way that it would encourage the States or one of them to enter into an agreement or begin the active implementation of it. It is only natural that also sufficient economic interaction tends to encourage more to cooperation in the field of taxation as well as in tax recovery. In current economical situation there is no reason to forget that some States may examine the situation from strictly practical point of view and ponder whether their Tax Administration will in reality be able to provide requested assistance efficiently in the circumstances. Naturally all the above-mentions reasons should be taken into account already when entering into an agreement but as often is the case in reality any of the above-mentioned arguments may come up, expressly or implicitly by lack of activeness, also when the agreement is to be implemented into practice.

As said the implementation of tax recovery related agreements may still fail for reasons of principle, but more commonly the challenges in implementation phase are more practical and relate to knowledge, experience and human resources provided for the task at hand. Therefore the challenge for the State entering into international recovery cooperation is not only to negotiate, sign and ratify the agreement, but also to see that all the proper steps are taken to implement it into practice.

The most common challenges in practice relating to the implementation are connected to the fact that the authority negotiating and preparing the agreement is quite often different from the national one that is to implement it into practice. There is a clear gap to be seen between these authorities, their powers and their knowledge about the content and interpretation of the agreement. This is bound to cause challenges in implementation and application. It is in fact a challenge to spread the knowledge about the international rules to the personnel that although firm experts in national taxation and recovery related questions, often stand in awe when coming face to face with an international case. The ways to overcome this unnecessary confusion are many. First of all it would be important for us all to realize that the recovery of foreign claims, once the basic negotiations on principle level as well as technical level have been successfully concluded and the requirements met, is not that much different from recovering national

claims. There are clear rules to be followed. As to make the implementation and application phase and especially the beginning of it smoother for the authorities concerned, the following steps, for example, could prove to be worth taking in the future negotiations and preparations.

- Recognize expressly the need for more detailed technical implementation related rules.
- Name the competent authority for implementation early on and involve them actively already to the negotiation phase hereby attaching them naturally to the later practical implementation.
- Provide support, backup and clear directions if the implementing authority is to negotiate or help with the specific technical rules on details of the cooperation.
- Create a continuous system of providing information to the implementing and applying level about the content of the Agreement as well as progression of the negotiations, interpretations and other relevant outcomes emerging during the negotiations and in the expert groups. If the technical rules are still agreed on governmental level then involve the implementing/ applying authority in the process this way beforehand for in advance delivered proper information is crucial in building up a successful practice in the future.
- Educate and provide information also about the application and interpretation of international law and agreements.
- Inform actively in the Administration about the existence of the Agreement.
- Promote and help in the formation of personal contacts with the competent authority of the other Party State.
- Centralize the treatment of international recovery cases in fewer hands. This promotes growth of expertise as well efficiency and uniformity.

The other type of challenges in the implementation provides the attitudes towards relevance and sensibleness of the type of international tax recovery cooperation.

Indifference or downright negative attitudes towards implementation can derive their origins from different sources. Such sources may be lack of previous experience, previous negative experiences or negative perception based on the problems other states have faced in the recovery cooperation. The cause can also simply be the lack of time and resources. Possible solutions to these problems in addition to the above mentioned could be to;

- Promote positive attitude towards international tax recovery;
- Allocate enough resources and expertise into this work;
- Not hesitate to ask about experiences and best practices also from more experienced national authorities or States.

5. MAIN ADVANTAGES AND DISADVANTAGES

Advantages

The advantages of international tax recovery can be divided into two groups. The direct effects naturally are quite easy to measure simply by looking at the statistics about international recovery. The indirect effects, however, are much more difficult to determine and point out for there is no definite objective means to measure them. The direct and indirect advantages, measurable or not, are at least the following.

- Increase in Tax Revenue by Recovery
- Increase in Compliance to Voluntary Payment and Decrease in Attempts to Avoid Payment of Taxes
- Worldwide Promotion of Equal Treatment of Taxpayers and Fight against Tax Evasion
- Increase in International Administrative Cooperation and Exchange of Best Practices in Tax Collection that Promote Improvements better Results both on International and National Level.
- Possibility to keep the Tax Recovery in the Hands of Official Processes and thereby promote also better the rights of Tax Payers as well as Safeguard the States' interests.

As for the last advantage there is a need to explicitly note current increasing tendency to use private international debt collection companies for collection of cross border debts. The pressure is increasingly high to extend the process also to such public debts as taxes. Such development at least without a very tight scrutiny of the State's Tax Administration, seems however a dangerous path to take. States use very autonomous fiscal powers and to renounce them for the part of recovery to the private sector is a real problem from the point of view of individual rights as well State's status. How would the State in reality guarantee the fulfillment of legally required safeguards when the foreign private collector, especially with a foreign claim, has most probably a minimum understanding of it, not to mention the legal system it derives from, and at the same time very high pressures to cost-effectiveness and maximum economical profit. To avoid arbitrary developments like this in the international tax recovery scene, the intervention of national Tax Administrations is needed fast.

Disadvantages

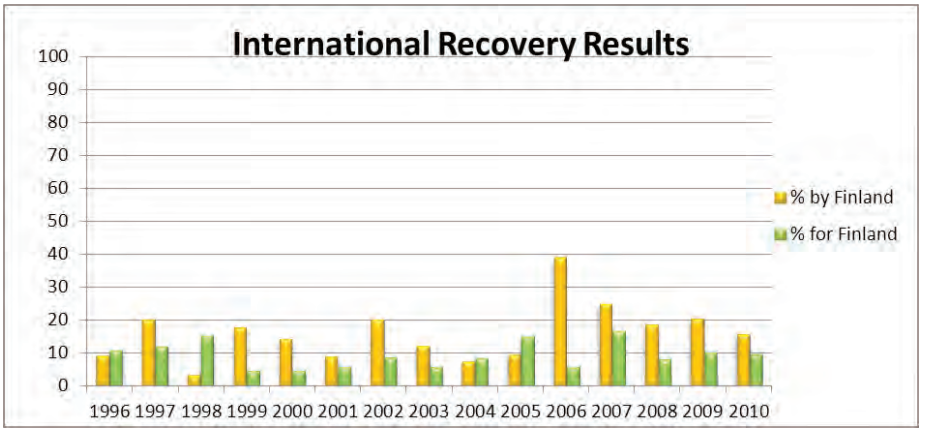
- Especially the Start of Implementation and application requires Time and Effort
  - Requires careful detailed preparation in advance to safeguard the process from all angles and yet provide maximum efficiency and minimum administrative burden at the same time.

- Establishment of Fluent Practice requires Time
  - This time is quite directly inversely comparable to the time and effort paid to the matter in the starting phase.

6. RESULTS ACHIEVED

Like mentioned in the previous chapter results achieved with the active international tax recovery cooperation can be direct or indirect. The direct and most obvious result is the better possibility to safeguard State's financial interests and that way increase the revenue. Unfortunately the recovery results in the international recovery are still quite low. On European level around 5 % of requested amounts are recovered but with the possibilities that the new directive will offer the aim is much higher. In Finland the 15-year-average result in recovery of foreign claims is around 16 %. Although the direct results are not yet, by no means, satisfactory there has been signs of gradual but uneven growth in overall numbers as can be seen also from the table below where the results of Finnish recovery have been presented from the last 15 years.

Table 1
For Finland Nordic Convention around 12 % and EU Directive 10%. By Finland Nordic Convention around 17% and EU Directive 14%.



Unfortunately, too often, the analysis of results achieved in mutual recovery cooperation is left to that. The profitability is measured only by comparing the amounts recovered on the base of requests and the activity in the field is considered marginal.

However the indirect effects of recovery cooperation in fact may be much greater than the direct effects. Solely a common knowledge about the existing possibility that an unpaid tax will follow and can be recovered in another state promote voluntary compliance and reduce the willingness to try to escape the taxes or

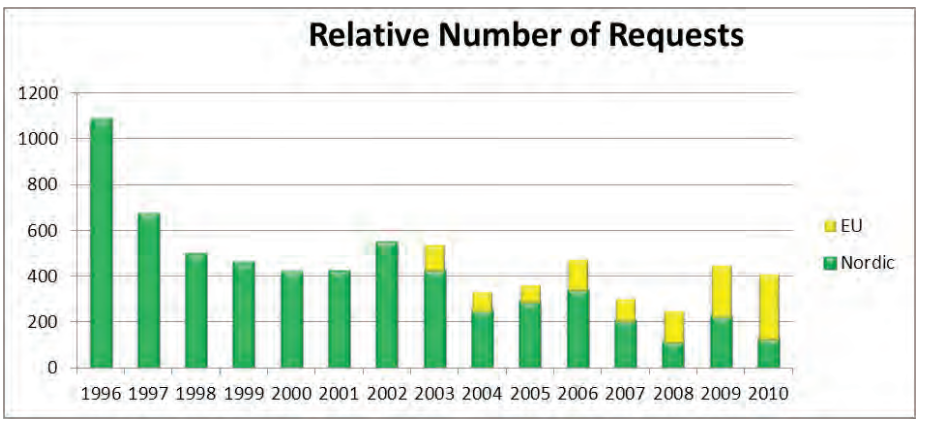
makes it at least more difficult. This naturally requires at least some believe in the efficiency of the system. There are however examples in practice how for example EU recovery already bares some such effects.

The successful international recovery plays also a significant role in the fight against black economy as whole. In addition to a wide range of successful cooperation in the field of exchange of information and tax examinations to impose the taxes in full, there is definitely a need also for an efficient international system to execute these payments by force, if needed, to back up the process.

Unfortunately these indirect preventive effects are very difficult to measure in the field of international recovery. There is no general research or statistics how the recovery cooperation alone for example has indirectly influenced the black economy as whole or compliance in voluntary payment. Some indications could possibly be gathered from the following statistics about the developments in the numbers of requests sent from Finland from the last 15 years. The numbers of the requests have somewhat declined although number of interaction across borders surely has increased over the last 15 years that Finland has been the Member of the European Union. The conditions of the agreements have not changed and in fact the active application of the EU Recovery Started only in 2003.

Table 2

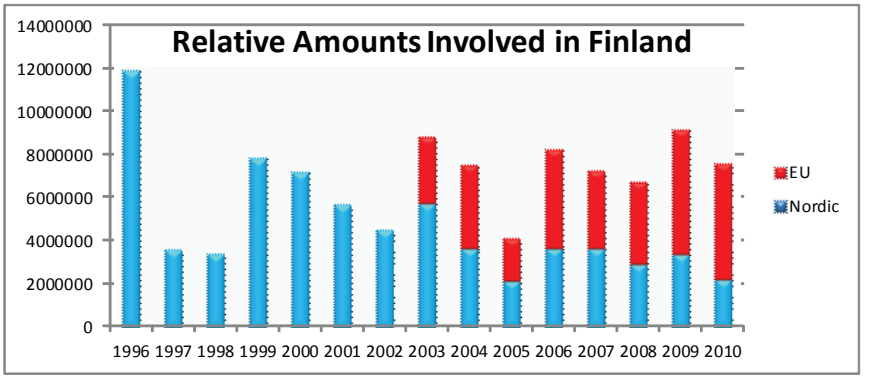
EU recovery commenced actively in Finland 2003 after the changes of the Directive 2001/44/EC entered into force.



Another somewhat contradicting phenomenon is the fact that the overall amount of tax claims involved has slowly increased while the overall number of requests has somewhat declined. This could be a result of several things. One could simply be that the possibility to internationally recover has influences

namely those tax debtors who previously left the foreign taxes unpaid more out of possibility than clear explicit intention to avoid payment. Normally they are individuals with minor tax debts. In this case the current practice of recovery operation maybe helps eventually to narrow down the type of tax payers that leave their foreign taxes unpaid. This development in turn would help to target the measures more accurately towards bigger issues like the fight against black economy in the future. In any case the following chart demonstrates the relative changes in the amounts involved in the International recovery in Finland.

Table 3



Finally, one cannot undermine the indirect benefits that the international recovery cooperation brings also on the level of professional expertise and cooperation between Tax and Recovery Authorities. To understand taxation and recovery systems, not only from the national point of view but also to reflect them against other differently working systems, helps to build a more wholesome picture and understanding of fiscal systems and provides good and simple grounds for successful exchange of best practices between States. There is indeed no need for everybody to invent the wheel again anymore.

7. RECOMMENDATIONS

As the implementation is eventually a decision every State has to make on the bases of their circumstances there is very little to add to the previously presented but some general points that in addition to Chapter 4 lists could be of some use in case of positive decision.

- Promote Open-minded, professional attitude towards international recovery assistance - most of the challenges can be overcome.
- Avoid unnecessary categorization in preparing and implementing Tax Recovery Agreements. Reflect results, for example realization of safeguards and efficiency, through the process in practice.

- Keep in Mind the Main Focus of Agreement - There are many worthy things to promote in the field of taxation, but in recovery agreements the main focus is on the money and how to properly get to it after the voluntary payment has failed.
- Aim to explanatory notes as well as main Agreement and technical rules.
- Investment of some Time and Effort - Detailed, careful and unambiguous preparation of technical rules.
- Proper Training and Support of Staff
- Promote Appropriate and Regulate Open Contacts with the Party States' Authorities on Every Level
- Active and Conscious Follow-up of the Involvements in the Interpretation of Agreement
- Renew the Agreement/ technical rules /explanatory notes from Time to Time to Respond to the Reality – Especially if the wording of the Agreement is older, it is often the case that the interpretation has altered so much that the wording does not correspond any longer to the wording, which blurs often the practice.
- Patience - The results will show and multiply in a long run with patience. Especially in the beginning of process time has to be reserved to build trust and coherent practice between Partner States. Good quality start will guarantee a smoother and more fluent continuation.
- If it is worth doing, it is worth doing well!

Case Study

Topic 3.3

STRATEGIC ALLIANCES WITH THIRD PARTIES FOR OBTAINING INFORMATION ON PROPERTIES AND MONEY

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***Contents:**: Executive summary. 1. Regulatory aspects. 2. Administrative aspects. 3. Technological aspects. 4. Conclusions.*

EXECUTIVE SUMMARY

With a clear objective in mind, the 2011 Annual Operating Plan was structured. It seeks an increase in the tax collection by the General Directorate for Taxation, herewith DGT, with a goal of U.S. $ 97,900.000.[1]

In this mission, the execution of the Perceptive Presence Plan, "PPP," internally known as the "3 Spiders" Plan[2] is promoted. Its background is a hidden plan implemented in 2010 by the Pacific Regional Directorate, which is justified by the high rate of taxpayers potentially hidden in that region.

The regional plan applied an integral approach, addressing the hidden and omitted gap, so that the hidden detected by data and the real proven in actual field visits were enrolled and required statements on their taxes. Also, the noncompliance found was sanctioned and special care was taken in collecting data for the Taxpayer Identification Number (RUT in Spanish).

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1 *(TC 1 $USA = 511.05 colones CR)*

2 *Francisco Villalobos, DGT Director, says that once he was watching Discovery Channel , a lady was terrified by the plague of spiders that had invaded her home ... wherever she would go there were spiders - in the kitchen, the bedroom, bathroom, the living room ... She urgently called plague control ... after a thorough fumigation there were only three dead spiders. This story inspired to come up with the internal code "Three Spiders". They were only three, but their innate ability to move with information on the system (floor plan) made it looked as they were not only three spiders but an army of them. Such perception is important to raise the level of risk in the population and promote voluntary compliance.*

Until 2010, the DGT had not implemented plans that would meet the hidden gap. DGT was executing plans to update RUT, omitted, inaccuracy and collections, each one in separate compartments, with a selection of cases that responded to different selection criteria for each plan. A taxpayer could be processed or not in different plans and be subject to several performances by several officials or be processed for noncompliance without being prosecuted for other serious irregularities, leaving the management in a state of myopia.

The biggest integrity noncompliance in the process of control occurred in the collection phase, where there was no track on debt recovery for executed plan, so that the DGT could not know how much of it had been effectively collected in each plan.

Therefore, the need to increase collection and the proposal on integrated action is committed to totally breaking paradigms nationwide, by turning the extensive control to a new management model inspired by the integrated action to bring fresh money on the table.

Incoming Director, Francisco Villalobos, in February 2011, ordered an immediate replacement of the DGT traditional annual control operating plan for the PPP as the only priority plan and for immediate implementation in the field. The management has been assigned to the Pacific Regional Directorate so as to generate a change supported by the General Directorate but developed from a regional to a central level.

The concept of integrity when acting has two aspects:

1. The integrity of control actions with regard to noncompliance gaps
2. Completeness in the internal behaviors, all areas being involved and committed under the same priority plan and purposes.

Thus, the new model is developed in the Perceptive Presence Plan that addresses all noncompliance gaps: hidden, omitted, inaccuracy and collection in one national plan with a scope of 17,500 noncompliant taxpayers selected under an universal criteria, namely, the DGT has evidence of economic activity by information from third parties, with a goal in proceedings by gap of 5000 hidden, 5000 omitted and12500 inaccurate, for a total of 22.500 performances. This means making 200% of the amount of control actions performed extensively in 2010, with the same staff, but with more efficient performances, since each processed taxpayer in the plan is managed for non-compliances identified in the interest gaps and for the corresponding periods according to the plan.

Under the same integral concept, the management model is characterized by cross-cutting purposes that require coordination among the involved areas. It

means that the particular priorities yielded to the priority of DGT being essential the concentration of efforts, avoiding the dispersion toward efforts that do not provide added value.

Going back to the main collection topic, there is no effective plan if the State does not receive the money. In this line, the PPP makes a continuous monitoring of the collection phase managing in the immediacy of each debt and obligations that the plan will generate in the omitted and inaccuracy phases.

Without being one of the planned purposes, after six months of the PPP implementation, a change is observed in the organizational culture at management and operational levels, both in regional and normative areas. We have realized that there is no turning back. We no longer want to do things like we did before. The motivation for change is obvious; there are signs of satisfaction at all levels. For the regional level, it is the first time that our efforts are reflected immediately on the results and it shows consistent management. At the policy level, we have to reinvent the process since the learned recipe was not giving results.

1. REGULATORY ASPECTS

Urgent legal reforms are needed in the Costa Rican tax legislation to strengthen the powers of the Tax Administration. But the dynamics of tax reform in our country tends to be slow and complex.

The decision: we must act immediately with what we have. DGT issues the guideline that regulates the Perceptive Presence Plan. This is a mixture between guideline and procedure, being necessary to go into such detail since it is a new management model which implementation was achieved in just thirty days.

PPP Management Model

Two lines of the 2011 Tax General Directorate Plan are to increase collection by the Tax Administration Management and improve the perception of this Directorate work.

With this objective, among others, the execution of the PPP has planned three tax plans at domestic level:

1. Hidden Plan
2. Persuasion Plan - Block Year 2009
3. Persuasion Plan - Block Year 2010

As mentioned, the universal criteria of selection is to have information from third parties as an indication that a taxpayer has income-generating activities that have not been adequately reflected in his income tax declaration and general on sales, or having activity that is not even registered with the DGT.

The Hidden Plan is executed to taxpayers who have economic activity but have not been registered with the DGT; and therefore, do not make income tax declaration nor pays their taxes. Once registered they become “omitted”, and if they incorrectly declare they becomes “inaccurate”. This is why the hidden plan and the persuasion plan, block 2009 and block 2010, differ in their initial working phase, locating and notifying taxpayers, but in subsequent stages the case management model is the same.

The Persuasion Plan refers to taxpayers who are registered but do not file their tax declarations or if they do, they do not report what it corresponds.

These address several fronts:

1. Update of RUT (Taxpayer Identification Number)
2. Inaccuracy Gap in the statement of income tax and general sales tax for the fiscal periods 2009 and 2010
3. Omitted Gap in income tax and general sales tax for the fiscal period 2010
4. Immediate Default Control to the payment or tax determination or penalties.
5. It creates on the taxpayer the perception of follow-up of his tax behavior by the DGT in regards to various tax obligations and tax periods.
6. It does not limit the expansion of actions by the tax administrator on the taxpayer behavior, which allows the expansion by exception.

The processing of each case should include aforementioned points 1 to 5 so as not to break the strategy of integrity in the performance.

The Plan block 2009 and 2010 are **PERSUASION** plans towards the inaccurate taxpayer income tax statement, giving the opportunity to regularize their situation of inaccuracy from the proposal offered by the DGT based on information from third parties, in the voluntary phase, that constitutes the “least expensive” compliance option.

What is the PPP - Persuasion Plan*?*

It is a plan for verification of tax returns accuracy on ample basis.

It is a plan for voluntary compliance by taxpayers, giving opportunity to benefit from the "least expensive" compliance.

It is a plan that strongly sanctions the taxpayer who insists on maintaining a noncompliance status.

It is a complete plan for addressing several noncompliance gaps and follow-up until collection is completed or self-settled.

It is a plan that brings fresh resources to the Treasury to be invested in social welfare

What is NOT the PPP - Persuasion Plan?

It is not a previous settlement plan; it is not a tax investigation plan, nor a plan to fight against complex fraud.

For Persuasion Plans block 2009 and 2010 execution, five stages named as follows have been defined:

- ✓ I "Impact on the Street,"
- ✓ II "Persuasion for tax correction"
- ✓ III "Strong Hand with the Reluctant"
- ✓ IV "Pre-Settlement for Reluctant"
- ✓ V "Tax Collection Control "

The action seeks a two ways effect: to provide the taxpayer an opportunity to comply by correctly self-settle before being subjected to tax audits and penalties due to inaccurate tax statements, and also benefit from reduced penalties related to noncompliance.[3] On the other hand, The DGT avoids incurring in costs involving the execution of prior or final settlement processes by avoiding performances which follow up is time-consuming and costly in resources with inevitable postponement of income determined taxes due to litigation processes. The double road then becomes an efficient equation: it avoids sanctions and investment in assessments for the taxpayer in cases of evident errors or malpractice and to the Public Treasury it ensures immediate revenue with low recovery cost.

3 *Under the Costa Rican law, the correction of self-assessment or self-determinations without intervention from the Tax Administration involves a significant reduction in penalties (80%) and even extinction of criminal prosecutions in cases which allegedly have elements to be initiated as a crime of tax fraud.*

Stage impact on street

According to the defined process, internally managed assigned cases, proceeding cases are determined and the corresponding notification documents are prepared in three weeks.

During the three following weeks, taxpayers are notified by personal visit, the proposal to regularize their situation in relation with the information from the DGT databases.

During the same visit, the taxpayer data are updated under the policy “Know your taxpayer”.

At this stage, we are not concerned with going to the site and leave the documents as a notifier would. In case a contact is made with the taxpayer, his/her legal representative or company partner, time should be taken to explain him what the visit is about, explain each document to be notified, explain that at least the settlement has to be corrected, explain the advantages of attending the TA call to correct the situation. Persuasion begins from this moment on”. (PPP Guideline plan, delivered to officers assigned to the plan)

The message given: The tax manager should be sharp when observing the reality, to see if what the taxpayer knows is consistent with what he is reviewing, determine the taxpayer real activity, the tax domicile, other activities, telephone contacts, email, another person to leave messages, alternate addresses. The tax manager should be interactive; he should ask a lot of questions and get all the possible information.

Persuasion stage to self-assess taxes and penalties

It is the most important stage of PPP, its name highlights the purpose of the Plan: PERSUASION so that the taxpayer complies with the voluntary phase.

The tax manager profile is “sales agent” and the “sale” closes when the taxpayer rectifies or regularizes.

The success indicator by officer, for the Tax Administration (TA) and for the Regional Directorate (RD) will be to get 90% of the notified cases correcting their noncompliance. The goal is at the persuasion stage, 90% of the cases to correct the irregularity in the inaccuracy gap, omitted gap, not only in income tax but in general sales tax as appropriate. Integrity must be kept in the control performance.

Five weeks were provided for the tax manager to contact the taxpayer by telephone, email, text messaging, office visits in order to explain the economic benefits of complying with the voluntary phase versus the price increases experienced by the amount payable due to the penalty for inaccuracy in the income tax statement - 25% or 75% - when subject to a pre-settlement process or an audit.

For the taxpayers unwilling to make a correction, if worth the case, an investigation will start to determine the tax behavior, complaints from third parties, and wealth signs.

By the third week of persuasion, an assessment of pending cases was done in order to define the strategy to follow with each in accordance with the information obtained, considering the position of the taxpayer and determining the arguments to be presented in the next interview.

If persisting in the noncompliance, an interview would be required where his/her tax situation would be outlined and the different scenarios (amount to be paid in colones) to those subjects to pass the case to the tax determination by the DGT.

In short, if the taxpayer remains reluctant, the tax manager must then investigate the taxpayer, a meeting as well as an interview should be scheduled in order to explain his tax situation, consistency between statements and his wealth signs, the consistency between gross and net income, between expenses and taxes to be paid from the income tax statement, consistency on monthly sales tax statements with respect to the reports on the credit cards, with respect to the cash sales and credit card sales behaviors, consistency between exempt and taxable sales in accordance to the economic activity, the consistency between the income tax statement and sales tax statement, economic activity detected on charges by third parties, his/her compliance record in filing relevant information gathered during the notification visit, among others. The concept is clear: each case tells us where we must deepen, “the spider” prepares its web depending on the strength of the “prey” to finally convince him/her to correct, in view of the amount of evidence against his/her statement and in view of the advantages of not letting the process move forward to a tax control. The instruction of spiders was equally clear: You CANNOT go to the interview without a clear case and a strategy to deal with it.

The PPP experience taught us that we must be cautious, not to believe everything, ask questions, the taxpayer should be investigated to assess the reality of his statement, show that we know him, but most of all, have tax instinct, someone must pay for the income that we have information on and behind each wealth sign there is a taxable income, unless there is sufficient proof of

the opposite. It is interesting to see that measures previously considered as control measures are now "massified" with the express intention of expanding control coverage and establishing office determinations with the conviction of the taxpayer. Mass control actions with little intensive control and a dynamic of self-assessment or "induced repentance" by the taxpayer.

"Strong hand" with the reluctant stage

This stage includes two weeks; one for the tax manager to give his recommendation with respect to each case that has not corrected its irregularities during the persuasion stage, the recommendation must be very specific, if the case should have a permanent or a pre-settlement.

A study committee composed of the Regional Director or his representative, the TA Extensive Control Manager and Deputy Manager, will ultimately decide the course that will be given to each case.

The cases recommended for a final settlement will go to other plans called "Less is more" or "Tax avoidance"[4] which will seek specific oversight actions for greater coverage or a similar dynamic to the spiders but quite timely and specialized. Both plans are different approaches to the extensive and intensive control established under the same sustainable development control concept: massive control, custom made system in information management matters.

Preliminary assessment of the reluctant

For cases in which taxpayers who fail to correct the irregularities detected by the Tax Administration and qualifying for an abbreviated test performance, the administration will notify them and manage the income tax and general sales tax determination when appropriate, and the application of the penalty for inaccuracy in self-assessment of these taxes. In addition, a follow-up of other breaches which have been reported and notified in PPP earlier stage will take place.

The above represents an important variant in regard to liquidation plans of previous years where only the inaccuracy in the income tax and the sanction for inaccuracy in the tax statement were managed without any further action. Again, same action, different concept, different results.

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4 These plans are part of the 5 lines of action established by management for the years 2011 and 2012 and which seek under the concept of Turbo Plan, enhance the resources of the Administration (without hiring new resources) based on best practice and success stories that were developed as pilot schemes in local government, are enhanced to national level, introducing as national leaders of these plans or axis to those that at the time took the initiative to carry them out and did it with good success.

PPP collection control

As explained, The PPP is integral to address several noncompliance gaps in a single stroke and to continue to follow the cases throughout the whole tax control process, to reach the collection stage .This is where the TA Collection Directorate become involved.

The collection control is understood as the keeping of accounts of the self-assessed plus the determined, i.e. strong and enforceable debt, information that originates in the TA extensive control areas and the registration of what has been collected from those debts, generated in both the control stage and the extensive administrative collection stage, obtaining this way, the total self-assessed or determined, the total amount paid and the balance for each case by Tax Administration (TA), by Regional Direction (RD) and at the national level.

In the areas of each TA Collection, collection managers are appointed for the debts administrative collection arising in the PPP. For these purposes, a control collection tool is available.

Here is a stage of the plan presented that cuts across the stages of extensive control mentioned above, since it begins with the first self-assessed case and continues until we have managed and achieved 90% of the collected debts that are claimed in administrative proceedings. This again is referred to us as a work of persuasion, this time by the collection managers.

Once the cases are being assigned in the control collection tool, the designated manager must perform the debt administrative collection, according to the current administrative fee guidelines.

”The collection manager’s role is to persuade the taxpayer to cancel before even having to issue a payment request, the intention is that most cases will voluntarily pay without request but in answer to the persuasion of the collection manager and even if they have to notify a payment request, to prevent the transfer to judicial collection, so he should rely on phone calls, emails, and office visits. The success of the collection manager to achieve recovery will be measured by the recovery of at least 90% of cases at the administrative headquarters. “(Taken From the PPP good manager manual)

In the case of the self-assessment of sanctions that have not been cancelled at the extensive control stage, it is clear that a payment notice for the self-assessment should be issued in a summary decision. However, considering the particularity of the PPP, which bases its management on persuasion for payment, these self-assessments of penalties on a standard form, will be passed to the collection control tools, so the manager can exercise persuasion to collect

payment from the taxpayer. Within terms of execution of the plan, if and only if, in short, the persuasion is ineffective and the officer is compelled to notify a requirement, a summary resolution must be previously issued and notified.

As an option for compliance, a payment term of up to one year with real guarantee for important debts is offered, with installment payments until December 2011.

The coercive collection is the responsibility of another Finance Ministry department, so that case management control by the DGT reaches the administrative fee which, added to the interest tax collection, makes them wish to achieve a 90% recovery of definite and mature debts in administrative proceedings.

2. ADMINISTRATIVE ASPECTS

Plan management as a DGT special project

Internal coordination in any organization is a sensitive issue; cross-compliance purposes require coordinated action between various areas both normative and operational. One of the General Tax Direction (DGT) successes was to inform all instances of the plan priority condition that the PPP had and concentrate decision making in the PPP management as a DGT direct representative, which role was to harmonize the actions of various departments towards a common final goal.

Internal disclosure

Initially, the PPP details were reported at DGT management levels. Mid-level executives and managers responsible for the plan implementation of had a series of meetings.

Every week, from the already executed plan management reports are issued to the General Director, Deputy Director General, Extended Control Director, Revenue Director, Comprehensive Management Director, Managers and Assistant Managers for Control and Extensive Collection of Tax Administrations, on progress in meeting the goals, recognizing achievements and issuing alerts.

The General Director sends a weekly message to the entire organization, giving results and general direction lines accordingly.

Statistics and performance indicators

The statistics and indicators that measure the effectiveness of the plan implementation and results are calculated automatically from the managers control sheets.

Phase I control pending notices and non-compliance breach:

Outstanding phase I Status		
	Cases	Amount
Pending management (Assigned-Managed)	0	¢
Pending of notification	0	¢
(Proc-notified-localized-transferred to other AATT)		

Status pending in gap of omitted		
Required contributors		
Taxpayers comply with 100% required	0	
Pending		0

Outstanding stage of persuasion-breach Inaccurate status		
Pending (Proceeding Notified - Completed in persuasion-no proceeding after notification)	Cases	Income Amount
		¢ -

Stage I Impact on street

Officers Success indicators		
	Cases	Amount
Managed / assigned		
Reported cases / cases proceeding		
Unlocalized cases / Coming cases		
RUT act cases / localized proceeding cases		N/A

Stage II Persuasion

Period XXXX	Cases
Dec income XXXX submitted/omitted Rta XXXX	
Dec Vtas XXXX submitted/omitted Vtas XXX	

Officers Success indicators		
Average amount corrected for rent		
Average amount rectified in sales		
	Cases	Amount
Persuaded / notified which proceed		
Regularized/Proceeding notified		

Persuasion management effectiveness indicator		
	Anticipated effectiveness	Effectiveness achieved
Rectified	90%	
Reluctant cases		
Transfer to stage III Strong Hand	10%	

Stage III “strong hand” with the reluctant

Without further formalities
Completed by procedure / reluctant cases
Move to previous settlement
Moved / reluctant cases
Transferred to Control
Transferred / reluctant cases

Self-assessment of penalties

Taxable self-assessment statistics	Cases	Amount
Total taxpayers with application of sanctions		
Total taxpayers with arrears in the payment		
Total taxpayers with art. 79 late disclosure		
Total taxpayers with other sanctions		

Stage V Collection Control

Recovery Index	
Taxes	
Total dropped / total receivables	xx %
Income Taxes	
Total dropped / total receivables	xx %
Total self-assessed taxes and penalties	
Total cancelled / total receivables	xx %
Indicator of transferred to judicial collection	
Taxes	
Total transferred to Judicial collection/total receivable	xx %
Income Taxes	
Total transferred to Judicial collection/Total receivable	xx %
Sales tax	xx %
Total transferred to Judicial collection/total receivable	xx %

Training

At the beginning of each plan, an eight hours training session is implemented, addressed to regional directors, managers, assistant general managers and tax managers in charge of the plan execution.

In this working session we outline the plan general features, insisting in the performance integrity and develop the procedure for the case management.

Training is provided by the Plan direction together with the Extensive Tax Control Directorate.

Feedback workshops

Due to the new management model and the lack of time for internalizing its application, close ongoing monitoring at all levels is essential, from General management to tax managers, in order to verify the correct concepts assimilation, implementation consistent with the PPP proposal, and timely decision-making when deviations are detected.

The PPP Directorate, the Regional Directors, Extensive Control Management and the General Sub-direction have been in charge of this monitoring.

It is a day to day work. Feedback workshops were organized after the execution of each started, in order to identify with the direct plan executors to replicate practices, to implement improvements, errors not to be repeated and executives demands to facilitate the work.

A number of actions parallel to the PPP have surged from these workshops to improve the effectiveness of the AATT activities that have required an extraordinary effort to make available the new tools to AATT in extremely short deadlines.

We find ourselves before a new model, which already suggests changes that cannot wait, and the organizational urge to make things better and different has been contagious in order to change and adopt new procedures.

Extended control directorate involvement

The Extended Control Division has been involved in the process of developing guidelines, procedures, information and queries to the PPP within the new management model. It corresponds to this division to continue the management institutionalization and tax control model that has been tested in 2011 as a DGT project and if the general results evaluation suggests that the PPP should be a permanent plan after 2012.

3. TECHNOLOGICAL ASPECTS

Support tools for cases studies

The Extensive Control Manager and Assistant Manager have access to alternative computer tools that allow a better use of the information available to the administration. Among these is the sales tax basis consultation, the income tax basis consultation, the mass-emails tools, all developed by the Northern Regional Direction for priority plans DGT 2011.

Also, they have the query to the migration database which has been made available by the Directorate of technology and information control and management, hereinafter DTIT.

Control tool for debt collection and DGT priority plans recovery.

Inspired by integral control that takes the PPP, which allows to know how much of determined and self-assessed has been effectively received on account , the DGT decides to extend this tracking form to all the priority plans, so a control tool collection for this is elaborated.

Management control system

The PPP leadership has designed the plan structural accountability through control bases for monitoring the manager results and the Collection Plan, which have been created in Excel. Similarly, it has also developed the bases of results consolidation by AATT, Regional Direction, National Direction and allocation of cases files.

The DTIT has collaborated in creating a website that provides a virtual space for maintaining these databases, but even more importantly, it allows the online reports consolidation, streamlining the production of AATT reports, DDRR and National progress reports, which may be performed even daily, under certain rules for updating files.

Another advantage of this portal is to increase the information system security to allow the creation of users with different privileges.

Both directorates, PPP and DTIT, address work for the accountability generation in an online tool, which for the PPP satisfies in a prescribed format the information needs of DGT, the Directorate General, the Directorate of PPP, Directorate of Extensive Control, Revenue Management, Integral Management, the DDRRs, the AATTs and appointed Managers.

This is in a basic format, to be applicable immediately, it is not a program but a tool, maximizing what we have available at this time, the expertise of staff and tools such as Excel, Share-Point and a portal.

The performance monitoring plan is carried through two types of reports, first the control sheet managers to be kept updated as the officials appointed during the stages of visit and the consolidation of results files. These reports are carried in the portal “CG-DGT”, “Management Control of the DGT,” where each of the operators updates their spreadsheets. These automatically generate individual reports which by formulas turned into consolidated reports spread in the same format to determine the performance of TA for DDRR and performance nationwide.

They may be viewed at any time by the Directorate General of Taxes, Sub-directorate General, Regional Offices, Extensive control managers and deputies and thus obtain information on the development of the plan.

For the first time the pulse takes real-time implementation of a national plan, with standardized reports for AATT, Regional and National managers, with success indicators that allow to observe the behavior and progress in achieving goals both individually and by organizational unit, serving as a starting point for the continuing and immediate outcome analysis and weekly decision-making to straighten the execution course when appropriate or check the wisdom of management decisions. The weekly risk assessment is part of the PPP leadership, but the Regional and other users can observe the daily behavior of the indicators.

The managers can view their own daily success indicators, with this is assessed the success for its performance.

DGT lacked of a monitoring tool that allowed online management in real time by having consolidated AATT, Regional or National. Before the PPP, reports were done in Excel formats on a monthly basis which were sent by e-mail to the Policy Directions for consolidation at the national level, achieving national reports with a quarterly frequency.

The previous policy direction provided the report format but not the tool for keeping the case tracking and automated reporting, thus increasing the margin of error, inconsistency in the information and the time invested. It took three to four days every end of the month for the preparation of reports in the established formats.

Immediate improvements to SIIAT[5] (integral access, automatic data validation, allocation of massive cases)

Sometimes the operation in the TA can be improved with simple modifications in the information systems that do not demand greater developments and on the contrary have a strong impact on the TA management.

From the Workshop feedbacks, ideas for improvement that were required to DTIT emerged immediately and they are already in production and available to the TA.

This is the case of a taxpayer request from the information system. Before, in order for a tax manager to obtain all information concerning a taxpayer under review, they had to surf through ten system menus, enter and print each type of information. Today with a single request, the system will extract all the case information. It even has the option to make an individual request or load a file with the NIT of the cases assigned to the system and generate massive consultation.

5 *Computer System of Costa Rica DGT.*

Another improvement was the massive allocation of cases. In both the pre-settlement module as well as in the omitted ones, a file containing the list of cases to be managed and the designated user has been loaded. Previously, the allocation of cases was performed by each Manager on a case by case basis and in each of the modules.

Each year, a validation plan disclosure was performed to unify information when a taxpayer had made several statements; this work is now automated this year.

These are examples of improvements that allowed eliminating time-consuming methods for tax control and for supervision in the case of Assistants Managers.

Improving quality of information entering SIIAT

A problem that undermines the DGT control action effectiveness is the information quality; after several studies conducted in 2010 by the General Deputy together with regional policy direction, they established measures to be implemented in 2011 to finally solve this problem. They also established a program to change the information collection, providing the taxpayer with technology tools to fulfill their self-assessment tax obligations and tax information which will in return ensure the DGT an acceptable level of information quality by the validation control.

It is an ongoing process of change. For 2011, it means:

- EDDI 7: consists in an updated tool for making statements in PDF format from the July sales tax return. It is required to file tax returns in this format or online. This measure is seen as a preparatory step toward increasing the percentage of taxpayers that virtually file taxes.
- Declaration: This is the improved tool for submitting information returns with the addition of validations and modifications that will decrease significantly the number of records to validate.
- Strengthening SIIAT by integrating various different platforms under a dot net model, similar to how both Spain and Chile have developed their systems[6].

There is awareness of the serious deficiencies in the information system and management of the DGT; this is why a process for updating and improving the SIIAT it has begun, with a two years development projection. For these purposes, a technical cooperation agreement with Spain has been signed.

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6 To increase and speed up this process of integration, a cooperation Convention with AEAT based on the experience of this agency has been signed.

Increased virtual services access by the taxpayer (Intermittent Spiders)

The progress there extends the range of possible plans for tax control. Urged by this need and limited on resources, from July 2011, a pilot project begins in two AATTs, changing the way the service is provided, which is their continuation, but by switching between personal attention and assistance given at these AATT kiosks in order for the taxpayer to meet his obligations by using of the virtual tools available by the DGT.

This gives the opportunity to release the staff for two days a week for RUT control and verification, with a strong street presence.

Results Obtained in the PPP
First half year of 2011

Anual goal		Executed	% Compliance goal
		I Sem. 2011	
By taxpayers	17.500	9.208	53%
by noncompliance gap	22.500	11.489	51%
Collection	$9.800.000	Self-assessed: $5.249.975 Charged: $2.488.993 From Self-assessed:	Self-assessed: 53% Charged: 48% From Self-assessed:

4. CONCLUSIONS

"Turbo Plan", "three spiders", "tax avoidance", "tailored suit for the mass", all these terms or pictures alien to our Public Affairs Managers realities with regard to taxes, are now common terms in the jargon of the staff members of Costa Rica Tax Administration, which by the way are also common to the press and to the general public.

The concept is simple to understand: To build around what has been built, enhance the good practices and do as in the Apollo XIII mission, without further external support, without any more resources or regulatory changes, to facilitate the management and control.

However, what is positive about this whole picture message is that our officials are clear on the path and are clear on the objectives. Then, the dynamic is also clear to taxpayers and the results denote so.

My experience as a veteran DGT officer, is that by enhancing the existing resources, by bringing to institutional practice what works in regional offices and by observing the scarcity of resources as a required opportunity, much more results can be accomplished than those accomplished when the challenge of urgency, the creative responsibility do not exist. Everyone has to realize that the solutions are there, waiting to be awakened.

I conclude with this press article in which the General Director brings a global perspective about what has been explained of the plan which I have to lead and present in this report.

FRAUD AND CHOLESTEROL IN TIMES OF REFORM

Francisco Villalobos
General Director of Taxation

Managing taxes is a task that is anchored on two pillars: that taxpayers comply voluntarily and as close with reality and that those who do not comply to have real, social and monetary consequences.

You cannot have one without the other. In order for taxpayers to comply it is necessary to provide them with all possible tools to complete filing an electronic payment. In case of doubts about specific aspects of their business in which they may be affected by a tax policy, they can see the Administration and be certain about their position. But for these taxpayers, the most important thing to know is to perceive that the Administration take strong actions against those who do not pay, otherwise there is a big disincentive, understandable and even justifiable for not fulfilling well or on time.

This is definitely linked with the other pillar that we refer to the fraud prosecution and punishment.

Tax fraud is what cholesterol does to the human body, it will be impossible to completely get rid of it, but levels in the body should be tolerable, controlled and healthy. Furthermore, attacking fraud is something that requires action in the short and long term. Not eating fried food immediately, but starting an exercise regime and changing the diet will take some time.

In addition to some studies by the Republic General Comptroller about tax evasion, which are an indicator of the problem, the Costa Rican institutions

have advanced in the attack on this situation from the Tax Administration Modernization (PMAT) Program to the tax fraud crime promulgation; from cases of millionaire fraud accusation reconciled by millionaire amounts, to the public denunciation of those who do not pay and to the attention and awareness of the magnitude of the problem. But we need to follow long-term measures: by promoting tax education, improving fraud penalization, generalize the VAT and tax the capital gains, provide our criminal courts with chambers specialized on tax matters and implement an integrated and efficient financial assets data repository.

My duty is to continue what has been done and boost long-term goals. However, in the short-term, we have to leave the fried food immediately. Our impact proposal consists in five directions:

1. A program against tax avoidance, for which a special unit that attacks truly remarkable cases has been funded. Such as the busy, well known and popular bar-restaurant which declared zero income tax in 2007 and 2008 and less than ¢ 300 thousand in 2009 and 2010. In the same line, the statements of the liberal professionals will continue to be reviewed, since they have surprised us with their low contribution.
2. A perceptible presence program with the visit that began on February 21th and will continue until the end of the year, to more than 17,000 taxpayers whose returns are zero or below average in recent years and about the ones we know from cross information have had higher gross revenues.
3. A different control approach: less is more; the audit hours will be reduced, not focusing on all lines in the balance, but in key ones according to the industry and information previously collected by the taxpayer.
4. Focus on the solidarity tax, not because of what it collects, but because of the frustration sentiment it causes in the population when they see that only four thousand owners have filed and paid this tax. It is notorious much more than four thousand homes in Costa Rica exceed 106 million colones.
5. A policy on disclosure of known fraud schemes, the lists of defaulters' publication and development of awareness about the harmful excess cholesterol.

We should all get on line, not only the workers whose taxes are retained or the most controlled taxpayers by their own corporate policies or because they are big taxpayers. That is the focus of our efforts. Even with limited resources, we will undertake a Herculean effort in tax management, but this will also require changes in the laws structures to ensure that all those who love this country and its benefits pay to maintain it and improve it. It is not fair to be in the stadium without paying the entrance.

FINAL CONSIDERATIONS

Dr. Isaiah Coelho, Senior Investigator
Escola de Direito de São Paulo da Fundação Getulio Vargas
NÚCLEO DE ESTUDOS FISCAIS

In answer to a kind invitation, I feel great satisfaction in taking part to this CIAT Technical Conference. As an organism of international cooperation and diffusion of knowledge in tax-related matters, CIAT has been extremely successful. This organization, 44 years-old but young, maintains a high dynamism in the management and dissemination of knowledge. Its events and initiatives abound in new ideas, in an atmosphere of collaboration and search of progress.

This conference has been dedicated to the complex and challenging subject of administrative collection. The presentations and discussions, whose main findings are reviewed here, have offered a range of strategies and solutions, necessarily incomplete by reason of the multiple public policies and management conditioning factors.

The limits of the tax debt administrative management

In the CIAT member countries, a tendency to the strengthening of the administrative powers for the outstanding tax debt collection is observed. Nevertheless, in most of those countries the coercive collection requires the intervention of a judge. Even if the delegation of power of execution to the administrative authority facilitates the collection -- as the experience of some countries more advanced in this direction demonstrates- still predominates the perception that the legal security is better warranted with a more immediate jurisdictional control.

The necessity to operate in two spheres of power-administrative and judicial-constitutes a challenge for the efficiency of the coercive collection. To face it, the tax administrations have sought, on one hand, to improve the cooperation between the powers and, on another hand, to emphasize friendly administrative procedures, such as the persuasion, the promotion of the tax citizenry and the offer of payment facilities, to obtain the fulfillment of the tax obligation, even postponed, in a purely administrative scope.

It is noteworthy that CIAT countries tax administrations have progressively increased their arsenal of debt protection instruments such as the seizure of banking deposits, the seizure and auction of assets, real estate embargoes and the joint responsibility of the associated managers or related third parties.

The political economy dimension in payment facilities

There is a consensus that the essential function of the tax administration is to collect the taxes established by law, and therefore the administration has the responsibility to perform the collection of the tax debt by friendly means, preferably, or coercive means, when it is necessary. Nevertheless, if the execution of the debt implies as potential consequence the bankruptcy of the taxpayer, with loss of production and jobs, strong social and political pressures arise for adoption of from some form of attenuation of the impact of the tax collection. Such pressures are still more decisive during economic crises like the one of the year 2008.

Administrations generally are against all form of tax amnesty, for the perverse effect that amnesties usually have on tax compliance. By exclusion, plans of payment facilities have been constituted to allow the taxpayers to gradually eliminate their tax liabilities and to return to complete tax compliance. The experience with payment plans in the CIAT countries is excellent and deserves a detailed evaluation.

Specifically, it is necessary to consider the incentives that the payment facilities generate for the taxpayers. If the interests and other surcharges are low in relation to the cost of the credit in the financial markets, economic agents tend to use the tax delay as a financing mechanism. If, by contrast, interests and surcharges are very high, it becomes difficult for the indebted taxpayer to clear the debt and at the same time to keep paying the current taxes on time, which could lead to a situation of insolvency.

For legal or operational restrictions, the tax authority has not always been able to adapt the debt payment plan to the circumstances of the taxpayer. That would imply to structure the number and amount of the services according to the payment capacity and, first, to consider the capacity of the company to continue existing. But the authorities have already developed tools to avoid the disposal of the indebted corporation assets through their transfer to shell corporations or other maneuvers.

The payment facilities typically do not benefit to the income tax retention sources or to contributions to employees provisions funds.

Administrative tax collection priorities

The presentations brought by the delegations to the Technical Conference make clear that the different countries are introducing, with apparent success, modern instruments of debt management, in particular the use of their resources- which are necessarily limited- according to risk analysis strategies.

Also, it is admitted that the probability of debt recovery goes decreasing quickly with the ageing of the debt. Therefore, the quick identification of arrears - through a suitable mobilization of the information systems- and the corresponding undertaking of administrative measures, including precautionary measures whenever necessary, are of great importance.

Within the same strategy, the countries generally are already acting in differentiated ways on the subgroups of taxpayers: a massive approach for the debts of small amounts and a differentiated approach for the large debts. Specialized management plans for debtors considered "strategic", who receive a more effective follow-up, have been organized. In various countries, these criteria already have resulted in a consistent improvement in credits recovery and therefore in the levels of debt defaults.

Tax-related crimes

Although tax evasion and tax fraud are crimes in the CIAT countries, their penalties do not play an important role. In fact, the payment of the outstanding debt generally eliminates the criminal action, either because the law specifically provides it or because the penal judges tend to consider the payment of the senior debt and its penalties as a form of efficient repentance.

The technological dimension

It has been recognized that the effectiveness and efficiency in the collection of the outstanding debt is only possible if the tax administration as a whole is efficient and effective. As well, this requires a constant technological advance. The table of discussion on information technologies made clear that, except for the massive and repetitive processes that can be outsourced, the tax administration needs to develop the most strategic computer systems internally.

If in the past this self-sufficiency was already affirmed in regard to the specificity of the processes, nowadays it takes new importance by the increasing interaction between the administration and the taxpayers, who demand interactive and flexible services.

The necessity to measure results

It appears difficult to make comparisons between countries in relation to the efficiency in tax debt collection because there is no uniformity in metrics or a compilation of historical series or indices. Without a doubt these desirable indicators will arise as by-products of the project "State of the Tax Administrations in Latin America", that the CIAT will organize with the cooperation of IDB and CAPTAC-DR.

In that same line, I am pleased with the publication of the study “Handbook of Best Practices Measurements in Tax Expenditures” that the CIAT has elaborated together with delegations of member countries. The study will contribute to a better understanding of the subject and will facilitate the desirable standardization of tax expenditure measurement.

Last but not least...

… I would like to greet the CIAT, specially the distinguished members of the Directive Council and the Executive Secretariat for the high quality of the discussions in this Technical Conference, which without a doubt stems from a laborious preparation.

Expressing the general opinion of the participants to this event, I would like to express thankfulness to the authorities of Portugal, specially the Dr. Jose António Azevedo Pereira, General Director of Taxes for the excellent hospitality.

And thank to all the participants for the high quality of the presentations and discussions, for their true civil service spirit and dedication to international cooperation.

Thank you very much and let’s meet again soon.

DAILY SCHEDULE OF ACTIVITIES

CIAT TECHNICAL CONFERENCE
Lisbon, Portugal
October 24 - 27, 2011

DAILY SCHEDULE OF ACTIVITIES

MAIN THEME: **"ADMINISTRATIVE COLLECTION PROCESS AS EFFECTIVE MECHANISM FOR INCREASING REVENUES"**

Monday, October 24

Morning

09:00 - 09:45 **Inaugural ceremony** (45')

09:45 - 10:15 **Inaugural Conference:** Carlo Cottarelli, Director of Fiscal Affairs Department, International Monetary Fund (30)

Moderator: Manjari Kacker, Member, Central Board of Direct Taxes & Special Sec, Ministry of Finance, India

10:15 - 11:00 Official photograph and coffee break

TOPIC 1 THE COLLECTION POWERS OF THE TAX ADMINISTRATIONS: ADMINISTRATIVE COLLECTION PROCESS VS. ENFORCEMENT FOR COLLECTION

Moderator: Carlos Marx Carrasco, General Director, Internal Revenue Service, Ecuador

11:00 - 11:30 **Speaker:** Arij Van Eijsden, Directorate General of the Tax and Customs Administration, The Netherlands (30´)

11:30 - 11:40 **Commentator:** Richard Philp, Manager, Inland Revenue Department, New Zealand (10´)

11:40 - 12:10 Discussion: (30´)

Topic 1.1: Competency for enforced administrative and friendly collection: administrative structure, scope, advantages and disadvantages

Moderator: Jaroslava Musilova, Communication and International Relations Department, General Financial Directorate, Czech Republic

12:10 - 12:30 **Speaker:** Max Marteau, Delegate General Director, General Directorate of Public Finance, France (20´)

12:30 - 12:50 **Speaker:** Carlos Roberto Occaso, Deputy Secretary Collection and Taxpayer Assistance, Secretariat of Federal Revenues, Brazil (20´)

12:50 - 13:20 Discussion: (30´)

13:20 - 14:45 Lunch

Afternoon

Topic 1.2: Classification and management of the debts portfolio

Moderator: Gerónimo Bellassai, Vice-minister of Taxation, State Undersecretariat of Taxation, Paraguay

14:45 - 15:05 **Speaker:** Mario Pereira Januário, Director of Finance, Ministry of Finance, Portugal (20´)

15:05 - 15:25 **Speaker:** Rudy Villeda, Superintendent of Tax Administration, Guatemala (20')

15:25 - 16:00 Discussion: (35´)

Tuesday, October 25

TOPIC 2: EFFECTIVE MECHANISMS FOR COLLECTING DEBTS: PRECAUTIONARY MEASURES, PAYMENT FACILITIES OR AGREEMENTS AND AUCTION OF GOODS

Moderator: José Antonio Azevedo Pereira, General Director, General Directorate of Taxes, Portugal

09:00 - 09:30 **Speaker:** José María Meseguer Rico, General Director, State Agency of Tax Administration, Spain (30')

09:30 - 09:40 **Commentator:** Carlos Alberto Barreto, Secretary of the Federal Revenue, Brazil (10')

09:40 - 10:00 Discussion: (20´)

10:00 - 10:20 Recess

Topic 2.1: Precautionary measures, their application and timeliness

Moderator: Roberto Ugarte, Executive Chairman a.i, National Tax Service, Bolivia

10:20 - 10:40 **Speaker:** Tania Quispe, National Tax Superintendent, National Superintendency of Tax Administration, Peru (20')

10:40 - 11:00 **Speaker:** Carlos Marx Carrasco, General Director, Internal Revenue Service, Ecuador (20´)

11:00 - 11:20 Discussion: (20´)

Topic 2.2 Payment facilities or agreements: timeliness, conditions and application

Moderator: María Raquel Ayala Doval, Studies and Training Director - CIAT

11:20 - 11:40 **Speaker:** Michael Gitau Waweru, Commissioner General, Kenya Revenue Authority (20')

11:40 - 12:00 **Speaker:** Pablo Ferreri, General Director of Revenue, General Directorate of Taxation, Uruguay (20')

12:00 - 12:20 **Speaker:** Cecilia Rico, Deputy Director of Collection and Recovery, Directorate of National Taxes and customs, Colombia (20')

12:20 - 13:00 Discussion: (40´)

13:00 - 14:30 Recess

Afternoon

14:30 - 17:40 TECHNICAL-STRATEGIC SESSION:

The Technical-Strategic Session is mainly intended for the representatives of the CIAT member countries; nevertheless, members of other delegations may also participate.

14:30 - 16:00 **Round Table 1:** Information Technology as a Tool for the Modernization of Tax Administrations

Moderator: CIAT - Raúl Zambrano

Participants: Argentina, Chile, Ecuador, Mexico, Portugal, Spain,

16:00 - 16:20 Recess

16:20 - 16:45 Presentation of Handbook of Best Practices on Tax Expenditure Measurements-CIAT

16:45 - 17:10 CIAT/ BID/CAPTAC-DR Project: Progress report

17:10 - 17:40 Open discussion - Practical Applications of Manuals - Challenges and Opportunities

Wednesday, October 26

Continuation Topic 1

Topic1.3: Forms of extinction of the enforced administrative action and its consequences

Moderator: Viralee Lattibeaudiere, Director General, Tax, Administration, Revenue Service, Jamaica

09:00 - 09:20 **Speaker:** Carlos Sánchez, Director General, Social Security Resources, Argentina (20´)

09:20 - 09:40 Discussion: (20´)

09:40 - 10:20 CIAT ES Strategy for selecting, processing and handling requests and 2012-2013 action plan

10:20 - 10:40 Comments and questions

10:40 - 11:00 Recess

11:00 - 11:20 IBFD – Courses and Activities in Latin America

11:20 - 11:50 Announcement of International Tax Dialogue Global Conference

11:50 - 12:20 International Tax Compact Report

Wednesday, October 26

Morning

TOPIC 3: SUPPORT TOOLS FOR THE RECOVERY OF DEBTS

Moderator: Alejandro Burr Ortúzar, Deputy Director of Studies, Internal Revenue Service, Chile

09:00 - 09:30 **Speaker:** Frank Van Driessche, Tax Administration and Fight against Fiscal Fraud, Directorate General for Taxation and the Customs Union, European Commission (30´)

09:30 - 09:40 **Commentator:** Rodrigo Montufar, Superintendency of Tax Administration, Guatemala (10´)

09:40 - 10:00 Discussion: (20´)

10:00 - 10:30 Recess

Topic 3.1: Information systems and their support in managing friendly and enforced collection

Moderator: Helena Ferreira, Assistant Commissioner Inland Revenue Division, Trinidad & Tobago

10:30 - 10:50 **Speaker:** José María Fernandes Pires, Head Manager of the Mission to Implement the Strategic Plan, Portugal (20')

10:50 - 11:10 **Speaker:** Germania Montás General Director of Internal Taxes, Dominican Republic (20')

11:10 - 11:30 **Speaker:** Richard Denis, General Director, Canada Revenue Agency (20')

11:30 - 12:00 Discussion: (30´)

12:00 - 12:30 Presentation of Tax Administration Manual – Organizational Structures and Human Resources. The Netherlands Tax Customs Administration /IBDF/CIAT.

12:30 - 14:00 Lunch

Afternoon

Topic 3.2: International administrative cooperation: assistance for collection

Moderator: Francisco Beiner, Institutional Development and Events Manager - CIAT

14:00 - 14:20 **Speaker:** Douglas O'Donnell, Director, Competent Authority & International Coordination, IRS, USA (20')

14:20 - 14:40 **Speaker:** Elina Karhusaari, Senior Advisor, Tax Administration, Finland (20')

14:40 - 15:00 Discussion: (20´)

Topic 3.3: Strategic alliances with third parties for obtaining information on properties and money

Moderator: Cornelis Van Dijk, Director of Taxes & Customs, Ministry of Finance, Suriname

15:00 - 15:20 **Speaker:** Roxana González Masis, Director of the Pacific Regional Directorate, General Directorate of Taxation, Costa Rica (20')

15:20 - 15:40 **Speaker:** Stefano Gesuelli, Head of Taxation Unit, Finance Guard, Italy (20')

15:40 - 16:00 Discussion: (20´)

16:00 - 16:10 Evaluation of the event

16:10 - 17:30 Closing Ceremony

16:10 - 16:40 **Final considerations:** Isaias Coelho, FGV (30´)

16:40 - 17:30 Closing acts of the event

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Lisboa, Portugal
October 24 to 27, 2011

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