Government of the Netherlands

CIAT Technical Conference

Smart Cooperation

CIAT TECHNICAL CONFERENCE
2012 THE NETHERLANDS

Amsterdam, The Netherlands
October 15-18, 2012

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Inter-American Center of Tax Administrations - CIAT
The Tax and Customs Administration - Netherlands

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INDEX

ABOUT CIAT

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CIAT is a public, nonprofit international organization established in 1967, with the mission of providing an integral service for the modernization, strengthening and technical development of the Tax Administrations of its member countries. Its membership currently consists of 39 member and associate member countries from four continents: 31 countries from the Americas, five from Europe, two from Africa and one from Asia. India and South Africa are associate member countries.

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TOPIC 1

COOPERATION AS A TOOL IN COMPLIANCE RISK MANAGEMENT STRATEGIES

Lecture

Topic 1

COOPERATION AS A TOOL IN COMPLIANCE RISK MANAGEMENT STRATEGIES"

Carlos Sánchez
Director General, Social
Security Resources, Federal Administration of Public Revenues
(Argentina)

Contents: *1. Introduction.- 2. Characteristics.- 3. Display of DATA FISCAL - 4. Scope.- 5. What type of information does Data Fiscal provide?.- 6. When is it obligatory to display the Nº 960/NM Form?.-7. Citizen participation.- 8. How can you file a claim against irregularities detected? .- 9. Cooperation with the subnational tax administrations.- 10. Main objectives.- 11. Conclusion*

1. INTRODUCTION

Since September 1st, 2012, the Federal Administration of Public Revenues (AFIP) is undergoing the full implementation of **DATA FISCAL.**

This is a new 960/NM interactive form that serves a double purpose:

- **External:** Will allow consumers to become aware of the tax behavior of vendors when acquiring goods or services.
- **Internal:** Will allow tax examiners access to the most varied and complete tax information on the taxpayer.

This project is framed within the organization's strategy for maximizing the use of the technology available and the "ex–ante" controls.

2. CHARACTERISTICS

2.1 What is a QR? In contrast to the previous forms, DATA FISCAL will have a quick response (QR) code. It is a univocal Bidimensional Code consisting of a point matrix where each taxpayer will have a different code for every commercial establishment declared.

2.2 How is a QR read? This code may be captured through mobile devices such, as for example, Cellular Telephone, Notebook

Netbook, Tablet, with a camera and connection to Internet. There are approximately 10 million Argentinians, or 24% of the population which already have an intelligent device (Smartphone or the like). (Ipsos private source).

The consumer may read the business' information code and make a quick online consultation that will show the businessman's tax behavior. In this way, he may know the vendor has everything in order, the number of employees registered, if he files his returns, among other data. In turn, if any irregularity is observed in the businesses, it may be reported to AFIP through the same channel.

3. DISPLAY Of DATA FISCAL

Taxpayers and/or those responsible, who in carrying out their activity are obliged to issue invoices or equivalent documents, must display Form Nº 960/NM - "Data Fiscal", in the premises where they carry out their sales, location or where they render their services —including open areas—, waiting rooms, offices or reception areas and other similar environments.

In order to obtain it, he must enter the institutional web page of this Federal Administration and Access the Web Service "Form 960/NM – DATA FISCAL" through its "Fiscal Code", which should have as a minimum Security Level 2 or above.

The new form should be displayed in an accessible place which may be captured and read by the general public, where the distance should not be greater than 1 meter. It should be printed in an A4 size sheet, it being possible to print it in other sizes, if necessary.

Preferably, the DATA FISCAL should be displayed in the commercial establishment's payment area, in accordance with the established distances and measures. In the case of supermarkets, the form should be exhibited in the cashier's line, one per cash register. If the store would have a shop window, it should also be displayed there, although in a smaller size in such a way that any citizen may see the code without the need to enter the commercial establishment.

In addition to being displayed physically, the obligation includes all pages of those taxpayers carrying out transactions or publishing their products in Internet, who should place the "Form N° 960/NM – Data Fiscal" in a visible place in the main page, from where it will be linked (through a URL provided by AFIP) to the fiscal report of the taxpayer holding said website. It is estimated that approximately 60% of the

businesses are present in Internet, either for carrying out electronic commerce or for prompting the products and services they offer.

4. SCOPE

The project covers approximately 3 million taxpayers and will be fully in force starting on November 1st. For purposes of its gradual implementation, a series of staggered expirations were established during the month of October. As of the date (September 28), 450,000 Data Fiscal have already been printed, while in addition there are 2000 web sites that have already placed the image in the portals.

5. WHAT TYPE OF INFORMATION DOES DATA FISCAL PROVIDE?

It offers two types of inquiries, depending on whether the information is requested from a device of a tax official from AFIP or from a device of the general public.

5.1 In the case of the general public, what is offered is a public consultation, which shows the following:

- Taxpayer's Trade Name
- Single Tax Identification Code, whether inactive or not
- Commercial domicile, complete or invalid
- Situation vis-a-vis VAT (Value Added Tax), status of filing of Returns and relationship as compared to the average of the sector.
- Situation vis-a-vis Profit Tax, status of filing of returns and relationship as compared to the average of the sector.
- Situation of Monotributo (Simplified System): registered category, filing of Returns and date of last payment.
- Number of declared employees and status of filing of Returns.
- If it has been subjected to trials, criminal prosecutions, lockouts, examinations
- Whether authorized or not to issue invoices
- If it is or has been included in the BCRA's (Central Bank of the Republic of Argentina) central and /or in that of Taxpayers with Invoices of Doubtful Authenticity
- If it is included or is outside the importers and exporters registry.
- Others.

5.2 If, on the other hand, the inquiry comes from the device of an AFIP examiner, the information to be shown has greater depth and value, with a greater level of detail; for example, all of the taxpayer's returns and other confidential data maintained by AFIP are seen.

6. WHEN IS IT OBLIGATORY TO DISPLAY THE Nº 960/NM FORM?

The obligation to show the Form Nº 960/NM - "Data Fiscal" begins on the day of the month of October 2012 which, according to the last digit of the Single Tax Identification Code (C.U.I.T.) of the responsible is determined below:

Last Digit of C.U.I.T	Day
0	October 2, 2012, inclusive
1	October 4, 2012, inclusive
2	October 10, 2012, inclusive
3	October 12, 2012, inclusive
4	October 16, 2012, inclusive
5	October 18, 2012, inclusive
6	October 22, 2012, inclusive
7	October 22, 2012, inclusive
8	October 26, 2012, inclusive
9	October 31, 2012, inclusive

7. CITIZEN PARTICIPATION

Once the citizen makes the inquiry in his device, he may interact with the system, being able to report such situations as:

- The businessman did NOT give me the invoice or fiscal ticket.
- The number of employees declared is lower than those visually observed.
- The domicile printed in the form does not coincide with the domicile where it is displayed

8. HOW CAN YOU FILE A CLAIM AGAINST IRREGULARITIES DETECTED?

The consumer may report irregularities detected in the businesses by means of last generation mobile devices ("smartphones" or the like) with access to Internet.

After reporting the irregularities, he must confirm them through the service with Fiscal Code with Security Level 2, called "Denunciations F960/NM".

8.1 How to make the denunciation in the Form N° 960/NM – Data Fiscal and how to confirm it?

STEP 1: When scanning the QR code of Form 960/NM – Data Fiscal, you will visualize the Taxpayer's main data and information on the latter's tax behavior. If you detect inconsistencies with any of the situations described, you may report it:

A. The domicile shown on the form is not the same as that of the premises.

B. Did not provide invoice / ticket for my purchase.

C. I saw more employees working than those declared in AFIP.

STEP 2: To conclude your denunciation you must provide your CUIT/CUIL/CDI number and "Confirm the Denunciation".

STEP 3: As a result, the system will issue the following message: Your report has been registered. To confirm it, please access the "Denunciations F960/NM" service with your tax code.

STEP 4: Subsequently, you must confirm the denunciation by entering the AFIP Web page (www.afip.gob.ar), selecting "ACCESS WITH TAX CODE", entering your CUIT number and Tax Code and then "ENTER".

STEP 5: Select the "F 960 N.M. Denunciations" service

STEP 6: You will see on the screen the denunciations made, and must confirm them by selecting the green check mark which appears to the right.

9. COOPERATION WITH THE SUBNATIONAL TAX ADMINISTRATIONS

The shared use of the DATA FISCAL tool has been submitted to consideration by the Provincial Jurisdictions. In that way, all the Subnational Tax Administrations that endeavor to follow the model by showing tax information from that Jurisdiction may do so by signing an adherence agreement with the Federal Administration of Public Revenues.

In this way there is a sort of synergy by sharing information between both Jurisdictions, thereby allowing for working out integrally and jointly.

10. MAIN OBJECTIVES

- Minimize the display of old Printed Forms
- Promote Commercial Transparency so that every customer may know who he is buying from, and thus have a tax behavior overview thereon.

- Encourage citizen participation in general, so that the latter may verify, detect and report irregular situations from the fiscal standpoint.
- Promote Examination tasks by providing a quick tool for the verification of the national and even subnational tax administrations.
- Increase voluntary compliance due to the fact that taxpayers will be more exposed, thereby causing an increase in voluntary compliance with tax and social security obligations.
- Increase the perception of risk.
- Monitor control activities, since the code allows for keeping a control of the QR codes raised by the AFIP inspectors: the time and place where it is raised, etc.
- Develop a Georeferential Commercial Map as an inspector raises a QR from the mobile device, thereby registering the geographical location where the information will be entered.

11. CONCLUSION

The name of this new instrument based on the word “data”, allows us to consider its real nature and objective. The aforementioned term comes from the Late Latin word ‘[charta] data’, that is, ‘document given’, ‘extended, granted’, which word in the Latin documents precedes the indication of the place and date.

In fact, the first two meanings of the term ‘data’ in the Spanish Royal Academy Dictionary refers to ‘Note or indication of the place and time in which something happens or is done and especially that placed at the beginning or end of a letter or any other document’ and ‘time when something happens or is done’.

Accordingly, what is intended to be highlighted with this new tool is the instantaneity, temporariness and location of the communication, the verification of events and eventual denunciation, with which the consumer, tax officials and tax administration interact.

To conclude, this new tool allows for establishing a fluent communication –in real time - between the taxpayers, the citizens, Tax Organization, thus being a new achievement in what is known as electronic government.

At the same time, Data Fiscal facilitates citizen participation in the struggle against evasion, thereby facilitating real time control of taxpayers.

The use of these new computerized and communication technologies, following implementation of the tool, will undoubtedly afford greater control capacity by the Administration.

COOPERATION AS A TOOL IN COMPLIANCE RISK MANAGEMENT STRATEGIES"

Pancrasius Nyaga
Commissioner of LargeTaxpayers Office
Kenya Revenue Authority
(Kenya)

EXECUTIVE SUMMARY

Since inception in 1995, Kenya Revenue Authority (KRA) has under taken various reform initiatives with a view of improving revenue performance through better compliance risk management framework. A comprehensive business process re-engineering was carried out and consequently tremendous growth in revenue performance of Ksh 122 billion in 1995 to Ksh 537 billion in 2011 was realized. This depicts a growth of 22.71% over the years.

However, KRA still endeavors to raise the bar higher in terms of revenue performance by strategizing on how to overcome some operational challenges that inhibits attainment of its full potential.

Many challenges face KRA that hampers full achievement of its optimal compliance level. The challenges are both at international and domestic level. It is therefore important that the authority envisage looking beyond its internal borders and seeking cooperation in areas that address these challenges including international tax fraud.

At international level, KRA already cooperates with other revenue bodies for bench marking and information sharing on tax issues. Participation in international forums has greatly enhanced capacity and efficiency. These include forums like the Double Tax Agreements (DTAs), Transfer Pricing, Tax Information Exchange Agreements (TIEA), CIAT, CATA, AFRITAC etc. These forums have helped the KRA build capacity internally through dissemination of knowledge acquired

to other staff. Skills gained have drastically improved the quality of audits, increased detection of international tax frauds and revenue yield

At domestic level, KRA has cooperated with various public bodies, private institutions and law enforcement agencies on tax matters.

In order of revenue administrations to achieve better results from cooperation, use of smart strategies is a key success factor. KRA has therefore moved from the traditional approach that was manual based to a modern risk based approach supported by automation and cooperation with key players. The benefits associated with this approach includes, enhanced compliance management, enhanced skills, faster detection of risks, reduced compliance costs and enhanced revenue collection.

1. INTRODUCTION

1.1. Overview of Kenya Revenue Authority (KRA)

The **Kenya Revenue Authority** (KRA) was established by an Act of Parliament, Cap 469 of the laws of Kenya on 1st July 1995. The Authority is charged with the responsibility of collecting revenue on behalf of the Government of Kenya. The authority is supported by a governance structure that comprises a Board of Directors, Commissioner General who is the Chief Executive of the institution and six commissioners managing various operational areas.

KRA's mandate include; assessment, collection, administration and enforcement of tax laws and border protection. KRA is committed to the highest standards of achievement obtainable through dedication and skill that is aligned to the vision." To be the leading Revenue Authority in the world respected for Professionalism Integrity and Fairness."

The authority operates on core values entrenched in four (4) key pillars of Integrity, Professionalism, Equity and Corporate and Social Responsibility.

1.2. Organizational Framework supporting compliance management

KRA operates on a leaner governance structure that enhances efficiency in compliance management in addition to the following key supportive measures.

a) Taxpayer segmentation
b) Relationship management system for each sector
c) Use of an elaborate Work plan & Monitoring and Evaluation Framework

1.3. Compliance risk management approach

A comprehensive framework that outlines the operational processes that supports better compliance risk management is in force. Taxpayer segmentation and sector focus approach in compliance monitoring enhances specialization.

1.3.1. Challenges

Compliance management faces several challenges (risks) that touch on taxpayer behavior. These must however be mitigated through different strategies otherwise they might negatively affect revenue. They include the following:

a. Non filing of returns
b. Late payment of taxes
c. Non payment of taxes/ Payment returns without cheques
d. Failure to effectively use ETR device
e. Lodging fraudulent tax refund claims
f. Bogus tax intermediaries/agents
g. International Tax matters e.g. Transfer pricing issues

1.3.2. Opportunities

Despite the above challenges, KRA has various opportunities that it can leverage on to take revenue performance a notch higher. These include;

a. A strong political support.
b. An enabling environment where management support to focused stakeholder engagement through Relationship Management helps determine corporate attitudes and tax risk areas.
c. Voluntary Disclosure Policy that encourages transparency across the board by taxpayers, tax consultants.
d. Existence of “Know your taxpayer concept” that helps in improved understanding of business operations and wider tax schemes.
e. Implementation of an integrated tax system and system enhancement initiatives that enhance; monitoring of business transactions, information reporting, taxpayer data availability, data analysis, interpretation and workflow management.

However, KRA is yet to achieve its optimal level of tax compliance in line with best practice. Challenges posed by globalization and use of technology require serious focus on new strategies that can address issues both at the international and domestic level.

2. NEED FOR COOPERATION

2.1. International sphere

2.1.1. Double tax agreements (DTA)

Kenya has entered into Double Tax Agreement with 11 countries that will enable exchange of tax information for purposes of dealing with International tax evasion. All the Double Tax Agreements have an article with enables exchange of information within member countries (Kenya – UK DTA Article 30 allows exchange of information). Kenya has put in place mechanism to allow faster conclusion of DTA with relevant partner states.

2.1.2. Tax information exchange agreement (TIEA)

Kenya is a member of the Global forum, which facilitates the framework to enter into Tax information Exchange agreement with other states including low tax jurisdictions/tax havens. TIEA's have the advantage of allowing faster conclusion of agreements as compared to DTAs and are specific to exchange of information.

2.1.3. Kenya transfer pricing legislation

The legislation Transfer Pricing is based on the Arm's length principle that is similar to the OECD rules. This gives us a platform to tap into the international best practice including the application of case laws from other jurisdictions to resolve tax cases. In addition, to build internal capacity in KRA, Kenya has collaborated with World Bank and OECD on a continuous training programme that enhances the skills in this area.

2.1.4. Membership of CIAT

CIAT has brought together many revenue administrations to focus on areas of improvement in compliance management through transparent international exchange of information. The synergy created has positively impacted on compliance management by various member states.

2.1.5. Regional Authorities Technical Forum & AFRITAC

These forums bring together all the Revenue Authorities within the East African Region to deliberate on any emerging issues affecting tax compliance. These include joint trainings on compliance improvement initiatives and exchange of tax information.

2.2. Domestic sphere

At the domestic level, KRA cooperates with various key stakeholders as follows;

2.2.1. Public institutions

In Kenya, the government is the main key stakeholder that facilitates revenue collection through the various ministries. To facilitate implementation of key compliance enhancement initiatives, KRA cooperates with the following public bodies.

a) Registrar of Companies

The Registrar is the custodian of data on all registered companies in the country. Registration of taxpayers to obtain Personal Identification Number (PIN) is anchored on the company registry data. PIN is the only single taxpayer identifier in Kenya.

b) Ministry of Immigration

The ministry keeps data on all passports that supports registration of non-residents as taxpayers.

c) Registrar of persons

The Registrar of persons issues all Kenyans who have attained the majority age (18 years) with National Identification (ID) numbers that is a pre requisite for PIN registration. This data facilitates tax registration of resident individuals by KRA.

d) Ministry of Foreign Affairs

The ministry issues non-residents with Alien Certificates that they use to obtain tax registration number at KRA.

e) Ministry of Finance & Public Procurement Oversight Authority

Ministry of Finance facilitates payments of all government suppliers. Data on taxpayer payments is shared with KRA for purposes of enforcing tax compliance amongst the government suppliers.

Public Procurement Oversight Authority (PPOA) is an entity within the Ministry of Finance that plays oversight role in ensuring conformity with procurement regulations by all public entities. PPOA is the custodian of data on all government tenders awarded. This data is shared with KRA to facilitate monitoring of tax compliance status of the various government suppliers.

f) Ministry of Mining and Geology

Cooperation between KRA and Ministry of Mining has enabled the authority to register players in the new emerging sectors like mining, oil and gas exploration. In addition, the Ministry has facilitated KRA to enhance understanding of taxpayer behavior in this sector by providing valuable information on operational procedures of the sector.

g) Enforcement agencies

KRA depends on Kenya Police and occasionally on Interpol in raiding premises and effecting arrests on persons suspected of committing tax frauds. Anti-Banking Fraud, and Money Laundering units assist KRA in safeguarding revenue. They monitor banking transactions and report to KRA any case of cheque diversion and money laundering.

h) Judiciary

The Director of Public Prosecutor (DPP) cooperates with KRA in facilitating prosecution of suits where taxpayers have objected to tax assessments and opted for litigation. However, the Judiciary encourages use of Alternative Dispute Resolution approach that calls for out of court settlement of disputes.

2.2.1. Tax intermediaries e.g. Auditors/ Tax Agents

Tax intermediaries play a significant role in ensuring that tax laws are well understood and compliance maintained by their clients. Cooperation with the intermediaries helps in achieving proper interpretation of the various tax laws and enforcing compliance by all taxpayers. This enhances compliance through improved accountability and transparency.

2.2.2. Other key institutions e.g. financial institutions, regulatory bodies etc

Operations of Financial institutions are key to proper revenue administration revenue collection process. KRA has moved the process of collection of tax payments to designated commercial banks. The banks provide KRA with data on all taxpayers who have paid their taxes for the various registered obligations. Banks also cooperate with KRA on provision of data that supports addressing specific tax evasion cases.

Cooperation between KRA and Regulatory bodies supports implementation of initiatives aimed at enhancing compliance management in various sectors. as shown in the table 1 below.

Table1. List of institutions that cooperate with KRA at domestic level

	INSTITUTION	AREAS OF COOPERATION
1	Treasury	Tax Policy
2	Kenya Power & Lighting	Data electricity meter ownership that gives details of Real Estate owners
3	Energy, mining regulatory authority	Data on players in the new emerging sectors like oil and gas exploration.
4	Export processing Authority	Data on exports by taxpayers in the Export Processing Zones.
5	Kenya International Freight Warehousing Association	Data on all clearing and forwarding firms that handle all imports and exports in the country.
6	Retirement Benefits Authority	Provides data on all Pension Schemes in the country
7	Communication Commission of Kenya (CCK)	Data on subscriber base of the mobile phone operators and call termination rates.

2.2.3. Taxpayers and the society in general

In order to enhance compliance amongst the taxpayer community, close cooperation between taxpayers and the revenue administration bodies is paramount. KRA has achieved this by implementing a framework that enhances closure engagement with taxpayers and society in general. This enhances taxpayer awareness on tax matters and the need to pay taxes. In addition, KRA further entrenches its cooperation with the society in general through its Corporate Social Responsibility activities.

2.3. Why is cooperation necessary?

Cooperation between revenue bodies and other stakeholders is very necessary and creates many benefits to the revenue authorities including the following;

a) Efficiency & effectiveness
b) Reduced cost of compliance
c) Enhanced Taxpayer Service Delivery
d) Improved voluntary compliance
e) Enhanced revenue collection
f) Faster detection of tax evasion
g) Enhanced perception of tax administrations.

However, for optimal realization of these benefits, Revenue Authorities should entrench 'Smart Cooperation' as a tool in their compliance risk management strategies.

3. SMART COOPERATION

3.1. Traditional approach

Cooperation between KRA and other stakeholders on tax compliance issues has evolved over the years. Traditionally, the process was full of manual interventions.

Taxpayer recruitment was a manual process that is labor-intensive requiring door-to-door campaign for registration. Identification and follow up of non-compliant (non-filers, nil and credit filers) required manual validations. Monitoring compliance with need to use Electronic Tax Register (ETR) devices requires physical market surveillance by staff. Implementation of GPRS1 enabled ETRs will facilitate remote monitoring. Confirmation of exports too required manual intervention that was time consuming and prone to data capture error.

3.2. Modern approach

KRA has undertaken various reform initiatives that have drastically reformed its compliance risk management processes as follows.

a) Enhanced automation of business processes through implementations of the following supporting systems;
b) Online processing of Tax Compliance Certificates.
c) Enhanced Excise Stamps management through an automated process.

1 GPRS – Enables transmission of ETR data to KRA Servers remotely.

d) Online data validation through linkages with other relevant systems.
e) Online reconciliation of revenue

Table 2: KRA systems

	SYSTEM	SUPPORT
1	Integrated Tax Management System (ITMS)	a) Online registration of taxpayers b) Online filing of all tax returns c) Online reconciliation of revenue
2	Common Cash Receipting System (CCRS)	Online processing of payment receipts
3	Electronic Cargo Tracking System (ECTS)	Online monitoring of transit cargo
4	Flow Meters	a) Enhanced management of domestic excise operations. b) Aligning flow meter readings with excise tax returns declarations
5	GPRS enabled Electronic Tax Registers.	Online monitoring of usage and daily sales turnover

4. KEY ELEMENTS FOR EFFECTIVE COOPERATION

4.1. Automation

For effective cooperation to be achieved the level of automation in the various cooperating agencies should correspond for ease of information sharing. An example is the sharing of one common database where there are linkages between ITMS, Registrar of Persons and Companies, Commercial Banks and the Central Bank of Kenya.

4.2. Legislation

There should be an enabling legislation that supports free sharing of tax information amongst the various entities. Disparity on this will create a bottleneck on effective sharing of data. Oath of secrecy/confidentiality taken by tax officers not to divulge information concerning taxpayer tax matters can be addressed administratively.

4.3. Political good will

The success of any revenue authority depends on the support given by the government. This will go further in supporting bilateral agreements and any other collaborative initiative that supports cooperation both within and across the borders.

4.4. Other administrative structures

The level of innovation that facilitates cooperation between revenue agencies and other key stakeholders determines the level of cooperation that can be achieved. In order to improve compliance in the Real Estate Sector KRA has used innovation that creates cooperation with other key players in the sector as follows;

a. Use of Geographic Information System, as a mapping tool.
b. Use of mobile and internet technology in data collection and location of property (e.g. GPS receivers to capture building photograph).
c. Linkage to various data sources on real estate plus the location element to determine under declaration and under declaration of revenue on property.
d. Statistical and spatial analysis on real estate players.

5. BENEFITS OF SMART COOPERATION

Tax administrations stand to realize the following key benefits from implementation of compliance management enhancement initiatives focused on cooperation both at domestic and international level as follows:

a. Improved revenue performance through enhanced compliance management.
b. Faster detection of and addressing of tax evasion.
c. Reduced administrative and compliance costs.
d. Improved operational standards through bench marking
e. Enhanced voluntary compliance.
f. Reduced compliance risks
g. Better understanding of taxpayer behavior in each sector
h. Enhanced taxpayer service delivery through focused sectors.
i. Curbing of international tax fraud

6. CONCLUSION

Revenue authorities are faced with many challenges that affect their output in revenue collection. Some of these challenges are beyond the control of revenue administrations but can be addressed through appropriate cooperation. The revenue agencies therefore need to evaluate their operational environment both at the domestic and international level. The strengths available needs to be capitalized on, while the weaknesses and threats needs to be addressed with a view of developing strategies that gives maximum output desired.

It is therefore imperative that various revenue bodies cooperate amongst themselves and with key stakeholders' tax matters that facilitate enhancement of compliance risk management. The revenue bodies needs to develop a very strong foundation that supports cooperation that leads to sharing of useful information on tax related issues and capacity building. Best practice gained through the various collaborative arrangements enhances benchmarking and improvement on the general compliance risk management in general.

Case Study

Topic 1.1

COOPERATION WITH GOVERNMENT ENTITIES

Cary O'Brien
Director
Provincial Sales Tax
Administration Reform, Canada
Canada Revenue Agency
(Canada)

EXECUTIVE SUMMARY

The Canada Revenue Agency (CRA) touches the lives of more Canadians than any other single department or agency in the country. It administers taxes and benefits to millions of individuals and businesses across the country every year on behalf of the Government of Canada, provinces, territories, and aboriginal governments. Smart cooperation between the CRA and its partners is a key enabler to successfully carrying out its mission. It allows the organization to increase efficiency by minimizing duplication of efforts, while at the same time making compliance more straightforward. The province of Ontario is one of the CRA's client governments and, as Canada's largest province, represents a significant portion of the revenue collected by the CRA.

This paper presents the case of the relationship between the CRA and the Ontario Ministry of Revenue (OMoR) through the lens of two cooperative efforts over the past decade that represented major successes and brought the partnership to where it is today. The first is the entry of Ontario into a Tax Collection Agreement (TCA) for the administration by the CRA of Ontario corporate income tax and the second is the entry of Ontario into the federal harmonized sales tax framework also administered by the CRA. The projects were somewhat different because the first was about the CRA administering a provincial income tax, which required carry forward of certain balances, while the latter was about Ontario joining an existing federal sales tax, with no requirement to access earlier provincial records. Still, the two were made possible through a combination of factors

including a growing consensus about the benefits of harmonization, a federal accommodation of provincial needs for flexibility, and two levels of government committed to working together to strengthen the economy and provide a seamless transition.

Even with a strong foundation of cooperative intent and administrative experience, the complexity of the transition was significant with the potential for disruption along the way. But attention to rigorous governance, project management, risk management, performance measurement, human resources planning, and communication, among other best practices, saw the administrative handovers occur without significant interruption of service.

Along the way, some important challenges were overcome and lessons were learned.

For example, lessons in early and inclusive collaboration, flexible governance structures, knowledge transfer, and systems change are among those explored and presented here as a resource for fellow CIAT members as they execute their own cooperative projects.

Smart Cooperation with Government Entities

"There is a wide variety of cooperation models with other government agencies: ranging from the use of data from other agencies' registers to revenue bodies performing tasks for other government agencies. What are successful cooperation models? What tasks do revenue bodies perform on behalf of other government agencies? Are there initiatives to work towards "compact government" bringing together all expertise on an issue under one government agency?" –CIAT Technical Conference Sub-Topic Profile

1. INTRODUCTION

1.1 Purpose and Scope

The purpose of this paper is to share the Canadian experience of smart cooperation between the CRA and the province of Ontario. It focuses on two recent, major cooperative efforts: the transition to CRA administration of Ontario corporate taxes – known as the Corporate Tax Administration for Ontario (CTAO) project, which saw the entry of Ontario into a TCA as well as the Provincial Sales Tax Administration Reform (PSTAR) project, which saw the entry of Ontario into the federal harmonized sales tax (HST) framework administered by the CRA.

The relationship between the federal government, in particular the CRA, the federal tax and benefits administrator, and Ontario is a useful example for other CIAT member administrations to draw from because it demonstrates how two jurisdictions can successfully collaborate to plan and implement complex tax projects that reduce administrative duplication, lower the compliance burden, and contribute to a more efficient tax system.

As the discussion in this paper progresses through the history of the two projects, the challenges that the CRA faced and lessons that it learned are also identified.

1.2 Partner Profiles

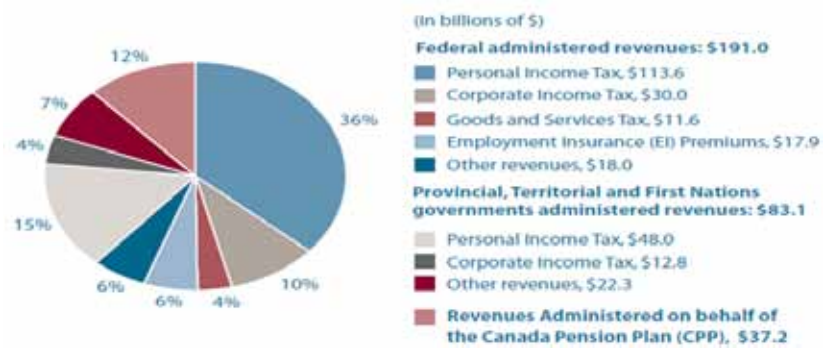
Canada Revenue Agency (CRA)

The CRA administers personal and corporate income taxes, a goods and services tax/harmonized sales tax (GST/HST) and other taxes, and is the principal revenue collector in Canada. It also distributes benefit payments to millions of Canadians.

In 2010-2011, the CRA collected more than $311 billion in taxes and other revenues, and issued over $22 billion in benefit payments to millions of families and individuals.

Revenues come from three key sources: income taxes, excise taxes and duties, and the GST/HST, as shown in the revenue breakdown below.

Revenue Breakdown for 2010-2011



Source: CRA Annual Report to Parliament 2010-2011.

A more comprehensive profile of the CRA is presented in Appendix A – About the CRA.
Ontario Ministry of Revenue (OMoR)

The OMoR was the tax administrator for the province of Ontario during the timeframe in which CTAO and PSTAR were planned and implemented.

2. BACKGROUND

2.1 A framework for cooperation

Canadian Federalism

Since the British North America Act of 1867 brought together the provinces of Canada, the federal union has grown to ten provinces and three territories. The federal government has the power to raise revenue by any mode of taxation, while the provinces have the ability to levy direct taxes within their jurisdiction. Intergovernmental matters, including fiscal issues, are dealt with through meetings and committees of federal and provincial leaders, ministers and officials.

In the 1930s, as a result of falling government revenues and little coordination between governments, joint occupancy of the income tax field in Canada led to what is commonly referred to as a “tax jungle” in Canada. Over the following 30 years, governments worked together to streamline the tax system, introducing various types of revenue sharing agreements, until 1962 when the first TCAs were signed. The TCAs provide significant tax policy flexibility to the provinces while ensuring a significant degree of tax harmonization between the federal and provincial governments, resulting in the following benefits:

- a simpler tax system with one set of rules, which results in reduced compliance costs for taxpayers and businesses;
- economies of scale in the costs of tax administration for governments;
- economic efficiency by preventing harmful competition for specific income tax bases; and,
- Limited opportunities for tax avoidance through financial planning to benefit from tax base differences between the provinces and territories.

In 2004, when discussions first started with Ontario on federal administration of the province’s corporate taxes, the CRA administered personal income taxes for all provinces and territories except Quebec, and corporate income taxes for all except Ontario, Alberta and Quebec. The CRA administers income taxes on behalf of the provinces and

territories on the basis of TCAs signed by the federal and provincial or territorial Ministers of Finance. The TCAs lay out the main conditions of CRA administration, including that provincial and territorial income tax legislation will be aligned with the federal Income Tax Act so that income taxes are levied on a common tax base and provinces and territories may adjust progressivity (through different tax brackets and rates) and introduce tax credits to address policy priorities, provided that these do not alter the common tax base, adversely affect the economic union and are not inconsistent with Canada's international obligations. The TCA also provides for the federal government to pay the major part of the costs of provincial and territorial tax administration under the agreements.

In 1991, Canada introduced a federal Goods and Services Tax (GST), which replaced a Manufacturers' Sales Tax. The GST is a value added tax levied on a broad base of goods and services. At the time, most provinces and territories collected a provincial retail sales tax that was not value added. In 1997, the provinces of Nova Scotia, New Brunswick and Newfoundland and Labrador decided to replace their provincial sales tax with a harmonized sales tax (the HST). The HST is administered by the CRA according to the federal Excise Tax Act, but contains a provincial component and a federal component. Currently, the federal component is the national GST rate of 5%; the provincial component varies between 10% (Nova Scotia) and 8% (Ontario).

Since the HST is harmonized, businesses follow much the same rules as for GST, filing one return, making one payment and interacting with one agency, the CRA. Provinces are able to address provincial policy priorities by selecting their own individual tax rate and offering limited province-specific rebates (e.g., point of sale rebates on specified goods). The CRA administers the HST according to an intergovernmental agreement signed by federal and provincial Ministers of Finance that states the conditions and provides for the federal government to cover the costs of CRA administration.

The GST and HST assessed by the CRA and the Canada Border Services Agency (CBSA), known as the revenue pool, is supplied to the Department of Finance Canada.

The Department of Finance Canada uses economic data from Statistics Canada complemented by rebate claims filed with the CRA to allocate the pool among the federal government and the participating provinces. An agreement between the federal and provincial governments stipulates all of the formulae used to allocate the revenue among the HST participants. The CRA performs quantitative analysis to ensure the

integrity of the HST data. The Department of Finance Canada estimates provincial payments and pays them weekly. The Department of Finance Canada forecasts provincial revenues for the forthcoming year and simultaneously updates the estimates for the previous five years. Reconciliations for revisions to previous year's estimates are added to or deducted from provinces' payments. The reconciliation process is finalized, 5 1/2 years after the reference year.

The Department of Finance Canada plays the lead role in negotiating intergovernmental agreements relating to single federal administration for income taxes and those relating to the HST. The CRA supports the Department of Finance Canada by providing operational advice. Once the intergovernmental agreement is signed by Ministers of Finance, the CRA may enter into further agreements related to day to day administration on behalf of provinces and territories.

3. CTAO PROJECT (2004-2009)

In the period preceding corporate tax harmonization, Ontario businesses, concerned about growing global competitiveness pressures, were urging governments to reduce red tape and streamline the administration of corporate taxes by harmonizing the federal and provincial tax systems. Several studies were undertaken by leading business groups to support their claim that eliminating duplication in tax administration would help Canadian businesses compete in the international marketplace. At the time, the OMoR administered its own provincial corporate income tax program. This meant that Ontario businesses had to file two tax returns and work with two separate tax administrators—the OMoR for provincial taxes and the CRA for federal taxes. Both the Ontario Chamber of Commerce and the Tax Executives Institute, two of many influential stakeholders, strongly endorsed a more streamlined and cost-effective approach to corporate tax administration.

On October 6, 2006, the governments of Canada and Ontario signed a Memorandum of Agreement (MOA) to transfer the administration of Ontario's corporate income tax to the CRA. One of the primary drivers of the initiative was to reduce the compliance costs incurred by corporations and reduce administration costs for governments. Under the new single administration, Ontario businesses would benefit from one set of rules, one tax return, one audit, one ruling and appeals process, and one point of contact for corporate income taxes.

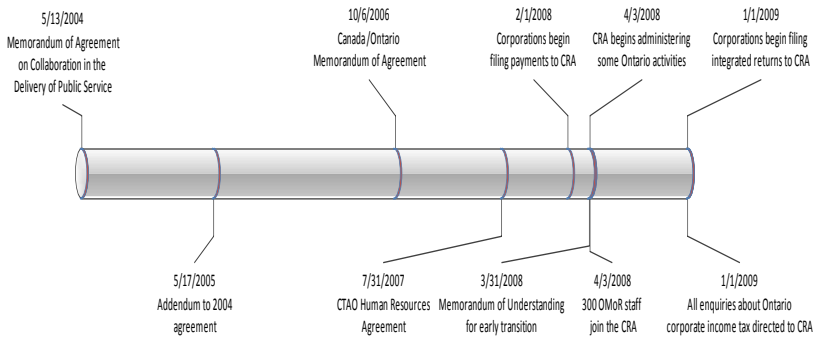
The Corporate Tax Administration for Ontario (CTAO) project was the first transfer of such a large program to the federal government. The size of the Ontario program ($11 billion in corporate taxes collected

annually) meant that the CRA would more than double its total corporate tax collection for the provinces and territories. The transition had to be achieved without negative impacts to the quality of service to taxpayers. To manage the transition, both the CRA and the OMoR created internal project management offices (PMOs) to manage project activities and issues internal to their organizations, and established a joint governance structure to manage project activities requiring inter-organization cooperation, a best practice.

The single administration of corporate income tax came into effect for taxation years ending after December 31, 2008. However, to allow corporations to realize early compliance savings, on April 3, 2008, the majority of the administrative activities for Ontario's corporate tax were transferred to the CRA for tax years prior to harmonization.

This early transition brought the benefits of single administration to Ontario businesses more quickly, but it was also the source of several implementation complexities because it necessitated the running of the old and new systems in parallel for nearly a year before the final switchover. The transitioned activities included administering provincial audits, objections, appeals, rulings, and interpretations for earlier tax years. At that same time, more than 300 OMoR staff joined the CRA. Corporate taxpayers began making integrated instalment payments to the CRA in February 2008 and began filing an integrated return with the CRA in January 2009.

Corporate Tax Administration for Ontario Milestones



3.1 Governance and project management

After the parameters of the transition to a CRA-administered Ontario corporate tax had been negotiated and codified in a Memorandum of Agreement, the CRA and the OMoR began to develop detailed plans

– within their respective organizations as well as with one another – to ensure that they could deliver the promised results.

Both the CRA and the OMoR used similar internal governance structures. They had a single executive lead, reporting directly to their respective Commissioner, supported by the Assistant Commissioner (AC) Steering Committee in the CRA and an executive committee in the OMoR. The Assistant Commissioner of the CRA's Strategy and Integration Branch (SIB), formerly Corporate Strategies and Business Development Branch, an executive without a program interest in the transition, was named as the lead in the CRA. The advantage of using a neutral, non-program lead was that the CRA maintained a project-wide focus, rather than a functionally-divided one. Executives from both Ontario and the CRA saw this as an advantage and a best practice.

Both jurisdictions created internal PMOs to manage internal project activities and issues. At the CRA, the CTAO PMO was created as the central project office, located within SIB. Its mandate was to provide overall project management leadership, coordination and support to all internal and external business clients and stakeholders.

The primary activities and duties of the CTAO PMO were to work with partners in functional and corporate areas of the organization to ensure horizontal management of the project and to act as the focal point for the CRA's relations with the province of Ontario.

Meeting the Challenge: Early Collaboration and Inclusion

In an interview for an article with Canadian Government Executive, Susan Bowen, the CRA's lead executive on the CTAO project, had this to say about the project:
"This governance structure was unique in the history of the Canada Revenue Agency. Working together with the province on establishing and implementing a single project plan ensured that Agency staff were well aware of provincial processes and concerns and engaged in joint problem-solving to arrive at a seamless transition for business."

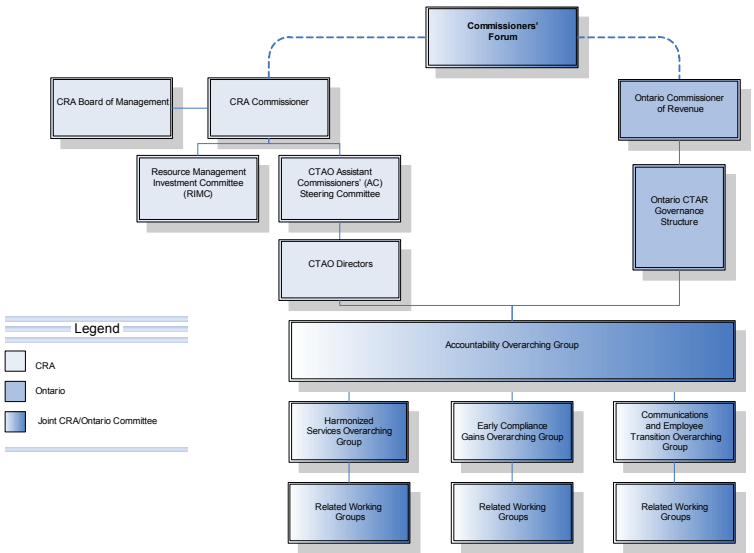
In addition to the internal governance structures, a joint CRA/OMoR governance structure was established early in the project. The joint governance structure was amended to provide the leadership and direction required to meet changing needs at each stage of the project. At all stages, it consisted of overarching groups, which planned and managed specific areas of the project. Each overarching group had its own mandate and established working groups of subject matter

experts to address specific aspects of their mandate. The overarching groups were co-chaired by representatives from the CRA and the OMoR. The overarching groups reported to the CRA and the OMoR PMOs on issues and progress of the CTAO project.

A joint Commissioners' Forum was also created and was co-chaired by the Commissioners of each organization and included the co-chairs of the overarching groups and key functional leads from both organizations. The Commissioners' Forum met on an annual basis from 2006 to 2008 with the objective of providing direction to the project, reviewing the work that had taken place to date, and establishing next steps.

The creation of internal groups, Project Management Office's (PMOs) for both organizations, and joint governance, was instrumental to the success of CTAO and is a recommended best practice. However, it is important to retain the ability to adapt that structure as the project matures, as is discussed in the next section.

CTAO / CTAR Governance - Implementation Phase



Note: CTAO was known as CTAR in the OMoR

3.2 Evolution of the governance structure

The CTAO project was divided into three main phases, plus a project close-out stage: the Transition Planning Phase, the Implementation Phase and the Service Delivery Phase.

While the MOA laid out the framework for single administration, there was still much work to be done on the design of transition. In particular, there were outstanding questions of how pre-harmonized workloads would be managed during the transition, and how the two organizations would exchange data and records to present a seamless experience for taxpayers. During the Transition Planning Phase (November 2006 – August 2007), the CRA and the OMoR developed high level transition plans that outlined the scope, deliverables and milestones for the transition to a single corporate tax administration. The plans also committed to high-level principles that reflected the intentions of both parties, including the demonstration of service and compliance improvements for Ontario businesses and a reduction of total administration costs for government.

The completed Transition Plans became the blueprint for single administration and were approved at the Assistant Commissioner Steering Committee level. Any changes to the plans had to be approved by the joint oversight committee. A Human Resources Agreement to transfer Ontario staff to the CRA was also negotiated and signed during this phase. After the development of transition plans and signing of the Human Resources Agreement, the project moved into the Implementation Phase (September 2007 to July 2008). At the beginning of this phase, the governance structure was revised to better reflect the distinction between 'harmonized services' and 'early compliance gains' services. Early compliance gains, as mentioned earlier, refers to those services that were transferred to the CRA on April 3, 2008, to enable corporations to realize compliance cost savings prior to the implementation of the single tax return.

Having flexible governance meant that the structure was able to adapt to match the different phases of the project, which made optimal use of the time of everyone involved. The approach to issues management, solving issues at the lowest possible level in the hierarchy, was consistent throughout the project and resulted in very few issues having to be escalated through to the top level of the governance structure.

During the Implementation Phase, the transition plans were amended to reflect the Human Resources Agreement and other business transition arrangements, and integrated into a detailed project plan. The various systems, processes and materials that were required for the CRA to begin administering Ontario's corporate income tax were developed during this phase. Change management activities also took place, including job offers to the OMoR employees and the transfer of these employees to the CRA in April 2008.

The Service Delivery Phase (August 2008 – June 2009) began after the transition of most corporate income tax functions and the associated transfer of the OMoR staff to the CRA. This phase included the development of any remaining systems and materials required for harmonized services. It ended with the first harmonized corporate tax returns being processed in April 2009. Outstanding agreements were concluded during this phase. These arrangements outlined relationship management and accountability structures between the CRA and the OMoR for the administration of Ontario's corporate income tax once the project governance was closed-out.

In June 2009, following the implementation of the last systems release and of the single integrated return, CTAO moved into the project close-out stage. The Accountability and Relationship Management Overarching Group concluded its mandate in April 2009 with the completion of the transition to a single administration. Any outstanding tasks or issues then fell directly to the CTAO PMO at the CRA. The relationship between the CRA and the OMoR began to transition to business as usual.

Meeting the Challenge: Revisiting the Project Structure
The governance structure of the project was adapted to meet the needs of the distinct phases of CTAO. A lesson that the CRA took away from this was that it can be beneficial to redeploy team members and modify the reporting structure as various project activities begin or are coming to an end.
For example, while in the Planning Phase, the complicated business of determining how the CRA would best leverage Ontario's existing records and other data required a great deal of focus and reporting to coordinate. Once this had been completed, those three planning groups were consolidated into one group for implementation. Eventually, when full harmonization occurred, that transition group would again be refocused.
The structure should be a good fit to the needs and activities and the project. When this is no longer the case, the structure should be flexible.

3.3 Human resources

One of the most time-consuming and challenging aspects of the project was the transfer of the OMoR employees engaged in corporate tax audit, appeals and advisory roles who would move to the CRA in 2008 to begin offering partially integrated services to Ontario corporations.

A Human Resource Steering Committee was created to oversee the Human Resources Agreement negotiation process. Its purpose was to provide the CRA with support and direction in the negotiation process, provide approval of the negotiator's mandate as issues were raised at the negotiation table, and to discuss proposals to table at future meetings. Additionally, both the CRA and the OMoR created teams of four to six people to negotiate the Human Resources Agreement. The CRA's negotiation team consisted of staff with a mix of business and human resources experience. The OMoR team consisted mainly of staff relations experts, with one business representative. Both negotiation teams had a lead negotiator from outside the organization.

Meeting the Challenge: HR and Knowledge Transfer

One of the challenges faced during the CTAO project was the transfer of employees from the Ontario government and their integration into the CRA organization and culture. While the CRA began accepting integrated returns for corporate income tax in January of 2009, it was responsible for most administrative activities related to Ontario corporate tax earlier than that, on April 3, 2008. At that time, some 300 employees - 88% of those extended a transfer offer – began their new jobs as federal employees.

For this project, the knowledge these employees brought was vital to the Agency's ability to sustain service levels to Ontario corporations as they moved from one system to the other.

The CRA information sessions, welcome sessions, office tours, and other efforts were effective and well-received, and was a best practice that the CRA will repeat in the future. However, the cooperation between the CRA and the unions behind the scenes was just as instrumental in ensuring a successful transition. The project benefitted from the relationship that the CRA had fostered with its unions in the preceding years. The organization's ability to make certain alignment provisions for newly transferred employees, such as recognition of accumulated vacation, required union support. One particular lesson from this aspect of the project was that tax administrations should not take an arm's length approach with their labour unions, but rather engage them from the beginning. If a tax administration anticipates taking on new business in the future, durable provisions with respect to employee transfers from partner agencies should be negotiated ahead of time so that ad hoc solutions and one-off provisions are not required late in the project.

3.4 Project management

The CRA had previous experience with large scope transformations, including a merger with customs and excise in 1994 and the

implementation of Harmonized Sales Tax in 1997. However, CTAO had unique elements due to the need to maintain the link between pre-harmonized corporate tax returns, administered by the OMoR, and post-harmonized corporate tax returns, administered by the CRA. This meant that the Agency had to develop new business processes to enable transactions to flow between the CRA and the OMoR, as well as to administer unique features of Ontario's new corporate tax legislation.

At an early stage, the CRA decided to complete an in-depth risk assessment to reduce the risk that the project would fall short of its goals. The resulting internal report advised the CRA to take a systematic approach to project management to ensure an integrated approach and clarity about accountability.

The recommendations resulted in the establishment of a central PMO with an overall executive lead. Risk mitigation strategies were put in place to address other areas, such as the establishment of a CTAO Communications team to ensure that businesses would be well-informed about their obligations during and after the transition.

The PMO developed a number of tools to ensure an integrated approach to the project across the CRA and ensure that each Assistant Commissioner was clear about his or her responsibilities, and that the executive lead could report to the Commissioner on overall progress. The PMO started with industry standard tools but adapted them to the CRA: following the completion of detailed transition plans for each function, a project charter was developed and complemented by accountability charters signed by each Assistant Commissioner for their branch or region's deliverables. A colour-coded dashboard system was employed to chart whether activities were on track, delayed or in jeopardy. This provided an at-a-glance assessment of the project's overall status and red-flagged issues requiring priority attention. The CRA logged risks and issues into a central repository, the Project Support Log, and reviewed the risk report at the monthly Directors' meeting. This provided transparency, visibility and an open forum for discussion to help with horizontal management. Establishing an additional reporting structure to the existing corporate reports was not easy and was initially seen as onerous by many, but the rigorous governance was later agreed to have been a key factor in the project's success.

As well as having an integrated project plan for the Agency's deliverables, the OMoR and the CRA developed a joint integrated plan that helped identify and ensure close monitoring of interdependencies between the two organization's plans.

3.5 Communications

A CTAO Communications team was established within the CRA to handle external and internal communications needs. By January 2008, roles and responsibilities had been laid out, lines of accountability clarified and workable processes established for both internal and external communications activities (the latter in partnership with the OMoR).

The need for effective communications was evident in dealing with Ontario corporations, who needed to know what changes would take place, when, and how they were to interact with the two tax administrators. An initial survey of stakeholders was undertaken to determine who they were, what their interests were and the way in which their connection to the CRA was maintained, including the types of communications products being made available to them and their uptake among stakeholders.

Both the OMoR and the CRA were issuing external communications and it soon became clear that a communications protocol was necessary to establish clear expectations for consultation and sign-off on external communications products. The CRA was responsible for communications relating to harmonized corporate tax returns; the OMoR would be consulted but final approval rested with the Agency. The OMoR was responsible for communications for pre-harmonized years but, if the communication referred to activities being undertaken by the CRA, the CRA would be both consulted and asked to sign-off. Both organizations agreed to turn-around time standards on drafts submitted for consultation and sign-off. The CRA put in place an internal communications protocol and process to enable the quick development and approval of products.

3.6 Observed benefits

After the CTAO project had concluded, the CRA engaged an independent consultant to produce a report detailing the compliance cost savings that resulted from corporations being able to file an integrated corporate tax return with the CRA rather than having to filing separately with both the OMoR and the CRA.

Corporations identified six primary activities for which they incurred compliance costs related to corporate income taxes:

1. Preparing and filing returns;
2. Calculating and remitting instalment payments;

3. Providing information in response to audits;
4. Making requests for, or responding to, reassessments;
5. Making objections or appeals; and
6. Requesting rulings or interpretations.

Based on the results of that work, it was estimated that, as a whole, Ontario corporations would realize compliance cost savings of an estimated $136.7 million annually, as compared to the initial $100 million estimated at the beginning of the initiative in 2006. Since the research was done quite soon after the transition from the OMoR to the CRA administration, even greater savings were expected in future years, as corporations became more familiar with the new requirements and processes.

The largest portion of the savings, 73%, related to calculating and filing corporate income tax returns, while 23% of the savings were associated with calculating and remitting instalment payments. Only 4% of the savings were associated with responding to an audit. Overall, 90% of the savings were realized by small, domestically-operating corporations, as opposed to large corporations with annual revenue of $50M or more.

4. PSTAR PROJECT (2009-2012)

The Provincial Sales Tax Administration Reform (PSTAR) project was more straightforward than CTAO for a number of reasons. Most importantly, the introduction of the HST was a clean break from the previous GST/Provincial Sales Tax (PST) regime. There was no need to continue providing administrative services for previous years' returns, as there was for CTAO. Also, because PSTAR followed CTAO, the CRA and Ontario had already established a rapport with one another, as well as a host of processes and governance structures that worked well and could be used as vehicles to deliver cooperation on PSTAR. In many cases, the executive project members from both jurisdictions that would work together on PSTAR had already ascended the learning curve in similar roles for the CTAO project.

Value-added taxes are administered in more than 150 countries around the world. Known in Canada as the GST/HST, this type of consumption-based, value-added tax has existed in Canada for more than twenty years, having been initially introduced as the GST in 1991. Where it is in place, the HST is a blend of federal GST and Provincial Sales Tax. It had been administered by the CRA since 1997, at one rate, with one set of rules for three participating provinces; Newfoundland and Labrador, New Brunswick, and Nova Scotia. The addition of Ontario to

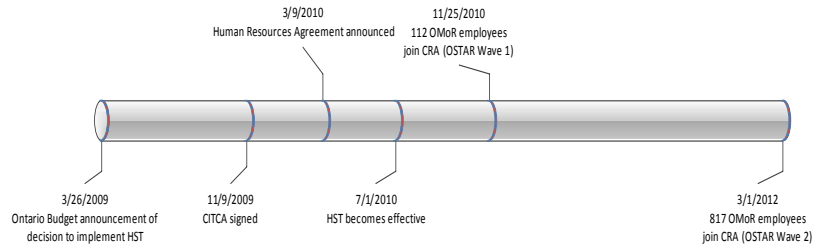
the HST framework increased significantly the total value of revenue collected through this tax.

In March 2009, the province of Ontario signed a Memorandum of Agreement with the Government of Canada that would see Ontario enter a new HST framework. The new HST framework introduced new provincial flexibilities such as the ability to have variable rates. Building on the successful implementation of the HST in New Brunswick, Nova Scotia, and Newfoundland and Labrador, and the more recent harmonization and transfer of the Ontario corporate tax to the CRA, this initiative provided another opportunity for the CRA and the OMoR to use their collective expertise to deliver another successful collaboration.

While the CRA had been administering the GST since 1991 and the HST since 1997, the new Comprehensive Integrated Tax Coordination Agreement (CITCA) signed with Ontario provided flexibilities previously unavailable under the previous HST framework.

The new CITCA set out the rates, transitional measures, revenue allocation formula, and other particulars that built upon the existing HST framework, but also introduced options such as variable provincial tax rates, and variable point-of-sale rebates. The result of this flexibility was that Canada became the only country in the world to administer a transaction-based tax that touches millions of consumers and businesses at more than one value-added tax, where the rate depends on where a transaction takes place.

Provincial Sales Tax Administration Reform Milestones

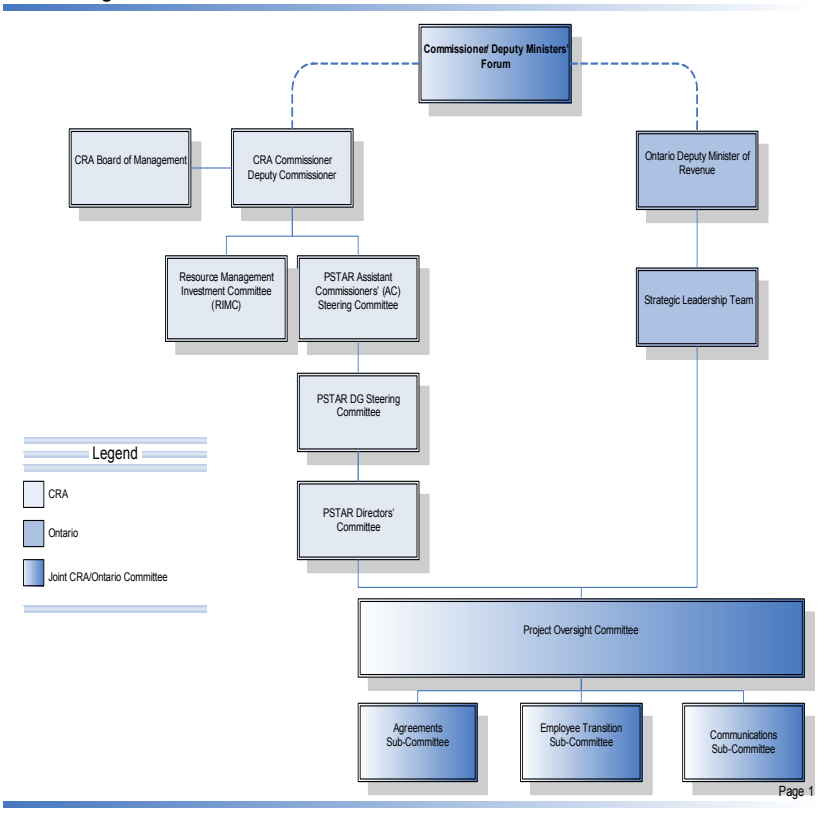


4.1 Governance structure

The governance structure of the PSTAR initiative was built on the experience and lessons learned from the CTAO initiative. While a similar governance model was put into place, there is an important distinction between CTAO and PSTAR. Under the TCA, the CRA

administers an Ontario tax through provincial legislation. Conversely, PSTAR was about Ontario joining an existing federal tax, under federal legislation. Although there was regular reporting to the OMoR regarding progress, PSTAR was chiefly a CRA project and its execution was in some ways more straightforward than CTAO because it did not involve having to run two systems in parallel during a transition period. However, governance lessons from the CTAO project still carried over. For example, processes were put in place to minimize the effect of team member turnover. Good documentation and record keeping, as well as ensuring every member had a delegate that was kept up-to-date, were best practices that were carried into the PSTAR project.

PSTAR Organization Chart



4.2 Human resources

As with the CTAO project, the negotiation of a Human Resource Agreement was an important milestone. On March 9, 2010, the CRA announced a Human Resources Agreement with Ontario that provided for employment offers to be made to provincial employees who

would join the organization in two waves over the following years. In November of 2010, the CRA received 112 OMoR employees and then another 817 in March of 2012.

While with CTAO the CRA had a need for provincial employees with experience with Ontario's corporate tax system, the situation was slightly different for PSTAR. Partly because of the additional flexibilities introduced to the HST framework upon Ontario's entrance, and because there would be a significant increase in the GST/HST revenues administered by the CRA, the partners anticipated a heightened compliance risk. The CRA significantly enhanced its GST/HST program to deal with this risk, and the migration of experienced provincial staff was a welcome addition to the organization for that reason.

Before the Ontario employees joined the CRA, they were provided with welcome, pension, compensation, and meet and greet sessions. Some of the sessions were also attended by former provincial employees who had joined the CRA as a result of the CTAO project, which participants felt alleviated uncertainty. After the prospective employees had accepted offers of employment they were provided with an extensive orientation and training process. According to feedback received, participants had a high level of appreciation for the CRA's work to make their transition to the organization a success.

4.3 Risk management and performance measurement

As with CTAO, the PSTAR project had a robust risk management and performance measurement protocol. From the beginning of the project, a Risk Management Strategy defined how the Project Management Office (PMO) and its internal CRA stakeholders in the implicated branches and regions would identify, analyze and manage risks that could have an impact on the project. The PMO oversaw the process and was accountable for all PSTAR-related risks, while the CRA's branches and regions were responsible for managing their program-specific risks.

The Project Support Log approach was used as it had been with CTAO: risks were logged so that they could be tracked and addressed in a timely fashion. Risks were then classified, quantitatively analyzed as appropriate, assessed for expected impact and probability, and courses of action were chosen. The entry, updating, and closing out of various risks were processes that continued throughout the project.

Colour-coded dashboards drawing attention to any schedule or budget problems were used to update committees on at least a monthly basis, but conference call updates were carried out sometimes as often as daily during certain critical project junctures.

The dashboards, logs, and reporting frequencies were for use in the CTAO project, and were best practices leveraged by PSTAR because of their proven efficacy.

Meeting the Challenge: Information Systems Change

Information technology systems are the backbone of the GST/HST administration. They allow for the data capture and return/rebate processing of our programs and services, each of these with their own forms and specified requirements. At the time of the PSTAR project, the CRA's IT infrastructure comprised a suite of 22 interrelated systems, 10 of which were impacted by the changes required to reflect the HST implementation in Ontario. The CRA follows a 48-week schedule to build and test each system suite release to ensure proper functionality within all 22 systems.

The legislative and regulatory changes brought about as part of the PSTAR project required many significant system and program modifications. For example, new or modified rebates (point-of-sale, housing, transitional, etc.), new reporting requirements, and temporary restrictions on input tax credits (known as recaptured input tax credits) all required complex modifications.

The magnitude of system modifications required in the short time frame led to a situation where not all modifications and upgrades could be completed by the July 1, 2010 HST implementation date. A phased-in approach of the necessary system and program development on a just-in-time basis was identified and built into system planning timelines and program work plans. Determining which systems changes were launch-critical, and which could be put on hold and processed at a later date, was an exercise that was carefully thought out and which contributed to the seamless nature of the transition.

4.4 Communications

While the province of Ontario was responsible for communicating the provincial government's rationale for moving to the HST, the CRA was responsible for explaining how the new harmonized tax would work, informing registrants about their obligations, internal communications with the CRA staff and unions, and for communicating to the Department of Finance Canada any legislative changes that could be

required along the way. The PSTAR communications challenge was larger than with CTAO. Because the HST is a tax visible to consumers, the public messaging effort had to be wider. The HST would have some 1.5 million business registrants participating, as opposed to the Ontario corporate tax, which only applies to about 500,000 Ontario businesses (i.e., some HST registrants are not incorporated).

Meeting the Challenge: Communicating with Stakeholders

Both the CTAO and PSTAR projects established communications teams within the CRA to manage internal and external communications needs. They were responsible for staying informed of the technical products being produced and the approach being taken by operational branches to ensure that the content and timing of messaging was consistent. They also established effective working relationships with counterparts in the provinces to produce internal and external communications that were complementary and consistent, if not joint.

Businesses and individuals needed to know how they should comply with the tax changes, while internally, new and existing CRA employees needed to know how the changes would affect them.

For the PSTAR project, the communications approach evolved based on lessons learned in CTAO and the reach of the Public Affairs Stakeholder Relations Desk was greatly expanded, engaging hundreds of stakeholders rather than just a select few. One of the legacies of the projects is that the CRA now has a large database of key stakeholders and partners that has been adopted as a working tool and used beyond its original purpose.

A variety of communications products were produced by the Communications Office and were disseminated at different points along the project timeline:

- External and internal websites;
- A Stakeholders Desk to maintain relationships and share information with key organizations and individuals;
- Direct mail campaign;
- Informational stuffers in existing mail-out products to taxpayers;
- Outreach and communication sessions;
- Webinars/webcasts;
- Information sheets;
- Pre-packaged editorial articles explaining how the HST works;
- Question and Answer sheets and media lines;
- Manager factsheets; and
- Internal newsletters.

5. CONCLUSIONS

The cooperative approach to two major transitions from provincial to federal administration delivered wins for all parties: the two governments, tax administrations, taxpayers and the Canadian economy generally.

Over the course of the evolving collaborative relationship between Canada and Ontario, the CRA came to learn and confirm a number of best practices for the planning and implementation of large tax projects. The experience was instructive in that it provided a template for the CRA, as it continues to bring additional provinces into the HST framework.
Appendix A - About the CRA

Canada is a large country that spans approximately 7,200 kilometres from east to west across six time zones. With a population of approximately 34 million people and a population density of 3.2/km2, it is one of the least densely inhabited, yet prosperous, countries in the world.

Canada's tax system is based on voluntary compliance and self-assessment which, in Canada, is believed to be the most cost-effective way to administer taxes. This is aided by a population that, in general, views the payment of taxes as a civic responsibility that should be respected. Taxpayers are expected to determine what they owe under the law and then pay the correct amount of tax, without the CRA's intervention. This means that taxpayers are expected to register as required under the law, file their tax returns on time, report complete and accurate information to determine tax liability and pay all amounts when due. Non-compliance is the failure, for whatever reason, to meet any of these requirements.

While the Department of Finance Canada is responsible for tax policy, the CRA is responsible for the administration of tax programs and the delivery of economic and social benefits on behalf of federal, provincial, territorial and aboriginal governments.

Revenues come from three key sources: income taxes, excise taxes and duties, and the GST/HST. In 2010-2011, the CRA collected more than $311 billion in taxes and other revenues, and issued over $22 billion in benefit payments to millions of families and individuals.

The CRA has a workforce of approximately 43,000 employees, including a term-hire population that fluctuates to approximately 10,000 during peak tax-filing season. The organization operates out of 45 service sites across Canada.

Case Study

Topic 1.1

COOPERATION WITH GOVERNMENT ENTITIES

Rosario Massino
Head of International
Cooperation Office, Italy
Guardia di Finanza
(Italy)

CONTENTS: GUARDIA DI FINANZA

Being here is for me a real pleasure and I have the honor to illustrate, though in summary, the institutional placement of the Guardia di Finanza and the subsequent cooperation profiles with the other actors at national level with which our Corps interacts in the daily performance of its tasks of combating economic and financial crime.

Particular attention wiil be paid to the analysis of collaboration between the Guardia di Finanza and the public entities working in the framework of fiscal revenues, whose protection represents one of the most relevant, as well as one of the traditional intervention sectors of the Institution I belong to.

To fully address the issue, however, it is essential to define what the Guardia di Finanza is and to make clear what tasks, in detail, the same national law system entrusts to it: once these points are clarified, of course you will be able to more easily identify the dynamics that bring the Corps to cooperate with other bodies belonging to the sphere of public administration and not only, as we shall see.

As a necessary premise it must first be noted that the Italian legal system and regulatory framework falls within the so-called civil law systems, and it is thus characterized by a codified legislation.

This has a strong impact on the legal regime of taxation, which, under the Constitution of the Republic, must be strictly subject to the provisions contained in the written rules, both in terms of the relations between Revenue Authorities and taxpayers, and in terms of co-operation with other sovereign jurisdictions.

Therefore, the Italian tax system provides for a direct taxation which is progressive for natural persons and proportional for legal persons, and in addition to it, there are a regional tax on productive activities and other minor local additional taxes.

There is also a set of indirect taxes, including the most relevant one, which is the Value Added Tax (VAT) deriving from the EC.

In the current year, during the period january-july 2012 the fiscal revenues show a variation trend of +4.7%, an increase compared to the same period last year, due to the increase of direct taxes by 5% and indirect taxes by 4.2%.

These amounts are, however, significant but still insufficient, especially compared to the estimates of the actual gross domestic product resulting from the economical-productive Italian fabric, part of which escapes the tax levying, resulting in a negative impact on the Country system and the State budget.

It is for this reason that the fight against tax evasion and tax avoidance is an essential goal fixed by the Government, by requesting the Financial Administration for increased commitments and efforts and by introducing ever more effective rules.

So this is, in a brief outline, the context in which the Guardia di Finanza operates. It is useful to start by saying that the Guardia di Finanza is in its own right part of the Italian financial Administration, and it is a police Corps with a military structure, having powers of intervention at national level and it is placed under the direct authority of the Minister of Economy and Finance.

And it is the Minister himself, through the General Directive for administrative action, who determines the primary targets towards which the operational activities of the Corps shall be oriented to achieve the goals set out in the economic policy by the Government.

The Guardia di Finanza is thus a police Corps which is fully part of the financial Administration, boasting historical origins dating back to the establishment, in 1774, of the Light Troops Legion of the Piedmontese State, a selected unit tasked with suppression of smuggling and border surveillance of the Savoy State. The Guardia di Finanza was thus born as a tax police: then, over time, the legislator of the unified State, through various legislative measures, has fully defined its tasks, lately qualifying the Corps as the sole law enforcement agency, at national level, having general competence on economical and financial

matters, whose mission is to protect, both in terms of revenues and expenditure, the budgets of local authorities, of the State and of the European Union.

At this point I must touch on the task that the legislator entrusted to the Guardia di Finanza. Among the Guardia di Finanza's tasks there are prevention and suppression of violations of direct and indirect taxes, customs and excise, national and EU public expenditure, irregularities in the financial and securities markets, crimes concerning currencies, securities, valuables and means of payment, including financial and capital movements, and, finally, protection against all forms of counterfeiting and piracy.

Besides these tasks comes the Corps's traditional commitment in the fight against drug trafficking and organized crime, especially through an approach aimed at identifying the wealth of Mafia-like organizations and proposing the issue of seizure measures provided for by the juridical system.

The Guardia di Finanza, thus, is able to combat economic and financial illegality through a cross-cutting approach, not just making tax evasion emerge, but widening the sphere of investigations in order to also identify the other offenses. I refer, for example, to the fight against tax evasion and social security contributions evasion, to the intensification of STRs for anti-money laundering purposes, to the controls on the use of cash and on cross-border movement of capital, to the investigations contrasting fraud in the area of public expenditure, to the protection of markets and competition, and the countering of illegal gambling, the fight against counterfeiting and the protection of the "made in Italy".

This is an outstanding feature, because this unitary way to deal with operational issues in the various institutional sectors connotes especially the Guardia di Finanza and enhances its role as an investigative body with specialized responsibilities.

It should also be noted that the Guardia di Finanza employees, as members of a police force, act in accordance with the criminal law, and in particular with the Code of Criminal Procedure. This allows the Corps to conduct criminal investigations on its own initiative or under the direction of the Public Prosecutor, in the economic and financial police areas, if behaviors constituting a criminal offense are identified.

In general, we can say that the sector regulation divides tax crimes into two main areas:

Crimes relating to tax returns, such as:
- fraudulent misrepresentation by using invoices or other documents for non-existent transactions;
- fraudulent misrepresentation by other devices;
- misrepresentation;
- omitted declaration (tax return);

Crimes related to documents and payment of taxes, such as:
- Issue of invoices or other documents for non-existent transactions;
- concealment or destruction of accounting records;
- omitted payment of certificated withholding taxes;
- omitted VAT payment;
- undue tax compensation;
- fraudulent subtraction to tax payment.

The penal tax offenses are often closely interrelated and investigated in connection with other criminal offenses such as money laundering, bankruptcy fraud, corruption, bribery, fraud against the State and conspiracy.

The investigations against these economic and financial crimes in Italy are usually assigned to the Guardia di Finanza.

For the set of features considered so far, the Italian system, characterized by an exclusive and incomparable structure, could not be classified in any of the four standard models provided in the report on Domestic Cooperation prepared by the OECD in the framework of the TFTC Group dialogue held last June in Rome during the Second Forum on Tax and Crime.

Having defined at this point that the operational segments in which the Guardia di Finanza is engaged, it is now possible to identify the institutional actors the Corps cooperates with. In other words, the tasks of the Guardia di Finanza necessarily determine the other institutions with which it cooperates.

An ideal first division can be made, on the basis of what has been said so far, between the so-called “administrative” sphere of the economic and financial police and the sphere which is instead connected to the criminal context.

As I mentioned earlier, the Guardia di Finanza fully cooperates with the judicial authority, representing a qualified partner thanks to the professionalism accumulated over time in the areas of economic and financial police activity: but this is not about governmental cooperation because in Italy the judiciary power is an autonomous Authority and it is independent from the executive (and legislative) powers, from which it enjoys safeguards provided by the Constitution.

Therefore cooperation between the Guardia di Finanza and the judicial Authorities is implemented in the forms and ways set forth in the Code of Criminal Procedure, which recognizes within certain limits a margin of initiative to the judicial police, but at the same time it qualifies and identifies the prosecutor and, ultimately, the Judicial Authority as the dominus of prosecution and pre-trial investigation, which is the procedural phase of choice of the police forces.

In this context, it should be certainly stressed that the Guardia di Finanza interacts and collaborates with a diverse audience of Judicial Authorities, and in particular:

- Ordinary Criminal-Judicial Authorities, including specialized structures appointed to the investigation on organized crime (District Anti-Mafia Directorates and National Anti-Mafia Prosecutor, with which the Corps interacts through the specialist component - Central Service for Investigations on Organized Crime);

- Judicial Accounting Authority, which the Corps assists in executing the inquests for liability arising from loss of revenue.

Moving on to the "administrative-governmental" sphere of economic and financial police, particular interest arises about the large number and diversity of institutional actors with whom the Corps cooperates in the performance of its duties.

It is worth it to point out that in some cases memoranda of understanding between the Guardia di Finanza and the organizations with which it cooperates have been concluded in order to identify and “procedurize” the exchange of information flows, the activations of checks, request for information, etc. ..

Among the actors with whom the Corps cooperates we find first of all the other law enforcement agencies having general competence (State Police and Carabinieri). In this field, a Decree issued by the Minister of the Interior on April 28 of 2006 regulated the so-called

"specialty division" between the various bodies, clarifying the operational specificity of the Guardia di Finanza regarding the needs of economic and financial security of the Italian State and of the European Union. In addition, measures such as the law n. 121 of 1981, established central structures in which all the law enforcement agencies participate, and whose task is to ensure the proper functioning of the "security" system as a whole, in a unitary and coordinated way, but at the same time fully respecting the specific capabilities of each entity.

Specifically, it is the Office for Coordination and Planning of the Department of Public Security, which is responsible for the classification, analysis and evaluation of the information provided by the police forces and for disseminating these information to the operational branches of the aforesaid police forces, as well as overall planning and operational coordination. On the other hand, in the field of investigations on drugs works the Central Directorate for Anti-drugs Services, having coordination and information exchange functions. This Directorate was established within the Department of Public Security and it is also composed of members of Guardia di Finanza, State Police and Carabinieri.

The fight against organized crime is rather the prerogative of the Antimafia Investigative Directorate, and the three law enforcement agencies (Guardia di Finanza, Carabinieri, State Police) take part to it as well.

Leaving the strictly police framework, it should be clarified that the Guardia di Finanza closely cooperates with various departments, including:

- the Ministry of Infrastructures and Transports, with particular regard to the monitoring of the work on the procurement and implementation of approved projects, both in economic and financial terms and as regards the regularity and transparency of procedures;
- the Ministry of Economic Development, with reference to the identification and implementation of appropriate initiatives to pursue an effective administrative action in the sectors of the products' safety, prize contests, and of price discipline, aimed at protecting competition and consumers,

But also - often through the specialized component of the Corps - with single branches of government bodies, such as:

- the Department for European Affairs at the Prime Minister's Office, which The Guardia di Finanza relates to for the prevention and prosecution of fraud related to the contributions allocated by the EU;
- the Department of Information and Publishing of the Prime Minister's Office, the National Agency for investment promotion and enterprise development SpA - INVITALIA, as well as with the Department of Public Function of the Prime Minister's Office.

Particularly important is also the collaboration, which for some time has been established between the Corps and the managing body of the social security (INPS) and local authorities (regions, provinces, municipalities) with whom there are special arrangements which provide ways of cooperation structured for the continuous exchange of information relevant to put on local taxes as well as for the acquisition of elements to be used for the recovery of evaded fiscal taxes.

Moreover, in virtue of its specific tasks, the Guardia di Finanza cooperates, often through memoranda of understanding, with the vast majority of the institutions responsible for the supervision and regulation of the various sectors of economic and financial life of the Country.

I refer in particular to:

- Bank of Italy and the Financial Intelligence Unit operating within it;
- CONSOB, independent authority whose objectives are the protection of investors and the efficiency, the transparency and the development of the securities market;
- ISVAP, supervision body with jurisdiction over the parties operating in the insurance sector in which the Corps works primarily through the specialized component - Special Unit Currency Police (the same can be said, in general, as for ISVAP and COVIP);
- COVIP, which deals with controls on intermediaries handling the "pension funds". About it, the Guardia di Finanza, usually upon request by COVIP, collaborates in the acquisition and processing of data, news and information relevant to the exercise of the supervisory functions;
- Authority for the protection of personal data, with which The Guardia di Finanza cooperates in ascertaining the violations of regulations on the processing of personal data;
- Authority for Electricity and Gas, with which the Guardia di Finanza collaborates to conduct investigations towards the

operators of works of public utility in the fields of electric energy and gas;
- Authority for the Supervision of Public Works, which the Corps works with for the ascertainment of violations of the rules in public works matters;
- Authority for Communications, with which the Corps cooperates in investigating violations of regulations in the sector;

Having mentioned the collaboration of the Guardia di Finanza with institutions such as the Bank of Italy - FIU, allows me to introduce an additional topic, concerning the mechanism of monitoring financial transactions, in which the Guardia di Finanza takes part, along with Authorities external to the financial Administration.

In fact, the whole system of prevention implemented by Italy for the protection of the capital market has been recently reformed with the transposition of the EU Directive 2005/60/EC dated 26 October 2005. The measure, which has received the appreciation of Financial Action Task Force (GAFI), streamlined the complex regulatory framework into one single text.

In particular, the Decree:

- redesigned the overall structure through a new institutional layout, consisting of the Minister of Economy and Finance, the Financial Security Committee, the Supervisory Authorities, the Guardia di Finanza, including the establishment of the Financial Intelligence Unit at the Bank of Italy;
- modified the control system, providing that surveillance must be carried out individually by each single authority on the basis of their institutional responsibilities (Bank of Italy, Consob, ISVAP), whereas for the professionals the supervision is entrusted to the Ministry of Justice;
- In particular the Decree has: explicitly granted enhanced control powers in this field to the Guardia di Finanza which, in collaboration with the Bank of Italy, may carry out specific inspections regarding the subjects that do not fall within the exclusive supervision of the Central Bank (such as, e.g., the money transfers).

The protagonists of theconceived device are various institutional actors, among which there is an ongoing **constant flow of information** that allows a reactive response to counter the illicit dynamics typical of money laundering.

In fact, in the follow-up procedure of suspicious transactions appear:

- The Office of Financial Information (the Italian FIU), which receives the appropriate reports from the parties responsible for them, carrying out financial analysis. To this end, the Financial Intelligence Unit - an independent unit within the Central Bank - has direct access to the so-called "Register of Accounts." This is a database managed by the Tax Authority, containing information on the relationships in place or terminated at the banking and financial intermediaries. This wealth of information is extremely useful for the analysis of suspicious transaction reports, as well as allowing an improvement of international cooperation through the exchange of information with foreign FIUs;
- The Guardia di Finanza, with particular reference to the Currency Police Special Department, which is the "entry and sorting point" of reports that are conveyed to the Corps for their investigation. On this point it should be emphasized that the FIU works closely with the Guardia di Finanza, which, receiving 97% of all of suspicious transactions reports, has a wealth of information enabling it to initiate and carry out complex investigations on money laundering and tax evasion. In addition, the Corps, as mentioned above, may conduct inspections to a broad audience of financial intermediaries as delegated by the same FIU;
- the Anti-Mafia Investigative Directorate (DIA), which receives 3% of the reports, carries out the investigations on organized crime matters;
- the Judicial Authority if, at the end of the analyses, situations emerge amounting to a crime and, in particular, the National Anti-Mafia Prosecutor, when there are connections with organized crime.

Nothing remains now but to deal with the issue of the Guardia di Finanza's cooperation with the institutions responsible for the management of the tax revenues.

In such a context, it should be stated that this mechanism is unique at international level. In fact, the national system includes, in addition to the Guardia di Finanza, which is an investigative body specialized in the inquiries and prosecution of violations that cause a loss of revenue resulting from tax levying, also:

- The Department of Finance, which is responsible for the management of tax policy and plays the functions of directing the overall tax system, of designing its development, of fiscal policy strategy, direction and control of agencies, companies and economic entities that make up the financial administration and which are entrusted with the operational functions. In detail, the Department takes care of the production of rules, issues

interpretation directives on tax legislation and coordinates the activities of agencies, which ensure the enforcement of the tax system towards taxpayers;

- the Revenue Agency ("Agenzia delle Entrate"), which will soon encompass also the Territory Agency. It deals with the assessment of direct and indirect taxes. This is a non-economic public body that carries out its official duties relating to the management of the tax, ensuring the highest level of tax compliance, through assistance to taxpayers and recovery of tax evasion and tax avoidance. Its strategic role at the service of citizens and in defense of the tax legality is to ensure the recovery of resources for the entire community, acting with a full managerial and operational responsibility. Furthermore, in order to further improve the quality of inspection interventions of the Corps, in the presence of doubtful or non-consolidated regulatory interpretations or in any case of possible failure to recognize the tax effects of transactions considered as elusive or abusive, the Corps shall make a technical and operational comparison with the competent branches of the Revenue Agency before establishing violations, in order to identify shared operational and functional solutions for subsequent assessment. It should, however, be noted that this type of comparison is not always necessary, unless the specificity of the case suggests, anyway, to do so, as in cases where the material facts, on which the violations are based, have been established in the context of criminal investigations, and their reconstruction and legal classification has already been defined in specific acts of investigation and has been taken by a court as a basis for the setting of the criminal proceedings;
- the Customs Agency - which will soon encompass the Autonomous Administration of State Monopolies - which deals with the assessment of customs duties and excises. The Agency carries out control, ascertainment and audit activities on the movement of goods and the internal taxation related to international trade, to guarantee full compliance with Community legislation. In particular, it verifies and monitors trade, production and consumption of products and natural resources subject to excise duty; also, it counters other forms of extra-fiscal offences (for example, in the fight against counterfeiting).
- the State Property Agency, which is responsible for the management of properties owned by the State. It is an economic public body with legal personality and having a wide regulatory, administrative, patrimonial, organizational, accounting and financial autonomy. Its task task is to rationalize and develop the use of public real estate property.

- The Territory Agency which, as mentioned before, will soon merge into the Revenue Agency. This is a public institution with legal personality and wide autonomy, capable of delivering cadastral, cartographic and real estate Registration services, as well as managing the creation and update of the integrated Registry of real estate properties existing on the national territory and the integration of cadastral activities with those attributed to local entities.

The tax collection, however, is performed by Equitalia Spa, a company with fully public share capital (51% owned by the Revenue Agency and 49% by INPS).

Within this organizational mechanism, the Guardia di Finanza arises as a police Corps having a legislatively established general competence to carry out administrative and criminal investigations on all the economic and financial violations.

Drawing together the threads of what so far said, we can definitely state that the Guardia di Finanza is the investigative structure of the Financial Administration, aiming at ensuring proper compliance with the provisions relating to the income and expenditure of the State budget. In order to fulfill these tasks, as we have seen, the law gives the Guardia di Finanza's investigators wide powers of investigation both in judicial police and tax and currency police matters.

In particular, the Guardia di Finanza performs, within the directives of the Minister, investigations having an administrative nature countering tax evasion and tax avoidance, conducting inspections and audits on taxpayers. To give some figures to the contribution from the Corps in this field, we can simply highlight that in 2011 the Guardia di Finanza performed over 30,000 inspections, equal to approximately 80% of the total inspections carried out by the entire national financial administration.

Furthermore, the Italian law entrusts the members of the Corps, under the direction of the Public Prosecutor, with the execution of criminal investigations in relation to tax crimes and criminal offenses related to them.

The Guardia di Finanza alone performs, within the Financial Administration, also the functions of currency Police, working in the areas of service regarding cross-border movements of capital, financial intermediation, usury, regulation of means of payment, financing of terrorism, the protection of savings and the fight against the offenses

covered by the consolidated banking and finance laws, and by the rules regulating insurance activities.

The law also provides for the legitimacy of the Corps to promote and develop initiatives for international cooperation with foreign counterpart bodies in order to counter the economic and financial offenses, also taking advantage of its officers seconded at numerous overseas locations; also the Revenue Agency can make use of such officers' help, in order to oppose the international tax offenses.

Such a mutual support, explicitly required by law, allows me to outline at my best the intense activity of operational and information integration that all the structures of the Financial Administration I have just described daily put into place.

In fact, each of these bodies of the fiscal Administration, within the sectors and the limits of its competence functions, constantly performs tax assessments aimed at maximizing the recovery of tax revenues, and to this end must produce the most intense and effective coordination and communication action with the other components of the system.

Sharing of fiscal and administrative information finds its full realization above all in the database of the Tax Registry, which allows real-time transmission of data on each taxpayer and any action on him.

Moreover, the Revenue Agency and the Guardia di Finanza have formed a number of working groups to share information about phenomena of tax evasion and tax fraud, profiles of suspicious individuals and methods of auditing and investigation. These working groups have had the aim of developing joint programs to combat tax evasion and maximizing the benefits of synergies between the two structures.

It is worth it to point out that also other bodies of the State, which do not have responsibility in tax matters, are required by law to report to the Guardia di Finanza any fact which might amount to a breach of taxation. This makes the Guardia di Finanza represent a collector, able to provide all the tax bodies with information from other government judicial sectors and that are relevant for tax purposes.

In fact, in our country, sharing of data and information arising from criminal investigations is also very intense, although within the limits imposed by the Code of Criminal Procedure: in this, once again, the role of a link between the criminal investigation and the administrative tax context is played, without any doubt, by the Guardia di Finanza, since it, holding both investigative powers, both in criminal and tax law,

is the liaison between the judicial authorities and the Tax ones.

Indeed in Italy, as already stated, the action of a criminal investigation is directed solely by the Prosecutor of the Republic, who, for the crimes of economic-financial nature, makes use, for investigations, of the Guardia di Finanza, as a police with prevalent competence in this area. At the Offices of the same Prosecutor of the Republic the Guardia di Finanza members are often posted, in order to assist the prosecutor in the management of such investigations.

In case the operators of the Fiscal Agencies responsible for inspections and/or audits, in the course of their activities, should make assumptions of crime, they must necessarily report it to the Prosecutor of the Republic.

In particular, Revenue Agency has the obligation to report to the Public Prosecutor, offenses identified in the course of its action to combat evasion, but without being able to be delegated to carry out the further police investigation, which is a prerogative of the Guardia di Finanza Corps, which later the Public Prosecutor, the owner of the investigation, will entrust with any judicial police investigations.

At the end of the criminal investigation, if it is not already resulted from an inspection or tax assessment, the State Prosecutor authorizes, as a rule, the Guardia di Finanza to use for tax purposes the findings made in criminal cases, in order to define the responsibilities emerging in the field of taxation. The results of this investigation are then communicated to the Revenue Agency for administrative activities of assessment and subsequent levying of the evaded tax.

It is thus a strictly codified mechanism and it is highly effective and efficient in the transmission and sharing of information.

In this organizational mechanism, as it has often been pointed out, the Guardia di Finanza stands as a police Corps with legislatively established general competence, to investigate all economic financial violations.

You can easily understand, then, as the Italian organization is not framed in predetermined templates, where the different actors involved in the fight against tax evasion and tax and financial crimes interact: this structure, thanks to the valuable contribution and to the institutional positioning of the Guardia di Finanza, ensures the circulation of information between the different fiscal bodies and the sharing of the same knowledges from the administrative sector to the

penal one and vice versa, so that an effective contrast is systematically realized against elusive and criminal phenomena, ever more insidious and characterized by marked transnational profiles.

Case Study

Topic 1.2

COOPERATION WITH TAX INTERMEDIARIES AND (PRIVATE) PROVIDERS OF THIRD-PARTY INFORMATION

Sudja Sharma
Member
Central Board of Direct
Taxes, Ministry of Finance, India
Ministry of Finance
(India)

SUMMARY

Economic Intelligence is the lifeblood of any Tax Administration. Without a comprehensive intelligence network systematically tracking significant economic transactions real-time, a revenue agency is shooting in the dark. Each economic transaction leaves a foot print. Sensing this importance, the Indian Tax Administration, in its enacted law, has introduced statutory provisions empowering the tax authorities to obtain data on economic transactions either from the tax payers directly or from the financial entities / institutions and tax intermediaries.

In the recent times, the focus of Indian Tax administration has seen a paradigm shift; moving from the era of collection of information on economic transactions directly from the tax payers during and for the purpose of audit to setting up a model in which the flow of information is automatic and continuous.

The Indian Tax administration has set up a separate arm for creating an efficient and effective database using various tools. One such

tool is Annual Information Return (AIR) system. The objective of this system is to have access to information on economic transactions of significance that are in possession of banking, financial, property registering authorities, etc. This system with the extensive use of information technology has brought commendable results within a period of 7 years since its introduction. The growth rate in tax collections and tax payers' compliances stand testimony to this utterance. The system of AIR was introduced in India in the year 2003-04. Since then, the net direct tax collection has increased by 370% and the number of taxpayers has increased by 15.50%.

The development of systems by the Indian Tax administration for the purpose of economic intelligence is a result of a 360 degree research and a step by step logical approach. This has made these new systems adaptable to the existing system facilitating the processing of unconnected pieces of information for the creation of a most potential database. Care has been taken to ensure that such systems are seen as a welcome change by making it cost effective and user friendly. Moreover, non-intrusive methods of data collection has changed the face of the Tax administration as it has addressed the tax payers' concerns related to harassment and has alleviated their grievances to a considerable extent.

To conclude, the Indian Tax administration continuously strives to ensure that enhanced tax payer services and also collection of right amount of tax (on the correct income determined, utilizing the economic intelligence) at the same time.

1. INTRODUCTION

Taxation, as it is understood, is the system by which a government collects money from people and spends it on things such as education, health and defence.

> "It was only for the good of his subjects that he (the king) collected taxes from them(the people), just as the Sun draws moisture from the Earth to give it back a thousand fold" –

Said Kalidas (a renowned Classical Sanskrit writer of 4th century AD) in Raghuvansh (an epic poem about the kings of the Raghu dynasty) eulogizing King Dalip.

In India, the system of direct taxation, as it is known today, has been in force in one form or the other from ancient times. The Indian taxation system was always broad based. The principle advocated by the

sages, who acted as advisors to the administrators of the ancient time, was that the taxes should be collected from the people in such a way that it does not hurt them. The same is being understood and adopted in the present day with a vision and mission that only the right amount of taxes are collected in the most right way.

How to determine what is the right amount of tax is a subject matter that entails a never ending research. Generation of income is an economic activity and in the economy one cannot function in isolation. Economy has a complex system comprising of institutions that are interrelated in their functioning and undertake interwoven transactions. Hence, the transactions of the tax payers vis-à-vis the institutions that exist in the economy need to be analyzed in the process of determining what is the right income of the tax payers and what is the due taxes to be collected from them.

While it has to be ensured that proper checks and balances are established to ensure that there is no escapement of income chargeable to tax, the focus should be more on the aspect that there should not be any undue harassment of tax payers in the name of tax administration. This is where, in addition to sensitizing the workforce, Indian tax administration focuses on the extensive use of technology to gather accurate information for effective use in tax administration.

This document focuses on the ways and means adopted by the Indian Tax administration in accessing the information in possession of banking, financial and insurance entities, as well as stock exchanges, with regard to the tax payers, to be used in tax administration. This document also focuses on the use of technology in aiding the tax administration in the collation, management and usage of information in possession of these institutions.

2. VARIOUS FINANCIAL INSTITUTIONS IN THE ECONOMY AND THE NATURE OF INFORMATION IN THEIR POSSESSION BANKING INSTITUTIONS

The primary function of banks is to channelize money from the surplus area to the deficient area. However, banks also perform the crucial function of assisting the players in the economy in carrying out their economic transactions with the others. The various functions of banking institutions are accepting deposits, extending credit, giving guarantees, discounting bills, facilitating transactions between parties (cheque system, electronic transfer, etc), etc to name a few.

The banks are in possession of all data pertaining to the transactions undertaken by the tax payers using the banking channel. Information on such transactions will act as a feeder in the assessment of income of the tax payers.

For example, there may be cash deposits in the bank account of a tax payer, which may be the sale proceeds in his business or assets. The tax payer may withdraw the same and expend it for his personal purpose. These cash transactions may be conveniently ignored by the tax payer while determining his income. However, if the tax administration has access to this information, then it can question the tax payer with regard to the accounting of the cash deposits and withdrawals and upon a finding, the same may be considered for the determination of his correct income on which due taxes are to be collected.

3. INSURANCE ENTITIES

The primary function of the insurance entities is to spread the risk and minimize the losses of the insured. Insurance entities will be in possession of the data pertaining to the assets of tax payers that are insured with them, value of such assets and the amount of premium paid by the tax payers for it. Such information might come handy for the tax administration to ascertain whether the premium paid by the tax payer or the asset owned by the tax payer are out of income that has been accounted for and suffered tax or do they constitute unaccounted investment or unaccounted expenditure. Hence the access to such information will be useful for the tax administration in the determination of correct income of the tax payers on which due taxes are to be collected.

4. STOCK EXCHANGES

Stock exchanges facilitate the functioning of the capital markets. They assist the companies, listed in the exchanges, to mobilize capital and the investors in freely investing in companies and exiting from them. In the days of online trading in stock exchanges, they are in possession of plethora of information. It may be noted that in India, the shares are dematerialized and traded online. Hence, every transaction of every tax payer is duly recorded. Such information can be useful in ascertaining whether the investment made by the tax payers in the shares of the companies listed in stock exchange is out of the known sources of income that has been taxed or not and also to ascertain whether the income generated out of those transactions have been accounted for or not. Hence, the access to such information will be

useful for the tax administration in the determination of correct income of the tax payers on which due taxes are to be collected.

5. METHODS OF COLLATION OF INFORMATION

Indian Tax authorities administer Indian Income-tax Act, 1961(henceforth "the Act"), a statutory Act. The Act was always having various provisions through which the information can be obtained directly from the tax payers and also from the entities in possession of tax payers' related information such as Banking, financial, insurance entities as well as stock exchanges. Earlier, such collection of information was tax payer specific which was more intrusive, until a new system was developed in India in the year 2003-04. This is called the Annual Information Return System. The later part of this document will focus on the conceptualization, implementation and challenges faced, as also achievement of this new system of collation of information.

6. ANNUAL INFORMATION RETURN (AIR) SYSTEM

A task force on direct taxes was constituted in India, which submitted its report on December 2002. One of the important recommendations of that committee was to ensure electronic collection of information automatically by eliminating the discretion of officers of tax administration and without bothering the tax payers. Accordingly, a new system for collation of tax payers' information from various government and non-government entities was introduced. The information so collated is to be put to proper analysis and then disseminated to the field authorities in tax administration. The field authorities in turn, use the information for the determination of correct income of the tax payers and the collection of due taxes thereon. This system is popularly called as 'Annual Information Return' system. A new provision was introduced in the Indian Income-tax Act, 1961 giving effect to this system. Further, rules were also framed under the Indian Income-tax Rules, 1962 prescribing the manner in which the AIRs have to be filed. Reproduction in verbatim of the said provision and rule are appended (Annexure 'A' and 'B') to this written presentation. The following paragraphs discuss the manner in which the system has been functionalized.

- The entities in the economy such as banks, financial institutions, companies, motor vehicles registering authorities, land and other property registering authorities and other such authorities / entities, with whom / through whom the tax payers may be having transactions having financial implications, are identified.

· The specific nature of information to be collated by them for reporting to the tax administration has been worked out. As per the system, the following are the specific transactions, about which information has to be supplied by the said entities to the tax administration:

Sl. No.	Class of person	Nature and value of transaction
1.	A Banking company to which the Banking Regulation Act, 1949 applies.	Cash deposits aggregating to Indian Rupees (INR) one million or more in a year in any savings account of a person maintained in that bank.
2.	A banking company to which the Banking Regulation Act, 1949 applies or any other company or institution issuing credit card.	Payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to Indian Rupees (INR) two hundred thousand or more in the year.
3.	A trustee or the manager of the Mutual Fund as may be duly authorized by the trustee in this behalf.	Receipt from any person of an amount of Indian Rupees (INR) two hundred thousand or more for acquiring units of that Fund.
4.	A company or institution issuing bonds or debentures.	Receipt from any person of an amount of Indian Rupees (INR) five hundred thousand or more for acquiring bonds or debentures issued by the company or institution.
5.	A company issuing shares through a public or rights issue.	Receipt from any person of an amount of Indian Rupees (INR) one hundred thousand or more for acquiring shares issued by the company.
6.	Registrar or Sub-Registrar under the Registration Act, 1908.	Purchase or sale by any person of immovable property valued at Indian Rupees (INR) three million or more.
7.	An officer of Reserve Bank of India duly authorized by the Reserve Bank of India in this behalf.	Receipt from any person of an amount or amounts aggregating to Indian Rupees (INR) five hundred thousand or more in a year for bonds issued by the Reserve Bank of India.

It may be noted that the filing of AIRs by the persons specified by the tax administration in the statutory Act has been made mandatory. Failure to file AIRs by such persons invites penalty under the provisions of the statutory Act.

· The format in which the data is to be collected and supplied to the tax administration has been designed which incorporates

necessary fields to make the data usable. A unique identification number called as PAN (Permanent Account Number) was allotted to every taxpayer. At the time of entering into above mentioned specified transactions, a tax payer is required to mandatorily quote his or her PAN to the class of persons mentioned in the above table. The specified persons are also required to mention the PAN against each transaction while filing the Annual Information Return (AIR) with the Tax administration. Failure to mention PAN by tax payers at the time of entering into specified transactions invites penalty under the provisions of the statutory Act. In case the individuals who state that they do not have PAN as they have income below the taxable limit, in that case it is mandatory for them to give a declaration to that effect and also give his/ her details in the prescribed form. Further, non-furnishing of AIR by specified class of persons also attracts penalty.

- When this PAN is quoted in the transactions, then the information collated from these persons / entities will be useful in correlating with the data filed by the tax payers in their tax returns.

- Such information collated is to be supplied to the tax administration by way of filing a return called as 'Annual Information Return'. The form in which it is to be supplied has been standardized. It has also been made mandatory that the information has to be necessarily filed with the tax administration in electronic format. This is for enabling the tax administration to run/ process the data and correlate the same with the data filed by the tax payers in their tax return. Such analysis helps in locating any mismatch that needs audit of such returns.

- Different income tax return forms used by the taxpayers have been modified so that the taxpayers themselves report such transactions in their annual income tax returns filed with the tax administration.

- The information received through Annual Information Return is then matched with the information provided by the taxpayers in their income tax returns. Cases of mismatch are selected for audit so as to determine the correct income of the tax payer on which he is required to pay the due taxes.

7. BENEFITS OF AIR SYSTEM

The purpose for which the system was introduced and the achievement of the same, clearly brings out the benefits of this system. The

following, though not exhaustive but indicative, are the benefits of the AIR system.

i. The system envisages automatic and continuous collation of information. The AIR is required to be filed by specified persons by the 31st of August following the closure of the financial year, being 31st March. For Example, the financial transactions of the tax payers pertaining to the financial year 1st April 2011 to 31st March 2012 has to be filed before the 31st of August 2012. This ensures that the information need not be called for every now and then. A system has been established wherein information about specified transactions come to the tax administration at specific intervals and that too automatically.

ii. This system was floated to eliminate the discretion of the individual officers of the tax administration with regard to what information is to be called for, from whom to be called for and when to be called for. The standardization of the nature of information, provider of information, timing of information to be provided for, automatically ensures that individual officers are taken away of their discretion which may be felt as intrusive by the tax payers. Hence, the grievance of the tax payers as being harassed when information is called for from them gets reduced significantly.

iii. The technology used in the mode of collection – being electronic filing of data mandatorily, ensures that the same may be integrated with the information in possession of the tax administration. Such cases of mismatch between the data provided by the entities and the data filed by the tax payers electronically in their tax returns are picked up for audit. Thus, it has enabled the tax administration in picking cases for audit in a scientific manner.

iv. The tax payers are now aware that information of their financial transactions is being collected by the tax administration. It has a deterrent effect. There is improved voluntary compliance with regard to the disclosure of such transactions as the tax payers are aware that the tax administration will come to know about them from other entities even if they do not disclose.

v. Since it is now widely known that certain financial transactions are being monitored closely by the tax administration, many individuals, who were hitherto non tax payers, have started filing their tax returns by taking into consideration the income generated out of the said transactions. Hence, the objective of increasing the tax base is being achieved.

vi. The selection of cases for audit, based on the information filed by these entities and the guidelines issued by the tax administration in this regard has made the assessment process (determination of the correct income of the tax payers) more specific and accurate. Hence, fishing and roving enquiries that result in tax payers' grievance are minimized.

vii. The system ensures that there is no duplication of data as individual authorities in the tax administration are not calling for information separately.

viii. The system is cost effective as substantial amount of information are collected at a very low cost. Further, the data having been collected electronically, it is easy to store, retrieve, analyze and integrate with other data of a tax payer in possession of the tax administration at a very low cost.

8. CHALLENGES OVERCOME IN THE IMPLEMENTATION OF THE AIR SYSTEM

The implementation of this AIR system was not an easy task. There were numerous difficulties in functionalizing the system that was envisaged. Some of the challenges / difficulties faced and overcome are as below.

i. India is a geographically huge country which comprises of 28 states and 7 union territories. The AIR scheme envisages certain authorities that come under the control of the states and union territories to file information. For example, the motor vehicle registering authorities and immovable property transaction registering authorities work under the administrative control of the state governments and the union territories. Hence, vast variations in the format, in which the information was being hitherto maintained by these entities prior to the introduction of scheme, were bound to be there. This problem was overcome by standardizing the format in which the information was to be collated henceforth and making the quoting of PAN mandatory.

ii. Since the entities that were to file the information under AIR system are located across the length and breadth of the country, sensitizing them with the objectives of the system was a herculean task. This had resulted in the teething problems at the initial stages of the implementation of the system. The problems encountered were like errors in the data as also incomplete information provided by the entities. This problem was overcome by making the system

simpler and providing training to the entities that are to furnish the information in the AIR.

iii. A detailed FAQ (Frequently asked questions) has been published in the website of the nodal agency (NSDL) in-charge of collecting AIRs.

iv. There were concerns raised by the entities at the initial stage of the implementation of this new system. They were mainly centered around compliance cost. This problem was overcome by making the cost of compliance as low as few hundreds of rupees (less than USD 10) per AIR (having more than 1000 pieces of information) filed electronically. Further, the utility software to be downloaded from the internet for the purpose of filing the AIR electronically has been made available free of cost in the website of the nodal agency (NSDL) in-charge of collecting AIRs.

9. DIRECTORATE OF INCOME-TAX (INTELLIGENCE)

The Indian Tax administration has a separate arm called as the Directorate of Income-tax (Intelligence) for creating and maintaining an efficient and effective database. In addition to AIR, this Directorate also collects specified information which is considered necessary from the point of view of tax administration which, otherwise is not collected through the automatic route like AIR system. For example, the stock exchanges are not covered in the AIR system as of now. However, the statutory Act provides that the stock exchanges are supposed to maintain all the data, for a period of 7 years, pertaining to the transactions undertaken by the traders in the market. This is necessarily maintained by stock exchanges as a tax namely 'Security Transaction Tax' is levied on every transaction made through stock exchanges. In Indian tax system, Stock exchanges are responsible to collect such tax and remit to the government treasury. This ensures that as and when the Tax administration wants to obtain data of specific values, the same can be provided by the stock exchanges.

Further, it has been made mandatory to have a PAN for all the persons trading through stock exchanges. The shares are in dematerialized form and can be traded only through an account maintained with authorized depositories. Hence, the retrieval of data pertaining to a particular Tax payer or identifying a tax payer of a particular transaction is possible.

Further, the stock exchanges are to report specified type of data/ transactions at stipulated intervals to this specialized Directorate.

Such information, after analysis, is, in turn, passed on to the officers dealing with the tax matters of the tax payers concerned. Reproduction in verbatim of the specific rule, in this regard, that finds place in the Indian Income-tax Rules, 1962 is appended (Appendix C) to this document for reference.

The Directorate of Intelligence, after collecting the information, uploads the same on the intranet of the tax administration for its effective utilization. During the year 2010-11, this Directorate has uploaded 145.70 million pieces of information.

10. CONCLUSION

Today, after the passage of eight good years since the implementation of the AIR system, India stands tall in the field of collation and usage of tax payers' information for the efficient tax administration. The system is being constantly improvised by making it fool-proof. The kind of information collected has also helped the tax administration in setting new parameters for the selection of cases for deeper audit.

The growth in the direct tax collection in India has been commendable over the past few years, which can be partly attributed to the improved voluntary compliance that is a direct result of AIR system. Definitely, the full implementation of AIR system for the purpose of collating of information from the banking, financial, insurance and other entities passed through many glitches and blocks. However, the end result is satisfying as it helped the tax administration to effectively march towards its vision of having a non-intrusive investment/business transaction information system for catching evasions and determination of correct taxes due from a tax payer.

Annexure A

SECTION 285BA of the INCOME TAX ACT, 1961

Obligation to furnish annual information return. 285BA.

(1) Any person, being—

(a) An assessed; or
(b) The prescribed person in the case of an office of Government; or
(c) A local authority or other public body or association; or
(d) The Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); or
(e) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988); or
(f) The Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or
(g) The Collector referred to in clause (c) of section 3 of the Land Acquisition Act, 1894 (1 of 1894); or
(h) The recognized stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or
(i) An officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934); or
(j) A depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996),

who is responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return, in respect of such specified financial transaction which is registered or recorded by him during any financial year beginning on or after the 1st day of April, 2004 and information relating to which is relevant and required for the purposes of this Act, to the prescribed income-tax authority or such other authority or agency as may be prescribed.

(2) The annual information return referred to in sub-section (1) shall be furnished within the prescribed time after the end of such financial year, in such form and manner (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed.

(3) For the purposes of sub-section (1), "specified financial transaction" means any—

(a) Transaction of purchase, sale or exchange of goods or property or right or interest in a property; or
(b) Transaction for rendering any service; or
(c) Transaction under a works contract; or
(d) Transaction by way of an investment made or an expenditure incurred; or
(e) Transaction for taking or accepting any loan or deposit, which may be prescribed:

Provided that the Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction:

Provided further that the value or, as the case may be, the aggregate value of such transactions during a financial year so prescribed shall not be less than fifty thousand rupees.

(4) Where the prescribed income-tax authority considers that the annual information return furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such return and give him an opportunity of rectifying the defect within a period of one month from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed income-tax authority may, in his discretion, allow; and if the defect is not rectified within the said period of one month or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to furnish the annual information return.

(5) Where a person who is required to furnish an annual information return under sub-section (1) has not furnished the same within the prescribed time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such return within a period not exceeding sixty days from the date of service of such notice and he shall furnish the annual information return within the time specified in the notice.

ANNEXURE B

RULE 114E of INCOME TAX RULES, 1962

Furnishing of Annual Information Return.

114E. (1) The annual information return required to be furnished under sub-section (1) of section 285BA shall be furnished in Form No. 61A and shall be verified in the manner indicated therein.

(2) The return referred to in sub-rule (1) shall be furnished by every person mentioned in column (2) of the Table below in respect of all transactions of the nature and value specified in the corresponding entry in column (3) of the said Table, which are registered or recorded by him during a financial year beginning on or after the 1st day of April, 2004:-

TABLE

Sl.No. (1)	Class of person (2)	Nature and value of transaction (3)
1	A Banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act).	Cash deposits aggregating to ten lakh rupees or more in a year in any savings account of a person maintained in that bank.
2	A banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.	Payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to two lakh rupees or more in the year.
3	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.	Receipt from any person of an amount of two lakh rupees or more for acquiring units of that Fund.
4	A company or institution issuing bonds or debentures.	Receipt from any person of an amount of five lakh rupees or more for acquiring bonds or debentures issued by the company or institution.
5	A company issuing shares through a public or rights issue.	Receipt from any person of an amount of one lakh rupees or more for acquiring shares issued by the company.
6	Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908.	Purchase or sale by any person of immovable property valued at thirty lakh rupees or more.
7	A person being an officer of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934, who is duly authorized by the Reserve Bank of India in this behalf.	Receipt from any person of an amount or amounts aggregating to five lakh rupees or more in a year for bonds issued by the Reserve Bank of India.

(3) The return referred to in sub-rule (1) shall be furnished to the Commissioner of Income-tax (Central Information Branch):

Provided that where the Board has authorised an agency to receive such return on behalf of the Commissioner of Income-tax (Central Information Branch), the return shall be furnished to that agency.

(4) (a) The return comprising Part A and Part B of Form No. 61A referred to in sub-rule (1) shall be furnished on computer readable media being a floppy (3.5 inch and 1.44 MB capacity) or CD-ROM (650 MB or higher capacity) or Digital Video Disc (DVD), along with part-A thereof on paper:

Provided that a person responsible for furnishing the return, may, at his option, furnish the return through online transmission of electronic data to a server designated by the "Annual Information Return – Administrator" referred to in sub-rule (7) for this purpose under the digital signature of the person specified in sub-rule 6:

Provided further that the return shall be prepared in accordance with the data structure specified by the "Annual Information Return – Administrator" referred to in sub-rule (7) in this regard;

(b) The person responsible for furnishing the return shall ensure that –

(i) if the data relating to the return or statement is copied using data compression or backup software utility, the corresponding software utility or procedure for its decompression or restoration shall also be furnished along with the computer media return or statement;
(ii) The return is accompanied with a certificate regarding clean and virus free data.

Explanation. – For the purposes of this sub-rule, "digital signature" means a digital signature issued by any Certifying Authority authorized to issue such certificates by the Controller of Certifying Authorities.

(5) The return referred to in sub-rule (1) shall be furnished on or before 31st August, immediately following the financial year in which the transaction is registered or recorded.

(6) The return referred to in sub-rule (1) shall be signed and verified by -

(a) In a case where the person furnishing the return is an assessed as defined in clause (7) of section 2 of the Act, by a person specified in section 140 of the Act;

(b) In any other case, by the person referred to in column (2) of the Table below sub-rule (2).

(7) The Board may appoint an officer designated as Annual Information Return – Administrator, not below the rank of the Commissioner of Income-tax for the purposes of day to day administration of furnishing of the Annual Information Return including specification of the procedures, data structure, formats and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies.

Annexure C

Conditions that a stock exchange is required to fulfill to be notified as a recognized stock exchange for the purposes of clause (d) of proviso to clause (5) of section 43.

6DDA. For the purposes of clause (d) of proviso to clause (5) of section 43, a stock exchange shall fulfill the following conditions in respect of trading in derivatives, namely:—

(i) The stock exchange shall have the approval of the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992 (15 of 1992) in respect of trading in derivatives and shall function in accordance with the guidelines or conditions laid down by the Securities and Exchange Board of India;
(ii) The stock exchange shall ensure that the particulars of the client (including unique client identity number and PAN) are duly recorded and stored in its databases;
(iii) The stock exchange shall maintain a complete audit trail of all transactions (in respect of cash and derivative market) for a period of seven years on its system;
(iv) The stock exchange shall ensure that transactions (in respect of cash and derivative market) once registered in the system are not erased;
(v) The stock exchange shall ensure that the transactions (in respect of cash and derivative market) once registered in the system are modified only in cases of genuine error and maintain data regarding all transactions (in respect of cash and derivative market) registered in the system which have been modified and submit a monthly statement in Form No. 3BB to the Director General of Income-tax (Intelligence), New Delhi within fifteen days from the last day of each month to which such statement relates.

Case Study

Topic 1.3

EVOLVING IRS PROGRAMS TO ACCELERATE ISSUE RESOLUTION

Douglas O'Donnell
Assistant Deputy Commissioner, International,
Internal Revenue Service
(United States of America)

1. SUMMARY

One significant objective of the United States Internal Revenue Service (IRS) is to reduce the length of time that a tax return is in the examination process, that is, the length of time from the day the taxpayer files the return to the day the taxpayer knows the amount of its final tax liability. A recent program that the IRS is using to shorten this open period is the Compliance Assurance Process, or CAP. In CAP, the IRS works with the corporate taxpayer before the taxpayer even files its tax return, so that the IRS has an opportunity to review relevant documents and meet with knowledgeable taxpayer contacts in order to consider the tax impact of various transactions. The IRS relies on full cooperation and disclosure by the taxpayer to achieve a successful CAP. The benefit to a taxpayer participating in the CAP program is the resolution of tax issues early, which gives it the opportunity to more accurately record tax reserves in its financial accounts. Resolving tax issues before the return is filed helps avoid the very expensive process of filing amended state income tax returns because the tax treatment of a transaction changed for federal tax purposes. By using the real-time audit program of CAP as well as other alternative dispute resolution options, including the Advance Pricing Agreement program, the Pre-Filing Agreement program, or the Fast Track Settlement program for unagreed issues, the IRS and the taxpayer try to resolve issues as soon as possible. In addition, when issues could impact taxes in 2 countries, conducting a joint audit of the taxpayer could save time and

minimize the use of taxpayer and tax administration resources. All of these techniques require a high level of communication, cooperation, transparency, and disclosure, but if these factors are present, these programs can be successful for everyone involved.

2. THE PROBLEM

The 1990's were years of increasing challenges for the IRS. Charles Rossotti became Commissioner of the IRS in November 1997, with a major goal of restructuring the IRS to modernize it and to improve taxpayer services. One area needing improvement was the audit process. In the 1990's, the IRS examined the approximately 1,700 largest corporations through the Coordinated Examination Program, or CEP. CEP teams generally began auditing returns 5 to 6 years after the taxpayer filed its tax return, and it took 2 to 3 years to complete the audit.[1] Thus, an audit of a tax year could be 10 years old, and if the resolution of the issues required litigation, the examination process could take 12 or more years. This was described as the "archeological dig" approach to auditing, where the documents relating to both transactions and the preparation of the tax returns were hard to find or lost in retention and the people involved in either implementing the transactions or preparing the tax returns were no longer employed by the taxpayer.[2] However, lengthy examinations are not a new problem. In 1994, the GAO reported that audits from 1961 were still open as of 1992.[3]

In 1999, 95% of the IRS' resources allocated to corporate taxpayers were directed to post-filing, rather than pre-filing, activities. Overall, audits of corporations with $250 million or more in assets accounted for about two-thirds of all additional income taxes and penalties assessed, but companies protested 80% to 90% of the proposed additional taxes and prevailed most of the time, with the result that only 20% of proposed audit adjustments were sustained on appeal.[4] Further, as a result of budget cuts reducing the number of auditors, the number of audits of large CEP returns was decreasing, while the use of aggressive corporate tax shelters was increasing. Also, as history would show, some corporations were using questionable techniques

1 *General Accounting Office (GAO), Compliance Measures and Studies of Large Corporations Need Improvement 18 (September 1994) (hereafter Compliance Measures)*

2 *Report of the Joint Committee on Taxation Relating to the Internal Revenue Service as Required by the IRS Reform and Restructuring Act of 1998, JCX-33-01, quoting from a letter from the Tax Executives Institute, Inc., dated April 12, 2001, included in the Appendix*

3 *GAO, Compliance Measures 39*

4 *Lee, Transaction Costs Relating to Acquisition or Enhancement of Intangible Property: A Populist, Political, but Practical Perspective, 22 Va. Law Review 291 (2002) (hereinafter Lee), including citations to GAO, Compliance Measures 42*

to widen the gap between profits reported to shareholders and profits reported to the IRS. In 1997, this gap was $122 billion, nearly twice what the amount was in 1995.[5] In Charles Rossotti's 1999 report Modernizing America's Tax Agency, the Commissioner indicated that "one of the overriding themes in improving IRS business practices is to shift from addressing taxpayer problems well after returns are filed to addressing them as early in the process as possible, and in fact prevent problems wherever possible."[6] This follows the quality principle that it is better for the customer and cheaper to eliminate defects than to fix them. One of the major strategies in the IRS's strategic plan for 2000 – 2005 was to reduce taxpayer burden by addressing taxpayer problems as early in the process as possible and preventing them wherever possible.[7]

3. THE BEGINNING OF A SOLUTION

As we began the new century, the IRS had as one of its goals the early resolution of taxpayer issues. Methods to accomplish this include agreeing on the tax treatment of a transaction before the taxpayer even files its tax return and resolving disputes arising after the return is filed without going through the Appeals process.

4. ADVANCE PRICING AGREEMENTS

The IRS has a long history of using alternative dispute resolution in a pre-filing setting, although in a very limited field. The IRS introduced the Advance Pricing Agreement (APA) program in 1991.[8] In the APA program, the taxpayer and the IRS work together to agree on an appropriate transfer pricing method for a number of years in the future. If the taxpayer files its tax return consistent with the transfer pricing method agreed on, the IRS agrees not to make any transfer pricing adjustments for the transactions covered in the APA.[9] The taxpayer can agree to a unilateral APA – that is, an agreement between the IRS and the taxpayer only. In that case, the transfer pricing method that the taxpayer must use in preparing its federal income tax return is agreed on. However, this does nothing to settle the transfer pricing method in a foreign country where the taxpayer operates. If the foreign

5 *Lee at 301, quoting an article by Owen Ullmann in USA Today, April 17, 2000*

6 *Modernizing America's Tax Agency 15 (1999)*

7 *Internal Revenue Service Strategic Plan 2000 – 2005 41 (1999)*

8 *Rev. Proc. 91-22, 1991-11 I.R.B. 1*

9 *Rev. Proc. 2006-9, 2006-2 I.R.B. 278. The scope of the APA program has expanded over the years and now included the resolution of transfer pricing issues as well as other issues arising in income tax treaties or the Code or Regulations where transfer pricing may be relevant, including the determination of income effectively connected with a trade or business within the United States. Rev. Proc. 2008-31, 2008-23 I.R.B. 1133, Sec. 3*

government proposes a different transfer pricing method on audit, the taxpayer may be subject to double taxation or have to seek competent authority to resolve the issue. As a result, the taxpayer often agrees to a bilateral APA – that is, an agreement between the IRS and the taxpayer, and the IRS and the foreign government.[10] If the United States has a tax treaty with a foreign country that contains a mutual agreement procedure (MAP) provision similar to Article 25 in the OECD Model Convention, the IRS and the foreign jurisdiction can work together to sign a bilateral APA that confirms the taxpayer's transfer pricing method for both countries. By the end of 2011, taxpayers had executed a total of 1,015 new, renewed, or revised APAs. Over half of these agreements were bilateral (589) or multilateral (13).[11]

5. PRE-FILING AGREEMENTS

In early 2000, the IRS announced in Notice 2000-12[12] that it was implementing a pilot Pre-Filing Agreement program for certain returns scheduled to be filed in late 2000 (specifically, September through December). The purpose of the program was to enable both taxpayers and the IRS to resolve before the due date of a tax return the treatment of issues otherwise likely to be disputed in post-filing audits. This cooperative effort was intended to reduce the costs, burden, and delays encountered in post-filing examinations. The IRS chose a handful of large business taxpayers to participate in the pilot program in 2000. The program was intended to allow the taxpayer and the IRS to reach agreement on factual issues and apply settled legal principles to those facts. It was not intended to determine the current interpretation of rules if the interpretation was not well settled. An example of an issue suitable for a Pre-Filing Agreement was the valuation of assets and the allocation of the purchase or sale price of a business. Examples of issues that were not suitable for Pre-Filing Agreements were issues that could be included in an Advance Pricing Agreement or issues regarding transactions that lacked a bona fide business purpose. Certain circumstances, such as issues that were the subject of a pending private letter ruling, were excluded from the program as well. The program also was not intended to settle disagreements over the correct interpretation of the tax laws (except in very limited circumstances).

The pilot program was successful. The IRS concluded that these Pre-Filing Agreements allowed taxpayers to file more compliant returns within prescribed time frames, were cost efficient, decreased taxpayer

10 Rev. Proc. 2006-9, Sec. 2.08
11 Announcement 2012-13, 2012-16 I.R.B. 805, APMA Statutory Report 2011, Table 1
12 2000-9 I.R.B. 727

compliance burdens, and conserved IRS resources. In early 2001, the IRS announced in Revenue Procedure 2001-22[13] that the Pre-Filing Agreement program would become permanent. The program was available to any taxpayer under the jurisdiction of the Large Business & International Division (LB&I) that wanted a pre-filing resolution of applicable issues that otherwise would be resolved in a post-filing examination. It was available for the current tax year or a prior tax year for which returns were neither due nor filed.[14] The application for a Pre-Filing Agreement can be made at any time before the due date (with extension) for filing a return, but if the request is submitted too close to the due date, and the IRS does not feel that it has enough time to consider the issue, the taxpayer will not be accepted into the program. Thus, this program is elective, not mandatory. Taxpayers participating in the program must pay a user fee.

The pre-filing program results in a closing agreement relating to the tax treatment of the transaction in question that is binding on both the taxpayer and the IRS. A Pre-Filing Agreement is available for issues that represent a factual determination or an application of legal principles to agreed-upon facts in which the legal principles are well established. In 2005, the Pre-Filing Agreement program was expanded to include limited consideration of issues for future tax years and to revise the list of eligible issues.[15] Now the program applies to past, current, and future years, although agreements for future years are limited to 4 tax years past the current tax year.[16] Eligible issues include factual issues, issues that require the application of well-established legal principles, or issues that involve a methodology. There is no list of specific eligible domestic and international issues, as long as the issue is not identified as an excluded issue. The IRS must coordinate and consult with the Associate Chief Counsel having subject matter jurisdiction over the issue proposed to be determined in the Pre-Filing Agreement. Certain international issues require the concurrence of the Associate Chief Counsel (International). Taxpayers have a very high overall level of satisfaction with this program.

6. FAST TRACK DISPUTE RESOLUTION

At the end of 2001, the IRS announced the Fast Track Dispute Resolution Pilot Program to introduce 2 new options for alternative dispute resolution, Fast Track Mediation and Fast Track Settlement.[17]

13 2001-9 I.R.B. 745
14 Rev. Proc. 2001-22, Sec. 3
15 Rev. Proc. 2005-12, 2005-2 I.R.B. 311, Sec. 2
16 Rev. Proc. 2009-14, 2009-3 I.R.B. 324, Sec. 3.02
17 Notice 2001-67, 2001-49 I.R.B. 544

The program was made permanent in 2003.[18] In Fast Track Mediation, an appeals official tries to facilitate communication and resolve factual issues. In Fast Track Settlement, an appeals officer helps resolve factual and legal issues, and the parties can take Appeals' assessment of the hazards of litigation into account in resolving disputes. The Fast Track program works best where there are a limited number of unagreed issues. Fast Track is not available in some cases, including where the issue has been designated for litigation by Chief Counsel, or for an issue that is the subject of a request for competent authority assistance. Either the taxpayer or the IRS may suggest the use of the Fast Track program, although both the taxpayer and the IRS must agree to the resolution of the issue. The IRS must have issued a Notice of Proposed Adjustment, and the taxpayer must have provided a written response to the Notice before the parties begin Fast Track Dispute Resolution. The Fast Track Settlement program is available to all LB&I taxpayers. Fast Track Mediation is available to small business taxpayers only, and Fast Track Settlement is available to certain small business taxpayers.

The Fast Track Settlement program is a collaborative process among the taxpayer, LB&I, and Appeals that is used during the exam process. If the program is successful, the issue considered in the Fast Track Settlement program is settled before the audit is complete. An Appeals Case Leader facilitates communications to help resolve factual and legal issues. It is intended that the issue will be resolved within 120 days, or 60 days for participating small businesses.[19] The Fast Track program does not replace the traditional appeals process, but it is designed as an alternative dispute resolution method. There is no cost to participate in this program, and if the IRS and taxpayer are unable to agree on an issue under consideration in Fast Track, all of the safeguards and procedures in Appeals continue to be available to the taxpayer.[20] It is estimated that use of the Fast Track program has reduced the audit cycle time by 2 months.

7. THE CONTINUING PROBLEM

Although the Pre-Filing Agreement program was successful, it has certain limitations. To participate in the program, the taxpayer must pay a user fee, and the agreement is available only for specific issues and not for the tax return in general.

In the early 2000's, there were a number of well-publicized financial breakdowns of large and seemingly financially sound corporations.

18 Rev. Proc. 2003-40, 2003-25 I.R.B. 1044
19 Publication 4167, Introduction to Alternative Dispute Resolution
20 Publication 4539, Fast Track Settlement

Enron Corporation, which Fortune Magazine had named "America's most innovative company" from 1996 through 2001, declared bankruptcy at the end of 2001, after many financial irregularities were discovered. Enron had hidden liabilities by recording them in offshore entities that did not have to be recorded in Enron's U.S. accounting records, and there was very lax review of its financial records. WorldCom declared bankruptcy in 2002. Its financial irregularities came from underreporting expenses and over reporting revenues, all accomplished with the knowledge and encouragement of upper management. Tyco Corporation was substantially reorganized because of financial troubles resulting from financial irresponsibility. It inflated its operating income and established improper reserves, again with the irregularities known at the highest operating levels.

One result of these financial irregularities was the enactment of the Sarbanes-Oxley Act, passed in 2002 in part to improve corporate governance.[21] Sarbanes-Oxley requires enhanced financial disclosures that reduced questionable items on financial statements and expanded the requirements of corporate governance. It relies on taxpayer transparency and a sharing of information.

In 2006, the Financial Accounting Standards Board (FASB) published FASB Interpretation No. 48 (FIN 48), Accounting for Uncertainty in Income Taxes. FIN 48 became effective in 2007. It requires businesses to analyze and disclose income tax risks. The business may recognize an income tax benefit only if it is more likely than not that the benefit will be sustained. As a result, it is important for businesses to know as soon as possible whether a tax benefit is acceptable to the IRS so that the appropriate financial reserves are booked.

8. THE EXPANSION OF THE SOLUTION

By the mid-2000's, a taxpayer could take advantage of both the Pre-Filing Agreement program to resolve issues before it filed a tax return as well as the Fast Track Settlement program to resolve disputed issues before the taxpayer went to Appeals. However, the taxpayer must pay a user fee to participate in the Pre-Filing Agreement program and there are limitations on the types of issues that will be considered. The audit resolution for the largest taxpayers still took an average of 60 months from the filing date.[22] Taking the issues through the Appeals process took an average of 26 additional months. This inhibited the

21 Pub. L. 107-204

22 Testimony of Mark Everson, Commissioner, Internal Revenue Service, before Joint Committee on Taxation, in JCS-4-05, Joint Review of the Strategic Plans and Budget of the Internal Revenue Service, 2003 8

early identification of emerging issues, including the significant volume of abusive tax shelter transactions. Further, although corporations were able to manage their tax reserves throughout this audit process, if the audit resulted in federal tax changes, the corporations would have to file amended state income tax returns, which can be an expensive process.

Taxpayers complained about the length of time that it took to complete an examination, the cost and administrative burden of supporting a lengthy examination, and the need for certainty of the tax liability for financial reporting. The IRS began to focus on reducing the length of the audit process. In 2005 the IRS announced a pilot program for large business taxpayers called the Compliance Assurance Process (CAP), referred to as the "ultimate prefiling agreement" by Donald Korb, Chief Counsel at the time.[23] The CAP program is a method of identifying and resolving tax issues through open, cooperative, and transparent interaction between the IRS and a taxpayer before the taxpayer files a return. It requires a contemporaneous exchange of information relating to proposed return positions and transactions that may affect the taxpayer's federal tax liability.[24]

The goal of the CAP program was to reduce taxpayer burden and uncertainly while assuring the IRS of the accuracy of tax returns before they are filed.[25] Through this improved service to taxpayers, as well as compliance with tax laws through real-time monitoring, review and issue resolution, it was hoped that CAP would reduce or eliminate the need for post-filing examinations, which saves time and resources and provides quicker guidance on tax issues. This allows the IRS to provide a more efficient use of audit resources and allows taxpayers to better manage tax reserves and ensure more precise reporting of earnings on financial statements. The IRS accepted 17 large business taxpayers in the pilot program.

By FY 2011, there were 140 taxpayers participating in the CAP program. In March 2011, the IRS announced that the CAP pilot program was being expanded and made permanent.[26] At the time it was made permanent, Douglas Shulman, the Commissioner of the IRS, said that "CAP is a program where the tax system is at its best – when the taxpayer and the IRS are transparent and issues are resolved before a return is filed."[27] In addition to becoming a permanent program, the

23 2004 TNT 192-4
24 Internal Revenue Manual 4.51.8.2
25 Announcement 2005-87, 2005-50 I.R.B. 1144
26 IR-2011-32, March 31, 2011
27 Id.

CAP program was expanded to include a new Pre-CAP program, which provides taxpayers with a clear roadmap of the steps required for gaining entry into CAP, and a new Compliance Maintenance program. The maintenance program is available to taxpayers who have been in CAP, have fewer complex issues, and have established a track record of working cooperatively and transparently with the IRS.

Participating taxpayers achieve tax certainty sooner and with less administrative burden than in a traditional post-filing examination program. As a result, the taxpayer can better manage its tax reserves and ensure more precise reporting of earnings on financial statements. The CAP program reduces overall examination cycle time and increases currency. It enhances the accurate, efficient and timely resolution of complex tax issues. It helps increase audit coverage by providing a more efficient use of audit resources. The program does not provide tax planning advice. It does not provide taxpayers with guidance on, or the resolution of, prospective or incomplete transactions outside of existing procedures.

9. OVERVIEW OF THE CAP PROGRAM[28]

Taxpayers must have assets of $10 million or more to participate in any CAP program.

If the taxpayer is a publicly held entity, it must have a legal requirement to prepare and submit Forms 10K, 10Q, 8K or 20F or other disclosure-type forms to the Securities and Exchange Commission or equivalent regulatory body. If the taxpayer is privately held, it must agree to provide to the IRS certified, audited financial statements or equivalent documents on a quarterly basis. A foreign-owned taxpayer that files the income tax return for foreign corporations operating in the United States can participate in the CAP program if it can provide documentation that is equivalent to what a U.S. corporation must file quarterly with the SEC. The taxpayer cannot be under investigation by, or in litigation with, the IRS or any other federal or state agency that would limit the IRS' access to current corporate tax records. In addition, if the taxpayer is currently under examination, it can participate in the CAP program only if it does not have more than one filed return that has not been closed in examination and one unfiled return for the year that has most recently ended.

28 *See Internal Revenue Manual 4.51.8, Pre-CAP Memorandum of Understanding, and CAP Memorandum of Understanding, available at http://www.irs.gov/businesses/corporations/article/0,,id=237774,00.html*

Although the first step in participation could be the Pre-CAP program, this paper begins with the CAP program, because understanding the benefits of the CAP program helps explain why participation in the Pre-CAP program is desirable.

CAP: The CAP program employs real-time issue resolution to improve federal tax compliance. Taxpayers must apply for acceptance into the CAP program annually and must submit an application between September 1 and October 31 of the year before the CAP year. The taxpayer sends the application to the Pre-Filing and Technical Guidance (PFTG) group. If the taxpayer satisfies the eligibility criteria and PFTG feels that the taxpayer is a good candidate for CAP, PFTG forwards the application to the LB&I Industry Director with jurisdiction over the taxpayer. Factors that the IRS considers in determining whether to accept a taxpayer into the CAP program include the level of cooperation and transparency shown in prior CAP years or pre-CAP years, the IRS and taxpayer resources, whether the taxpayer had a majority ownership change, and if the taxpayer had material financial restatements. If the IRS feels that the taxpayer historically has been less than transparent and cooperative, the IRS might not approve the taxpayer for acceptance in the program. If the taxpayer is not accepted into the program, the taxpayer can appeal the decision to the Deputy Commissioner (Operations), LB&I. More taxpayers have applied for the CAP program than have been accepted into the program. If the CAP application is approved, the taxpayer is notified in writing by the Territory Manager.

Before acceptance into the program, the taxpayer must execute a standardized Memorandum of Understanding (MOU) that outlines the CAP requirements and establishes the agreement to meet the requirements. The signed MOU must be returned by January 31 of the CAP year. Once the taxpayer is accepted into the CAP program, the IRS assigns an Account Coordinator who is the primary IRS representative. Other IRS employees may be added to the IRS team. In the MOU, the taxpayer agrees that it will make open, comprehensive, and contemporaneous disclosures of its completed business transactions including its proposed return reporting position and a description of the steps that have a material effect on its federal income tax liability. The taxpayer also agrees to disclose any other item that could have a material effect on its federal income tax liability and its proposed return reporting position for items that meet a materiality threshold. For CAP, a matter that has a material effect includes those items that the taxpayer will or would be required to reserve for purposes of any financial statement for the CAP year and those items that the taxpayer anticipates that it will or would be required to reserve for purposes

of any financial statement for any period after the CAP year. The taxpayer and the IRS jointly determine these materiality thresholds, and thresholds may be reconsidered during the year. These materiality thresholds are important, because the taxpayer does not have to disclose transactions below the threshold.

Regular meetings between the taxpayer and the IRS are essential. During those meetings the taxpayer will provide relevant information, documentation, and interviews to the IRS. The taxpayer and the IRS will discuss the status of the CAP and resolve concerns as they arise. The Account Coordinator must prepare a list of taxpayer disclosures on a quarterly basis and provide this list to the taxpayer. The taxpayer must verify that the disclosed items are all the material items completed to the date the list was prepared.

The CAP Team Manager and other members of the team will assess and document the taxpayer's transparency and cooperation. This assessment is made at least quarterly.

While the IRS and taxpayer jointly determine the scope of the CAP review, including materiality thresholds, the ultimate decision of identifying transactions, items, and issues for compliance review remains with the IRS. The materiality threshold could change from CAP year to CAP year and can be reconsidered during the current year. Certain items, such as tax shelter items, listed transactions, transactions of interest, potentially fraudulent items, LB&I compliance initiatives, and emerging issues, can be considered for a compliance review regardless of the materiality thresholds. The taxpayer is still expected to prepare and file all appropriate tax forms and schedules, such as Schedule UTP, the Undisclosed Tax Position Statement. In addition, the taxpayer must provide tax schedules and computations for all rollover and recurring adjustments from previous years that impact the CAP year.

The IRS still prepares Information Document Requests, or IDRs, but the cooperative and transparent nature of the CAP program often reduces the total response time. Once an issue is identified, the taxpayer should produce all documents relating to the issue and not wait for the IRS to issue follow-up IDR after follow-up IDR as more questions develop. The taxpayer and the IRS strive for expediency and urgency.

Once the taxpayer and the IRS have completely addressed an item or issue, the IRS drafts an Issue Resolution Agreement (IRA), and both parties mutually agree to a timely response date. In the response, the

taxpayer indicates whether it agrees or disagrees with the IRA. If the taxpayer disagrees, it must state all relevant facts and legal arguments that support its position. At the end of the CAP year, if appropriate, the IRS will provide one or more Closing Agreements for each completed IRA. If the taxpayer and the IRS can resolve all material items and positions taken with regard to transactions before the tax return is filed, the taxpayer is assured that the IRS will accept its tax return if it is filed consistent with the resolutions agreed to by the taxpayer and the IRS.

Any items that cannot be resolved before the return is filed will be resolved through the traditional exam process. However, the IRS will participate in the Fast Track Settlement program during the CAP year if the taxpayer and the IRS disagree on a proposed resolution and the taxpayer is eligible for Fast Track Settlement and requests it. The taxpayer must request Fast Track Settlement after the tax year ends, but before the tax return is filed. If the taxpayer requests an extension of time to file a return, the due date for the return is 8 ½ months after the tax year ends.

If the IRS and the taxpayer agree on all identified issues by the end of the pre-filing stage of CAP, the IRS provides a Full Acceptance Letter. This is written confirmation that as long as the post-filing review of the tax return shows that it was filed consistent with the agreements and no additional items or issues are discovered, the IRS will accept the taxpayer's return as filed. If only some of the issues are resolved, the IRS provides a Partial Acceptance Letter to indicate that the IRS will accept the return on these issues if the tax return is filed consistent with the Issue Resolution Agreements.

After the taxpayer files its tax return, the Account Coordinator begins the post-filing review of the return. The Account Coordinator and the taxpayer jointly review the return to verify that all resolved items and issues were reported as agreed and that all material disclosures were made in accordance with the CAP MOU. If the post-filing review indicates that all material items and issues were disclosed and resolved, the IRS issues a No Change Letter that concludes the examination of the taxpayer's books of account.

The goal for completing the post-filing review of the filed return is within 90 days of the date the return was filed. If there are inconsistent unresolved issues, or material issues that were not adequately disclosed, the IRS examines these issues through the traditional exam process. The taxpayer can appeal any item with respect to which a traditional examination was conducted.

Within 30 days of the date the return was filed, the taxpayer must provide a Post-filing Representation signed by an officer of the taxpayer who has authority to sign the U.S. income tax return. This Representation indicates that the taxpayer has disclosed all completed transactions and other items that have a material effect on the taxpayer's federal income tax liability for the CAP year and, as of the date of the Representation, there are no remaining undisclosed transactions or tax positions for the CAP year that would require the taxpayer to report reserves on any financial statement for the CAP year or any period after the CAP year.

The CAP Team Manager assesses and documents the taxpayer's transparency and cooperation at least every three months. The Team Manager and other members of the CAP Team will meet with the taxpayer to discuss the results. If the IRS determines that the taxpayer has not followed the terms of the MOU, the IRS can issue a termination letter. The taxpayer's participation in the CAP program ends and the IRS will conduct a traditional post-filing examination.

One of the most important aspects of a successful CAP program is communication. This includes communication between the IRS and the taxpayer, communication between personnel in the taxpayer's Tax Department and personnel in the rest of the company, and communication between the various sections of the IRS. Immediate and complete communication is best.

Obviously the CAP program only works well with complete transparency between the taxpayer and the IRS. The taxpayer cannot hide a transaction and hope the IRS does not find it in the audit process. For CAP to work, the taxpayer must disclose all transactions for the IRS to review during the year. The CAP program does not provide guidance on or resolve prospective or incomplete transactions outside of existing procedures. The taxpayer still must rely on traditional methods such as letter rulings for resolution of those issues.

The CAP program has been successful for both the taxpayer and the IRS. Participating taxpayers like the early certainty. It is better to lock in the appropriate amount of tax reserves than have to go to the CFO after the fact and say that the reserves must go up and that amended state income tax returns must be filed. The IRS likes the program because it uses fewer resources. There is a greater sense of collaboration from both sides – this is a real team effort.

Pre-CAP: Taxpayers may not be ready for the CAP program because they have more than one tax year under examination or have more than one tax return that is due. In this case, the taxpayer can apply to participate in the Pre-CAP program, which is designed to prepare the taxpayer to participate in the CAP program.

Taxpayers can apply for the Pre-CAP program at any time. Again, they send the application to the Pre-Filing and Technical Guidance group in LB&I. If the taxpayer meets the eligibility criteria, PFTG forwards the application to the appropriate industry director. The IRS may, but does not have to, approve a taxpayer's application for the Pre-CAP program. The taxpayer can appeal a negative decision to the Deputy Commissioner (Operations), LB&I. After the taxpayer is approved and before it is formally accepted into the Pre-CAP program, the taxpayer must execute a Pre-CAP Memorandum of Understanding. Unlike the MOU for the CAP program, the MOU for the Pre-CAP program is effective for the first Pre-CAP year and will continue in effect until the transition years are closed and the taxpayer qualifies for CAP or the taxpayer is terminated or voluntarily withdraws from the Pre-CAP program. The MOU defines specific objectives, sets parameters for the disclosure of information, describes the methods of communication, and serves as a statement of the parties' commitment to good-faith participation in the Pre-CAP program.

In the Pre-Cap phase, taxpayers and the IRS work in a traditional post-file examination process to complete examinations so the taxpayer qualifies to meet the CAP selection criteria. If the taxpayer does not have any open tax years, then it can apply directly to the CAP program.

Once accepted into the Pre-CAP program, the IRS assigns a Team Coordinator to the taxpayer. This Team Coordinator is the primary IRS representative who serves as a single point of contact for all federal tax matters. The IRS and the taxpayer work together to develop an action plan to complete all required examinations within an established timeframe. They also jointly determine the materiality thresholds for the pre-CAP examinations. The taxpayer must be prepared to show the same level of transparency and cooperation that taxpayers in the CAP program show. In the Pre-CAP phase, the taxpayer must act proactively to disclose in writing all transactions, material items and steps within the transactions, and other items that have a material effect on its federal income tax liability and its return reporting position for those items. It must provide the relevant information within the established timeframes. The Team Coordinator is responsible to promptly review all the relevant information that is provided and to communicate to the taxpayer when it needs more information, it disagrees with the taxpayer's tax treatment, or the tax treatment is

appropriate. The IRS and the taxpayer discuss the contents of IDRs and mutually agree on due dates. The parties strive for expediency and urgency during this process. The taxpayer provides information and documentation about adjustments from previous years. There are certain items that can be examined regardless of the materiality threshold or when or how they are identified. These items include tax shelters, listed transactions, transactions of interest, potentially fraudulent items, compliance initiatives, and other issues that have been formally identified as important or emerging.

Honest and open communication is critical for a successful Pre-CAP phase, and collaborative interaction and a sense of urgency are necessary. The Team Manager should assess the taxpayer's transparency and cooperation on at least a quarterly basis and should meet with the other members of the Pre-CAP team to discuss the results of the assessment.

Traditional post-file procedures are used, including the use of the Notice of Proposed Adjustment, Closing Agreements, and appropriate Revenue Agent Reports. Existing issue resolution processes, including Fast Track Settlement, can be used on an expedited basis. The taxpayer can withdraw from the program or the IRS can terminate the taxpayer's participation in the program if the IRS determines that the taxpayer is not adhering to the terms of the MOU. Termination of the taxpayer's participation in the Pre-CAP program leads to a traditional post-filing examination.

Compliance Maintenance: If a taxpayer continues to meet the CAP eligibility requirements and expectations, it may progress to the Compliance Maintenance phase.

In this phase, taxpayers execute the CAP Memorandum of Understanding and provide the required information. The IRS reduces its level of review based on the complexity and number of issues as well as the taxpayer's history of compliance, cooperation, and transparency in the CAP program. In the Compliance Maintenance phase, taxpayers also must disclose the steps within their completed business transactions as well as other material items that could have a material effect on their federal income tax liability and other items or issues that meet the materiality threshold. Taxpayers must disclose their proposed tax positions for these disclosed items. The IRS may move taxpayers between the CAP phase and the Compliance Maintenance phase depending on the complexity and/or volume of transactions and other factors.

A taxpayer must complete at least one CAP cycle through the post-file review before it can apply for the Compliance Maintenance program. The Compliance Maintenance program is not for every CAP taxpayer in every year. A typical taxpayer in the Compliance Maintenance program will have strong, functioning internal controls, low-risk transactions, and a CAP history of limited controversies, with full compliance with both the letter and the spirit of CAP in previous years. For example, in the previous CAP program, the taxpayer would have been proactive in advising the CAP team of major transactions sufficiently in advance for appropriate IRS resource planning, no issues considered in the CAP years would have gone into a post-file examination because of inadequate time to develop the issue, and no new issues would have been discovered after the return was filed. In addition, there should be little to no turnover in personnel within the taxpayer's Tax Department to ensure a current understanding of the process.

In most instances, domestic team members will not be needed and the pre-file review work will require no more than 32 staff days for the Account Coordinator during the 12-month pre-filing period. All issues can be completed within 6 to 8 days (or less) per quarter. Minimal due diligence work is anticipated and specialist resources should not take more than 5 days a quarter.

10. CAP PERFORMANCE MEASURES

It is difficult to design objective measures with respect to tax liabilities to assess if the CAP program is effective. The IRS would perform the audits in any case. In a "typical" post-filing audit, one may consider the additional tax assessments, that is, how many tax dollars were found (taxpayer files a return showing taxes of $10 million, auditor determines total taxes should be $20 million), compare those dollars with how many hours it took to finish the audit (100 hours of all IRS personnel involved), and determine an objective value of the audit. One cannot do that with CAP. If CAP works as it should, there are no post-filing audit adjustments, because all issues are resolved before the return is filed.

Another objective measure of program effectiveness is cycle time, that is, the time from filing a return until the IRS examiner closes the case and either the taxpayer agrees with or appeals the tax assessment. In this case, CAP is effective. For the filing year 2009, for example, the overall post-filing cycle time was almost 8 months if the taxpayer was in the CAP program and almost 50 months if the taxpayer was not in the CAP program.

Even if one adds the possible 20 months of pre-filing time used in the CAP program (making the unlikely assumption that the IRS begins its work on the first day of the tax year), the cycle time for taxpayers in the CAP program saves 22 months.

The IRS has conducted CAP surveys to help identify performance measures. In 2010, the IRS conducted 3 separate surveys of IRS examiners, which include the account coordinators and specialists; IRS managers and executives; and customers (the taxpayers). Overall, the survey results show that the program is successful.

Within the IRS, the managers are more positive about the CAP program than the examiners who deal with the taxpayers on a day-to-day basis. 62% of the examiners and 87% of the IRS managers indicated that the CAP program effectively addressed tax compliance for the IRS. Slightly more than half of the IRS responses indicated that the tax results in the CAP case are equal to or greater than the tax results that would have been obtained in a traditional post-file exam. However, 37% of examiners and 21% of managers indicated that the tax results were less in the CAP program. About 25% of the responses were neutral. Almost three-quarters of the IRS responses indicated that the overall experience was very successful in meeting the CAP program objectives. Fewer than 8% were very dissatisfied or dissatisfied with the CAP program. Some IRS responders found it hard to assess whether CAP was or was not effectively addressing tax compliance – how do they know what was missed? With CAP, they may never have a chance to find out. One examiner complained that a review of a pre-filing disclosure did not provide the same opportunity to develop the facts as a review of a filed return, and it still seems to take the same time to develop the facts.

The effectiveness of the CAP program depends on transparency and cooperation. Transparency involves agreement between the IRS and the taxpayer on the materiality threshold and the disclosure by the taxpayer of all transactions having a material effect on the tax return. Over 28% of examiners and over 40% of managers indicated that the taxpayer was extremely transparent, with another 58% of examiners and 52% of managers indicating that the taxpayer was somewhat transparent. Nevertheless, 30% of examiners and over 26% of managers reported that taxpayers did not provide sufficient information on all transactions that have a material effect on the tax return, including those items where a reserve is required. While over 60% of all IRS responders indicated that the taxpayer disclosed all transactions that had a material effect, only 25% of the responses indicated that the taxpayer also disclosed all the proposed tax positions and identified

all the tax issues. In addition, almost 24% of examiners indicated that they discovered a transaction with a material effect through other means that should have been disclosed by the taxpayer.

On a positive note, continued participation in the CAP program appears to improve the level of transparency. Over 19% of the examiners indicated that transparency increased and fewer than 5% of the examiners indicated that transparency decreased in subsequent CAP years.

Over 70% of examiners and over 88% of managers rated the taxpayers as cooperative or very cooperative. However, one comment from an examiner indicated that some taxpayers feel that they will not be dropped from the CAP program, so they have no incentive to be cooperative. In the long run, the lack of transparency and cooperation by the taxpayer could result in the taxpayer not being accepted into the CAP program in a future year. As participation in CAP continues from year to year, the taxpayer and IRS can agree on the methodology for issues much more quickly, so the scope of the audit in each subsequent CAP year is becoming narrower and the overall audit is more efficient.

Not all examiners find that the CAP program is right for their taxpayers. 18% of examiners indicated that the taxpayer should be terminated from the CAP program.

Reasons for this recommendation were varied and referred to (1) taxpayers that are too large with too many international operations; (2) uncooperative taxpayers, or taxpayers who are contentions and unprofessional towards IRS personnel; (3) taxpayers who fail to comply with the CAP agreement; (4) taxpayers who are not transparent; (5) taxpayers who are not timely; (6) taxpayers who fail to disclose information and simply may not be compliant enough for the program; and (7) lack of taxpayer resources. Transfer pricing is an area that does not seem to lend itself to resolution in the CAP program.

Participating taxpayers also were satisfied with their CAP experience, with 92% of the 86 respondents indicating that they are very satisfied or somewhat satisfied with the process, and only 5% indicating that they are very dissatisfied or somewhat dissatisfied with the program. One taxpayer indicated that the quality of the CAP coordinator and manager was key to a successful CAP program.

Areas that the taxpayers assessed to determine performance measures are timeliness, tax certainty, and resources required. The

most common measure of effectiveness for the taxpayer was resolving tax issues in a timely manner. Taxpayer complaints about timeliness generally involved the lack of the responsiveness of specialists. Interestingly, the examiners complained about delays in this area also. On the other hand, specialist comments in the survey indicated that the CAP process does not give them sufficient time to respond, so the coordination of on-site examiners and other IRS personnel involved in CAP may be an area for improvement. Taxpayers also complained about the delays involved when issues have to be sent to the National Office because they are new or unique. Some taxpayers feel that they turn over transaction documents immediately, only to have the IRS sit on them. Therefore, decreasing the response time from the IRS is an opportunity for improvement. Staff turnover, whether in the IRS or in the taxpayer's tax department, also affects timeliness.

Other measures of effectiveness for the taxpayer were gaining tax certainty and reducing the use of resources. 62% of taxpayers indicated that the CAP program increased tax certainly a lot, with another 33% indicating that it increased tax certainty somewhat. Benefits of gaining tax certainly included spending less time on audits, reduced administrative costs, and reduced staff burden.

One examiner comment in the survey could be said to sum up the hopes for the program: Before CAP, the taxpayer was very aggressive with its tax positions. Once in CAP, it became very transparent and wanted tax certainty and became less aggressive.

The new tax director made this change along with the board of directors. They felt it was better to be in CAP than the path they had been on - unagreed audits, Appeals, etc.

As the survey results show, the assessment of the CAP program is still mixed. However, these are still the early years of the program. The positive comments from both the IRS and taxpayers support the feeling that a successful CAP program depends on all parties agreeing to work to make it successful. The framework for success exists and may need better implementation from time to time. The program probably will never be popular or successful with, or even appropriate for, every taxpayer, but improving the tax return patterns of even a few taxpayers through participation in the CAP program could be seen as a success.

11. CONTINUING THE SOLUTION

The CAP program shows how the IRS and the taxpayer can work cooperatively and transparently to achieve success for both parties. As

companies become increasingly more global, it becomes increasingly less efficient for governments to wear audit blinders and look at the tax issues of the company only within the boundaries of its country alone. Instead, tax administrations are trying to maximize the benefits of conducting audits while minimizing the use of taxpayer and tax administration resources.

The operations and financial affairs of multinational companies are complex and cross many tax jurisdictions. Cooperation between tax administrations is required to ensure that the correct amounts of tax are raised on international business transactions while conserving the use of resources. Multinational corporations can expect heightened scrutiny not only by U.S. tax authorities but by foreign governments as the focus grows on transparency across borders.

Using joint audits to improve taxpayer services is not a new concept. In its 1998 Report Harmful Tax Competition: An Emerging Global Issue, the OECD made recommendations to counteract harmful tax practices. One recommendation related to co-ordinated enforcement regimes, with simultaneous or joint audits included as an example of such a coordinated effort.[29]
Simultaneous and joint audits are not the same. As CIAT explains in its EOI Manual, a simultaneous tax examination is an arrangement by 2 or more countries to examine simultaneously and independently, each on its own territory, the tax affairs of taxpayers in which they have a common or related interest with a view to exchanging any related information which they so obtain.[30]

In contrast, a joint audit is an arrangement between participating countries that agree to conduct a coordinated audit of a related taxpayer where the audit focus has a common or complementary interest and/or transaction(s).[31] Said another way, a joint audit is where the exam teams from two or more countries join together to form a single audit team to examine cross-border business transactions involving a company and its related affiliate(s) organized in the participating country(ies).

Joint examinations may be timesaving and less resource-intensive, and they can produce swift resolution. Ideally, the taxpayer needs

29 Organisation for Economic Co-operation and Development (OECD), Harmful Tax Competition: An Emerging Global Issue 69 (1998)

30 CIAT, Manual for Implementing and Carrying Out Information Exchange for Tax Purposes, Module on Conducting Simultaneous Tax Examination 4 (2006)

31 OECD, Manual on the Implementation of Exchange of Information Provisions for Tax Purposes, Module 9 on Joint Audits: The Forum on Tax Administration Joint Audit Participants Guide 4 (2010)

to answer each question only once and provide documentation only once.

Generally, the administrations look for cross-border transactions involving the shift of profits between the jurisdictions or, in certain cases, away from the jurisdictions (for example, movement of intellectual property to a low or no tax jurisdiction) for joint audit consideration. Joint audits can be proposed by the tax administrations and/or taxpayers.

A joint audit should be considered when there is an added value compared to traditional exchange of information procedures; when the countries have a common interest in the transaction(s) of one or more related taxpayers; and when the examining jurisdictions would like to get a complete picture of a taxpayer's tax liability in reference to the transaction(s). In joint audits the taxpayer makes joint presentations and shares information with the countries.

The most important elements for an effective joint audit process are collaboration by exam teams, transparency from the taxpayer, a commitment from all stakeholders to deliver within the agreed timeframes, and solid support from the tax administrations' management.

The primary objectives of a joint audit are to reduce taxpayer burden of multiple country audits; to provide as much evidence about a transaction as possible, in order to determine the correct amount of income, expense and tax to be reported; to address factual disputes by the jurisdictions (for example, how to define intellectual property; who owns the intellectual property; characterizing an entity's functions, risks, and assets employed); to accelerate the Mutual Agreement Procedure by early involvement of the Competent Authority, where double taxation is involved, in order to reach a joint/mutual agreement on the audit results; to recognize and learn from the different audit methodologies and harness the strengths and expertise of team members from different administrations for the benefit of the joint audit; to enhance the awareness of the opportunities available in dealing with international tax risks; and to identify and improve further areas of collaboration.

The IRS has begun several joint audits. One involved a joint audit of one of our CAP taxpayers that involved a transfer pricing issue. We resolved the issue bilaterally for the CAP year and we also were able to provide the taxpayer with a bilateral Advance Pricing Agreement to

cover future years. We did all of this in only six months.[32] This was a Win-Win-Win situation for all stakeholders.

This successful joint audit highlights several of the elements that we need to see in future joint audits:

Transparency: We began with a CAP taxpayer, who had already agreed to cooperate and open its books before a tax return is filed.

Real time: We resolved a complex issue in six months, combining a competent authority process into the audit.

Certainty: We resolved the issue for the current year and for future years.

Coordination between two governments: We worked cooperatively with another government to reach a mutually acceptable principled resolution.

Joint audits can work well with a cooperative taxpayer. They can be used to resolve issues for prior tax years, the current tax year, and future tax years. They are a useful process promoting tax compliance and providing pricing certainty. By involving Competent Authority early in the joint audit process, issue resolution timelines are greatly reduced.

12. CONCLUSION

Like many tax administrations, the IRS has increasing responsibilities with limited growth in personnel. To maintain or even improve our effectiveness, we must look for efficiencies in delivering our responsibilities. These efficiencies include resolving issues earlier in the exam process to reduce taxpayer burden and minimize the use of resources. We began in 2000 with Pre-Filing Agreements, continued in 2001 with Fast Track Appeals Mediation and Fast Track Appeals Settlement, piloted in 2005 and later made permanent the Compliance Assurance Process and have begun working with treaty partners to conduct Joint Audits. We have also been focused on service improvements in our Advance Pricing Agreement and Mutual Agreement Procedure programs.

32 *Prepared Remarks of Douglas H. Shulman, Commissioner of Internal Revenue, Before the IRS/George Washington University 24th Annual Institute on Current Issues in International Taxation, Washington, DC, Dec. 15, 2011*

The IRS continually evaluates the effectiveness and efficiency of programs while searching for new approaches that improve compliance and taxpayer service while maintaining employee engagement. Our role as tax administrators allows us to consider opportunities from across the world as we face similar challenges. We hope this paper provides you with thoughtful approaches to improve compliance and enforcement engagements with large businesses.

Case Study

Topic 1.3

COOPERATION WITH TAXPAYERS AND SOCIETY IN GENERAL

Guarocuya Felix
Director General of Revenue
General Directorate of Internal Taxes
(Dominican Republic)

Contents: *1. Summary.- 2. Introduction.- 3. Legal aspects of implementing standard 08-04.- 4. Application of the regulation.- 5. VAT withholding evolution.- 6. VAT withheld by sector and activity.- 7. Amount of taxpayers affected by the regulation.- 8. Delinquent taxpayers. - 9. Conclusion*

1. SUMMARY

This case shows the results of the regulation 08-04 implemented in the Dominican Republic as a VAT[1] withholding mechanism generated on transactions through credit/debit cards. The results of the regulation are very satisfactory. The average growth rate of the VAT withholding is 12.8%. Also, the annual average growth of the amounts billed by credit/debit cards is 15%. Among the Economic activities most involved in the VAT withholding in 2011 are: Businesses (65%), Hotels, Bars and Restaurants (15%) and Communications (11.9%).

The regulation allows the measurement of VAT withholding through the use of credit/debit cards. Another important element is that it allows the DGII to immediately identify taxpayers who fail to pay the tax once it is withheld from consumers. Since its implementation, the control of delinquent taxpayers receiving income payments through credit/debit cards keeps reducing from 53% in 2005 to 12% in 2011.

1 *VAT in Dominican Republic is called Impuesto sobre Transferencias de Bienes Industrializados y Servicios (ITBIS).*

2. INTRODUCTION

For reducing VAT evasion mainly in sectors selling to final consumers, the Tax Administration has instituted Acquisition Companies[2] as VAT withholding agents generated in transactions through credit cards or debit cards. The Dominican Republic has two of these companies active: Cardnet and Visanet, which are intermediaries between financial institutions issuing credit/debit cards and businesses where final consumers purchase goods or services paying by these cards.

The use of credit/debit cards increased over recent years. This phenomenon is worldwide, and is considered as a great contribution to the economic growth of developed countries allowing consumers to have more opportunities to acquire goods and services, and thus provide more money to the local economy.

In the Dominican case VAT withheld by the Acquisition companies is reported every Friday of every month, so the months with a higher number of Fridays are expected to have a higher collection.

In recent years, the number of cards in the Dominican Republic has grown considerably due, among other factors, to the strong performance of the economy, to the information campaign, to the growing banking sector, and the expansion of the point of sales infrastructure. Payment instruments Statistics[3] to December 2011 confirm that from the total of cards currently on the market, 3.55 million belong to the category of debit cards and 2.04 million are credit cards.

In order to show the project results/achievements, this document includes the following sections: legal considerations supporting this rule, description of the rule 08-04 application; evolution of VAT withholding; VAT withheld by sector and economic activity; taxpayers affected by this rule and detected as delinquent and finally details of the impact of the rule 08-04 on tax evasion.

2 . *For the purposes and application of this standard, an Acquirer business (Compañia de Adquiriencia) is any institution, organization or company which acts as an intermediary between a financial institution or bank (credit card issuer) and the business where the operation is registered and its value determined; these companies install the devices for capturing the cards data for banking validation purposes and pay the consumed items, discounting a brokering and processing fee.*

3 *Economic statistics. Central Bank of Dominican Republic available on http://www.bancentral.gov.do/sipard.asp?a=ESTADISTICAS*

3. LEGAL ASPECTS OF IMPLEMENTING STANDARD 08-04

Tax authorities of the Dominican Republic have power to make general rules about various subjects, which are among others: averages, coefficients and other indices that serve as ex officio basis to estimate the tax base[4].

Also the obligation to submit returns and pay taxes; establish and abolish withholding collection agents, and information, as well as any other appropriate provision for the proper administration and collection of taxes.

Withholding agents are those who by their public function or because of business activity, trade or profession, are involved in acts or transactions in which they can withhold the corresponding tax. Therefore, the withholding agent does not deliver to his creditor the corresponding tax amount in order to deliver it to the tax administration.

In this regard, the DGII has issued the 08-04 Regulation where Acquisition Companies are instituted as VAT withholding agents in transactions generated by credit/debit cards, which shall withhold thirty percent (30%) of the VAT amounts appearing in transactions in affiliated premises. VAT payers consider the deductions made as a prepayment on their monthly returns.

However, the Dominican Republic has Law 183-02 (Monetary Financial Law) which in its Article 56 emphasizes the need for banking secrecy, considering that confidentiality obligations are part of good banking practices, and that financial intermediaries have a legal obligation to maintain secrecy regarding deposits received from the public in disaggregated form, revealing the identity of the person. This information is part of the privacy of the financial system customers.

It is emphasized that the legislation does not violate the provisions of the Monetary and Financial Law[5] on banking secrecy because the DGII only receives information on the amount and business where the transaction was made without exceeding the limits of individual information.

4 *General rules, General Directorate of Internal Taxes. Available at: http://www.dgii.gov.do/legislacion/normas/Documents/norma08-04.pdf/*

5 *Regulation. Central Bank, Dominican Republic Available in: http://www.bancentral.gov.do/normativa/leyes/Ley_Monetaria_y_Financiera.pdf*

Taxpayers whose business is the sale of goods such as medicines, books, newspapers, magazines, fuel and health services, electricity, water, waste collection and education are exempt from the withholding mechanism. They must request to the DGII an authorization so the Acquisition Companies exclude them from the withholding procedure

Table No. 3. 1

Legal base	Description
Constitution of the Dominican Republic	Article 75, paragraph 6), which states that people have a duty to pay taxes, in accordance with the law and in proportion to their ability to pay, to finance public spending and investment. Article 243, on the principles of the tax system, stating that: "[...] the tax system is based on the principles of legality, justice, equality and equity for each citizen to comply with the maintenance of public charges." Article 50 recognizes and guarantees freedom of enterprise, stating that: "Everyone has the right to freely engage in economic activity of their choice, no restrictions other than those prescribed in this Constitution and established by law." Article 128, paragraph 2, letter b), empowers the President of the Republic to issue decrees, rules and instructions when necessary.
Tax code	Empowers the Tax Administration to control the taxpayers through Article 50, subparagraphs i), j) and k) listed below: i) Provide control inspectors, inspections and verification anywhere, commercial or industrial establishments, offices, warehouses, ports, airports, ships, airplanes, trucks or containers, vehicles and other means of transportation. j) Submit or display to the tax administration, returns, reports, documents, forms, invoices, vouchers from merchandises, receipts, price lists, etc.., related to obligations, and generally give clarifications upon request k) Any individual or legal entity that perform transfer operations to goods or services for consideration or issue tax receipts for transfers or transactions. Prior to their issuance, they must be controlled by the tax administration according to the established rules. Similarly, Article 355 of the Code establishes the taxpayers' obligation to issue the required documentation to support their transfer, taxable and exempt services.

Law 227-06	Law 227-06 which provides legal and operational autonomy, budgetary, administrative, technical and equity capital to the Directorate General of Internal Taxes (DGII): Article 4, paragraphs c), d) and n) gives other powers and functions: implement a management system to meet the revenue targets set by the Executive, as well as working on the continuous improvement of taxpayer assistance services, design systems and administrative procedures aimed at securing compliance with tax obligations.
Legal base	Description
Regulation 08-04	Article 1: Effective first (1st) of January, two thousand and five (2005) are instituted as withholding agents VAT transactions generated by credit card or debit card to the Acquisition Companies. Article 2: Acquisition companies must withhold thirty percent (30%) of the VAT amount appearing in transactions with credit or debit cards in affiliated businesses. The total VAT withheld must be paid by the Acquisition Companies on Friday of each week, covering the period from Friday to Thursday in any of the Large Taxpayers Office (OGC). PARAGRAPH I: Where in transactions subject to this withholding do not appear in the VAT, the Acquisition Company shall apply factor 0083 to the total amount of the transaction, equivalent to sixty percent (60%) of the VAT amount not shown. PARAGRAPH II: Taxpayers whose main activity is the sale of goods exempt such as medicines, books, newspapers, magazines and fuel, and exempt services such as health, electricity, water, waste collection, education, are exempt from the withholding mechanism for which they must request authorization from DGII so Acquisition Companies exclude them from the withholding procedure. Article 3. Acquisition companies must submit a report on the withheld VAT and transferred it to the DGII, specifying the VAT withheld for each affiliated business. The presentation referred to in this Article shall be made in the manner and by the means provided specifically for this purpose by the Internal Revenue Department. Article 4. In the event that VAT taxpayer after being withheld by Acquisition Companies has a credit balance, they can use it within the framework of the regulations established. Article 5. VAT Taxpayers should consider withholding as an advance payment in their monthly return, the amount that was withheld by the Acquisition Companies. Article 6. Noncompliance with the provisions of the General regulations will result in application of penalties under the Tax Code.

4. APPLICATION OF THE REGULATION

The implementation and applications of this mechanism are explained below:

1. The customer pays by card. The affiliated business receives the consumer's credit or debit card and makes the transaction.

2. The payment is processed at the sales point[6]. The amount of the sales or transaction is recorded, authorization from the card issuing bank is requested and then an invoice detailing the VAT withheld is issued.

3. Withhold. Acquisition Companies (Credit and Debit Cards administrators) withhold thirty percent (30%) of the VAT appearing in transactions by credit or debit cards taking place in affiliated businesses.

4. The DGII receives the withheld amount and stores it in the database. Acquisition companies must submit a report regarding the VAT withheld and transferred to the DGII, specifying VAT amount withheld for each affiliate business. The DGII receive the full amount withheld and introduces it in its database

5. Database on withheld amounts. Data generated on VAT withheld by Acquisition companies are filed.

6. Information Crossing. There are different ways to cross the information reported to the DGII, through which it is possible, for example: to determine the delinquent taxpayers, verify the levels of sales, whether they are sales reported with credit card or debit cards vs. total sales, among others.

6 It is a device which, connected to the traditional phone network allows charging through credit card or debit card in real-time with the central card manager, including an authorization request and, at times, the amount charged.

Graphic 4.1
Application of regulation 08-04 overview

Source: Dominican Republic General Directorate of Internal Taxes

5. VAT WITHHOLDING EVOLUTION

Government tax revenues withheld by the application of this rule have sustainably increased since its enforcement began. At first approximately 5,380 VAT taxpayers who did not report VAT (delinquent) but invoiced sales paid with credit/debit card consumers were detected, and therefore Acquisition Companies withheld their corresponding VAT.

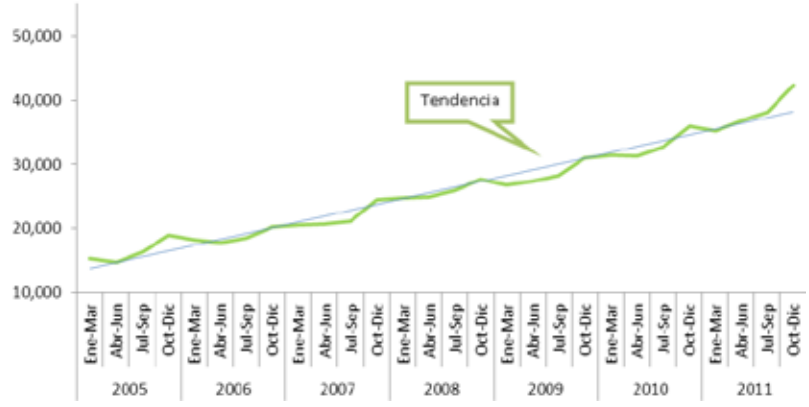
One concern of those affected by the rule at the beginning of its implementation was a possible disincentive in using credit/debit cards. However, as shown in Graphics 5.1 and 5.2 the trend of the number of transactions and the amounts invoiced have been positive. Each month transactions are increasing and so increase VAT withholdings.

The average annual growth of tax withholding from the application of the regulation is 12.8%. In addition, the annual average growth of the amounts invoiced by credit / debit card was 14.8% at the end of 2011.

Graphic 5.1
Quarterly Evolution of VAT withheld with Credit /Debit cards
In millions DR $

Source: Dominican Republic General Directorate of Internal Taxes.

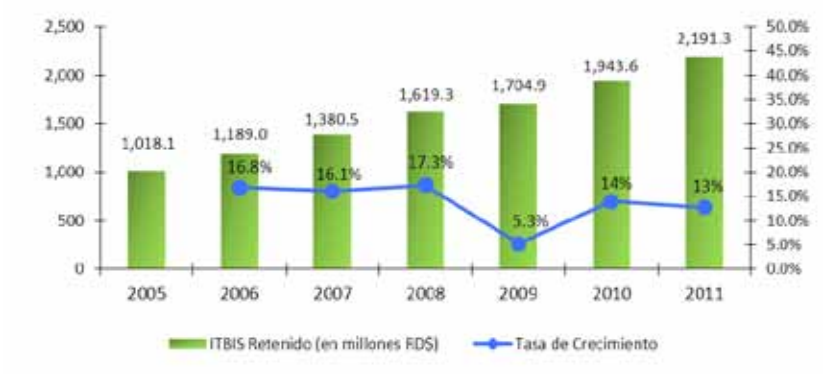
Graphic 5.2
Quarterly Evolution of Amounts invoiced with Credit/ Debit cards, in millions of DR $



Source: Dominican Republic General Directorate of Internal Taxes.

The increase in VAT withheld is a result of the increase in invoicing using credit / debit cards. Graphic 5.3 shows how the growth rate of tax withheld with credit cards has maintained a very similar trend with rates ranging from 13% to 17%, except for 2009, which shows an increase below average, due to the global economic crisis. The crisis had a negative impact on the Dominican economy, as in the case of collection revenues which fell below projections.

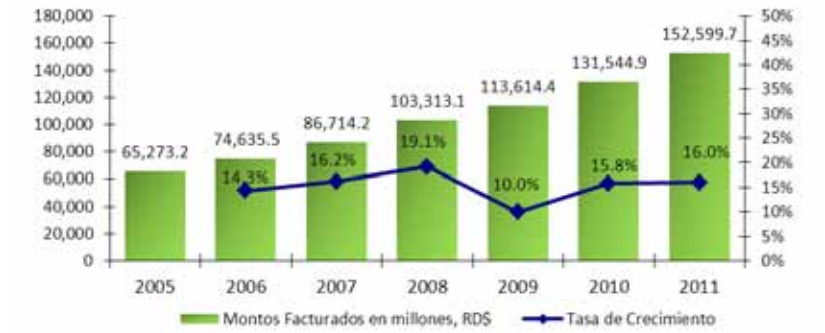
Graphic 5.3
Evolution of annual Tax Withheld Amounts with Credit / Debit cards
2005-2011, in millions of DR $



Note: Average Exchange rate with the US Dollar is 38.08 in 2011
Source: Dominican Republic General Directorate of Internal Taxes

The increase in amounts invoiced with credit/debit card can also be seen since the implementation of the rule in 2005 until 2011. Graphic 5.4 shows how invoiced amounts have evolved, averaging from 2006 to 2008 an annual increase of 16.4%. For the period 2008-2011, an average growth of 13.6% appears. It is important to stress that since the regulation DGII has sales data from businesses affiliated to Acquisition Companies and the proportion of VAT collected by them.

Graphic 5.4
Annual trend of amounts billed by Credit/Debit Card
2005 - 2011, in million $ RD



Note: Average Exchange rate with the US Dollar is 38.08 in 2011.
Source: Dominican Republic General Directorate of Internal Taxes.

6. VAT WITHHELD BY SECTOR AND ACTIVITY

The sectorial share of VAT withheld is constant since the beginning of the implementation of this regulation. The sector with the highest VAT withheld is services, representing over 94%. It includes economic business activities, hotels and restaurants, bars, communications, and others followed by industry and to a lesser extent, the agricultural sector. The low participation of this last one is due, among other reasons, to the exemptions included in the tax code.

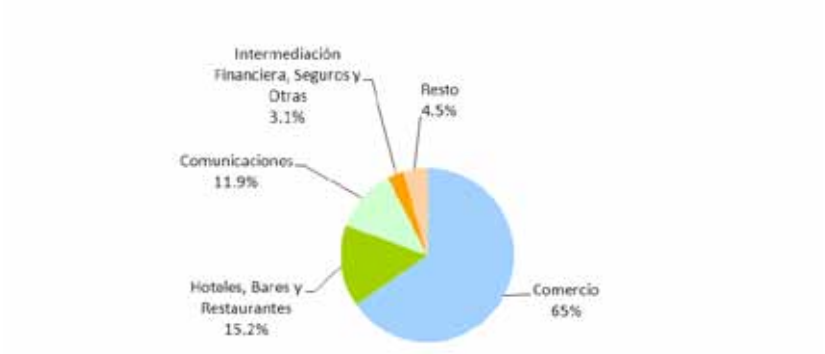
Table 6.1
VAT withheld by sector
In periods and percentages

Sector	2005	2006	2007	2008	2009	2010	2011
Agropecuaria	0.2%	0.2%	0.1%	0.1%	0.1%	0.1%	0.1%
Industrias	4.2%	4.2%	4.2%	5.4%	5.8%	5.5%	5.5%
Servicios	95.6%	95.6%	95.7%	94.5%	94.1%	94.4%	94.4%
Total	100%	100%	100%	100%	100%	100%	100%

Source: Dominican Republic General Directorate of Internal Taxes

The greatest contribution to economic activity within the services sector revenue was business which total amount held in 2011 was DR $ 1,351.3 million. This figure represents 65% of the revenue from the sector, followed by the activity from hotels, bars and restaurants with DR $ 314.6 million, representing 15.2%. (See graphics 6.1 and 6.2)

Graphic 6.1
Tax withheld for service activities
Year 2011, in percentages



Source: Dominican Republic Internal Revenue General Directorate.

Graphic 6.2
VAT withheld
2005-2011, millions of RD$

Source: Dominican Republic General Directorate of Internal Taxes.

Table 6.2 presents the annual performance of VAT withheld by Acquisitions Companies, from 2005 to 2011, by economic business activity.

Table 6.2
Annual Evolution of VAT Tax Withheld by Economic Activity
2005-2011, in thousands of DR $

Actividad Economica	2005	2006	2007	2008	2009	2010	2011
Agropecuaria	**1,805.08**	**2,372.49**	**1,968.06**	**2,109.06**	**1,266.08**	**1,423.31**	**1,562.72**
Industrias	**42,451.99**	**49,783.20**	**57,975.68**	**87,214.44**	**98,646.19**	**107,432.66**	**121,217.12**
Manufactura	35,117.67	40,275.96	47,090.85	74,056.14	83,388.45	87,697.97	92,721.32
Construcción	7,242.73	9,375.57	10,730.77	12,980.25	15,070.97	19,467.03	28,043.20
Explotación de Minas y Canteras	91.59	131.67	154.06	178.06	186.77	267.66	452.60
Servicios	**973,821.83**	**1,136,860.47**	**1,320,517.55**	**1,530,019.02**	**1,603,894.85**	**1,833,187.92**	**2,067,552.71**
Comercio	521,382.30	610,894.27	789,819.20	1,001,563.63	1,064,552.78	1,191,739.57	1,351,319.42
Hoteles, Bares y Restaurantes	135,973.85	163,900.14	192,455.36	222,833.83	230,248.47	279,828.28	314,654.38
Comunicaciones	112,655.83	132,287.24	149,661.93	165,275.45	184,527.88	213,367.73	245,320.22
Intermediación Financiera, Seguros y Otras	110,651.83	149,841.80	96,128.87	42,008.77	44,267.02	67,262.52	63,097.87
Otros Servicios	37,389.79	36,817.40	46,336.43	49,462.70	41,964.18	43,755.00	48,160.84
Alquiler de Viviendas	20,829.50	27,752.12	31,718.16	35,352.52	25,315.77	23,533.66	25,127.03
Transporte y Almacenamiento	26,910.16	13,171.58	12,675.96	11,965.27	11,543.66	11,670.18	17,239.19
Servicios de Enseñanza	812.28	658.03	652.38	619.91	502.70	705.27	825.66
Servicios de Salud	855.34	577.92	522.91	475.02	444.23	740.30	1,342.09
Administración Pública	6,301.43	857.59	482.12	435.45	380.77	204.80	142.41
Electricidad, Gas y Agua	59.51	102.39	64.23	26.46	147.38	380.62	323.60
Total	1,018,078.89	1,189,016.16	1,380,461.29	1,619,342.52	1,703,807.11	1,942,043.89	2,190,332.54

Note: Average Exchange rate with the US Dollar is 38.08 in 2011.
Source: Dominican Republic General Directorate of Internal Taxes.

Among the economic activities that most contributed VAT withheld by regulation 08-04 in 2011 are the following: business with DR $ 1,351.3 million, followed by hotels, bars and restaurants with DR $ 314.7 million; communications with DR $ 245.3 million, manufacturing

industries with DR $ 92.7 million and financial services with DR $ 63.1 million.

Table 6.3
Growth of VAT Withheld by Economic Activity
2006-2011

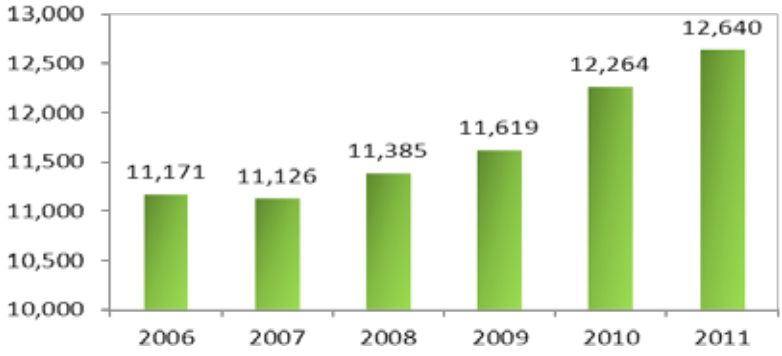
Actividad Economica	2006	2007	2008	2009	2010	2011
Agropecuaria	**31%**	**-17%**	**7%**	**-40%**	**12.4%**	**9.8%**
Industrias	**17%**	**16%**	**50%**	**13%**	**8.9%**	**12.8%**
Explotación de Minas y Canteras	15%	17%	57%	13%	5.2%	5.7%
Manufactura	29%	14%	21%	16%	29.2%	44.1%
Construcción	44%	17%	16%	5%	43.3%	69.1%
Servicios	**17%**	**16%**	**16%**	**5%**	**14.3%**	**12.8%**
Comercio	17%	29%	27%	6%	11.9%	13.4%
Hoteles, Bares y Restaurantes	21%	17%	16%	3%	21.5%	12.4%
Comunicaciones	17%	13%	10%	12%	15.6%	15.0%
Intermediación Financiera, Seguros y Otras	35%	-36%	-56%	5%	51.9%	-6.2%
Otros Servicios	-2%	26%	7%	-15%	4.3%	10.1%
Alquiler de Viviendas	33%	14%	11%	-28%	-7.0%	6.8%
Transporte y Almacenamiento	-51%	-4%	-6%	-4%	1.1%	47.7%
Servicios de Enseñanza	-19%	-1%	-5%	-19%	40.3%	17.1%
Servicios de Salud	-32%	-10%	-9%	-6%	66.6%	81.3%
Administración Pública	-86%	-44%	-10%	-13%	-46.2%	-30.5%
Electricidad, Gas y Agua	72%	-37%	-59%	457%	158.3%	-15.0%
Crecimiento	16.8%	16.1%	17.3%	5.2%	14.0%	12.8%

Source: Dominican Republic General Directorate of Internal Taxes.

7. AMOUNT OF TAXPAYERS AFFECTED BY THE REGULATION

The number of taxpayers affected by the regulation 08-04 is increasing. Graphic 7.1 shows the increasing trend in the number of taxpayers who make transactions with credit/debit cards since 2006 to 2011.

Graphic 7.1
Taxpayers affected by Regulation 08-04
2006 – 2011

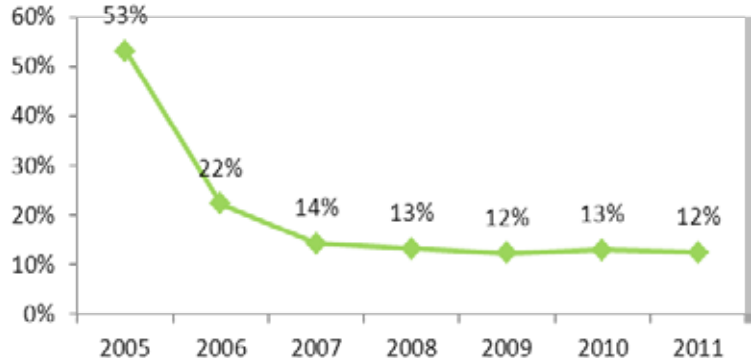


Source: Dominican Republic General Directorate of Internal Taxes

8. DELINQUENT TAXPAYERS

Graphic 8.1 shows how the control of delinquent taxpayers who receive income through payments with credit/debit cards maintained a declining trend since the implementation of the Regulation 08-04 from 53% in 2005 to12 % in 2011.

Graphic 8.1
Number of delinquent Taxpayers
2005 - 2011, in percent



Source: Dominican Republic General Directorate of Internal Taxes.

9. CONCLUSION

The application of this regulation has helped to reduce evasion in sectors that mainly sell to final consumers. This explains why there is an absolute sales control with electronic payments, and the withholding of VAT charged to consumers.

The Annual growth of withheld VAT is 12.8% on average since the implementation of the regulation until 2011. Over 80% of this comes from VAT withheld from activities from business, hotels, bars and restaurants.

At the beginning of the rule's implementation, 53% of all commercial businesses affiliated to Acquisition Companies were omitted in their VAT return. However, they submitted sales paid by consumers with credit/debit cards. VAT noncompliance or evasion was reduced by 10.54 percentage points in the period from 2004 to 2011.

TOPIC 2:

KEY ELEMENTS FOR EFFECTIVE COOPERATION

Lecture

Topic 2

KEY ELEMENTS FOR EFFECTIVE COOPERATION

Carlos M. Carrasco
General Director
Internal Revenue Service
(Ecuador)

Contents: *Abstract.- 1. Introduction.- 2. Integrated governments: information and communication technology to develop public administration. - 3. Intelligent cooperation.- 4. The Ecuadorian experience: Towards a more efficient information management (IM).*

Abstract

This document summarizes the experience of the Ecuadorian tax administration, the Internal Revenue Service. It focuses on the importance of the use of technology, information and cooperation to fulfill the multiple roles this institution has. It also makes a brief account of the organizational restructuring that arises as a challenge in the coming years.

1. INTRODUCTION

In a disturbing scene from “The Silence of the Lambs”, the murderer Hannibal Lecter (Anthony Hopkins) refused to continue answering the questions of FBI agent Clarice Starling (Jodie Foster) if she did not reveal some intimacies to satisfy his morbid curiosity. “Quid pro quo, Clarice” (this for that, information for information), claimed the cold and demented doctor.

In recent years, organizations like WikiLeaks and movements like Anonymous have vindicated freedom of information. At the same time, the disclosure of thousands of sensitive documents that showed the dubious behavior of governments and private corporations worldwide has evidenced the fragility and vulnerability of network security systems. However, these events have also put a very high price to freedom of expression, as an excuse for the most reactionary to demand internet censorship. The price has also proved high for people like Private Bradley Manning, accused of transferring classified

military information, or like Wikileaks founder, held at the Ecuadorian Embassy in London because of the lack of guarantees to prevent an eventual prosecution by the U.S. justice although he has not been charged yet.

We usually think that in this “knowledge society”, information circulates freely online, at no cost. We use email accounts, we remain loyal to our favorite web browser revealing all our concerns, we use software subject to conditions we accept without even reading its terms, we remain available 24/7 through mobile phones –even geo-localized, and upload pictures and personal data on social networks, often without realizing the valuable information we give away –on our preferences and habits–. Many of these on-line services are used to trace our consumption profiles by commercial companies and, to say the least, set their advertising campaigns to those preferences. We do not show much concern with this granting of intimacy, which is the price paid for such services.

Information is also the basis for tax administration. In this case, citizens are much more wary of the information they provide –it is used to asses tax obligations–, despite the benefits obtained from paying taxes, in the form of public services and investment.

Leaving aside the role of taxes to focus on the importance of the information provided by taxpayers and third parties, we note that data allows tax administrations to carry out not only control procedures but also to satisfy other ends: it encourages voluntary compliance, more effective service delivery, and it is a valuable source of knowledge to guide economic and fiscal policy decisions. These benefits are strengthened by the gradual replacement of the burdensome physical tax forms for electronic filing, and the improvement in the quantity and quality of the information it entails.

The act of submitting information by a taxpayer has a special significance. Tax returns info is legally presumed to be true (misinformation is a specific infringement, in addition to tax fraud), and it enhances the role of fiscal citizenship by making people contribute to public finances, as subjects of both, rights and obligations. On the other hand, information provided by third parties, as we have already noted, plays a key role in the performance of tax administrations since it makes it simplifies taxpayer compliance and since it reinforces control tasks.

We coexist in a web of legal relations, many of which are relevant to improved delivery of public services and, of course, to improve the performance of tax administrations. In the domestic context,

government agencies should make efforts to integrate their systems in order to achieve full availability of the appropriate information. This implies significant benefits for the citizen who obtains public services of higher quality and reduced compliance costs. But it also presents major challenges: the need to protect and secure systems, to guard personal information and to ensure traceability and proper use.

From the standpoint of tax administrations, it is needless to elaborate on the usefulness of tax-related data: economic capacity manifestations from public and private organizations as diverse as real estate cadastres, notaries, civil, commercial or business and property or land registries, social security institutions, central banks and credit institution, among others. However, reconciling the interests at stake in the debate over privacy and security is not an easy task. It is the tax administration's responsibility to redouble its efforts to guarantee the good use of information, by promoting professionalism, good governance and accountability.

In a global and technological context, tax administrations can count on data processing and management tools to carry out their activities – collection of revenue– more effectively. Yet, paradoxically, international tax evasion rates remain at unacceptable levels.

Economic globalization, led by the intensive use of new communication technology, has reduced costs and barriers, enabling a boom in transnational relations and trade.

Increasing foreign investment, expanding markets and greater production capacity favor both the investor and the recipient of such investments. Nevertheless, uncontrolled capital mobility produces undesirable situations for some countries. Indeed, differences in tax systems cause harmful tax competition phenomena; low-tax countries capture the resources of devious companies set wherever they get the largest tax benefits, even if business benefits come from the exploitation of resources of other States. This phenomenon is exacerbated as a result of financial speculation and tax havens which offer secrecy to the excessive ambition of investors and companies that act outside the idea of contributing to the general welfare, if not overlooking the murky purposes of criminal organizations.

The different models of conventions to avoid double taxation (OECD, UN) foster the exchange of information for control purposes, restricting it to matters covered by the agreement and stressing its confidentiality and proper use. International tax cooperation has intensified since the nineties. The creation of forums and institutions where, without loss of

tax law sovereignty, extended the debate on adopting universal rules governing transfer pricing adjustments, advance ways to actually implement agreements and discuss solutions to conflicts caused by the difficult coexistence between domestic and international law.

Experience shows that, in a context of economic globalization, tax administrations are required to travel the path towards true cooperation in the international exchange of information, as a mechanism to fight global-scale tax evasion and to achieve the objectives of tax systems. These mechanisms are more effective than domestic anti-circumvention rules, which are often complex, expensive and insufficient because its existence promotes relocation of businesses and the resulting loss of revenue collection. At this point, it should be remembered that unity is strength, as stated in the mottos of countries as diverse as Bolivia, Belgium and Malaysia. It also remains in place that other saying information is power, but perhaps it is worth adding that, given the abundance of information these days, power requires, above all, its adequate processing and management.

Indeed, collecting, processing and managing tax information, through effective information systems, and implementing protocols under standardization criteria to facilitate exchange of data are the best tools to better enable our tax administrations in fulfilling of its roles: combat tax fraud, tax evasion and even criminal networks that emerge where capital flows arise. Therefore, if we want to meet our mission, if we really believe in tax fairness and justice, we must commit to an effective exchange of information –an international-level tax quid pro quo– so we can stop the diversion of public resources from development goals to the uncaring people who put personal gain before the common good. Reciprocity –if considered a cost– would be a meager price to pay compared to the potential benefits it would accrue to all cooperating countries.

2. INTEGRATED GOVERNMENTS: INFORMATION AND COMMUNICATION TECHNOLOGY TO DEVELOP PUBLIC ADMINISTRATION

In recent years, technology has become a pillar for economic and social development. That is why governments have felt the necessity to use technological advances to improve the services they provide and the interaction with citizens. Electronic Government, also known as e-gov, is one of the tools to achieve the integration of government. Moreover, e-gov is the transformation of the public sector; it merges the intensive use of information and communication technology (ICT) with government administration, planning, management. Electronic

government uses ICT to improve the services and information offered to citizens and businesses, to simplify the processes of inter-institutional support and to create new channels that increase transparency and citizen participation (ECLAC, 2011).

2.1. International experiences

There are several countries that have already implemented e-government and achieved a number of administrative and economic advances. One way to asses and compare the implementation of e-gov from country to country is the United Nations' Global E-Government Development Index (EGDI). This index measures the state of e-gov use in each country. It scores the willingness and capacity of governments to use ICT in its main functions. The information used is provided by the United Nations survey that evaluates the online presence of government in each of the 192 member countries. This is a composite index of three criteria: scope and quality of online services, development status of telecommunication infrastructure, and inherent human capital. The maximum value of the index is 1 and the minimum is 0 (United Nations, 2012).

According to the 2012 scores of the EGD index, the Republic of Korea, the Netherlands and the United Kingdom are the three leading countries in the development and implementation of electronic government. In the Americas, the United States, Canada and Chile are the pioneers in this area (see Table No. 1).

Table No. 1

	EGDI Leaders 2012		
	Nº	Country	E-gov. development index
World	1	Republic of Korea	0.9283
	2	Netherlands	0.9125
	3	UK and Northern Ireland	0.8960
The Americas	1	United States	0.8687
	2	Canada	0.8430
	3	Chile	0.6769
	4	Colombia	0.6572
	5	Barbados	0.6566
	6	Antigua and Barbuda	0.6345
	7	Uruguay	0.6315
	8	Mexico	0.6240
	9	Argentina	0.6228
	10	Brazil	0.6167

Fuente: United Nations E-Government Survey (2012). E-Government for the People.

Haiti is a particular example of e-government implementation. Following the devastating earthquake of 2010, the Haitian government and the Inter-American Development Bank (IDB) created a technological solution to manage all resources received (and their information) to rebuild the country. Thus, foundations of an e-government platform to transform the modus operandi of the Haitian government and improve public service delivery were laid. The Haitian Government Integrated Platform (HIGP) was developed by Microsoft Partner, Infusion. Its first goal was to provide a tool to improve transparency and coordination of donations. Since then, the HIGP platform provides immediate information and services to citizens. In the long-term the system will be expanded to all public institutions and agencies.

The United States has also implemented several technological applications in state management, which have placed it as the leading American country in e-government. The Internal Revenue Service (IRS) is the government agency with one of the most advanced technological applications. In 2000, the institution processed more than USD 35 million in revenue on-line through electronic filing (e-file).

2.2. Ecuador: first steps

In recent years, the Ecuadorian government has adopted many technological resources in order to increase efficiency in the delivery of services to citizens and inter-agency processes. The government has identified three key areas for improving public administration management: services to citizens, internal government processes and citizen participation.

a) Guidelines to improve services to citizens are:

- To gradually introduce the use of information and communication technologies (ICT) in all associated processes to provide services to citizens, considering interrelations between services offered by other public agencies.
- Encourage and promote citizen access to government services and information through ICT, making sure this does not cause more spending nor reduces quality of service.
- Provide citizens with a complete set of services according to their needs. This requires the measurement of the needs within the scope of each government agency.
- Serving citizens by setting-up “one-stop shops” in government agencies and providing virtual access to their services through their web pages and the single window for the different procedures citizens could need (www.tramitesciudadanos.gob.ec).

- Establish appropriate safety standards for the use and management of electronic documents to comply with the existing legal regulations and ensure reliable service to citizens.

b) Guidelines to improve internal government processes are:

- Improving internal operational efficiency of government agencies using ICT, together with the “Subsecretaría de Tecnologías de la Información” (Under-secretariat for Information Technology) and the “Subsecretaría de Gestión Estratégica e Innovación” (Under-secretariat of Strategic Management and Innovation), on presentation of the process redesign proposal to the “Secretaria Nacional de la Administración Pública” (National Secretariat of the Public Administration).
- Developing ongoing training programs for public officials on the use of ICT in all areas of government agencies, together with the “Subsecretaría de Tecnologías de la Información”.
- Develop a document management system to support internal functions of agencies and services delivery, as well as directly feeding the information systems of other government agencies.
- Introduce indicators to measure the progress of e-government in each service on a quarterly basis. The indicators should capture the percentage of face-to-face and electronic procedures provided to citizens and other government agencies.
- To put into effect Presidential Decree 1014 about the use of Free Software as government policy.
- Develop mechanisms to facilitate and promote communications mainly by ICT within government agencies.
- To gradually adopt the standards set by the “Subsecretaría de Tecnologías de la Información”, to connect and integrate different systems and platforms, and phase in the use of open-source, free software instead of proprietary software.

c) Guidelines to enhance citizen participation are:

- Adopt measures to provide the public with relevant information, to consider their views and suggestions and to facilitate citizen participation bodies and public transparency through the use of ICT.
- Monitor compliance with the “Ley de Transparencia y Acceso a la Información Pública” (Transparency and Access to Public Information Law) by government agencies, through Central Government websites.
- Monitor compliance with the Technical Standards for Web sites for the development of government websites, including the requirements of accessibility to information.

At present, among the specific applications developed at the national government level are: information technology, electronic signatures, document management (Quipux), Outcome-Based Government System, System for the Management of Government Resources, and System for the Management of Public Infrastructure Works.

2.3. Ecuadorian Tax Administration: Domestic exchange of information

Exchange of information occurs when a specific need arises. This need can originate either in the tax administration (SRI) or in other institutions (public or private). The Ecuadorian SRI has defined a procedure for the exchange of information. This procedure involves the following steps:

d) Identification of needs and internal negotiation. At this stage, clear definitions of what information to ask for and why must arise.
e) Feasibility analysis, which includes operational, legal and technological feasibility for the exchange of information. Depending on the nature of the counterparty, there is a different treatment:

- Convention or agreement with public entities (public enterprises or government agencies). The SRI has model agreement which has a fixed part and a flexible part. The first part covers the background, the purpose of the agreement, duration and confidentiality clause. The second part is what is actually open for negotiation. It corresponds to annexes with a detailed list of the variables that will be exchanged. In general, conventions remain into force for at least two years, a period which automatically renewed unless denounced by either party.

- Information requests to all private societies or individuals. In this case, information goes only in one direction: to the tax administration.

In any case, the guidelines governing the exchange of information are: confidentiality, integrity and proper use of information exchanged. There are three forms for this exchange: (i) direct connection to the counterparty's database so information is provided on a real-time basis; (ii) information is encrypted and stored in magnetic or optical media (CDs, hard drives, USB flash drives), and (iii) access to the database, which means the creation of a user and a password to grant access only to the information specified in the conventions. This is the least common and recommended.

At the time, the SRI has 78 information exchange agreements in force, of which 34 are with public agencies and the remaining 44, with municipalities. Among the most emblematic conventions because of

the type of information they provide to the tax administration are the ones with: the “Instituto Ecuatoriano de Seguridad Social-IESS” (Social Security Institution), the “Instituto Nacional de Contratación Pública-INCOP” (National Institute of Government Procurement), the “Secretaría Nacional de Aduanas del Ecuador-SENAE” (Customs Service) and the Civil Registry. The exchange of information between the Ecuadorian SRI and IESS and INCOP is of the first type, meaning data is updated automatically and on real time. The agreements with SENAE and the Civil Registry are pending renewal.

2.4. Limitations on the exchange of information

In the process of information exchange, the SRI has faced different challenges and constraints. The more significant ones are:

- Third-party lack of technological infrastructure which makes it difficult to do it using ICT.
- Lack of standards for data gathering and storage.
- Poor quality of information, especially that of local governments.

Because of that, it must be noted that information provided by third parties is merely referential.

2.5. Other remarks

Article 106 of the “Ley de Régimen Tributario Interno” (Internal Taxation Law) provides that reserve or secrecy laws will not apply to any information requested by tax authorities. However, because of political reasons, the SRI has not been able to obtain periodic and complete financial or bank information of taxpayers. Currently, when requested by the tax administration, financial institutions provide information only of one individual or business at a time.

3. INTELLIGENT COOPERATION

Intelligent cooperation would be one that is maintained over time because it is advantageous to both parties: Quid pro quo, as mentioned at the beginning of the document. In terms of the cooperation that requires a tax administration, collection and exchange of information, especially sensitive information, should go hand in hand with guarantees of data security and proper use.

3.1. Making it better and easier for taxpayers

In many Latin American countries, the adoption of information technology has played a key part in improving tax administrations and raising revenue levels. We could even say technology has also made it possible to make fairer tax systems –since tax evasion can be identified and prevented more accurately–. The use of technology has made possible to track and organize taxpayers with unique identification numbers, to collect more data, to process it for verification and automatic cross-checks; technology has radically changed the way in which tax administrations relate to citizens (current and potential taxpayers). The replacement of cash or check payments for electronic payments, the transition from physical (paper) forms to electronic ones ("e-filing"), the existence of virtual channels to educate people, to resolve their queries, etc. have made life easier for taxpayers willing to comply with their tax obligations (Bird & Zolt, 2008).

The Ecuadorian tax administration is no exception. The Internal Revenue Service (SRI) has incorporated information technology as a key tool for achieving its goals and objectives, ever since it was created in 1997. In this regard, it is worth noting that the Ecuadorian tax administration was the first institution in the country with a data warehouse. Advances in information and communication technology (ICT) have also been used in the provision of services such as: one-stop shops, online services and a Call Centre.

While points of single contact or one-stop shops are still a face-to-face channel, they are possible through assistance agreements with other public organizations (such as municipalities or public enterprises). This can be the first step towards building bridges of cooperation in terms of automatic exchange of information relevant to the collection and administration of taxes by the SRI.

Through online services, the second channel mentioned above, SRI delivers the following services:

a) Provides information and registration assistance: pre-registration, temporary suspension of taxpayer identification number (RUC), authorization to issue invoices, sales receipts and other billing documentation, tax compliance status, automatically-generated certificates, and other general information.
b) Facilitates compliance with tax rules: generation of password for access to online personalized services, software for online filing of tax returns and annexes, billing validity checks, vehicle registration system, assets declaration, a collection of tax legislation (laws, regulations, circular letters, etc.), FAQs.

c) Enhance reception of tax benefits to those entitled and guarantee taxpayers' rights: information about exemptions and rebates, requirements to apply them, process for tax refunds, information about tax payment facilities.

The website of the SRI (www.sri.gob.ec) had more than 14 million visitors in 2011; 8.4 million of them (60%) went online for e-filing. Almost all consultations submitted by taxpayers through this channel (95.4%) were answered within the prescribed deadline (15 days). We should also note that, according to the latest satisfaction survey, 75% of users said they were satisfied with functionality and content of the website.

Another service channel is the Call Center (1800-SRI-SRI), which operates through a response issued by a machine or an agent, to deal with queries about:

- Outstanding Obligations
- Interest and penalty checks
- Requirements to get a taxpayer identification number (RUC)
- Requirements for vehicle registration and related procedures
- Requirements for billing authorization
- Expiration date of tax obligations
- Non-delivery of sales receipts reports

Other services supplied by call center agents are:

- Overview of all taxes administered by the SRI (although not binding).
- General information to fill tax forms and annexes.
- Information on tax administration procedures, location of agencies and opening hours.
- Generation, suspension or deregistration of TINs for individuals and corporations.
- Authorization for the issuance of sales receipts, for the use of cash registers, computerized billing systems, etc.
- Reception of administrative complaints and requests for reimbursement of incorrect payment or overpayment of taxes.
- VAT refunds.
- Information on the status of procedures and about installing filing software.
- Consultations tax compliance status, debts, and vehicle registrations values.
- Formal tax-related claims.

In 2011 there were more than 746,000 calls nationwide. The satisfaction survey reported a 91.5% satisfaction with the quality of the support

they received. The call center has been improved this last year: it now operates 24 hours a day, 7 days a week; also, a project to improve the database of questions and answers is in progress, in order to reconcile all information received by the taxpayers.

Undoubtedly, the adoption of new technology brings advantages for taxpayers, in terms of decreasing costs of compliance to tax regulations, as well as for the administration, to the extent technological tools increase its performance. Here it is worth noting that technology is a necessary means to improve business processes of tax administrations, but it is not the end itself (Bird & Zolt, 2008). Political will is critical to putting into effect the necessary technological changes. Moreover, political will is also needed to design the tax system (and its administration) to keep up with the changing economic environment, the development of human talent and the type and quality of the information provided by taxpayers and other public and private entities.

3.2. Data management for a better tax administration

Whether it is debated, all society –government included– benefits from a modern and efficient tax administration. In achieving such goals, more can be done better with technology. However that will only as useful as the data that feeds such technological tools. Therefore, any tax administration requires a strategy to manage not only taxes but data.

The Internal Revenue Service was the first organization to implement a data warehouse in its business processes. While this has been a success, the rapid growth of economic activity and, with it, the tasks of the institution, have made clear the need for organizational reengineering towards the integration of processes and information.

The SRI currently has one of the best databases in the country and a network of agreements with public institutions, which adds to the capacity of the tax administration to characterize taxpayers and verify their information. However, more is not necessarily better: the SRI has 14TB of information and only uses 4TB –less than 29%–. Two situations could be behind this fact: (i) There is a vast quantity of useless or junk information that needs to be filtered since its storage increases costs, both financial and in terms of information systems perfomance. (ii) There are insufficient tools (whether hardware or software) to process data into useful information for the SRI.

Therefore, an information management strategy should follow these steps:

The truth is that data are only valuable for decision making and better understanding of taxpayers and their complex motivations to the extent they are reliable and processed into information, knowledge and intelligence. Increasing the quantity and quality of information will be possible through cooperation with public and private entities, but it also depends on the taxpayers' awareness of their duties as citizens as the other side of citizen rights. The ability of the tax administration to detect false information or failure to report, to penalize and persuade those who deliberately fail as well as to generate confidence about the safety and proper use of the data are also important elements to improve its performance.

In addition to that, economic and social structures of the country in which a tax administration performs should be considered. If the SRI, in order to reach its goal of enhancing fiscal citizenship, seeks to become an inclusive tax administration it must take into account the limitations of automating its processes, especially, the services delivered to citizens. The so-called digital divide between groups of population is still considerable in Ecuador. According to data from the Instituto Nacional de Estadística y Censos (National Statistics Institute), in 2011 less than a quarter of households owned a home computer. Internet use also varies by age, territory and income. On average, only 31.4% of the population used the Internet at least once in 2011. If we stratify the population by age, differences as large as the following: almost 60% of people aged 16 to 24 years used the internet in 2011, the proportion falls to less than 40% for the age group between 25 and 34 years, and to only 3.3% of those age 65 or over. There are also important discrepancies if we group internet users by income quintiles: only 15.5% of the population in the first quintile used the internet in 2011; at the other end, the majority of the people (about 52%) had internet access.

Disparities in accessibility and provision and different attitudes towards innovation and willingness to use online services should be considered within the strategy of tax administrations. Tax policy and administration requires also flexibility to adapt to the new forms of businesses that the technological revolution has brought about. Finally, special attention must be paid to the diverse conceptions of the right to privacy that coexist in the same society if we are to achieve a broad consensus.

4. THE ECUADORIAN EXPERIENCE: TOWARDS A MORE EFFICIENT INFORMATION MANAGEMENT (IM)

4.1. Some history

Public services may be defined as all activities or tasks performed on a regular and continuous basis provided by a public entity (or by a private company under state control). Public services are created in response to particular laws or in order to guarantee rights acknowledge in the Constitution. Since public services are meant to satisfy general needs, not those of particular interest, its aim is not benefit but efficiency and effectiveness –through high quality processes–. Public institutions in charge of delivering such services must be managed adequately: making sure that all activities (planning, coordination, monitoring and evaluation) are consistent with each other and with the goals of the institution. This also requires the use of management tools which embody people's beliefs, values and norms –building a constructive, healthy and strong organizational culture– (Propuesta MIGERP, 2012).

Information management is a key element of any organization. More so in institutions that deliver public services to citizens and to the State itself, like tax administrations. Tax records are one of the most complete sources of information in most countries.

Proper treatment of information, from its collection, validation, processing, storage and use, is essential. The main reasons why information management is important for tax administrations are:

- Tax administrations are responsible for one of the key elements for the functioning of the society: the collection of economic resources that finance the State.
- Tax revenue is a basic source of public finances in all democratic societies. The fair contribution of all citizens (according to their ability to pay) is the essence of the social contract from which a State emerges.
- Solvency of public finances is required for economic recovery, infrastructure improvement, social expenditure and investment. Taxes are an expression of a society jointly responsible for a successful public policy.
- Taxes promote income redistribution, a key element to vanishing sound inequalities in our societies, together with public social spending.
- In particular, fair taxes are capable of redistributing private resources in order to improve living conditions and guarantee basic public services access of all population. As Musgrave notes, a tax system is only as good (and fair) as its administration.

In addition to that, economic activity is constantly changing as technology advances. This entails a major challenge for tax administrations. Technological, administrative and operative flexibility is necessary to ensure tax administrations fulfill their role.

The Ecuadorian "Internal Revenue Service" (Internal Revenue Service), since its creation in 1997, has gradually focused part of its work in fostering tax culture in this country. As a result, in the last years, the SRI's performance has earned growing social recognition and has been set as an example to other public institutions; without mentioning the achievement of tax revenue. However, in an ever-changing context, where tax laws are constantly reformed, technologic advances transform the way people and businesses connect and citizens are more demanding, the SRI has felt the need to reexamine its operations.

The increasing needs of tax revenue have been the driving force of institutional growth, both structural and operational. This has not always been a well-planned and systematic process. Activities of the taxpayer cycle became isolated and partial technical definitions resulted in non-integrated information systems, thus creating silos of information and hindering the performance of the tax administration. The consequences have been ill-defined roles, ambiguous responsibilities and lack of understanding of products and services offered, hence, poor evaluations and hardly any improvement. With complex and poorly integrated information systems, the physical and virtual capacity of the technological platform has been negatively affected, and problems in the availability and performance of applications, used by both internal and external customers, have become more frequent. All this has posed a constraint in the efficiency and quality of the services provided by the Ecuadorian tax administration.

Feeling the need to evolve, this year (2012), the "Internal Revenue Service" has undertaken an organizational change initiative towards a management model based on process optimization.

4.2. Risk-oriented integrated business process management model (RIBPMM)

The RIBPMM is a well-balanced approach that encompasses strategy, processes, technology and organizational management. This model rethinks the previous concept of organization and considers it as a system made up of four subsystems: (i) business leadership, (ii) technological architecture, (iii) process management and (iv) management plan (scheme). The framework is intended to create

synergetic relationships among these factors to become a logical, coherent and consistent design.

This model is based on a high-priority strategy of tax administrations, namely, risk management –operational risk as well as those risks regarding taxpayer behavior–. In other words, the new model will institutionalize the risk management strategy the SRI has already started to implement. To realize this plan, logical processes mapping is required. This is the second element of the RIBPM model (see figure below).

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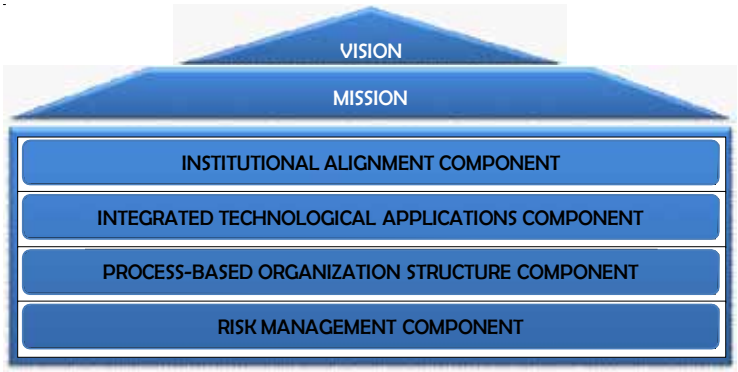
The assessment of business processes revealed that, up to June 2011, they had a maturity level of 25%.

Elements of the RIBPM Model



Source: Servicio de Rentas Internas

Technology is of strategic importance for SRI performance, yet it has become a difficulty that needs to be addressed: the excessive number of technological applications and the lack of integration between processes has become an urgent issue. Therefore, the model's third component is a comprehensive technological solution. The goal is to decrease the number of applications to 10 integrated ones, covering both support and management units. Last but not least, the fourth component allows more organized planning, follow-up and monitoring exercises within the organization. This is the institutional alignment component and it is divided into three management levels: strategic, tactical and operational. Each of these levels comprises objectives, strategies, risks, plans and projects and their respective indicators; they are all run by three governance committees with specified roles and responsibilities.

4.3. RIBPM model objectives

- To establish a structured decision-making model that allows visualizing SRI's performance in an expedite and timely manner.
- To improve processes of SRI's value chain following an integrative approach and under parameters of efficiency and effectiveness in all its activities.
- To develop and carry out technological applications of the processes of the value chain in an integrated manner, on a single integrated platform.
- Implement a suitable technology infrastructure with characteristics such as flexibility, availability, security, reliability, speed and opportunity, capable to meet future demands.

4.4. Brief summary of RIBPM model components

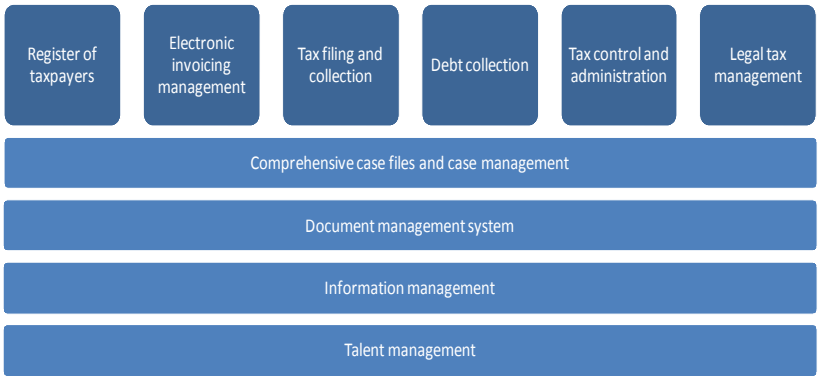
4.4.1 Institutional alignment component (IAC)

This component of the Risk-oriented Integrated Business Process Management Model enables model implementation and continuity. The IAC relies on tools and best practices for management and decision-making. It uses a monitoring strategy by corporate management levels, making strategic planning easier to execute.

4.4.2 Integrated technological applications component (ITAC)

This element is aimed at integrating all IT tools and applications allowing the systematization of tax processes in order to deliver an efficient service to taxpayers (reduce time and cost of interaction with the tax administration) and to make a more efficient and transparent management, especially in tax audit and control departments. Note the significance of information processing of ITAC: document and data management are cross-cutting elements of all activities of the SRI's value chain.

Structure of the ITAC



Source: Internal Revenue Service

The document management system should allow expedite and timely managing of external documentation. Furthermore, documentation generated by internal activities of the tax administration should be automatically tracked (electronic and digital reception, generation, storage and use of documents).

Information management is the identification, collection, treatment, generation, validation and use of information to assist decision making and improve the various control procedures. It is also aimed at ensuring business continuity, which will result in enhanced corporate image but, mainly, it will reduce the discomfort experienced by taxpayers by minimizing the occurrence of data errors or inconsistencies.

4.2.2.1 Integrated technological applications component (ITAC)

The key elements of tax administration are:

- Register of taxpayers: Comprehensive management of registration and generation of taxpayers identification numbers and basic personal/business information, updating, suspension and deregistration, by both face-to-face and virtual channels.
- Electronic invoicing management: this will include the definition and development of scheme for the automatic processing of information. This will be used as an input for other subsequent processes: tax returns, control, refunds, collections and formal complaints.
- Tax filing and collection: Includes the design of a new application for the reception, processing and validation of tax forms and annexes, as well as the processing of collection and refunds in an integrated manner.

- Debt collection: Automating the collection process in its various stages: persuasive and coercive. This will be integrated with the previous tax administration processes.
- Tax control and compliance: Includes the automation of control processes, both extensive and audits. Extensive controls (cross-checks) should be able to automatically identify taxpayers who do not file their returns or those with differences when compared with third-party information; the idea is to develop an application to send electronic notifications to those taxpayers.
- Legal tax management: Includes the automation of grievances and review requests under an integrated flow with a unique application. It also includes the development of a system for the management of trials.

Electronic invoicing is one of the main inputs for control and collection processes. Consequently, this initiative has become one of the flagship projects of the Internal Revenue Service. The New Electronic Invoicing Scheme began on September 13, 2010.

The specific objectives of this project are:

- To provide a new service to enable citizens to issue electronically signed invoices.
- To provide an online check service of electronically signed invoices.
- Provide an online information service of all electronically signed documents stored in SRI's databases.
- Improve and simplify the application process to get authorization for issuing electronic documents, by providing responses online.
- Minimize direct and indirect costs related to the obtaining of authorization to issue pre-printed documents.

The new electronic invoicing scheme has four stages: pre-pilot phase, pilot phase, voluntary phase and mandatory phase. In the pre pilot and pilot phases the tax administration will work with a previously selected group of taxpayers. In the voluntary stage, electronic invoicing will be extended to taxpayers requesting to adhere to the program. Finally, a schedule will be set for the adoption of electronic invoicing by those economic activities obligated to use it.

Phase 1 of the "New Electronic Invoicing Scheme" was completed on March 22nd, 2012. Here is a list of the products:

- Legal basis production (amendments to the regulations invoice and other retail and tax withholding documents, drafting a resolution to regulate the working of the new electronic invoicing scheme).
- Electronic invoicing system for the Intranet

- Electronic invoicing system for the Internet
- Development of software to generate electronic invoices, available to all citizens for free.
- Preparation and generation of Web services for online authorization of electronic vouchers.
- Preparation of technical specifications, XSD schemas and XML examples.
- Preparation of press releases to inform about the new scheme.
- Socialization and training of internal staff and taxpayers in the pilot group.
- Software and hardware procurement to ensure high-availability systems.
- Identification of the need for 24/7 monitoring to plan the quantity of new employees that need to be recruited.

Phase 2, which is to be completed by December 2012, comprises electronic invoicing by taxpayers in the pilot (32 companies), stabilization and support of the applications. Phase 3, to run from 2013, consists of the expansion of the program to taxpayers who voluntarily join the electronic invoicing scheme. Finally, Phase 4, planned to start from 2014, implies compulsory electronic invoicing for certain economic activities.

4.4.3 Process-based organization structure component (POSC)

This component seeks the implementation of an effective system of management by processes. The idea is to implement a business process management approach within the Internal Revenue Service, focused on outcomes in order to have an organization focused on providing better services to taxpayers.

Proper information management, a functional area for Information Intelligence will be created. The products and services of this new area include:

- Managing internal data cubes.
- Presentation of information cubes.
- Information assets.
- Information requirements.
- Use of information cubes reports.

The technological counterpart of the mentioned area is the data warehouse area that will be responsible for the following:

- Internal and external information analysis.
- Data mining.
- Transformation of information.

- Data structure modeling.
- Information cube building.
- Information systems administration.

4.4.4 Risk management component (RMC)

Risk management identifies and assesses factors that can hamper taxpayer compliance. From an operational point of view, risk management is an identification, analysis, determination, prioritization and assessment of tax compliance risks.

Risk management allows a better approach of the tax administration to taxpayers, by identifying its characteristics and behavior. Service delivery and control are both related to the efficient management of information. One of the main elements of this component is the design of a risk-scoring model.

Case Study

Topic 2.1

TAX ADMINISTRATION POWERS AND TAXPAYER RIGHTS

Julio Pereira
Director
Internal Revenue Service
(Chile)

Contents: *Summary.- Introduction.- 1. Legal framework applicable to the Tax Administration and the information it manages.- 2. Use of tax information. 3. Mechanisms for requesting and providing information . - 4. The empowerment of the informed citizen.- 5. Conclusions*

SUMMARY

Currently, access to information has become an asset used by citizens to monitor and control the public entities' performance, for which reason the latter have been obliged to improve themselves, beginning with the beneficiary selection processes up to evaluating the impact of the different public policies that are implemented as well as those that have already been implemented.

It is for this reason that public entities have had to resort to unity of action, through the joint use of resources available, in order to more effectively and efficiently respond to the citizens' demands as regards a State that may be transparent and fair in its decisions.

The Internal Revenue Service has not been unaware of these demands, inasmuch as it has been receiving a significant number of requests for information from the citizens themselves as well as from the rest of the public entities, especially those providing social benefits and determining public policies.

Thus, the Service, in addition to contributing to public finances through the assessment of internal taxes, also contributes by providing information used for distributing the State's resources among the different benefits given to the citizens, such as pensions, reduction of housing debts, housing subsidies, tax benefits, promotion of entrepreneurship, among others and the provision of information for designing public policies that may result in a better use of public

resources which, as in every economy, are scarce vis-a-vis the needs of citizens.

INTRODUCTION

One of the State's main concerns is the efficient management of public resources available, which must be distributed between the efficient and effective administration of public institutions and the provision of benefits in a focalized manner.

The Internal Revenue Service, as part of the Tax Administration must apply and examine all internal taxes established, for which purpose it requires detailed information on the taxpayers and for which reason it is one of the public entities with the largest amount of tax data and information regarding the latter.

Although the information stored by the Internal Revenue Service is of a tax nature, the rest of the State entities require it to make economic estimations for improving and focusing on the design of public policies as well as the delivery of social benefits.

Due to the above, and in order to promote inter-institutional cooperation, several mechanisms that may allow collaboration and exchange of information have been sought, although ensuring that they will not infringe the legal reserve that bears on the latter.

1. LEGAL FRAMEWORK APPLICABLE TO THE TAX ADMINISTRATION AND THE INFORMATION IT MANAGES

1.1 Function of the SII

The main function of the Internal Revenue Service as part of the Tax Administration is to apply and examine all internal taxes established, which may be of interest to the Treasury and whose control has not been entrusted by law to a different authority, as provided in Article 1 of the institution's Organic Law.

Regardless of the above, and since the legislation in force provides that the State's entities must promote unity of action and act in a coordinated manner, the exchange of information with other organizations has become a relevant process within the Service's management, due to the significant amount of resources used within the Service and the consequence resulting from the use of the information.

Hereunder is a description of the main laws that govern the management of information found in the Service, which should complement each other, in order to protect tax reserve, while at the same time collaborating with the functions of the different public institutions.

1.2 Legal framework regarding Information kept by the SII

At the general level, there is the Political Constitution of the Republic (1980), which ensures respect and protection of the private life[1] of all individuals and obliges incumbents of public institutions to strictly comply with the principle of integrity in their actions, while at the same time noting that the acts and resolutions of the State bodies are public, unless there is a law of qualified quorum that provides for reserve or secrecy thereon, or when their dissemination may affect the functions of the entities mentioned or the rights of individuals or the security of the Nation or the national interest[2].

Thereafter, Act N° 18.575, Constitutional Organic Law of General Bases of the State's Administration (1986), provides in Article 3 that the State's entities are at the service of the community and should promote the common welfare by continuously and permanently responding to public needs, as well as encourage the country's development by exercising the powers granted to it by the Constitution and other laws. Likewise, Article 5 provides that they must fulfill their duties in a coordinated manner and tend toward unity of action, avoiding duplication and the interference in functions.

Contrary to the 'dissemination' urged by the previous laws with respect to the information kept by the State, Act N° 19.628, on the Protection of Data of a Personal Nature (1999) is enacted´. It states that personal data can only be used when this law or other legal provisions authorize it, or the holder expressly gives its consent. Likewise, it calls for confidentiality of personal data by officials who may have become aware thereof in complying with their functions.

Lastly, in order to empower the citizen in their examination of public entities, Act N° 20.285, on Access to Public Information (2008) was enacted. The latter provides that every person has the right to request and receive information from any entity of the State's Administration, in the manner and conditions stated in the law. It stipulates the right to access information included in acts, resolutions, minutes, files, contracts or agreements, as well as to all information prepared with public budget, regardless of the format wherein it is included, save for legal exceptions.

1 *Decree 100 Art. 19, N° 4*
2 *Decree 100 Art. 8*

Based on the aforementioned legal rules, it is understood that efforts should be made for achieving unity of action between the State's entities and transparency before the citizens, by transferring all the information that may be available and requested, provided that such information is not subject to tax reserve, or else, that there may be some legal exception that may allow its transfer to third parties.

1.3 The duty of tax secrecy

Article 35 of the Tax Code, stipulates for all of the Service's officials the obligation of not in any way disseminating the amount of the source of revenues, or losses, expenditures or any data related thereto, that may appear in the obligatory returns, nor will allow that the latter or their copies or records or documents containing excerpts or data taken therefrom be known by any person unrelated to the Service, except when they were necessary to comply with the provisions of the Tax Code or other legal regulations.

This implies that only Service officials may review or examine the returns filed by taxpayers, regardless of the powers of the Courts of Justice, or some other institution with a legal framework that may provide for an exception to the tax secrecy.

1.4 Exceptions to the tax secrecy

As mentioned in the foregoing section, there are situations wherein the very rules provide for exceptions to tax secrecy, either for tax purposes or reasons of social interest.

Every exception to tax secrecy must be supported by a law that expressly authorizes a public entity to request and receive tax background information from the taxpayers they may require and in the same manner imposes on the Service the obligation to make it available to them.

Exceptions to secrecy may be classified according to the use to be made of the information, which ranges from supporting and focusing resources provided for promoting entrepreneurship, up to the control and examination of social benefits provided, without disregarding tax examination.

Some of the rules that provide for exception to the duty of secrecy, according to the use to be made thereof, are:

- Delivery of background information for examination (tax or of another type)

- Article 168 of the Tax Code which stipulated that designated officials from the General Treasury of the Republic may have access to Service's information in order to determine the taxpayers' properties.
- Article 16, Act N° 19.366, empowers the State's Defense Council to request the reports and background information it may deem necessary for complying with its functions as investigator of crimes dealing with illegal trafficking of drugs and psychotropic substances and "moneylaundering".
- Article 4, Act N° 19.479, which authorizes the SII to deliver taxpayer information to the National Customs Director when the latter may require it to carry out the examination tasks entrusted to said Service.
- Article 9, Organic Act N° 10.336, of the General Comptrollership of the Republic provides that it may request data and information for the better performance of its tasks and may likewise approach any authority or official to give instructions in relation to the examination for which it is legally responsible. It is also stated that the rules establishing secrecy or reserve on specific issues shall not be an obstacle to providing to the General Comptrollership the information or background it may require for carrying out its examination, without prejudice to the fact that its staff may be equally obliged to observe such reserve or secrecy.

• Delivery of background information for improving public policies

- Articles 20 and 21, Act N° 17.374, which stipulate the obligation to provide data, background or information to the National Statistics Institute which may be held by institutions involved in structuring official statistics.
- Article 53, Organic Act N° 18.840 of the Central Bank, which empowers it to request from the various Public Administration services or offices, decentralized institutions and, in general, the public sector, the information it may deem necessary for generating the main national macroeconomic statistics.

• Delivery of background information for focusing on and examining the provision of social benefits

– Article 33, paragraph six, Act N° 18.409, which states that the background information for determining the monthly revenues of its affiliates should be provided to the National Health Fund.
– Article 9, Act N° 19.287, on the Joint University Credit Funds which states that the General Administrator of the Fund in each

institution may verify the information provided by the debtors with all the background information available at the Internal Revenue Service and other public or private institutions which shall be obliged to provide such background information.

– Article 56, Act N° 20.255, provides that "the Social Security Institute shall be empowered to request from public as well as private organizations of the social security sphere, or which pay pensions of any kind, the personal data and necessary information for carrying out its functions and managing the aforementioned data and it is also specified that the provision of paragraph two of article 35 of the Tax Code will not be in force, thereby directly lifting the secrecy.
– Article 3, paragraph s, Act N° 20.530, provides that the Ministry of Social Development may request information to other organizations, in order to verify the eligibility of those requesting benefits or who are beneficiaries of the social programs or the maintenance thereof, as well as to complement the Social Information Registry provided in article 6 of Act N° 19.949.
– Article 26, Act N° 20.595, on Ethical Family Income, provides that the Ministry of Social Development may request information from beneficiaries as well as potential beneficiaries of social programs, including that which may have been provided by third parties to the Service.

§ Delivery of background information for the granting of bonuses

– Article 49 of the Labor Code states that the Service should report the amount of the net earnings that serve as basis for the bonus to the Course of First Instance or the Directorate of Labor as well as employers, unions or staff delegates.

§ Delivery of background information for justice

– Article 35 of the Tax Code explains that the Courts of Justice as well as the prosecutors of the Attorney General's Office have the power to review the taxpayer returns.

Regardless of the exceptions to the existing tax secrecy, the very Tax Code indicates that any information which the Service may transfer to another institution may only be used for the purposes of the institution receiving them.

2. USE OF TAX INFORMATION

From the foregoing section one may see the various uses that may be given to the tax information, beyond the tax assessment and pure tax purposes, some of which are:

- To generate and/or improve public policies
- Focus on and examine the provision of social benefits

Below is a description of these uses, indicating the purpose, the users/beneficiaries and their relevance.

2.1 To generate and/or improve public policies

The Service has permanently shown its willingness to respond to the requests of various State Entities, in order to act in a coordinated manner and contribute the necessary information for the definitions required to generate or modify the public policies, abiding by the country's current conditions and needs.

Shown below are some forms of cooperation carried out by the Service in favor of the public policies.

- Collaboration with the **Superintendency of Pensions** which, in order to focus on the delivery of different types of social pensions granted by the State, requires a reliable source of information with which to replace the self-declared information by the applicants for these benefits. To this end, a procedure is generated which serves to compare the self-declared revenues based on the taxpayers' income returns, in order to calculate, along with other factors, the respective score to qualify for the benefit or not.

- Collaboration with the **Ministry of Education**, which according to its duty to promote educational development at all levels, to contribute to improve the quality thereof and to keep the students informed, generates studies on higher education for improving the established policies; for example, with respect to evaluating what type of information is more effective in the student's decisionmaking process, with respect to the value added of education and with respect to estimations of long term return of education, in order to estimate the reference schedules; in addition to generating statistical information on income earned by the students according to their characteristics (age, sex, year of graduation) and the institution and careers selected, so as

to guide future students with respect to the labor system. The universe on which studies are carried out is close to 600,000 students.

- Permanent collaboration with the **Central Bank** and the **National Statistics Institute**, which request monthly information for generating indicators and statistics of national interest, such as price indexes, monthly commercial activity, among others.

- Collaboration with the **National Energy Commission**, which in accordance with its duty to ensure the appropriate operation and use of the Taxpayer Protection System vis-a-vis Variations in International Fuel Prices, for the benefit of taxpayers that fulfill certain conditions, requests information on the taxpayers that have actually applied for refunds of the specific tax on Diesel fuel and thus project these recoveries when the System is fully operational.

- Collaboration with the **General Comptrollership of the Republic**, which according to its duty to examine and ensure appropriate use of public resources, permanently requests information on taxpayers that belong to a group of persons that are being investigated because they respond to certain characteristics, or because a procedure of an institution is being examined, or else, because it is part of the compilation of information it must carry out according to its functions.

- Collaboration with the **Corporation for the Promotion of Production**, which according to its duty to promote entrepreneurship and innovation for improving productivity in Chile, is permanently searching for information to learn about the mobility of economic agents (according to proxy based on tax data) such as, for example, number of companies in operation, establishment and closing of businesses, creation and elimination of employment, which allows for dimensioning the economy and its variations in order to generate new promotion programs or else, modify the existing ones.

- Collaboration with the **Ministry of Finance**, which in its role of improving the country's growth and promoting the best use of productive resources available, permanently requests information relative to evaluations of various public policies being analyzed, information on possible impacts of legal changes in tax terms, in order to determine their impact on the national treasuries.

- Collaboration with the **Labor Directorate**, which according to its duty of increasing compliance with the labor regulations must

examine employers who may be implementing bad practices, as for example, labor informality due to lack of individual working contract for those workers under the fee regime, and for which purpose it requests information from those employers who may be maintaining this type of contractual relationships with their workers, thus focusing the examination efforts.

2.2 To evaluate the provision of social benefits

Another aspect of the use given to tax information is to verify that the applicants to certain social benefits fulfill or not the specific requirements (in particular, that which is related to revenues or possession of real estate properties), to verify whether the benefits given were duly assigned or to analyze the effect of the provision, by following up the tax information of the beneficiary.

Within this type of collaboration there is:

- Collaboration with the **Social Security Institute** which, based on the procedure established by the Superintendency of Pensions, carries out the exchange of information relative to revenues of the applicants, and their respective family group, in particular, revenues from net fees, exempt revenues and income from capital, for purposes of calculating the score to be nominated for social security pensions. In order to give a prompt response to the applicant to these benefits, the information is exchanged once a month for a base close to 20,000 single tax identification numbers (RUTs) associated to the applicants of the month and close to 2,000 RUTs associated to potential applicants.

- Collaboration with the **Ministry of Education** which, by virtue of its functions which deal with supervising the credit system and evaluating the accuracy and veracity of the information compiled by each University Credit Fund Administrator in each institution, work was carried out jointly for developing a model regulation that obliges the Fund Administrators to request the necessary information to the Service, in order to verify the income of the debtors with a view to recovering the funds and thus maintain a self-sustainable system that may allow more students access to this benefit.

  On the other hand, collaboration is given to this Ministry in the verification of entry data of candidates to the various higher education scholarships offered by the State. In this process, the Service indicates the income bracket of the candidate (together with his family group) and the Ministry is in charge of comparing

said bracket with the information obtained directly from the candidate's self-declared data. The purpose is to avoid fraud and ensure that the benefits will actually be provided to those who really require it for accessing this educational level.

In this case, the amount of data verified depends on the number of debtors from each University and the number of candidates for each scholarship.

- Collaboration with **Comisión Ingresa**[3], which in order to comply with its functions of determining and evaluating policies for developing and implementing financing instruments for higher education studies, as well as managing the higher education credit system with state guarantee, requests the Service for information on the income, properties and employers of those debtors of the system they administer, in order to recover the funds provided, The cases consulted exceed 250.000.

- Collaboration with the **National Health Fund (FONASA)**, which according to its duty to collect, manage and distribute financial resources of the health sector and examining health quotations and resources intended for benefits, requests information on the income of those paying contributions to FONASA (which exceed 13 million individuals) to ensure that the benefits granted correspond to their level of income, as well as potential contributors to FONASA (approximately 7 million persons) to estimate the potential number of beneficiaries which the system could have.

- Collaboration with the country's 345 **municipalities**, which for purposes of obtaining municipal resources through the taxpayers carrying out commercial activities in the county, must calculate the payment of a commercial license based on information directly declared at the municipality, plus information on their own capital declared before the Service, which is sent annually.

- Collaboration with the **Budget Directorate**, which according to its duty to ensure the efficient allocation and use of public resources, within the framework of the tax policy in force, requests tax information to evaluate to impact of certain government programs carried out, in order to determine whether it is appropriate to increase, maintain or reduce the allocated budget.

3 *Comisión Ingresa, the Higher Studies Credit System Managing Commission, is an autonomous State entity, established in 2005 through Act N° 20.027 which promotes this student financing alternative It is formed by representatives of the State and Higher Education Institutions.*

- Collaboration with the **Ministry of Housing and Urban Development**, which in accordance with its mission must strengthen the citizens' participation through programs intended to ensure better quality housing for the most vulnerable sectors, thereby promoting social integration and reducing inequalities, requests information on income and properties of the applicants for the various housing benefits, in order to make sure that the applicants are actually those for whom the benefit is intended, and which benefits may be reduction in housing debts or access to subsidies for acquiring housing. The number of inquiries varies, ranging from 2 thousand to over 50 thousand applicants on each occasion.

- Collaboration with the **Technical Cooperation Service**, which institution endeavors to support initiatives for improving the competitiveness of micro ad small businesses and strengthen the development of the managerial capability of the entrepreneurs, which results in some programs that provide non-reimbursable funds. To this end, applicants are required to formalize themselves in addition to complying with certain requisites that are validated at the Service, such as the type of activity they carry out or if they have been operating for over a year. Inquiries depend on each nomination process which in some cases may be up to 25 thousand applicants.

- Collaboration with the **National Training and Employment Service**, which according to its duty to increase the competitiveness of businesses and employment of individuals, has several mechanisms for increasing the workers' capability and reducing dismissals, to which end it must verify the background of the employers as well as workers in order that the benefits granted may be used for the proposed purpose. Some of the benefits are tax exemption for training and subsidy for youth employment. Depending on the case, information is provided with respect to the type of contract of the workers, compensation or fees paid. As regards the subsidy for youth employment, information has been provided on over 350 thousand persons and over 45 thousand persons with respect to the tax exemption.

- Collaboration with the **Ministry of Social Development**, which is in charge of generating policies, plans and programs on the subject of equity and/or social development, especially those intended to eradicate poverty and provide social protection to vulnerable individuals or groups, through the provision of tax and economic information on the individuals, in relation to their income

and/or net worth, with a view to generating new social policies, to determine the universe of persons to whom their efforts are devoted and focus the benefits on the sectors that actually need them. Inquiries involve all persons, which represents a universe of over 8 million persons (of which the Service has records, since there is no record on the most vulnerable ones).

The periodicity of information delivery depends on the need of each requesting institution and the updating of the data available at the Service, since most of the data request come from the annual income returns.

In those cases where information is requested to verify the background of applicants, the information is provided monthly (for the applicants of each month) or when the respective nomination processes are concluded, which at times is quarterly.

In 2011, information was sent to over 70 public institutions, thereby responding to, some 15 to 20 monthly requests. In the first semester of 2012 information has been sent to over 30 institutions, thereby maintaining the monthly average of the previous year.

3. MECHANISMS FOR REQUESTING AND PROVIDING INFORMATION

Considering the high demand for information from the Service, efforts have been made for standardizing the requests as well as the response processes, thereby allowing for maintaining an internal order, handling the respective priorities and providing the information in a safe manner.

3.1 Mechanisms for requesting information

Two modalities for requesting information have been determined, which depend on the periodicity with which the information is requested and the standardization thereof: information exchange agreements and 'upon request'.

- **Information exchange agreements**

For delivering information with a specific periodicity and on a standardized basis the Service has entered into information exchange Agreements or Protocols with other public institutions. These agreements are of an operational nature, inasmuch as they are not above the law, but rather seek to improve the processes related to the provision of information, as well as clearly establish the terms,

those responsible and the information that is transferred, specifying the responsibilities and limitations with respect to the use made of the information. In some cases, information exchange is carried out through online services or through the safe downloading system that is explained below.

To date, there are over 30 information exchange agreements with other public institutions, which are based on Act 18.575, which provides for the principle of collaboration between public entities and the regulations in force which determine the actions of the institutions involved.

- **Upon request**

For providing information that has no specific periodicity and which is determined on each occasion by the requestor, specific requests must be made to the Service Director, so that they may be subsequently sent to the corresponding areas in charge of providing a response, according to the inquiry made.

Under this modality, a system is being implemented, which allows certain institutions to upload a list of taxpayers on which information is required; for example, applicants for certain benefits, thereby allowing for sending the information through a safe data transfer system, which identifies the person to whom the information is sent and who downloads it within the Service, ensuring the confidentiality of the list of persons consulted.

3.2 Mechanisms for delivering information

On the other hand, considering the usefulness of the Service's information for the permanent provision of benefits (as is the case in some institutions) and in keeping with the collaboration which should exist between the entities of the State's administration, several ways of delivering information have been implemented which are useful for the institutions receiving it as well as for the Service.

- **Online services (Web Services)**

This is a means for delivering information which the Service has made available for inquiries from other public entities, in particular, that which is not protected by confidentiality and whose inquiry is massive. These online systems allow for consulting various types of data, which deal with taxpayer identification, the latter's economic activities or its representatives, among others, or else with real estate identification

and classification. With this modality of information delivery, the institutions may immediately Access taxpayer information.

To date, there are over 40 online services that could be consulted by public institutions requiring this information, following the signing of an information exchange protocol. Currently, there are over 25 institutions that connect and access information by means of this system.

- **Safe downloading system**

This is a system which the service has made available for providing specific and massive information. This system safeguards the security of data sent, on identifying that the person accessing the information actually belongs to the institution requesting it, since such person must be authorized and must authenticate itself in the system. By means of this delivery modality, the institutions may inquire about a specific group of taxpayers, while maintaining the secrecy and privacy of the data.

4. THE EMPOWERMENT OF THE INFORMED CITIZEN

In a manner parallel to the existence of the principle of collaboration between entities of the State Administration and the delivery of information to them, the regulations currently in force include laws that allow and facilitate access to the information which is kept by the Service and which is considered public and of free access to the citizens in general.

The so-called Act of Access to Public Information (Act N° 20.285), also known as Transparency Law, which entered into force in 2009, was created for the purpose of giving citizens the power to examine the institution's performance, by rendering transparent the internal processes and the criteria adopted for making certain types of decisions, while this does not imply delivering information that may be secret or which may affect the normal operation of the Service. This law is the one that provides greater examining power to the citizen, since it stipulates different principles that oblige public entities to deliver the information they possess.

Some of the main principles included in this law are the principle of freedom of information (which indicates that every person has the right to access the information held by the entities of the State Administration, with the sole exceptions or limitations provided by laws of qualified quorum), the principle of transparency (which indicates that all the information held by the entities of the State Administration is presumed to be public, unless it may be subject to exceptions) and the principle of

facilitation (which indicates that exercise of the right must be facilitated, excluding the demands or requisites that may obstruct or prevent it.).

The principles and rights provided in this law determine the normative framework regarding the right to access public management information.

The interest in the information held by the Service is also reflected in the number of requests received from the citizens since the entry into force of this Law, and for which reason the Service has been positioned in 5th place among the most requested public entities, with respect to requests based on this law, thereby receiving 3,588 requests in the period between April 2009 and July 2012[4].

The following graph shows the relative positioning of the Service among the 10 most requested public entities.

Source: Monthly Statistical Report on Requests N° 40, Act N° 20.285

The monthly average requests received at the Service have gone from over 130 in 2009 to close to 100 so far in 2012.

On the other hand, and ratifying the Service's commitment to rendering its management transparent, the Taxpayer Rights were included in the Tax Code in 2010, which provide for the delivery of information and assistance by the Service regarding the exercise of the rights and in compliance with its functions, thereby ratifying the power granted to the citizen and, in particular, to the taxpayer regarding public management.

4 *Monthly Statistical Report on Requests N° 40, Act N° 20.285 on Access to Public Information. Ministry General Secretariat of the Presidency.*

5. CONCLUSIONS

Due to the significant use of the social networks and easy access to information existing at the world level, the citizens have been empowered and have begun to demand compliance with the existing regulations and a more effective respect for their rights.

Public entities have not been exempt from these new demands and thus have had to adapt their processes in order to ensure the citizens their transparent and effective performance.

One of the areas requiring greater emphasis is in improving management of public resources, which are scarce and are in high demand, for which reason each institution, within the function entrusted to it, has had to look for all the existing sources of information for ensuring an efficient and focalized delivery of public policies.

It is for this reason that the Internal Revenue Service has become a fundamental axis for the development of these policies, acting as supplier of information, statistics and studies intended to focalize the development instruments provided by the State, providing its support in the advanced or subsequent measurement of the economic-tax effects of legal changes by some Government Ministries, being fundamental input for the development of the country's micro and macro-economic indicators, and supporting the work of the Judicial Body and the police, among others.

Case Study

Topic 2.1

TAX ADMINISTRATION POWERS AND TAXPAYER RIGHTS"

Alexandre Gardette
Tax Audit Department Head
Public Finances Directorate General (DGFiP)
Ministry for the Economy and Finance
(France)

PRESENTATION OUTLINE

I) From the 1980s to the end of the 2000s: greater protection for the taxpayer
II) From the end of the 2000s: tighter anti-evasion measures in an environment of economic and financial crisis
III) Balance between effective anti-evasion action and the right of defence

I. FROM THE 1980S TO THE END OF THE 2000S: GREATER PROTECTION FOR THE TAXPAYER

1. FROM POUJADISM TO THE AICARDI REPORT (1986) THE TAX FACE OF POUJADISM (AND THE FRENCH REVOLUTION)

One of the first formal expressions of relations between the administration and taxpayers in the history of France can be found in the 1789 Declaration of the Rights of Man and of the Citizen.

Article 13 of this Declaration states that, "For the maintenance of the public force, and for administrative expenses, a general tax is

indispensable; it must be equally distributed among all citizens, in proportion to their ability to pay."

Article 14 adds that, "All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration."

Article 15 then stipulates that, "Society has the right to ask a public official for an accounting of his administration."

These measures were taken in response to the Farmer-General practice, which developed at a time when the monarchy was struggling with near-empty coffers. The farming out of the collection of duties and taxes had the advantage of giving the Public Treasury regular, predictable revenues while freeing it up from having to collect them.

The behaviour of the Farmers-General made them one of the most reviled institutions of the Old Regime and brought the wrath of the French Revolution down on them. The Farmer-General system was abolished on 21 March 1791.

In more recent times, a political, union-based tax protest movement emerged in France in the form of Poujadism in the Lot Department in 1953. It basically defended shopkeepers and small businesses and criticised the inefficiency of the parliamentarianism of the Fourth Republic.

The term stands more specifically for the activities of the UDCA (Union for the Defence of Shopkeepers and Craft Trades), the union led by Pierre Poujade, and the UFF (Union and French Fraternity).

The Union for the Defence of Shopkeepers and Craft Trades headed a movement by small shopkeepers against the tax administration and its officials. These shopkeepers were opposed to rising taxes on small retailers, growing tax audits and especially an amendment that was to become Article 33 of the Budget Act passed on 14 August 1954, providing for heavy sentences for those who tried to block tax audits.

In the 1970s, the French tax administration reformed its practices in house. General acts were passed on relations between the administration and the public (the Freedom of Information Act of 17 July 1978, the Act of 11 July 1979 on the statement of grounds for administrative decisions, and the Decree of 28 November 1983 governing out-of-court administrative remedies).

A large-scale tax audit reform was conducted in 1987 following work by a committee chaired by MP Aicardi and set up in April 1986 to improve relations between the public and the tax and customs administrations.

ii. The Act of 8 July 1987 made changes to the audit procedures:

iii. The rights of audited taxpayers were formally laid down in a charter (based on an administration initiative from 1975)
iv. The statute of limitations was shortened
v. The burden of proof was reversed in favour of the taxpayer

Some of the committee's recommendations were implemented by the acts of 30 December 1986 and 8 July 1987. These included:

- Placing the burden of proof on the tax administration (the reversal of the burden onto the taxpayer became the exception);
- Reducing the general statute of limitations for the administration from four to three years;
- The binding nature of individual rulings in favour of the taxpayer;
- Improving taxpayers' rights of defence in on-the-spot audits of individuals;
- Formally laying down the audited taxpayer's rights and obligations in a charter for the audited taxpayer that became compulsory and binding.

2. LEGAL CERTAINTY: GIBERT (2004) AND FOUQUET (2008) REPORTS

- Development of advance tax rulings and formal rulings during tax audits
- Secure rulings from the administration on transfer pricing
- Introduction of voluntary tax audits

In the 2000s, a competitive international tax environment made for a focus on the legal certainty that governments needed to provide economic players.

The French Minister for the Economy, Finance and Industry hence tasked Mr Gibert, lawyer, with a report in 2004 to propose measures to improve the certainty of tax legislation in order to increase the country's attractiveness.

This report led to 30 measures being taken to improve relations between taxpayers and the tax administration. These measures were

designed to:

- Guarantee the legal certainty of businesses by developing advance tax rulings, especially on transfer pricing, limiting the retroactive application of tax legislation, making rulings during audits binding, and introducing voluntary tax audits;

- Create an administration with more respect for taxpayers in good faith: income tax return amendment request letters, information on the closure of documentary audits, rectification of a tax situation during an audit, limitation of the length of on-the-spot audits, introduction of a department tax mediator, and improvements to the way the department commissions are run;

- Help individuals conduct their tax formalities: easy applications for advance tax rulings, improvements to the tax service call centres, and more functions for the online tax accounts.

In 2008, Mr Fouquet, Section President, Conseil d'Etat (French Supreme Administrative Court), took this work forward in a report on improving legal certainty in relations between the administration and taxpayers.

The DGFiP accordingly set up two pilot tests. The first was "the tax guarantee" for auditors to issue an opinion, on their own initiative, as to whether sufficiently audited points comply with tax legislation.

The conclusions of this "investigative report" count as a formal position binding on the administration, subject to certain conditions, in the event of a future audit.

This pilot test returned mixed results. Businesses criticised the measure for the fact that they had no say in the choice of what the guarantee covers. It was also felt that this measure could create more work for auditors at the expense of their auditing assignment.

The second pilot tests concerned the certification of the tax audit units. An independent body certifies the units that comply with 15 benchmark specifications in recognition of their long-running work to smooth relations with users when conducting audits, especially in terms of lead-times and the quality of dialogue.

These pilot tests found that the constraints of certification by an outside body increased the units' workload and the paperwork already imposed by the legislation.

These drawbacks marked the end of the certification approach as such by an outside body.

However, the tests did point up some positive results with the sharing of certain good practices based on the certification standards.

3 IMPROVED RELATIONS BETWEEN THE ADMINISTRATION AND TAXPAYERS IN THE MANAGEMENT OF THE TAX RETURN SYSTEM AND AUDIT PROCEDURES

· Simplification of tax formalities and development of online tax returns

Simpler, streamlined tax return formalities are key to taxpayers' compliance. In view of this, the DGFiP has developed tools for individuals and businesses to file their main tax returns online and use paperless tax payment procedures.

· Introduction of the pre-printed tax return and the tax return amendment request letter for individuals

The tax administration derives some of its information on taxpayers' incomes from third parties (employers, banks, social security funds, etc.), which are required by law to declare certain sums. In 2005, the DGFiP introduced an option for taxpayers to amend any inconsistencies between their tax returns and these third parties' returns without requiring an audit.

In 2006, a further improvement was introduced. The administration now sends annual income tax returns to taxpayers already printed with the income data it has at its disposal.

· Reform of penalties from 2003 to 2005

The purpose of the reform was to realign a mechanism that had become opaque over the years as successive standards stacked up.

The idea was also to make the legislation more transparent by updating and harmonising the vocabulary and improving the way it was structured. For example, tax base references previously found in

articles on fines were transferred to the relevant tax base articles (on tax break issues, for example).

Late payment interest was placed at the start of the General Tax Code section dealing with fines to highlight its nature as a pecuniary penalty, which differentiates it from other sanctions, and to show that it applies across the board. It was reduced from 0.75% to 0.4% per month in 2007.

The common law sanctions were grouped into nine main categories of offence under the tax sanctions heading in the General Tax Code. The range of sanctions was reduced and the provisions on fines were rewritten to harmonise their terminology.

· **Procedure to rectify a tax situation during an audit**

Article L. 62 of the Book of Tax Procedures allows for businesses to rectify mistakes made in good faith when their accounts are being audited. They are granted a reduction in their late payment interest if they pay the taxes due immediately.

This measure is taken up by an average 8% of audits and rectifications.

· **Improvements to the running of the commissions**

Article 26 of the Supplementary Budget Act for 2004 stipulates and extends the material responsibilities of the Département Commission for Direct and Turnover Taxes. The administration and taxpayers can refer audit disputes to this body.

The commission rules on the factual grounds for the administration's rectification proposal. Yet it can also rule on points that may be involved in a legal question without actually settling the said legal question.

· **Information to taxpayers audited by a documentary audit**

When the administration conducts documentary audits, it sends the taxpayers concerned a request for information in which it informs them that, if they do not hear from the administration within 60 days of sending their reply to the administration's request for information, they can consider their case closed on this particular point. In this way, taxpayers are not left in the dark as to what is happening with their case.

In addition, auditors are advised to include in the procedural documents the amount of taxes and penalties due following the rectifications proposed by the documentary audit.

4 FROM THE END OF THE 2000S: TIGHTER ANTI-EVASION MEASURES IN AN ENVIRONMENT OF ECONOMIC AND FINANCIAL CRISIS

4.1 Internal anti-evasion measures

· **Creation of new disclosure requirements**

Six disclosure requirements have been created or extended since 2009: for banking establishments on their international fund transfers for individuals; for telephone operators and internet service providers on their customers; for online gambling and casino operators and the regulator; and for craft trades and professionals selling antiques and second-hand goods.

· **Introduction of the flagrant tax evasion offence**

With the introduction of the flagrant tax evasion offence, the DGFiP can conduct precautionary seizures in the most blatant tax evasion cases (undeclared business, clandestine employment, carouseling and zapper software) and circumstances liable to jeopardise tax collection. It can do so without a ruling from a judge and before the tax return deadline.

· **Establishment of an advance VAT audit for businesses on the simplified VAT return system**

The administration can use this procedure for on-the-spot audits before the VAT return deadline of transactions conducted in the start-up year and current year in order to swiftly put a stop to and charge certain fraudulent practices (false invoicing, carousel fraud invoicing chains, and fly-by-night businesses in certain high-risk socio-professional fields).

· **Launch of the criminal tax inquiry procedure**

The judicial tax inquiry procedure authorises the DGFiP to apply for a warrant before the start of tax audit operations to give the administration criminal investigation powers to search for elements that can serve to establish and charge the most elusive tax evasion cases, in practice evasion via non-cooperative jurisdictions and falsification.

This procedure deals with particularly complex and short-lived fraudulent practices by enabling the administration to use tapping, police custody, searches and so on where its usual prerogatives (right of visit and seizure, accounts audits and audits in the taxpayer's presence) are not enough.

Warrants can be applied for at the audit programming stage or during an audit without the administration having to provide definite evidence that tax evasion has been committed. The taxpayer is informed neither of the referral to the Tax Infringements Commission nor of its ruling.

Cases must meet the all of the following conditions:

Scope restricted to three categories of tax evasion:

- The use, for the purpose of evading taxes, of accounts or contracts with entities established in a state or territory that has not concluded, for at least three years as at the time of the events, an administrative assistance convention with France for the exchange of all information required to enforce French tax legislation;
  - The fraudulent use, in this same state or territory, of front men or front companies or any similar body, trust or institution;
  - The use of a false identity or forged documents as defined by Article 441-1 of the Penal Code or any other forgery.

- **Reason to believe that evasion has been committed:** the tax administration must have sufficient evidence obtained from its administrative procedures.

- **A risk of loss of the integrity of the evidence:** There must be a risk that the elements enabling the administration to establish tax evasion will disappear or be altered.

The inquiry may be assigned to the National Tax Crime Unit (BNRDF), also known as the "tax police". This structure reports to the Ministry of the Interior. It comprises criminal investigation police officers and tax officials who have attained the status of criminal tax investigation officers.

4.2 Cross-cutting anti-evasion action

· Information exchanges with all the administrations concerned, Social security bodies, Police, Gendarmerie and Customs, Justice (respecting the independence of the judiciary and educating the public on the criminal sanctions applicable to tax evasion)

· Action headed by the National Anti-Evasion Delegation (DNLF)

A National Anti-Evasion Delegation was set up in 2008 to ramp up action to combat tax evasion and welfare fraud. The DNLF reports to the Minister for the Budget. It is briefed to work within the strategic and operational remit of the administrations concerned to:

1° Ensure the effectiveness and coordination of the actions taken by the central administrations, social security bodies and unemployment benefit management bodies to combat evasion and welfare fraud;

2° Improve the government's knowledge of evasion and fraud that impact on public monies and, in particular, improve the current valuation of this evasion and fraud, the tracking of growth in these phenomena and the definition of evasion and fraud categories;

3° Contribute to guaranteeing the collection of public revenues and payment of welfare benefits, in particular by furthering the development of information exchanges and file interoperability and interconnectivity in keeping with the conditions laid down by the Act of 6 January 1978 on data protection and privacy;

4° Contribute to the implementation of a national prevention and communication policy;

5° Define guidelines for closer cooperation with foreign administrations and bodies;

The DNLF's coordination action is underpinned by the Department Anti-Evasion Committees, which cover all the relevant devolved services and report to the Prefect.

Information exchanges with social security bodies are restricted by means of withholding identifying data on individuals and by the scope of the fraud in question (benefit controls).

Closer cooperation with customs to combat tax evasion and smuggling took shape with the conclusion of a national agreement on 3 March 2011, which has now been rolled out locally throughout France. Under this agreement, the two administrations closely monitor the services' activities at central and local level with a focus on the most serious cases (especially VAT evasion) and broader cross-cutting access to both partner directorates' software applications.

Cooperation with the Ministry of the Interior is long standing, with 50 officials working at the National Business Investigations Unit (BNEE). Yet closer cooperation has been achieved by three innovative measures: the regional intervention units (GIRs) set up in 2002 and whose action was reaffirmed by the interministerial circular of 2 March 2010; the plan to fight crime in certain sensitive districts introduced following the memorandum of understanding signed by the interior and budget ministries on 23 September 2009; and the creation of the National Tax Crime Unit (BNRDF) at the Central Criminal Investigation Directorate (DCPJ) on 5 November 2010.

Cooperation with the Ministry of Justice respects the independence of the judiciary. The main action here is to educate the public on the criminal sentences applicable to tax evasion.

4.3 Action against international tax evasion and avoidance

The Liechtenstein tax evasion scandal and the financial crisis highlighted the harm done by tax havens.

Audit measures were ramped up to improve transparency and cooperation with the tax havens and to encourage taxpayers' compliance.

A first step was taken with the Supplementary Budget Act for 2008:

- The statute of limitations for the tax administration to recuperate unpaid income tax and corporation tax was extended to ten years (instead of three years), when taxpayers fail to declare a bank account or life assurance contract abroad or an entity owned in a tax haven country (crime tackling measures in articles 209 B and 123 bis) and the country concerned has not concluded an assistance convention for banking information exchanges with France.

- The fine that applies in the event of failure to declare a bank account in such a jurisdiction was raised from €750 to €10,000. The Supplementary Budget Act for 2009 adopted comprehensive provisions to combat non-cooperative countries and territories by:

- Stepping up the convention policy to conclude OECD-standard administrative assistance conventions with non-cooperative jurisdictions (28 conventions and 9 tax treaties have been signed; 26 conventions and 8 tax treaties have entered into force);

- Legally defining the notion of non-cooperative countries and territories (Article 238-0A of the General Tax Code), to which is attached a ramp of retaliatory measures. A black list of non-cooperative countries and territories is updated annually, taking into account the conclusion of new conventions and the effectiveness of information exchanges. As at 1 January 2012, eight countries and territories (Botswana, Brunei, Guatemala, Marshall Islands, Montserrat, Nauru, Niue and the Philippines) were on the black list.

- Adopting a ramp of retaliatory measures penalising transactions with non-cooperative countries and territories. These measures provided for:
  - A 50% increase in withholding tax and contributions on dividends, interest, fees and capital gains;
  - Limited deductibility in France of sums paid to a resident of a non-cooperative country or territory;
  - Withdrawal of the benefit of the parent-subsidiary arrangement and the long-term capital gains arrangement;
  - The stepping up of the crime-tackling measures in articles 209 B and 123 bis;
  - A stricter transfer pricing documentary obligation for transactions involving large corporations (Article L. 13 AA and L. 13 AB of the Book of Tax Procedures).

- Setting up a rectification unit in April 2009, through to the end of 2009, to encourage taxpayers to rectify information on their undeclared assets abroad. This was designed for individuals living in France with assets and income outside of France that they had not declared to the tax administration.

- Introducing a large-scale disclosure requirement in 2010 for all banks established in France to obtain information on capital transfers to non-cooperative countries and territories. A huge amount of information was obtained (40,000 transfers representing over €12 billion). This information was reprocessed and gave rise to the programming of over 500 audits in early 2012.

A similar operation was launched at the start of 2012.

Generally speaking, and excluding the cases of former non-cooperative countries and territories, cooperation to combat tax evasion and avoidance has produced good results. However, the situation is more complicated when it comes to deciding how to allocate the tax base among different countries (case of transfer pricing).

A recent development is helping to step up action against the cross-border concealment of earnings, irrespective of the relevant country's level of cooperation.

Combating international tax avoidance calls for more than just administrative assistance. The tax administration has to contend with the absence of a tax return from the taxpayer. This raises the issue of general access to information in the case of undeclared assets.

The tax procedure already deals with this issue on a domestic level.

Legislation was brought in over the 2011/2012 period to address this issue on an international level and independently of the cooperation criterion:

- The Supplementary Budget Act for 2011 extended the statute of limitations for the tax administration to recuperate unpaid corporation tax and income tax to ten years in the event of the concealment of assets or entities abroad, regardless of the jurisdiction concerned. In addition, its scope was extended to cases where trust administrators fail to meet their obligation to declare the creation, modification or termination of these legal entities, as required by the 2011 Supplementary Budget Act.
- Stricter, aligned tax sanctions now apply in the event of failure to declare bank accounts and life assurance contracts held abroad.

  For example, when undeclared bank balances or the value of undeclared contracts total €50,000 or more on 31 December of the year for which the declaration should have been made, the fine is 5% of the balance of each undeclared account or value of each undeclared contract (regardless of the country). This fine cannot be less than a floor of €1,500 or €10,000 in the case of a tax haven.
- The Supplementary Budget Act for 2012 introduced stricter criminal penalties for tax evasion.

· The fine for tax evasion was raised from €37,500 to €500,000 in general and from €75,000 to €750,000 when the evasion is conducted or facilitated by means of purchases or sales without invoices or false invoicing or where the intention is to obtain unjustified reimbursements from the administration;

· New penalties were created for ties with a non-cooperative country. In this case, sentences were increased to seven years' imprisonment and a fine of €1 million.

- Lastly, the Supplementary Budget Act for 2011 adopted a change to the criminal tax inquiry procedure. The cooperation criterion was maintained to target accounts held in tax havens, but these remain a further three years within the remit of the tax police as of the conclusion of an information exchange convention.

The ministers have announced further measures for the end of the year.

5 BALANCE BETWEEN EFFECTIVE ANTI-EVASION ACTION AND THE RIGHT OF DEFENCE

5.5 Tools for the administration to use in its audit assignments

· A range of auditing and investigative procedures
· Computer files on businesses and individuals and powerful databases

These developments have given the administration a range of procedures to collect and process information for its tax audit work: right of visit and seizure, right of inquiry, disclosure requirement, and the documentary and on-the-spot audit procedures.

It has used the onlining of business, individual and asset returns to build databases. Software analyses the tax risks of each population group and each file using a rating system based on tax behaviour and suspected anomalies and inconsistencies.

This selection method is rounded out by the information sent by the other auditing administrations.

2.2 The legal framework governing the administration's action

· The range of possible remedies during audits without having to resort to litigation
· Court cases (two types of court)
· Citizens protection bodies (National Commission for Data Protection and Privacy)

Tax audit procedures are generally conducted in the taxpayer's presence so that taxpayers, or their agents, can present their observations on the rectifications proposed by the tax administration. The administration is bound to respond to these comments in keeping with the conditions laid down by law.

Taxpayers also have various remedies available at different hierarchical levels (the auditor's department head and management) before having to resort to litigation and the possibility of referring an unresolved dispute to a department or national commission for direct and turnover taxes. The commission, made up of administration and civil society representatives and chaired by a magistrate, issues an opinion that is not binding on the administration (in the event of litigation, the burden of proof is on the administration if it charges tax higher than the commission's opinion).

Before submitting a court case, taxpayers must present an appeal to the administration, which has to inform of its decision within six months of the appeal. After this six-month period or on receipt of the administration's response, the taxpayer may bring the case before the relevant court: the administrative court for direct taxes, turnover taxes and equivalent taxes; and the judicial court for registration duty, real property registration tax, wealth tax, stamp duty and indirect contributions.

These many different remedies could raise the question to whether they might have any undesired effects. They could encourage the administration to stand firm on its rectification decisions or taxpayers to refuse to cooperate during the audit itself.

The administration conducts its action in compliance with privacy and confidentiality requirements. The National Commission for Data Protection and Privacy, established in 1978, is the official personal data protection watchdog in this regard, and has the relevant supervisory and sanctioning powers.

The administration is bound by its position, especially in the case of cross-referencing files and online disclosure requirements.

2.3 Moves to better meet taxpayers' needs

- Separating management and audit tasks
- For businesses: the Large Business Directorate (DGE) and the National and International Tax Audit Directorate (DVNI)
- For individuals: targeting high-risk accounts (large accounts audited by the National Tax Situation Examination Directorate – DNVSF)
- Taxpayer management improvements do not necessarily tie in with audits

Since the 2000s, the DGFiP has been adapting its organisation to the particularities of certain categories of taxpayer.

The Large Business Directorate (DGE) was set up on 1 January 2002 to cover:

- Businesses with a turnover or gross assets of over €400 million (core companies);
- Partners and over 50%-owned subsidiaries of core companies;
- Companies that belong to the same integrated group (Article 223 A of the General Tax Code) as one of the abovementioned companies;
- Companies that are members of a group that comes under the consolidated global profits tax system (repealed on 31 December 2010).

It manages approximately 36,000 businesses representing 1,350 groups.

Most of these groups and companies are the responsibility of the National and International Tax Audit Directorate (DVNI) for external tax audits. This directorate is made up of 26 tax audit units specialised by business sector (heavy industry, banking, luxury goods, pharmaceuticals, food industry, etc.). The DVNI conducts some 1,300 accounts audits per year.

At department level, small and medium-sized businesses have a one-stop contact in the form of the Business Tax Service (SIE). Department services audit the small businesses while interregional services audit the medium-sized businesses.

Individuals' taxes and tax account files are managed locally. Individuals are generally audited by specialised units in the most complicated and high-risk cases.

At national level, the National Tax Situation Examination Directorate (DNVSF) conducts documentary and on-the-spot audits of individuals presenting high-risk, complex or particularly sensitive tax accounts.

Case Study

Topic 2.3

SMART COLLABORATION
OPERATORS OF CREDIT CARDS, DEBIT CARDS AND SIMILAR

Pablo Ferreri
General Director of Revenue General
Directorate of Taxation
(Uruguay)

Contents: *Summary.- 1. Introduction.- 2. The Uruguayan experience: the operators of credit/debit cards as collaborators.- 3. Facilitating management – providing information.- 4. Increasing collection – tax responsible.- 5. Promoting formalization – 6. Trade policies – reduction of IMESI fuels.- 7. Tourism policy – tax reduction.- 8. Promoting equity – the case of personalized vat.- 9. Final considerations*

SUMMARY

"Smart cooperation" has become in recent years one of the key issues on the agenda for various international fields. It is an important tool for tax administrations in different jurisdictions which have focused on cooperation for fighting international tax evasion.

There is also another type of cooperation occurring within the different jurisdictions, at domestic level, essentially pursuing the same objective: to fight against tax evasion and informality.

Through smart cooperation, domestic revenue collection agencies establish coordination mechanisms with other public and private entities in order to increase efficiency and effectiveness, promote voluntary compliance, have adequate information for better controls, increase collection, provide better service to taxpayers, and in some cases, it is also an appropriate mechanism to encourage certain economic activities, promote equity, ultimately providing a better service to the general public.

Cooperation with tax administrations involve a wide cast of entities which among other are State agencies, public entities, businesses, taxpayers, responsible for taxes, information providers, certain sectors of the economy and the society.

In particular, this document will address the study of different forms of collaboration that have been implemented between the Tax Administration of Uruguay and operators of credit, debit cards and similar since it is a very positive experience to be shared with other tax administrations.

In that sense, the analysis will focus considering the various functions associated with the mentioned cards, when they are used as payment for certain operations: (1) as a tool for providing information, (2) as a tool for withholding taxes and (3) as a mechanism for reducing taxes. Regarding this last point, it should be noted that by using cards, consumers can benefit from a reduction of the Value Added Tax (VAT) when acquiring certain goods and services purchased in established businesses, a reduction in Excise Tax (IMESI) when purchasing fuel at the border as well as a general reduction of VAT, which may be total (in the case of purchases made by people belonging to low income sectors) or partial, which is an innovative mechanism of " tax awards ".

1. INTRODUCTION

It is well known that tax administrations are a strategic pillar for any country as they depend on the collection of most of the revenue required by the State to fulfill its purposes.

In Uruguay, the DGI is the leading collection agency, financing approximately 85% of the Central Government revenues, thus ensuring the stability of the State revenues, allowing the financing of active and social policies that are addressed to the most vulnerable sectors.

Its mission is to ensure the collection of the State resources through the effective application of rules relating to internal taxation of its competence, promoting voluntary compliance by taxpayers, in a framework of respect for their rights, acting with integrity, efficiency and professionalism.

As part of its mission, strategic objectives aim to facilitate voluntary compliance with tax obligations, fighting fraud and tax noncompliance, strengthen functional, institutional and social commitment with the assigned mission and promote the effective enforcement of tax laws in order to achieve the effective, efficient and transparent management of the organization.

In Uruguay indirect taxes represent a high percentage for the collection, verifying the higher relative weight in the year 1984 with a share of 81.6%, while in the year 2011 it is at 64.1%.

This significant decrease in the relative weight of indirect taxes reflects a strategic definition adopted from the 2007 Tax Reform, which defined the relative increase in direct taxation, in order to have a more equitable tax system.

As to direct taxation, the most important changes in income taxes introduced by the Reform were given by the incorporation of Personal Income Tax (IRPF), structured in a dual system which provides a base rate of 12% for capital gains and "progressive" rates for labor income and on the other hand, by the creation of an Income Tax for Non Residents (IRNR).

The changes introduced by the Tax Reform related to consumption taxes are essentially three: a) the reduction of VAT rates (base rate went from 23% to 22%, while the minimum rate fell from 14% to 10%); b) the extension of the VAT base in groups of goods and services that were exempt from the tax; and c) the elimination of COFIS (Tax Contribution for Financing Social Security).

The elimination of COFIS and reducing the VAT rates were policies aimed to reduce the relative share of indirect taxes in the tax system, to help simplify the system and improve the fight against evasion and informality.

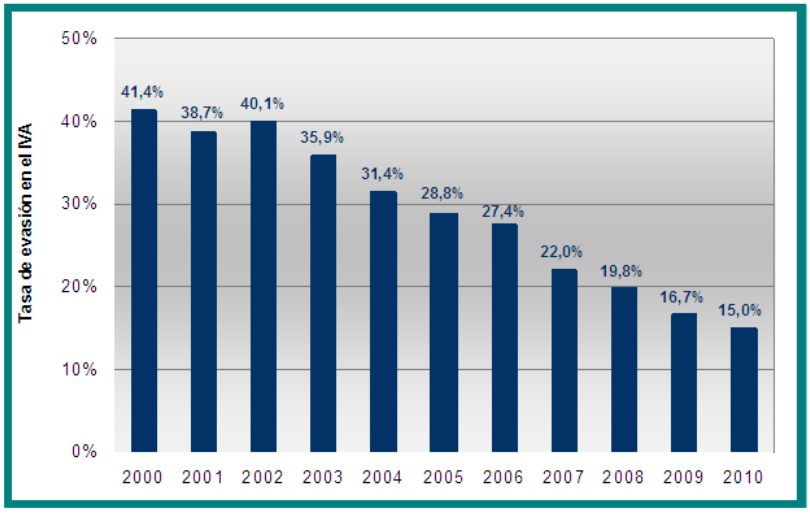
It is also important to note that the Tax Reform was not designed for collecting higher revenue, but in any case its purpose was to collect differently, following equity, efficiency, simplicity, sufficiency criteria and encourage productive investment.[1]

1 *GONZÁLEZ AMILIVIA, Gustavo. The reform of the Uruguayan tax system from the perspective of efficiency and equity. Notes for courses in Economics and Public Finance. Preliminary Version 2007. UDELAR, Faculty of Economic Sciences and Management.*

In the public consultation document the concept associated with the result in terms of potential collection for the proposed design was reflected through the approach called fiscal responsibility.

Moreover, if the results of evasion studies on Value Added Tax (VAT) performed in recent years are analyzed, they reflect in our country permanent efforts and strong commitment to fight tax evasion and tax fraud.

The Table below shows the results on the estimation of tax evasion for the period 2000-2010. It peaked at a maximum of 41.7% in 2000 and a minimum of 15% in 2010.[2]



The numbers show a continuing downward trend. Uruguay became one of the countries with the lowest evasion figures in Latin America.

While there are various factors that influenced the fall in the VAT evasion rate[3], one of them is related to the appointment of new directors and tax information agents.

The designation of these agents responds to, on one hand, the need to ensure the tax collection by a more effective way than the one from the taxpayer, and on the other hand, getting information from certain agents of the economy, so as to properly manage taxes administered by the DGI.

2 *Estimated evasion on Value Added Tax by the consumption method 2000-2010, Economic Consultancy General Tax Directorate, in http://www.dgi.gub.uy*

3 *Consult the report "Asesoría Económica de la DGI." Ob. cit., note 1.*

Designated entities respond to the existence of certain characteristics for the agents involved in various economic events. Also, the incorporation of these figures, whether as agents responsible for withholding a tax or to provide information, increases the taxpayers' perception risk since the responsible one reports to the Administration about the transaction that originates its obligation.

The so-called "intelligent cooperation" is one of the main tools that tax administrations have to achieve the above objectives.

Cooperation, understood as the coordination between the Tax Administration with other partners, whether public or private, produces a positive synergy, which translates into cost savings by increasing efficiency and effectiveness, avoiding duplication of tasks. at the same time minimizes efforts since the criteria to get the information are standardized, which allows to correct errors by avoiding detours and that way improve the quality of data. This improves the third party information and counter-information, all which contributes to improve the quality of services provided and taxpayer assistance, increases revenue, improves controls, and ultimately tends to improve the efficient tax management.

In that sense, this paper will focus on the analysis of the experience on cooperation between the Uruguayan Tax Administration with a sector of the economy in particular, operators of credit cards, debit cards and similar.

2. THE URUGUAYAN EXPERIENCE: THE OPERATORS OF CREDIT/DEBIT CARDS AS COLLABORATORS

Recently, our country has been developing efforts aimed to increase the "banking" of transactions.

The implementation of this mechanism is based on improving safety by reducing cash transactions, replacing the money by credit cards, debit cards and similar.

The measure also seeks to promote savings, give access to credit to sectors that today have them but at significantly higher rates, improving the payments system and financially educate users to warn them.

Similarly, it will allow a greater control over tax evasion and implement direct measures, such as VAT (general or selective).reduction.

It also seeks to encourage consumption through credit cards and debit cards, withdrawing cash at ATM terminals, payment of salaries and pensions through these mechanisms, the extended business hours and the possibility of overdrafts.

It is for these reasons that card operators have been identified as a key sector to work jointly and in coordination with the State (in particular with the Tax Administration), so as to achieve the various goals outlined in the banking process.

Moreover, it should be noted that the work coordinated with the aforementioned operators has been developed for several years, even before the banking was a priority for the government when identifying and recognizing the benefits associated with such entities involves.

Identifying potential collaborators as responsible whether acting as withholding or collection agents of certain taxes or entities responsible for providing information to the Treasury is associated with various factors.

This way they can identify among them the difficulties for the management, collection and tax control on certain activities or taxpayers, the need to ensure and secure the tax credit, the subject identification with more payment guarantees than the taxpayer related to taxable transactions or taxpayers that are difficult to manage, collect or control.

On the other hand, it is undeniable that by recognizing these designations, the Treasury saves in the tax administration related to the costs which are transferred to those responsible who become a kind of “auxiliary agents” for the Tax Administration.

In short, the figure of the responsible for the tax is due to the need to ensure the interests of the Treasury. This need arises in most cases from the difficulties of the Comptroller for certain activities.

However, the fact that a particular business or activity present control difficulties is not enough to impose obligations on certain subjects.

Thus, the decision to appoint a responsible one should come arise after a careful circumstances analysis, once concluded that negative externalities which affect the nomination are largely exceeded by the benefits that motivates it. In short, there must be a positive balance between the costs saved to the Treasury and the costs to be passed on

to the responsible ones, or other negative effects that the designation may have.[4]

It is precisely that the reason for the appointment of such subjects cannot be the first solution, but several factors must be weighed. This is, after identifying the potential responsible, it is necessary to have an adequate tax behavior (otherwise it would be “rewarding” the informal sector) and verify that their appointment does not introduces distorting elements to the market.

To identify a potential responsible it is necessary to check that they meet a set of attributes so as to ensure that the objectives pursued by the Treasury with its designation are effectively met. Without pretending to detail them all, below are a few of them:[5]

- **Solvency:** To meet any obligations that may emerge from their designation as such.

- **Reliability:** in marketing or distribution chains where there are compliance problems, a participant can be identified in some stages of the economic cycle that reveals a greater degree of reliability than the rest. Reliability is also important because in cases of withholding or perceptions, the responsible can manage very significant amounts of money so the risk is considerably concentrated.

- **Easy control:** that the Tax Administration can achieve. This may be associated, for example: to the link between the responsible and the generated event.

- **Simplicity:** in some cases the designations of responsible contribute to easier comply with the taxpayers obligations. An example is the designation of responsible for Personal Income Tax (IRPJ).

- **Applying a more onerous penalty system:** for example: in the case of withholding and collection agents, the fine for not pouring withholdings and collections within the stipulated period is up to 100% of the unpaid amount whereas the penalty for other cases is up to 20%.

4 *ROMANO, Alvaro, Effective mechanisms for the collection of taxes and recovery of debts in times of crisis. Case Study: URUGUAY. 44th CIAT General Assembly - Montevideo, April 12 to 15, 2010.*

5 *ROMANO, Alvaro, Ob. cit, note 3.*

- **More information:** to have reliable information is an objective increasingly pursued by tax administrations. In that sense, the designation of tax responsible can help provide relevant information to the Administration.

The designation which lies on the operators of credit, debit cards and similar is later analyzed based on the recognition of most of the attributes that were earlier highlighted.

Indeed, these entities have the following characteristics: participation in a large volume of transactions, having all the information related to them, it's about companies with good administrative infrastructure which facilitates control of their operations. It should be remembered that these companies are subject to regulation by other public agencies, they also have a high degree of tax compliance which makes them reliable agents and their solvency is also highlighted.

Ultimately, they meet a set of requirements that justify their inclusion in the list of collaborating entities with the Administration constituting a valuable and reliable information source for it.

Next, the present document analyzes different objectives that have been pursued by using such subjects as associates and the measures taken. In that sense, it explains the various ways in which the Tax Administration is related to these entities, depending on the intended purpose:

a) Facilitating management - Provision of information

b) Increasing revenue – Tax Responsible

c) Promoting formalization - Reducing 9 VAT points

d) Trade policy - IMESI Reduction of fuel at the border

e) Tourism Policy - Tax Cut

f) Promoting equity – The particular case of personalized VAT

3. FACILITATING MANAGEMENT – PROVIDING INFORMATION

The Tax Administration, recognizing the importance of the consumer sales mode through credit management companies decided in 1989[6] the obligation to inform the aforementioned entities on a monthly data

6 Resolution Nº 325/989, 09.28.989.

series when engaging in sales of goods and provision of services by third parties.

The information to be submitted was adjusted over time as a result of the increase occurred in the financing through credit card management companies, as well as the emergence of new computer tools.[7]

The measure is justified by the need for timely information to facilitate the management and control tasks, taking advantage of the facilities provided by computer resources, reducing costs for the State.

The information monthly submitted on magnetic media individualized for each day provide the details of all transactions regardless of the mode used for this purpose, of each of the affiliated companies to the system (active subjects of credit) identifying:

- Name or company name
- Property Registration number (Tax ID No. or ID)
- Address

For each transaction, the following information must be recorded:

- Operation date
- Invoice number associated with the transaction.
- Total amount of the transaction

The information provided by the credit card management to the Tax Administration facilitated the management and control tasks, which allowed detecting among others, the following irregularities:

i) Sales not reported to the DGI by certain business.
ii) Sales made by companies that had been closed.
iii) Sales of certain types of goods that had not been reported by companies.

4. INCREASING COLLECTION – TAX RESPONSIBLE

Considering the increasingly widespread use of credit and debit cards for payment, it was appropriate to appoint card administrators responsible for the taxes that are generated during the operations they finance.

This mechanism ensures the Treasury a significant percentage collection of taxes that are generated in such transactions.

7 Resolution Nº 577/006, 05.29.006 is the provision in force.

It should take into account the evolution of the collection in respect to VAT withholding made by the entities managing credit cards in recent years:

Año	% s/Rec IVA
2005	1,1%
2006	2,7%
2007	2,7%
2008	2,8%
2009	3,0%
2010	3,1%
2011	3,3%

Through this measure, the responsible for the payment of third parties tax obligations were designated from companies that through credit and debit cards or purchase orders or other similar procedures manage credit, intervening in sales of goods and provision of services performed by third parties.[8]

The amount of withholding is generally fixed at 5% of the total amount of the original transaction including taxes.

However, in the case of certain activities, a lower rate up to 2% is established when they are service business, Real Estate, Tax Free Shops, Travel Agencies and taxpayers included in the Group not headquarter in the DGI[9].

It also establishes certain exceptions to the withholding regime in the case of transactions carried out by those who do not verify the income source or VAT, or in the case of national tax-exempt institutions, Government agencies are also exempt and non-state public figures as well as other specific activities exempt from income tax or VAT.

Taxpayers who are subject to the above mentioned withholding may deduct from their own tax obligations the amounts withheld. When these amounts are greater than those, there will be a credit to the taxpayer which may be refunded or allocated to the payment of other taxes or social security contributions.

It must be noted that through the various established exceptions (either by setting a reduced tax rate - 2% - or null), it is intended not

8 *Decree N° 94/002, 03.19.002.*

9 *By Dept. 458/011, 12.23.011 small size taxpayers were incorporated (those included in the group not yield tin he DGI), as to exclude them from the general rate of 5%.*

to transfer financial costs to taxpayers, resulting from the withholding practice if appropriate applying the general rate of 5%. This is based on the principle of neutrality, to avoid generating distorting effects on certain sectors of the economy.

5. PROMOTING FORMALIZATION – 9 POINTS OF VAT REDUCTION

The law promoting tourism[10] empowers the executive branch to reduce up to nine (9) percentage points the VAT rate on certain transactions that are paid using credit cards.

Operations benefiting from this scheme are: food services, catering services for conducting events, sales and other services for events, car leases without drivers and mediation services in rental properties for touristic purposes (sectors representing high levels of informality).

This measure inserted into a government policy that seeks to improve the country's conditions for the attraction and retention of domestic and foreign tourists tends to a greater formalization of the sector largely offsetting the unfair practices to better facilitate competition for entrepreneurs that comply with their obligations.

The purpose is to encourage the use of "plastic" as a means of payment in the processes specified.

How does the benefit work?

Suppose we pay with credit card in a restaurant an amount of 100 + VAT (22%), a total of 122.

10 *Law Nº 17.934, December 20, 2005, regulated by Decree Nº 537/005, 12.26.005.*

The business invoices and settles the tax at the effective rate without reduction to be entitled to a credit computable in VAT settlement (in the example an invoice for 122). This credit (9 in the example) will be paid once the card manager communicates the corresponding amount to the business.

It also sets certain formal obligations for business, among them, the obligation to put the voucher number on the voucher documenting the operation and mention that it is a protected operation under the regulating regime.

As for the cardholder, the benefit is recorded in the account statement under which the reduction is deducted from the payable amount. This results in an obligation of the card issuer to include or report in the account statement the amount of benefit.

Meanwhile, card administrators must provide the DGI information concerning operations benefited from the regime identifying for each operation the business RUC number, the sale receipt No., voucher No., total, VAT total and the amount corresponding to the reduction of the rate.

6. TRADE POLICIES – REDUCTION OF IMESI FUELS AT THE BORDER

In light of the differences between the price of fuel in service stations in our country and in neighboring countries which generates a significant imbalance in those places where the residents of border areas cross the line for fuel registering losses in service stations located there, the Executive authorized IMESI to reduce the amount corresponding to the sale of gasoline at some stations.[11]

The benefit is the reduction in the amount arising from applying the 28% to the sales price. The same is materialized through the accreditation of the discount in the final consumer's statement.

The measure contributes not only to promote trade in service stations benefiting from the regime, but prevents distortion of prices, while it is also a tool in the fight against smuggling.

How does the benefit works?

The mechanism is very similar to the previous case of the 9-point reduction in VAT. That is, the benefit is reflected in the account

11 Decree Nº 398/007, 10.27.009, written by the Decree 199/010, 06.25.010.

statement, with formal obligations that the business must comply with as how to document transactions as well as the card administrators obligation to inform the DGI of all the operations mentioned in this regime.

The difference is the fact that in the sales made by the service stations, the holder of the credit is the card administrator. This means that the business receives the total amount of the voucher, being the manager who deducts 28 points of IMESI from their returns.

7. TOURISM POLICY – TAX REDUCTION

For our country, the promotion and protection of tourism is a main pillar as a special economic, social and cultural activity. It should also be noted that tourism is a major source of strong and sustained growth to the Uruguayan economy.

Public administration has in this regard the guiding role and must encourage, promote, regulate, investigate and monitor touristic activities and services directly related to it.

In what has to do specifically with tourism-related tax policies, the government actions are aimed to: i) fight informality in all its expressions, ii) the rationalization of the tax system, in particular to generate appropriate conditions for the promotion of investments (in infrastructure and human capital), iii) stabilize emerging professions, business restructuring plans, iv) facilitating investment in the sector and in general to promote tourism.

In this context, the Uruguayan government plans to launch a package of stimulus measures for tourists, basically inspired by the use of credit cards.

Among the announced measures are:

- VAT Refund on all purchases with cards issued abroad: includes food services, services of events organization and car leasing.

- Return of 10.5% of rental of buildings for tourism purposes when the tenant is an individual not resident if the lease is made in registered real estate agencies and the payment is made with credit or debit cards issued abroad. This benefit will be in force from the period between November 15 and March 30, 2013.

8. PROMOTING EQUITY – THE CASE OF PERSONALIZED VAT

Finally, it should be noted that the recent action adopted by our country which empowers the Executive to reduce the VAT on the sale of goods and services made to final consumers when they are acquired through credit cards and similar.[12]

Two distinct audiences are considered by the Executive Branch. On one hand, a general reduction which is the reduction of 2 percentage points in the tax rate if purchases are made by electronic transactions. On the other hand, the total tax reduction for the same operations if they are made by people who belong to underprivileged population sectors.

This measure is part of the banking process above mentioned due to the gradual incorporation into the system of business, since not all of them have sales terminals suitable for these transactions, the Executive Branch regulated to date the total VAT reduction.[13]

The general reduction is part of the goal of reducing the relative weight of indirect taxes; while selective reduction has an obvious redistributive purpose.

Regarding the implementation of the total tax reduction, the law allows until the final implementation of the system the establishment of an estimated amount equal to the VAT reduction. It was set at 18.03% of the transaction amount.

How does the benefit works?

In this case the consumer benefit is at the time using the card, debiting the net amount of the corresponding reduction.

The obligations regarding the documentation of transactions by registered business, to inform the DGI of all operations covered by this regime by the card administrators are similar to those described in previous regimes.

Who has access to the benefit of the total VAT reduction?

They are the beneficiaries of family and food cards from the Ministry of Social Development (MIDES) that acquire goods and services through

12 Law Nº 18.910, May 25, 2012.
13 Decree Nº 288/012, 08.29.012.

the use of Social Uruguay debit cards and BPS Services for Family Allowance payment.

These are cash transactions with transfer cards that the State makes for the low-income sectors of the population.

This measure is part of the government's strategy to reduce poverty and inequality, by performing active social policies as part of a distributive and inclusive model.

In that sense, it is worth noting that Uruguay is the country with the lowest poverty and indigence rate in Latin America, standing out for having the least poverty in the region. The percentage of indigents fell by half in 2011 from 1.1% of the population to 0.5%.

Regarding poverty, the reduction between 2004 and 2011 was from 39.6% to 13.7%, i.e. more than 25 points, a figure that means 850,000 fewer people in that situation.

The most important and original of the Uruguayan strategy is that poverty and inequality were lowered at the same time and it reached the lowest level of poverty in modern history (ECLAC indices show that poverty is the lowest in the last 50 years) and also the lowest Gini index in modern history.[14]

While poverty reduction is fundamental due to the implementation of transfer social policies, since 2005, first by the citizen's income, and then by the Uruguay Social card and family allowances after the Equity Plan, it is also undeniable that the new tax system has decisively contributed to the achievement of those objectives.

Moreover, it is important to remember that the resources to address active redistributive policies come almost exclusively from the tax system resources.

9. FINAL CONSIDERATIONS

Tax policies related to the designation of credit, debit cards operators and similar as tax responsible, are contextualized in recognizing the benefits that occur when identifying "partners" relevant to the Tax Administration.

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14 Source:
Http://www.presidencia.gub.uy/wps/wcm/connect/presidencia/portalpresidencia/comunicacion/comunicacionnoticias/olesker-políticas-sociales-focalizadas-igualdad

In this sense, the “smart collaboration” is understood as a fundamental tool to fight tax evasion, tax fraud, promote voluntary compliance with tax obligations and increase revenue through a more efficient management and control of taxes.

The choice of these agents responds, among other reasons, to the need to ensure the tax collection by a more effective way than one of the taxpayer, as well as the need to get information from some agents from the economy, for properly manage such taxes administered by the DGI.

However, it is also motivated by other reasons, not just tax policy, but is part of a series of actions undertaken by the government, on one hand linked to the development of economic policies, related for example to the promotion of trade, tourism, among others.

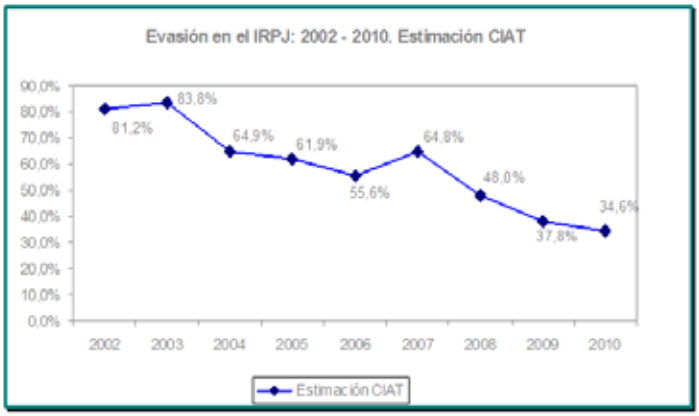
On the other hand, it is part of what has been the government’s strategy to promote the formalization of work, promoting social inclusion, poverty eradication and indigence, reducing inequality.

The number of objectives pursued in the various forms of collaboration described shows the ductility of the operating companies of credit / debit cards for implementing “smart collaboration” mechanisms.

The implementation of the measures described has contributed (without prejudice to other measures taken as or more relevant for the same purpose) with greater efficiency in the administration of its duties with the reduction of informality and evasion, ensuring thus the financing of public policy.

The following graphic reflects the decline in both evasion and collection cost:

The steady decline experienced by evasion in corporate income taxes in our country can also be seen below.



For these reasons, the Tax Administration plays a key role since it is responsible to a large extent for the collection of most of the revenue that will allow the State to comply with its public policies.

TOPIC 3

RESULTS OF COOPERATION ACTIONS

Case Study

Topic 3.2

BENCHMARKING OF PERFORMANCE INDICATORS; A TRAP OR HIDDEN TREASURE?

Victor van Kommer
Director Tax Services
Member of the Executive Board
(IBFD)

Contents: *1. Introduction.- 2. Some theoretical remarks regarding benchmarking studies.- 3. The CIAT benchmarking report.- 4. Some additional analyses .- 5. Conclusions*

1. INTRODUCTION

I was able to write this paper based on the report "State of the Tax Administration in Latin America 2006-2010" published in April 2012 by the CIAT Secretariat. First my sincere compliments to the authors and the tax administrations involved who have all done their utmost best to give an insight in their performance over the last couple of years. Exposure of a tax administration by disclosure of internal results and provide them to researchers to use these indicators as the ammunition for benchmarking can lead to a situation that the outcome of the comparative study is less positive then expected if the results were analysed in a more closed environment. Thanks to the openness of the CIAT member countries I am able to make some critical remarks and hopefully this is not perceived that I am the wrong cook in the kitchen.

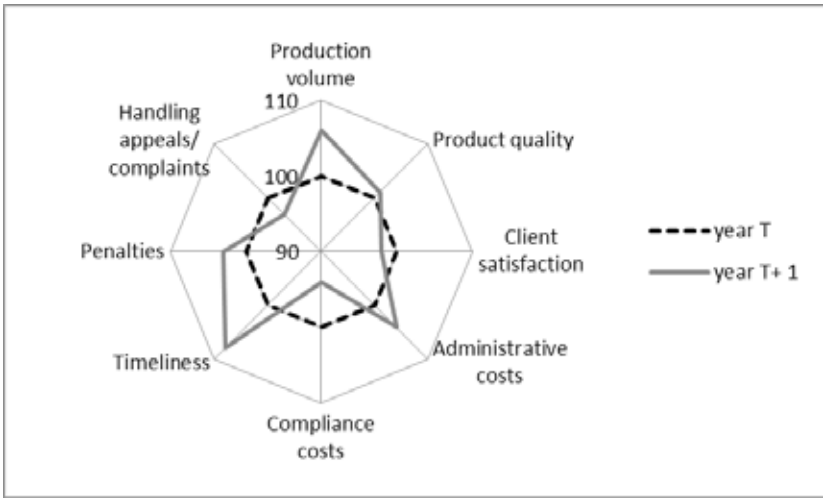
2. SOME THEORETICAL REMARKS REGARDING BENCHMARKING STUDIES

Benchmarking is the process of comparing organisational results, processes and/or strategies with comparable organisations, or the benchmark is an internal comparison between divisions or departmental units or functions. The comparison can be:

- Internal in time (to create an overview of different periods);
- Internal in strategic performance (achieving the business goals);
- External between relevant organisations (the common benchmarking studies);

· External related to international standards/best practises (more the learning ambitions).

A benchmark in a tax administration is mostly the planning (mapping the results with the objectives for the last planning period?) and in time (comparison results between months, quarters or years). Below I give an example of a comparison in time (with neutral indexes where year T = 100) for one theoretical tax administration. The shown radar diagram makes it possible to see in one view the impact of the improvement of certain indicators on other result areas.



Using a radar diagram can be a helpful tool to bring factors in perspective or to correlate. Giving special attention to one item can mean also the neglect of another result area. At the end management means always making the right choices with limited resources.

3. THE CIAT BENCHMARKING REPORT

The report presented by CIAT gives a third dimension and that is the comparison with other tax administrations in the same region. And of course we as readers like to compare the performance indicators, nicely presented in tables, with each other; but is this right to do? We have to remind that tax administrations have different positions. I like to address a few assumptions:

· The legal assignment by the Ministry of Finance and approved by parliament can be different, meaning the formal role (we see in this report already differences in collection authority , differences in obtaining information from third parties and differences if the

tax administration is integrated with customs . Probably there can be more differences in the official duties (tasks in collection of social security, the possibility that the tax administration has to give statements (of income or registration) to all kind of external stakeholders and last not least how the way training is organised (internally or outsourced to academic institutions);

- The historical background of the tax administrations. Have they all a comparable same starting position? I mentioning this aspect because tax administrations are bodies of knowledge with all the stages of immaturity, maturity or even decline. What are the goals (personal or dictated by higher authorities) for the different director generals? Remember the different choices commissioners of the American IRS have made in the last decades. Is this also the case for Latin America countries?;

- The differences in distribution and allocation of resources. In some tables in this report we see already that tax administration has different budgets and made also different choices how to distribute the give budget among the several main processes;

- The economic environment determines in many ways the performance of the tax administration and not only in revenues. A deep and sudden recession what Argentina lived through a couple of years ago has of course an immediately impact on the administrative budget but also on the psychological condition of the employees. If the economy is booming like we see in Brazil now we can imagine that for the professional employee there are plenty of other opportunities in the market, especially in the big cities, who are functioning as the engines under the economy. Just two different situations what should have a correlation with their performances.

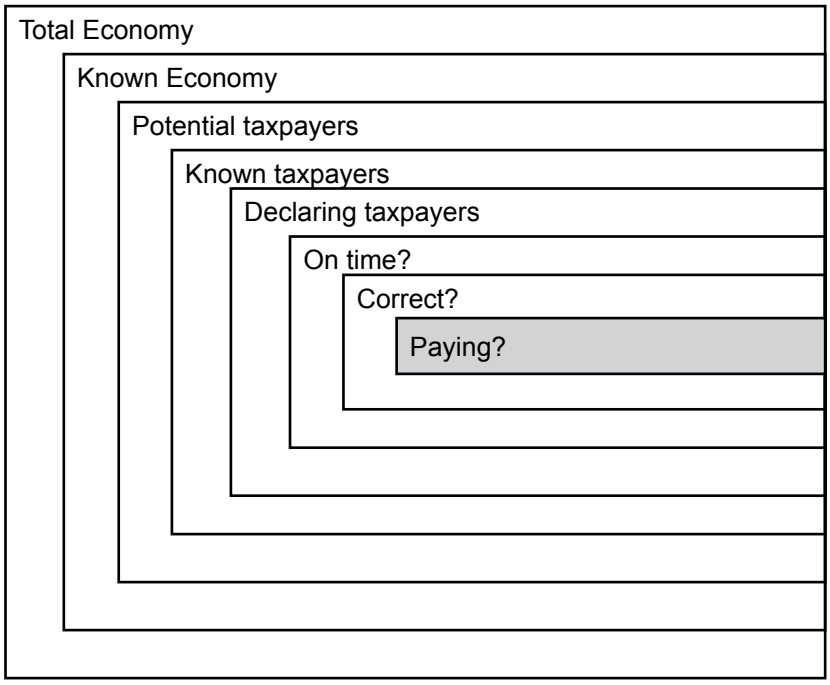
In the CIAT report we see an implicit choice that tax administrations are responsible for revenue collection and of course this is the right starting point for a comparative study and also the final exam that each individual tax administration has to pass. But is this right, can we hold tax administrations accountable for revenue collection? Partly this is true; however the revenues collected are the outcome of different processes that have also a mutual influence on each other. I can mention the following factors that play a role in revenue collection:

- The condition of the economy;
- The state of art of the public service in general;
- The behaviour of the taxpayer;

- The quality of the tax legislation;
- The international dimension (what is the position of the local economy in the context of in- and outbound investments);
- The quality of internal processes of the tax administration.

Only the last factor out of 6 can be fully influenced by the tax administration and even this we have to see in the restrictions of the framework of budget, allocation, administrative procedures opposed on the tax administration etc.

With this last statement I come to the report itself and all the tables presented give the idea that we have the full toolkit by hand to make the right comparison however I have to make some additional remarks before I will dig in the presented results. In the overview below I give a very simple overview of what a regular tax administration has to know and to report to higher authorities and parliament.



If we give this overview a more detailed look and to compare this with the information given in the CIAT report then we can conclude that we miss several indicators to have a proper overall picture of the performance. What we are missing?

- A sophisticated idea how big the unknown economy is. The so called shadow economy is a starting point for every tax administration;
- The state of art of the economy of the country. The growth rate is of course at least the minimum standard that a tax administration has to achieve. We have to keep in mind also the yearly inflation rate as one of the conditional factors we have to take in account;
- One of the indicators how citizens perceived overall performance of the public sector are corruptions indicators , because we have to recognize the bare fact that if corruption is high that we have not be surprised that results in collection are pretty poor;
- One of the most crucial elements in proper taxation is timing. Every time lag means all kinds of possibilities that the tax obligation will evaporate. Successful tax administrations are able to collect taxes so much as possible during the current year of earnings. Provisional assessments and monthly payments in the self assessment system are the main drivers for excellence. Another time factor how much time is allocated to several tax processes. Based on this report some assumptions can be made and come back to this later in this paper;
- Quality is of course the missing factor. Even if we have the right information regarding several processes (knowing what is the average duration of a field audit) we have no clue what officials are doing with their available time (in the case of comparison field audits we can have a very short audit based on risk selection and well prepared auditors and a long field audit where the auditors are lost in not finding the right information, weak preparation, unskilled and inexperienced);
- We are comparing without the framework of norms. The comparison on itself gives no answers, we only get an idea that country X has more taxpayers than country Y and that country Y are making more adjustments than country Z, before you know, and I am exaggerating now, we are comparing that China has more inhabitants than Egypt, but Egypt has more dessert than China, but I am not sure if China has more camels than Egypt.
- And as last point I like to point to the powerful tool of correlations. Data becomes information if we make the right combinations. On one hand to verify or the given data can be correct and on the other hand to make the right analyses. I will give later some examples and in this sense this report is already a treasure full of hidden information.

4. SOME ADDITIONAL ANALYSES

The CIAT report is providing a quantity of information and thanks to this input I can have the luxury to select a few items and to analyse them a bit more in depth. I have selected:

- Distribution of staff;
- Examinations;
- Information on median age, permanence and gender;
- Taxpayers registration;
- Large taxpayers;
- Collection;
- Relations with society;

a. Distribution of staff

Table 11 in the CIAT report we see the division between the main processes (guidance and assistance to taxpayers, examination and auditing, revenue and collection, legal services and litigation, management and others) and the available staff allocated to these processes. I have some observations I want to share:

- What the column 'others' represents? If this category was only representing a few percentages than we can ignore these kind of activities. But with an average score of more than 22% I am worried that essential processes are covered in this category. The Dominican Rep. has 42,6% staff working in other categories than the primary processes of the tax administration. They all pouring coffee or they all work in research and development?

- I am missing some elementary processes in this overview, especially at the supporting level (Human Resource management, Planning and Control, Internal Auditing, IT support, Communication and Training) and where the main process of registration is covered? It could be that the category others covers these activities as mentioned by the authors;

- You could divide the table between pro-active processes (taxpayer's assistance and even examination and auditing) and the more re-active processes, because the statement is already made by the tax administration by a final assessment and the re-active process is more related to recovery as collection and litigation. We see that some tax administrations have an astonishing high score in the re-active processes. Countries with a score higher than

35% are Costa Rica, Guatemala, Mexico, Nicaragua, Paraguay and Uruguay. And if we examine the time allocated to the most important process in a self-assessment environment and that is the auditing and examination time, a score lower than 30% is worrying and even 40% has to be kind of minimal norm. Under the 30% level are countries as Colombia, Costa Rica, Dominican Rep., Nicaragua, Panama, Paraguay and Uruguay. There are only six (out of 17) countries that spend more than 50% of their resources in the pro-active processes, the clear frontrunners are Chile, El Salvador and the pretty young tax administration Ecuador followed by Argentina, Peru and Panama;

- As mentioned in the introductory paragraphs is that we have to bear in mind that the allocation of time doesn't say anything about the delivered performance (quantity and quality) in these sectors. The good example given above is not a guarantee that the time is well spent. Again and indicator is just the starting point of a critical discussion;

- In the paragraph 3.2 of the report the authors implicitly give some norms and one of them is that it would be considered that time allocated for managerial activities is 10%. Not clear where this norm is coming from and according to my experiences we have to keep in mind the different typologies of organisational formats. Steering a group of professional and experienced auditors in the area of large taxpayers requires another span of control and type of management than mass processes as dealing with VAT returns or personal income tax. Differentiation is part of norm setting but will harm the easiness to make comparable studies possible.

b. Examinations

Thanks to the report we have the insight of the staff available for the tax administration (table 10), how much time is allocated to examination and auditing (table 11), the number of field audits and other examinations (table 20) and the adjustments made in the examination process (table 21)

	Inland revenue staff A	Time allocated to examination B	Staff for examination C = A/B	Number of field audits D	Audits per examinator C/D	Tax adjustments In millions $ E	Per audit F= C/E
Argentina	13.140	42.9	5.637	18.396	3.3	1,515.7	82
Bolivia	1.506	n.a.	n.a.	52	n.a.	369.6	n.a.
Brazil	26.473	n.a.	n.a.	23.198	n.a.	99,780	4.301
Chile	4.095	50.6	2.072	7.693	3.7	756.2	98
Colombia	4.366	25.6	1.118	38.373	34.3	n.a.	n.a.
Costa Rica	953	23.1	220	635	2.9	165.9	261
Dominican Rep.	2.646	17.4	460	268	0.6	149.7	559
Ecuador	3.114	34.8	1.084	626	0.6	381.0	609
El Salvador	1.087	41.4	450	572	1.3	89.4	156
Guatemala	2.029	31.8	645	4.789	7.4	n.a.	n.a.
Honduras	1.046	n.a.	n.a.	175	n.a.	82.4	471
Mexico	25.105	34.3	8.611	26.465	3.1	17,245.4	652
Nicaragua	1.911	21.6	413	165	0.4	59.0	358
Panama	634	24.0	152	413	2.7	43.6	106
Paraguay	953	14.9	142	n.a.	n.a.	n.a.	n.a.
Peru	4.677	35.3	1.651	1.738	1.1	2,383.3	1.371
Uruguay	1.617	23.5	380	n.a.	n.a.	238.7	n.a.

If the presumptions and the correlations I made in the above given table are correct then the tax administrations in Latin America are facing a serious problem and that is the fact that auditing and especially field auditing is the Achilles heel of the system. We have to keep in mind that checking VAT returns and CIT declarations can't be achieved with only formal procedural dealing insight the tax offices. Field audits are crucial to check the real factors that are behind the tax statements in the returns and not to compare the tax declarations with the internal administration of the taxpayer. If I bring together the different data of four tables of the CIAT report than the outcome is alarming: hardly any field audits, the productivity per examinator (or it is desk examination or field auditing) is very low and the adjustments per audit is in certain countries insufficient (Argentina, Chile and Panama have very low adjustments, especially in regards with the GDP per capita, who are the highest on the continent).

c. Information on median age, permanence and gender

Table 12 in the report gives a nice overview of the staff by age and seniority. I have to belief that the given data are correct because this

kind of information is easily to retrieve and not suitable for conflicting interpretations. I can add some more conclusions to table 12.

- Certain tax administrations have a high score in seniority (meaning staff with more than 11 years experience), Argentina 75,8%, Brazil 67,2%, Colombia 61%, Costa Rica 66,3%, El Salvador 56,2%, Paraguay 65,8% and Uruguay 63,1%. The opposite of this position is of course a lack of young staff. All these organisations are so matured that hardly anyone younger than 30 years is working there. Argentina only 7%, Brazil 5,8%, Chile 10,2%, Colombia 6,3% and Uruguay 3,7%. The exception are Costa Rica with 15,2%, El Salvador with 17,4% and especially Paraguay with 22,2%. Meaning that the last three mentioned tax administrations are better prepared when the matured experience expires (or in other words retirement);

- A tax administration has to represent in a certain way the society. We all know that the booming Brazilian economy is also based on a younger entrepreneurial generation but are their thoughts and ideas reflected by the tax officials? I don't want to suggest that elderly officials have lost the connection with society but the risk can be there;

- A younger staff can be an impulse for innovation and bringing in new ideas regarding a changing society but they need as well more training, guidance and learning experiences and are they ready to approach the more experienced tax lawyers at the other side of the table;

- Younger staff is cheaper, lower in their remuneration levels and has of course an impact on the administrative costs. There are five tax administrations with a relatively high percentage of staff younger than 30 years, front runner is Ecuador with 50,9% (the other side of the coin is that only 7,2% of the staff has more than 11 years experience), Dominican Rep with 29,3%, Honduras 28,2%, Nicaragua, 27,1% and Peru with 26,5%. If we give table 9 a better look (Tax Administration's management costs) than we see the variety of different percentages; Ecuador has 1,3, Dominican Rep 1,6, Honduras, 1,14, Nicaragua 1,9 and Peru 1,54. Countries with 'old' organisations as Brazil and Colombia are even cheaper with respectively 0,97 and 0,98%. Evidence that we have to be very careful to draw to easily any conclusion;

- What we see based on this table no 12 is that tax administrations need all a proper strategic human resources planning where topics addressed as succession planning, training capacity for new

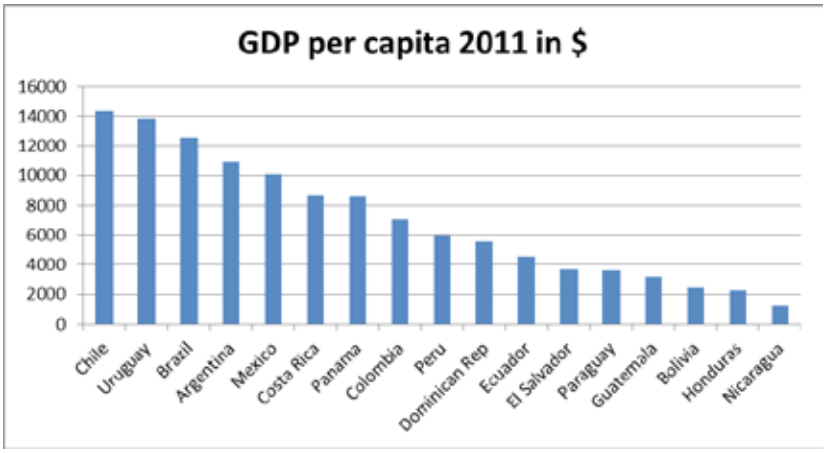
staff, recruitment policy, availability of mentorships, remuneration forecast, organising knowledge management and theoretically even outplacement policy.

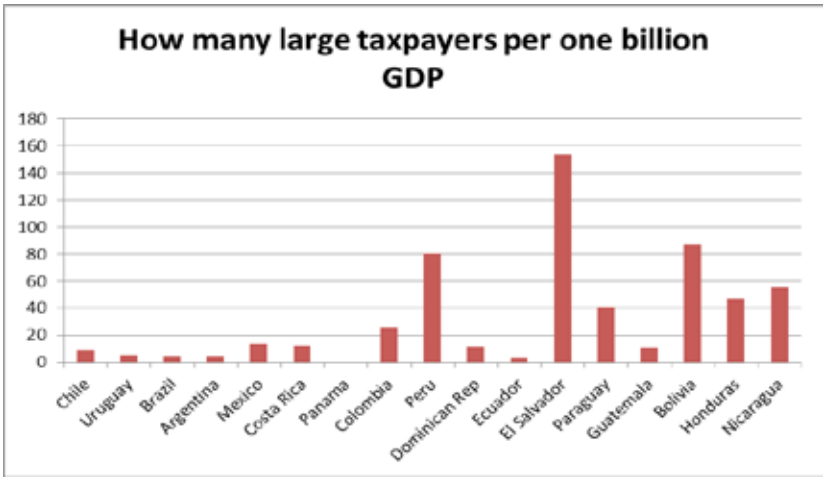
d. Taxpayers registration

A good example that we have to be very careful to compare tax administrations is given in table 16 where an overview is given of the number of taxpayers per country. In this table we see how many registrations are in place, how many of them are active taxpayers and how that relates to countries population. The differences are huge. In Brazil it seems that everything that moves is in the registration and in countries as the Dominican Rep. and Honduras hardly anyone is in the registration. Maybe this is occurred by differences in the legal framework or selection in the registration process itself. I don't want to make any judgement but like to address the presumption that primarily tax administrations are paper pushers or factories of procedural production lines, what in the above mentioned comparison Brazil have to deal with more paperwork, digital data and of course taxpayers then the Dominican Rep. and Honduras. Can we still compare them and reflect on the previous statement I made before that the legal assignments between tax administrations can differ.

e. Large taxpayers

Table 25 gives a nice overview of the number of large taxpayers per country and how they contribute to the overall collection of taxes. The overview reflects the conclusion already presented by IMF in different reports. In the graphs below I brought to data of large taxpayers together with GDP data (source. World bank 2011)





Of course there is a tendency that smaller countries and certainly they with a low GDP will have more large taxpayers per one billion $ GDP. This conclusion can be made on bases of the graph above. Still there are some incomparable. Why Guatemala and Ecuador have considerable less large taxpayers then their comparable neighbors. It can't be the size of the economy. The first conclusion is that definitions for large taxpayers has to be different. Another fact to be prudent again to compare incomparable data.

f. Collection

We see in the earlier mentioned table 21 an overview of the adjustments made in million dollars and also the amount that could be collected. Most tax administrations are only able to collect a part of the tax adjustments made and have to face the fact that the tax debt is only rising. The CIAT reporters are also worried by the outcome of their benchmarking survey. We can draw the following conclusions based on the following tables no 21, 22 and 23.

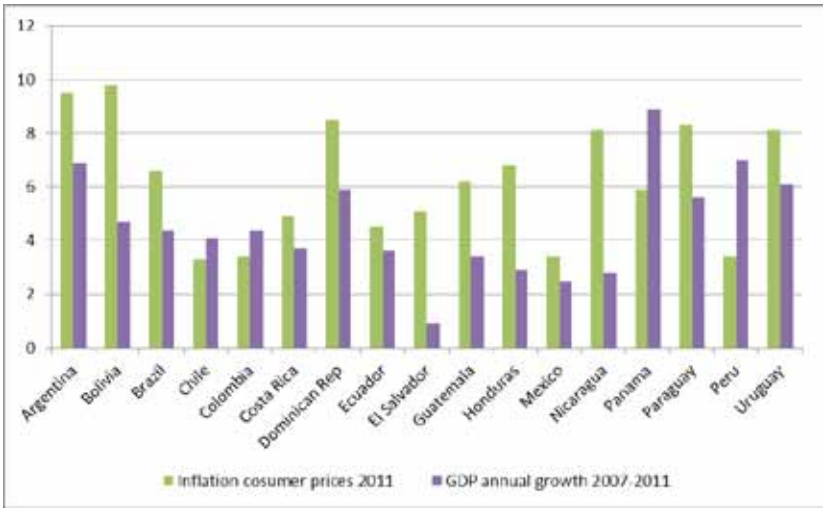
- For Argentina, Bolivia, Chile, Ecuador, México, Nicaragua and Uruguay the tax debt added at the end of the year is even higher than the adjustments made during that year;

- In some of these countries a large number of staff is even working in the collection area (Mexico 29,4, Nicaragua 39% and Uruguay 40.1%) what makes the situation even more worrying;

- In other countries (Argentina and Chile) the uncollected taxes ae around 50% older than 5 years;

- The total outstanding debt is unknown and for a self assessment process in many of the Latin American countries the uncollected taxes has to be rather low;

- Inflation is helping the taxpayers who is refusing to pay his taxes. In the graph below we see the overview of annual growth figures for 2007-2011 and the inflation rate. The countries we a high risk in collection (esp Argentina, Chile and Uruguay) the inflation is between 8 and 10%. Probably it is worth to delay the payments in these countries and the tax administration functions as a very competitive bank.



g. Relations with society

I have to be careful to draw any conclusion, because the whole theme of my paper is that comparison of countries is only possible if the circumstances are equal and the definitions are well defined, otherwise we bring apples, pears and oranges in the same basket and we can only conclude that we have a nice coloured and healthy fruit basket without stating that the pear is so much successful compared with the apple. However I am abusing my own warning and like to conclude that graphic no 5 shows very satisfied taxpayers in a number of countries. I am not surprised to see that some of these tax administrations were hardly able to collect their adjustments or even the regular tax events. More amazing is the fact that also with a failing performance in revenue collection the tax administration can score a dramatic low appraisal. As stated by the authors the data differ between countries, probably influenced by the methodology used, therefore we have to be careful

to draw any conclusion. What is missing are well defined norms. It is more recommendable to compare the tax authorities to a more neutral defined benchmarking norm.

5. CONCLUSIONS

I have written several times that making conclusions based on the data provided by the tax authorities is a risky manoeuvre. However I am pretty sure that readers we do this and tables and graphs are challenging to do this exercise. I have done the same and the reader can blame me, still I like to address a few conclusions:

- My sincere respect for the CIAT staff who made this insight possible and the same counts for the tax officials who provided these data;
- The study can be the beginning of a better benchmark and that is to see of the tax authorities can really learn from each other (what are best practises, where are the risks, what are proper definitions, etc);
- Even the limited information we have to conclude that auditing and collection are the investment areas for many tax administrations. A master plan has to be developed for these tax authorities for long-term investments (in number of staff, training, coaching and the right toolkit) and also to diminish delays in the assessment and collection process because it seems for certain taxpayers very attractive with the current inflation rates to retard their payments.

DAILY SCHEDULE OF ACTIVITIES

CIAT TECHNICAL CONFERENCE
Amsterdam, The Netherlands
October 15-18, 2012

DAILY SCHEDULE OF ACTIVITIES

MAIN TOPIC: "SMART COOPERATION"

Monday, October 15

09:00 - 09:45 **Inaugural Ceremony** (45')
- Video message State Secretary of Finance, Frans Weekers.
- Welcome by Peter Veld, Director General of the Netherlands Tax & Customs Administration & Edwin Visser, Deputy Director General, Directorate General for Tax Policy and Legislation.

09:45 - 10:15 **Conference Opening Presentation,** Prof. Leen Paape, Dean and Member of Executive Board of Nyenrode Business University, Netherlands (30')

10:15 - 10:55 Official photograph and coffee break (40')

TOPIC 1: COOPERATION AS A TOOL IN COMPLIANCE RISK MANAGEMENT STRATEGIES

Moderator: Tyrone Lavine, Deputy Commissioner, Department of Inland Revenue, Barbados

10:55 - 11:15 **Speaker:** Carlos Sánchez, Director General, Social Security Resources, Federal Administration of Public Revenues, Argentina (20')

11:15 - 11:35 **Speaker:** Pancrasius Nyaga, Commissioner of Large Taxpayers Office, Kenya Revenue Authority, (20')

11:35 - 11:55 **Speaker:** Franz Tomasek, SARS Group Executive: Legislative Research & Development, South African, Revenue Service (20')

11:55 - 12:10 **Commentator:** Manuel José Díaz, Director, School of Public Finance, Institute of Fiscal Studies, Spain (15')

12:10 - 12:30 Discussion**:** (20')

12:30 - 13:30 Lunch

Case study 1.1: Cooperation with government entities

Moderator: Carlos Alberto Barreto, Secretary of the Federal Revenue, Brazil

13:30 - 13:50 **Speaker:** - Police officer
- Frits Brentjens, Director car-related operations, NL Tax & Customs Administration, Netherlands (20')

13:50 - 14:10 **Speaker:** Cary O'Brien, Director, Provincial Sales Tax Administration Reform, Canada (20')

14:10 - 14:30 **Speaker:** Rosario Massino, Head of International Cooperation Office, Italy (20')

14:30 - 14:50 Discussion: (20')

14:50 - 15:20 Recess

Case study 1.2: Cooperation with tax intermediaries and (private) providers of third-party information

Moderator: Raul Pertierra, Assistant Revenue Service, Representative, IRS, U.S.A.

15:20 - 15:40 **Speaker:** Sudja Sharma, Member, Central Board of Direct Taxes, Ministry of Finance, India (20')

15:40 - 16:00 **Speaker:** Beatriz Viana Miguel, Director General, State Agency of Tax Administration, Spain (20')

16:00 - 16:20 Discussion: (20')

Tuesday, October 16

(Continuation of Topic 1)

Case study 1.3: Cooperation with taxpayers and society in general

Moderator: Pablo Ferreri, General Director of Revenue, General Directorate of Taxation, Uruguay

09:00 - 09:20 **Speaker:** Douglas O'Donnell, Assistant Deputy Commissioner, International, U.S.A. (20')

09:20 - 09:40 **Speaker:** Guarocuya Felix, Director General of Revenue, General Directorate of Internal Taxes, Dominican Republic (20')

09:40 - 10:00 Discussion: (20')

10:00 - 10:25 **Presentation:** Smart Cooperation in The Caribbean Netherlands (25')
Angel Bermudez, Director Caribbean Netherlands Tax Office
Gerard Meijer, Teamleader at Caribbean Tax Office.

10:25 - 10:45 Discussion: (20')

10:45 - 11:10 Recess

TOPIC 2: KEY ELEMENTS FOR EFFECTIVE COOPERATION

Moderator: Tania Quispe, National Superintendent, National Superintendency and Tax Administration, Peru

11:10 - 11:30 **Speaker:** Carlos M. Carrasco, General Director, Internal Revenue Service, Ecuador (20')

11:30 - 11:45 **Commentator:** Miguel Gutiérrez, Tax Administration Superintendent, Guatemala (15')

11:45 - 12:05 Discussion: (20')

Case study 2.1 Tax administration powers and taxpayers' rights

Moderator: Juan Ricardo Ortega, General Director, Directorate of National Taxes and Customs, Colombia

12:05 - 12:25 **Speaker:** Julio Pereira, Director, Internal Revenue Service, Chile (20')

12:25 - 12:45 **Speaker:** Alexandre Gardette, Head of the Tax Examination Department, France (20')

12:45 - 13:05 Discussion: (20')

13:05 - 14:05 Lunch

14:05 - 14:50 **Presentation:**

1) United Nations Model to avoid double taxation between developed and developing countries.
   Alexander Trepelkov: Financing for Development Department. UN - DESA
2) UN Projects
   Harry Tonino, Inter - Regional Adviser on International Cooperation. UN - DESA

14:50 - 15:10 **Presentation:** Cooperation between tax authorities and tax **I**ntermediaries in the Netherlands. Arnold Vredenbregt (Partner Deloitte Netherlands) (20')

15:10 - 15:20 Discussion

15:20 - 15:40 Recess

Case study 2.3: Other key elements

Moderator: Thomas Carroll, Head of the Unit Tax Administration and fight against fraud, European Commission

15:40 - 16:00 **Speaker:** Stefano Gesuelli, Head of the Italian Mission to CIAT, Italy (20')

16:00 - 16:20 **Speaker:** Pablo Ferreri, General Director of Revenue, General Directorate of Taxation, Uruguay (20')

16:20 - 16:40 **Speaker:** Grace Pérez Navarro, Deputy Director, Centre for Tax Policy and Administration, OECD (20')

16:40 - 17:00 Discussion: (20')

Wednesday, October 17

09:30 - 11:00 Panel for Topic 1:
Promoting dialogue among the Tax Administration and the business sector for improving compliance

Moderator:
Theo Poolen, Deputy Director General Tax & Customs Administration, Netherlands.

Participants:

- Jos Beerepoot, Head of Taxation,Uniliver.
- Angelo Bertolas, Vice President, Tax Services, TD Bank Group.
- Jacques van Hooij, Head of Tax Nutreco.
- Wouter Brookman, advisor fiscal affairs, Confederation of Netherlands Industry and Employers.

11:00 - 11:30 Recess

TOPIC 3: RESULTS OF COOPERATION ACTIONS

Moderator: Márcio F. Verdi, Executive Secretary, CIAT

11:30 - 11:55 **Speaker:** Gonzalo Arias, Director, International Taxation and Cooperation, CIAT (25')

11:55 - 12:10 **Commentator:** Hans Wollny, Deputy Head of Governance Division, Federal Ministry for Economic Cooperation and Development, Germany, ITC (15')

12:10 - 12:30 Discussion: (20')

12:30 - 13:30 Lunch

14:00 - 19:00 Social Program

Thursday, October 18 octubre

(Continuation Topic 3)

Case study 3.1: Current international projects

Moderator: Deokie Hosein, President COTA and Acting Chairman Board of Inland Revenue, Trinidad & Tobago.

09:00 - 09:25 **Speaker:** Ton Mulders, Tax and Customs Administration, programme manager LEAN (Forum on Tax Administration Project: Continuous Improvement), Netherlands (25')

09:25 - 09:45 **Speaker:** Norbert Steilen, Directorate Compliance and Enforcement, WCO (20')

09:45 - 10:15 Discussion: (30´)

10:15 - 10:50 Recess

Case study 3.2: Benchmarking (Comparative Evaluation)

Moderator: Socorro Velazquez, Director, Planning and Institutional Development, CIAT Introduction of topic, CIAT initiatives (15')

10:50 - 11:10 **Speaker:** Victor van Kommer, Director Tax Services, Member of the Executive Board, IBFD (20')

11:10 - 11:30 **Speaker:** Paul Lanser**,** Senior Economist, HMRC, United Kingdom (20')

11:30 - 13:00 **Panel for Topic 3:**
Usefulness of different benchmarking projects for tax administrations planning

Moderator:
Socorro Velazquez, Planning and Institutional Development, CIAT

Participants:
ITD (Alan Carter), Netherlands, IBFD (Victor van Kommer), WB (Raúl Junquera), IMF (Katherine Baer), Spain (Luis Cremades)

13:00 - 14:00 Lunch

Case study 3.3: Smart cross border cooperation

14:00 - 14:25 **Speaker:** Harry Roodbeen, Director of International Department at Ministry of Finance, Directorate General for Tax Policy and Legislation / International (25').

14:25 - 14:45 **Speaker:** Douglas O'Donnell, Developments in FATCA, Assistant Deputy Commissioner, International, U.S.A.

14:45 - 15:05 Discussion (20')

15:05 - 15:20 **Final considerations** on Technical Conference Theme - Peter Veld, Commissioner, The Netherlands (15')

15:20 - 16:15 **Closing acts of the event:**

- Signing of cooperation agreements.
- Presentation of Honors by CIAT to The Netherlands Tax & Customs Administration.
- Invites to 2013 CIAT General Assembly and Technical Conference.
- Words of appreciation to The Netherlands by CIAT member
- Event evaluation.
- Closing of event by President of Executive Council.

LIST OF PARTICIANTS

CIAT TECHNICAL CONFERENCE

Amsterdam, The Netherlands
October 15-18, 2012

LIST OF PARTICIANTS

AATA
Pascal-Baylon Owona
Secretary General

ADAM SMITH INTERNATIONAL
Graeme Keay
Senior Tax Policy Adviser
Adam Smith International

ARGENTINA

Luis Maria Capellano
Subsecretario
Ministerio de Economía y Finanzas Públicas

Carlos Alberto Sanchez
Dirección General de los Recursos de la Seguridad
Administración Federal de Ingresos Públicos

Angel Ruben Toninelli
Director General
Dgi – Afip

SPECIAL GUEST

Carlos Maria Folco
Juez Federal
Poder Judicial de la Nación

ATAF

Thulani Shongwe
Multilateral Specialist
African Tax Administration Forum

Logan Wort
Executive Secretary
African Tax Administration

AZERBAIJAN

Rufat Hajiyev
Chief State Tax Inspector of International Relatio
Ministry of Taxes

BANCO DE PREVISIÓN SOCIAL

Daniel Croza
Director Técnico Asesoría Tributaria y Recaudación
Banco de Previsión Social

Hugo Odizzio
Director
Banco de Previsión Social

BARBADOS

Tyrone Lavine
Deputy Commissioner
Department of Inland Revenue

BELGIUM

Carlos Six
General Manager of Taxes
Fps Finance

BERMUDA

Lucia Peniston
Tax Commissioner
Government of Bermuda

BOLIVIA

Juana Patricia Jiménez Soto
Investigación Tributaria
Servicio de Impuestos Nacionales

Zenobio Vilamani Atanacio
Gerente Distrital de Potosi
Servicio de Impuestos Nacionales

BRAZIL

Flávio Araújo
Coordenador-Geral de Relações Internacionais
Receita Federal do Brasil

Carlos Barreto
Secretário
Receita Federal do Brasil

CANADA

Cary O'Brien
Director Provincial
Sales Tax Administration Refor
Canada Revenue Agency

Maria Pica
International Relations Advisor
Canada Revenue Agency

CENTRO DE ESTUDIOS FISCALES

Rosa Grosskoff
Directora Ejecutiva
Centro de Estudios Fiscales

CEPAL

Ricardo Martner
Coordinador Area Fiscal
Cepal, Naciones Unidas

CHILE

Alejandro Burr
Subdirector de Estudios
SII

Gerardo Montes
Jefe de Gabinete
Servicio de Impuestos Internos

Julio Pereira
Director
Servicio de Impuestos Internos

CHINESE TAIPE

lHui Chu Peng
Assistant Director General
Ministry of Finance

CIAT

Márcio F. Verdi
Secretario Ejecutivo

Isaac Gonzalo Arias Esteban
Director de Cooperación y Tributación Internacional

Maria Raquel Ayala Doval
Directora de Capacitación y Formación del Talento

Francisco Beiner
Director de Operaciones y Gestión Institucional

María Bell
Coordinadora Eventos Institucionales

Miguel Pecho
Director de Estudios e Investigaciones Tributarias

Maureen Pérez
Coordinadora de Capacitación

Socorro Velazquez
Dir. Planificación y Desarrollo Institucional

Raúl Zambrano
Director de Asistencia Técnica

COGEF

Francisco José Garcia
Vice-Presidente
COGEF

COLOMBIA

Juan Ricardo Ortega López
Director General
Dirección de Impuestos y Aduanas Nacionales
DIAN

Wilbert Cordero Fernández
Director Gestión del Potencial Humano
Ministerio de Hacienda

Francisco Fonseca
Director Administrativo y Financiero
Ministerio de Hacienda

COSTA RICA

Karla Salas Corrales
Directora de Inteligencia Tributaria
Dirección General de Tributación

Maribel Zùñiga Cambronero
Directora de Relaciones Tributarias
Dirección General de Tributación

CREDAF

Berteau Gilles
General Secretary
Credaf

CROWN AGENTS

Dale Williams
Advisor Tax
Crown Agents

CYPRUS

Georgios Poufos
Inland Revenue Department of Cyprus

ECUADOR

Carlos M. Carrasco Vicuña
Director General
Servicio de Rentas

Ximena Victoria Amoroso Iñiguez
Directora Centro de Estudios Fiscales
Servicio de Rentas Internas

Mauro Alejandro Andino Alarcon
Director Nacional de Planificacion
Servicio de Rentas Internas

EL SALVADOR

Luis Fernando Díaz
Director De Fiscalizacion
Dirección General De Impuestos Internos

Sergio Mario Miranda Ortiz
Subdirector De Otros Contribuyentes
DGII - Ministerio De Hacienda

ERNST AND YOUNG

Deborah Nolan
Americas Director, Tax Controversy and Risk Manage

EUROPEAN COMMISSION

Thomas Carroll
Head of Unit
European Commission

Iris Mueller
Policy Officer
European Commission

EUROSOCIAL

Tecnico Senior Eurosocial
Fiiapp

FEBRAFITE

Roberto Kupski
Presidente
Febrafite - Federação Brasileira
De Associações De Fiscais D.

FRANCE

Jean-Charles Babe
Oficial de la Misión de Cooperación Internacional
Dirección General de Finanzas

Patrick Bernard
Attache Fiscal para BENELUX
Direccion General de Finanzas Publicas

Patrick Bernard
Fiscal Attaché
Dirección General De Finanzas Publicas

Isabelle Gaetan
Jefe Misión Francesa ante el CIAT
Dgfip-CIAT

Sylvie Perroudon-Ragot
Jefa Adjunta de la Mision de Cooperacion Internacional
Dirección General de Finanzas Publicas

GERMANY

Hans Wollny
Deputy Head of Division
Bmz

GIZ

Michael Beyme
Director Proyecto de Apoyo a la Política Fiscal

Wisner Joerg
Senior Project Manager

Sebastian Lechle
Advisor

ITC

Astrid Templin
Adviser
Giz

Susanne Thiel
Asesora Técnica
Proyecto Apoyo a la Política Fiscal

Roland Von Frankenhorst
Head of Sector Project International Tax Compact

GUATEMALA

Miguel Gutierrez
Superintendente SAT

Rodrigo Montúfar
Director Titular
Superintendencia de Administración Tributaria

GUYANA

Khurshid Sattaur
Commissioner-General
Guyana Revenue Authority

HAITI

Ronald Decembre
Secretario de Estado de la Reforma Fiscal

IBFD

Fabiola Annacondia
Team Manager KcIBFD

Maarten Goudsmit
Director Publishing
IBFD

Carlos Gutierrez Puente
Team Managerlbfd

Luis Nouel
Principal

Anapaula Trindade
Research Associate
IBFD

Victor Van Kommer
Director Tax Services
IBFD

IEF

Manuel Jose Diaz
Director Escuela Hacienda Publica
Instituto Estudios Fiscales

IFA

Han Kogels
Secretary General
International Fiscal Association IFA

IMF

Katherine Baer
Division Chief

Oscar Vazquez
Experto Reside

INDIA

Deepak Garg
Director
Ministry of Finance

Sudha Sharma
Member
Central Board of Direct Taxes
Ministry of Finance

ITALY

Stefano Gesuelli
Head of the Italian Mission at CIAT
Guardia di Finanza
Italy

Rosario Massino
Head of International Cooperation
Office Guardia di Finanza

ITDA

Alan Carter
Head of International Tax Dialogue Secretariat
International Tax Dialogue

JAPAN

Hiroyuki Tanaka
Assistant Chief
National Tax Agency, Japan

KENYA

Emmah Njagi
Senior Assistant Comm
Kenya Revenue Authority

Lucy Njoe
Sac
Kenya Revenue Authority

Pancrasius Nyaga
Commissoner Doemstic Taxes Large Taxpayers Departm
Kenya Revenue Authority

MEXICO

Fernando Martínez
Administrador
Servicio De Administración Tributaria

MOROCCO

Tahri Amal
Chef Division
Trésorerie General of King

Sandi Anouar
Ingenieur
Tresorerie Generale du Royaume du Maroc

Mohamed Najib Atrakouti
Prefectural Treasurer
General Treasury of the Kingdom of Morocco

NETHERLANDS

Angel R. Bermudez
Director
Tax Office Dutch

Marian Bette
Senior Policy Advisor International Affairs
Netherlands Tax And Customs Administration

Hans Blokpoel
Director
Netherlands Tax And Customs Administration/ national Office T

Paul Broer
Oficial de Policía
Netherlands

Meijer Gerard
Teamleader
Belastingdienst Caribisch
Nederland

Paul Heijnis
Integrity & Compliance Officer
Netherlands Tax And Customs Administation

Tempel Jaco
Deputy Director / Fiscal Affairs
Tax And Customs Administration Directorate General

Piet Kats
Oficial de Policia
Netherlands

Marco Langhorst
Information
manager
Belastingdienst

Alink Matthijs
Senior Adviser
Netherlands Tax And Customs Administration/

Theo Poolen
Deputy Director General
Tax And Customs Administration Directorate General

Harry Roodbeen
Director
Ministry Of Finance Directorate International Tax Policy & L

Peter Veld
Director General
Tax And Customs Administration Directorate General

Edwin Visser
Deputy Director General
Ministry Of Finance Directorate

Ko Zonruiter
Strategic Advisor
Netherlands Tax And Customs Administration/

NORWAY

Egil Martinsen
International Director
Tax Norway

OECD

Ana Cebreiro
Economist
OECD

Grace Perez-Navarro
Deputy Director Centre for Tax Policy and Adminis.

PANAMA

Luis Cucalón
Director General de Ingresos
Ministerio de Economía y Finanzas

PARAGUAY

Javier Contreras Saguier
Viceministro de Tributación SET
- Ministerio de Hacienda

Daniel Alberto Farias
KronawetterAuditor / Investigador
Subsecretaria de Estado de Tributación

Tito Ibarrola
Jefe Dpto. Investigación Tributaria y Detección
SET-MH

PBLQ

Peter Jong
kind Senior Consultant
PBLQ Hec

PERU

Tania Quispe
Superintendente Nacional de Aduanas y de Adm.Ttrib.
Superintendencia Nacional de Aduanas y de Adm. Tributaria.

PGFN

Paulo Ricardo Souza Cardoso
DiretorProcuradoria-Geral da Fazenda Nacional

PORTUGAL

Jose Antonio Azevedo Pereira
Diretor-GeralAutoridade Tributaria e Aduaneira

Helena Maria Borges
Subdiretora-Geral
Autoridade Tributaria e Aduaneira

Maria Angelina Silva
Subdiretor-Geral
Autoridade Tributaria e Aduaneira

RTPAY

Richard Gray
European Head

SEFAZ

Maranhão Cláudio José Trinchão Santos
Secretário da Fazenda
SEFAZ-ma/confaz

Myrthes Pinheiro
Gestora Chefe
Sefaz-Ma/Brasil

SERPRO

André De Cesero
Superintendente de Negócios Administração Tributário

Marcos Vinicius Ferreira Mazoni
Diretor-Presidente Serviço Federal de Processamento de Dados

Janio Rafael Jose Chayadi
Tax Policy Advisor
Department of Fiscal Affairs of Sint Maarten

Guilliano Saturnilia
Head Audit and Criminal Investigation
Tax Administration Sint Maarten

SOUTH AFRICA

Franz Tomasek
Group Executive
South African Revenue Service

SPAIN

Beatriz Viana Miguel
Directora Genera
Agencia Tributaria de España (AEAT)

Luis Cremades
Jefe de la Misión de España ante el CIAT /AEAT

Francisco Muñoz Morales De Anciola
Director Gabinete Directora General
Agencia Tributaria de España (AEAT)

Enrique Sánchez-Blanco Codorniú
Jefe de la Unidad de Coordinación de las Relacion.

SPECIAL GUEST

Lee Niederman
Tax Administration Advisor
Us Dept. of Treasury

Jeffrey Owens
Professor
Vienna University

Carlos Alberto Rubinstein
Subdirector General de Cobranzas
AGIP

Daniel Vernhet
Consultor
CIAT

Carlos Walter
Administrador Gubernamental de Ingresos Públicos
Agip

SURINAME

Eugene Merkus
Deputy Director of Taxes & Customs
Ministry of Finance

Cornelis Van Dijk
Director of Taxes and Customs
Ministry of Finance

SWEDEN

Anders Stridh
Strategist Swedish Tax Agency

Trinidad & Tobago

Nizam Ganga
Assistant Commissioner
Inland Revenue Division

Deokie Hosein
Chairman
Inland Revenue Div

UNITED KINGDOM

Paul Lanser
Senior Economist
Organismo

UNITED NATIONS

Harry Tonino
Inter-regional Adviser on International Cooperation

Alexander Trepelkov
Director Financing for Development/Desa
United Nations

UNITED STATES OF AMERICA

Douglas Odonnell
Assistant Deputy Commissioner, International

Raul Pertierra
Revenue Service Representative
Internal Revenue Service

URUGUAY

Pablo Ferreri
Director General de Rentas
Dirección General Impositiva

WCOOMD

Norbert Steilen
Programme Manager
World Customs Organization

WORLD BANK

Raul Felix Junquera Varel
Senior Public Finance Specialist
World Bank

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