



Manual CIAT on Tax Intelligence

Inter-American Center of Tax Administration - CIAT

Countries participating in the Working Group:

**Brazil
Canada
Chile
Colombia
France
The Netherlands
United States of America**

**Technical Coordination
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I. Executive Summary

1. The quick development reached by the globalization and information technology processes, while bringing significant progress to countries, have generated new and important challenges to tax administrations regarding tax obligation compliance controls. Among them, it is worth mentioning as a problem that has become widespread, the materialization of an environment more propitious to commit not only evasion and avoidance, but also tax crimes related to the creation of organizations that could be described as criminal, given their objectives and “*modus operandi*.”

2. Some of the characteristics of these organizations can be stressed – transnationalization - insofar as their actions go beyond borders; the adoption of global strategies, which enable them to combine and take advantage of normative deficiencies in various countries, such as the inability to exchange information, the cause of significant social damage, the use of modern technology and the notable expansion force due to systems connected to other groups and an underground network of links with public and private elements that definitely promote corruption and disqualification among government branches.

3. As for the impact on the tax field, these organizations follow the specific or main objective of committing tax evasion and fraud by acting through schemes that try to give a shroud of legality to their illegal operations, with a high infiltration and influence in public branches.

4. Thus, the usual audit and oversight routines based upon the data supplied by the taxpayers themselves in many cases have failed to unveil the composition and operation forms of such criminal organizations, which are more and more complex and professional. Concomitantly, new technological forms have been used in the execution of tax and customs crimes, because those who commit them have had the support of highly specialized professionals who legitimize the fruits of these illegal activities through intricate money laundering tactics

5. Under this ever increasing uncertainty, each day there are more obstacles to comply with the institutional mission of state organizations responsible for tax collection and oversight.

6. Thus it is imperative for these organizations to try to update, upgrade, and improve their administrative and legal structures to the level of these new challenges, so as to give their public agents instruments that promote the effective fight against these illegal actions. Then it is necessary to give tax administrations highly specialized units to investigate and detect tax crimes, which can also be related to other criminal activities such as money laundering and terrorist financing. These tax Intelligence units should have a close relationship with other specialized

crime fighting organizations and should be capable of developing new tools and knowledge that support oversight of tax collection as a whole.

7. These units would mainly focus on investigations into sophisticated tax and customs-related fraud that involves large sums of money by individuals or is carried out by organized groups. The end result of these investigations is to gather, whenever possible, the necessary evidence in the administrative or criminal areas, and to penalize violators. In addition, the information created from these investigations should be forwarded to the tax policy makers of the country to enable a more effective oversight.

8. In order to make tax Intelligence work solid and effective, this Manual identifies areas of special interest for the success of both the implementation of these activities and their improvement. Each one of them was reviewed and revised, so that they can be used as a reference by the tax administrations of the member countries of the CIAT. These areas are the following: financial configuration and autonomy, information coordination and exchange, an adequate legislative foundation, the desirable profile of the Intelligence agent, information sources and tools, the results and products expected from these activities and the ethical and moral principles that must prevail in their exercise.

9. In this regard, this Manual also describes the experiences already put into practice by various member countries of the CIAT, gathered through a survey conducted by the Working Group. These best practices provide guidance for tax administrations interested in implementing or enhancing tax Intelligence activities. Thus, their application is expected to be appraised in a case-by-case basis by the respective national tax administrations. This is how the advisability of using or adapting these experiences will be verified according to the specific circumstances and characteristics of the political and legal system of each country.

10. In conclusion, the document recommends that those tax administrations that still do not carry out tax Intelligence activities start conducting studies on their implementation or recommends that those that already have these units improve them. This recommendation will ultimately lead to an increase in tax collection and justice, given the taxes at risk and effective control of sectors and organizations that operate above the law through illegal systems that are difficult to detect and to obtain evidence against.

II. Introduction

11. The delegates to the XXXVIII CIAT General Assembly who participated in a preparatory meeting held in Cochabamba, Bolivia on March 9, 2004, agreed on the need to establish a Tax Intelligence Working Group that would lay the base for the implementation and/or improvement of said activity in the tax administrations of their respective countries.

12. It was determined that Brazil, together with the CIAT Executive Secretariat would be in charge of the technical coordination of the Working Group. The other members of the Working Group are Canada, Chile, Colombia, United States, France and The Netherlands.

13. Thus, Brazil, with the collaboration of the CIAT Executive Secretariat, was entrusted with the preparation of a basic document on the topic, as well as a survey for compiling information on the best practices implemented by those tax administrations.

14. The answers given to the “Survey on the best practices for promoting the implementation and development of tax Intelligence activities” served as the basis for the development of this document. The countries answering the survey were Brazil, Chile, Canada, Colombia, Czech Republic, France, Mexico, Peru, Spain, The Netherlands and the United States.

15. The legitimacy of this document is also based on the fact that its text is integrally constructed with the suggestions presented by the member countries of this Working Group. These suggestions, through a dialectic process, were presented to the plenary of these same countries, during the four meetings of the Working Group.

16. These meetings were held in Brasilia (November, 2004), Fortaleza (April, 2005), Washington (August, 2005) and Panama City (December, 2005). Only the consensus reached by this method was utilized in the preparation of this report, expressing this full agreement of ideas and opinions.

17. It is important to stress that the concepts used in this document, though the conceptual similarity regarded the Intelligence doctrine, fostered by several countries, have their own conceptions, created in common agreement by the member countries of the Working Group on Tax Intelligence, in order to attend the different specificities of the tax administrations of these countries. Thus, it is expected that they also cover the peculiarities of any other country that decide to use them in the creation or the improvement of tax Intelligence activities.

18. Finally, because there are specific technical terms that are common to the area of Intelligence, it was considered appropriate to provide a glossary, which is included in the latter part of this document.

III. Scope

19. Intelligence is defined as the systematic use of specialized techniques for obtaining, analyzing and sharing knowledge about events and situations which may have an immediate or potential influence on the decision-making process and government action for the purpose of counseling the governmental authorities in their respective levels and areas of responsibility, as well as with respect to security of society and the State.

20. In this sense, tax Intelligence is understood as the activity of gathering information, which aims to counsel the tax administration in the planning and execution of its legal powers, especially in combating tax avoidance, tax evasion contraband, and terrorist financing.

21. Tax Intelligence has proactive and reactive characteristics. When it is proactive, it will be related to the activity of obtaining and analyzing the information, making possible the elaboration of prognostics in the tax area, aiming to combat tax and customs violations, as well as the improvement of the tax legislation or administrative procedures.

22. When reactive, it can assume the form of investigation, helping, in a decisive way, the gathering of evidence and leads that can, opportunely, be used for administrative purposes and for instructing the criminal representation as well.

23. Institutional security for a tax Intelligence unit is mandatory. Institutional security must be a series of measures adopted by the tax administrations for protecting their facilities, officials and the information collected.

24. Thus, the present document has as its main scope to serve as a guide for helping the CIAT member countries to implement or improve the Intelligence activities in their tax administrations.

25. In this way, it is expected that each tax administration may evaluate, and, if appropriate, adapt the best practices gathered herein, according to the political/legal reality of their respective institutions.

26. Since the main objective of this work is to gather experiences and recommendations that will help tax administrations to implement or improve their tax Intelligence function, it is necessary that the results reached in this document should be widely disseminated to every level of the tax administration, and, if desirable, to other government entities that do not belong to the tax administration structure.

IV. Objectives

27. This study aims to show the importance of the use of tax Intelligence methods by tax administrations. With this goal, they are based on the best practices already adopted by the participating countries of the Working Group on Tax Intelligence and other countries that are CIAT members (attached to this document and referred to throughout it), as well as those identified as a result of the discussion and consensus of the Working Group.

28. Thus, in order to allow the tax administrations of the CIAT member countries, to implement or improve the tax Intelligence activities that may be appropriate to their own legal and institutional models, we have opted for the elaboration of this document.

29. Given that the tax Intelligence activities may be carried out on a decentralized basis or through specific structures, the objectives of this document reflect that range of organizational options.

30. Thus, the objectives of this paper are to:

- Identify and compile the best practices already adopted by the tax administrations in relation to tax Intelligence activities.
- Recommend an appropriate legal framework for the tax Intelligence activities.
- Specify the appropriate scope of competence of tax Intelligence activities as well as their objectives.
- Identify the necessary profiles and skills of the officials carrying out tax Intelligence activities.
- To stress the importance of establishing a set of ethical principles to be observed by the employees that operate in the tax Intelligence area, with the objective of stimulating the highest standards of conduct while performing these activities.
- Identify the techniques and methodologies applicable to tax Intelligence activities.
- Determine the results generally arising from tax Intelligence activities, as well as their main characteristics.
- Identify the criteria that may be recommended for improving or establishing tax Intelligence units, as regards their structure, legal competencies, specialized procedures and techniques, support tools and staffing.
- Identify ways of coordinating the tax Intelligence units with other State Intelligence structures.
- Define the area of competence of the activities of those Intelligence units and the way of acting vis-à-vis other state bodies.
- Contribute to legitimize Intelligence activities within the sphere of tax administrations, mainly in countries lacking such activity or those having difficulties in establishing them.

31. Since the result of the meetings should be the compilation of the best practices with tax Intelligence activities already implemented by the CIAT member countries, it is expected that the suggestion that this report be adopted as a model with due adaptation to the peculiarities and specific needs of each country, may facilitate and increase the opportunities of success of this task.

V. Main challenges faced by tax Intelligence.

See in the Appendix 1 the best practices regarding this issue

32. The tax administrations face numerous challenges in the national as well as international spheres. It should not be forgotten that the current international order where there prevails an ever more globalized economy, is also the scenario of action of transnational criminal organizations that act in an extremely structured manner, according to the patterns of the large multinational corporations.

33. Besides, the challenges inherent in those criminal organizations that cross the national borders, involve connections with other foreign organizations of the same nature; that is, maintenance of influence over public and private sector authorities, as well as the use of modern information technology for achieving their objectives.

34. In this sense, tax Intelligence will perform an important role, since one of its main objectives is the search for the denied data. And this, depending on the type of illicit activity, will represent a level of challenge to be faced.

35. Some of the most disturbing challenges that can be mentioned are complex tax evasion and money laundering schemes. Such illegal practices involve the participation of several individuals and, in general, several phases which many times may include entities of the national or international financial system.

36. This illicit activity, generally called “white collar crime”, especially those that involve illegal tax refunds and the collection of the Value Added Tax (VAT) has become common practice. In relation to the first, there is an accentuated tendency to occur in cases of illegal refund, committed by individuals or legal entities. When related to VAT fraud, it can be clearly perceived that it occurs under the worldly known scheme denominated “carrousel” (see glossary), due to its operational characteristics. While in the past, individuals generally performed such practices, criminal organizations are currently being observed to perform them as well.

37. These kinds of illicit activities have clear repercussion on the criminal sphere and may result in significant financial losses for the States.

38. Things being so, in order to achieve successful investigations, many times it is essential to coordinate with other state agencies: financial Intelligence unit, government attorney’s office, police, other financial supervision institutions etc.

39. The coordination with other government entities or agencies, at times, may also represent the challenge of dealing with sensitive aspects of information exchange, since the taxpayer data are protected by rules of confidentiality.

40. It can easily be seen that the solution of such problems, at times, escapes the working method associated with traditional examinations or audits, based to a large extent, on the verification of records, or tax data reported by the taxpayers themselves. In spite of the appearance and characteristics of legality that these verifications confer, they may be hiding some type of irregularity. This fact is corroborated by the recent revelation of accounting frauds practiced or covered by large and renowned business and audit companies, compromising their credibility.

41. To face these new challenges resulting from the advent of organized crime, computerization and globalization, those tax administrations are becoming aware that it is necessary to undertake a new type of approach. Thus, it became evident that it was necessary for officials to be trained in investigation and Intelligence techniques, many times developed and adapted to respond to the very characteristics of organized crime.

42. The approach normally associated to tax Intelligence activities is the preliminary investigation of tax crimes, particularly those involving large amounts of money and organized groups. Nevertheless, it is essential that their agents, priorities and working methods distinguish themselves through the capability for adaptation, inasmuch as a characteristic of organized crime is the continuous development of new methods to conceal financial or tax violations. In the same way, the tax administration should be capable of implementing new and legitimate procedures that may render possible or facilitate investigations, thereby not allowing that obstacles of a bureaucratic nature may prevent the necessary evolution of Intelligence agents and techniques.

43. In this sense, it is important that the tax Intelligence unit presents a qualified structure to elaborate studies related to technical problems, which handle tax avoidance or evasion, on national and international levels. In this way it will be apt to propose alterations, important for the improvement of the legal and administrative laws to combat tax fraud.

44. In order to protect the systems that safeguard the information found in the institution, it could be useful if units or officials carrying out tax Intelligence activities could assist in the development of internal institutional security rules and procedures. Such rules are intended to increase the level of awareness of the entire tax administration staff, particularly as regards risks originating from external and internal actions or interests against the institutions or its agents, as well as with respect to the need for safeguarding knowledge and data protected by tax secrecy. There should also be concern with respect to the so-called "hackers" and "crackers" who intend to take over or destroy the classified data for profitmaking purposes or self-promotion.

Besides the institutional security issue, the wide utilization and dissemination of information technology resources creates on the tax administration, more specifically on the tax Intelligence unit, the need to be able to overcome these obstacles. Especially when it is required the search of the denied data in

computerized systems, using appropriate tools to retrieve even encrypted or deleted data.

45. Besides, with the wide utilization and dissemination of information technology resources, the need to search for denied data in computerized systems is ever more frequent, thus bringing forth the need to have specialists and tools capable of recovering the data, whether they are encrypted or deleted. These factors, along with the aspect of the essential institutional security, generate the need for the tax administration, more specifically tax Intelligence, to be able to overcome these obstacles.

46. An additional difficult issue to be faced is the fact that information technology allows individuals or organizations to control a large volume of data and information that could be stored in servers located in different places or even in other countries.

47. Furthermore, the development of Internet and the increase of electronic commerce have proved to be great challenges, inasmuch as there are large volumes of records, documents and purchase and sales transactions, without any effective control mechanisms on the part of the state. Such situation turns out to be worst given the temporary nature of the storage of this information on the Web.

VI. Tax Intelligence aspects or issues

48. The answers given by the tax administration to the survey, as well as the aspects discussed in the meetings of the Tax Intelligence Working Group allowed for identifying some issues and topics that should be considered given their importance, whether in the establishment or improvement of the tax Intelligence activities, systems or structures.

49. In this way, the tax administrations, aware of the topics discussed, may evaluate the best way to implement and adapt them, according to their own institutional and legal characteristics.

VI.1. Scope of action and objectives of tax Intelligence.

See in the Appendix 1 the best practices regarding this issue.

50. The tax Intelligence activity is understood to be the systematic use of specialized techniques aimed at the production and safeguard of knowledge, for the purpose of assisting the tax administration in the planning and execution of its legal functions, particularly in combating tax avoidance, tax evasion and customs violations. Additionally, tax Intelligence could assist the national financial Intelligence unit in combating money laundering.

51. As important as the combat against tax and customs violations is the security and protection of the tax administration as a whole, including its facilities, staff and the information it legally holds and for whose confidentiality it is responsible.

52. Accordingly, the scope of action of this activity is quite broad, even more so when it becomes evident that this activity does not merely involve internal aspects in each country, but also transnational illegal tax activities.

53. It is important to note that in some situations, mainly when a reactive position is adopted, the tax Intelligence activity tends to assume an investigative nature and may additionally contribute to obtain information, evidence and indications that may be of an administrative as well as criminal interest. As was previously mentioned, the competencies to be developed in exercising this activity will depend on the political/legal regulations of the country whose tax administration uses them.

54. Thus, according to the respective structures of each tax administration, the tax Intelligence activity may have the following main objectives:

- Obtain information and denied data of interest for compliance with the tax administration mission, including the identification of potential illegal activities in order to subsidize more important tax actions through investigations of crimes against the tax system, foreign trade, illegal

customs actions, forgery, copyright violations, money laundering, and terrorist financing;

- Elaboration of studies and proposed procedures for improved prevention of violations of the tax law, irregularities in foreign trade and money laundering operations, among others;
- The production of knowledge to support the decision-making process in the tax administration, by expanding and/or disclosing situations with effects that are contrary to the legislation and objectives and goals determined by the institution;
- The elaboration, dissemination and follow-up of the institution's security policy, linked to the Intelligence activity and use of the information.
- Obtain data concerning the one who is being investigated, using formal and standardized computerized processing of gathered information, comparing them with data received from the own investigated individuals and those given by third parties.
- Elaboration of knowledge able to classify, analyze and manage models of tax avoidance and evasion, with special emphasis on those that involve money flow between tax haven and other countries with favored taxation.
- Contribute on the development of new tools and knowledge that will help as support to the fiscal activity as a whole.
- Operate in close relation with other agencies specialized in combating tax and customs crimes and other financial crimes.
- Follow up the transactional illicit activities, identifying their "*modus operandi*" and their impact on the tax administration.
- Identification and elaboration of flow charts of resources that pass over tax haven or preferential regimes countries that do not have tax agreements and countries that do not have legislation regarding money laundering and terrorist financing.

VI.2. Structure, position and financial autonomy of the tax Intelligence units in the organization chart of the tax administration.

55. The tax administrations should endeavor to organize their tax Intelligence units through strict abidance by the legal system in force in their respective countries and with the adaptations required by their structural realities.

56. Inasmuch as it is impossible to develop a unique model that may be applicable to all the tax administrations, it is important to provide examples of structures that may be implemented or even adjusted to the singularity of each national legal system. In the same way, one should consider the best way of obtaining the financial resources dedicated to those activities.

57. Thus, the tax administrations that opt to begin or improve tax Intelligence activities must take into consideration that the structural models mentioned in this

document could be adapted to specific needs. In addition to this, these administrations must endeavor to provide the human and material resources and the legal means to do so. Adequate legal guarantees must also be given in order to guarantee legal and physical security to its agents. Furthermore, it must be taken into consideration that the adequate definition of the placement of Intelligence activities in the organizational structure of the tax administration is an essential factor to guarantee its efficiency and effectiveness. This is how the legitimacy and legal validity of the work stemming from activities will also depend upon the legality observed during its constitution, as well as the transparency in the relations with the authorities involved in its supervision and control (item VI.4 “Legal Framework for Tax Intelligence Actions” specifically addresses this issue).

58. This document basically identified among the member countries of the Working Group on Tax Intelligence two types of organizational structures for the development of Intelligence activities: centralized and decentralized. These types of organizations are studied as follows.¹

a. Centralized Structure

See in the Appendix 1 the best practices regarding this issue.

59. Is that in which the Intelligence body, in addition to supporting the other sectors of the tax administration by investigating violations under its competency, must, as one of its main functions, provide direct counseling to the institution’s top hierarchical level, as recommended by the doctrine of the Intelligence activity.

60. In this case, the tax Intelligence organizational structure would consist of a central body, acting at national level and responsible for planning, coordinating, controlling and evaluating the Intelligence activities.

61. In large countries, where a centralized unit could have difficulties to manage efficiently the Intelligence activities all around the country, the solution could be the creation of regional offices, subordinate to this central body and responsible for investigations in territorially defined jurisdictions whose purpose would be to increase the presence and speediness of the Intelligence unit.

62. The following are some of the characteristics of this central command unit:

¹It is important to mention that the investigation on best practices has identified a country holder of a structure of fiscal peculiar enough Intelligence unit, not being able to be fitted like centralized, not as(like) decentralized, in relation to the structure organizacional of the administration of taxes.

There was stated that the activities typical of fiscal Intelligence in this country are executed out of the tax administration, for employees not linked to this one. Verifying the international scenerium, it is stated to be atypical this type of organization. This for which in this case, these activities are delegated to an external organ to the administration of taxes: the unit of Financial Intelligence.

- Issue policies and procedures that must be observed by the regional tax Intelligence units in order to standardize such practices nationwide.
- Coherently direct the allocation of resources by regional units, with the goals and objectives established by national tax policies.
- Monitor the regional units in order to guarantee compliance with the policies and procedures edited by the central command unit, as well as the correct and efficient use of resources.
- Analyze and distribute the information generated by the regional units to the government bodies responsible for the measures applicable, as well as for the issuance of new laws, policies, or procedures.

i. Advantages:

- Speediness in responses to request for search and compilation of information/data, given that such activities would flow within the same entity.
- Coordination of the work covering part or the totality of the national territory, inasmuch as they would not depend on the availability of staff and time of other entities.
- Direct counseling to the tax administration, given that it would be a central body linked to the director of the Institution.
- As a centralized structure, its establishment become simpler in the case the institution does not have an Intelligence department yet.
- Easier recruitment of employees since the selection is standardized in a unique structure.

ii. Disadvantages:

- Lack of close links with other bodies of the tax administration that, because of their operational characteristics could be great generators of information/data.
- If there is no unequivocal definition of the functions of the body, there is the possibility of duplication of efforts, inasmuch as the work carried out by tax Intelligence may also be carried out by other bodies of the tax administrations, without one being aware of the other (result of the principle of compartmentalization).

b. Decentralized structure

See in the Appendix 1 the best practices regarding this issue.

63. Is that in which various bodies of the tax administration carry out the Intelligence activity, thus not being the exclusive activity of their specialization. In this case, several bodies could exercise the Intelligence activity to which it would be directly related and subordinated.

64. The counseling function would then be linked to the administrator of the body where the Intelligence activity was carried out.

i. Advantages:

- Speediness and objectivity in the execution of its activities, inasmuch as responses will be given to the requests that are the statutory responsibility of the body carrying them out.
- Better understanding of the specific problems and characteristics of the tax administration bodies wherein they are carried out.
- The employees that work in distinct units, executing Tax Intelligence activities are experts and specialists in their respective operation areas. This is how their missions tend to be more efficient, because local bodies have the possibility of better knowing the characteristics of the region and its taxpayers.

ii. Disadvantages:

- Overlapping of competencies when carrying out activities.
- Duplication of efforts, when the Intelligence work is carried out by one body may also be carried out by other bodies of the tax administration, without being aware of the other.
- Difficulties in the coordination of actions at the national level, mainly as a result of the political organization of the country and/or its territorial extension.
- Withholding of relevant information / data which may be of interest to other bodies or the tax administration as a whole.
- By reason of the items above mentioned, this could generate an inter-administrative rivalry.

c. Financial Autonomy

See in the Appendix 1 the best practices regarding this issue.

65. Another aspect of great relevance in the tax administration's structure, which may strongly impact the effectiveness of the tax Intelligence work is whether or not there is a specific budgetary allocation for carrying out these activities. In this regard, it may be useful to devote a special funds item, of a reserved nature, being important that a law provides for the mechanisms for their use and auditing.

VI.3. Coordination of tax Intelligence activities with other State entities.

See in the Appendix 1 the best practices regarding this issue.

66. In tax administrations, professional secrecy is an obligation that can be revoked only by an express legislative regulation. Thus, as tax Intelligence activities are part of the legal structures of the administrations to which they are subordinated, there must be no doubt that they have to fully abide by the rules of confidentiality of the data in their possession, regarding the economic and tax lives of taxpayers.

67. It is also essential that public bodies or entities directly or indirectly aware of information that may be of interest to the Intelligence activities may exchange such information. Some countries have been able to regulate by means of a law, an Intelligence system that provides for the exchange of data that may contribute to increase the level of counseling in the decision-making process.

a. Exchange of economic-tax information between tax administrations

See in the Appendix 1 the best practices regarding this issue.

68. In principle, there are no significant legal difficulties in the exchange of tax information between the tax administrations within the same State because those bodies and their agents are already subject to compliance with the general rules of confidentiality of economic and tax data.

69. In fact, it is common for the national legal system to provide for the obligation to exchange such information between the tax administrations, although abiding by the political-administrative organization of that State; in other words, within the federal/national, state/provincial or municipal sphere.

70. Such data exchange is normally linked to mutual assistance in the field of tax examination or the simple exchange of information. It is advisable that it be carried out on the basis of a specific law or by agreement between the interested entities, providing for the requisites for such exchange.

71. As far as the tax Intelligence activities are concerned, such data exchange between the various levels of tax administrations of the same State is essential, since it is clear that the administrations responsible for the examination and collection of different taxes will have access to varying levels of information on the same taxpayer, whether it be income tax, consumption tax, property tax, etc.

72. In that same sense, the access to information kept in local tax databases ends up contributing to increase the availability of tax Intelligence to the upper political-administrative organization levels of the State. That is, the level of access to information disseminated throughout the national territory is multiplied. Such strategy may be of special interest to the national Government with a large territorial base.

b. Exchange of tax-economic information among tax administrations and the various state bodies

See in the Appendix 1 the best practices regarding this issue.

73. Legal provisions regarding confidentiality may mean that it is not legally possible to transfer tax information to other state institutions. While many countries

may be in this position at the present, others may have the opportunity to adopt a different legislative basis for sharing information that would allow sharing of information on a restricted basis as in the following paragraphs.

74. Far from involving a risk to the constitutional rights of citizens, such flexibility could result in the adoption of the concept of “transfer of confidentiality”.

75. In this way, the strictness of tax secrecy would be maintained, although lessened with respect to the possibility of access by specific entities, in accordance with a specific legal provision, and independently from judicial authorization. Thus, direct access to the data could be achieved through a simple request from those bodies to the tax administration, with the observance of certain rules established for such purpose.

76. In order to prevent the widespread use of such type of request, the legal rule could require that the body needing such information should establish an investigative procedure and also assume responsibility for maintaining confidentiality. Therefore, there would be no violation of confidentiality, but rather the duty of confidentiality would be transferred to the administration’s legally authorized bodies through which the classified information would be circulated.

77. Obviously, an information exchange based on that profile would have to abide by strict criteria. For example, the requesting body would have to justify the reason for requesting such confidential information. In addition, the rule could provide that a specific agent could only receive the protected data after signing a document wherein he assumes responsibility and providing for administrative as well as penal sanctions when there would be negligence or bad faith in the use of the information.

78. Within a legal model with this format, it may be said that the specific tax Intelligence activity will be all the more successful, the greater its level of relationship and exchange of information with other bodies of the administration or with other State Intelligence units, whether they be the central, financial unit or those existing in the other civil and military bodies.

79. The effectiveness of the tax Intelligence actions is closely related with the information flow. However, being essential to tax secrecy flexibility, it should be provided for within a well defined legal framework.

c. International exchange of economic and tax information.

See in the Appendix 1 the best practices regarding this issue.

80. It is common for national legislations to allow for the exchange of tax information with foreign Governments, provided it is of interest for the collection and examination of certain taxes, in accordance with the manner provided in the specific treaties, agreements or conventions entered into between those States.

Normally, the respective federal tax administrations are delegated the responsibility for making such exchange.

81. It is common that these treaties limit the use of the shared information to tax matters. It is also common that access to the economic and tax data of a certain taxpayer, achieved by means of international agreements, may be limited only to the taxes mentioned in those documents, in addition to being restricted to the tax authorities in charge of their examination or collection.

82. In this issue, many countries will decide that this limitation is totally appropriate to their situation. On the other hand, some countries may decide it is appropriate to provide tax information for non tax purposes as well.

83. On this matter, it should be mentioned the Article 26 of the Model Tax Convention, reviewed and approved in June 2004 by the Organization for Economic and Co-operation Development (OECD). This document has a provision establishing that the information received by the asking State, due to an agreement signed with a foreign State, should be subject to the same rules of the national legislation of the petitioner, concerning the maintenance of secrecy. It establishes also that these data may be utilized for tax purposes only.

84. Frequently, the Tax Intelligence investigative work faces the access restriction to fiscal/economic information, essential for the instruction of criminal procedures concerning tax evasion. Moreover, when evasion is associated to money laundering, political corruption, drug traffic, terrorism, etc, the time wasted between the petition made by the competent departments of the executive and judiciary branches, or by the Prosecuting Attorney Office, and its effective reply, in determined circumstances may result in an undesirable delay in the investigation of these crimes.

85. This can contribute for the lack of effectiveness of the legal order, as well as for the consequent increase of the impunity feeling regarded the practice of financial, fiscal or customs illicit activities. Thus, it should be stressed, again, the importance of mitigating tax secrecy rules, this time regarding international agreements or conventions designed for tax evasion purposes. It is noticed that, as previously mentioned, it could be useful to put into practice the concept of “secrecy transfer”, allowing the fiscal/economic data displacement for its utilization in penal or investigative procedure.

86. Concerning this theme, the CIAT, in its 33rd General Assembly, held in El Salvador, in 1999, approved its Model Information Exchange Convention that foresee, expressly, the following forms of fiscal information exchange among the administrations of several countries:

- Automatic or usual exchange – occurs when the competent authorities of the contracting States define and name what kind of information will be transmitted or received in usual or automatic manner.

- Spontaneous exchange – the information transmitted or received, reciprocally and spontaneously, by the competent authorities of the contracting States. The transmission will occur every time that, in carrying out with their activities, the contracting parties identify the information that is relevant and meet the fiscal purposes.
- Specific or requested exchange – The competent authority of the contracting State furnishes the information following a previous request from the asking State, and provided that the information meets tax purposes.

87. In the model proposed by CIAT, there are provisions that deal with simultaneous and foreign fiscal control. The simultaneous control occurs when the contracting States agree to control, simultaneously, each one in its own country, the fiscal situation of individuals and legal entities on which they have a common interest, with the objective of exchanging any relevant information obtained through this procedure. The second provision (foreign fiscal control), occurs when by request of the competent authority of the asking State, the requested State may allow the representatives of the petitioner to be present, in the appropriate phase, in a fiscal control held in the requested State.

VI. 4. Legal Framework for carrying out tax Intelligence.

88. Appropriated legal instruments should rule the Tax Intelligence activity, due to the high sensitivity of the matters that it approaches and the peculiar characteristics of the techniques it uses, specialized in the information search. This legal framework aims at giving security to its employees when carrying out their functions, contributing to legitimate the results of their work by means of a clear explanation of the ethical/legal framework to which these professionals are linked.

89. The employees should be trained to understand, in its essence, the specific attributes and the importance level of the activities carried out, in order to produce Intelligence knowledge and also investigation. These particularities are revealed, for example, when the denied data search requires to carry out operations beyond the normal shift, or when specialized Intelligence techniques are to be used (see item V.7).

90. Things being so, the tax administrations having or wishing to implement tax Intelligence activities must do so in accordance with the legal regulations in force, undertaking efforts for the issuance of specific rules. Obviously, these rules must be compatible with the legal regulations, providing its agents all the security and support for the specialized actions that may be necessary in carrying out those activities.

91. The Intelligence activity will give priority to institutional security, which results in the protection of individuals, facilities, knowledge produced as a result of that same activity and information for whose confidentiality the tax administration is

responsible. A legal base must also support such aspects in order to give them legitimacy before society.

92. Since it is an activity that frequently involved the performance of highly risky tasks, often with long work days at times different from normal schedules, it is also important that the financial remuneration of officers linked to tax Intelligence activities be, if possible, higher than other tax administration officials.

93. At the end, the exercise of operational techniques, such as interviews, undercover operations, recruitment of informers, search and seizures, and so on, will continuously put tax Intelligence agents in danger from national and international systems of organized crime, putting the physical and mental integrity of these officials close to risky circumstances similar to those of policemen. In this regard, appropriate legislation could specify special rules for retirement taking into account the stressed and strain of this type of activities.

94. Legal provision or regulatory text is essential to the security and definition of the working methods of its integrating parties and shall consider the following aspects:

a. Legal Authorities

See in the Appendix 1 the best practices of regarding this issue.

95. It is imperative that the departments or the units that carry out tax Intelligence activities have their legal competencies and attributions clearly defined in legislation.

96. Therefore, it is important that the tax administration defines which organizational structure of tax Intelligence it wishes to implement or improve.

97. Thus, it will be possible to define and implement, or modify, its statutory competencies, which, besides its structure, should include its scope. That is, its objective should be limited to the area where this activity is being carried out, preventing the overlapping and the duplication of efforts with other areas of the tax administration.

98. Tax Intelligence has its own characteristics distinguishing it from the usual activities carried out by other tax administration units. Therefore, it is important to define objectively the functions performed by its agents.

99. The Intelligence duties typical of Intelligence activities, in addition to being adequate to the structure of the body and its operations, must be compatible with the definition of specific legal authority conferred to its agents, such as:

- Authority to obtain information: when these are different from the legal competencies related to the usual civil tax purposes, such as competence to carry out Intelligence actions if specialized operational techniques are to be used, and the authority to execute search warrants, to seize, etc. In this regard, the tax Intelligence agent must have the same legal authority conferred to the other tax administration agents regarding the legal powers to official request information and documents from individuals, companies, and organizations.
- Authority to carry firearms: if it is not already a prerogative of the usual tax purposes; always and when authorized by the legislation.
- Authority to make arrests: depending on the legal structure of the country, legal powers can be conferred upon tax Intelligence agents to make arrests, as stipulated in specific legal mandates.
- Authority to share information: if different from the legal competencies related to the civil tax activity, especially when the information is designed for non-tax purposes.
- Authority regarding institutional security: in this case, including human resources, secret information and systems security.

b. Basic Principles

100. The carrying out of tax Intelligence activities needs to be led by basic principles from which it should not be apart. The principles mentioned in the present sub-item are directed to reach technical excellence in tax Intelligence activities, and should not be confused with those that should be rigorously observed by its employees in terms of professional ethics, which are part of an item in this document, the VI.9.

101. Among the many principles identified on planning and carrying out these activities by the tax administrations, the following should be mentioned:

- **Timeliness** – consists of the importance attributed to the time element in the development of actions. That is, in many cases, the success in the search of determined information or evidence would be achieved only if the proper specialized action is executed in a given opportunity that may not repeat. Another aspect of this principle is related to the obtained results, since the knowledge acquired must be disseminated within an adequate deadline in such way that it will allow its effective utilization. Attention to this principle also demands further concern about managing personnel, since a

certain opportunity would be better taken advantage of when the use of human resources, which are often scarce, is optimized.

- **Extent** – involves the concern for obtaining the most complete results possible from the activities carried out. The time, human resources, and materials used in an investigation must be proportional to the expected results. In other words, even though the scope of the investigations is rather large, they must be reassessed periodically, trying to adjust the resources allocated to this objective, keeping them from becoming unnecessarily expensive or excessively detailed. The application of this principle must be done along with the principle of simplicity.
- **Effectiveness** – involves planning and execution of actions in keeping with the current circumstances and the results sought to be obtained, avoiding, during the investigations, treading rather irrelevant paths or paths with no links to these objectives.
- **Clarity** – deals with the way of elaborating documents and knowledge obtained from Intelligence, which should be produced in such a way as to allow for their complete and perfect understanding, by avoiding doubtful or uncommon terms.
- **Security** – prioritizes the adoption of guarantees and safeguards, trying to protect the personnel involved. They must be the most adapted to the specific characteristics of each action carried out. This concern is of utmost importance in the planning of any Intelligence action.
- **Control** – consists of the need for appropriate supervision and follow-up throughout the Intelligence actions, both internal and external. Internal control could be done by the tax administration itself, when the correct and efficient use of human and material resources will be assessed, trying to prevent waste of time and public funds. External control will be exerted by the public authority responsible for the external supervision of activities. This control will normally consist of supervision of the good use of financial resources, as well as of the analysis of the legality of Intelligence actions.
- **Impartiality** – The need to ensure that Intelligence agents perform their duties objectively; to do away with any personal factor of the Intelligence agent that could distort the results of his/her activities, such as preconceptions, prejudices, or other individual factors. The official must be in a position of being independent regarding those under investigation, and his separation is advisable where there is, or can be, a certain degree of personal involvement.
- **Simplicity** – determines that the Intelligence actions should always take into account the minimization or elimination of unnecessary steps in the

investigation, costs, and risks. This can be achieved through effective planning at the beginning of the investigation by initially executing the most direct path to obtain the information which should take into account actions that are less risky and that involve fewer costs. Its use also should take into account the extent principle as well.

- **Compartmentalization** – principle of the Intelligence activity that requires that the information on the ongoing works shall be shared only with those that need to know them, that is, they need the information for the development of some specific activity. It aims to prevent the leaking of secret information on the ongoing investigation.

102. In order to guarantee the adoption of all these principles, the Intelligence activities must be preceded by specific planning as established in Point VI.7.b.i of this document.

c. Policies and Procedures

See in the Appendix 1 the best practices regarding this issue.

103. It is necessary to set out clear policies and procedures in regard to the creation or improvement of the tax Intelligence activities. Thus, documents that detail all aspects of this work should be developed

104. It is essential that all employees engaged with Intelligence activities are aware of these policies and procedures. Thus, the creation of a manual with specific procedures for tax Intelligence activities is considered to be necessary.

105. Besides including definitions concerning organizational and administrative characteristics, such document could expound clearly the attributions and authorities of the department or of the employees working in this area. The document could also describe taxpayer selection standards, operational techniques procedures, reports elaboration, etc.

106. Thus, this manual could include as annexes the different standard models of working papers and reports, specifically used in the Tax Intelligence activities, as well as examples of practical cases and applicable jurisprudence.

107. It must not be forgotten that given the rapid development of legal relations, it is essential that a document of this type should be constantly reviewed regarding administrative procedures, legislation, and legal decisions. The application of such manual should be feasible and practical. Therefore it is required that the Tax Intelligence agents are allowed to access it through a system like intranet, with the access restricted to these officials.

d. Institutional protection obligation

See in the Appendix 1 the best practices regarding this issue.

108. Due to the nature of their duties, the tax administrations should protect their agents by a legal instrument that assure this support whenever they act in accordance with their ethical and legal duties. This kind of protection is justified due to the following main reasons:

- Do not leave the employee defenseless, facing threats and attacks from individuals or organizations.
- Guarantee the continuity and development of the public service.
- Guarantee the public order.

109. In addition to this legal instrument, policies and procedures must be implemented, specifying behaviors recommendable for tax Intelligence agents. Their content must also make it clear that the administration will only give protection and legal advise to those officials who follow these recommendations as good as possible in the circumstances

110. The scope of this protection obligation must have two objectives: prevent damage to public administration and prevent harm to the officials. The aspect of protection to public administration is necessary to guarantee that this administration will not be considered responsible for cases of tax Intelligence agents who, in their daily routines, violate laws, policies, and procedures.

111. The second objective of this protection obligation already refers to the defense of the tax Intelligence agent, as well as to the search for a compensation for the harm sustained by this agent that occurred as a result of any physical or moral attack by individuals. This defense must be available both in the administrative and legal levels.

112. Thus, prior to beginning any disciplinary procedures, the administration must have an internal system that will review any complaint filed against its agents in order to guarantee that the complaint will not be worthless, ill-intentioned, or groundless. In addition to this, if the attitude taken against the agent allows it, the administration must help in the filing of legal actions against slander, lies, defamation, or violence sustained or by the defense against actions, seeking compensation or civil damages, and so on.

113. In these cases, the official must receive assistance with the previous authorization of a state attorney whose fees will come from the public treasury. Such assistance must include all advice and counsel necessary for his full defense.

114. Finally, it is important to have a legal provision that allows the tax administration – when in defense of its accused officials – to produce all the

necessary evidences at the jurisdiction where the action takes place. In this case, it is fundamental that the administration is exempted from data secrecy laws in order to release protected data specifically to the object of the litigation under investigation. In the frame of this institutional duty of defense of the personnel, the tax administration should be able to inform the public about the penalty for illegal conduct of the taxpayers and/or the personnel.

115. Therefore, it is imperative that, to reach the intended objective with the implementation or improvement of tax Intelligence, the tax administration should commit itself effectively. Such commitment understands fostering conditions to create a legal and institutional environment able to warrant, stimulate and honor the performance of Intelligence, within the standards, principles and established procedures.

VI.5. Profile and skills of the employees that participate in the tax Intelligence.

See in the Appendix 1 the best practice regarding this issue.

116. As initial parameters, it is important to accentuate that it is expected from the tax administrations that they carry out all the human resources activities based on criteria that allow for the development of their employees. To achieve this expectation, these administrations should give the due importance to the process of personnel selection executed according to the principles of merit, capacity, publicity and transparency. An effective career planning that establishes the duties and rights of the employees and the criteria of functional promotion is essential to this process.

117. In this sense, the legislation of human resources should establish, among other points, the positions and functions assigned exclusively for career employees, as well as the minimal guarantees of functional stability, in order to assure independence and neutrality when these employees comply with their duties.

118. Moreover, a career employee of the tax administration should not be fired or be subject to disciplinary action without just cause such as in consequence of a serious violation of the agency' policies or procedures, of the country's laws, or for insufficient performance according to an agreement with objectively defined standards.

Any proposed firing or disciplinary action should be evaluated by a disciplinary administrative process, instituted pursuant previously established procedures or due to a judicial sentence before such action can take place. The hiring and firing of employees in the tax Intelligence unit should not be subject to changes in the ruling party of the government. These procedures have as their aim to eliminate the resignations "*ad nutum*" in the activities of fiscal Intelligence.

119. Only with the functional stability it will be possible to have personnel that works in defense of the permanent interests of society, because they are more protected from unjustified firings, eventually determined by the change of governments. Naturally, the tax Intelligence employees who originate from the personnel already selected by the same tax administration, are subject to the same processes of selection and to the same rights and guarantees of their career.

120. The employee that carries out the Tax Intelligence activities must be also subject to a normative framework that guarantees total observance of the rights and guarantees constitutionally assured to individuals, as well as to the ethical principles that govern the Intelligence activities. Therefore, the utilization of specialized operational techniques of Intelligence should have as maximal frontier for its application the regulatory limiting norms that the national legislation imposes on the public administrations on behalf of every citizen in order to assure his protection.

121. In general, there are two different profiles in Intelligence activities: the operational agent and the information analyst. Since they require personnel with different qualities, it is fundamental that the selection process be designed for the search of people that meet these particular characteristics. The selection of both profiles must include people who represent the cultural diversity of a nation. Likewise, the selection of personnel that gives preference to a diversified academic education tends to contribute to the success of these activities.

122. Considering that the Tax Intelligence activities may include the investigation of illicit activities perpetrated against the tax, customs or financial laws, it is essential that not only the operational agent but also the information analyst possess formal education of multidisciplinary character. Thus, to both positions is fundamental the knowledge in the areas of accounting and Law, particularly in the tax, criminal and financial areas. However, in view of the conclusions that will be required from them, as well as the documents that they should produce, each position would require a deeper knowledge in specific areas.

123. For instance, operational agents would need a deeper knowledge of how to use specialized investigative techniques to gather denied data. The information analyst would need a deeper knowledge of how to retrieve and correlate information from databases.

124. Due to the judicial aspects, specifically the one related with tax illicit activities faced by the tax Intelligence employees, it could be useful to count upon a group of assistants specialized in fiscal themes. These employees that should have formal education in law could participate in the stages of planning, development and operational execution of the investigations under Intelligence's responsibility.

125. Another function that can be developed by these assistants is that of analyzing the fiscal laws and their alterations, suggesting, if it is the case,

alterations that aim at covering the faults in the fiscal legal system or its improvement. Depending on the structure of the public administration of each country, these fiscal assistants may even be responsible for the presentation of judicial actions before the Judiciary Branch departments, during a penal process. This kind of professional may help in the prevision of problems that would appear later, in the eventuality of a judicial process. Thus, its action will allow verifying, in a more elaborated way, the existence or not of correspondence between the concrete facts and the abstract legal norm.

126. The operational agent, also called operation officer, should possess skills adequate in developing the field activities, in searching the denied data, and proficient in the use of the operational specialized techniques of Intelligence. His skills must include the expertise in the use of operational equipment, as well as the capacity in adjusting to new environments and social situations.

127. His profile must include also the capacity to interact with other people and the fast reasoning and adaptability to new environments and social situations. Therefore, it is indispensable that the operational agents be trained in interviewing techniques, not only during the process of admission, but also in more advanced phases of his career in which more advanced techniques will be taught.

128. Considering the fast and constant technological evolution, it is essential that periodical training be scheduled to allow the operational agent to follow up the changes or innovations in terms of equipment and informatics.

129. Another main point in the formation of these agents, which can be provided by internal training, is located in the areas of accounting, tax law and penal process. With these notions acquired, the operational agent will be more qualified to evaluate whether a given information is, or not, of real interest to the investigation, and if it should, or not, be used, considering that the search or collection of evidences or traces carried out in discordance with the procedural law could invalidate it for the instruction of judicial processes purposes.

130. There are many aspects of operational Intelligence that should be taught within the context of the operations, due to the impossibility of being acquired in formal education or brought from previous professional activities. Thus, an essential aspect in the formation of an operational agent is the training. This is particularly true as far as the work of tax Intelligence is concerned. For this kind of activity it is not sufficient, for example, to hire former policemen, because like the information analysts, the operational agents must be able to conduct complex financial investigations. To accomplish this, the investigator preferably should have an university degree that includes courses in accounting and other financial fields.

131. As for the information analyst – also called Intelligence analyst, his typical profile is related to his personal qualities that make himself able to interpret facts and situations that aim the production of knowledge of specific interest of the tax

administration and, eventually, of the State and the society. His formation and personal qualities should allow that the elaboration of this knowledge covers not only past facts, but also the estimates about possible future evolutions of these facts, informing the most probable scenarios.

132. Like the operational agents, the education of the tax Intelligence analyst must include also knowledge about accounting and legal criminal and tax order. However, the education of the information analyst requires a more solid and deeper education in such areas that will not be necessary to an operational agent. Such knowledge will help him to understand and distinguish sophisticated legal constructions concerning the fiscal avoidance from others that, eventually, will become illicit tax evasion. This requirement is justified especially in these tax administrations where the Intelligence activity is also involved in the criminal investigation.

133. Some Intelligence analysts must be well trained to carry out investigations in large databases typically managed by tax administrations, particularly with the use of computer applications known as data mining. In order to have practical results, these investigations must be guided by parameters defined by the Intelligence agent himself according to the specific needs of each investigation.

134. The sensitiveness and the secrecy of the matters handled by the employees in charge of the tax Intelligence activities is similar to those carried out by other employees of the tax administration. However, considering the peculiarities of the Intelligence field, it is important that its selection, within the tax administration, be composed by a selective process consisting of very well defined stages.

135. The creation and maintenance of tax Intelligence activities require high investments in the formation and improvement of its professionals. Thus, the selection process is also useful to identify those public servants that have a profile adequate for the tax Intelligence activity, saving possible future waste of public resources. Another advantage inherent to a selective process of quality is in making the candidates aware of the kind of job that they aspire, preventing future disillusionment. The conjugation of these two characteristics of the selective process contributes to reduce to a minimum the employees' turnover, totally inconvenient and inadvisable in the area of Intelligence.

136. Given the high level of professionalism and confidentiality inherent to these activities, the selection process must be based on clear and well known rules, and on merit criteria such as: adequate personal profile, desirable academic graduation, specific skills, capacity to work in groups, etc. This is also a way of waiving any possibility of patronage.

137. Thus, the following stages below could be used in the hiring of these professionals linked to the tax Intelligence activities:

- Curriculum analysis: the employees interested in joining the tax Intelligence, should forward their curriculum vitae which will be subject to a analysis to verify if the formation, profile and professional experience of the candidate are adequate to the activity's requirements.
- Analysis of questionnaire: those selected in the previous stage should fill in a specific questionnaire for the analysis of the professional profile and personal skills. In this phase, the fiscal situation of the candidate and his personal background could be verified, evaluating information from former chiefs, concerning disciplinary occurrences, as well as information on his biographical background related to professional experiences, police or judicial occurrences.
- Written test: another possibility is to include in this process a written test in order to reduce the number of candidates before the interview process.
- Interview: the remaining candidates would be summoned for a personal interview, when the information filled in the questionnaire would be checked, their motivation to enter in the selective process evaluated, and their characteristics of interpersonal relationship verified. On this occasion, the candidate would receive more specific information to clear their doubts about Intelligence activities.
- Training in Intelligence activities: the candidates selected in the previous stage would participate in a specific training program on Intelligence where they would receive theoretical and practical instructions. Training would be a combination of generic for all employees and then an agenda of subjects that would focus specifically on the tasks of either the profiles of operational agent or information analyst, according to the candidate's identified profile.

138. Following admission of the agent and throughout his work in tax Intelligence activities, it is imperative to distinguish the constructive purpose of this activity. So, the training of this employee should identify the dual purpose of Intelligence that can be carried out in the amplest assistance to different sectors of the tax administration and also in the investigation of tax, customs and sometimes, financial illicit activities. In doing so it is essential also the knowledge and determine the Intelligence doctrine currently in force.

139. To attain these targets it is imperative to conduct ongoing training for the updating of concepts, techniques and legislations, as well as for the learning of new knowledge, not only in these areas, but also in other areas that will become of interest to the tax administration.

VI.6. Sources of information and tools for Tax Intelligence

140. For some years, humanity has been experiencing what can be called an era of information, resulting from the disseminated and intense use of technologies, not only in the area of information technology, but also in the methods to communicate this information. The information is accessible and is utilized actively as strategic resource of organizations and institutions and even by the common citizen.

141. In Intelligence activity, data/information is understood as the description of verifications, facts or situations by means of documents, photographs, reports or any other mean that should be submitted to a specific methodology for the production of knowledge. Actually, data are the information in raw state without being submitted to any type of mental elaboration.

142. In this sense, the tax Intelligence unit should use all sources of data available for the production of its knowledge, meaning as source of data every and each person, document, department or mechanism providing data and/or information that make feasible the production of Intelligence knowledge.

143. Therefore, in trying to accomplish its main objectives, the tax Intelligence activity needs to reach all data and/or information possible by means of open actions or not. During an open action the tax administration employee identifies himself as such and acts according to the norms and procedures applicable to the procedure of an ordinary tax action.

144. It is the tax Intelligence unit that should obtain the data and/or information from all possible sources available, provided that the actions developed for their collection do not confront with the national legislation.

145. From the Intelligence activity's point of view the sources of data and/or information can, in a large classification, be qualified as closed or open sources. This distinction concerns, respectively, the need or not of utilization of Intelligence specialized techniques for their collection.

146. Thus, the fact of a source being classified as open or closed will always be from the Tax Intelligence point of view. When this report qualifies a source as open, it does not mean, necessarily, that any person can access the source, but that this access is assured to the agents of the tax administration or its Intelligence, in the exercise of their regular functional attributions, without the use of Intelligence techniques. Naturally, it should be stressed that there are open sources of public character which are accessible by anyone, public servant or not, and should not diminish the significance of their use.

147. Below this classification is summarized, with its subdivisions:

a. Closed sources

148. Due to the nature of these sources, it is usually necessary the use of specialized techniques of Intelligence to reach information or data coming from them. Depending on the case, interviewing techniques, monitoring of communications or capture of images could be used. The three primary types of these closed sources are human, signal and imagery, accordingly to its origin and/or techniques involved in its collection.

i. Human Sources

See in the Appendix 1 the best practices regarding this issue.

149. These sources have the human being as main source of collected data and/or information. They can be considered as that of higher quality, provided that its trustworthiness and reliability are duly evaluated. It results of the specific Intelligence activity called Human Intelligence or HUMINT. The following can be cited as examples:

- Information Analysts
- Operational Agents
- Informants
- Denouncers

ii. Signal Sources

See in the Appendix the best practices regarding this issue.

150. These sources are data and/or information collected with the utilization of a specific Intelligence activity called Signal Intelligence or SIGINT. They are basically actions of interception and monitoring of the emissions of the electromagnetic spectrum (communications), designed for the production and safeguard of knowledge. It should be noted that the authorization for the interception and monitoring of private communications by a department that carries out Intelligence activities should depend on the legislation of each country. As example:

- Telephone
- Pager
- Fax
- E-mail

iii. Imagery Sources

See in the Appendix 1 the best practices regarding this issue.

151. These sources are data and/or information gathered with the utilization of a specific Intelligence activity called Imagery Intelligence or IMINT. They come, basically, from images of photographic equipment, radars, infrared sensors and others.

- Photography
- Films
- Satellite images

b. Open Sources

152. As mentioned before, this work, according to the classic theory of Intelligence, classifies the sources as open or closed, always taking in consideration the point of view of the agents or the department that carries out Tax Intelligence activities. Some open sources were named as such, since the information kept under the protection of the public and tax administrations may be easily reached by their employees in their own systems of internal data, or by means of agreements with other departments. Naturally, the concept of open sources includes also those of free access to the public in general. In the case of open sources, it is important to stress, that the access to them does not require the utilization of Intelligence techniques.

153. Although they do not require the utilization of specialized techniques to be accessed, the open sources are of fundamental importance for the Intelligence activities. And the reason is that the data gathered from these different sources will constitute one of the main raw materials for the production of the so-called knowledge.

154. In this particular, it should be stressed that such knowledge – by definition, the result of the information process together with the intellectual work of the Intelligence analyst – is not limited to the constructed knowledge based on data of closed sources. This knowledge will be also retrieved from primary information originated from different open sources, frequently by means of cross-checking the data pertaining to the tax administration and the other data informed by the investigated person to other departments or institutions. In these cases, the Intelligence activity will consist also in the specification of parameters for the retrieval or cross-checking of existing information hosted in normally huge databases and by the subsequent capacity of analysis of the results of these findings.

155. Thus, for this report purposes, the open sources may be subdivided in: public sources, sources accessible by the tax administrations, and internal sources of these same administrations, as follows.

i. Public Sources

See in the Appendix 1 the best practices regarding this issue.

156. Public sources are defined as sources available for any person or organization, chargeable or not. The information originated from such sources, though easy to be gathered, should not be despised since they constitute a large and varied field of research. As examples, can be mentioned the:

- Clerk's Offices (civil, commercial, etc.)
- Press, in general
- Internet

157. Due to the relatively short existence of internet, as well as to its increasing importance as source of information, caution is advised in the evaluation of the trustworthiness of the information gathered through it. It happens that, in spite of the short period of existence, this huge database of global scope has proved itself extremely valuable for the researches carried out by people involved in Intelligence activities.

158. When dealing with human sources, the analysis of the information gathered takes into account the credibility of the source, its motivation, the collaboration given in previous occasions and other factors that allow validating or not a determined source. Thus, in relation to the data collection through Internet, is also indispensable the analysis of credibility of the information and of the source. However, because of the relative novelty of this database, it is necessary to make adaptations to the traditional method of analysis of sources. So, if the source originates from internet, it is important to evaluate, judiciously, the following parameters:

Authorship: the author should be easily identified, so that his proficiency in the matter could be evaluated. If the author is identified but is not known as a specialist in this field, one should verify if other respected sources in the area make reference to this author. An indication of credibility is the existence of links between the author's homepage and that of a specialist. It should be verified if there is an effective way to contact the author, by e-mail, telephone or address.

Depth of the data: normally, the Internet data is a second hand source. For this reason, the primary sources or documents of reference should be detailed so that the premises utilized could be assessed. If the primary sources are mentioned, it

should be verified if there are links for such sources. If the bibliographic sources are utilized, its quality must be verified.

Creation, updating and support: it should be done a verification of the correspondence between the entity or individual that recorded the domain and the one that disseminates the information on the Internet. It is a sign of professionalism the indication of the date the page was created, how and when the updating was done. When confirmed that the page is supported or financed by a respectable institution, the higher will be the credibility of the author and its contents. On the other hand, links that lead to inexistent home pages, or homepages that have changed the address, should raise prompt attention.

Precision: a text containing grammar or typing errors, texts whose quality is significantly inferior to that of the figures, graphs, photos or other visual elements, diminishes the source's credibility.

159. Despite being extremely useful, Internet access must be used with extreme care. It is known that each computer linked to this worldwide web is a frequent target of unauthorized access, aimed at seeking information stored in its memory units or internal networks (Intranet) to which it is connected. Thus, some basic precautions are essential when tax administration computers are connected to the Internet:

- Installation in these machines of programs specialized in preventing unauthorized access attempts, and they must be updated periodically (firewalls);
- Disconnect these computer from any internal tax administration networks;
- Do not keep files with data subject to tax secrecy or with information on past or ongoing investigations in the memories of these computers;
- Only used computers that do not have an Internet Service Provider (ISP) associated with the government when conducting covert (undercover) research of internet sites;
- Information stored on the computer should be encrypted.

160. Finally, it should be stressed that besides the homepages of free access, it is possible, through payment of relatively reduced charges, to get information from internet's national or international addresses specialized in performing searches on financial and patrimonial data, often omitted in the tax returns delivered in their countries of origin.

ii. Sources accessible by the tax administration

See in the Appendix the best practices regarding this issue.

161. Tax administrations have access to important sources of information that do not have public character but, actually, keep data with higher or lesser level of secrecy. This information, furnished by citizens to different civil or governmental institutions – normally in compliance with some legal duty, may be used for tax purposes, depending on the specific legislation of each country. As such, the following sources can be cited as examples:

- Different state organizations of control, development, recording of activities (concerning the industrial, health, labor, welfare, agriculture, fishery activities, etc.);
- Departments of the judicial branch;
- Registration of motor vehicles;
- Registration of real state/evaluation for property tax purposes;
- Financial Intelligence Units (financial reporting forms), which could include currency transactions in excess of a threshold amount, suspicious currency transactions, cross-border reports etc.
- Addresses and Return Addresses listed on mail;

iii. Internal sources of the Tax Administrations

See in the Appendix 1 the best practices regarding this issue.

162. The internal sources of the tax administrations are those sources of information that are kept by the tax administration itself. They can be classified in two subgroups: those available through the civil tax administration (data systems of collection and control – and customs, if the case) and those that have been produced by means of tax Intelligence activities.

163. In this sense, it is extremely important for the collection of data and/or information to provide personnel with adequate training that allows building expertise in available technologies, techniques and methods that must be used at the appropriate time and in harmony with the country's legal regulations. Frequently, as this knowledge will be periodically retrieved from primary information originated from different sources, the expertise of standard procedures for the cross-checking of data is essential.

- Sources of civil tax administration

164. Besides being huge, the databases kept by the tax administration, stored during the normal activities of collection and control of internal taxes (or, when applicable, customs duties) are very rich in information on the taxpayers. These

sources may include personal and financial information that are rendered by the taxpayers. They may also include data sent by financial or business institutions that are legally obliged to inform on salaries, investment and other income paid to their associates, directors, employees and clients.

165. Besides these data systems, the tax administration has, normally, programs and activities concerning non-compliance identification and evaluation, as fiscal audits, programs for identifying negligent taxpayer, etc., constituting valuable sources for the activities of Tax Intelligence.

- **Sources of the Tax Intelligence information system**

166. The tax Intelligence must develop an Intelligence information system, preferentially in a computerized format and integrated in a network to allow its agents to use it, not only for operational purposes, but for analysis as well. Such system should include information on received denounces, potential targets, fraud schemes already disclosed in former investigations, active or potential informers, etc. This system would reach also the management of cases or on-going investigations.

167. This system's project would make possible the management of every incoming communication whose investigation or forwarding is under tax Intelligence's responsibility: reports on suspect financial operations, warning of alert, reports on atypical transactions and elements that permit to consolidate signs or evidences related to the practice of tax illicit activities.

168. Thus, it is essential for the maintenance and organization of information gathered from other sources, besides making possible to those in charge of the tax Intelligence activities to carry out their activities at operational and analysis level.

169. It is expected that such system be the first source to be consulted by an agent in the gathering of data on potential new target, with the objective of determine if the tax Intelligence already possesses information about the matter.

VI.7. Techniques and methodologies of the Tax Intelligence action

See in the Appendix 1 the best practices of regarding this issue.

170. One of the main objectives of the Tax Intelligence is the search of denied data, i.e., information of interest for the tax administration but not available in open sources because their holders protect them. This search is done by means of a wide fiscal investigation.

171. In the course of an investigation, the Tax Intelligence Unit uses the techniques and methodologies mentioned here in order to follow the traces and findings related to financial and fiscal illicit activities. The objective is to obtain evidences

that provide basis for a civil tax examination or for the beginning of a judicial criminal process.

172. To reach this kind of information, an efficient investigation presupposes the expertise and the application of specialized operational techniques of Intelligence. Besides the search for protected data, such techniques may be used to prevent or obstruct adverse actions, potentially able to cause damages to the staff, documentation, produced knowledge, communication, information systems and tax administration's facilities.

173. Considering the limited budget volume normally available for the allotment in tax Intelligence activities, as well as the high investment of resources necessary for the development of these activities, it is essential to make the correct selection of taxpayers to be investigated. Thus, the techniques for the identification of targets should be also optimized, not only with the objective of increasing the chances of a correct application of these budgetary resources, but also to prevent the waste of time and personnel.

174. Equally important in the Tax Intelligence activity is the need to use a specific methodology for the production of knowledge. After all, in possession of the information gathered from open sources, or collected through specialized techniques, there is the need to produce knowledge. Its creation will result from a process of mental work of the collected information, being essential that a specific methodology governs this phase.

a. Specialized operational techniques of Tax Intelligence

175. Technique may be defined as a particular way of carrying out some task or achieving some objective. Each art, profession or science has its own techniques, and this is the case in tax Intelligence as well.

176. Thus, in the course of an investigation conducted by the tax Intelligence staff, some renowned techniques associated to this task should be used, and below are the main techniques followed by the respective definition:

i. Techniques of analysis and identification of targets

See in the Appendix 1 the best practices of s regarding this issue.

177. These techniques are meant to increase the chances of success in the identification of individuals or organizations that will be object of investigations by the tax Intelligence, and to get the largest amount of information on such targets. Data included in information brought by informers, as well as economic sectoral studies carried out in order to identify specific taxpayer segments can be used to achieve this goal. From this point, it is useful to cross check all of this information applying techniques based on mathematical models that allow the selection of a specific target, or a group of targets to be investigated.

178. The efficient use of such techniques will increase, substantially, the chances of selecting companies or individuals with higher possibility of being involved in tax or financial illicit activities.

179. While conducting more thorough studies by sectors, the tax Intelligence unit will also be able to start with analysis previously done by the tax administration. The objective of these studies will be to determine which specific sector, among the national economic sectors, should be investigated. To achieve this goal it is necessary to comprehend and understand the functioning of each economic sector, as well as its importance and relevance for the country's economy. Thus, these sectors will deserve studies in the financial, tax, organizational and legal areas.

180. Meanwhile, the analysis of the targets will consist of the use of specific information on each taxpayer of the economic segments selected in order to determine those that will be investigated. Thus, in possession of information from the tax administration database or collected from several other external open sources, that furnish economic or financial data about the targets, cross checking of information or mathematic models may be carried out, as described below:

- Cross checking of information: aiming to determine eventual inconsistencies between the information provided by the taxpayer on his tax returns and the information sent by third parties.
- Mathematic models: planned for the comparison of different relations between financial and tax values, and designed for the identification of taxpayers that deviate from standard behavior already observed in others of similar characteristics.

181. Another effective way for the targets identification is based on the use of informers. Due to its extremely sensitive nature, this instrument should be used cautiously in order to prevent the occurrence of any violation of citizen's rights and guarantees. All information furnished by informers should be continually evaluated, so that its accuracy can be well determined.

182. Other considerations about the techniques involved in the evaluation and utilization of informers are mentioned in the sub-item to follow.

ii. Handling informers

See in the Appendix 1 the best practices regarding this issue.

183. The tasks performed by operational tax Intelligence agents when handling informers are extremely sensitive and risky. Thus, the execution of these activities within a tax administration is not advisable if a clear set of legal regulations is not in

effect in the national legal system. Such regulations must outline in detail all the aspects involved in these activities, such as the existence or not of legal competency by the administrative authorities to authorize the practice of illegal actions (when the characteristics of the operation requires it), the possibility of paying for information, rules to share information, guidelines to keep data on the informer secret, and so on.

184. The informers that interest the tax Intelligence activities are those individuals that possess, or have potential access, to true information of practical interest for the investigations related to illicit acts already perpetrated or about to be. In this sense, it is extremely important to identify the motivation of the informer, aiming to assure the credibility and reliability of the information brought by the informant, prevent the risks to the agent's personal security and prevent the application of human and material resources in an investigation without interest for the tax administration.

185. The reason precaution is necessary is that some malevolent motivations can neutralize the veracity of the data rendered by the informer, such as: the wish for eliminating the competitiveness in his sector of economic activities, obtaining secret information from the Intelligence agent, knowing the identity of other informers in order to eliminate them, producing counter-information, etc.

186. Thus, the handling of informers is also related with the technical capacity of the Intelligence agent in identifying, analyzing and, frequently, promoting the continuity of a given motivation. Under this scope, the main kinds of informers that would be useful for the tax Intelligence may be identified based on the most common motivations:

- Voluntary informer: his motivation derives from a number of factors such as personal revenge (usual in case of the fired or disregarded employee), jealousy, envy, fear, civic duty, personal vanity of contributing to a criminal investigation, etc.
- Paid informer: is the individual that supplies information by means of payment. It is usual that an initially volunteer informer, later continues to supply data through payment, and money becomes his new motivation.
- Cooperating defendant (legal compensation): is an individual for which the agent has already gathered sufficient evidence to prosecute him,. In exchange for a possible reduction in sentence or immunity the defendant agrees to inform on his confederates and possibly to continue to meet with his confederates to gather additional incriminating evidence.

187. The tax Intelligence agent must be fully aware of his total legal incapacity for signing certain agreements with the informer, particularly if these commitments

induce the idea that collaboration will bring immunity against processes for his illicit acts. An agreement with such characteristics may, or may not, be signed only after evaluation by the prosecuting attorney or the judge responsible by the process, depending on the legislation of each country. Since trust is a fundamental factor for the building up of the relationship between informer and agent, the latter should never compromise to execute any action besides those within his legal powers.

188. It is very important to warn the informers not to violate any law, in their urge to obtain data to supply the tax Intelligence. Therefore, an agent cannot authorize the participation of an informer in illicit acts, even when these are essential for the carrying out of his activities inside a criminal organization. Accordingly, the informer must be apprised that he should not stimulate the practice of illicit acts by other individuals. In accordance with the legal system of each country, and the jurisprudence formed by their courts, the practice of acts – that otherwise would be considered illegal – can be authorized only by the District Attorney's Office, or by the judge that is following the investigation.

189. The agent responsible for the contact with the informer should maintain total confidentiality about the any information derived from the on going investigations. Thus, only information indispensable to the informer will be shared with him, usually after evaluation made by the officer qualified for authorizing such sharing.

190. Considering the fact that, frequently, an informer's life is seriously at risk, it is essential that those agents that have access to his identity preserve it. The documents that contain these data must be classified as secret and submitted to special protection procedures. Usually, this confidentiality can be broken only through judicial warrant. The belief that the public authorities take seriously this kind of commitment is essential for the continuity of Intelligence activities and criminal investigation.

191. When domestic law allows payment to informers, rigorous rules should be followed to prevent the occurrence of legal violations from any of the parts. Moreover, it must exist a clear ruling for the steps to be followed for the approval of payments to informers, be such values unique or periodical.

192. Such rules should foresee which authorities have legal power for this decision, the stated period for reevaluating the concession of payments, the documentation and accounting of the payments, the limit of values to be paid, etc. Such limits may be related to a percentage of the tax value that is expected to be collected in the end of the investigation – ten percent, for example. So, the exact percentage will depend on how valuable was the rendered information for solving the case, as well as for the determination of the evaded tax.

193. If there is legal authorization to pay informers, methods must be developed to guarantee the protection of their identities. In this regard, tax recognition codes that do not indicate this type of service must be created. With the same objective,

the validity of a legal provision that exempts taxation to these payments made by the tax administration to its informers can be considered.

194. Finally, it is important to stress the importance of signing a commitment by the informer in case he accepts the conditions under which he will render services to the tax administration. Such document must outline his responsibilities regarding the secrecy of the information to which he has access, as well as the secrecy of the identity of the Intelligence agents involved and other guarantees deemed important for the security of the operation.

iii. Reconnaissance

See in the Appendix 1 the best practices regarding this issue.

195. This is the technique that aims the gathering of general or specific data on the target and on the operational environment, which may have as objective to guide the planning of a subsequent specialized action within the same investigation.

196. The reconnaissance consists in the exploration or inspection of a given area of interest in order to gather all the information relevant to that phase of the investigation. It is conducted in accordance with the mission's aim, and has as usual purposes: the identification of the target, his general habits, the users of the operational environment, the means of transport used by them, schedules of coming in and going out of the place, its accesses, existence of security, possibility of using a near building or support vehicle, suggestions for undercover activities, etc.

197. The reconnaissance may be done through visits in situ or at a distance, usually by using optical instruments that allow the observation or the registration of images at a safe distance. Eventually, depending on the means available and the type of reconnaissance requested, airplanes or even satellites may be used. These instruments are particularly useful when setting down parameters for the territorial or rural property tax.

iv. Interviewing

See in the Appendix 1 the best practices regarding this issue.

198. The Interview may be defined as a conversation held between one or more Intelligence agents and one or more individuals, with a defined purpose and with the help of specific techniques. Because it has a specific purpose it must be previously planned and controlled by the interviewer.

199. The interview technique is intended, among other aspects, to create empathy between interviewer and interviewee, in order to condition his behavior increasing cooperation and the chances of getting valuable information. Moreover, an agent qualified in such technique learns and improves his capability for detecting verbal,

nonverbal or paralinguistic behavioral reactions associated to sincerity or insincerity.

200. This technique is indispensable for the gathering of information on the tax Intelligence activities. Therefore, the ability to conduct interviews is essential for every agent that works in this area. He must be skilled to interview people with different personal and professional profiles, such as executives, lawyers, accountants, informers and witnesses, about the most different matters.

201. In the course of the interview, some secret aspects of the ongoing investigation may be unintentionally disclosed. Thus, its use must be carefully evaluated, by taking into account the level of involvement of the interviewee with the illicit activity, as well as the possibility, or not, of obtaining information through other means or sources. Therefore, the agent must evaluate with enough criteria the cost/benefit relationship when deciding whether or not to apply the interviewing technique.

202. However, if it is possible to obtain a guilty admission or a confession by means of interviewing any main suspect, this possibility must be taken into consideration, since this decision can save significant public resources due to the resulting reduction of the time necessary to the investigation.

v. Undercover activities and undercover operations

See in the Appendix 1 the best practices regarding this issue.

203. Basically, undercover activity consists of making up a story that justifies the presence, questions or other actions (taking pictures, filming, etc) undertaken by an operational Intelligence agent, without identifying his activity or objectives. It is essential that the agent's knowledge, physique, way of speaking and dressing be compatible with the story created for increasing the level of credibility.

204. The application of this technique, which is extremely useful in terms of production of evidence against criminal organizations, will be viable only if it is consistent with the laws or accepted procedures of the country. If so agents that are authorized to carry out these activities, in the context of an infiltration in these organizations, must have immunity regarding the illegal actions they may commit during the performance of their duties. Thus, the law should establish the conditions and limits of action of these agents in order to guarantee such immunity.

205. The greater is its capacity to support the undercover scenario; the more efficient will be an undercover activity. Therefore, the argument must be as simple as possible, thereby reducing the margin for queries or incoherence. Another important recommendation is that maximum advantage should be taken of the personal profile, aptitudes, skills and knowledge of the agents involved.

206. Undercover activities and undercover operations are usually carried out by Intelligence or police departments, with the aim of getting denied data. They are essential for gathering of evidences of tax and financial illicit activities, in which, due to their nature, it is difficult to prove the suspects' intention. However, as imposture and simulation are inherent to these activities, being sometimes necessary cooperation with individuals of disreputable behavior, its application must be carefully considered, planned and monitored.

207. An undercover operation utilizes of a series of self-related undercover activities, within a determined period of time, by one or several operational agents (undercover agents) who simulate being individuals other than they really are. The objective is to interact with other people, normally targets of an investigation, with the objective of collecting evidences or traces about the illicit activities practiced by them. Some times, besides disguised agents, may be created an undercover company or society, especially to operate in the market where a given tax or financial illicit activity is occurring. The undercover operations are especially efficient to demonstrate that a group of investigated persons are willfully engaged in these illegal activities.

208. Considering the high risks involved in performing this technique, it is advisable that the conversations between the undercover agent and the investigation's targets be taped, preferentially by means of a hidden tape recorder. The evidences then collected will help to corroborate the agent's version of the facts. It is important to observe that, depending on the legislation of each country, the evidences got through an undercover operation will be valid only if the carrying out of this technique was previously authorized by the judicial authority.

209. Any kind of undercover activity must be considered dangerous and of high risk for the agents involved. That's why they are seen as the last resource in the search of incriminatory evidences. So its utilization should be guided by rigorous protocols that aim to maximize the undercover agent's security.

210. Among other themes, such protocols should foresee: hierarchic level with legal power to approve (and good monitoring of) an activity or an operation, selection and training of the operational agent that will act undercover, development of disguise identity, adequate monitoring of the operations, etc.

211. In addition to this, depending on the degree of harm of certain people or illegal activities, as well as on the fact that many complaints are concomitantly geared toward various investigation organizations, it can happen that more than one government body or agency is carrying out this type of operation simultaneously and seeking the same objective. This is why it is essential to have some type of higher control institution that will supervise this type of activity at the national level, preventing any possibility of overlapping duties or authorities.

212. The use of undercover activities should take into account legal aspects related to the individual rights and guarantees foreseen by the constitution and

legal regulations. Also, the use of the information gathered through this technique will take into consideration the laws that rule the administrative and penal procedures, particularly, regarding the legal requirements about evidences to be included in a judicial process. Eventually, information gathered by means of undercover activities may be used as a guide to an ongoing investigation.

vi. Surveillance

See in the Appendix 1 the best practices regarding this issue.

213. The purpose of this operational technique is to keep the target under observation. It may be planned as an isolated surveillance or as support to other actions. The main purposes of the surveillance are:

- identify targets, verify their illicit activities, hidden assets and contacts;
- identify the means of communication used by the targets;
- to determine activities and routines undertaken at facilities and areas observed;
- to identify the places where clandestine activities are being held;
- to get information to be used later, during an interview;
- to verify the loyalty of the informer and identify counter surveillance.

214. The surveillance may be carried out by fixed or mobile means. When fixed, the agents remain in an adequate position, observing the target. In the mobile way, surveillance is made on foot or in vehicles, following the target.

215. The notes related to the surveillance must be taken in a daily basis, in detail. At the end of the operation, the agent should prepare a report including the gathered data and the conclusions about the observed events.

216. Whenever possible, a counter-surveillance group should be organized to safeguard the security of agents and equipment involved in the main surveillance. Such precaution is especially necessary in cases of open fixed surveillance, i.e., the surveillance carried out in a place where, potentially, they could be seen by the target.

217. The technical surveillance, which is characterized by the use of auxiliary means (optical, mechanical or electronic), may be used together with the personal surveillance.

218. The use of surveillance will also take into consideration the individual rights and guarantees embodied in the national legal regulations. Accordingly, the use of information coming from this operational technique in a judicial process will be conditioned to the meeting of the administrative and penal judicial procedures. It should be considered that, often, the information gathered by means of surveillance would be utilized only for the orientation of the investigations.

vii. Photography and filming

See in the Appendix the best practices regarding this issue.

219. These techniques may be used either in a low-profile manner, seeking evidence during the investigations to prove violations or when it is useful for the compliance of judicial search and seizure warrants.

220. Its discreet use may take place at distance or in a camouflaged manner. In this case, the images are recorded with the use of portable objects, from a operational vehicle or real estate that may serve as support.

221. Usually, the individual rights and guarantees related to privacy do not forbid taking pictures or film exposed parts of houses and offices. Therefore, the recording of images of events occurred in these environments visible by the public would not be considered illicit evidence. However, it is important that, before making use of documents provided by this technique, a judicial evaluation from the District Attorney Office be issued. It is advisable, also, to verify the courts orientation, through consultation to the specific jurisprudence.

viii. Search and seizure

See in the Appendix 1 the best practices regarding this issue.

222. The techniques employed in a search and seizure action occur when the investigation evolved from the administrative level – tax Intelligence activities only – to a criminal investigation designed to search for evidence of illicit practices, already with the purposes of constituting basis for a judicial penal procedure.

223. In addition to obtaining denied data that assure the precise determination of the tax liability, the search and seizure technique also seeks to collect evidences that may be used in a criminal procedure. This is important so the investigator will be able to furnish information enough to convince a judge responsible for the trial of these kind of crimes, as well as other related illicit activity such as money laundering, fraud, terrorist financing, or tax evasion.

224. Usually, the only way to reach crucial information for an investigation with legal validity for utilization in judicial processes is the search warrant. As a court order, it has power to authorize tax agents to access the facilities used by the suspects (companies, residences and other places) for the search and seizure of

documents, magnetic means or equipment. Duly authorized, such agents then can seize these evidences in order to better analyze them, preserving them for subsequent presentation before the justice.

225. Depending on the law of each country, the search warrant will have or will not have as a legal requirement its execution by the corresponding police body. Anyway, the request must have the search warrants required by the tax administration from the judicial branch, so that their carrying out can be considered effective only if officials from this administration participate. Thus, in these cases, they will be the officials technically better able to select proofs and evidence related to the illegal tax, financial, or customs crimes, if that were the case.

226. Considering that it is extremely invasive for citizen's privacy, a search and seizure action must, besides be authorized by the competent judicial authority, follow steps that can maximize the probability of a successful operation. With this objective, the following actions should be taken by the agents in charge in order to improve the efficiency in the request and execution of a search warrant:

- Presentation of the search warrant request to the judicial authority. This request should include enough information and evidences to convince the judge that the tax administration has enough elements to believe that the suspect has committed the tax or financial illicit activity.
- Local reconnaissance of the places for which the search warrant was requested; elaboration of a planning indicating some aspects of interest for the warrant execution, such as: blueprint of the buildings, location of monitoring cameras, rooms with special interest, files, computers or network servers location, identification of employees with supervision status (who, potentially, know about computers passwords), etc.
- Special care must be taken regarding the personal safety of the agents involved in the compliance with the mandate. The vision of security must permeate all phases of the planning of a legal search and seizure warrant, beginning with the recognition of the office of his commitment, where such aspects as the amount of armed security officers, the proximity of hospitals, the need to use bullet-proof vests, personal weapons, and so on, will be identified.
- If the search warrant is approved, it must be carried out in the establishments approved with a search team authorized and previously trained, equipped and instructed regarding the planning of such specific operation, locating and seizing the documents and equipment mentioned in the warrant. This training is essential, given the need for everyone in the team to take courses that will qualify them to execute their respective tasks, keeping a homogenization of their procedures; and

- Elaboration of a detailed report to inform the judge who granted the warrant, describing all the seized material as well as the facts occurred during its execution.

227. Essential for the success a search and seizure is knowing how to deal with computers. Nowadays, it is possible to affirm that almost the totality of companies, or even individuals store significant quantities of data in computerized systems. Thus, it is necessary expertise in specialized techniques for locating and obtaining these records, assuring their admissibility as evidence in the courts. Therefore, files copied during a search warrant must be perfectly identical to that located on original magnetic means. These so-called mirror copies will avoid allegations that the seized files were modified.

228. Therefore, whenever a previous reconnaissance of the locals to be submitted to a search warrant reveal the existence of data stored in computers, it is fundamental the presence, among the search and seizure team, of specially trained agents in searching computer systems and in retrieving this kind of evidences. These same specialists can, after retrieving this electronic information, prepare them for the use of the agents in charge of the investigation.

229. Finally, it is worth stressing that in certain legal systems, magnetic media will be useful only as valid evidence if the corresponding legal authority to authorize the search also authorized their seizure. Thus, this particular aspect present in some laws must also be taken into account when a request for this type of legal warrant is requested.

b. Methodology for producing knowledge

See in the Appendix 1 the best practices regarding this issue.

230. The methodology for producing knowledge must be well understood and adequately utilized. That is the only way to assure standard procedures among all agents carrying out tax Intelligence activities, particularly those acting as information analysts.

231. The methodology of knowledge production, as far as tax Intelligence activities are concerned, is split in five steps: planning, gathering, analysis and synthesis, interpretation and conclusion, and subsequent dissemination. These steps do not need to be followed in a linear way, and one or more can be, eventually, overlapped or even suppressed.

232. Following, is the brief description of each of these steps.

i. Planning

See in the Appendix the best practices regarding this issue.

233. The purpose of planning tax Intelligence actions is to organize and systematize the task to be carried out in order to attain the proposed goal in a methodical and rational way. To this end, some basic principles must be observed, as defined in item VI.4.b: principles of objectivity, security, opportunity, control, impartiality, and simplicity.

234. Investigations should be planned in such a way that they may be concluded within the shortest possible term. However, human and material resources should be rationally allocated by planning such actions and by periodically updating plans. Naturally, this plan must be coherent with the working goals of the tax administration to which the tax Intelligence is subordinated.

235. When formulating the plan, the tax Intelligence official must determine the information that is necessary, the relative importance of the data searched, the sequence of the investigation and selection of the best sources of information. Some criteria must be taken into account in the selection of those sources. Thus, it is important to consider whether the source has complete data that have been gathered in a concise and perfect manner. It is also advised to ensure whether the source will allow the immediate compilation or search; if its use is convenient or economic; as well as whether it will require visible actions or not.

236. Some planning aspects are essential for the appropriate development of the investigation, it being useful to verify them previously. Likewise, one should clearly limit the events or situations that will be focused in the knowledge to be produced, so as to avoid unnecessary expenses in time and public resources. The same analysis should be used to determine the scope of the issue through time, identifying who will be the addressee or potential users of the knowledge to be produced, as well as the available time for the production and dissemination of the knowledge.

237. Planning will determine the essential aspects of the work, whose answers will be obtained by the investigation team: open questions, new elements of conviction, indications or evidences. In short, following are some important points to be considered when planning a tax Intelligence activity:

- Its beginning must be based on defined and documented criteria of selection.

- Its goals must be specified, mentioning the objective criteria that allow the selection of the targets: whether the action aims at investigating a particular taxpayer, a determined segment of taxpayers or a specific sector of the economy.
- It should identify and characterize what kind of tax evasion or avoidance needs to be controlled: if associate with the productive sector, to financial transactions, accounting reports, tax benefits, etc.
- The taxes to be examined during an investigation must be established, as well as the applicable legislation.
- It is important, for the good management of tax Intelligence activities, establishing a deadline for the conclusion of the intermediary actions of Intelligence, as well as for the effective conclusion of the investigations with the consequent elaboration of the final report.
- The utilization of worksheets associated with the elaboration of routines is useful for the standardization of Intelligence actions, as well as for preventing any blanks in the search or collection of information.
- The plans should establish for the investigation a start date and an estimated completion date.

238. The terms for lapsing of the statute of limitations to which the violations investigated are subject are also essential for determining the period available for the production of useful knowledge. This is so, since planning must take into account that the reports, in general, will be sent to other sectors of the tax administration for initiating the pertinent tax actions.

239. It is recommended that the authorization for the beginning of a tax Intelligence activity be conditioned to the analysis and approval of a planning that includes the detailing of these actions.

ii. Gathering

240. In the Intelligence methodology for the production of knowledge, the gathering is characterized as the second phase. At this stage, typical activities are developed aiming at gathering information or knowledge that answer or complement the essential aspects of the facts and situations to be known.

241. In this phase of data gathering it is important, in the first place, to exhaust the available information on the targets chosen by means of researching of internal sources. These sources are available in computerized data systems or in information on the taxpayer filed by the same tax administration.

242. Only after exhausting these steps, researching about information kept by external departments should be initiated. It is clear that if an information of relevant interest emerges, it can be investigated immediately also according to the principle of opportunity, whose application must permeate all phases of Intelligence activities.

243. The instruments used in the gathering phase are the contact with third parties, compilation and covert activities. In terms of the tax Intelligence activity, compilation is the action that seeks to obtain data available in open sources, such as clerk's offices, public entities, internal data systems, etc (to this respect consult the sub item VI.6.b of this document). Covert activities, otherwise, is the invisible activity aimed at obtaining "denied data". The contact with third parties occurs when the data kept by the taxpayers are officially obtained.

244. With respect to the secrecy that is typical of Intelligence works, it is recommended carrying out these contacts before the taxpayer who is the main target of the investigations only in exceptional situations. Preferably, they should take place in the final phase of the activities.

245. Also in gathering, it is advisable to apply some type of standardization with respect to the evaluation of specific characteristics of the information sources, such as:

- Access – primary or secondary,
- Type – individuals, organizations or medias,
- Origin – internal or external to the tax administration,
- Credibility – evaluation on the reputation, motivation and level of reliability of the previously received information.

iii. Analysis and synthesis

246. This phase aims to determine the value of the knowledge and data gathered, integrating them in a coherent and orderly group. They will be expressed through written? resources that show the state of certainty, opinion or presumption of the information analyst.

247. The organization of that set of ideas, based on significant fractions, worked coherently in accordance with the role of essential aspects that are part of the knowledge under production may assist in such integration.

iv. Findings and recommendations

248. Findings and recommendations are phases that occur simultaneously, when the analyst will try to express the results of the reasoning initiated in the analysis and synthesis stage. In the findings, the meaning of these facts or situations obtained in the course of the Intelligence activities will be displayed in a conclusive way.

249. Thus, the evaluation and judgment about the facts known – that is, their findings together with the recommendations will be expressed by means of the ways of dissemination of the produced knowledge: the Intelligence reports.

250. It is important to stress that these phases must be object of analysis and evaluation also by the hierarchical superior levels within the tax Intelligence. Thus, part of this stage is the quality control of this main product of the investigation activities: the Intelligence report. Being verified its different aspects, like writing coherence to quality evaluation, and whether evidences found during investigations are enough or not.

251. The item VI.8 mentions with detail the types of reports usually produced to disseminate the results reached by the Tax Intelligence activities.

252. In this sense, tax Intelligence agents, particularly the information analysts, should be trained in special techniques of writing, in order standardize the reports and make them totally clear for the readers.

v. Dissemination

See in the Appendix the best practices regarding this issue.

253. This last and essential phase of the methodology of Intelligence knowledge production shapes its final form with the dissemination to the users.

254. Dissemination is made through reports, and the knowledge to be disseminated must contain all the necessary elements for its understanding and utilization by the users. The document should include the level of secrecy necessary and compatible with the matter, which in turn will determine the means of transmission to be employed.

255. When the dissemination of knowledge is discussed, the dissemination to the Intelligence professionals is also to be considered. Thus, it is extremely profitable for the tax administration, in terms of speeding up and facilitating the investigations, to structure an information system to be used by tax Intelligence agents, with national scope, like that mentioned on the item VI.6.b.iii.

256. Such a system could contain all reports already produced, as well as a data bank with information of interest that could be constantly updated by its officials,

provided that it is approved by the competent authority. The managerial control aspect also benefits from the existence of an Intelligence information system, considering the simplicity and speediness given to the flow of information and to the administration of human and material resources of the Intelligence body or activities.

VI.8. Results and products of Tax Intelligence

See in the Appendix 1 the best practices regarding this issue.

257. The information internally gathered, still in the initial taxpayers selection, together with that obtained from external open sources and enriched by the denied data – retrieved by using specialized operational techniques – are submitted to the process of mental elaboration by the information analyst. The findings and recommendations resulting from this process form the noblest product of the investigative activity: the so-called Intelligence knowledge.

258. When it comes to Intelligence activities, findings and recommendations on the investigated facts will be presented in specific reports that may be partial or final reports. They will be partial when, due to some non-deferrable need – imminent lapse of the tax liability, for example – they are produced before the complete end of the investigations. The accomplishment of the timeliness principle can also require the elaboration of a partial report. It would be the case, for instance, when it is absolutely necessary to catch the target committing an illicit act. Naturally, after the timely elaboration, approval and forwarding of the partial report, the remaining works will proceed in order to allow the conclusion and dissemination of the final report.

259. The tax Intelligence reports have special relevance, considering that they record the essence of the produced knowledge, allowing the tax administration and, eventually other institutions, to efficiently carry out their responsibilities. In other words, audits, examinations or criminal prosecutions, based upon the facts collected and outlined in these reports, will be considered direct evidence and quality proof for the performance of their duties.

260. In brief, this product may be aimed at four main categories of objectives:

- Finding out of tax illicit activities with criminal effects, when the document will report about investigations carried out, the conclusions and evidences obtained on individuals or institutions believed to have committed these illicit activities. It aims to give solid bases to the subsequent audits and examinations to be made by the tax administration and to the criminal proceedings to be initiated by the prosecuting attorneys.

- The identification of purely civil tax errors, with a record on the carried out investigations, conclusions and proofs obtained on the individuals or institutions believed to have committed these errors. Its objective is to give a base to the immediate tax examinations by the tax administration.
- The technical assistance to the different sections of the tax and/or customs administration, to the high level direction of these administrations or to the Department of Treasure, Economy or Finances. In this case, aiming at the improvement of administrative procedures and tax or customs policies.
- The assistance concerning issues of national and strategic interest, to be used by other institutions of the public administration than the tax administration, if that is in accordance with the tax secrecy regulations. Its objective is to allow these public departments to take the initiatives they deem necessary within the scope of their legal powers.

261. These reports may be presented in different forms, depending on the purpose they have. Thus, it is important that the tax Intelligence internal rules standardize, perfectly, the kind and characteristics of the most usual documents, with models of these documents attached. Such rules, as mentioned on item V.7.b.iv, must also foresee a rigorous quality control of these reports, previously to the approval of their forwarding to the final addressees.

VI.9. Ethical and moral principles of the tax Intelligence activities

See in the Appendix 1 the best practices regarding this issue.

262. The knowledge originated from tax Intelligence, observed the strict compliance of the law and respected the individual guarantees, is produced under the principle that the interests of society prevail over those of individuals, groups, trends or organizations.

263. Thus, it is fundamental to give special attention to the selection and formation of those who will carry out these activities. Solid ethical principles will be developed in order to able this agent to comply with the behavior standards recommended for carrying out tax Intelligence activities. In doing so, in case of doubts of moral nature when developing his tasks, it will be possible to prevent deviations in the intelligent agent's commitment with the truth of the facts and with the legal statutes.

264. Summarizing, it is essential that the Intelligence agents be aware of the ethical and moral principles that should guide their activities, in addition to assuming an irreproachable behavior.

265. However, it is crucial that the high direction of the tax administration and their respective tactic areas, firmly believe in the purpose of the Intelligence activity as the support for the planning and decision making, and in the certainty that the knowledge provided by this activity will be always produced under the principle that the interests of society prevails. Nevertheless, ethical principles will guarantee that such prevalence will not excuse disregarding individual rights and guarantees constitutionally provided.

266. The tax Intelligence ethical and moral values will be expressed, preferentially, in the same code of ethics that regulate the conducts of the tax administration employees. This code of ethics will assure that, during production of strategic information, the knowledge acquired will be used to achieve the tax administration mission, and do not favoring individuals or groups.

267. Thus, it is imperative to promote a wide dissemination of the results reached by the CIAT Working Group on the Model Code of Conduct and Ethics. This document seeks to train the tax administrations employees on the main themes or aspects identified as essential for the establishment of recommendable conducts that shall be considered as standards for the Intelligence agents and the whole administration.

268. For that reason, the CIAT Code of Ethics, approved in the Assembly held in Argentina, April 2005, establishes the principles that guide the conduct of the tax administration employees. Some of them are mentioned below:

- **Compliance with the law**
The tax employees must recognize that the base for the decision-making concerning the ethics and good conduct implies in the rigorous compliance of the Law of the country.
- **Personal commitment**
The tax employees must assume personal responsibility in reading, understanding and promoting the compliance with the principles established by the Code of Conduct.
- **Relationship with the interested parties**
It is expected from the tax administration employees that they deal with other government employees, higher authorities, subordinates and colleagues with courtesy and respect, while carrying out their functions, keeping the highest standards of professionalism and cooperation.
- **Bribery**
The tax employees must always refuse any proposal of bribery or corruption. Those who offer, ask for, or accept bribery will be liable under the penalties established by Law. Accordingly, whoever

attempts offering compensations any other benefits in exchange for favors or special treatment must be denounced, immediately, to the hierarchical superiors.

- **Conflict of interests**

It is the responsibility of the tax administration employees to avoid situations that will lead to a real or potential conflict of interest. This procedure is a requirement for the function.

- **Secrecy and utilization of classified information**

The protection of the privacy of taxpayers, tax employees and the public in general is essential for the integrity of the tax administration and for all operations that require the maintenance of private information, whether it is provided by citizens or companies in compliance with additional legal obligations.

Thus, the tax employees must keep confidential all information stored by the tax administration, revealing it only to the own taxpayer, to his representative or to other officers or institutions if established by law.

Moreover, these employees should not have access to this information in the tax administration files, unless their current activities require this access. This information must not, under any circumstance, be used in personal benefit or profit of such employees, their families or anybody else.

Lastly, the tax employees must safeguard the official information. Therefore, this information can be only used, processed, stored or handled for the specified goals by the tax administration.

VII. Conclusion

269. Throughout human history, a constant in the relationships between citizens and the State has been the search for fair and isonomic taxation. This healthy conflict has proved to be extremely fruitful; so much so, that the *Magna Carta*, considered the first national constitution to delimit the powers of a sovereign and attribute guarantees to the citizens precisely arose for the purpose of curbing the tax appetite of King John, back in 1215 in medieval England.

270. The aspiration for social and tax justice also covers the State's search for impartial taxation of the citizens. In a historic evolution, the French National Assembly developed the Declaration of the Rights of Man and the Citizen, on August 26, 1789. In that fundamental document for human history there are two articles that deal specifically with the importance of taxation for society. They are²:

“Article 13. For the maintenance of the public force and administrative expenses, a common contribution is essential: it should be equitably distributed among all citizens, according to their capacity.”

Article 14. All citizens have the right to verify by themselves or through their representatives, the need for the public contribution, to give its free consent thereto, follow up its use, determine the amount of the quota, its registration, collection and duration.”

271. In other words, the ideal of taxation in proportion to each one's paying capacity, will only be achieved if such taxation is also effectively applied to individuals or institutions that are against the payment of their corresponding share in the distribution of the national tax burden. The logic is simple: if all contribute in their due and fair proportion, individual taxation will necessarily be less burdensome.

272. It is in this historical and social context that a new global society, interconnected in terms of instantaneous communication as well as means of transportation that allow for the speedy and safe movement of persons and goods is being consolidated, since the late XX century. In the same way, such scenario ended up promoting, previously unthinkable facilities for carrying out illegal

² Text translated from the original in French:

“Art. 13: Pour l'entretien de la force publique, et pour les dépenses d'administration, une contribution commune est indispensable: elle doit être également répartie entre tous les citoyens, en raison de leurs facultés.”

“Art.14: Tous les citoyens ont le droit de constater par eux-mêmes ou par leurs représentants la nécessité de la contribution publique, de la consentir librement, d'en suivre l'emploi et d'en déterminer la quotité, l'assiette, le recouvrement et la durée.”

financial and tax practices, currently, of a transnational scope and, frequently, with intentionally complex structures.

273. Thus, there was no doubt regarding the need for tax administrations to remain updated and well equipped in terms of human, material, institutional, and legislative resources to face these new challenges. In this regard, an approach that presents positive results is the institutionalization of tax Intelligence activities within the framework of these administrations.

274. At the end of almost two years of joint efforts, the countries that participated in the CIAT Working Group on Tax Intelligence concluded in this Manual that it is essential to recommend to those national tax administrations that still do not carry out tax Intelligence activities to begin studies geared toward their implementation.

275. Likewise, this Manual tries to contribute to improving these activities in countries where they are already being carried out. This intention is materialized in the Annex that outlines best practices, which presents, always referencing to the text of the main document, numerous and diversified experiences geared toward the work of various countries - in various levels of institutional maturity - that already faced the challenge of forging a tax Intelligence unit.

276. Of the set of the experiences that were analyzed, it can be inferred that the full and efficient operation of Intelligence activities in the area of tax administration is extremely important. Good tax Intelligence is essential to the success of efforts to combat illegal financial, tax, and customs actions performed by criminal and/or terrorist organizations.

VIII. Glossary

277. Bearing in mind the specific aspects of the matter discussed, as well as the use of some terms that are common to the Intelligence activity, it was considered essential that this Manual include a list of those words with their respective meanings.

Capillarity – term originating from the Intelligence doctrine. In this term, a high level of capillarity means a high level of access to information distributed throughout the national territory. Such access may be multiplied if the Intelligence body involved in analysis has facilities or contacts dispersed throughout that territorial base. Said principle is of special interest to national States with extensive territorial base.

Carrousel – name given to a kind of Value Added Tax (VAT) fraud, perpetrated by several companies (at least three). It is very common in the European Union (EU) where it involves companies headquartered in, at least, two integrating countries, or, eventually, external to the EU. This scheme aims to:

- Divide the avoided VAT among the participants of the scheme;
- Get the deduction or the VAT refund that actually were never collected;
- Reduce the final price of the goods.

The fraud begins with the establishment of a group of companies headquartered in two or more countries of that economic block, which carry out imports and exports actions between them. Some of these have as objective to “create” the VAT credit by means of an invoicing circuit. In this kind of fraud, typically take part:

- a supplier company located in other country; actually this allows the legal admittance of goods in the country, without paying the due VAT to the customs;
- a national company, called “taxi company” (also called “missing trader”), with irregularities in the tax area, responsible for invoicing the goods with a deductible VAT for its client, at a lower price than the buying price, without collecting to the Treasury the due VAT; and
- a “reducing” company (beneficiary of the deduction) in this same country, main beneficiary of the scheme; who is, generally, the wholesaler and is dedicated to an actual activity, partially outside the “carrousel” circuit.

At the end of the invoicing circuit, the goods may return to its start point with a lower price. That is, the non-collected VAT is distributed among all the circuit's participants.

Compartmentalization – principle of the Intelligence activity that determines that the information about the works in process of production, will only be shared with those having the need to know about it or, that is, requiring that information for carrying out some specific activity.

Compilation – action that seeks to obtain data available in open sources such as notary's, office, public entities, data systems, etc.

Cracker – term describing the people who seek to achieve material advantage by destroying, altering and inserting information in the computerized systems and environments. They normally act in bad faith and are considered delinquents.

Denied data – is the information of interest to the Intelligence body, but which is not available in open sources, on being protected by the holder thereof and whose access is only possible through the use of a specialized operational technique. It is believed that individuals can opt to hide this information from tax administrations through fraudulent actions – in the absence or supply of erroneous or simulation data – in the hiding of an illegal activity by a structure that is seemingly legal. The common objective is to keep the tax administration from learning the real extension of taxable activities or revenues, trying to make the due taxation difficult.

Data Mining – It is a type of computer application (software) aimed at easing the analysis of existing gross data in large databases. These programs extract or manipulate the necessary information from these databases according to parameters specified by the programmer.

Hacker – term that describes individuals with a high level of knowledge in the area of information technology, and who without authorization modifies, alters and customizes computer systems of third parties. They understand their actions merely as an intellectual challenge and aim, usually, the acquisition of knowledge, entertainment and self-promotion.

Illicit – is a term that includes all the non-legal activities. It includes the civil illicit from which causes third parties rights damage, as the penal or criminal illicit. The latter is related to the actions intentionally committed, forbidden by Law, and subject to penalties on behalf of the collectivity and social security of the State.

Information analyst – also known as Intelligence analyst, is the agent who, in possession of information obtained through open or closed sources, is qualified to interpret facts, documents, events and opportunities, aiming at the production of knowledge of specific interest to the tax administration. The intellectual profile of that official should allow him to elaborate knowledge not only of a retrospective, but also a prospective nature, aimed at the evaluation of possible future scenarios.

Intelligence knowledge – Is the result of evaluations, interpretations and conclusions concerning the data and information that were gathered by the tax Intelligence professional during an investigation. In other words, it is the final product obtained from an exhaustive intellectual work on information by collecting data, or its search, using specialized techniques. It has as main objective to communicate or allow the user to reach conclusions related to events or situations of his institutional interest.

Intelligence specialized operational techniques – techniques used in investigations through the use of human resources and specialized equipment in order to identify targets or economic segments of interest, as well as to obtain denied data that are necessary for the production of knowledge. As an example, one may mention such techniques as interview, photography and surveillance.

Operational agent – also known as operation official, is the agent who carries out the external activities in search for denied data, visible or not, through the application of specialized Intelligence operational techniques. For that reason, it is essential that his qualification include a natural interest on the use of equipment that may render possible the application of those techniques.

Operational environment – place where any specialized technique or action will be executed or developed.

Primary sources – are those whose access to information about an event or situation of interest took place directly, without intermediaries.

Proceeding – is defined as the officially obtaining the available data held by the taxpayers, whether individuals or companies.

Public authority responsible for external supervision – is a public authority that, whether he belongs to tax administration or not, is responsible for the control of the legality of tax Intelligence activities, guaranteeing his actions according to legal regulations and upholding the interests of society at large.

Secondary sources – are those which give access to information indirectly, or through the primary sources or other secondary sources.

Search: Is the activity directed to obtain denied data, protected by holders. Usually, it's provided by using special techniques on Intelligence such as surveillance, following and capture, using informants, and under covered operations, etc.

Target – is the object of the Intelligence or investigation operation. It may be a person or an organization.

Timeliness Principle – it refers to the importance given to the temporal element in the actions development and its dissemination. That is, in many cases, the success will only be achieved in the search of determined information or evidence, if the specialized and adequate action is executed in a given opportunity that may not repeat. Another aspect of this principle concerns the obtained results, since this knowledge must be disseminated in a proper deadline, in such way that allows its efficient use.

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ANNEX 1: BEST PRACTICES ON TAX INTELLIGENCE

This annex contains experiences about subjects on tax Intelligence, submitted by the following country members of CIAT

**Brazil
Canada
Chile
Colombia
Czech Republic
France
Mexico
Peru
Spain
The Netherlands
United States of America**

Presentation

This document is an integral part of the report on Tax Intelligence, and is the result of the contribution of the countries that took part in the Workgroup on tax intelligence, as well as the other member countries of the CIAT who responded to the call to answer the survey on the best practices adopted in this field in their respective tax administrations.

To make it easier to use, it follows the same format for the identification of items and sub-items, allowing for quick cross reference. In this way, whenever there is a correspondent good practice for a certain topic in the main report, it will be highlighted at the beginning of the item.

The main objective of this annex is to allow countries interested in enhancing or implementing their tax intelligence units to gain knowledge of the practices adopted in the several countries, assess them, and adapt them accordingly to the legal and administrative realities and specificities of each nation.

I. Synopsis

Not applicable to the presentation on best practices.

II. Introduction

Not applicable to the presentation on best practices.

III. Framework

Not applicable to the presentation on best practices.

IV. Objective

Not applicable to the presentation on best practices.

V. Main challenges that must be faced by tax intelligence .

Brazil:

In order to tackle criminal organizations, which are becoming more and more structured and are many times transnational, often involved in tax withholding, smuggling and contraband, the Brazilian Federal Revenue and Customs Administration (*Secretaria da Receita Federal - SRF*) tax intelligence unit, the General Coordination of Research and Investigation (*Coordenação-Geral de Pesquisa e Investigação - Copei*), has been directing its work mainly towards carrying out joint investigations with other governmental law enforcement agencies, especially the Federal Public Prosecution Service and the Federal Police. Inquiries into illicit acts by task forces improves the performance of the institutions involved, making the state more present and offenders more aware of the risks of criminal action. In Brazil, joint operations have been extremely productive. Through them, national and international illicit schemes involving tax, financial and customs offences have been tackled, their *modus operandi* made clear, their creators processed and, frequently, arrested.

In the technological field, among other projects, SRF has been developing the Projeto Harpia, together with a renowned national technological research institute. It involves the construction of a computerized tool with artificial intelligence, the objective of which is to enable computerized systems and carry out functions that are routinely executed by human beings, using knowledge and reason, in large masses of data. The program will first be used in an analysis of customs risk, until the end of 2005, and will then be gradually applied to the other areas of tax administration. In the area of criminal investigation, it is imagined that it will be especially applicable in the struggle against tax return fraud schemes, so as to allow the identification of fraudulent schemes and holding the offenders responsible before payments are made.

USA:

The US has experienced criminals targeting tax systems to obtain illegal and fraudulent refunds. To combat this problem, IRS-CI has set up the Office of Refund Fraud at Headquarters to orchestrate CI's efforts in this area. This primary method being used by CI is to identify the schemes before the refunds are issued. CI has set up Fraud Detection Centers (FDCs) at each of the IRS Centers where

tax returns are filed to have immediate access to tax returns as they are being filed. The personnel at the FDCs have developed sophisticated computer programs and analytical techniques to try and identify quickly the fraudulent schemes.

CI also uses other methods to investigate these schemes if the refunds have already been issued. One of the most successful methods is the use of undercover operations. IRS-CI uses undercover operations in two manners. The first manner is to issue a refund check in a controlled delivery to identify who is picking up the refund checks so they can be arrested. The other manner is if tax preparers have been identified as probably preparing fraudulent tax returns, IRS-CI will send undercover agents to the return preparers to determine if the return preparer will prepare a fraudulent return. If the return preparer does prepare a fraudulent return, a search warrant will be conducted at the business to identify other fraudulent tax returns.

Another method that IRS-CI has most recently been using is to investigate fraudulent return preparers for violating wire or mail fraud statutes as predicate offenses for money laundering statutes. All tax returns in the US are filed either by mail or electronically. The use of the money laundering statutes also allows the agents to obtain a warrant to immediately seize the stolen funds before it can be transferred out of the IRS jurisdiction or spent. However, these statutes are only used in schemes where the refunds are of high dollar figures and the risk of losing the money is great. The US does not want to regularly use money laundering statutes to combat tax violations.

VI. Aspects or themes in tax intelligence

VI.1. Field of action and objectives of tax intelligence

Brazil:

SRF's tax intelligence also specializes in holding inquiries into evidence of crimes against the tax order, including smuggling and contraband, in addition to crimes related to money laundering. Within the scope of SRF, Copei is the task coordinating body when those investigations take place in joint operation or in task forces with the Federal Police, Federal Public Prosecution Service and other designated bodies. An additional objective is to reach taxpayers who are traditionally less susceptible to tax and contribution collection, for a fair tax system.

Another important field of action is the production of strategic information for the State, such as that which might impede reaching the national objectives, harming the nation's sovereignty or its search for the common good. The production of this type of information for strategic advice is ruled by the laws of tax confidentiality, which are followed strictly by all of SRF's administrative divisions.

Copei is also responsible for presenting propositions for alterations or improvements in the legislation under SRF, based the information it has access to through its investigations. Another objective of this unit, to subsidize the decision making process of the higher administration of SRF, fits within this context.

USA:

In the US, tax intelligence is used for all of the purposes mentioned above, except for the investigations of other crimes than tax evasion, unless a court order is received.

The tax Intelligence gathered is divided primarily into two categories, protected and unprotected. Protected intelligence is used only within the IRS. This intelligence can originate from tax returns being filed or from investigations of tax-related violations.

This intelligence is used primarily for the IRS to execute its legal powers to combat tax evasion through audits and criminal investigations (tactical level).

The IRS has designated, the Deputy Commissioner (Services and Enforcement) as the person responsible for gathering all pertinent tax intelligence to be able to advise the Commissioner of the IRS, and other US policy makers on tax-related issues. The heads of all Tax Intelligence Divisions of the IRS report to the Deputy Commissioner (Services and Enforcement).

The protected intelligence is gathered from the different sources within the IRS. Depending upon the source it has different levels of value in combating tax evasion. The three primary sources of tax intelligence within the IRS are:

- Service Centers
- Civil Compliance (Examination) Divisions
- Criminal Investigation Division

All tax returns filed in the US are sent to Service Centers. Through the use of computers and specialized trained staff, the Service Centers can examine all of the data filed with the IRS quickly for tax intelligence purposes, but it is not very refined intelligence. This intelligence is used to identify major areas of possible fraud. The Service Centers are not capable of obtaining data that has been denied. The Service Centers send tax intelligence to the Examination Divisions and CI for further refinement using audits and criminal investigations, respectively.

The Civil Compliance (Examination) Divisions gather intelligence primarily through audits. They are not able to gather intelligence as quickly as the Service Centers, nor review as much data. They can obtain some data that has been denied through the use of a Summons, but it cannot use specialized techniques to obtain data that has been refused. The Examination Divisions gather more refined intelligence than that gathered by the Service Centers. The Examination Divisions are not authorized to conduct criminal investigations; they must refer these investigations to CI.

CI gathers the most detailed tax intelligence of the three major tax intelligence sources in the IRS. It is able to gather information through tactical and strategic work.

It can gather intelligence from data that has been refused using a Summons or Subpoena, and using specialized techniques such as undercover operations, seized computers, and consensual monitoring. The drawbacks to gathering intelligence by the CI Section is that it takes significantly longer than the other two functions and not as much data can be reviewed.

Since CI is not able to review as much data or as quickly as the other divisions of the IRS, CI has undertaken several initiatives to increase its access to tax intelligence from these divisions.

At the Service Centers, CI has imbedded personnel in Fraud Detection Centers (FDCs). The personnel at the FDCs have developed specialized computer software that enables them examine all of the tax information being gathered for possible fraud schemes. Consequently, fraud referrals can be sent directly to CI field personnel for a more in-depth investigation in the matter of days after the information has been received at the Service Centers, rather than months or longer.

CI works with the Examination Divisions through another form of the Fraud Referral Program. CI provides training and guidance to auditors to identify possible fraud schemes which will enable the auditors to refer this intelligence to CI.

Protected information cannot be shared with other law enforcement agencies that have jurisdiction for customs violations or bootlegging, unless a court order is obtained or a joint investigation has been approved. This information cannot be used by the National Financial Intelligence Unit (FinCEN) under any circumstances, unless it has become public knowledge by being divulged pursuant to a court proceeding.

Unprotected intelligence is gathered from opened sources outside the IRS or it is protected intelligence that has been sanitized to remove non-disclosable information. Non-disclosable information is information that can identify the tax entity. Non-disclosable information is primarily statistics gathered by the IRS, but can include protected intelligence that has become public knowledge through legal proceedings, such as a trial. It is considered “pure” intelligence. This intelligence is used to

initiate and conduct criminal investigations and for the purpose of counseling the tax administration at the highest levels and other government bodies that are involved with tax administration issues, such as the Treasury Dept., Congress, and the President. For instance in the 1990's US citizens were taking advantage of a loophole in tax statutes to create fraudulent tax shelters to evade their income taxes. As the result of many criminal investigations and audits, unprotected tax intelligence was furnished to tax administrators that allowed for new legislation to be passed by Congress that removed this tax loophole, effectively eliminating this form of tax evasion.

VI.2. Configuration, position and financial autonomy of the tax intelligence units in the organizational structure of tax administration.

a. Centralized Structure

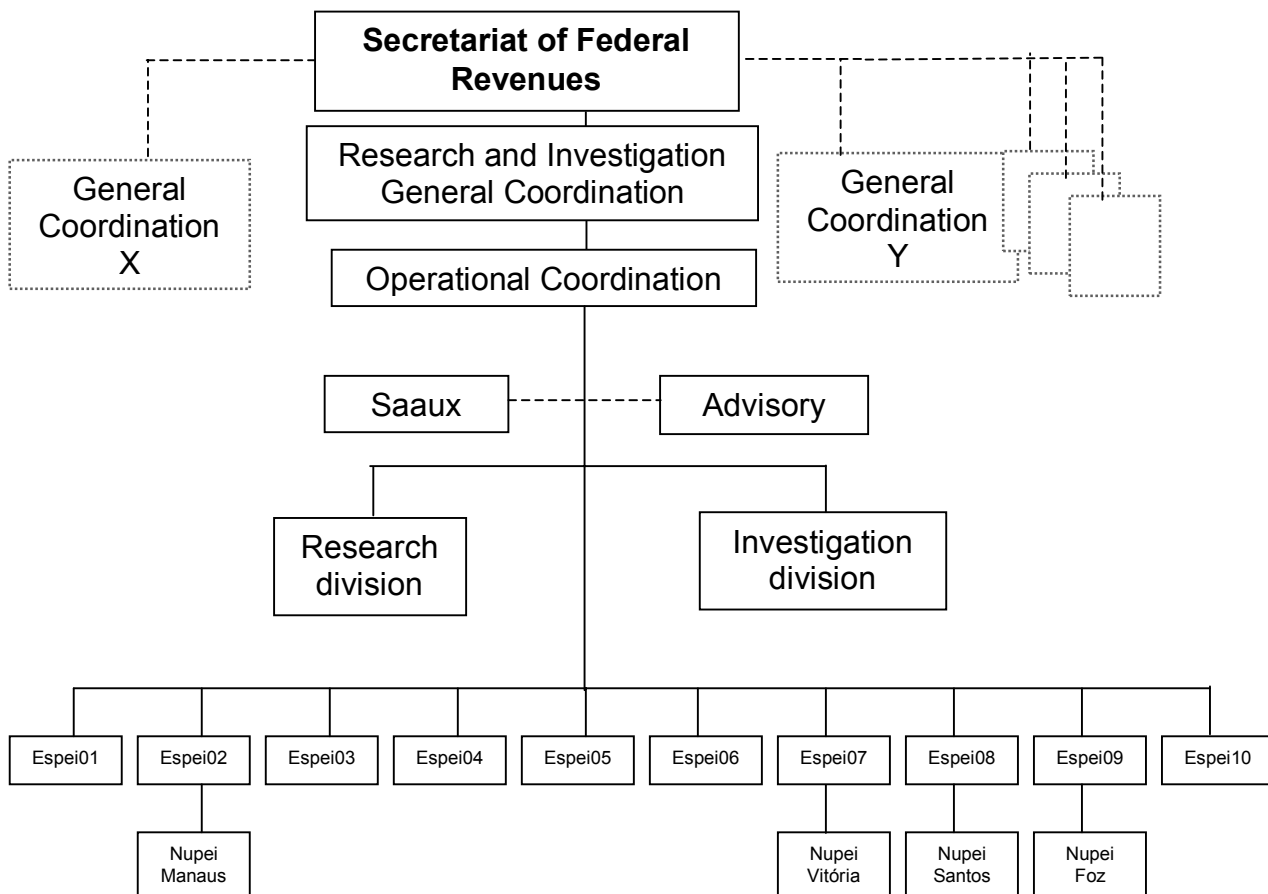
Brazil:

The tax intelligence unit of SRF was structured in mid 1996. Initially, Copei carried out only the General Coordination itself, in Brasilia, as well as in two regional offices, in Rio de Janeiro and São Paulo. Later, an Operational Coordination, with two divisions, Investigation and Research, was added to the administrative organization chart. Ten regional offices were also added (Research and Investigation Offices – Espei). Copei's staff was then comprised of 52 civil servants.

Currently, Copei has a centralized structure, located in Brasilia, comprised of an Operational Coordination and two divisions (Investigation Division and Research Division) These central units are responsible for the General Coordination's policy and global strategy.

It also has regional projections, aimed at reaching the entire vast regional territory. There are 10 regional offices (Espei), located in the cities that host the headquarters of the Regional superintendences of SRF (Brasilia, Belem, Fortaleza, Recife, Salvador, Belo Horizonte, Rio de Janeiro, São Paulo, Curitiba and Porto Alegre), in addition to four nuclei (Research and Investigation Nucleus – Nupei), located in other cities important for the national tax administration (Manaus, Vitória, Santos and Foz do Iguaçu), and linked to the offices of the corresponding tax areas. These decentralized units (Espei and Nupei) are operational, in other words, they are responsible for the investigations properly said and for the operation of intelligence actions. Today the staff is comprised of a total of 138 civil servants, among them tax auditors, experts and support staff.

The following organization chart illustrates that structure:



Czech Republic:

Organizational Structure of The Czech Tax Administration:

1. Ministry of Finance
2. Central Financial and Tax Directorate
3. Customs Administration (as a part of the Ministry of Finance). The Customs Administration has own organizational structure. Since 2004 the Customs Administration has been authorized for administration of the consumption taxes.
4. Financial Directorates – system of 8 regional tax authorities.
5. Tax Offices – total 222 tax offices, which are directly controlled by particular Financial Directorates (methodical, organizational, personnel and material).

The Central Financial and Tax Directorate (CFTD) is divided into 8 specialized tax departments according to particular types of taxes, one department is analytical and on the level of departments there are two independent divisions too. One of them is the independent division 406 – “Integration of Information”, which is directly subordinated to General Director of the Central Financial and Tax Directorate. The CFTD is the third and the highest instance in the system of deciding powers.

The independent division 406 insures tasks resulting from the co-operation of Tax Administration and Authorities actived in the criminal proceedings with emphasis on the part of Tax Administration activity in custody on police examination, in particular their specialized divisions, which needs co-operation with tax experts or which concerns of the important state interests.

The concrete functions of the independent division 406 – “Integration of Information”, which is directly subordinated to General Director of the Central Financial and Tax Directorate:

- The Search Activity (resulting of selected national cases of tax evasion, co-operation with the Police of the Czech Republic including consulting activity);
- The Methodical Management of Search Activity (management of the search divisions in the Financial Directorates, education for selected employees);
- The Against-Corruption Activity (creation of the against-corruption program for the Tax Administration and the Ethic Code);
- The conducting tasks (co-operation with the Police, acquirement and analysis of information from the tax area, process conceptual materials concerning the prevention of tax evasions, corruption and fanaticism.

USA:

In the US, the primary tax intelligence unit is the Internal Revenue Service's Criminal Investigation Division (IRS-CI). This division is responsible for gathering tax intelligence to combat tax evasion. IRS, however, draws upon all of its compliance divisions to gather tax intelligence to advise policy makers relative to proposed legislation, conducting studies and designing procedures to prevent violations of tax law, and the many other goals of a tax administration entity.

The US has chosen a combination of centralized and decentralized components for each of its divisions to gather tax intelligence. This combination is necessary because the IRS must obtain its intelligence from many sources involving a population that exceeds 280 million people spread out over a land mass that is one of the top five in the world in size.

At the tactical level, the tax intelligence unit has been decentralized so that it can gathered data in the different geographical and demographic categories in the US. This affords the tax intelligence personnel in these areas to better understand the specific problems and characteristics of the tax issues being examined. For instance in CI, there are 33 field offices throughout the country that conduct investigations and gather local tax intelligence. CI has also placed Attachés at eight strategic foreign posts to gather intelligence and facilitate investigations of transnational criminal organizations.

However, to effectively use the tax intelligence gathered from these field offices, CI has instituted a strong centralized management body at the national (headquarters) level to perform the strategic tax intelligence work.

This work includes planning, coordinating, controlling, and evaluating intelligence activities. This centralized body collects tax intelligence from the field through access of a central computer database, through visits to the field offices, and through a small centralized senior management structure.

The IRS also follows this same structure. The head of each Compliance Division, including the Chief of CI are on the direct counseling body to the top level of management within IRS.

This is the primary path that unprotected tax intelligence is passed onto US policy makers in Treasury and Congress. On occasion, the Commissioner of the IRS may request experts from CI to pass on unprotected tax intelligence directly to

Treasury and Congress. In addition, CI has employees who work directly with Treasury and Congress to help improve lines of communication.

The following diagrams reflect IRS-CI's role relative to tax intelligence in the US and the structure of CI as a centralized and decentralized organization. The first diagram reflects CI's role in assisting in the formation of US tax policy.

The second diagram reflects the organizational structure to gather the raw intelligence from the sites at the tactical level, whether from investigations (field offices) or information gathering at the Service Centers (FDCs) or the field (LDCs). The third diagram reflects how IRS-CI centralizes its analysis of tax intelligence for tax policy purposes, and to help plan for changes to have CI more effectively implement tax intelligence activities.

Diagram 1

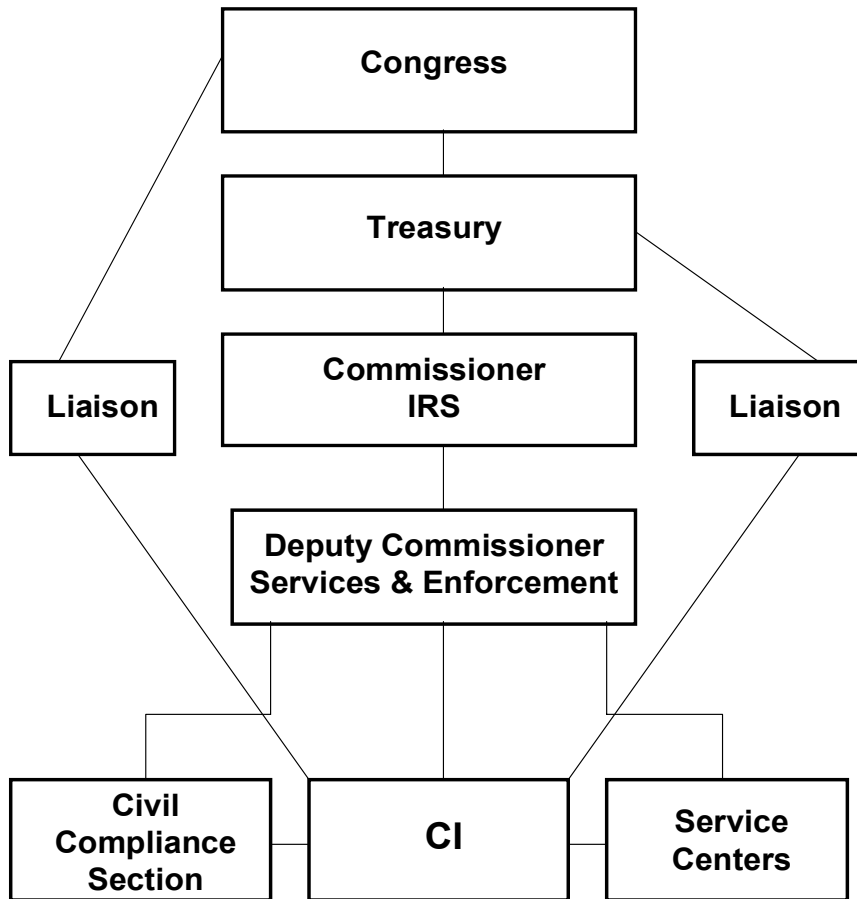


Diagram 2

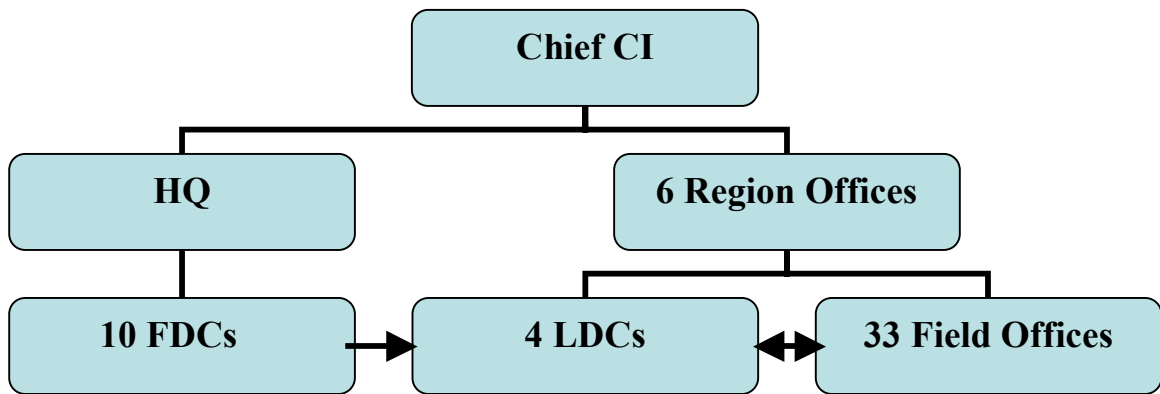
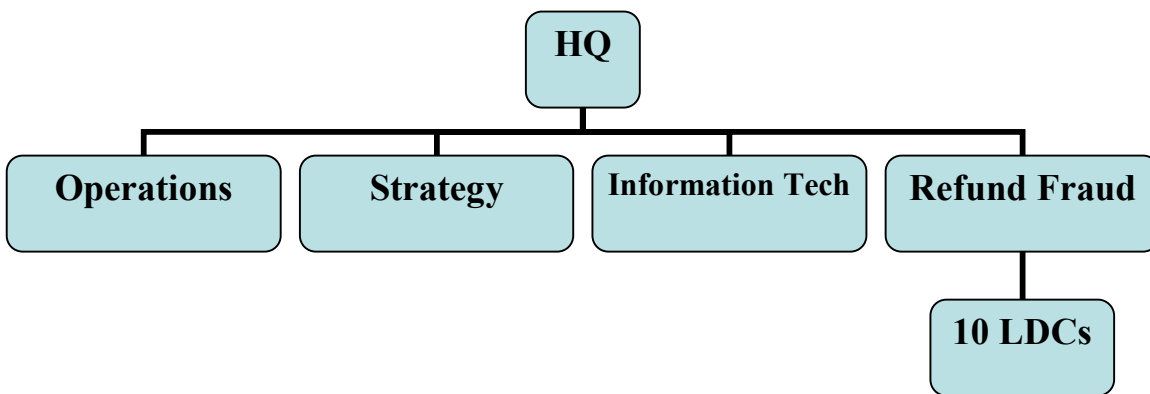


Diagram 3



b. Decentralized structure

Canada:

Canada Revenue Agency (CRA) does not have a centralized body that is responsible for tax intelligence activity. Risk assessment, identification of non-filers and other tax intelligence work is carried out in a variety of organizational units and a variety of ways in CRA in support of civil compliance programs. It therefore occurs that criminal activity, tax evasion and fraud may be identified by a number of different organizational units in CRA. Similarly, research and analysis into all kinds of tax non-compliance issues are also carried out in a decentralized way in CRA. These studies are used for both civil and criminal enforcement purposes.

However, CRA does have a dedicated Criminal Investigations Program, which conducts investigations for the purpose of laying criminal tax charges in court and obtaining a criminal tax conviction, the penalty for which may be a fine, a jail sentence or both. The work is largely carried out by regional operational units that are physically close to the taxpayers involved. However, these regional

operational units receive technical guidance, budgets, and policy and programming support from headquarters.

CRA also has a centralized Special Enforcement Program that focuses on people who are suspected of obtaining income from criminal activities. The program uses civil enforcement activities such as audits and requirements-to-file-tax returns, which can include significant penalties and interest, to reduce and even eliminate the profits from such illegal activities. Files are often referred to the Criminal Investigations Program for criminal prosecution. Staff of the Special Enforcement Program maintains close links to police forces in Canada in order to obtain referrals of subjects who obtain income from illegal activities.

Chile:

Unfortunately, due to unexpected problems, the translation of the best practices sent by this country wasn't ready for the 40th CIAT General Assembly, in Florianopolis. As soon as they are ready, a new version of this document will be sent.

Colombia:

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France:

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Mexico:

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Peru:

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The Netherlands:

Distinction between information/intelligence

In The Netherlands, no (clear) distinction is made between intelligence and information. The legislation on this subject refers to providing intelligence to the tax inspector as required, but in common speech, the terms intelligence and information tend to be used at random.

The place given to intelligence within The Netherlands Tax Administration organisation

In the Netherlands Tax Administration organisation, the intelligence/information aspect is part of the way in which the Tax Administration organises its system of monitoring.

According to the Netherlands Tax Administration guideline, all available manpower should be deployed in the places with the highest tax and financial risks. For this reason, specific risk indicators have been built in at the central level of the mass process of computerised processing to throw out a number of tax returns to be dealt with individually.

So-called risk knowledge groups have been made responsible for gathering the information used to appraise the level of risk. These groups, which comprise expert staff (from specific branches, for example) from the Tax Administration regional offices, meet on a regular basis. The information they gather is gleaned from their own experiences, open sources, findings during audits etc. Current (social) developments can also play a role.

Alongside these knowledge groups, the regional offices also have a role in intelligence activities: they set up regional operations on the basis of risks they have identified.³

We advocate working in small, flexible groups that are assigned to detect, analyse and tackle risks.

The knowledge groups set up to focus specifically on fraud are part of the FIOD-ECD (*Fiscal Intelligence and Investigation Service-Economic Investigation Service*). The FIOD-ECD is the national-level investigatory service that works for the Tax Administration. It focuses particular attention on tax and customs fraud. The knowledge groups are as follows: money laundering, VAT fraud, precursors (illicit drugs) and excise duty fraud. These knowledge groups work closely with other international agencies. The international data exchange for the entire Tax Administration is also concentrated at the FIOD-ECD.

The Customs Information Centre is responsible for the national-level detection and analysis of risks relating to goods transport, with a particular emphasis on the control of container transport (6 million per year). The Customs information departments fulfil this role at the regional level.

c. Financial Autonomy

Brazil:

In Brazil, the article 47 of the Presidential Ordinance 93.872/1986 disposes about the unification of the National Treasury's cash flow funds, updates and consolidates the pertinent legislation and includes other measures. It's current draft is included in the Ordinance 3.639, of 10/23/2000.

Later, the concession, the application of funds and the proof of funds supply in reserved activities were regulated, within the scope of the intelligence body of the Brazilian federal tax administration, Copei. Such regulation took place through an internal operational regulation.

The objective of this norm is to regulate the payment of expenses that are necessary in certain cases and the criterion of the order of expenses, when there are expenses that cannot be subordinated to the ordinary bureaucratic process. The Operational Norm has the function of regulating procedures to be observed in the supply of funds for expenses in reserved activities.

This modality of "supply of funds" is aimed at answering to the unique needs of the following bodies:

- Presidency and Vice-presidency of the Republic;

³ Examples of knowledge groups are included in item VI.7.a.i.

- Treasury Department (*Ministério da Fazenda* - ministry to which the IRS of Brazil is subordinated);
- Ministry of Health;
- Departments of the Ministry of Foreign Affairs abroad; and
- Military intelligence departments.

Originally, the Ordinance 93.872 of 1986 only foresaw the resource to the "supply of funds" to "attend to military specificities." However, with the evolution of the administrative organization of the Brazilian State, a new Ordinance was edited (2.397, of 11/20/997). This norm altered the article 47 of the original ordinance, adding other State bodies that could make use of that modality of payment of expenses, among them Treasury Department and intelligence departments.

The art. 45 of the Ordinance 93.872, of 12/23/1986, specifies that the supply of funds can be granted to public servants when the expenses to be covered cannot be subordinated to the normal process, specifying the following cases:

- To assist with occasional expenses that demand ready payment in cash;
- When the expense should be covered confidentially; and
- To assist with small expenses.

The inclusion of the Treasury Department, and especially of its tax intelligence body, as addressees of this norm, allowed for the execution of typical tasks of that branch of activities. Thus, expenses for reserved activities were legally authorized.

Several investigations, which would otherwise have been impossible, could be concluded with full success. That because emergency expenses, from the purchase or rent of specialized equipment to payment for several services rendered, could be covered without having to go through the bureaucracy typically associated to acquisitions by State organizations.

Canada:

In the Canada Revenue Agency (CRA), a separate budget is established for the Criminal Investigations Program, which is distinct from other parts of the CRA. Headquarters is responsible for allocating this budget to the regional operations units that undertake the investigations activity. Once the budgets have been allocated to the regions, the money is quite well protected and must be used for criminal investigations purposes.

USA:

IRS receives a separate budget each year approved by Congress. IRS-CI's portion of the IRS budget is allocated separately from the rest of IRS. These funds are fenced off from being diverted to another division of the IRS, unless CI agrees to release the funds. The funds are fenced off to ensure that IRS-CI can adequately perform its tax intelligence duties, as designated by Congress. Before the 1990's the budget was not fenced off, and this led to major diversions of CI funding to other divisions of the IRS if they ran out of funding. These diversions reduced CI's ability to gather tax intelligence.

VI.3. Coordination of tax intelligence activities with other State organizations

Brazil:

In December 1999, the Brazilian Intelligence System – Sisbin, was instituted. At the time its purpose, objective, foundation, and even a brief definition of intelligence and counter-intelligence, were specified.

In September 2002, its regulations were published, disposing as to its organization and functioning, and the bodies that comprise the System.

The Treasury Department participates in Sisbin through three bodies, The Executive General Office of the Financial Activities Control Council – COAF (financial intelligence unit), the Central Bank of Brazil – BC and the Brazilian Internal Revenue Service – SRF. SRF's representation in Sisbin has been exercised, since it was implemented, by Copei, the executive tax intelligence body.

Sisbin was instituted by the Law number 9.883, of December 7 1999 and regulated by the Ordinances number ° 4.376, of September 13, 2002 e n ° 4.872, of November 06, 2003. The objective of this system is to integrate the planning and execution activities in intelligence in Brazil, in order to offer subsidies to the Executive Power in matters of national interest (Ordinance number 4.376/2002, article 1)

Sisbin covers bodies and entities of the Public Federal Administration which can, directly or indirectly, produce knowledge in which intelligence activities are interested. Especially those institutions responsible for external defense, internal security and foreign relations (Law n ° 9.883/1999, article 2).

One of Sisbin's main features is bringing together civil and military bodies that carry out intelligence activities for the obtaining, analysis and dissemination of knowledge relative to facts and/or situations which will immediately or potentially influence the decision making processes connected to their respective institutions, but especially governmental action.

However, Sisbin's functioning would come into effect through coordination between the bodies that comprise it, respecting each one's functional autonomy and following the legal norms relative to security, professional secrecy, and protection of secret matters (Ordinance 4.376/2002, art.5). In relation to this subject, it must be pointed out that matters protected by tax secrecy cannot be shared administratively by SRF/Copei with the other members of Sisbin, in accordance to what is established in article 198 of the National Tributary Code, Law 5.172 of 1996. Thus, Copei will be able to share with the other members of the system only information elaborated based on data unprotected by such secrecy, or obtained through intelligence operations.

The creation of Sisbin was decisive for the institutionalizing and diffusion of units and intelligence activity in several governmental bodies, especially civil ones. For, until the system was instituted, many bodies, differently from SRF, had not yet identified the need to have an intelligence unit.

Ordinance n °4.376/2002, article 7, institutes the Consultative Council of the Brazilian Intelligence System. It is a collegiate body, comprised by bodies that are included in Sisbin, which, among others, has the following functions:

- To propose norms and procedures for knowledge exchange;
- To contribute to perfect the intelligence doctrine; and

- To create specific workgroups to carry out studies related to specific problems.

France:

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USA:

In the US, maintaining the confidentiality of tax intelligence from unauthorized individuals is considered paramount. Consequently, the US has enacted a law to govern the access to tax intelligence and the circumstances under which it can be shared with other entities. Title 26 Internal Revenue Code (IRC) 6103 is the law that sets the rules of confidentiality. This law prevents the disclosure of tax intelligence gathered by IRS pursuant to criminal tax investigations, audits, and or the filing of tax returns. This is classified as protected tax intelligence.

IRS and IRS-CI can also gather unprotected tax intelligence. This intelligence can originate from non-tax sources, such as public records, informants, Information gathered pursuant to non-tax investigations, i.e. money laundering, Bank Secrecy Act, and terrorist financing, or tax intelligence has been sanitized (i.e. removal of identifying information) sufficiently to be classified as unprotected intelligence.

Under the following subsections, it will be explained how tax intelligence gathered by IRS-CI can be shared with other entities pursuant to this law.

a. Exchange of economic and tax information between tax administrations

Brazil:

In Brazil, the exchange of information between tax administrations from the several members of the federation, that is, the national, state, Federal District, and municipal treasury departments, is allowed.

According to article 199, of the National Tax Code (Law 5.172/66), this exchange of information should take place through a law or agreement celebrated between the interested entities.

It must also be pointed out that in Brazil there is no hindrance to exchanging information between sectors responsible for federal surveillance over internal taxes, and foreign trade, since SRF's structure covers all those areas.

Canada:

Canada Revenue Agency (CRA) administers the individual income taxes for all Canadian provinces except Quebec, the corporation income tax for all provinces except Quebec and Alberta, and the GST for three of the ten provinces. This is an excellent system for a number of tax policy, economic and financial reasons, and in respect of tax intelligence, it ensures that there is a national perspective on such activities. It also ensures that CRA is able to share tax information with the provincial governments and there is an information-sharing Memorandum of Understanding for this purpose.

For those provinces where CRA does not administer their taxes, CRA will inform these provinces of the results of its enforcement actions (audits, investigations) so that they can take similar action. This is done automatically through regular data exchanges.

France:

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USA:

Title 26 IRC 6103 has an exception that permits the exchange of protected tax intelligence with other tax administrations in the US. The purpose of exemption is to foster tax compliance by permitting the various tax administrations in the US to compare tax intelligence gathered by each tax administration to identify possible discrepancies between each body's tax intelligence and therefore possible cases of non-compliance with the tax laws. This exemption also permits the IRS and local tax administrations to have access to greater resources to gather tax intelligence than if they were required to duplicate efforts.

b. Exchange of economic and tax information between tax administrations and diverse governmental bodies

Brazil:

In addition to the legally allowed exchange of confidential tax information between tax administrations from the several federal entities, there are the following other exceptions to the obligation to keep confidentiality.

The same Law 5.172/66, in the only paragraph in article 198 of the National Tributary Code, provides that the confidentiality to be maintained by the tax administration in regards to contributors' economic or financial data can be broken to response to an official request from a judiciary authority, while exercising their jurisdiction (judgement of a demand taken by the parts in a prosecution to a judge or court). These demands may be made in order to instruct both criminal a civil procedures.

Additionally, the Legislative Power, when exercising its investigative function, through its legislative inquiry committees, may also request information protected by tax secrecy from tax administrations (art. 58, § 3^o of the Constitution).

Finally, the Public Prosecution Service also has powers, foreseen in the law that regulates its activities (art. 8^o, VIII e § 2^o of the Complementary Law 75/1993), to request data and information about contributors, which tax administrations are required to keep secret.

Canada:

As a general rule, due to the confidentiality provisions of the tax statutes, the Canada Revenue Agency (CRA) cannot share tax information with police, national security agencies, or any other law enforcement body. There are some specific exceptions to this as follows:

- Police may get a court order for tax information if they are investigating a designated drug offence or if the investigation relates to organized crime.
- Police may request tax information after they have laid criminal charges in court.
- Canada's national security organization may obtain a warrant from a judge to obtain certain information.
- CRA may share tax information with the Canada Border Services Agency for Customs purposes.

Given these limited circumstances for sharing tax information with law enforcement, CRA has nevertheless developed our Special Enforcement Program, involving partnerships with police agencies, that focus on using the tax system for obtaining broader law enforcement objectives. A good deal of information is shared by police with CRA, even though CRA is not able to reciprocate. Through these partnerships with police, CRA obtains referrals of people suspected of obtaining income from criminal activities. Using information provided by police, as well as other information obtained using regular audit powers, CRA undertakes audits and criminal tax investigations that have the result of reducing the profit from illegal activities. We are also able to obtain jail sentences for tax evasion in many cases.

At the headquarters level, CRA participates in a number of government-wide committees and other forums that are intended to help coordinate law enforcement programs and activities at the national level. While this does not negate the impact of the information-sharing constraints in the tax legislation, it does ensure that CRA is able to contribute to the broader law enforcement objectives through its programs.

Chile:

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France:

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The Netherlands:

The Tax Administration regularly works in collaboration with other Government organisations. A few examples:

- During national operations such as those mentioned above, the Tax Administration works very closely with the Public Prosecution Service on account of the criminal aspects of the operations and to prepare for subsequent criminal proceedings.

- Each year, the Tax Administration and the Public Prosecution Service make agreements on the number and type of criminal cases to be instigated.
- For many national and regional operations, cooperation is sought with the Health & Safety Inspectorate, social services and social insurance benefits agencies.
- During national operations involving, for example, trailer camps and illegal casinos, the Tax Administration works together with municipal agencies and the police.
- The Tax Administration and the FIOD-ECD are represented in the FEC (*Financial Expertise Centre*). The other parties in this partnership include financial monitoring bodies (Financial Markets Authority and the Nederlandsche Bank), the General Intelligence and Security Service, the police and the Public Prosecution Service. The aim of the FEC is to safeguard the integrity of the system of finance in the Netherlands. Each organisation submits any information it receives from a pre-agreed designated area. This provides a better overall picture of the risks and clarifies the need to carry out further investigation and/or operations. For instance, the terrorism finance risk is one of the areas given special attention by this partnership.

Confidentiality

Confidentiality in tax matters is regulated in Article 67 of the Netherlands State Taxes Act (*Algemene wet inzake rijksbelastingen*). Paragraph 2 of this Article states that the Minister may grant exemption from the duty to observe confidentiality.

The policy on granting exemption is laid down in the Regulations on the Communication of Information.

The provision allowing exemption is widely used.

- *Structural use*: the Tax Administration supplies data on income on a structural, fully automated basis to Government agencies responsible for implementing income-dependent regulations and schemes, for example, rent rebate, student finance and social assistance benefits.
- *Occasional use*: information is provided to Government agencies on request if the agency needs that information to perform its duties. Any such information is supplied on the condition that it is only to be used for the purpose it was intended.
- *Partnerships*: partnerships always work on the basis of an agreement that explicitly includes the confidentiality aspect.
- *Public Prosecution Service*: questions from the Public Prosecution Service in connection with criminal investigations are always answered.

USA:

Title 26 USC 6103 specifically prohibits the disclosure of tax intelligence gathered by IRS pursuant to criminal tax investigations, audits, and or the filing of tax returns (protected tax intelligence) with other State Intelligence bodies, unless the exchange of information is granted pursuant to an exception written into the law. The most frequently used exemption provided by law to exchange protected tax intelligence with another State Intelligence Body, is if that State Intelligence Body is conducting a criminal investigation, it can petition the court to grant an exemption. Another exemption occurs if IRS-CI becomes a member of the investigation, and is investigating criminal tax violations. But as noted, the other State Intelligence Body must be conducting their own criminal investigation for these exemptions to apply.

In the US, protected tax intelligence cannot routinely be shared with a national intelligence system, if such as system existed in the US, or with other intelligence units, such as a Financial Investigative Unit (FIU) or other civil or military bodies. These bodies can only obtain tax intelligence if it becomes unprotected because the protected tax intelligence has become public knowledge by being divulged during a court proceeding or the intelligence has been sanitized to remove all identifying information of the tax entity from it.

Unprotected tax intelligence is routinely shared with the appropriate policy makers at IRS, Treasury, and Congress to aid in the decision making process in shaping future tax policy and legislation.

c. International exchange of economic and tax information.

Brazil:

Normally, specific clauses relating to information exchange are included in all international treaties, conventions and agreements signed by Brazil, in what refers to taxes, both to avoid double taxation and escape, and to encourage cooperation in customs situations.

These clauses are based on the provision in article 26 of the convention model of the Organization for Cooperation and Economic Development (OCED), which recommends that the information received by a contracting State should be considered confidential, as well as the information obtained based on the State's internal law, and may only be communicated to the people or authorities (including courts and administrative bodies) in charge of the launching or charging the taxes covered by the treaty, convention or agreement.

These people or authorities will only use this information for tax related objectives, and must keep tax confidentiality. The legal provision relating to tax information exchange cannot, under any circumstance, force a State to:

- Adopt administrative measures contrary to its legislation or administrative practice;
- supply information that could not be obtained based on its own legislation or within the scope of its normal administrative practice;
- Supply information that reveals trade, industrial, or professional secrets, or information the rendering of which is against the public order.

As foreseen in the article 2, item XV, of the Decree 275 of the Ministry of Health, of august 15, 2005, one of the objectives of SRF as a specific body, unique and directly subordinate to the Treasury Department, is to take part in the negotiation and implementation of international agreements, treaties and conventions pertinent to taxes, respecting the competencies of other bodies that deal with those matters (for example, the Ministry of Foreign Affairs).

Currently, three types of international agreements related to taxes are in place, they are:

- Agreements to avoid double taxing, signed by the following countries: Germany, Argentina, Austria, Belgium, Canada, Chile, China, Korea, Denmark, Ecuador, Spain, Philippines, Finland, France, The Netherlands, Hungary, India, Italy, Japan, Luxembourg, Norway, Portugal, Slovenian and Czech Republics, and Sweden.
- Customs Agreements signed by the following countries: United States, France, Great Britain, Mercosur (Mercosur + Chile), Mercosur (Treaty of Asuncion), Russia and the Multilateral Agreement on Cooperation and Mutual Assistance among the National Customs Administrations. COMUCAM (Argentina, Brazil, Colombia, Costa Rica, Cuba, El Salvador, Spain, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Dominican Republic and Uruguay).
- Economic Complementation agreements, signed in blocks by the following countries:
 - Bolivia, Colombia, Venezuela, Ecuador, Peru, Argentina, Paraguay and Uruguay;
 - Argentina, Paraguay and Uruguay;

- Argentina, Paraguay, Uruguay and Mexico;
- Uruguay.

Brazil may obtain tax related information, for penal applications, by using the Mutual Legal Assistance Treaty – MLAT, following the prerequisites established at the time of signature. Among them, we point out the agreements signed with the countries in Mercosur (Argentina, Paraguay and Uruguay), with France and the United States of America.

Lastly, it's worth mentioning the SRF keeps tax attachés in three embassies of countries that are significantly important for Brazil, in terms international tax relations: Argentina (Buenos Aires), United States (Washington) and Paraguay (Asuncion). The attachés have also been successful in establishing partnerships with those foreign tax administrations in countries that subscribe to said agreements or whose legislation allows the exchange of information. They have also contributed substantially to investigations involving transnational criminal organizations.

Canada:

In Canada, tax treaties are used for sharing information with other countries. The treaties do limit the way in which the information can be used to tax matters. Furthermore, the information to be shared must be approved by the “competent authority” named in the treaty in order to ensure that it meets with the conditions of the treaty.

In order to facilitate sharing information between Canada and the United States, an administrative agreement has been entered into with the intention of reducing the administrative burdens associated with the normal information-sharing process under the tax treaty in cases where the two countries are investigating the same target.

Canada also uses Mutual Legal Assistance Treaties to obtain tax information where it will be used for criminal investigation purposes.

CRA is attempting to develop tax treaties with several countries, which have more highly secret banking laws, and which therefore are reluctant to share tax information.

France:

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USA:

Title 26 IRC 6103, permits the IRS to exchange protected tax intelligence with foreign countries pursuant to a formal agreement such as a Tax Treaty or Tax Information Exchange Agreement (TIEA) between the US and the foreign government. The exchange can be for assistance in gathering evidence for an investigation or used for any other tax administration purpose permitted by the agreement. Generally foreign countries cannot use tax intelligence for non-tax criminal investigations such as money laundering, drug trafficking, etc. However, if the crime being investigated is terrorist financing, then a court order can be requested to release protected tax intelligence to the foreign country. The US has aggressively sought international tax exchange agreements with other countries to obtain tax

intelligence pursuant to investigations. The US is currently using the model adopted by the OECD for these agreements.

As with the exemption to exchange protected tax intelligence with other tax administrations in the US, the purpose of this exemption is to foster tax compliance by permitting the various tax administrations in the world to compare tax intelligence gathered by each tax administration to identify possible discrepancies between country's tax intelligence and therefore possible non-compliance with the tax laws.

Other international agreements that IRS-CI uses to gather tax intelligence from foreign countries are Mutual Legal Assistance Treaties and Letters Rogatory. These agreements can only be used in criminal investigations. The information exchanged by these agreements is handled by the US Justice Department. This information can be used for other criminal violations other than tax violations, such as money laundering, since the information was not obtained using a Tax Treaty or TIEA.

As a result of international criminal tax schemes increasing significantly over the past twenty years, IRS-CI has created an International Section at Headquarters. The key component of this section is placement of criminal investigators at strategic overseas posts. These attachés' mission is to work with foreign tax intelligence and other law enforcement agencies to facilitate the exchange of intelligence, participate in joint investigations, and develop potential investigations

Finally, IRS and IRS-CI hopes to reduce barriers to the sharing of tax intelligence between foreign countries by being a member of international bodies devoted to these issues such as CIAT and OECD.

VI.4. Normative Basis for Tax intelligence activities

a. Legal Competencies

Brazil:

In accordance with the Ordinance 1.745, of December 13, the General Coordination of Research and Investigation - Copei was created. Copei's attributions and competencies are those listed in the Internal Regulations of SRF, approved by the Minister of the Treasury through the Decree MF n° 030, of February 25, 2005, and changed in the Decree MF 275 of August 15, 2005. The objective of these legal acts was to give a legal basis for the creation of Copei, as well as determine its legal competencies.

The pertinent legislation defines Copei's legal competencies and attributions to plan, coordinate, control and evaluate the research and investigation activities in the intelligence area, especially crimes against the tributary order, smuggling and contraband and laundering or hiding of goods, rights and values, aimed at producing knowledge to be used by the SRF's units within the scope of their competencies.

Canada:

Canada's tax statutes provide several articles that are important for tax intelligence and investigations activities:

- i. clear provisions for laying criminal charges for tax evasion and conspiracy to commit tax evasion, filing false statements as well as for claiming false refunds; the law provides for significant fines and/or jail sentences on conviction of these offences.
- ii. penalties for failing to file tax returns when demanded;

iii. specific authorities for obtaining information for purposes of tax enforcement activities, including inspection or audit powers, authority to require production of documents, power to obtain search warrants and the authority to hold enquiries; and

iv. clear provisions that describe when tax information can be used for non-tax purposes.

The Canada Revenue Agency also uses provisions of the Criminal Code to enforce tax legislation. In certain circumstances where offences are considered to be more serious than usual, Criminal Code fraud charges are levied instead of tax evasion charges because there are stiffer penalties associated with Criminal Code charges.

USA:

In the US, Congress has passed a series of laws that empowers the IRS to collect and distribute tax intelligence to the appropriate parties. Specifically, Title 26 Internal Revenue Code Section 7608(b) and other sections of the Code provide the legislation for IRS-CI to collect tax intelligence pursuant to criminal investigations and other approved means.

b. Basic principles

c. Policies and procedures

Brazil:

Copei's Norms and Procedures Manual is the instrument that determines the policies and procedures that should be followed by the tax intelligence agents. This manual establishes in details the current work method in Copei, based on the basic principles that structure this activity, such as opportunity, breadth, objectivity and clarity, among others.

The norms and procedures manual describes in details the work procedures of Copei, presenting the knowledge production methodology, norms for analyzing and treating denunciations, recommendations related to conducting investigations and specialized intelligence techniques, rules for developing diffusion reports, etc.

Canada:

Canada Revenue Agency (CRA) has developed a detailed Investigations Manual that outlines the policies and procedures for all aspects of the program. This manual is available on the CRA's internal website and can be accessed electronically by staff from anywhere in Canada. The manual is updated on a regular basis to ensure it reflects the most current law, jurisprudence and operational procedures and practices.

USA:

IRS has instituted a manual (IRM) to provide the general policies and procedures which IRS compliance divisions, including IRS-CI, follow in the performance of its duties to collect tax intelligence. These policies and procedures cover the extent of the duties to be performed, the need for timeliness, clarity, objectiveness, impartiality and simplicity in performing these duties, the level of

supervisory oversight of these duties (control), and the level of security for the tax intelligence produced.

IRS-CI has also instituted a Law Enforcement Manual (LEM) to govern those activities that only IRS-CI performs. Such activities can include conducting specialized and sensitive law enforcement activities including undercover operations. These policies and procedures provide the basic principles for gathering tax intelligence, whether through information gathering activities or actual criminal investigations. These policies and procedures address timeliness, scope, security, control, impartiality, and other major tenets to protect the rights of the US citizens from overly intrusive and illegal activities by IRS-CI employees. For instance the manual dictates the amount of managerial oversight must be given in gathering tax intelligence. All special agents of IRS-CI must have a comprehensive review of their activities every four months and an annual review. The purpose of these reviews is to ensure the agents are performing their duties in compliance with the laws of the US and in conformance with the policies and procedures of the IRS and IRS-CI. The reviews will cover timeliness, clarity, scope, among other attributes of a well-run criminal investigation.

The policies and procedures in the LEM are consistent and compatible with the policies and procedures of other State Law Enforcement Intelligence bodies in the US.

The IRS and IRS-CI is constantly updating its structure to improve its ability to collect tax intelligence. The most recent major update was in 2000, when IRS and IRS-CI underwent a complete organizational restructuring. This restructuring was conducted pursuant to an independent assessment of the IRS and IRS-CI by the US government of its policies and procedures and how IRS/IRS-CI implemented these policies and procedures. In addition to organizational changes, IRS and IRS-CI is constantly updating its policies and procedures to be consistent with changing legislation and methodologies to collect tax intelligence.

d. Institutional protection duty

Brazil:

The Institutional Security Manual of SRF was instituted by the Decree SRF n ° 1.700 of December 12, 2003. The objective of the Manual is to present the rules and recommendations that encourage awareness building among SRF's staff as to the risks posed by external actions or interests against the institution and its civil servants, and the need to guard knowledge and data protected by tax secrecy.

Therefore, institutional protection is translated into awareness building among its civil servants as to the importance of the activity they carry out and the care they should take, both in carrying out their tasks and in assuring the safety of the physical, computerized or cognitive objects to which they have access.

The Manual is meant for all of SRF's civil servants who, in addition to fulfilling the duties imposed in the legal ordinance, and because they are involved in collecting part of the contributors' income, should be additionally careful in dealing with public matters, with regards to their professional conduct and the discretion necessary to carry out their function.

This instrument is currently in a phase of diffusion, which will be permanent. That is, it will be an ongoing task in SRF. The aim is the institutional strengthening of the organization, by permanently perfecting and updating the normative procedures and recommendations, particularly respective to protecting tax secrecy and the institution's employees.

The diffusion campaign includes the distribution of thematic calendars and bookmarks, containing security recommendations, among employees. Also, fictional stories and comic strips are being presented when employees access their computers, which are plugged into a common network. Those

stories emphasize the concepts of institutional security in an attractive way. Periodic talks are also being given to the entire staff.

This manual presents rules and recommendations aimed at neutralizing risks posed by internal and external actions upon the institution and its public servants. It is comprised of chapters on staff security, documentation security, communications and information systems security, and areas and installations security, in addition to an annex listing all the pertinent legislation. Thus, in accordance with the manual, institutional security must be promoted through a set of actions aimed at preventing and obstructing potential harm relative to:

a) Staff security

Actions aimed at preventing and obstructing actions carried out by third parties and civil servants' conduct that may pose a risk to the integrity of the staff and the security of information and sensitive data covered by tax secrecy.

b) Documentation Security

A set of measures aimed at the protection of data and information contained in the institution's documents, especially those whose secrecy is necessary for the society's and the State's security, as well as the protection of the inviolability of people's intimacy, private life, honor and image, in accordance with the law. Respecting the right, assured to all, to receive information that holds particular interest for them, collective or general interest, contained in filed documents, which should be made available in accordance with legally established timeframes.

c) Communications security

A set of measures aimed at protecting confidential knowledge and data during the respective reception and transmission activities. This procedure foresees, from the adequate place for installing communication equipment to the adequate means for transmission and, according to the sensitivity of the subject, the use of cryptography for protection.

d) Information Systems Security

A set of recommendations aimed at assuring the security and integrity of the hardware, the software, the databank management systems and the databanks themselves.

In this regard, the then SRF was already making available to its employees, since 2001, an on-line Information Security Manual.

e) Areas and Installations Security

A set of measures aimed at protecting the places where documents, data or information treated by SRF is elaborated, handled or stored, the goods controlled by the institution, as well as the civil servants carrying out their functions at their workplaces.

Colombia:

Unfortunately, due to unexpected problems, the translation of the best practices sent by this country wasn't ready for the 40th CIAT General Assembly, in Florianopolis. As soon as they are ready, a new version of this document will be sent.

USA:

Priority is given to institutional security of all intelligence gathered by the IRS and IRS-CI. Title 26 Internal Revenue Code 6103 is the overriding law that governs the disclosure of protected tax intelligence. The IRS has instituted strict security protocols governing the storage, access, and distribution of tax intelligence. These security protocols are issued to all employees. All IRS employees most reviewed these protocols annually to ensure their understanding and compliance with them.

As part of the security protocols, all employees of the IRS must pass a background check before being hired. The background check is conducted to confirm the applicant does not have a criminal record. The background check will also determine the applicant's reputation in the community to ensure that they are of good character and will not likely be corrupted and illegally access and disseminate tax intelligence to unauthorized individuals. The level of the background check will depend upon the type of tax intelligence to which the applicant will have access. For instance, most CI operational agents have a Top Secret Clearance and must redo their background check every 5 years.

Annually, all employees are given renewal training in the disclosure laws and the penalties for violating these laws. The penalties include mandatory fines, being fired from the IRS, and possible criminal charges and incarceration if found guilty. In addition, the taxpayer can file a civil suit against the employee for further financial penalty.

As part of the security protocols, all computer systems are protected against hackers/crackers through the use of firewalls and passwords. All computers require a password to gain access to the records stored on it. All databases and e-mails require a secondary password to be opened. To further protect IRS-CI e-mails from being read by hackers all e-mails are encrypted. All files are kept in secured areas; locked in cabinets or safes depending upon their level of secrecy. Secured faxes are used when the level of secrecy requires it. Each IRS Section has a Security Officer to ensure security protocols are followed. Annual training is given to remind personnel of the security protocols.

All employees of the IRS-CI must pass an extensive training course after being hired concerning their duties and responsibilities in gathering and analyzing tax intelligence. The course is given at a Federal Training facility and is 26 weeks long. The course includes subjects in tax law, federal criminal law and procedures, the use of special investigative techniques, and how to conduct a financial investigation.

VI.5. Profile and abilities of workers taking part in the tax intelligence activity

Brazil:

The norms related to the selection and training of employees for carrying out tax intelligence activities in the Brazilian Internal Revenue Service, as well as to their dismissal, if their are proved personally incapable or if deviations by employees are suspected, are prescribed in Copei's Manual of Norms and Procedures and in SRF's Institutional Security Manual.

The first one provides criteria for recruiting and selection of SRF civil servants, which may comprise Copei's staff. In this way, it must be made clear that all candidates to working in SRF's tax intelligence unit already have advanced knowledge of tributary, constitutional, commercial, civil and administrative law, as well as accounting and financial mathematics. They shall have been tested when they were approved in public competitions for public employment, national in scope, before entering SRF. A prerequisite for participating in such public competition is being a university graduate.

The objective of SRF's Institutional Security Manual is to encourage awareness building among the organization's staff as to the risks posed by internal or external actions or interests against the

institution and its civil servants, as well as to the need to guard knowledge and data protected by tax secrecy.

The guidance included in both documents is applied to all civil servants in SRF who wish to enter Copei, as well as those whom one considers should be dismissed from it.

The Manual of Norms and Procedures, among other provisions, establishes the selective process to be faced by tax administration civil servants who aspire to comprise the body of tax intelligence agents. Such selective process should be comprised of the following stages.

- Curricular analysis – The SRF’s civil servants interested in comprising Copei’s staff should send their *curriculum vitae*, which will be previously analyzed, in order to verify if the education, personal profile and professional experience of the candidate are adjusted to the characteristics and needs of such activity.
- Analysis of a specific questionnaire – The civil servants whose curriculums are selected should fill in a specific form supplied by Copei, so their professional profile and personal aptitudes can be analyzed. It is also in this phase that the regular fulfillment of their tributary obligations will be verified, as well as their history as public servants, including occurrences related to discipline and information from former bosses.
- Interview – Candidates approved in the previous stage will be called for an interview, carried out by two members of Copei – already have experienced in conducting interviews. The interview will attempt to verify the information rendered in the form, the motivation to enter tax intelligence and the personal profile of the candidates. At the time, the interviewee will receive more specific information as to the type of work carried out at Copei, characteristics of the mandatory training program, etc. This interview is also an opportunity to answer the candidates questions, as well as clear up any unfounded notions related to the intelligence activity.
- Training in intelligence – Those selected in the previous stage will take part in a specific training program in intelligence, which will eliminate candidates, and during which they will receive theoretical and practical instructions related to the activity.

As to SRF’s Institutional Security Manual, it prescribes, among other recommendations, the adoption of safety measures in the cases of temporary or permanent dismissal of civil servants, such as recommendations to cancel passwords and take back name tags or functional identification documents in certain specific cases.

Canada:

In Canada, CRA’s intelligence activities and investigations program focus on tax matters and therefore staff must have a very good accounting and tax auditing knowledge. Recruitment for these programs is therefore focused on staff already in our civil audit activity. Specific training is given to these staff in a number of activities related to the criminal investigations knowledge and skills that they would not receive from their auditing background.

Training for the operational agent is paramount. There are many aspects of operational intelligence and investigation that must be taught in the context of the operation, that cannot be brought into the job from previous work or education. It is particularly true for tax intelligence work. It is not sufficient, for example, to hire former police officers in tax intelligence since agents must have a university education and understand taxes and tax law. Ongoing training is also critical.

Chile:

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France:

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USA:

IRS-CI employs both operational agents and information analysts to collect tax intelligence. The Operational Agent position is a professional position that has minimum educational requirements, including at least five university courses in accounting. Both positions have a detailed job description as to the qualifications an applicant should have to obtain the position and what their job duties will be. Upon being hired, the employees are informed the criteria and standards for which they will be evaluated to determine if they are doing their jobs successfully. In the US, all operational agents are law enforcement officers that carry a gun, and can perform all law enforcement duties, including performing search warrants, arrest warrants, and the use of special investigative techniques, such as surveillances and undercover operations.

Because of the highly and sensitive technical nature of being an operational agent and the judgment required to successfully perform their duties, IRS-CI has instituted a strict hiring process to employ only the best individuals. To apply for the position the applicant must provide a curriculum vitae that must indicate that the applicant has a college degree with a minimum of five courses in accounting. The accounting background is necessary in order to be qualified to perform the forensic accounting duties associated with gathering tax intelligence.

All applicants whose curriculum vitae indicates they have the basic skills and knowledge to be an operational agent then pass the following steps to be hired:

- o Written Examination
- o Interview
- o Background check
- o Drug testing, and
- o Medical examination

The interview is especially important since it provides an opportunity to judge the individual's ability to meet and deal with people. The applicant must demonstrate he will not abuse the powers inherent with the job. He must also demonstrate that he is easily adaptable to gather intelligence from people with different socio-economic backgrounds.

All applicants that are selected to be hired as an operational agent then must pass an extensive training course (basic training). The course covers all aspects of being an operational agent including the policy and procedures of the IRS and IRS-CI, tax law, Federal criminal law and procedures, how to conduct a financial investigation to gather tax intelligence, including the techniques used to gather denied data and the use of special investigative techniques. The Federal criminal law and procedures

includes observing the rights and guarantees constitutionally provided to all individuals, including the limitations is using special investigative techniques.

Operational agents are also trained to conduct money laundering and terrorist financing investigations since they are responsible for these crimes. They are also made familiar with other Federal crimes such as customs violations during basic training.

After the operational agent passes basic training, he is assigned to a field office to begin his tax intelligence gathering duties. Upon his reporting to his office he is assigned an experienced operational agent for a period of at least one-year to be an on-the-job instructor. This instructor is responsible for training the operational agent in how to conduct tax intelligence activities in the field.

In addition to the basic training described above, IRS-CI conducts annual training to all agents on emerging criminal trends and new techniques to gather tax intelligence. It also provides advanced training to all operational agents after the agent has been on the job for five years. Specialized training is also given to experienced operational agents that have demonstrated an aptitude to use the equipment associated with special investigative techniques, including visual and audio monitoring devices, and tracking devices.

The US government is authorized to pay operational agents salaries that are at the top of the government pay scale for civil servant employees. The high salary is justified due to the job knowledge required to be a financial investigator, the danger associated with being a law enforcement officer, and to provide a reasonable deterrent to an operational agent being susceptible to a bribe.

The Information Analysts also undergo a strict recruitment and hiring process similar to an operational agent, except taking a written exam is not required. The skills and education are not set as high for an information analyst as for an operational agent since their responsibilities are not as complex. All aspects pertaining to the training of information analysts are significantly reduced from an intelligence agent. Their training is only for about two weeks, they are not required to deal with the public, except as a support person to an intelligence agent. Primarily their duties are to research public and government databases and prepare reports on potential criminal activities for further in-depth investigation by the operational agent. The same adherence to protecting individuals' constitutional rights is expected of information analysts. Management oversight is provided by operational agents to ensure the seamless blending of information gathered by the analysts with the work of the agents.

In addition to the positions described above, IRS-CI also employs other specialists to be a more effective tax intelligence unit. Some of these specialists are as follows:

Attorneys: IRS-CI has in-house attorneys that provide legal advice on ongoing investigations, especially in the use of special investigative techniques such as undercover operations and monitoring of conversations.

Public Affairs Officers: IRS-CI has trained operational agents to issue press releases to the US media. These press releases help increase tax compliance by informing the public of ongoing enforcement actions, and help disseminate tax intelligence to the public.

Information Technology Specialists: IRS-CI has a complete branch dedicated to designing and maintaining its computer infrastructure. This includes purchasing hardware, purchasing software, or designing it if public software is not available, maintaining CI's databases, and retrieval of information from seized computers.

VI.6. Information sources and tools for tax intelligence

a. Closed sources

i. Human

Brazil:

Copei considers human sources essentially important as a source of information in tax intelligence activities. Any investigative work within the scope of Copei tries to identify, in the initial evaluation, if there are trustworthy human sources with potential for accessing information about the target contributors, which hold interest for the investigation.

These human sources may be surveyors or experts from tax administration itself, agents from other intelligence bodies, volunteer or hired informants, etc.

A procedure that has proved to be useful, after defining the investigation target, is the search for informants who have, or have had until recently, access to relevant economic-tributary data relating to the contributor under investigation. Additionally, before any contact, these human sources are evaluated as to their potential motivations for supplying information.

Normally, the choice of former employees has proved particularly fruitful, especially those who have worked in higher hierarchical levels of the company being investigated, or former spouses who are undergoing a contentious separation from the target.

In this respect, it must be pointed out that those informants are not encouraged at all, by Copei's agent, to practice acts in disagreement with the national legal ordainment. The training programs and internal procedures are very clear as to the prohibition of this type of conduct by such intelligence agents.

USA:

The other source of intelligence is investigative intelligence. They can originate from humans, signals, or images. Sources of investigative intelligence in the US are:

- IRS-CI Investigations (Operational Agents)
- Lead Developmental and Fraud Detection Centers (Information Analysts)
- Audits by IRS
- Collection Activity by IRS
- Informants, including Accusers
- Foreign entities
- Other government investigations

ii. Signs

Brazil:

Brazilian legislation (Law 9.296, 1996) confers upon police organizations the exclusive competence to intercept communications from people under investigation. However, they will only be able to intercept communications if authorized by the competent legal body, whether a judge or a court.

Only the police or the Public Prosecution Service can issue a request to a legal body and there are no provisions for tax administration to make any such direct requests. However, it is possible to suggest to the Public Prosecution Service requesting the Judiciary body to intercept the communications of those under investigation, when it is perceived that a certain investigation can only be taken to term if evidence is obtained through such a judicial provisional remedy. If allowed, the interception will be

carried out by the Federal Police, and then it will be possible to issue a judicial authorization to follow-up on the monitoring by civil servants appointed by SRF/Copei.

It must be mentioned that, in Brazil, in face of the grave invasion of privacy represented by this type of action, the law only authorizes communications' interception for criminal investigations or instructing penal prosecution. Thus, an investigation within the scope of Copei/SRF can only consider the hypothesis of requesting such a measure if there are justified suspicions that a tax, customs or money laundering crime is under way.

USA:

IRS-CI can gather data from signal sources for tax intelligence purposes if one party of the communication agrees that the communication can be monitored. (consensual monitoring) These communications can be by telephone, fax, e-mail, telemassage (beeper). IRS-CI cannot gather data for tax intelligence purposes from communications if one party of the communication does not agree to be monitored; it violates constitutional provisions to right of privacy.

iii. Images

Brazil:

Whenever it is considered essential for a certain investigation, Copei uses images that can be used as proof or evidence of illicit acts. They are used to inform administrative-tax procedures or criminal prosecution.

In order for such images to be considered legally valid, they should be obtained without violating the intimacy of the contributors investigated. Thus, an attempt is made to produce images in public environments or those in which there will be no expectation of privacy, such as public tax or customs offices.

USA:

IRS-CI can also gather data from image sources for tax intelligence purposes, as long as it does not violate constitutional provisions to right of privacy. These images are primarily done by photographic equipment, camera, video recorder; IRS-CI has not used radar, satellite imagery, or infrared sensors to gather tax intelligence.

b. Open Sources

i. Public

Brazil:

Public open sources are widely used by SRF/Copei, both in the research previous to any investigations and while they are in place. Newspapers, books, magazines and the Internet can be mentioned as important public sources.

It is important to point out that public servants at Copei have the legal competency to, within the scope of an investigation, subpoena public register offices, commercial establishments, etc. However, in investigations of certain targets, it is possible to request a certain certificate from one of those public registers in name of the agent himself, as a common citizen. This avoids, especially in smaller towns that are more subject to the influence of locally powerful contributors, such contributors gaining previous knowledge of the fact that they are being investigated by federal tax agencies.

USA:

Another form of non-investigative intelligence is public (open) or government records that do not originate from the IRS. These records are generally accessed by either an information analyst when evaluating a potential investigation or by an investigative agent during an investigation. In the US, examples of these records are:

- public records, such as real estate records, business records, (in US now being recorded on computer databases (Lexus/Nexus)), Internet, etc,
- Published news
- Published literature
- Published interviews

ii. Sources accessible to tax administrations

Brazil:

Brazilian legislation, based on the Law 5.172 of 1966, secures for tax administration access to information about goods, business or activities of third parties, kept by public registry offices, financial institutions in general (banks, brokers, etc.), companies that administer goods, auctioneers, brokers, or any other person that the specific law of the federated entity designates due to his or her position or profession.

SRF keeps in its systems large and detailed computerized databanks related to the income declarations sent in by contributors, both people and enterprises. Information rendered in compliance with legal mandates, related to tax that may have been retained due to wage payments, service rendering, payment of proceeds from financial applications or other cases in which income is subject to taxes, and the remaining federal tributes, is also included in those systems

Those internal databanks are also fed with information relative to real estate acquisition, the communication of which is legally mandatory for the public registry where the deed is drafted; as well as information about operations with credit cards, the communication of which is legally mandatory for the companies that administer them.

Since it also covers customs administration, SRF has access to the databanks referring to the importation and exportation of goods.

It must be mentioned that, in order to control access, entrance into such internal systems is limited in accordance with the civil servants' area of action, and requires personal passwords and magnetic cards. The users identify themselves and the time when anyone enters the databank is registered.

Brazilian legislation authorizes SRF to issue administrative requests for reports relating to financial movement made by contributors in the banks in which they have accounts (Ordinance 3.724/2001, which regulates the article 6 of the Complementary Law 105/2001), as long as this contributor's inspection has already been formally initiated and objective criteria established in the respective law are respected.

SRF also keeps agreements with organizations that have databanks that are especially interesting for the assessment of the patrimony of contributors under investigation, such as *Banco Central* (Brazil's Central State Bank), state and municipal tax administrations, among others. Thus, several of these systems can be accessed on line from the computers of the very surveyors in charge of such audits: vehicles ownership, partnerships in commercial enterprises, currency exchange operations, municipal and state taxes collection, etc.

Another important source of information accessible to SRF comes from the Brazilian Financial Intelligence unit: The Council for Control of Financial Activities – COAF. This unit shares information about operations considered suspicious and cash operations over R\$ 100,000.00, sent to it by financial institutions in general, when there is evidence of irregular tax procedures, or when SRF requests it.

Canada:

Canada Revenue Agency (CRA) has made arrangements to obtain online access to a number of external databases as well as on demand sources that can help identify individuals and corporations, their business interests, and their income and wealth. Some of these sources are provided free of charge and some require that CRA pay for the service. These information sources include:

- other government regulators (agriculture, fisheries, business registrations, health services, social services)
- motor vehicle registrations
- real estate/property valuations
- credit bureaus
- financial intelligence units (money laundering).

USA:

The IRS is also permitted to obtain tax information pursuant to agreements from State and local tax administrations and from foreign governments.

This enables the IRS to match the returns filed with the IRS with returns filed with these entities to note any discrepancies and to gather data for analysis.

The last source of internal records is other records kept by the Federal, State, or local governments. These records include criminal histories, driver's licenses, vehicle registrations, and social security records.

iii. Tax administrations' internal sources

Brazil:

Copei has powerful tools, based on modern information technology support, to aid it in reaching its research and investigation objectives,

- Research and Investigation System – Sispei
- Data “extractors” from the SRF’s Control Systems
- Acquisition of information from external databanks

The research and investigation system computerized Copei’s procedures, making the electronic flow of information and the digital storage of the relevant data possible, in such a way as to make research, investigation and administrative control processes faster and easier. The definitive implanting of the Research and Investigation System took place in July, 2003. The Research and Investigation System began being used partially in August of 1999. During the initial period, several training programs were carried out to train Copei’s civil servants in the use of the new work tool that went into operation when some the system’s modules were put into operation. In July, 2002, when all the documentation and information available in Copei was included in this system, it began being effectively used and all the modules and resources foreseen during its development were put to use.

Among the main characteristic of the Research and Investigation System, we can point out:

- The safety of the data, whether in storage or during transmission; the availability of the information, which allows for consultations from the servants workstations;
- It has a user friendly interface;
- Reliability; and
- Total integration among all the functions.

The system is comprised of ten modules, allowing the system to function as an indispensable management, control, information and knowledge tool. These modules go from the documents’ protocol, through subject and staff control, to the information bank.

The effective implantation of Sispei made granted greater security and control of the information generated/obtained and the knowledge produced in exercising the activity of tax research and investigation. The significant increase in the speed of the flow of information and documents must also be pointed out .

The data “extractors” from the SRF’s Control Systems are used in a certain type of consultation carried out by using programs developed to extract data of interest that are registered in the databanks or the SRF’s Control Systems, and enable the optimal use of this consultation’s specific features. They are used by SRF workers, who must have been previously authorized in the internal norms that define the profile of the user who can have access to the data “extractor” program. The use of “extraction” programs has been promoted in accordance with the needs and the potential information that can be obtained, allowing tax administration to improve its control and collection mechanisms. The implementation of the data “extraction” programs has been taking place as the units verify the need and the opportunity for them, according to the definition and/or alteration of tax administration policies. An important characteristic is the possibility of optimizing and specifying the type of information that one desires to obtain by using large systems that normally generate a large mass of information without prioritizing specific points. The obtaining of information adequate to the specific needs o each tax administration body, through data extraction, has enabled the improvement of the control and collection instruments.

The acquisition of information from databanks takes place through the purchase of official information from foreign countries that is made available on several Internet sites, using specific funding. This is very useful in identifying and locating goods undeclared to tax administration. Copei, using specific funding, is enabled to search for such information. The necessary funding is regulated by the Presidential Decree 93.872, from 12/23/1986, which came into effect on 01/01/1987. The alteration of article 47, through the Ordinance 3,639, of 10/23/2000, came into effect with its publication on 10/24/2000. It is useful as a quick and reliable means for obtaining information available in the so-called open sources, particularly the Internet. This possibility for obtaining data allows for the identification of goods located abroad, in the cases in which the real proprietor is a Brazilian citizen who has not turned in the necessary declarations to tax administration and even the Central Bank of Brazil and the time of the transaction (buying or selling).

Canada:

Canada Revenue Agency (CRA) has many sources of third party information that are required by law to be filed with CRA. The information is mostly provided in an electronic format so that it can be matched automatically with the information provided in the individual's tax return. The types of information provided in this way include:

- income from employment
- pension income
- interest and dividends
- securities transactions; and
- some information about payments made under contracting arrangements.

CRA has reached agreements with other countries to share information that it receives regularly about income that is paid to the residents of those other countries. CRA also receives similar information from those other countries. This sharing is done automatically on an annual basis.

Chile:

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France:

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Spain:

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USA:

In the US, the IRS gathers tax intelligence from many sources and using many tools to do so. For the purpose of this working group we will split tax intelligence into two categories, non-investigative intelligence and investigative intelligence.

Non-investigative intelligence is gathered mainly from government, primarily the IRS (internal) and public (open) sources.

The biggest source of non-investigative intelligence is the records filed with the IRS. These records include tax returns which provide the raw intelligence about each tax entity, including:

- Name
- Address
- Tax Identification Number
- Spouse and other dependents
- Sources of income
- Businesses they may be involved with
- Financial institutions at which they have invested funds
- Foreign Bank Accounts (F-Bars)
- Foreign Trusts

All tax returns are filed at one of 10 Service Centers. All data is transcribed onto computer databases. This information is then stored in one computer facility. This database is available to all employees that need this intelligence to perform their duties.

The next major source of non-investigative intelligence from the IRS is income information returns filed with the IRS. In the US, all issuers of income of over a certain amount, depending upon the type of income, must issue the receiver of the income an IRS Form 1099 or W-2 reflecting the income earned. A copy of these income information returns is filed with the IRS as well, and placed on a computer database. This database is periodically matched with tax returns filed to ensure the income has been reported. If discrepancies are found, audits or criminal investigations are initiated depending upon the amount of income that has not been reported. Examples of Income Information Returns filed in the US are:

- Interest Income
- Dividend Income
- Real Estate Sales
- Securities Sales
- Gambling Winnings
- Wages

Another major source of intelligence filed with the IRS is Employment Tax Records. All employers must deduct money from their employees to withhold for income tax payments to the IRS and for Social Security payments. These returns are used to identify individuals that have not filed tax returns.

The IRS also receives all financial reporting forms filed in the US. These forms include:

- Currency Transaction Reports of over \$10,000 from Financial Institutions
- Currency Transaction Reports of over \$10,000 from Businesses
- Currency Transaction Reports of over \$10,000 from Casinos
- Suspicious Transaction Reports from Financial Institutions
- Suspicious Transaction Reports from Businesses
- Suspicious Transaction Reports from Casinos
- Cross-Border Currency Transaction Reports of over \$10,000

VI.7. Techniques and methodologies in tax intelligence activities

Canada:

CRA uses a variety of techniques to obtain information that has been refused. In particular they include:

- Undertaking audits with traditional books and records techniques;
 - Undertaking audits using indirect methods, particularly net worth audits, where the taxpayer does not have adequate books and records;
 - Issuing “requirements”, or demands for information, under the authority of the tax statutes – if the taxpayer does not comply, criminal charges can be brought against him, or civil contempt of court charges can be brought which may result in jail;
 - undertaking enquiries as authorized under the tax statutes;
 - search warrants in criminal investigations, as well as production orders;
- Informant Leads program whereby information is voluntarily provided by the public.

Chile:

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USA:

In the US, IRS and specifically IRS-CI uses many techniques and methodologies to gather and verify tax intelligence from denied data. I will first describe ones that I believe will be unique to the US, and then under each subheading, confirm if IRS-CI is using that technique/methodology, and provide any additional elaboration if necessary.

Techniques and Methodologies to Gather Tax Intelligence that has been refused:

- Audits and Collection Activity

- The use of a Summons to command the production of records that have been refused. (A formal request for information made by the IRS pursuant to an investigation or audit that can be enforced in court.)
- IRS-CI Investigations
 - The issuance of a Subpoena (A formal request for information made by the US courts on behalf of the IRS-CI for criminal investigations)
 - Use of Informants
 - Undercover operations
 - Consensual monitorings to records conversations (where one party agrees to the recording of a communication whether conducted in person or by electronic means, i.e., telephone, computer, fax, etc.)
 - Surveillances that can include the use of photography equipment
 - Search warrants.
 - Interviews with Witnesses

Retrieving evidence from computers and other electronic formats: IRS-CI has pursued using newly developed information technology to aid it in effectively gathering tax intelligence and investigating criminal tax violations. In 1987, IRS-CI formed an Information Technology Unit (ITU) to provide management oversight and support to the investigating agents in the use information technology. In 1990's, IRS-CI began training criminal investigators to extracting evidence from seized computers and other electronic formats such as the internet and e-mail systems in the course of an investigation. In 2003, a state-of-the-art computer lab became operational to assist the seized computer specialists perform their tasks. IRS-CI has also developed specialized computerized data mining centers, Lead Development Centers (LDCs), to gather tax intelligence to help identify possible targets for IRS-CI to investigate. In 2004, the ITU was elevated to report directly to the head of IRS-CI.

a. Specialized operational tax intelligence techniques

i. Target analysis and identification techniques

Brazil:

SRF uses several methods and information crossing to select the contributors who will be subject to transparent and objective audits. One method that stands out is the *Sistema Gerador de Ação Fiscal - DW* (SIGA-DW) (Tax Audit Procedure Generating System), a powerful computerized tool of the *data warehouse* type, which allows for the crossing of all the information internally available, and some from external sources, as well as defining parameters for selection, allowing for the identification of contributors with a high risk of not fulfilling their tributary obligations. This tool is known as SRF's "*Big Brother*", an allusion to the novel by George Orwell.

In the area of customs, the *Ambiente de Registro e Rastreamento da Atuação dos Intervenientes Aduaneiros* (RADAR) (Environment for Registration and Tracing of Actions of Interveniers in Customs) is used. This system makes available, in real time, customs related information that makes it possible to identify behaviors and infer the risk profile of the several agents related to external trade, and is therefore an essential tool in combating fraud.

The following are the main sources of information for beginning investigations: denouncements, informants, and crime fighting organizations that work in partnerships with the Federal Police, the Federal Public Prosecution Service, the Brazilian Financial Intelligence Unit (COAF), etc.

Canada:

Canada Revenue Agency (CRA) carries on a large variety of programs and practices for identifying targets for tax intelligence and tax investigations activity. The largest part of these are undertaken in CRA's civil tax administration programs. These include:

- programs that focus on specific tax deductions and exemptions such as charitable contributions;
- matching of information from third parties related to various kinds of income with the amount of income reported by taxpayers;
- programs that focus on individuals and businesses that do not file their returns when required;
- sophisticated automated risk assessment programs that use a variety of internal and external information sources to identify taxpayers where there is a high risk of non-compliance;
- programs that focus on aggressive tax planning activity;
- analytical studies that focus on specific sectors of the economy.

Most cases of non-compliance that are identified in these ways are handled by the civil tax administration. However, when evidence of fraud is found to be part of the non-compliance, referrals are made by the civil administration to the investigations program where criminal tax investigations are undertaken for potential prosecution.

CRA also maintains very close liaison with Canada's national police force, the Royal Canadian Mounted Police, and provincial and local police forces to identify people involved criminal activity, which may also include tax non-compliance and evasion. This is an important source of tax intelligence since individuals who obtain income from criminal activity are rarely included in CRA's normal risk assessment processes since they do not carry on a normal business activity.

France:

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The Netherlands:

Examples of the national risk knowledge groups set up on the instructions of the organisation can be found in: the building sector, trade, the service industry, the bars & restaurants sector, the medical sector etc. These groups comprise 10 to 20 members of staff.

Working method of the money laundering knowledge group, for example

The Customs Authorities report to the money laundering knowledge group unusual amounts of money and/or items with a high monetary value that have been discovered during routine audits. The group assesses the tax relevance of the find and passes the information on to the competent tax office and the Unusual Transactions Disclosures Office (Financial Intelligence Unit).

If during the audits it conducts, the Tax Administration comes across situations indicating money laundering activities, this information will also be passed on to the money laundering knowledge

group. After evaluating the situation, once again, the group will pass the information on to the Unusual Transactions Disclosures Office. If the Unusual Transactions Disclosures Office considers these reports to constitute so-called suspicious transactions and the Public Prosecution Service consequently decides to order an investigation, the FIOD-ECD will be responsible for conducting this investigation. Large-scale money laundering investigations are carried out by the National Criminal Intelligence Department, assisted by the FIOD-ECD.

Information from these (and other) investigations deemed relevant in terms of levying taxes is passed on to the Tax Administration, after permission has been granted by the Public Prosecutor.

Examples of national operations

The Netherlands Tax Administration has conducted various national operations over the past few years. These include the following:

- *Accounts project:* information received from Belgium indicated that a number of Dutch citizens had opened accounts at a Luxemburg bank using code names. In order to ensure a national uniform approach, a national-level project team was set up for this operation with a steering group that included representatives from the Public Prosecution Service. The investigation to trace the code names was carried out by the FIOD-ECD. The extra tax revenue amounted to € 50 million.
- *Foreign assets project:* The aim of this project is to uncover secret assets being retained in foreign countries by Dutch citizens, for example property, ships, bank and securities accounts. The Netherlands organised an international seminar on this subject, which was attended by Tax Administrations from countries including Germany, France, Italy and Spain. This resulted in a substantial flow of information from these countries. The project is organised along the same lines as the accounts project and has so far resulted in € 100 million in extra tax revenue.
- *Building fraud project:* In response to the outcome of a Parliamentary enquiry into prohibited prior consultations and price agreements in the building sector, the Tax Administration launched a building fraud project to look into the accuracy of primary accounting systems, turnover and the possible incidence of bribery. The project is based on the findings of the enquiry, on knowledge of the sector available within the Tax Administration and information from the Public Prosecution Service. This nationwide operation is being coordinated by a project group of enthusiastic specialists, led by a steering group. Results up until now: € 40 million in extra tax revenue and some 50 alerts to official and private corruption.

USA:

IRS-CI uses many methods to identify possible targets. Examples of these methods are:

- **Analytical Computer Software** – The IRS has developed computer software that can analyze tax returns filed for possible fraud through the matching of different IRS documents such as Income Information Returns and Tax Returns filed or not filed. In addition, the software has been developed that can correlate tax intelligence to provide overall statistics for research and analysis
- **Fraud Detection Centers** – IRS-CI has installed at Service Centers (where tax returns are filed), information analysts that can use sophisticated analytical techniques to review tax returns as they are filed for possible fraud
- **Lead Development Centers** – IRS-CI has groups of information analysts that review leads to possible criminal violations of tax laws, money laundering, and terrorist financing. These information analysts have accessed to all records mentioned above to perform their analysis.
- **Suspicious Activity Reports Review Teams** – IRS-CI is involved with other Federal investigative agents to review all Suspicious Activity Reports filed by Financial Institutions and Businesses for possible targets.

- Task Forces - IRS-CI is involved with other Federal investigative agents to review all any information to develop targets.
- Detroit Computer Center (DCC) – All financial transaction forms prepared in the US are sent to the IRS DCC. IRS-CI has a team of information analysts located at the DCC to review these forms for targets.
- Fraud Referral Program – IRS-CI has formed partnerships with the IRS civil divisions. If during the audits and collection activities conducted by these decisions, indications of tax fraud are discovered, the auditor, makes a referral to IRS-CI for possible criminal investigation. To strengthen this program, auditors have been trained to be Fraud Referral Specialists in each field office. These specialists work directly with the auditors to ensure they understand what constitutes fraud, and reviews all suspicious audits to determine if the suspicious activity constitutes fraud

Informants – IRS-CI identifies many of its targets through information provided by informants. To prevent abuses, IRS-CI has very strict guidelines in the use of informants.

- Financial Institution Compliance Working Groups – It is the experience of IRS-CI that most tax evaders and other criminals are committing their crimes to get more money. In the US most of this money will end up in a financial institution, including banks, security firms, and money transmitters. IRS-CI agents work directly with the Compliance Officers at these institutions to develop targets from the client’s suspicious activities identified by the Compliance Officers.

ii. Handling informants

Brazil:

Copei qualifies its informants in accordance with the degree of relevance of the information they possess, as well as their involvement in the investigation.

Information obtained from informants may be point specific, that is, related only to partially known facts, useful to give and investigation and initial thrust or identify its main focus.

There is also the possibility of the information possessed by the informant being essential or contributing for the development of the investigation. In this case there is a legal provision that payments should be made in order to obtain more information. Such payments are considered as gratification to eventual collaborators or informants. In those cases there is a concern with maintaining, for reasons of security and preserving the source, their anonymity. Therefore, there is a rigid control of gratification, whether internally, by Copei itself, or externally by the Federation’s General Surveillance Department (Controladoria Geral da União), the body responsible for controlling the financial, budgetary and patrimony administration of the federal public administration.

Payments are made from reserved funds (that is, the accountability is confidential), after the case is duly accessed by the person responsible for the investigation and the director of the respective Research and Investigation Office – Espei, and approved by the General Coordination. Once approved, the payment will be made in accordance with strict execution and control norms.

Upon every payment a report including all the information obtained will be drafted. This information will be duly evaluated for the establishment of further procedures. Also, the person in charge of the investigations should sign, together with the director of the Espei, a declaration including the amount

paid, the type of expense (obtaining information) and a declaration of its effective use in the investigations carried out by Copei.

Both in the initial approach and in keeping the bond with the informant, it is important to highlight the use, also, of specialized interview techniques; whether to gain the informant's confidence, by establishing a harmonic relationship between him and the intelligence agent, or to maintain control of the informant, when the relationship tends to be prolonged or even last during the entire period of the investigation.

Colombia:

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France:

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USA:

IRS-CI divides the classification of informants into two categories. The first category are those informants that just provide the initial information and have no longer any involvement in the investigation, The second category are those informants that continue to have an involvement in the investigation after the initial submission of information or have been paid for their information.

All informants of the second category must go through a strict review process to ensure they will adhere to US laws in functioning on behalf of the US, and do not have a hidden agenda. These informants must be approved by the Special Agent in Charge (SAC) of the Field Office before being used or paid. If the informant is located in a foreign country, the approval for use of the informant must be obtained from Headquarters.

All approved informants are entered into a database at HQ for future reference and at the end of the investigation the results of using the informant are entered. Headquarters conducts an annual review of all informants approved by the SAC, to ensure the guidelines are being followed and whether an informant should be deactivated.

All payments to an informant are recorded. Informants that act on behalf of the IRS-CI are generally involved in an undercover operation to gather additional evidence on the target.

An Information Report Referral (copy is attached) is prepared that summarizes the information provided by the informant. The investigating agent reviews the information to determine if there is sufficient credibility to the information to warrant an immediate criminal investigation, or it can be sent to a Lead Developmental Center for further research and corroboration.

IRS can pay informants awards for information in two methods. The first and most used method is paying the informant up to 10% of all taxes collected at the conclusion of the IRS activity. The

percentage is dependent upon how much did the information result in determining the correct taxes due and owing.

The second method is used more often in criminal investigations. The investigating agent can pay the informant at the time of receiving the information, if the investigating agent believes the value of the information warrants the immediate payment.

An example when this would be permitted if the informant was turning over the second set of books for a business that recorded correctly the income and expenses of the business. Generally, the amounts paid immediately are capped at under 10% of potential tax loss, and the informant can be paid the rest of the 10% once the taxes are collected. All information provided by informants is looked at very thoroughly to judge its accuracy.

It is especially important to review the motive of the informant to ensure that the information has some validity, and it is not just the informant's intention to involve the tax intelligence unit in the target's affairs without merit.

iii. Reconnaissance

Brazil:

An essential rule followed by Copei agents is, before executing any intelligence operation, carrying out a reconnoitering of the installations used by the targets of the investigation.

During the reconnoitering, all the relevant data and information is obtained, according to the mission's objective, such as: the users of the operational environment, the existence of private security, transportation means used, entrance and exit times, number of entry points, the possibility of using real estate or a vehicle for support, the existence of a hospital in the surrounding area, etc.

Copei's norms and procedures manual also has lists of minimum items to be verified during reconnoitering, when fixed or mobile surveillance activities are carried out.

Also, Copei uses reconnoitering as an essential technique for enacting the legal search and seizure warrants. In those cases, reconnoitering helps in estimating the resources necessary for the success of this type of legal action, both in terms of staff and of material.

France:

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iv. Interviews

Brazil:

Copei considers the interviews technique indispensable for gathering information in tax intelligence activities, due to the importance of human sources in the investigative process. Thus, the ability to

conduct interviews is essential for civil servants in Copei. Therefore, the aim is for the entire staff, especially the operational agents, to be enabled to interview people with several types of personal and professional profiles, on various types of subjects.

The training in interview techniques offered to SRF's civil servants is comprised of theoretical content, which is presented in one day and a half, and practical training lasting two days. All of the twenty students in each class, in pairs, interview actors who play the role of contributors in several situations. The interviews are watched by the other students through an internal video circuit, when they are analyzed by the instructors.

This training course reproduces the method used by Copei's civil servants when they carry out their investigative interviews. The different types of communication that take place during an interview are observed and perfectly characterized, classified into symbolic, non-verbal and written. After this course, interviewers begin paying more attention to human psychology involved in using the interview technique. Thus, to increase their power of persuasion, resources such as the reciprocity, consistency and instigation techniques are used. Also, the need for creating affinity, influence appearance, etc. is identified.

The techniques used take into consideration that the interviewer's attitude should not be merely passive, but capable of stimulating behaviors in the interviewee that can be assessed as to their truthfulness or lack of it. These behaviors are also information of interest for the investigation.

Additionally, no interview carried out during a Copei investigation is executed without previous planning, foreseeing its objectives, the interviewee's characteristics, the necessary technical studies, the physical environment, etc.

In accordance with the techniques used, the interviews go through five phases, related to introduction, approximation, questioning, summarizing and closing. Likewise, a standard method for tax intelligence in SRF is the two interviewer format. They take on the roles of primary and secondary agent, whose prerogatives are well established.

Copei's norms and procedures manual also has a list of minimum items to be verified while planning interviews.

USA:

IRS-CI conducts many interviews to gather tax intelligence. IRS-CI considers this technique indispensable in gathering tax intelligence. The ability to conduct an interview is one of six critical elements on which investigative agents are evaluated each year. The investigating agent must have the ability to interview individuals in a very professional manner including targets, attorneys, accountants, businessmen, informants, and witnesses from many aspects of life. As noted in the text, it is vital for an interviewer to be able to create empathy with the interviewee to solicit the greatest information. This is especially true when conducting an interview with a target. To obtain a confession from a target at the initial interview is very beneficial in that it can save the government significant funds by reducing the time to complete the investigation. Training in interviewing is given to operational agents both at the initial training classes and more advanced interviewing techniques is given later in an operational agent's career.

v. Cover stories and undercover operations

Brazil:

The Research and Investigation General Coordination uses this operational technique in order to assure the confidentiality of the investigation and the protection of the identity of its operational agents and installations.

Due to the techniques' sensitivity, its use is also dependent upon previous knowledge and approval of the director of the respective Espei. The drafting of the R1 report that consolidates the information obtained and of suggestions for the next actions is mandatory.

Since it is based on the use of a fictional story, which the agent must fit into completely, allowing him to become integrated into or observe the fact, situation or target being investigated, the cover story technique should be well studied and thoroughly planned.

Thus, certain prerequisites are always followed in cover stories, such as:

- Keeping it simple, to decrease to probability of suspicion or questions;
- It should be adequate to the operational environment;
- Compatibility between the agents' actions and the cover story created;
- Taking advantage of the characteristics, aptitudes and knowledge of the intelligence agent involved in the action.

Therefore, the agent designated to carry out the action is always well trained, in addition to having a body type adequate for the operational environment. Several tests are carried out to verify the consistency of the cover story before it is acted out. Also, the material, the clothing, and the equipment that can be used should be chosen in accordance with the data observed during the reconnaissance of the operational environment.

It is important for the designated agent should act naturally and act out the plot created perfectly, while carrying out the action. And more, after the action, the cover story cannot simply be abandoned, since, in the future, it may be necessary to return to the operational environment in search of more information.

Depending upon the depth of the cover story, if it requires documents or public registries to be issued to lend credibility to the agents or practices involved, the intervention of the Public Prosecution Service and the Judiciary Power will be necessary. Therefore, the realization of certain juridical/administrative actions may be authorized for the benefit of the investigation, and the intelligence agent will not be held responsible in any way.

France:

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USA:

IRS-CI considers using undercover operations to collect denied tax intelligence, an essential tool. However, IRS-CI also considers conducting an undercover operation very dangerous to the undercover agent and intrusive to a target's privacy. Therefore, IRS-CI has implemented extensive protocols governing all aspects of the undercover technique and will only approve an undercover operation as a method of last resort to get evidence that has been denied.

IRS-CI has a special section in headquarters that is responsible for management oversight of the use of undercover operations, the Special Investigative Techniques Section. Assigned to this Section are operational agents, who have experience with undercover operations, known as Undercover Program Managers (UPM). The UPMs are responsible for providing expert advice to operational agents and management in the use of undercover operations. The UPMs ensure that all undercover activities are pursuant to IRS-CI policies and procedures and to US law that protects the privacy of individuals.

Before initiating an undercover operation (UCO), the Field Office works with the UPM to develop a Plan of Action. The Plan of Action must detail the purpose of the UCO and how they plan to conduct the UCO. The UCO application is forwarded to IRS-CI senior management for review and approval. Once an UCO is approved, a meeting must be held at which all participants of the UCO are present to review the Plan of Action. The participants include the Field Office Management Team, the UPM, the UCA, the Contact Agent, the Cover Team, and the Case Agent. The Contact Agent is an operational agent that will be the sole contact the UCA will have while the UCO is ongoing. The Contact Agent will also be using a false identity to provide safety to the UCA. The Cover Team is other operational agents that will conduct surveillance of the UCA during the UCO to prevent harm to the UCA. The Case Agent is the operational agent actually conducting the investigation who requested the use of the UCO, and who will be briefing the UCA what evidence he should be attempting to obtain.

Every 90 days during the UCO, the UPM must meet with the UC team to review the progress of the UCO, and to ensure it is being conducted in compliance with the undercover protocols. A written report of the review is prepared and it is forwarded to the head of the Special Investigative Techniques Section. Part of the report will address if the UCO should be discontinued if progress is not being made. Generally, at the end of 1 year, the Field Office must reapply to senior management to continue the UCO. At the conclusion of the UCO, a final report must be prepared discussing the results of the UCO, and making recommendations for improving the process. These reports are sent to HQ reviewed and filed with the other paperwork of the UCO, i.e. application and quarterly reviews.

This Special Investigative Techniques Section also manages the work done in developing backstopping for IRS-CI undercover agents. As part of this process, this section utilizes strict rules in selecting and training IRS-CI operational agents to be undercover agents. They also ensure that all undercover agents are given sufficient paperwork to create a fictitious identity to provide security while working undercover. The selection of the undercover agent and the type of false identity to be used for an undercover operation will be dependent upon the target. These factors will be based upon on what will allow the undercover agent to easily operate in the environment that the target operates within this aspect has become increasingly difficult with the rise of internet browsers such as Yahoo and Google which targets can used to verify the identity of an undercover agent.

Other protocols IRS-CI uses to increase the safety of undercover agents, include not using an undercover agent in the locale where he lives. This reduces the opportunity for the target to meet accidentally the undercover agent or his family under the UCA's real name. Undercover agents are also examined once a year by a psychiatrist to monitor whether the stress of being an UCA is becoming overwhelming, including showing signs that the UCA is beginning to become the undercover role in real life.

Examples of types of UCOs that IRS-CI uses to gather tax intelligence are the following:

- Storefronts – Storefronts are fictitious businesses that UCAs open to rent actual office space to meet with targets. The business enhances the background of the UCA. The business office allows the UCAs to record these meetings with both video and audio equipment. Storefront businesses have been kept operational for years to help establish that it is a legitimate business.
- Business Opportunities Program – In the US, businesses that deal primarily in cash, such as restaurants and bars, are more likely to not report all of their income and evade taxes. IRS-CI will send UCAs to these types of businesses when they are being offered for sale, to determine if the owner of the businesses will inform the UCAs the correct income to justify the selling price.

Due to the sensitivity of UCOs and dangers inherent with conducting them, IRS-CI only conducts approximately 75 undercover operations of the 4000 investigations each year.

vi. Surveillance

Brazil:

Very frequently, Copei uses the surveillance technique, particularly aimed at identifying goods undeclared by contributors under investigation (automobiles, real estate, etc., which may be registered under the names of third parties), their contacts with persons or companies, or illicit activities in which they may be involved.

Surveillance always take place within the context of an ongoing investigation. Therefore, it is carried out after being authorized by the director of the Espei (Research and Investigation Office) under which the investigation is taking place.

After each surveillance operation, the agent in charge should write a report called R1, in which all the facts observed and incidents occurred are described, and any photographs or filmed footage obtained is included. This report will become an integral part of the investigation's history.

Copei's norms and procedures manual includes a list of minimum items to be verified in planning fixed or mobile surveillance actions, such as the amount of staff involved, observation points, equipment to be used, security measures, etc.

Just as the other operational intelligence techniques, surveillance is carried out in accordance with the parameters of rights and guarantees foreseen by Brazilian legislation.

USA:

IRS-CI conducts surveillances to gather tax intelligence. IRS-CI uses surveillances for all of the purposes stated above. IRS-CI incorporates all of the practices noted above in conducting a surveillance. Before a surveillance can be conducted a Special Enforcement Activity Report (SEAR) must be prepared and approved by the eSenior Manager of a Field Office. The SEAR must identify all possible hazards to the upcoming surveillances, who will be involved, measures for counter surveillance, how the surveillance will be conducted, i.e. by individuals,

mechanical, electronic, etc. After the surveillance has been completed all noted must be transcribed and added to the case file and a post SEAR must be prepared to discuss the outcome of the surveillance. As with the other intrusive investigative techniques discussed above, surveillances are only conducted in accordance with US laws to the right of privacy.

vii. Photography and filming

Brazil:

Copei also uses photography and filming as means to obtain evidence of tax, customs, or money laundering crimes. For that, its operational agents are trained in the use of such equipment. Each one of the ten Espeis and 4 Nupeis has modern digital photography and filming equipment.

Much of this equipment has been perfectly adapted to register images discreetly and by remote control, without exposing the agent to risks or revealing of his activity.

SRF is currently purchasing aircraft (two airplanes and two helicopters). This aircraft will include integrated filming equipment, "FLIR" standard, which will allow for registering images with no vibrations. The equipment will also be enabled for nighttime operation, for it will also operate in the infrared spectrum. In order to make it easier to analyze the images later, as well as strengthen them as evidence to be used to instruct processes, this filming equipment will include geo-reference resources. The location, in terms of its geographical coordinates, will be visible on the image.

The main focus of the use of aircraft will be smuggling and contraband repression. In this way, it will be possible to register the movement of irregular goods, as well as their transportation within the national territory in defiance to customs legislation. The aircraft may also be used to produce intelligence in investigations carried out by Copei.

USA:

IRS-CI takes pictures and films to gather tax intelligence. IRS-CI trains specialists and acquires specialized equipment to perform tasks. All pictures taken are conducted in accordance with US laws to the right of privacy. One technique IRS-CI uses in taking picture is known as a pole camera. There may be instances when you need to record the activity at a site over a period of time and it is impractical to have an operational agent to be present to take pictures. In those instances a video camera will be secretly installed at a location that overlooks the site you wish to photograph, such as a telephone pole (hence term pole camera) from which you take remote pictures of the site.

viii. Search and Seizure

Brazil:

In Brazil, a Search and Seizure Warrant is a judicial authorization given to a police authority or justice officer, to investigate and search, followed by seizure or arrest of the wanted person or thing, motivated by evidence of illicit acts. The federal tax administration may propose either to the police authority, to the Federal Prosecution Service (General Prosecutor of the Republic), or the Prosecutor of the National Treasury to request the Judiciary Power (Judge or Court) to issue one such warrant.

In this case, the institutions involved in the execution may act as a task force. If that happens, there should be a clear definition of each bodies' attributions, in accordance with its legal prerogatives.

In task administration, particularly in Copei/SRF, the intelligence agent in charge of coordinating the operation should be deeply knowledgeable in case development, and may or not be the one responsible for conducting the investigation. He must be responsible, among other preparatory measures:

- for defining the team that will take action, especially in the logistics and information technology areas;
- for choosing the places that should be previously reconnoitered, avoiding unforeseen occurrences and surprises while enacting the warrant;
- For identifying the type of equipment, hardware platform, operational system and other systems used in the information technology area, as well as the location of the data processing center.
- For commanding the teams of tax administration agents, designated to enact the warrant, splitting them up into areas.

The members of each team who participate in the operation should be aware of the main information regarding the investigation; the correct identification of the target of the warrant; the objectives to be reached (documents of interest, databases to be copied, equipment to be seized, etc.); additional information that may be of aid during the operation. This information is given during a *briefing* before the operation, normally hours before.

After the enacting of the warrant, the area coordinators meet with their respective teams (if the mandate is carried out simultaneously in several places.) At this meeting, the activities carried out will be reported and each team will turn in its evaluation report. Later, the coordinators of each area will consolidate the reports of the activities carried out in the region or places under their responsibility, turning in the teams' evaluation reports in to the coordinator of the operation.

Search and seizure warrants are always enacted out by Copei/SRF in accordance with the legal provisions in the text of this document. The contributors who are the targets of such measures are treated urbanely. As to the evidence existing in several types magnetic environments, arresting of employees or seizure of computers upon which the economic activities of the people or companies under surveillance depends is avoided. In those cases, one always chooses to copy such magnetic files, using techniques that assure the complete identity between the copies and the original document (mirroring, for example).

Canada:

Search warrants should be executed without undue delay. In some jurisdictions, the search warrant may refer to a time frame (i.e. 15 days) during which it may be executed. Proper planning will ensure that the selected time frame is realistic and that there will be no last minute surprises, such as the subject of the search being away on vacation.

The execution of a search warrant is a very serious matter that must be carefully planned. The following points should be covered in the planning process:

- A plan of the premises to be searched should be prepared whenever possible.

- The investigator in charge of the case should be responsible for the over-all planning of the search and its successful execution. One experienced investigator per search location should be assigned the responsibility of acting as search team leader and will answer questions from the search team members and individuals found at the search premises..
- A briefing memorandum should be prepared by the investigator in charge of the case setting out among other things, the date of the search and entry time, the address for each of the premises to be searched, the names of the officers going to each search location, details of the records to be taken, and any other information that may assist those taking part.
- The investigator in charge should estimate the volume of records that they expect to seize so that they can arrange for transportation and storage space and order sufficient boxes and other supplies.
- Box labels should be prepared.
- One copy of the signed search warrant, along with a copy of the plan of the premises, the briefing memorandum prepared by the investigator in charge of the case, labels and stickers, and business cards of the investigator in charge, should be given to each search team leader.
- A search team will be comprised of as many officers as are needed to do the job quickly and efficiently. At least one female investigator should be included where appropriate, particularly at residential locations.
- A senior officer should remain in the office to act as search co-ordinator. Search team leaders must inform the co-ordinator upon entry and completion of each search location and indicate if the evidence believed to be at that location was found and seized.
- Generally, all places to be searched should be searched simultaneously. This will avoid the possibility of records being destroyed in one place, as a result of a search at another.

Prior to the search, a meeting of all participants should be held. It should be held as close to the search day as possible, preferably the day before. Officers will be assigned to their respective search teams and issued any other necessary instructions including transportation arrangements to the search location.

USA:

In the US, the search warrant is an invaluable method used by law enforcement to obtain denied data. IRS-Criminal Investigation has been issued statutory authority to conduct search warrants in the course of criminal tax investigations. However, since the US Constitution protects against unreasonable search and seizures, strict protocols are followed to ensure all search warrants are consistent with US laws and safely.

Because of these issues, the search warrant is used with great discretion and restraint. All other investigative tools, such as mail covers, surveillance, informants, trash pulls, etc., are considered before making the decision that a search warrant is needed to acquire the evidence. IRS-CI consults with both their attorneys and Department of Justice attorneys when evaluating if the situation requires a search warrant.

Once it has been decided to conduct a search warrant, the IRS-CI performs the following steps:

- a. Prepare the search warrant application
- b. Obtain approval from a US Magistrate
- c. Plan the enforcement action
- d. Execute the search warrant and preserve the evidence
- e. Follow to the applicable post operation procedures

A. Prepare the Search Warrant Application

In the US the special agent must prepare a search warrant affidavit that demonstrates there is probable cause that a criminal tax violation has been committed and that items associated with that crime are present at the site wished to be searched. The evidence needed to demonstrate probable cause is usually gathered through other methods to gain denied data such as informants, surveillances, undercover operations, consensual monitorings, etc.

B. Obtain the Approval to Conduct a Search Warrant from a US Magistrate

Once the affidavit is completed, it is reviewed by IRS and Department of Justice attorneys to ensure it meets all of the criteria needed to prove there is sufficient probable cause that a crime has been committed and evidence of that crime is at the site requesting to be searched. The special agent is then required to appear before a US Magistrate and swear that the information contained in the affidavit is true and accurate. Once the Magistrate grants the search warrant, the special agent then proceeds with planning and conducting the search warrant.

C. Plan the Enforcement Action

Because conducting a search warrant could be a highly hazardous operation, IRS-CI performs extensive preplanning and background work to ensure a safe and efficient operation. The following planning documents are used for every search warrant:

- Enforcement Action Review Form
- Risk Assessment Guide
- Search Warrant Checklist
- Search Warrant Plan

The Enforcement Action Review Form summarizes that type of enforcement action to be undertaken, such as a search warrant, what level of risk is involved with the action: high, medium, or low, and provides the background why a search warrant is needed to obtain the denied data. The form must be approved by the Special Agent in Charge of the office.

The Risk Assessment Guide is a checklist that helps the special agent ascertain the level of risk in conducting the enforcement action: high, medium, or low. Items listed on the checklist include:

- Does the target have a criminal background?
- Is the target known to have weapons?
- Will other people likely to be at the search warrant site, such as children?
- What type of building will be searched?

The Search Warrant Checklist is a summary of all steps the special agent needs to complete in preparing for a search warrant. The key areas on the checklist are:

- Pre-Operation Intelligence Gathering (Obtaining personal and criminal histories of subject and associates including photographs; observe mode of operations, habits, and likely responses to search warrant)
- Site Survey (Type of building, neighborhood, photographs of structure, parking sites to stage at, nearest medical facility, prepare maps, are there minors in the area, i.e. in building or a school nearby.)
- Staffing (How many people should participate, what will their roles be, who is in command, should assistance from local law enforcement be requested.)
- Equipment (Body armor, types of weapons, entry tools, computer forensic equipment, photocopy machine, first aid kit, lighting equipment, raid kit to document evidence gathered.)
- Communications (Test all radios and frequencies, are there radio dead stops in area of search, call signs to be used, telephone numbers of police, hospital, and other emergency personnel.)
- Pre-Operational Briefing (Prepare and review written plan, meeting with all personnel participating on warrant to review all aspects of search, discuss intelligence, conduct rehearsal if practical)
- Post-Operational Review (Gathering of all warrant personnel to discuss activity and provide feedback to improve operations in the future.)

The Search Warrant Plan places into writing all aspects of how the warrant will be conducted addressing the areas listed on the Search Warrant Checklist.

D. Execute the search warrant and preserve the evidence

Upon entry, the premise is secured and the search warrant is read to whoever is in control of the premise. Assigned special agents photograph and/or video each site location to identify the condition of the premises upon entry and to assist in identifying the location of evidence seized. Next, the premises are sketched and rooms labeled.

The CI Search Warrant Computer Inventory Program is used to record all documents and other evidence seized pursuant to the warrant. All evidence seized is also labeled with a IRS, Criminal Investigation evidence tag, and a chain of custody form is prepared.

When a computer is at the site during the execution of a search warrant the following is considered:

- Preserve the chain of custody and integrity of the evidence.
- Pre-programmed destructive software that can alter and delete data.
- Determine where the information is being seized: a local personal computer, a network computer, or a computer located outside the United States. Generally, do not seize electronic evidence located outside the United States.
- Thoroughly document and photograph the area. Photograph the components of the computers and the cable connections.
- Whether the computer should be removed from the site to conduct the search

At the conclusion of the search warrant a copy of the inventory of items seized is provided to the subject or the individual in charge of the premises.

E. Follow to the applicable post operation procedures

IRS-CI special agents prepare a Post Enforcement Operation Summary Form that summarizes the enforcement action, including who participated, their roles in the operation, what individuals were at the search warrant site, method of entry, description of premises upon entering and leaving, photographs/videos of premises, description of any force needed to execute warrant, what evidence

was found, including contraband and weapons, who was provided a copy of the search warrant and a copy of the inventory of seized items at conclusion of warrant. An assessment is performed as to how the search warrant could have been conducted more effectively.

b. Knowledge production methodology

Brazil:

According to the methodology used by Copei, the first stage of the tax intelligence works is research, that is, collecting data and information available in open sources, making it possible for the analyst to formalize a first interpretation of the problem and propose subsequent actions.

After those procedures, if the evidence is considered relevant and consistent, the General Coordination authorizes the opening of the case: then the investigation per-se begins, aimed at producing knowledge and intelligence to subsidize future tax actions of SRF's other units, including those related to criminal aspects that might be detected.

The investigation goes through the following phases:

a) Planning

In this phase, the work carried out in the Espei or Nupei is foreseen by the agent, in order to reach the desired objective in the most efficient and economic way, always being guided by the basic principles of intelligence activities.

All the aspects developed in planning should be in place when developing the document called *Projeto Inicial* (PI) (Initial Project), which is mandatory in order to obtain Copei's approval and begin investigation in the Espeis and Nupeis.

That document will explicit the subject, the subject's time scope, the user of the knowledge, the aim of the knowledge, the deadline for execution, the essential information already known and the information one intends to obtain. The necessary means, such as the number of agents involved, the need for vehicles, renting real estate, paying informants, using specific instruments, etc., will also be foreseen.

It is important that the PI also includes information on whether aid from other regional offices or Copei Nuclei will be necessary, as well as the need for contacts with other state bodies, such as the Public Prosecution Service, police forces, of the judiciary system.

b) Meeting

After the approval of the Initial Project – PI, by Copei, the agent in charge in the respective Espei or Nupei begins the phase in which all the data or knowledge referring to and investigation are collected and obtained. According to SRF's intelligence systematic, the following instruments are used in this phase:

- Collection – aimed at the exhaustive obtaining of data available from open sources, for which it is not necessary to use specialized operational techniques.
- Search – non-ostensive activity aimed at obtaining denied data, for which specialized operation intelligence techniques are used.

- Diligence – aimed at the official obtaining of available data from the contributors, though a subpoena to supply information or documents to which tax legislation allows tax administration agents to have access.

During the meeting phase, the regional office (Espei) or their nuclei (Nupei) in Copei carry out, in their respective jurisdictions, the necessary specialized research and investigation activities that will be documented in reports called R1. Otherwise, each Espei/Nupei can, if such is the case, request from the other regional offices the information or knowledge necessary for their activity. In that case, the requesting office, with the knowledge of Copei, should formalize the request to the office that will carry out the work. This formalization takes place through internal documents called collection, search and diligence requests. Both those requests and their responses, will circulate in Copei's intranet system – Sispei, where they will be elaborated, expedited, evaluated, approved and answered.

c) Analysis and Synthesis

Phase in which the knowledge and data brought together, through collection, search, and diligences is duly evaluated, towards reaching a state of certainty or an opinion based on the knowledge obtained about tax, customs or money laundering illicit.

In order to advise SRF's higher administration, if the knowledge and intelligence obtained reveals tendencies for future tax planning for other contributors or economic sectors, analysis and synthesis will be useful also to reach an opinion as to the need for changes or improvements in tax or criminal legislation.

d) Interpretation and conclusion

After developing the report, in the format most adequate for the type of knowledge produced, it will be revised by the immediate boss, at the Espei or Nespei where the agent in charge of the investigation is.

If the report is fully approved at the regional level, it will be sent for revision by Copei, where it will be handled by analysts from the Investigation Division – Divin. If improvements or changes are necessary, the report returns to the original department, where the agent in charge of the investigation will evaluate the suggestions for alterations. These revisions evaluate aspects of the composition, of coherence in the writing, and the quality and sufficiency, as proof, of the investigations carried out.

In order to improve this phase of knowledge production, in which the writing must be such as to communicate the result of the investigations and express the analyst's state of opinion, Copei has developed and has been applying to its information analysts and operational agents a specific training session about techniques for composing tax intelligence reports. The objective of these techniques is for these reports to expose the issues clearly and follow a standardized form.

e) Diffusion

Diffusion normally occurs when the Research and Investigation Report – R.P.I., the Special Report – RE, or the information messages developed are sent or transmitted, after their approval by the General Coordination.

Copei is concerned with establishing the necessary degree of secrecy and the means of communication to be used when diffusing knowledge. Thus, in accordance with the principle of compartmentalization, the reports are publicized only to those who need to know them. That is, only the sectors of SRF that, in accordance with recommendations included in those reports' appropriate items, must carry out some measure; or state bodies with powers and legal authorization to access this secret information (Especially the Public Prosecution Service and the Ministry of Justice), will receive this knowledge.

Also, the approved reports and information messages remain filed in Copei's information system – Sispei, for future consultation. The original documents that function as appendixes or annexes for those reports remain filed at the Espei or Nupei that produced the information. Thus, if such proof or evidence is necessary during administrative processes or legal procedures, it may be specifically requested. This contributes to decrease the risks of losing or destroying documents essential for proof.

USA:

The methodology to gather intelligence in the US is consistent with the steps listed in this chapter.

Planning - Before any investigation is initiated a planning session is conducted between the agent and his supervisor to develop the plan of action for the investigation. They review the principles of objective, security, control, impartiality, and simplicity during the planning session. They prepare timelines for completion of the different steps of the investigation that they agree are needed to be performed to gather the evidence needed to prove or disprove the allegation of criminal activity by the target. This planning session is written down in a report. The report is updated every four months with the progress of the investigation until its completion. Changes will be made periodically to the plan of action as new intelligence is gathered.

Gathering – The actual investigative work is the gathering of evidence. It is done in accordance to the plan of action prepared by the supervisor and investigating agent. All legal sources of information are available to the investigating agent to collect evidence. The investigating agent briefs the supervisor of all major steps completed in gathering the evidence to ensure that the correct steps are being taken.

Analysis and Synthesis – As the agent gathers the evidence, he and his manager constantly analyze and synthesize it to determine whether the planned steps should be amended.

Interpretation – The agent and manager will periodically discuss the results of the gathering, analysis and synthesis stages of the investigations to evaluate if sufficient evidence is being gathered to warrant a criminal recommendation or should the investigation be discontinued. IRS-CI attempts to perform its interpretation as early into the investigation as possible to limit the waste of resources and the unfair intrusion into the target's privacy.

Dissemination – Once the investigation is completed it is placed into a report and disseminated to the appropriate parties to review for accuracy and legal sufficiency. It is then forwarded to the appropriate parties for disposition, whether that be for criminal prosecution, use for formulating tax policy, or training. All pertinent information of an investigation is placed into a centralized computer database for future reference as needed.

i. Planning

France:

Unfortunately, due to unexpected problems, the translation of the best practices sent by this country wasn't ready for the 40th CIAT General Assembly, in Florianopolis. As soon as they are ready, a new version of this document will be sent.

ii. Meeting

No best practices specifically related to this item were presented.

iii. Analysis and Synthesis

No best practices specifically related to this item were presented.

iv. Interpretation

No best practices specifically related to this item were presented.

v. Diffusion

No best practices specifically related to this item were presented.

VI.8. Results and Products of Tax Intelligence

Brazil:

The product of the tax intelligence works is normally substantiated by investigation reports, to be sent to SRF's competent sectors. Such sectors may be either from the internal tax surveillance area (income tax, taxes on industrialized products, etc), or from the customs area. Those are the sectors which, based on such intelligence reports, will carry out the surveillance of the contributors indicated.

Additionally, those intelligence reports are also focussed on gathering evidence of criminal conduct, so that, when such is the case, the penal representation to be sent to the Public Prosecution Service is solid enough to contribute to the contributor's conviction at the end of the legal process.

Sometimes the result of Copei's investigations demands immediate notification of the Federal Public Prosecution Service, and, in such cases, the research and investigation report is sent directly to that body. This takes place especially in cases of illicit conduct in which it is essential to request a legal warrant to carry out more in-depth inquiries by, for example, the police organization with the exclusive prerogative of intercepting communications.

The intelligence knowledge produced by Copei is divided into:

Information Messages

This is a report about a fact or situation that is made known to a certain body, due to its own activities or those of third parties, who may be autonomous or associated in the case of denouncements. The Information message is not signed, and should be classified as confidential and transmitted to those who need to be informed about the matter, who are also responsible for preserving its confidentiality. The circulation of the information message is restricted to SRF and other intelligence bodies.

The information message should not include value judgements as to the facts described, or suggestions for those who will make use of the knowledge. Techniques, means and resources used should not be described there.

The information message should also be used to respond to requests made between Copei's regional units. It can also be used to diffuse knowledge from investigations which, although they it has not born very relevant results, includes information that must be diffused.

Research and Investigation Report (RPI)

This report is classified as confidential and shall be diffused as the result of research and investigation activities. It must be signed by the person in charge of the investigation and the director of the unit and, optionally, by the other agents involved in the case. It may be final or partial.

Special Report (RE)

This is a confidential report, developed as the result of a research and investigation activity when the danger posed by the target or the sensitivity of the matter being handled may place the physical integrity of the investigating agents at risk. Its diffusion should be very handled with great care and it may, in exceptional cases, be sent to external bodies.

This report will not contain the identification of the servants who developed it, and will be authenticated by a standardized stamp and the signature of the director of the unit on every page of the RE.

Research Report (RP)

This report is classified as confidential and diffused as a result of research activities, when the denouncements sent to Research and Investigations System's units are handled. Its objective is to present the information and conclusions from the detailed analysis of the denouncement in a more enchainé, elucidating and didactic way. It must be signed by the person responsible for the denouncement and the Director of the unit.

Chile:

Unfortunately, due to unexpected problems, the translation of the best practices sent by this country wasn't ready for the 40th CIAT General Assembly, in Florianopolis. As soon as they are ready, a new version of this document will be sent.

France:

Unfortunately, due to unexpected problems, the translation of the best practices sent by this country wasn't ready for the 40th CIAT General Assembly, in Florianopolis. As soon as they are ready, a new version of this document will be sent.

USA:

The primary products of tax intelligence in the US are the following:

- The identification of possible criminal tax violations and the subsequent investigations of the entities believed to be committing these violations
- The identification of possible non-criminal tax violations and the subsequent audits of the entities believed to be committing these violations
- Providing advise to senior tax advisors, including personnel at Treasury, Congress, and the President's staff on tax policy issues

These products are presented to their respective clients in various formats. In the case of tax intelligence used for identification of possible criminal tax violations, the format is known as a referral. A referral can come in many different forms depending upon the source of the intelligence in the IRS. The Information Report Referral (copy provided as an example) is the primary form used by IRS-CI when the intelligence has originated from the public, including informants. The Information Report Referral is a standardized form, which provides the pertinent identifying information on the potential target and the allegation. Another similar form is the Criminal Referral, which is prepared by the IRS Examination Functions based upon audits and other civil compliance activities. These reports are forwarded to either our field offices or Lead Development Centers. Information analysts or operational agents conduct proactive non-investigative intelligence gathering and analyze the referrals to corroborate the allegation. A written report (appraisal) is prepared to recommend whether a formal criminal investigation should be open or the referral should be sent to the Examination Functions of the IRS. CI can also refer intelligence to the Examination Functions when their formal investigations do not indicate criminal intent by the target.

In IRS Headquarters, experienced employees (known as senior analysts) are tasked with conducting intelligence gathering and producing reports. The work can be both proactive or reactive intelligence gathering. These employees are assigned to both the Examination functions and CI. They gather intelligence from various sources within and outside of the IRS to produce assessments (intelligence reports) concerning the various tax policy issues being addressed. These analysts examine historical data in order to predict future results based upon current tax policy or proposed changes to tax policy. The analysts also use this information to identify new criminal schemes and to aid the agency in adapting to investigate these new schemes. Analysts will prepare new policies and procedures that are issued to the field agents. The analysts will also prepare training courses to aid the field agents to quickly understand the new schemes. This information can also be shared with representatives of foreign countries in multi-national forums such as CIAT or OECD.

VI.9. Ethic and Moral Principles of the Tax Intelligence Activity

Brazil:

All civil servants of the Brazilian Executive Power (Including those of the Federal Tax Administration and its Tax Intelligence) are ruled by the Professional Ethics Code approved through the Presidential Ordinance 1.171, of 06/22/1994. This code foresees the so called “Deontological Rules”, the main duties of the civil servant and the prohibitions he is under. It also creates “Ethics Commissions” in all the bodies and entities of the direct, indirect, autarchic and foundation related Federal Administration, as well as any body carrying out attributions delegated by the Public Powers.

Also, to promote awareness among its servants as to the importance of the activity carried out by them and the care they should take in carrying out their activities, as well as to encourage the creation and keeping of a security mentality among the tax administration employees, especially those who are serving the tax intelligence body, the Research and Investigation Coordination of the Internal Revenue Service - SRF developed the “Operational Security Manual”. This manual was instituted by the Decree SRF 1.700, of December 12, 2003.

The manual presents rules and recommendations to encourage the SRF’s staff, regarding the risks posed by external and internal actions or interests to the institution and its servants, and emphasizes the need to guard knowledge and data protected by tax secrecy.

Thus, institutional protection is translated into awareness building among its servants as to the importance of the activity carried out by them and the care they should take, both in carrying out their

tasks and in assuring the security of the physical, computerized or cognitive objects to which they have access.

The manual is aimed at all the servants of SRF's general office who, in addition to fulfilling the duties imposed by the legal ordainment and since they are involved in the activity of collecting part of the collectors' income, should follow a strict ethics. This ethics privileges additional care in dealing with public matters, preserving the secrecy of the contributors' tax data, professional conduct and the necessary discretion for carrying out their function.

In order to promote the institutional strengthening of the organization, by permanently perfecting and updating the normative procedures and recommendations, particularly respective to protecting the tax secrecy and its employees, in September of 2003, a workgroup was formed, comprised of representatives of SRF's Coordinations, to elaborate the Internal Revenue Service's Institutional Security Manual.

In December 2003, the Manual was concluded and approved and, since then, a second stage has been in place, which is the phase of implanting the manual's diffusion mechanisms. This has been taking place through campaigns on the intranet with exemplifying films and stories, using characters created specifically to represent several types of servants, in addition to the distribution of calendar and bookmarks with the recommendations in the manual. This diffusion will be permanent, that is, it will be a permanent task within the scope of SRF.

France:

Unfortunately, due to unexpected problems, the translation of the best practices sent by this country wasn't ready for the 40th CIAT General Assembly, in Florianopolis. As soon as they are ready, a new version of this document will be sent.

USA:

Because of the extreme sensitivity of tax intelligence information and the inherent power an investigating agent has in performing their duties, the IRS ranks ethical and moral behavior as the highest criteria to judge an employee. The US has passed various laws to ensure the ethical and moral behavior of its employees and the agency in whole are maintained. These laws also govern the manner in which tax intelligence can be legally used by the employees of the IRS and other parties to whom that IRS may pass tax intelligence pursuant to the laws. IRS has enacted a code of ethics that incorporates policies and procedures to implement these laws. If the employee is found to have violated these laws, policies or procedures, the employee can be temporarily suspended, fired, fined, or sentenced to jail, depending upon the violation's degree of severity.

Background checks are performed before hiring all employees to ensure that they are of the highest integrity. Depending upon the type of tax intelligence activity the employee may be involved, additional background checks are conducted throughout the careers of employees. For criminal tax intelligence work an employee's background check is renewed every 5 years.

All employees are given training in the laws, policies and procedures governing ethical and moral issues when they are hired. In addition an annual refresher course is given to every employee.

One of the biggest concerns in the US has been the issue of politicians using tax intelligence for personal gain. To minimize this from occurring, only the head of the IRS, the Commissioner, is a political appointment. The rest of the employees are hired pursuant to the civil servant process and cannot be fired when a political change occurs in the US. Thus employees are protected from being threatened to be fired if they do not divulge tax intelligence to politicians that are not authorized to

receive it. To reduce possible corruption, IRS employees are well paid and given generous fringe benefits.

The US Government has also created an independent agency from the IRS to investigate any potential violations of the ethical and moral by IRS employees to ensure IRS officials cannot influence these investigations.

VII. Conclusion

Not applicable to the presentation on best practices.

VIII. Glossary

Not applicable to the presentation on best practices.

ANNEX 2: INTERNAL DOCUMENTS RELATED WITH THE BEST PRACTICES ON TAX INTELLIGENCE

This annex is formed by documents related to activities of tax Intelligence sent by the following countries associated with the CIAT:

**Brazil
France**

ANNEX 2.1. INTERNAL DOCUMENTS RELATED WITH THE BEST PRACTICES ON TAX INTELLIGENCE: BRAZIL

ANNEX 2.1.1. MODEL OF AN INFORM

RESERVADO



**MINISTÉRIO DA FAZENDA
SECRETARIA DA RECEITA FEDERAL
COORDENAÇÃO-GERAL DE PESQUISA E INVESTIGAÇÃO**



INFORME SRF/Copei nº		
DATA:		
ASSUNTO:		
ORIGEM:		
DIFUSÃO:		
DIFUSÃO ANTERIOR:		
REFERÊNCIA:		
ANEXO(S): Conforme mencionado no documento		
AVALIAÇÃO :	CLASSIFICAÇÃO DA FONTE E DO CONTEÚDO A - fonte confiável e conteúdo provavelmente verdadeiro B - fonte razoavelmente confiável e conteúdo possivelmente verdadeiro C - fonte sem histórico e conteúdo necessariamente sujeito á verificação	FONTE 1 - pessoa 2 - documento 3 - mídia 4 - interna

O DESTINATÁRIO É RESPONSÁVEL PELA MANUTENÇÃO DO SIGILO DESTES DOCUMENTOS
(Port. SRF 782/97, arts. 28 e 29 e Lei 8.112/90, art. 116, incisos III e VII)

ANNEX 2.1.2. MODEL OF A RESEARCH AND INVESTIGATION INFORM

RESERVADO



**MINISTÉRIO DA FAZENDA
SECRETARIA DA RECEITA FEDERAL
COORDENAÇÃO-GERAL DE PESQUISA E INVESTIGAÇÃO**



**INFORMAÇÃO
DE
PESQUISA E INVESTIGAÇÃO**

IPEI N.º:

O DESTINATÁRIO É RESPONSÁVEL PELA MANUTENÇÃO DO SIGILO DESTES DOCUMENTOS
(Port. SRF 782/97, arts. 28 e 29 e Lei 8.112/90, art. 116, incisos III e VII)

ANNEX 2.1.3. MODEL OF A RESEARCH REPORT

RESERVADO



**MINISTÉRIO DA FAZENDA
SECRETARIA DA RECEITA FEDERAL
COORDENAÇÃO-GERAL DE PESQUISA E INVESTIGAÇÃO**



**RELATÓRIO DE
PESQUISA**

RD DP19XX000

CONTRIBUINTE(S) / CNPJ ou CPF

DATA: Mês / Ano

O DESTINATÁRIO É RESPONSÁVEL PELA MANUTENÇÃO DO SIGILO DESTES DOCUMENTOS
(Port. SRF 782/97, arts. 28 e 29 e Lei 8.112/90, art. 116, incisos III e VII)

ANNEX 2.1.3. MODEL OF A RESEARCH REPORT (continuation)

ORIGEM

RESUMO

PERFIL ECONÔMICO-FISCAL DOS CONTRIBUINTES

ANÁLISE, PESQUISA DE INFORMAÇÕES E LEVANTAMENTO DE INDÍCIOS

CONCLUSÕES PRELIMINARES E SUGESTÕES

PROPOSTA DE ENCAMINHAMENTO

ANNEX 2.1.4. MODEL OF A RESEARCH AND INVESTIGATION REPORT

RESERVADO



**MINISTÉRIO DA FAZENDA
SECRETARIA DA RECEITA FEDERAL
COORDENAÇÃO-GERAL DE PESQUISA E INVESTIGAÇÃO**



**RELATÓRIO DE
PESQUISA E INVESTIGAÇÃO**

CASO: XYXYXY

DATA: Mês / Ano

O DESTINATÁRIO É RESPONSÁVEL PELA MANUTENÇÃO DO SIGILO DESTE DOCUMENTO
(Port. SRF 782/97, arts. 28 e 29 e Lei 8.112/90, art. 116, incisos III e VII)

ANEXO 2.1.4. MODEL OF A RESEARCH AND INVESTIGATION REPORT (continuation)

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CONCLUSÃO

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ANNEX 2.2.1. OFFICIAL TAX BULLETIN

DIRECCIÓN GENERAL DE IMPUESTOS

P.B.O. I-2-05

Nº 28 de 11 de FEBRERO de 2005

PUBLICACIÓN DE SENTENCIAS

(DEFENSA Y PROTECCIÓN DE LA ADMINISTRACIÓN Y LOS MIEMBROS DE SU PERSONAL
ARTÍCULO 11 DE LA LEY DE 13 DE JULIO DE 1983 MODIFICADA)

PRESENTACIÓN

Esta disposición registra todos los fallos de justicia que llegaron a conocimiento de la Administración Central al año 2004 y resultaron de delitos cometidos en contra de Funcionarios de la Dirección General de Impuestos o la misma Dirección General de Impuestos. Es propicia la ocasión para subrayar la gran determinación con que la Dirección General de Impuestos defiende a sus Funcionarios.

PBO I-2-05

CONFIRMACIÓN DE FALLOS DE PRIMERA INSTANCIA QUE FAVORACEN A FUNCIONARIOS

1) Uno de los socios de una sociedad verificada que había proferido amenazas de muerte en contra de la Verificadora a cargo del caso interpuso un recurso de apelación en contra del fallo que emitió el 26 de noviembre de 2002 el Tribunal Correccional de Boulogne sur Mer. Par sentencia de 27 de enero de 2004, la Corte de Apelaciones de Douai confirmó la declaración de culpabilidad del contribuyente y aumentó la pena impuesta a este último con una condena a 6 meses de cárcel con la sentencia en suspenso. En su decisión referente a los intereses civiles, la Corte confirma el fallo emitido en todas sus partes y condena al interesado a pagar a la verificadora la suma de 500 euros en base al Artículo 475-1 del Código de Procedimientos Penales por el proceso de apelación. Ordena, además, el envío del proceso a los primeros Jueces para la liquidación de los perjuicios que sufrieron la Verificadora y el Agente Judicial del Tesoro.

2) Los contribuyentes que habían demandado por el delito de malversación de fondos a dos Funcionarios, ante el Tribunal Correccional de Basse-Terre, interpusieron un recurso de apelación en contra del fallo emitido el 20 de septiembre de 2001. La Corte de Apelaciones de Basse-Terre, por sentencia con fecha de 11 de febrero de 2003, consideró también que no se había comprobado el delito de malversación de fondos y confirmó el fallo apelado en la parte que reconoció reparaciones por daños y perjuicios a favor de ambos Funcionarios (7622 euros para cada uno), en base al Artículo 472 del CPP, y sancionó así el abuso de petición de daños y perjuicios. La Corte de Casación, en su fallo con fecha de 28 de enero de 2004, confirmó la legalidad del fallo al condenar a los contribuyentes al pago de daños y perjuicios.

VIOLENCIA EN CONTRA DE PERSONA ENCARGADA DE UNA MISIÓN DE SERVICIO PÚBLICO

El 3 de octubre de 2002, un deudor moroso, atendido, después de haberlo solicitado, por un Agente del Servicio Tributario para examinar las modalidades de pago de su deuda fiscal, agredió al Recaudador Divisionario. Mediante fallo de 11 de junio de 2003, le Tribunal Correccional de Fort de France, al constar la culpabilidad del contribuyente, condenó al mismo a 40 días multas, a razón de 50 euros por día, al pago de la suma de 1000 euros al Inspector Divisionario en concepto de daños y perjuicios y a la cancelación de la suma de 700 euros en base al artículo 475-1 del CPP. El 4 de marzo de 2004, la Corte de Apelaciones de Fort de France confirmó en todas sus partes el fallo apelado.

AMENAZAS EN CONTRA DE UNA PERSONA ENCARGADA DE UNA MISIÓN DE SERVICIO PÚBLICO

El 21 de marzo de 2003, un contribuyente, citado para proceder a la regularización de sus obligaciones declarativas, profirió graves amenazas en contra de la Controladora en cargada de su expediente. Mediante fallo con fecha de 23 de mayo de 2003, el Tribunal Correccional de Bourg en Bresse dictaminó en contra del acusado una pena de encarcelamiento de 6 meses con sentencia en suspenso, le impuso un régimen probatorio por un periodo de 18 meses y lo condenó a pagarle a la Controladora la suma de 500 euros por perjuicio moral y el monto de 400 euros en base al Artículo 475-1 del CPP. Dicho Tribunal condenó además, el 15 de junio de 2004, al contribuyente previamente señalado al pago al Agente Judicial del Tesoro de la suma de 765,50 euros en concepto de deuda a favor del Estado y 400 euros sobre la base del Artículo 475-1 del CPP (Código de Procedimientos Penales).

ENCAUSAMIENTO ABUSIVO DE FUNCIONARIOS

Tres notificaciones para comparecer con el fin de responder a acusaciones de intento de extorsión o malversación se entregaron a tres Funcionarios (Conservador de hipotecas del Registro Público, Inspector Principal e Inspectora) a petición de una pareja de contribuyentes que fueron objeto de un estudio contradictorio de su situación tributaria personal. Mediante fallo del 8 de marzo de 2001, el Tribunal Correccional de Saint-Brieuc pronunció el sobreseimiento de los tres Funcionarios y condenó a los autores de la demanda abusiva a pagar a cada uno de los Funcionarios la suma de 3811,23 euros en concepto de daños y perjuicios. Este fallo lo confirmó la Corte de Apelaciones de Rennes el 21 de marzo de 2003 y luego la Cámara Criminal de la Corte de Casación que, mediante fallo de 5 de mayo de 2004, consideró legal la indemnización por reparación de daños que se les otorgó a los tres Funcionarios abusivamente demandados.

ACCIÓN POR DENUNCIA CALUMNIOSA

Mediante dos intervenciones en los años 2000 y 2002 ante el Secretario de Estado del Presupuesto, un contribuyente atribuyó el origen de un control fiscal en su contra al cargo (obtenido mediante elección) de miembro de Consejo Municipal asumido por un inspector tributario y los conflictos que tuvo este mismo contribuyente con la Alcaldía correspondiente. En 2002, el Funcionario Tributario, al igual que la Dirección de Servicios Tributarios, interpusieron una acción por denuncia calumniosa en contra del contribuyente. Mediante fallo de 23 de septiembre de 2004, el Tribunal de Gran Instancia de Albi declaró culpable al contribuyente de actos de denuncia calumniosa y dictaminó en su contra una pena con multa de 1000 euros. Se le condenó también a dicho contribuyente a pagar al Inspector la suma de 1000 euros con concepto de daños y perjuicios y la suma de 400 euros en base al Artículo 475-1 del CPP (Código de Procedimientos Penales).

FALSIFICACIÓN DE DOCUMENTOS ADMINISTRATIVOS

En junio de 2003, un contribuyente falsificó un aviso de desgravación y utilizó el documento alterado para oponerse a un embargo de bienes muebles. Mediante fallo de 11 de junio de 2004, el Tribunal de Gran Instancia de Pontoise declaró culpable al contribuyente de delito de falsificación y uso de falsas escrituras públicas y lo condenó a una pena de encarcelamiento de 2 meses con sentencia en suspenso. Por otra parte, se acogió la petición de daños y perjuicios del Agente Judicial del Tesoro; a este respecto, se condenó al contribuyente a pagarle la suma de 1 euro por daños y perjuicios y la suma de 400 euros sobre la base del Artículo 475-1 del CPP (Código de Procedimientos Penales).

DETERIORACIÓN DE BIENES PÚBLICOS

1) En marzo de 2003, un contribuyente se rindió culpable del deterioro de la puerta de entrada de vidrio de un Centro de Servicios Tributarios. El 3 de noviembre de 2003, el Tribunal Correccional de Toulon pronunció en contra del contribuyente una pena suspensiva de 4 meses de encarcelamiento y lo condenó a pagar a favor del Estado la suma de 578,27 euros en concepto de daños y perjuicios junto a la suma de 450 euros en concepto de costas por el juicio interpuesto (Artículo 475-1 del CPP).

2) El 15 de octubre de 2002, un contribuyente deterioró deliberadamente una puerta de vidrio ubicada en la antesala de un Centro de Servicios Tributarios. El Tribunal Correccional de Nanterre condenó al acusado, en su fallo con fecha de 28 de mayo de 2004, a una multa de 350 euros y al pago de al Agente Judicial del Tesoro de la suma de 350 euros por daños y perjuicios.

ROBO DE MATERIALES DE LA ADMINISTRACIÓN

1) El 1ro de abril de 2002, un robo de materiales cometido con fractura se perpetró en locales de la Administración. Mediante fallo con fecha de 10 de julio de 2003, el Tribunal Correccional de Paris condenó al autor del robo a una pena firme de encarcelamiento de 3 meses.

2) En la noche del 9 al 10 de diciembre de 2003, un individuo, menor de edad, robó material informático y cometió actos de vandalismo en los locales de una Dirección de Servicios Tributarios. Mediante fallo de 18 de octubre de 2004, le Tribunal de Menores de Marsella dictaminó en contra del autor de los hechos una pena de dos meses de encarcelamiento. Dicho Tribunal condenó además al interesado, solidariamente con sus padres civilmente responsables, al pago al Agente Judicial del Tesoro por daños y perjuicios del monto de 17 649,59 euros y la suma de 350 euros sobre la base del Artículo 475-1 del CPP (Código de Procedimientos Penales).

El Subdirector,

Olivier Sivieude

ANNEX 2.2.2. INFORMATION TRANSMISSION (B.T.I.)

**TRANSMISION DE INFORMACION
(B.T.I.)**

**DIRECCION GENERAL DE IMPUESTOS
DIRECCION GENERAL DE ADUANAS Y DERECHOS INDIRECTOS**

Remitente	Destinatario
------------------	---------------------

Adjunto encontrarán las siguientes informaciones (Derecho de comunicación, previsto en los artículos L81, L83 y L83A del Libro de Procesamientos Fiscales, y artículo 65 del Código de Aduanas)

PERSONA NATURAL O JURIDICA CONCERNIDA

Nombre, apellido o denominación
Fecha de nacimiento (personas naturales) o fecha de creación (sociedades)
Profesión o actividad
RUC
Número de identificación IVA intracomunitaria

DIRECCIONES

Dirección del domicilio
Dirección de la sede social
Residencia secundaria o sucursal, depósito

--

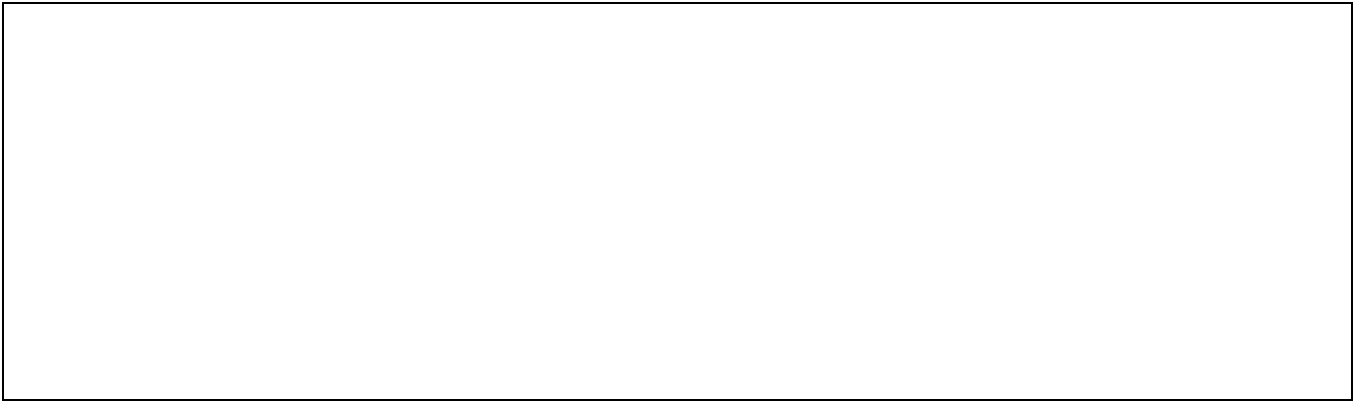
**INFORMACIONES ENCONTRADAS
(Descripción del caso)**

Tipo de infracción constatada
Anomalías que dejen pensar en una infracción tributaria o aduanera
Irregularidades encontradas en caso de una fiscalización de campo

PARA SERVIR SI ES NECESARIO

Fecha del acta	
Monto	de la multa (para operadores, que no sea personas naturales) del embargo de los impuestos eludidos
Estado del caso	transacción en curso justicia

DOCUMENTOS TRANSMITIDOS



Fecha

Firma

Cargo

ANNEX 2.2.3. APPLICATION OF THE ARTICLE 40 (CODE OF PENAL PROCEDURE)



DIRECTION GÉNÉRALE DES IMPÔTS

BRIGADA DE CONTROL
E INVESTIGACIÓN DE IMPUESTOS

Téléphone :
Télécopie :

lugar, fecha

El Director de Servicios Tributarios de Gard

Al

Señor Procurador de la República

ante el Tribunal de Gran Instancia de Nimes

OBJETO: aplicación de lo que dispone el Artículo 40 del Código de Procedimientos Penales

Tengo a bien hacer de su conocimiento los siguientes hechos que observaron varios Agentes Tributarios.

Se realizaron operaciones de control fiscal, mediante Brigadas de Verificación que dependen de distintas Direcciones, en empresas de trabajo temporal que ejercen actividades dentro del sector agrícola. Estas verificaciones permitieron detectar disimulaciones muy importantes del volumen de negocios. El procedimiento de fraude utilizado es común a todas estas sociedades y consiste en la no contabilización de operaciones que aparecen en cuentas abiertas a nombre de la persona jurídica.

Se contemplan propuestas de presentación de demandas por fraude fiscal para algunas de las situaciones descubiertas. Por otra parte, el análisis de los movimientos de las cuentas bancarias de estas empresas reveló que:

- se efectuaron retiros muy importantes de dinero en efectivo;
- se cobraron numerosos cheques en efectivo en la ventanilla del Banco sin mencionar detalles dando fe de la identidad de los beneficiarios;
- cheques emitidos a nombre del Banco o de sociedades dueñas de cuentas permitieron retiros de dinero en efectivo sin informar acerca de las personas que efectuaron dichos retiros;
- las firmas de algunos cheques y los documentos de retiro no son idénticas y difieren de las que aparecen en los documentos que posee el Banco;

Los elementos que presentamos abajo en hojas recapitulativas por cada sociedad llevan a cuestionar el cumplimiento por parte de los establecimientos bancarios de las obligaciones que les incumben.

El destino real de los fondos que transitaron por estas cuentas no pudo determinarse.

El Director de Servicios Tributarios,

ANNEX 2.2.4. CORPORATION EXAMINATION PROPOSAL FORM

BCR

N° Alpage

Identificación del contribuyente o la empresa

Forma	Denominación / apellidos- nombres		
	N° y vía		
	Complemento dirección :		
	Código postal y Municipio		

V. Datos referentes al contribuyente o la empresa

Desconocido por el Servicio :		Rep	Regímenes impositivos		
SPI		SIREN		IVA	
FRP		Código NAF		BIC/IS	
				BA	
				BNC	
				RF	
				Grupos 223 A	
Naturaleza de la actividad ejercida					
CGA/ AGA n°					
Volumen de negocios / ingresos / rentas		Año :		Tipo de actividad :	
Total de activo bruto :				Cantidad de asalariados :	
Fecha de creación de la empresa o de nacimiento del contribuyente					
Criterio DNVSF :		Situación especial		Fecha de la situación	

Directivo(s) / socio(s)

Fecha de nacimiento :	Apellidos-nombres		
	N° y vía		
	Complemento dirección :		
SPI	Código postal y Municipio		
Fecha de nacimiento :	Apellidos-nombres		
	N° y vía		
	Complemento dirección :		
SPI	Código postal y Municipio		

TSE	
ADONIS	
FICOB	
A	

ADELIE	
---------------	--

I – DATOS IMPOSITIVOS

Cierre de ejercicio	Resultados declarados			Tributos establecidos en el marco de un procedimiento de oficio	
	Vol. de Neg. o Ingresos	Resultados		Vol. de Neg.	Resultado fiscal
		Contable	Fiscal		
../..					
../..					
../..					

• Déficits anteriores imputados a los años por fiscalizar :

• Operaciones intra comunitarias : SÍ NO

• Operaciones internacionales (fuera de CEE) : SÍ NO

II – VÍNCULOS INTERESANTES CON OTRAS EMPRESAS (directamente o a través de directivos)

Designación	Dirección completa	M (casa matriz) F (filial)

III – DECLARACIONES NO PRESENTADAS

NATURALEZA	Emplazamientos enviados (en caso afirmativo, poner un gancho en la casilla)	IVA					
		Indicar el periodo y poner un gancho en la casilla TO en caso de cobro					
			TO		TO		TO
IR							
IS							
BIC-BNC-BA							

IV – DATOS REFERENTES A DIRECTIVO O ADMINISTRADOR

APELLIDOS y Nombres :		Función asumida :	
Situación familiar :		Sujeto a ISF : SÍ NO	
	Año :	Año :	Año :
- Salarios (para Directivos)			
- Renta gravable.....			
- Otros datos.....			
(desgravación, déficit relacionado con bienes raíces)			

V – CFE ANTERIORES

Última fiscalización : Naturaleza Rectificaciones : SÍ NO

Periodo: hasta Servicio fiscalizador:.....

Monto impuestos simples notificados:

Penalidades:..... Mala fe Maniobras fraudulentas TO/EO Demanda penal

IV BALANCE DE TESORERÍA SUMARIO				
A – DISPONIBILIDADES LOGRADAS	20	20	20	TOTAL
1) Ingresos declarados (monto bruto)				
- Sueldos de funcionarios, salarios, pensiones				
- Ingresos procedentes de bienes raíces				
- Remuneraciones de directivos				
- Ingresos procedentes de capitales mobiliarios				
-BIC – BA				
* beneficiario (impuesto concertado)				
* monto neto de retenciones (régimen. real)				
- BNC (EA o DC)				
- Otros ingresos				
2) Ventas				
- Inmuebles				
- Automóviles, botes				
- Otros bienes muebles				
- Valores mobiliarios				
- Diversos				
3) Préstamos <u>contraídos</u>				
4) <u>Otros recursos disponibles</u>				
TOTAL - A -				
B - DISPONIBILIDADES UTILIZADAS				
1) <u>Evaluación de tren de vida</u>				
2) <u>Impuestos pagados</u>				
3) <u>Compras y gastos de mantenimiento de</u>				
- Inmuebles				
- Automóviles, botes				
- Otros bienes muebles				
- Valores mobiliarios				
- Diversos				
4) <u>BIC - BA (real) : monto de aportes</u>				
5) <u>Préstamos concedidos</u>				
6) <u>Reembolsos de préstamos</u>				
7) <u>Diversos</u>				
TOTAL - B -				
SALDO (A - B)				
Declaraciones n° 2042 presentadas a tiempo	SÍ/NO	SÍ/NO	SÍ/NO	
Fechas de emplazamientos enviados				
Fechas de grabaciones de oficio realizadas				

vi. HOJA DE ANÁLISIS DE RIESGOS PROGRAMACIÓN CFE

I- RIESGOS CONCERNIENTES A ASPECTOS ECONÓMICOS

CRITERIOS	SÍ	NO
c. Actividad de sector sensible o riesgos		
Cambio o extensión de objeto social, ruptura de comportamiento		
Actividad real totalmente diferente de objeto social o de actividad previamente ejercida		
Pluriactividad		
Situación económica o financiera difícil, problemas sociales o conflictos laborales		
Sociedad en proceso de liquidación amistosa desde hace más de 2 años.		
Cesión de la empresa o cesión importantes de derechos de sociedad		
Coeficiente multiplicador (ventas/ compras revendidas) anormal		
Rendimiento de Personal (salarios/producción) anormal		
Índice de movimientos de existencias ($((SI+SF)/2)/compras\ revendidas$)x360) anormal		
Bajo nivel de resultados con respecto al volumen de negocios o la actividad		
Ratios financieros anormales		
Inversiones importantes o movimientos de inmovilizaciones importantes		
Detección de operaciones con personas privilegiadas o especiales (comunidad de intereses, vínculos familiares, grupo informal, socios mayoritarios, extranjeros ...) : socios, directivos, asaliarados, clientes o proveedores, prestamistas o prestatarios ...		
Aportes netos del administrador, retenciones netas insuficientes, cuenta corriente de socio deudor		
Enriquecimiento personal, incoherencia ingresos/patrimonio		
Variación importante de patrimonio de directivos o el administrador		
Desastre sufrido por la empresa		
I bis- RIESGOS RELACIONADOS CON ACTIVIDAD INTERNACIONAL		
Sociedad madre o filial en el extranjero, sociedad controlada por accionistas extranjeros		
Empresa extranjera identificada en FRANCIA		
Vínculos con sociedades ubicadas en países con régimen tributario privilegiado		
Reembolso de abono de dividendo extranjero		
Operador intracomunitario		

II- RIESGOS CONCERNIENTES A ASPECTOS JURÍDICOS

Sociedades vinculadas con o pertenecientes a un Grupo informal, presencia de permisos y patentes		
Ingreso o salida de Grupo		
Fusión y operaciones afines		
Creación de sociedad holding o transformación de sociedad en holding		
Régimen jurídico poco común o riesgoso		
Sociedad de participación		
Cambio del/de los directivo(s), socio(s) o dirección de domicilio social (frecuente)		
Datos referentes a directivos y dudas acerca de su moralidad (RJ-LJ anteriores, mala fe)		
Fallecimiento de directivo		
Acontecimientos familiares (divorcio...) para BIC-BNC		
Variación importante de capital social, en aumento o baja		
Movimientos importantes de participaciones		

III- RIESGOS CONCERNIENTES A ASPECTOS CONTABLES O TRIBUTARIOS

Cambio de Contador,		
Ausencia de Contador, Contador asalariado		
Dudas acerca de la moralidad y la competencia del Contador		
Ausencia de CGA o AGA		
Importancia de operaciones auto liquidadas: LASM, IVA INTRA...		
Importancia de productos de riesgos (alquileres, subsidios, intereses, regalías...)		
Importancia de cargas riesgosas (subcontratación, alquileres, leasing, honorarios, comisiones, ...)		
Existencia de cargos importantes (con respecto a Volumen de Negocios) o que varían de modo anormal		
Importancia de provisiones normadas o provisiones especiales (implementación, grandes reparaciones,...)		
Empresa beneficiaria y provisiones importantes		
Empresa con dificultades financieras y retención del IVA (deuda IVA injustificada, crédito de IVA)		
Régimen tributario de riesgo : derogatorio, opcional, exoneración...(empresa nueva, crédito fiscal, crédito fiscal / Impuesto para Investigación superior a 200 KF ...)		
Fallas en obligaciones declarativas, morosidad en declaración de ingreso o tesorería		
Solicitud reiterada de reembolso de crédito de IVA (fuera de exportadores), o crédito de impuesto que cubra un periodo de más de 3 trimestres en caso de solicitudes de reembolso		
Sociedad pantalla (Volumen de Negocios de aumento rápido o implementación dentro de zona beneficiada con incentivos fiscales)		
Ninguna verificación o verificación antigua		
Verificación reciente (derechos o penalidades importantes o BF no retenida)		
Antecedentes especiales, infracciones diversas		
Existencia de contencioso en curso		
Dirección de domiciliación o ficticia		
Gerente, administrador o profesión liberal con domicilio fuera del Departamento		
Sociedad que invoca solicitud de beneplácito		

Totalización de criterios :

CONCLUSIONES DEL SERVICIO

**CUADRO DE ANÁLISIS DE RIESGOS PARA RECAUDACIÓN
(para transmitir al Contador)**

Empresa fiscalizada :

N° alpage :

Servicio destinatario :

N° SIRET :

CRITERIOS	COTATION			Observaciones
	1 Bajo	3 Alto	5 Comprobado	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>Riesgo</i>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>Criterios que debe completar el Servicio que redacta la Ficha 3909</i>				
Empresa morosa	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Obligaciones declarativas	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<i>Criterio que debe completar la Dirección</i>				
Origen de programación	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<i>Criterios que debe completar el Servicio fiscalizador</i>				
Manejo de la Contabilidad	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Comportamiento del Contribuyente	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Penalidades	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Situación de Tesorería con respecto a la rectificación	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Activo aprensible (fuera de Tesorería)	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Sub Total			<input type="text"/>	
Deuda en contra del Estado o una Colectividad Local	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Total			<input type="text"/>	

Observaciones del Verificador:

Fecha de creación del Cuadro de Análisis de riesgos de cobro :

Fecha de envío de la 3952 anticipada:

Servicio de donde procede la
transmisión:
