ISSN 1684-9434
N° 32
DECEMBER 2011

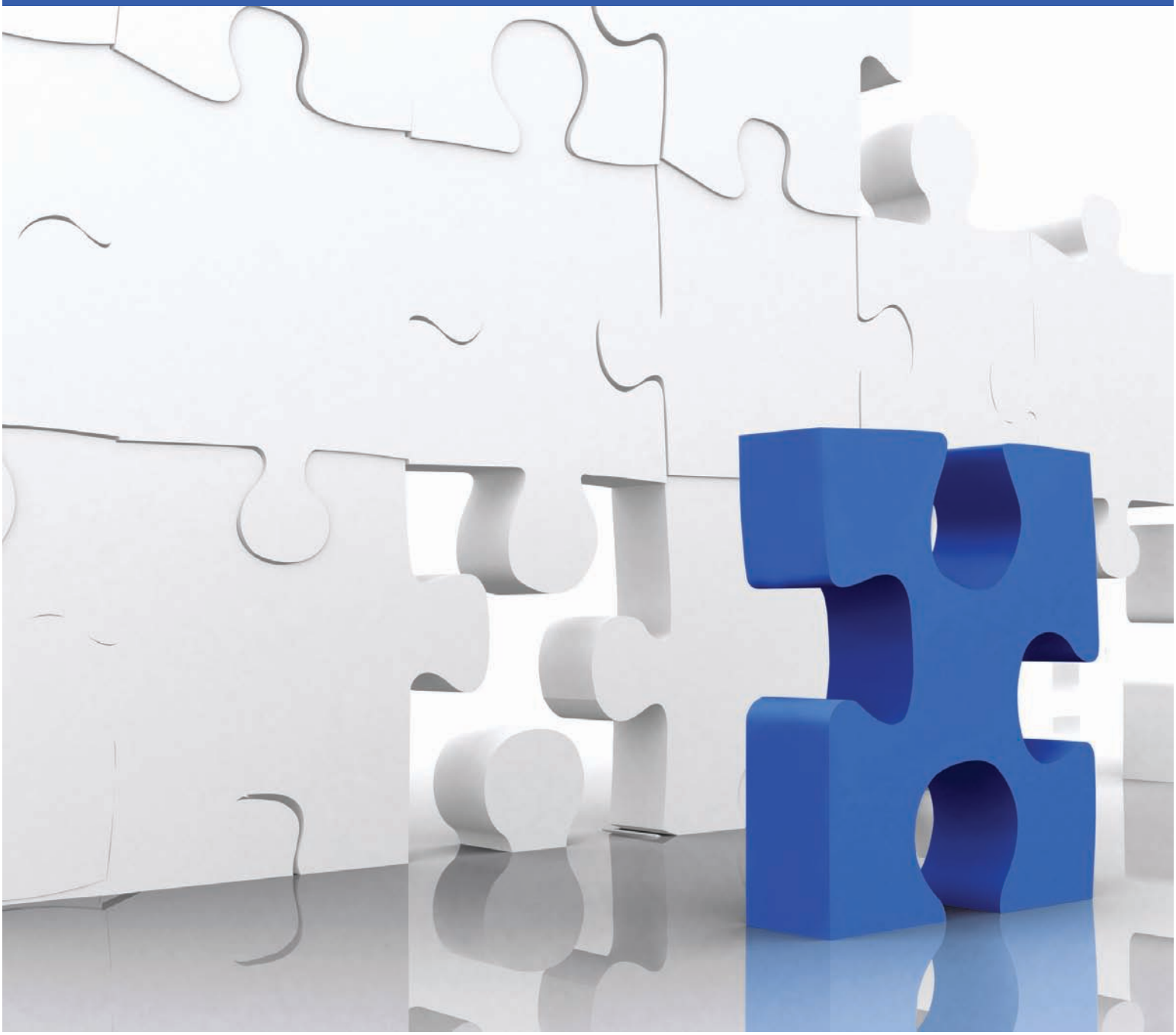
Inter-American Center
of Tax Administrations

Generating synergy

Managing knowledge

Best practices

Tax administration review



CIAT/AEAT/IEF
Tax Administration Review

No. 32
December 2011

Sponsoring Organizations

Inter-American Center of
Tax Administrations - CIAT

State Agency of Tax Administration - AEAT

Institute of Fiscal Studies - IEF
Ministry of Economy and Finance of Spain

Editorial Policy

The Technical Cooperation Agreement signed by CIAT and the State Secretariat of Finance and Budgets, the State Agency of Tax Administration (AEAT) and the Institute of Fiscal Studies (IEF) of Spain, provided for the commitment of editing a review that would serve to disseminate the different tax approaches in force in Latin America and Europe.

An Editorial Council formed by CIAT officials (the Executive Secretary, the Director of Studies and Training and the Tax Studies and Research Manager) and the Heads of the Spanish and French Missions, are responsible for determining the topics to be considered in each edition of the review.

The articles are selected by the Editorial Council from a public announcement made by the CIAT Executive Secretariat for each edition of the review. Participation is open to all tax administration officials from the CIAT member and associate member countries and, following evaluation by the Editorial Council, to other members of the My CIAT Community.

Correspondence

Every communication must be addressed to:
revista@ciat.org or to P.O. Box 0834-02129, Panama, Republic of Panama.

Author's Responsibility

The opinions expressed by the authors do not represent those of the institutions for whom they work or those of the CIAT Executive Secretariat.

Copyright

CIAT/AEAT/IEF
Tax Administration Review

Table of Contents

No. 32
December 2011

Editorial

Dear readers,

In this edition, the Tax Administration Review displays seven (7) articles that explore diverse aspects on tax policy, tax administration, and custom management. Thank you very much again to our contributors.

Two (2) articles present a sectorial analysis. One is focused on the tax contribution of "All inclusive" Hotel Services in the Dominican Republic, and the other one deals with the control of the construction sector in Peru. Since they are both strategic sectors for other countries in the region, they constitute without a doubt useful contributions to the debate.

The other two (2) articles discuss the effectiveness of tax information exchange, a milestone of the CIAT work. One explores the experience of the Eastern Republic of Uruguay. The other one covers the Latin American scope. This one is a summarized version of the winning work of the XXIII CIAT/AEAT/IEF Monographs Contest.

In matter of control and assessment, two (2) additional articles are presented. One discusses the subject of the correct registration of the economic transactions for an effective VAT tax control (very important for economies with high informality) and the other one proposes a new methodology of selection of control cases in Chile, based in models of Data Mining or Mining of Data that explore invoices.

Finally, an article details the background, the legal institutes and the modern control techniques considered in the new Customs Code of the Mercosur as an element that supports the consolidation of the unified customs territory.

We hope once more that this new edition - the third one with this new format – be of the interest for our readers, and will constitute a contribution to all the members of the MyCiat Community, specially to the tax administrations officials.

Director of the Review
Márcio Ferreira Verdi

ANALYSIS OF THE HOTEL SECTOR IN DOMINICAN REPUBLIC

Marvin Cardoza and Wanda Montero

SUMMARY

This article provides an analysis on all inclusive hotels in the Dominican Republic, its tax contributions, jobs created, revenues and expenses reported and key financial indicators. In this sense, this activity shows a low domestic revenue contribution, especially in the direct taxes such as the income tax (IT), this is due to the low income compared to its costs. In financial terms, the sector operates with low profitability, low liquidity and recurring losses which are financed mainly through indebtness outside the banking system.

The Authors: Wanda Montero, *Director of the DGII Transfer Pricing Department. She is an Economics graduate from the Pontificia Universidad Catolica Madre y Maestra (PUCMM). She has a master degree in Political and Economic Reforms for Development, and a minor in Political Economy from the University of Illinois. She is a teacher in Economics at the Pontificia Universidad Catolica Madre y Maestra (PUCMM).* ***Marvin Cardoza,*** *Director, Department of Economic and Tax Studies at the DGII. He specializes in applied macroeconomics and magister in economics with specialization in macroeconomics and public policies at the Pontificia Universidad Católica from Chile and information systems engineer at the Pontifica Universidad Cathólica of Nicaragua. He teaches Economics at the Pontifica Universidad Catolica Madre y Maestra (PUCMM). External Consultant, International Monetary Fund (IMF) and the Inter-American Development Bank (IDB).*

CONTENT

The economic and commercial activity of all inclusive hotels, defined this way for the purposes of this study, includes companies operating in the country providing accommodation or hotel services, in the all inclusive form. This means that for a fixed rate the consumer gets room accommodation, food, drinks and access to other facilities such as entertainment, sports and recreational activities during the contracted period.

This type of hotels started in the country in the late 70's, according to the taxpayer database of the General Directorate of Internal Revenue, recording the first two taxpayers in this period. At the end of the 90's, 62.1% of all current existing taxpayers were registered.

The all inclusive hotels are a component of the subsector hotels, bars and restaurants, which has been of growing importance in the Dominican Republic. As for taxes paid, the activity contribution in the years 2005 - 2009 represents about 0.9% of the Central Government revenues and has a burden of 0.18% of the gross domestic product (GDP).

1. ECONOMIC ENVIRONMENT: SUBSECTOR HOTELS, BARS AND RESTAURANTS

Hotels, bars and restaurants are an important subsector within the services sector, which is the major sector generating employment, wealth and greater contribution to tax revenues.

According to Central Bank statistics, production of this subsector was on the average of 18% of the services sector, and 10.7% of GDP during the 2005 - 2009.

Chart 1
Nominal added value for the subsector hotels, bars and restaurants
In millions of RD$ and percentages: 2005 - 2009

Concept2	0052	0062	0072	0082	009
Added Value (Millions RD$)	118,265.91	38,489.3	145,732.71	59,793.5	158,984.5
% GDP Services sector	20.0%1	9.9%	18.3%1	7.1%	16.1%
% GDP Total	11.6%1	1.6%	10.7%1	0.1%	9.5%

Source: *Database from the Central Bank of the Dominican Republic.*

After the average growth of 10.7% presented between 2005 and 2008, the nominal added value of hotel operations dropped 0.5% in 2009. This drop was influenced by the reduction in the hotel occupancy rate at 4.4% over the previous year, and sluggish tourist arrivals, which showed a marginal growth of 0.3% due to the effects of the external economic crisis affecting tourism revenues worldwide. It is estimated that the international tourist arrivals to the Caribbean region fell by 2% this year[1].

Chart 2
Subsector indicators for hotels, bars and restaurants
In millions of RD$ and percentages: 2005 - 2009

Concept	2005	2006	2007	2008	2009
Rooms available (Units)6	0,088	63,549	65,072	66,192	67,197
Tourism revenues (Millions US$) 3	,518.33	,916.84	,064.2	4,165.94	,064.9
Tourist arrivals [1] (Millions visitors)	3.09	3.34	3.40	3.45	3.42
Hotels Occupancy rate [2]	73.9%7	3.0%	72.2%7	0.4%6	6.0%

1/Non-Residents
2/Average hotel occupancy
Source: *Database from the Central Bank of the Dominican Republic.*

2. ALL INCLUSIVE HOTELS SERVICES

The economic activity defined for the purposes of this study as “all inclusive hotels” is the most important section within the hotels, bars and restaurants subsector according to taxes paid and the volume of its sales. On average for the years 2005 - 2009 this represented 50.7% of taxes collected and 60.4% of sales reported by companies in the subsector. Other activities that comprise this subsector are hotels that provide conventional service for accommodation only, (second in importance), and bars and restaurants. (See chart 2.1)

Chart 3
Indicators for all inclusive hotels
In percentages: average 2005 - 2009

Economic activity	% Collection I subsector	% Collection DGII	% Sales subsector	% Sales totales
Hotels, bars and restaurants subsector	**100.0%3**	**.9%**	**100.0%4**	**.2%**
Bars and restaurants	15.4%	0.6%	14.8%	0.6%
All Inclusive Hotels	50.7%	2.0%	60.4%	2.8%
Other Hotels	33.9%1	.3%	24.9%0	.8%

Source: *Department of Economic and Tax Studies, DGII.*

1. *UNWTO World Tourism Barometer, 2009.*

There are 66 active taxpayers [2] on the Taxpayer National Register engaged in the activity all inclusive hotels. However, many of these operate more than one hotel, which are sometimes located in the same geographic area and they share services among the group, what is commonly called "resort". In this sense, these 66 taxpayers grouped a total of 105 hotels operating under the same modality and they are mostly located in the Bavaro and Punta Cana area.

Chart 4
Hotels registered by geographic location
In units: Year 2010

Zone	Quantity
Bayahibe - La Romana6	
Boca Chica	4
Juan Dolio - San Pedro	4
Puerto Plata - Sosua -C abarete2	2
Punta Cana - Bávaro - Uvero Alto6	3
Río San Juan	1
Samaná	5
Total	**105**

Source: *Department of Economic and Tax Studies, DGII.*

There are six (6) taxpayers providing all inclusive hotels services that are registered under the special regime for the Promotion of Tourism Development (Laws 184-02 and 318-04).

The incentive for the Promotion of Tourism Development to which we refer grants taxpayers a set of tax benefits according to the geographic area[3] in which is located. These benefits range from 100% exemption in the payment of Income Tax[4] (IT) (for 10 years from the date of completion of the construction and equipping the project), of the business tax (ITBIS) paid on imports, taxes, tariffs, municipal taxes, among other taxes. However, the new hotels built in zones defined as tourism development that do not receive the said benefits will have tax exemption for the purchase of machinery, equipment, materials, and personal property necessary for the modernization, improvement and upgrading of such facilities, provided they prove to have a minimum of five (5) years built.

Taxpayers who operate in this modality are also indirect beneficiaries of the exemptions cited through other taxpayers who benefit from these incentive laws for construction projects taking place in the area.[5]

2.1. Amount of formal employees

In 2010, the activity all inclusive hotels recorded 34,687[6] employees. This figure represents 2.8% of formal employment in the Dominican Republic and 49% of employment in the subsector hotels, bars and restaurants[7]. Regarding the last two years, the employment generated by this industry has remained stable with slight variations. In 2009 it increased by 2.5%, but less compared to the national employment growth which grew by 28.8%. In 2010 the number of employees in the sector decreased by 3.5%. (See Graph 1).

2. *It is considered as an active taxpayer one who has filed at least one income tax return for the fiscal period under review.*
3. *The law 158-01 defines the poles and provinces of tourist attractions to be developed.*
4. *For 10 years from the date of completion of the construction and equipping the project.*
5. *There are currently 62 taxpayers registered who benefit from incentives that develop construction projects, which sometimes offer their services to hotels.*
6. *Employees are considered only in the formal market from which their employers have payroll to the DGII and make payments to social security. To determine the number of employees it was taken as a reference the same month for each year (July). It is assumed that the number of employees remains constant throughout the year.*
7. *Formally the subsector of Hotels, Bars and Restaurants currently employs 64,599 people.*

Graph 1
Proportion of employees for all inclusive hotels in total of formal
Employees: 2008 - 2010

Source: *Department of Economic and Tax Studies, DGII.*

2.2. Taxes paid by all inclusive hotels

The contribution in terms of tax collection[8] of all inclusive hotels activity does not represent significant amounts, even though the service sector, to which it belongs, is of great importance for DGII and the economy. The reasons for this behavior are on one hand, the existence of incentive regimes that exempt the tax payment to hotels located in certain areas specified by Law 158-01 of Tourism Development and its modifications; the wages paid by sector are mostly below the income tax level of wages in the country; and the registered taxpayers in this activity have been operating with high levels of losses during the period 2005 - 2009.

As a percentage of total revenue from taxes administered by the DGII, its proportion has not had wide variations in the years covered by the study, remaining almost constant at 2%. Although the taxes paid by these taxpayers have registered positive changes for most of the analyzed years, their share in total DGII revenues and the central government is less in 2009 compared to 2005, indicating a slowdown in the growth of this activity in relation to other activities within the sector and within the total economy.

Chart 5
Indicators for taxes paid by all inclusive hotels
In millions of RD$ and percentages:
2005 - 2009

Concepts	2005	2006	2007	2008	2009
Paid taxes1/ (millionsRD$)	1,901.4	2,342.5	2,300.1	2,906.7	3,066.6
% Collection Hotels, Bars and Restaurants	45.7%	56.9%	50.7%	48.3%	52.1%
% DGII Total collection	2.3%	2.1%	1.6%	1.8%	2.0%
%Central Government collection in	1.0%	1.0%	0.8%	0.9%	0.9%
% of GDP	0.2%	0.2%	0.2%	0.2%	0.2%

1/ It includes all direct and indirect taxes paid to the DGII, among them: IT of employees, individuals and companies, ITBIS, Assets, Property, Selective and others.

Source: *Department of Economic and Tax Studies of the DGII and the Central Bank of the Dominican Republic*

With regards to collections from the activity as a percentage of the services sector, the recorded average participation for the period 2005 - 2009 is 3.3%, noting a downward trend during the years 2005 and 2007, reversing this trend from 2008. (See Graph 2).

8. *It refers to domestic indirect and direct taxes.*

Graph 2
Participation of collections from all inclusive hotels
In percentages: 2005 - 2009

Source: *Department of Economic and Tax Studies, DGII.*

The fall in revenues from services of all inclusive hotels for the period 2006 - 2007 is explained by the decrease in income tax of 10%, as well as by the reduction in luxury housing tax[9] of 99%.

For the years 2008 and 2009 total revenues of the activity resume their growth, showing rates of 26% and 6% respectively. It should be noted that the internal ITBIS[10] grew by 18.5% for the years of study, and was on average 62% of total taxes paid by these hotels. (See chart 6).

Chart 6
Taxes paid by hotels, depending on the type of tax
In RD$ million: 2005 - 2009

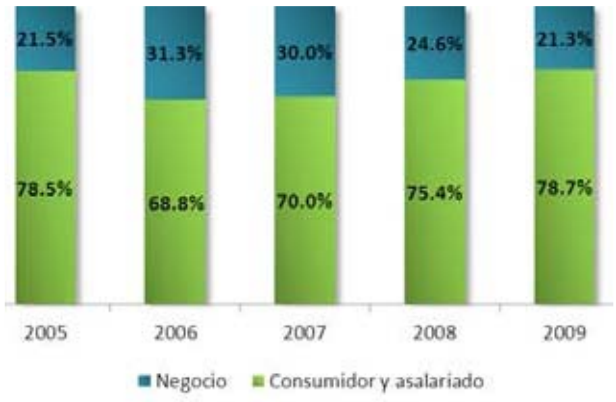
Tax year	2005	2006	2007	2008	2009
Income Tax	432.2	757.2	682.6	544.2	396.0
Tax on Assets [1]	0.0	0.0	54.2	210.2	288.7
Employees income tax deduction	64.9	97.0	116.2	165.9	177.6
Internal ITBIS	1,142.5	1,171.2	1,381.5	1,963.7	2,188.9
Tax on luxury residences	226.8	236.0	3.5	0.0	0.0
Other	35.1	81.0	62.2	22.7	15.3
Total	**1,901.4**	**2,342.4**	**2,300.1**	**2,906.6**	**3,066.6**

[1] *This tax begins to apply from 2006.*
Source: *Department of Economic and Tax Studies, DGII.*

9. *Effective Law 557-05 which was enforced in 2006, when it corresponds to companies, this tax is substituted by Tax on Assets.*
10. *It refers to ITBIS paid to the DGII generated by the sales of goods or services in the local market.*

If taxes are assessed according to who actually bears the tax burden, that is who really pays the tax, taxes paid by the companies[11] represent 26%, amounting to RD$644.2 million on average per year. The remaining 74%, equivalent to RD$1,859.3 million was retained by the companies but paid by final consumers and/or employees[12]. (See Graph 3).

Graph 3
Taxes paid by all inclusive hotels
In percentages: 2005 – 2009

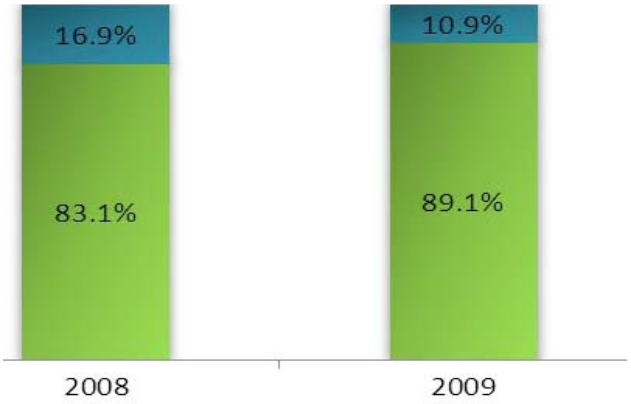


Source: *Department of Economic and Tax Studies, DGII.*

2.3. Supply and demand of the activity

According to DGII Customs Statistics, the largest proportion of the inputs required to offer services are purchased in the local market. In 2008 only 17% of these supplies were purchased on the foreign market[13]; this ratio is reduced in 2009 to 11%. (See Graph 4).

Graph 4
Composition of consumption of all inclusive hotels
In percentages: 2008 - 2009



Source: *Department of Economic and Tax Studies, DGII.*

Intermediate consumption acquired in the local market is concentrated in the sectors of Industry and Services. 67.7% of purchases are supplied by the service sector, primarily by the trade activities (29.4%). Meanwhile, the industry sector provides 27.7% of purchased inputs, concentrating mostly in manufacturing activity (15%). (See chart 7).

11. *Earned Income Tax for Businesses and Tax on Assets.*
12. *The latter referred to indirect taxes on consumption of goods and services, taxes on wages, dividends paid to shareholders, among others, the burden does not fall on the company.*
13. *Imports are CIF value.*

Chart 7
Local intermediate consumption by economic activity
In RD$ million: 2009 vs. 2008

Activity	2008		2009	
	Purchases	%	Purchases	%
Agriculture	1,289.8	3.6%	1,439.0	4.6%
Livestock, Forestry and Fisheries	675.6	1.9%	666.0	2.1%
Traditional Crops	401.1	1.1%	474.8	1.5%
Grain Crop	176.2	0.5%	254.0	0.8%
Agricultural Services	36.9	0.1%	44.2	0.1%
Industries	12,370.1	34.8%	8,611.9	27.7%
Manufacturing	5,259.0	14.8%	4,673.9	15.0%
Construction	7,067.8	19.9%	3,922.9	12.6%
Mining and Quarrying	43.3	0.1%	15.1	0.0%
Services	21,883.2	61.6%	21,053.2	67.7%
Public Administration	6.4	0.0%	13.2	0.0%
Housing Rental	977.8	2.8%	1,272.6	4.1%
Trade	9,340.1	26.3%	9,144.6	29.4%
Trade, others	7,885.3	22.2%	8,060.7	25.9%
Trade - combustible	1,182.1	3.3%	886.9	2.9%
Trade - vehicles	272.7	0.8%	196.9	0.6%
Communications	376.2	1.1%	354.1	1.1%
Electricity, Gas and Water	3,336.4	9.4%	3,425.1	11.0%
Hotels, Bars and Restaurants	1,588.8	4.5%	1,580.1	5.1%
Financial Intermediation, Insurance and others	2,082.9	5.9%	2,614.7	8.4%
Other Services	3,175.8	8.9%	1,686.8	5.4%
Education Services	20.8	0.1%	14.8	0.0%
Health services	32.8	0.1%	38.2	0.1%
Transportation and storage	945.2	2.7%	909.0	2.9%
Total	35,543.1	100%	31,104.1	100%

Source: *Department of Economic and Tax Studies, DGII.*

For the years 2007 - 2009 it shows that consumer goods are the largest import item, an amount that represented about 45% of total imports of the activity, followed by capital goods which represent about 30.1% and raw materials with 25%.

Chart 8
CIF value of imports of all inclusive hotels
According to type of good, 2008 - 2009

Description	2008		2009	
	RD$ Millions	%	RD$ Millions	%
I- Consumption of goods	3,260.6	45.0%	1,942.7	51.3%
II- Raw materials	1,808.9	25.0%	488.5	12.9%
III - Capital goods	2,179.8	30.1%	1,357.7	35.8%
Total	7,249.3	100%	3,789.0	100%

Source: *Database from the Directorate General of Customs.*

On the other hand, these hotels operate under the modality of sale in advance of a portion of their rooms to overseas tour operators. For most hotels, these sales are up to 70% of the total rooms available. In some cases, this proportion may be higher.

In this sense, according to DGII data, cash sales[14] represented 74.8% of total sales in 2009 and sales made in the local territory with credit cards represented 13.6%. In the other hand, the sales reported by third parties that involve the use of GMP were 11.9% of total industry sales. (See Graph 5).

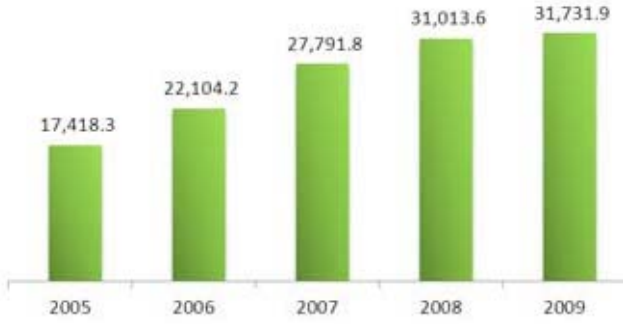
Graph 5
Composition of total sales of all inclusive hotels
In percentages: 2008 - 2009

Source: Department of Economic and Tax Studies, DGII.

2.4. Revenue and expenses reported

Total revenues, according to the income tax returns which includes both hotel operating income and financial income and other extraordinary income amounted to RD$31,731.9 million in 2009, increasing by only RD$718.3 million compared to 2008.

Graph 6
Income from all inclusive hotels per year
In RD$ million: 2005 - 2009



Note: *Gross earnings for the declaration of income tax of enterprises.*
Source: *Department of Economic and Tax Studies, DGII.*

The largest proportion of this income in 2009 comes from the hotel operation which represented 80.9%. This income is divided into rooms (63.9%), followed by food and beverage income that had a proportion of 17%.

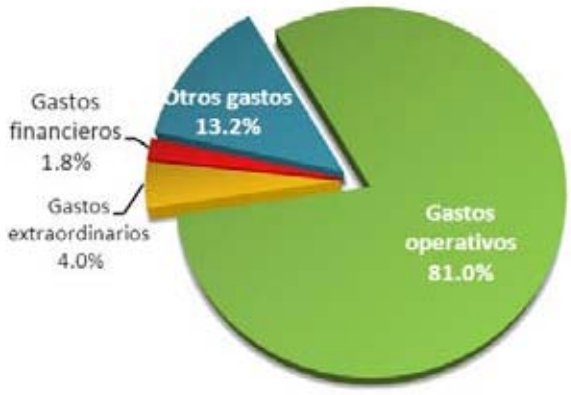
The third major income component is rental and other income which share in total revenues was 15.3%. The share of other income was 3%; this item includes financial income and extraordinary income related to sales of assets, capital or exchange differences.

14. Cash sales refer to payments made by electronic means of payment or guaranteed by tax receipt.

Graph 7
Taxes paid by all inclusive hotels
In percentages: 2008 - 2009

Source: *Department of Economic and Tax Studies, DGII.*

Graph 8
Taxes paid by all inclusive hotels
In percentages: 2009



Source: *Department of Economic and Tax Studies, DGII.*

As for expenses, the largest share corresponds to operating expenses. These expenses are those inherent in the production process of the company, i.e., which must be incurred to operate the hotel. Between these are: sale costs, personnel expenses, works and supplies, fixed assets maintenance and repair, renting and representation expenses. In other expenses those of depreciation are included, among others.

According to the data presented before the DGII, it can be observed through the years the little profitability of the hotels modality All Inclusive, which generated rents do not allow covering the costs and expenses generated in the production of their services. If we evaluate the margin of gross ratio, operative profit on cost and operating cost for these contributors, in most years it is negative.

Chart 9
Percentage of taxpayers according to the operating income and gross profit margin on cost and cost of operation
In percentages: 2007 - 2009

Rank of the Margin	Percentage of taxpayers		
	2007	2008	2009
Less or equal to zero	66.7%	59.0%	61.5%
Between 0.01% and 5.0%	7.7%	12.8%	10.3%
Between 5.01% and 10.0%	7.7%	10.3%	7.7%
Greater than 10.01%	17.9%	17.9%	20.5%
	100.0%	100.0%	100.0%

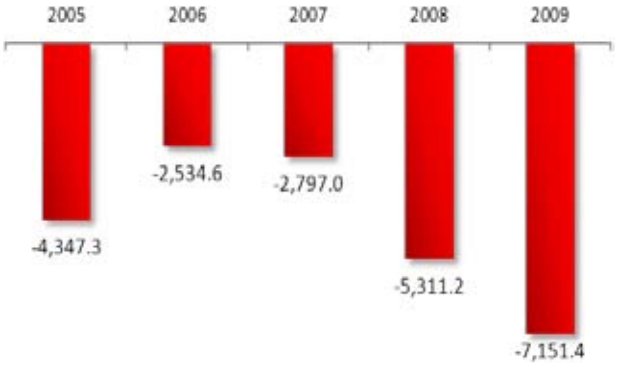
Source: *Department of Economic and Tax Studies, DGII.*

2.5. Analysis of the profits and losses

In order to analyze the situation of profit and losses of the all inclusive hotels in the country, the data was extracted from gain and/or loss from the income tax returns (IT) presented annually before the DGII[15], specifically the "Taxable Rent before Loss" (RNAP).[16]

Considering the previous statement, it is observed that the sum of RNAP of the hotels modality All Inclusive presents negative results in the analyzed years in spite of the benefits that are granted to them. It is important to highlight that in 2007 losses were not deeper due to the gain obtained by the sale of capital assets of RD$1,246.4 million, of taxpayers corresponding to this activity. (See Graph 9 and chart 10).

Graph 9
Net income return per year
In RD$ million: 2005 - 2009



Source: *Department of Economic and Tax Studies, DGII.*

Chart 10
Summary of declared profit and loss according to fiscal year
In RD$ million: 2005 - 2009

Año	Ganancias	Pérdidas	Total Neto
2005	356.5	-4,703.8	-4,347.3
2006	330.6	-2,865.1	-2,534.6
2007	1,001.5	-3,798.4	-2,797.0
2008	169.5	-5,480.7	-5,311.2
2009	136.8	-7,290.2	-7,153.4

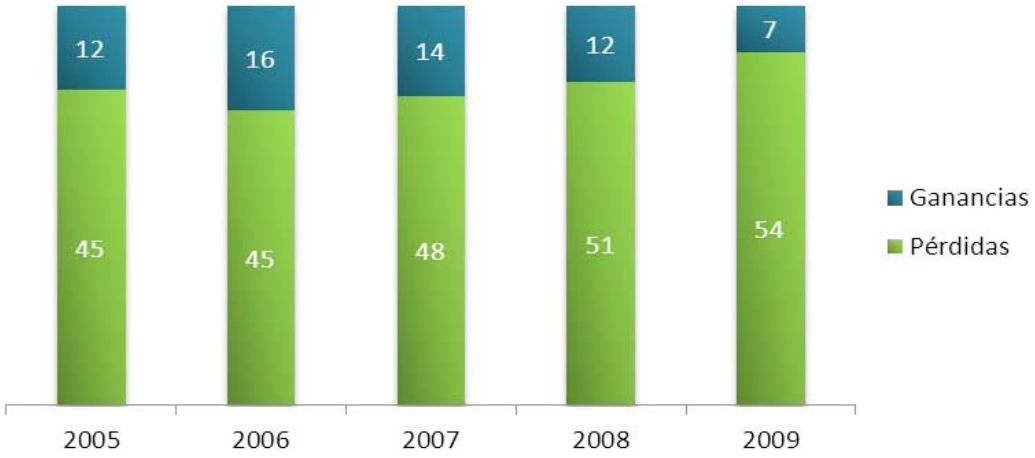
Note: *2007 gains include income due to sales of capital assets by value of RD$ 1,246.4 million.*
Source: *Department of Economic and Tax Studies, DGII.*

The existence of these constant losses in most of the taxpayers justifies the low collection on income tax and that the Effective Rate of Tax payment (TET in Spanish) defined as the quotient between the tax paid and the gross income generated has not reached 1% in any of the analyzed years. TET of the activity in 2005 - 2009 was of 0.49%, 0.33%, 0.87%, 0.1% and 0.08% respectively.

Following in this same line, Graph 10 presents the amount of taxpayers who declared losses or gains in every fiscal year. In this sense, it is observed that in every year, in average near 80% of the taxpayers displayed losses.

15. *It is important to clarify that in not all the cases the IT sworn declaration is available since some companies did not file it before the DGII or they were declared without operations; this amount of companies represents the 7.8% of the total.*
16. *This box was chosen (No. 17 of IR-2, 2010) to consider that it is the one that better can reflect the concept of profit or loss, since it is the less distorted by adjustments like the compensation due to previous losses.*

Graph 10
Participation of taxpayers of all inclusive hotels which declared IT
Values in units: 2005 - 2009



Note: *It includes only legal entities.*
Source: *Department of Economic and Tax Studies, DGII.*

2.6. Financial analysis

In order to make the financial analysis of all inclusive hotels service activity, each one of the entries of the financial statements that are filed to the DGII was consolidated. This process was made for the statement of financial position and also for the income return for each fiscal year analyzed. This way, the financial ratios were calculated on the basis of the entire sector.

Chart 11
Financial ratios of all inclusive hotels
By year: 2006 - 2009

Concept	2006	2007	2008	2009	Average
Cash ratios					
EBITDA/ Incomes	0.02	0.11	0.01	-0.02	0.03
Interests coverage	0.93	4.31	0.41	-0.37	1.32
Debt Coverage	0.02	0.08	0.01	-0.01	0.02
Liquidity ratios					
Work capital/ Incomes	-0.92	-0.83	-0.39	-1.07	-0.80
Current ratio	0.37	0.40	0.70	0.30	0.44
Acid Test	0.31	0.33	0.63	0.24	0.38
Defensive test	0.05	0.07	0.05	0.04	0.05
Debt ratios					
Operative leverage	1.66	1.55	1.66	1.94	1.70
Bank debt/ Assets	0.21	0.14	0.20	0.32	0.22
Capital structure	0.38	0.39	0.38	0.34	0.37
Profitability ratios					
Return on capital	-13.0%	-8.1%	-15.5%	-20.2%	-14.2%
Return on assets	-4.9%	-3.2%	-5.8%	-6.9%	-5.2%

Source: *Department of Economic and Tax Studies, DGII.*

The cash ratios suggest that income of the sector is not sufficient to cover their costs and operation expenses. Returns before Taxes, Depreciation and Amortization[17] (UAIDA or EBITDA for its abbreviations in English) does not manage to cover the short term debts, even by only taking taxpayers who reported benefits. The activity only showed capacity to cover their financial expenses with its EBITDA in 2007 where it covered 4.31 times.

According with the liquidity ratios that shows the service activity of all inclusive hotels, it can be seen that it has more current liabilities than current asset which demonstrates a lack of liquidity to cover its obligations in the short term.

According to the indebtedness ratios, the activity is financed more with debt than with its own resources. The greater percentage corresponds to the short term debt composed by Payable Accounts and Other Accounts, which represent more than 70% of the liabilities. In this sense, this suggests that the debt in the formal financial sector is relatively low as it is demonstrated in the reason of banking debt on assets.

Finally, the profitability reasons are negative for the study period, which indicates on one hand that it has negative operative returns and on the other hand that their losses have been growing at the same time that their capital and assets decreases, which suggests little productivity of the activity.

2.7. Declared rates

The rates per night obtained from the IT returns resulting from the 2007 fiscal controls made by the DGII is 20% of the taxpayers of all inclusive hotels located in the Bavaro zone - Punta Cana are shown in the following chart:

Chart 12
Rates per person per night reported by hotels
According to category[18]: by season: 2007

Category	Low	High
1	29.94	33.21
2	35.38	41.85
3	48.27	48.37

Source: *Database of DGII External Management Control.*
Note: *It does not include taxes.*

3. CONCLUSIONS

"All inclusive hotels services" represents half of the subsector hotels, bars and restaurants according to its paid taxes and to the sales volume reported to the DGII. However, the contribution in tax collecting terms of this activity has stayed around 2% of the total internal collection for the period 2005 - 2009, being most of those taxes paid by the final consumer and salaried employee.

The IT contribution to the total DGII collection was in average 0.5% for the study years. This low contribution is mainly due to the declared recurrent losses and to the regimes of incentives they use. In this sense, 1% use special regimes, and of the rest, around 80%, report losses.

According to statistics, the largest proportion of the supplies needed to offer services are

17. *The EBITDA measures the profit after deducting the costs and operating expenses.*
18. *Hotels have been classified by category according to the service quality served. This category goes from 1 to 3, where 1 represents the one of smaller category and 3 those of greater category.*

purchased in the local market. 67.7% of the purchases are supplied by the service sector, primarily by the trade activities (29.4%). Meanwhile, the industries sector provides 27.7% of supplies purchased, concentrating mostly in the manufacturing activity (15%).

Finally, when analyzing the activity like a whole, the financial ratios show that they operate with low profitability, little liquidity and recurrent losses which are financed mainly through indebtedness outside the banking system. In this sense, according to the financial statements that are filed to the DGII, cash is not enough to cover neither the debt, nor the interests, and they have a low level of assets and capital in relation to their liabilities.

4. BIBLIOGRAPHY

BANCO CENTRAL DE LA REPÚBLICA DOMINICANA. Estadísticas Económicas, Sector Real (1991-2009).

BANCO CENTRAL DE LA REPÚBLICA DOMINICANA. Estadísticas Económicas, Sector Turismo (1991-2010).

ORGANIZACIÓN MUNDIAL DEL TURISMO – OMT. Barómetro OMT del Turismo Mundial (Vol. 8, No.1. Enero 2010).

República Dominicana. Ley 158-01 sobre fomento al desarrollo turístico para los polos de escaso desarrollo y nuevos polos en provincias y localidades de gran potencialidad, 9 de octubre de 2001, p.12.

República Dominicana. Ley 557-05 Sobre Reforma Tributaria, 3 de diciembre de 2005, p.177.

EFFECTIVE IMPLEMENTATION OF INTERNATIONAL TAX INFORMATION EXCHANGE IN URUGUAY

Pablo Ferreri, Guillermo Nieves and Carolina Zitto

SUMMARY

Economic globalization has impacted the national tax systems, making them adjust their tax regulations in order to protect their tax bases from harmful tax competition. At the international level and for the same purpose, countries have signed international agreements with clauses that provide exchange of information on tax matters.

In this context, the present paper will address the measures taken by Uruguay, specifically in relation to the exchange of information in tax matters and their effective implementation.

***The Authors: Pablo Ferreri**, Income General Director of the General Tax Directorate. Ex- President of the CIAT Executive Council. **Guillermo Nieves**, Attorney, Professor of Tax Law of the University of the Republic. Member of the Tax Consultancy board of the General Tax Directorate. **Carolina Zitto**, Attorney, Tax Law Professor of the University of the Republic. Member of the International Tax Department of the General Tax Directorate*

CONTENT

The tax systems facing the phenomenon of globalization were generally designed after the Second World War in an environment of trade protection and immobility of capital and labor.

Nevertheless, the last three decades have witnessed an unprecedented liberalization and globalization of national economies, and the predictions indicate that, at least in the next three decades, this process will continue to intensify.[1]

The current globalization phenomenon is different from the past decades situations of internationalization by four factors:

The massive nature of the phenomenon taking into account that in the current process are involved a very large number of countries - all of the developed countries and the vast majority of developing countries.

An unprecedented increase in the volume of financial transactions resulting from an absence of exchange controls or limits on inflows and outflows of capital, - lawful or unlawful.

The appearance and nature of new financial products and instruments - bonds, swaps, options, futures and other complex securities - object of operations, and the introduction of new operational tools that organize and channel the financial activity - holdings, high-risk investment funds, etc..

The incidence of the phenomenon in the political and economic structures.[2]

We live in an open economy situation in which economic borders between states have virtually disappeared.

1. *WORLD BANK REPORT: "Global Economic Prospects 2007: Managing the Next Wave of Globalization",en:http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/GEPEXT/EXTGEP2007/0,,menuPK:3016160~pagePK:64167702~piPK:64167676~theSitePK:3016125,00.html.*
2. *VALLEJO CHAMORRO, J., ""La Competencia Fiscal", en Manual de Fiscalidad Internacional, Vol. I, Dir. Teodoro Cordón Ezquerro, 3rd. Edition, p. 203.*

1. IMPACT OF ECONOMIC GLOBALIZATION ON TAX SYSTEMS. NEW CHALLENGES FOR TAX ADMINISTRATIONS

Globalization, like any economic phenomenon, has an impact on taxation, more particularly on the following aspects:

1.1 Transnational economic activity

The globalization of economic production processes greatly hinders the determination of the companies tax bases, which is due to factors such as complexity to identify the source of income (see for example, in-line production processes in several countries, specific e-commerce operations or global trading operations), or the leeway that taxpayers members of multinational groups have to transfer taxable income from one place to another in the world (tax base shifting).

1.2 Increase in the mobility of financial flows and investments

Tax systems are experiencing a sharp deterioration in terms of equity because tax competition between states to attract capital produces a higher tax burden on less mobile factors: labor, real estate, among others.

States are witnessing the distribution and localization of portions of their tax base in areas outside their tax jurisdiction, reducing the real possibilities of the exercise of fiscal sovereignty of each State. This has led the states to become aware and include the international factor among the variables that influence the design of their tax policy.

Among the instrumental measures taken by states to compete in attracting investment, we find the overall decrease in income taxes, the exemption mechanisms for direct foreign investment, the off-shore centers creation or development and exemption of passive incomes.

1.3 Redesign of national tax systems

Globalization makes clear the need to redesign the national tax systems, but the states have limited options to autonomously define their legal tax systems.

McLure[3] has identified four types of limitations:

1.3.1 Limitations (voluntary) induced by the market

Investors tend to locate their investments where they perceive greater fiscal and financial returns, resulting in a "race of successive tax cuts" between the states, which led to a progressive reduction of the tax burden on capital income and an increased tax pressure on the economic capacities not likely to be offshored.

1.3.2 Conventional limitations (negotiated)

States are forced to compromise on parts of their tax base through bilateral or multilateral conventions.

1.3.3 External limitations (imposed)

These limitations are imposed through coercive actions by some states as anti-avoidance rules, unilaterally or multilaterally, inducing another country or group of countries to change aspects of their fiscal legislation, under threat of "countermeasures".

3. *MCLOURE, C.E. Jr., "Globalization, tax rules and national sovereignty", Bulletin for international Fiscal Documentation, v.55 nº 8, august 2001.*

1.3.4 Limitations on administrative or operational independence

Such independence is understood as the ability of a State to "manage" its tax system without the assistance of tax authorities from other countries, as has been observed in the present context, countries structuring their tax system on the principle of world income taxation, have seen their fiscal sovereignty reduced or limited by experiencing a marked reduction of their "administrative independence".

2. REACTION OF THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT AGAINST HARMFUL TAX COMPETITION.

2.1. Harmful tax competition

Immersed in the international context above described, the states are facing what has been identified as "harmful tax competition", which can be understood as: "…when the State intends to aggressively attract capital flows and yields which actually belong to other states, encouraging tax evasion and tax fraud in those other states. This situation has been described by the English term "poaching", to the extent that the yields attraction appears to be an indirect effect of fiscal measures taken by the State, its main objective being in the first place to attract financial flows that have connection elements with the other State, and that should therefore belong in priority to the other State ".[4]

In this situation, the Ministers of the member countries of the Organization for Economic Cooperation and Development (hereinafter "OECD") on May 22, 1996 requested this organization to conduct a study to develop measures to counteract the distortions caused by harmful tax competition on investment and financial decisions. In response to this request, the Committee on Fiscal Affairs of the OECD created the "Tax Competition Special Sessions."

The first results were achieved through the development of a report submitted in 1998 under the title "Report on Harmful Tax Competition: An emerging global issue", adopted by member countries on April 27 and 28, with the abstentions of Switzerland and Luxembourg. This report addresses the first phase of the OECD work: to have valid criteria for identifying the 'unfair' regimes, either tax havens or with tax regimes harmful for OECD member states. In addition, the 1998 report included recommendations that could be adopted by member states to fight against harmful competition.

The 1998 Report also ordered the continuation of the works on this matter, recommending the creation of a working group to develop a list of tax havens and other of harmful tax regimes on the basis of the foregoing mentioned criteria. This group, known as "Forum on Harmful Tax Competition", was established in July 1998, starting to work in October of that year.

2.2 Tax havens and harmful preferential regimes

The essential contribution of these reports was the determination of certain universal standards

4. *TELES DE MENEZES LEITAO, L,: . "El control y combate a las prácticas tributarias nocivas". Tema 3: Aspectos claves en las acciones de las administraciones tributarias. CIAT Technical Conference, Lisbon, Portugal, September 29 – October 2, 2003, page 3.*

in order to define the concept of "tax haven" and "harmful regime" as well as the establishment of a working method to identify, based on such criteria, "suspect" jurisdictions.[5] [6]

The Forum focused on the development of the two lists of potentially harmful tax regimes: the "tax havens" and "harmful regimes" to member countries. The result of these works led to a new report in 2000 which titled: "Progress in identifying and eliminating harmful tax practices".[7]

In June 2001 a new report was presented which details the progress made in the fight against harmful competition. According to the conditions set out in the 2000 report, those jurisdictions that have not been committed to eliminate the harmful elements of their regimes by July 31, 2001 would be included in a list of uncooperative jurisdictions against which defensive measures would be taken.

2.3 The model of information exchange agreement

From the preparation of lists of cooperatives and non-cooperative jurisdictions, the next step in the OECD strategy against harmful tax competition resulted in the implementation of an instrument to assist the parties in their negotiations on this matter.

Thus, in September 2000 the Working Group on the effective exchange of information was created, composed of representatives of twenty-four states or territories. This group developed a "Model Agreement on Exchange of Information on tax matters" adjusted to the standards defined in the 2001 report published in April 2002 along with the list of uncooperative jurisdictions.

However, states found a pitfall which prevented them from reaching concrete results: the lack of progress regarding "harmful regimes" of some OECD member countries.

Such circumstances also led to a deadlock in negotiations with countries considered "tax havens", leading to the creation of a Global Forum which met for the first time in Ottawa in October 2003, and in which OECD member countries and cooperative jurisdictions tried to define what has been called the "level playing field." By using this term they tried to move forward, establishing certain conditions of fairness and balance that should be provided to proceed with the information exchange. For this purpose, a Sub-Working Group was formed which should identify the key elements of the above mentioned concept.

2.4 Increased need for exchange of information among states following the 2008 global economic crisis

The 2008 global economic crisis reinforced international tax cooperation policy and fiscal transparency of developed countries.

---

5. *VALLEJO CHAMORRO, J., ob. cit. pages 226-228.*
6. *As a determining criteria of the concept of "tax haven" are the following: little or no direct taxation; flexible financial and commercial law; protection of banking and commercial secrecy; absence of exchange controls "Ring fencing regime" applicable only to non-nationals; little or no network of international agreements for the exchange of information between states. As criteria for determining the concept of "harmful regimes" we find the following: lack of effective taxation or abnormally low or reduced taxation, lack of fiscal transparency, "Ring fencing regime" and lack of effective exchange of information.*
7. *Through it forty-seven jurisdictions were initially identified which could be considered as tax havens, finally from that initial list, forty-one could indeed be considered as such according to the criteria established in the 1998 report cited above. Subsequently, the final list was reduced to thirty-five when Cyprus, Malta, San Marino, Mauritius, Bermuda and Cayman, were committed to adopt the necessary legislative changes to eliminate the prejudicial nature of their regimes.*

The phenomenon produced a wave of public deficit[8] in the developed countries that led them - in order to impulse liquidity to the banking system and increase tax revenue - to focus their attention on tax revenue loss suffered as a result of harmful international tax planning.[9]

The detection of tax evasion cases made by companies located in countries not cooperating also contributed to that decision. Given these events, states shifted from an unfettered protection of their economic operators' privacy towards cooperation and transparency in international transactions.

The events described above have led states to raise awareness for the need to increase tax revenues through the control of foreign source income. In this context, the OECD member countries have carried out an aggressive policy, urging members and non members to conclude agreements with clauses providing for the exchange of information in accordance with current international standards.

The non-compliance with such guidelines leads to the non-complying State --branded as "uncooperative"-- sanctions of various kinds, including obstruction of trade with member countries, incorporation into public lists of uncooperative states, discriminatory treatment by other states.

The issue was highlighted by the G-20 during their meeting in London in April 2009, by the **"Declaration on Strengthening the Financial System"**,[10] through which:

- Appeal was made to all countries in the world to incorporate international standards for information exchange established by the OECD
- The list of countries identified as uncommitted jurisdictions with international standards set by the OECD for exchange information, determined by the Global Forum was made public.
- Actions were announced against those jurisdictions uncommitted with the referred standards.

At the G-20 meeting held in Pittsburgh (USA) in September 2009, the OECD Secretary-General said that since the April 2009 appeal, more than ninety information exchange agreements had been signed and over sixty tax agreements were being negotiated, or renegotiated, to meet international standards for information exchange. On the other hand, he said that most "off-shore" centers were committed to meet such standards and those failing to do so were in process of removal. He also noted that there were some jurisdictions that having promised some time ago to implement the standards, had not yet done it.

Overall, current international standards that states must meet can be summarized as follows:

- Existence of procedures for the exchange of information upon request;
- Exchange of information for the application of tax laws, both in criminal and civil matters;
- No restrictions to the exchange of information on the grounds that the conduct being investigated would constitute a criminal offense under the laws of the requested party if such conduct occurred in that required party or for the mere fact that the requested party may not need such information for its own tax purposes;
- Respect for safeguards and limitations;
- Strict rules of confidentiality for the information exchanged;

8. *The fiscal deficit average of OECD countries is around 8% of GDP. Cf. GURRÍA, A. (OECD Secretary General) Seminar on Economic Perspectives 2011"El Reto del Crecimiento Económico", ITAM 7 de enero de 2011 México DF, México. Available on the Web: http://www.oecd.org*
9. *The OECD countries have estimated their fiscal tax revenue loss as a result of harmful tax planning around 1.3 trillion U.S. dollars.*
10. *http://www2.ccoo.es/comunes/temp/resources/1/187190.pdf.*

- Availability of reliable information, including: financial, identity of companies or corporations owners and for trusts, foundations, and others, as well as accounting information and
- Legal and material reciprocity.[11]

3. EXCHANGE OF INFORMATION ON TAX MATTERS

As appears from the above, the exchange of tax information has come to play a leading role in the international arena. In this sense, we will analyze its importance and then consider Uruguay's position regarding it.

The exchange of tax information between states responds to the need to provide tax administrations with adequate means in order to verify compliance with tax obligations of transnational operators.

In this sense, ROSEMBUJ states: "The information offers any interested public entity the opportunity to learn and acquire legal elements, data and documents which, with different effects, are used to the exercise of administrative power to tax (...) Information is the way for the correct application of the tax regulations of each State as an instrument against tax evasion".[12]

In short, as CALDERON CARRERO said: "The control of tax obligations, ultimately, does not represent anything other than "information management" so that the Treasury can control everything that it has or may have knowledge of. When the administration intends to verify the tax compliance of taxpayers who do transnational operations, it faces a serious problem: the lack of information on such operations".[13]

In today's highly internationalized economic environment in which we are immersed, the exchange of information has gone from being a secondary mechanism of international tax cooperation to become an essential condition of tax control.

This has also been recognized by the Organization for Economic Cooperation and Development, in comments to the article that regulates the exchange of information in the MCOECD (latest version).[14]

Notwithstanding the foregoing, we are still far from reaching a significant development in this regard. According to SERRANO ANTON: "... despite the significant initiatives and developments experienced by the mechanism of information exchange over the last decade, the truth is that the state of its development and current implementation is far from corresponding with the real needs that tax administrations of different countries have in order to comply with their fiscal oversight responsibilities and fight against fraud and international tax evasion ".[15]

---

11. *OCDE, "Tax Co-operation 2010 - Towards a Level Playing Field. Assessment by the Global Forum in Transparency and Exchange of Information for Tax Purposes, pages 15-16.*
12. *ROSEMBUJ, T., "Intercambio internacional de información tributaria", Editions from the Universitat of Barcelona, 2003, page 13.*
13. *CALDERÓN CARRERO on CARMONA FERNÁNDEZ and others, Convenios Fiscales Internacionales y Fiscalidad de la Unión Europea", first edition 2009, Grefol S.L., Madrid, Chapter v.3. Intercambio de información y asistencia mutua, page 649.*
14. *OCDE, "Model Tax Convention on Income and on Capital", condensed version, July 2010, page 397.*
15. *SERRANO ANTÓN, "Fiscalidad Internacional", Editorial Centro de Estudios Financieros, Madrid, 4th. Edition, Chapter 26, page 1208.*

While tax administrations still do not fully use the opportunities offered by the exchange of information mechanism, progress towards an effective exchange is undeniable. In this regard, we agree with the opinion of Sanchez that states: "It deals ultimately with the establishment of an international administrative culture based on the existence of a community of interests which, particularly in the field of taxation, require to overcome "the inertia to give higher priority to internal files requests than those for information and assistance from other states".[16]

3.1 Uruguayan position

As it has been expressed, the sustainability of an open world economy depends on international tax cooperation to ensure that taxpayers who have access to cross borders transactions do not have access to greater opportunities for tax evasion and tax avoidance with respect to those which operate only at national levels.

Tax cooperation reflects the basic principle that participation in the global economy brings both benefits and responsibilities.

In this context, Uruguay has concluded numerous agreements to avoid double taxation, tax avoidance and tax evasion and facilitate the exchange of information.[17]

This is part of a strategy of openness and consolidation of international relations in order to achieve effective international tax cooperation. Additionally, it seeks to create a secure legal framework, in order to attract investment to the country.

3.2 The current status of negotiations

Currently, Uruguay has five existing agreements for exchange of information with Germany, Hungary, Mexico, Spain and France. Still in process at the Parliament level are the agreements signed with Portugal, Switzerland and Liechtenstein, Germany (renegotiation), Ecuador and Malta. Technical agreements exist with South Korea, Belgium, Finland, India, Romania, and finally the country is negotiating agreements with Luxembourg and Malaysia.

3.3 Particular analysis of the clauses allowing the exchange of information established in the agreements signed by Uruguay that are in force

The information exchange clauses agreed by Uruguay, this is essentially the same, with some variations, as discussed below.

The agreement signed with Germany[18] provides that the information exchanged will be all that necessary to implement the agreement. It also establishes the obligation of discretion with respect to the information by the receiving State, providing that the information may only be disclosed in case of specific hypotheses expressed by the rule.

Exceptions to the obligation of providing information by the requested State are stated in the following hypothesis: When collecting the requested information involves actions contrary to the law or administrative practice of the requested State or those of the other State; when it involves providing information

16. *SÁNCHEZ LÓPEZ, M., "El Intercambio Internacional de Información Tributaria. Perspectivas de una nueva significación de este instrumento"en Revista Crónica Tributaria, No. 114/2005 (91-105), page 100.*
17. *On April 3, 2009 the Uruguayan Government reiterated the Secretary General of the OECD commitment to meet the most demanding standards of transparency, a commitment which would consist of the basic guarantee for the course of our country's long-held, and served as a basis for the consolidation of a prestige that distinguished it on the international stage.*
18. *Uruguay – Germany Agreement: "Agreement for the Avoidance of Double Taxation with Respect to Income and Capital Taxes", ratified by Law No. 16 110, article 26, effective for the exchange of information from the June 28, 1990.*

which is not obtainable under its national laws or normal administrative practice or those of the other contracting State or when the required information would disclose protected information or if its communication is contrary to public order.

In the case of the agreement with Hungary[19], the clause of exchange of information stipulated is similar, except that it extends the potential object of the request. In this sense, it establishes that contracting states shall exchange information needed not only to carry out the provisions of the agreement but also to implement the states´ domestic legislation.

It further states that information exchange is not limited by the provisions of the first article -- subjective scope-- and may require information on people who do not have domicile in any of the contracting states.

It is not set in any of the agreements procedures governing the way in which the request should be processed.

The agreement with México[20] expands the information that can be exchanged. In this sense, it provides that states can exchange not only the necessary information but all those foreseeably relevant to the implementation of the agreement or to the administration or enforcement of the domestic law.

It also does not limit the exchange of information to the objective and subjective scope of the agreement; it can request information from both residents and non residents as well as in respect of any tax.

The clause also adds a forth subsection which provides that the requested State should collect the requested information, even if not required for its own tax purposes and that the State can not refuse to provide the required information by the mere fact that is held by a bank, financial institution, beneficiary or other person acting as agent or trustee, or because such information relates to the holding of an interest in a person.

Nor does the agreement with Mexico establish any procedure to follow in order to proceed to the exchange of information.

Regarding this, it is important to note the requirement to interpret the provisions as to MCOECD comments under the provisions of the second subparagraph of Article 22: “It is understood that the contracting states shall endeavor to implement the provisions of this agreement in accordance with the comments on the Articles of the Income and Capital Tax Model Agreement developed by the Committee on Fiscal Affairs of the OECD to the extent that the provisions contained in the agreement apply to those established under the Model “.

In this sense and regarding the exchange of information, the Article 26 of the agreement with Mexico must be interpreted in the light of comments made in the model, given the specific reference made by the above mentioned subparagraph.

Regarding the exchange of information clause set forth in the agreement signed with Spain[21], it is similar to that agreed with Mexico, except that the information received by a contracting State may be used for other purposes when such use is permitted by the laws of the State providing the information.

---

19. *Uruguay – Hungary Agreement: “Agreement for the Avoidance of Double Taxation with Respect to Income and Capital Taxes “, ratified by Law No. 16,366, article 27, effective for the exchange of information from the January 1, 1994.*
20. *Uruguay – Mexico Agreement: “Agreement for the Avoidance of Double Taxation with Respect to Income and Capital Taxes “, ratified by Law No. 18.645, article 26, effective for the exchange of information from 12/29/2010.*
21. *Uruguay – Spain Agreement: “Agreement for the Avoidance of Double Taxation with Respect to Income and Capital Taxes”, ratified by Law No. 18.730, article 25, effective for the exchange of information from the April 24, 2011.*

Also, the protocol sets some rules in order to "facilitate the exchange of information", as described hereafter.

First, it sets that the State shall provide, upon request, information for the purposes specified in Article 25. In case it does not have it, the state shall use all necessary steps to acquire it, even though when it is not an interested party

To the extent permitted by its domestic Law, the information required will be provided in the form of depositions of witnesses and authenticated copies of original documents.

It also provides that the State shall provide, upon request, information relating to capital companies, partnerships, trusts, foundations and others.

Second, it is stated that the requested State shall send the requested information as soon as possible to the other contracting state.

For such purpose, it establishes that from the time a request for information is received, the competent authority shall acknowledge receipt of the request within fifteen days and will also have a maximum period of sixty days in order to communicate any defects in the request.

The requesting State will try to send the information within a maximum of six months which could be extended for complexity reasons. If unable to obtain or provide the information requested, inform the other State within ninety days, explaining the reasons for its inability or the reasons for its refusal.

In this sense, they settled the hypothesis that the requested State may refuse to provide the required information. For example, if it is discriminatory for a national of the requested by comparison to a national of another State or information that would reveal communications between a client and a lawyer, in certain circumstances.

It establishes that the cooperation between the two countries includes assistance in the notification.

As for the language to be used, it provides that the requirements and the responses thereto shall be written in Spanish.

3.4 Specific analysis of the provisions established in agreements on information exchange in force in the Republic.

At present time, the only specific agreement signed by Uruguay on information exchange is the agreement with France[22].

This agreement is based on the Information Exchange Agreement on Tax Matters developed by the OECD, which regulates the exchange of information upon request and the control or investigations abroad.

As for the content of the agreement, it provides that information object of exchange will be all that foreseeably relevant to the administration and enforcement of national laws of states in relation to the taxes levied by their laws and regulations. It comprises all existing taxes set by the contracting parties at both national and municipal levels, without any limitation.

Finally, as to its validity it was provided that once is ratified by both countries, it will apply from that date when it comes to criminal tax matters and in all other aspects, for tax periods beginning after that date or, when there is no period, for taxes due after that date.

22. *Agreement Uruguay – France: " Agreement between the Republic of Uruguay and the Government of the French Republic concerning Exchange of Information on Tax Matters ", ratified by Law No. 18,722, effective for the exchange of information since December 31, 2010.*

4. PARTICULARITIES OF URUGUAYAN TAX LEGAL FRAMEWORK IN THE LIGHT OF THE INFORMATION EXCHANGE PROVISIONS

Having analyzed the content of information exchange clauses agreed by Uruguay, we should analyze their impact on our legal system.

In this regard, the following points should be analyzed:

4.1 Exception to the national tax secrecy established in Article 47 of the Tax Code

The commitment to exchange information that our country has taken through this type of clause establishes an exception to the tax secrecy provisions stated in article 47 of the Uruguayan Tax Code.

The stipulation of these clauses implies that for the purposes of the Agreement the tax secrecy obligation referred to above is waived, forcing the country to provide all the requested information except in case of specifically mentioned hypothesis.

4.2 The international tax secrecy is not limited by laws governing access to public information

By virtue of the international tax secrecy, it is important to note that the information received by a contracting state may be disclosed only to the tax authority of the requesting State, and be used only by that authority, for the purpose of the agreement, unless expressly provided otherwise.

This secret is not limited by the existence of internal rules that force to disclose the public information as it is the case in our country by Law No. 18.331, August 11, two thousand and eight.

4.3 Scope of the protected secrets

According to the clauses of exchange of information as provided by Uruguay, our country can refuse to provide information that reveals trade, managerial, or professional secrets, trade procedures, or information which would be contrary to public policy.

To define the scope of these concepts, an analysis by the required State under its internal regulations must be performed.

Indeed, in front of a request of information from a foreign tax administration, we must first analyze whether the exchange is appropriate and then analyze if it does not reveal any information that is confidential, excluded from the exchange under the agreements.

As an example, our law establishes the professional secrecy in Article 302 of the Criminal Code, under the heading “Disclosure of professional secrecy,” it says: “Anyone who, without just cause, that will reveal secrets that have come to his knowledge, in virtue of their profession, employment or commission, is punishable by fine when the act will cause harm ... “

Before a request for information that could be found within the scope of that secret, the competent authority must proceed to a detailed analysis on whether or not the exchange can take place.

4.4 Bank secrecy provisions established by Article 25 of Decree Law No. 15,322

The information exchange clauses impact the bank secrecy established by Article 25 of Decree Law No. 15322 of September 17, 1982, which typifies as crime and punishes the financial companies that provide information on money or securities that they have in current accounts, deposit accounts or any other value, from individual or entity.

However, some clauses signed by our country provides that in no case shall the provisions of the article allow a contracting state to refuse to provide the requested information just because it is held by banks or other financial institutions.

The lifting of bank secrecy which will apply to information relating to operations performed after January 2011 has been expressly authorized under the provisions of the third paragraph of Article 15 of Law No. 18.718 which replaces the provisions of Article 54 of Law No. 18,083, which regulates the lifting of bank secrecy. Regarding our topic, it provides:

"... The same information may be requested by the tax authorities, in compliance with specific and founded requests by the competent authority of a foreign State, exclusively in the framework of international conventions ratified by the Republic on the exchange of information or to avoid double taxation, which are in force and in this case the applicant party shall be indicated and all the background and bases to justify the relevance of the requested information. The provisions of this subsection shall apply to information relating to operations after January 1, 2011"

In this case, the lifting of banking secrecy should be requested to the Judiciary following the procedure for lifting the bank secrecy with the individual or legal owner of the information.[23]

4.5 Powers of investigation and control of the tax administration

The effective exchange of information with foreign tax administrations will be guaranteed by the provisions of Article 68 of the Tax Code. That article gives the tax administration a series of powers of investigation and control that will allow adopting measures leading to effective information exchange upon request.

4.6 Simultaneous inspections

Article 16 of Chapter VII of Title IV of the 1996 law, in regards to Transfer Pricing provides that the Internal Revenue Service may require from foreign entities special affidavits without prejudice "...of performing, if appropriate, simultaneous inspections with tax authorities from states which have signed a bilateral agreement providing for exchange of information between tax authorities."

Definitely, it is a kind of "empowerment" to conduct simultaneous inspections that the internal law provides in case that Uruguay subscribes bilateral agreements governing the exchange of information.

4.7 Procedure for the purpose of implementing the exchange of information

Without prejudice to the specific procedural provisions under each agreement, it was considered convenient to establish some general guidelines in order to be able to carry out effectively the exchange of information that Uruguay has undertaken under the signed agreements.

In this sense, Decree 313/011, dated September 2, 2011 establishes a procedure for making effective the exchange of information.

As the competent authority for the exchange of tax information (as established in the Agreements for the avoidance of Double Taxation and the Information Exchange Agreements) the Ministry of Economy and Finance ("MEF"), the second article allows to delegate these tasks to the Internal Revenue Service ("DGI" in Spanish). By the Resolution dated August 11, 2011 the MEF resolved to delegate its powers to the DGI as the competent authority concerning the effective exchange of tax information.

---

23. By Decree No. 282/2011 of August 10, 2011 provided for the administrative procedure by which the Internal Revenue Service shall request to taxpayers with the registered address in the Service, to voluntary lift the bank secrecy, prior to the formal request before the competent court.

The scope of application is defined by the third article, which includes the requests of information exchange from competent authorities of the requesting states, and those made by the MEF or DGI.

The final paragraph of the mentioned third article specifies that the requests of information will not proceed when background information upon request is not provided, including the description of the tax purpose by which information is required.

The procedure for a received information request is scheduled in the fifth article of the decree. In this regard, the DGI will make a preliminary assessment of its conformity with the provisions of the applicable convention or agreement, verifying especially that it contains the following information:

- Elements that correctly identify the persons or entities holding the requested information;
- Elements that allow the correct identification of the persons or entities that have control or possession of the information requested within the national jurisdiction;
- Period of time for which the information is requested;
- Detail of the information requested;
- Tax purposes for which the information is requested.

In his final subparagraph, the article establishes that the DGI may provide in accordance with the provisions of article number three of the decree, other elements which should contain the requests received for information exchange.

When the request includes information protected by banking secret (article 25 of the decree-law Nº 15,322, of 17 of September of 1982) it will have to follow the specifications in section 4.4 of this chapter.

In article eight, the Decree attributes to the MEF the resolution of certain hypotheses, providing that the DGI will not decide:

- When the supply of information could reveal trade, managerial, industrial or professional secrets, and business processes or contains information whose disclosure to the requesting competent authority might result contrary to public order;
- Applications for entry to the national territory officers of the requesting authority to interview individuals or examine documents. In these cases, applications of the requests from the competent authority should come with the express written consent of the owners of the information or the people involved.
- When the competent authority shall request to assist an audit in the national territory.

An important point, and where the decree would seem to align with the majority position in the international doctrine, is the precision that the requests received on exchange of information will follow the statute limitations of the tax obligations set out in state of the requesting competent authority (Article 9).

The tenth article establishes that no resolution will be issued to be delivered to a requesting authority without granting view of the administrative actions to the owner of the information within five business days. In this sense the decree has been aligned to the prevailing national law standards (Articles 12, 66 and 72 of the Constitution, Article 8 of the Pact of San Jose, Costa Rica and article 46 of the Tax Code and Article 76 of Decree 500/991).

With respect to requests for information, the eleventh article provides that the DGI will establish internal procedures by which applications for exchange of tax information addressed to the competent authorities of the requested state will be formalized and the following article imposes the DGI an obligation to report to the MEF in case the competent authority of the requested state refuse to provide the assistance requested by Uruguay.

Finally, the thirteenth article states that the DGI will only make requests for information when, in

accordance with domestic law, it had exhausted all available regular resources, except those that would cause disproportionate difficulties, to obtain data, reports or records, which according to the circumstances, would be necessary for the correct determination of debts or the classification of violations.

Similarly, it states that the Internal Revenue Service may not proceed with any requests for information from competent authorities of the requesting states, while these do not declare the compliance of the conditions stated in the previous paragraph.

It is worth noting that the Internal Revenue Service in full awareness of the challenges that the adequacy of a new tax system to the international standards involve in a near future, has initiated a process of adapting its administrative structure and specialization of human resources.

It is with this objective that the Department has instituted within its organizational structure the Large Taxpayers Division, a Department of International Taxation, among other tasks to attend the requests for information exchange.

5. CONCLUSIONS

This document has attempted to describe how our country understands the exchange of information in the context of a rapidly growing globalization. This is defined within a country strategy, strongly oriented towards greater international integration, given the dimensions and characteristics of our country. This strategy of international insertion obviously can not be the same as the one carried out a few decades ago, simply because times have changed and we are in another reality. It is not possible to aim at international integration on base of the promotion of elements favoring the opacity of the information, and it becomes essential to adopt and promote best practices in transparency, both in fiscal and other dimensions of the national activity.

In this sense, we think that Uruguay has taken obvious steps to stop seeing itself as a place where the financial system was conceived in isolation and which was, as crucial sector, submitting other sectors. In this context, the promotion of the country passed through the provision of legal solutions that collaborated with the opacity of information, both nationally and internationally. A clear example of this is a banking secrecy law designed to serve a regional integration to take advantage of weaknesses in neighbor countries.

Today Uruguay has redefined itself as a productive country, and consequently went on to have a comprehensive approach to development, where the financial and productive sectors are articulated according to this national strategy.

Today, the wager must be for a Uruguay strategically inserted not only in the region but also globally, where government actions are focused to serve a good integration into the world. In this context, the administrative actions regarding international taxation, banking secrecy, the fight against money laundering, terrorist financing and information exchange are part of the legal innovations.

Uruguay's commitment to ensure effective exchange of information within the framework of agreements signed has highlighted the need for issuance of a regulatory standard clarifying certain aspects of the exchange procedure.

Finally, administrative and operational levels require full awareness of the challenges that the adjustment of the new tax system to international standards will imply in the near future. This is why the tax administration has begun a process of specialization of its human resources and adjustment of their administrative structures.

In particular, the Internal Revenue Service has established within the organizational structure of the Large Taxpayers Division an International Taxation Department that will address, among other tasks, requests for information exchange, counting for such purpose with the direct assessment of the Tax Administration of Spain.

6. BIBLIOGRAPHY

ALBACETE y ERMOGLIO. Convenios para evitar la doble imposición internacional. Aspectos específicos. Intercambio de información. -- p. 939-959. -- In: Revista Tributaria Uruguaya número 219. (2010).

BANCO MUNDIAL. Perspectivas económicas mundiales 2007: Afrontar la nueva etapa de la globalización.

CALDERÓN CARRERO, José Manuel. La incidencia de la globalización en la configuración del ordenamiento tributario del siglo XXI. -- 27 p. -- Serie: Documentos del Instituto de Estudios Fiscales, N° 20/06. (2006).

CARMONA FERNÁNDEZ y otros. Convenios fiscales internacionales y fiscalidad de la Unión Europea. -- Capítulo V.3 Intercambio de información y asistencia mutua, página 649. -- Ira. ed. -- Madrid: Grefol S.L., 2010. (2010).

GURRÍA, Angel., Seminario de perspectivas económicas 2011; "El Reto del Crecimiento Económico", ITAM 7 de enero de 2011 México DF, México. (2011).

MCLOURE, C.E. Jr. Globalization, tax rules and national sovereignty. -- In: Bulletin for International Fiscal Documentation, v. 55, n° 8, agosto 2001. (2001).

OCDE. Tax co-operation 2010 - towards a level playing field. Assessment by the global forum in transparency and exchange of information for tax purposes. (2010).

OCDE. Modelo de convenio tributario sobre la renta y sobre el patrimonio. (2008).

OGEA RUIZ, Rodrigo. La legislación española y los paraísos fiscales. -- p. 1759-1791. -- In: Fiscalidad internacional/ Fernando Serrano Antón. -- 4ta. ed. -- España: Editorial Centro de Estudios Financieros, 2010. (2010).

ROSEMBUJ, Tulio. Intercambio internacional de información tributaria. España: Ediciones de la Universitat de Barcelona, 2003. 116 p. (2003).

SÁNCHEZ LÓPEZ, María Esther. El intercambio internacional de información tributaria. Perspectivas de una nueva significación de este instrumento / María Esther Sánchez López. -- p. 91-105. -- In: Crónica Tributaria Núm. 114/2005. (2005).

TELES DE MENEZES LEITAO, Luis Manuel. El control y combate a las prácticas tributarias nocivas. -- p. 207-216. -- In: Conferencia Técnica del CIAT. Lisboa, Portugal, 2003.

VALLEJO CHAMORRO, José María. La Competencia Fiscal. -- 199-246. -- In: Manual de Fiscalidad Internacional, Vol. I /Teodoro Cordón Ezquerro. -- 3ra. Ed. – España: IEF, 2007. (2007)..

TRANSPARENCY IN THE ECONOMIC ACTIVITY: A PRIORITY

José Luis García Ríos

SUMMARY

The value added tax requires a kind of settlement that is based on transaction detail basis, and if its support documents have been set up in order to verify their probative value, automatic validation is possible: it depends on the fulfillment of the filing and availability conditions established in the society and in the support systems that enable the administration to feed its processes.

The monitoring and maintenance of these conditions are vital for the transparency of the economic activity, as much or more than the efforts in the investigation of complex forms of evasion, which may be more easily detected trough them.

Author: *Public Accountant (Buenos Aires University) has been the Director of the Data Computing System, Inspection Director and Sub-General Deputy of the Internal Revenue Planning Division and Accountant General of the Court of Accounts of the Nation of Argentina, has worked for 20 years as a Consultant to institutions providing international tax services in Peru, Paraguay, Panama, Ecuador, Colombia, Argentina, Nicaragua, Dominican Republic, Venezuela and Bolivia.*

CONTENT

Based on incompatibility causes with the well-being objectives, in disagreement with the government's management or lack of solidarity principles in the community culture, the non-compliance can overwhelm the acceptable limits, the first symptoms of this are shown in the concealment by omission or defect in the recording of economic events and the goods and products involved.

Information is then required to tax services that strive in vain to claim it, the answer is not forthcoming, or when it does, it's never on time or with the expected quality.

What kind of information feed the administration´s database? How have the registration methods been planned and regulated to do so? What technology is available to obtain it? What validation processes make it reliable? How are the sources maintained?

Certainly, these issues require priority in the administration activity and they do not always have it.

The information structures are multifaceted computer continents depending on the type of individuals who possess them, the kind of activities that they develop or the different requirements of the institutions that regulate them. The audit processes need to operate on them to access data that support the transactions and verify their quality of proof.

Where such structures do not exist or do not offer appropriate conditions, every effort is in vain, the verification resources are poorly implemented, the conclusions are based on subjectivity, and extortion and bribery are just around the corner.

These comments have the support of real life experiences by the narrator in the countries where he has served. These comments just try to give a warning message for those administrations that are eager in finding sophisticated ways of evasion without attending primary information levels in the economic activity of the society in which they are likely to find what they are looking for.

1. THE INFORMATION STRUCTURE

The information, on which the tax audit operates, is built on the sales documentary support in the domestic market, on exports, on purchases in the domestic market and on imports. The systematization, storage and availability of detailed support of such transactions should support what we call "transparency of the economic activity."

The sales and export information provide income, purchases and imports provide expenses, and the equation can be supplemented with information on the remuneration of work to bring an estimate of income.

Starting from the information based on indirect taxation, the result reached by the direct taxation can be reached; on the contrary to start a review from the result of direct taxation is to choose for the most difficult way to reach compliance.

The following paragraphs aim to create in the society, structural conditions of information on their economic activity to feed the processes of control of noncompliance with the tax obligations deriving from it.

2. THE INFORMATION SUPPORT AND ITS ISSUERS

The legal verification of the economic activity is based on two conditions: the transparency of economic events and the identification and location of the object that materializes them.

First of all, transparency requires the installation of a legal system establishing documents authentication to witness economic events and conditions to ensure the veracity of the nature and value of the objects involved in them.

For such purpose and in order to assign the proof value of documents in audits, their formats should be normalized, define the data that it should contain, determine duties and responsibilities of issuers; discriminate requirements of printed and issued ones manually and by electronic means, establish procedures for printers that produce it, for suppliers of mechanical devices, for software suppliers and sale receipt issuers and implement support documents for transport of goods in warehouses and technology to ensure a correct identification.

It should also establish mandatory issuance and delivery of testimonial documents in the transactions, by the economic operators, making them responsible of their formal registration.

While the issuance and delivery of sale receipts do not involve the security of transactions registry, for the administration it represents the possibility of locating accreditations through information crossings and with it achieve the deterrent effect necessary to limit the non-compliance.

The issuance of documents and information storage can be operated through mechanical means to ensure a closed system that prevent from manipulations of information.

The chips placed in storage in such devices - backup form of information known as “fiscal controller”, is common in supermarkets and other businesses with large volumes of relatively low amounts operations.

The amount and dispersion of devices that these companies require do not offer the best solution to survey information but in the market there are tools that facilitate its electronic transmission.

The administration allows companies to print the receipts with their own equipment when the volume of their operations required it and the computer systems ensure the security of information.

A current form to issue receipts as a result of technological development is the electronic invoicing through which the tax administration can know the detail of the transactions between the sender and the receiver. It is a permanent intervention instrument in the economic activity. Encourages transparency of the activity and facilitates the verification of its legality without involving the operators more than in the input of the registration of their transactions on the web.

This technological tool promises automatic settlement of VAT through its widespread implementation.

The support document of transport and storage of goods generally used is the waybill. It provides the identification and location of the sender,

recipient and transporter, the location of the origin and destination of deposits, the reason for transfer, the detailed description of volumes and items transported and the reference sales receipts codes of the operation that led to its displacement and subsequent storage.

Its electronic development as well as its electronic invoicing constitutes an important service for the transportation of goods and for the security of their loads.

3. SPACES WITHOUT INFORMATION SUPPORT

They are transactional areas without documentary evidence of the facts resulting from their activities.

3.1. Informal markets

This mode of operation, which escapes any legal tax order, hides illicit smuggling, theft and piracy in what some call “creative solution to the lack of jobs.” There is no shortage of arguments that justify it as a way to overcome extreme poverty.

These markets, which criminal supply makes their operators accomplices, develop business without any tax charge in disloyal competition with those operating in the economy complying with their tax obligations.

They have no records; the visible form of crime is the offered merchandise which dispersion in unmarked stalls without documentary support, hides or disguises its sources of supply.

The music market constitutes a particular case, with illegally copied videos and software in actions usually called “piracy.” In this type of transaction, it is legally difficult to separate the “packaged goods” from the “package” that contains it.

The dealers of these commodities ignore intellectual property rights, they illegally copy products on magnetic media eventually sustaining the sale of containers, but not the illegally copied content, thereby, supports containing music, videos or software are disposed at bargain prices and their sale is justified as empty “containers”.

At some time, administrations have tried to induce informal operators’ groups to comply with their obligations to by training them, inducing them to adhere to simplified procedures, seeking simple document models to regularize the support of their sales. The attempt did not last long, thus demonstrating that the best way to end their activities is to provide the sustained opening of labor markets where unprotected sectors find employment and penalize illegal operations.

3.2. Informal virtual markets

To find transparency within an “informal virtual market” operation is almost impossible, except with the appropriate technology.

The virtual market of informal operations is created by operators who develop internet applications for specific product offerings, marketing agents or informal producers. These operators act as intermediaries between private suppliers and potential customers, broadcasting on their pages images and description of products.

The communication between buyer and seller is private, is done without the intervention of an intermediary, which causes the illegal concealment of transactions.

By this virtual operating mode and the difficulties to control it, the business escapes the vigilance of institutions, allowing the escape of the collection of its taxes.

With evidence obtained from their own promotions, in some cases they can be accessed through the fees charged for the operations, since operators use receiving banks to obtain them, thereby facilitating their location.

The resources usually available to administrations are limited to control the frauds implicit in this business as widespread as profitable for those who thrive on it.

4. VALIDATION IN THE INFORMATION BASES

Once the legal framework and the support systems which facilitate the assembly of the information structure are installed and implemented, it is necessary to monitor compliance with the established conditions.

The legality is validated through the occurrence of the sale transactions, transport and storage of goods until their processing, sale or consumption.

They sellers and buyers, shippers, carriers and consignees of the cargo and the owners, holders and custodians of storage are the responsible ones.

4.1. Internal market transactions

4.1.1. Sales support

The authorization systems for printing of sales receipts foresee the existence of computer systems for obtaining and replacing them so that once installed, they receive print requests, validate the applicant's tax situation and subordinate the authorization to the fulfillment of the pending obligations.

The authorizations have a validity period at the end of which the individuals must reapply for authorization and the review and request of compliance with pending obligations is repeated. So here is a simple and effective method of regulating the mass of defaults with no other cost than the system maintenance.

The procedure requires a permanent control of the authorization applications for new registration, revocation of granted licenses and issuance and delivery of sale vouchers by economic operators.

Electronic invoicing allows the buyer to get their records prior interception of his registers by the administration, validating the tax status of the issuer and the receiver and feed their databases.

The validating process of documents that support the sales operations includes their validity control, the fiscal existence of the operators involved and their compliance status.

Notwithstanding the recognition of the validity of the transaction documents, a nonobjective description of the goods or failure of identification in the nomenclature used, can lead to confusion or omission about the nature, quality or object, affecting the document`s anticipated legality.

4.1.2. Purchase support, tax credit

The tax deduction on goods purchases by businesses to determine the value added is often illegally increased to evade tax amounts corresponding to the performed operations.

The use of printed forms to support tax credit is often at the source of frauds, and their issuance by ghost companies exclusively created to sell this type of forms makes this type of illegal activity difficult to control, usually involving reviewing the sample that their validation implies, requiring an audit of the supply chain up to the formal factory sales or to the control of the importation procedures, according to each case.

The legitimation of the tax credit requires documentary identification and location of the seller and buyer of the goods, their detailed description, the date of the transaction and the identity and location of who printed the document.

Since their authorization, printing forms provided as tax credit support should be subject to monitoring and their application subject to detailed validation that should also include reference guides used for the transport and storage of goods at the origin of the credit.

To make it easier for buyers to check legality of the documents they receive, there are applications available that validate the tax status of providers and approval of receipts they have received in support of the tax credit. The availability of these applications prevent the parties involved in using invalid credits, from using the argument that they ignore the tax status of their suppliers.

The control of illegal activities in the tax credit production requires crossing processes that support their detection and help dissuasive and punitive actions.

4.2. Transport of goods and merchandise

Control of the legality of transit cargo within the country's territory is the responsibility of the tax administration.

The legality of the goods in transit or in storage can be inferred in the identification of those who operate them, in their origin, on the motives of their transfer, on the route they use, the identity of the transporters and the travel times of the cargo, data provided by the waybill in use.

The existence of this information does not fully enable the legality of the goods transported but provides important clues to determine the lawfulness of their origin.

Currently implemented in electronic form, the waybill gives the possibility to intercept the log entry to assess the tax status of the operators involved and the data components of its legality prior to shipment.

Shippers of goods upload the cargo to the web and once the transit authorized, they are traveling with a code that allows downloading the data during the transfer for review and validation.

The displacement control in route is highly strategic in the cargo tracking; the use of mobile communications to monitor it facilitates the control by analyzing the transport and the compatibility of the observed direction with the one reported in the waybill. GPS receivers are valuable tools to determine the exact position of the moving transport.

4.3. Storage in warehousing services and private warehouses

Companies often hide their own storage offices and goods stored in them or in leased premises or services, forcing the administration to perform intelligence actions to locate them when the programs require so.

The leasing of storage space is very attractive to the deposit of illicit goods so they require strict control by the administration.

The storage of goods in warehousing services is usually recorded with identity of depositors who frequently hide to holders or owners that they operate illegally with them.

To keep the operators of the activity identified and located, their compliance with the minimum conditions that guarantee the legitimacy of their operations is required.

The rules for location of storages facilities, direct access to inventory information and their owners of warehousing services, general systematization of registries, identifying standardization of goods stored and the rules of order and maintenance for their storing, are essential elements in the detection of goods and merchandise sold in illegal activities.

In relation to the identification of goods if they do not use universal classifiers or codes, companies register in their inventory descriptive text or source codes or their own codes, resulting in the coexisting in many forms that lead to inequalities to components, of identical quality, type or nature, bringing confusion to audit.

In such conditions the manual registration of samples to be examined suffers illegible, deletions and omissions, fingering without prior manual printing is expensive, the entry of digital information in systematized inventory without standard identification forces to re-code samples for their uniform treatment.

In seeking efficient ways to do the survey, the GS1 barcode, universal identifier of goods, as the support for objects identification codes, appear suitable for reading using scanning equipment.

The GS1 is extremely useful for tracing the processes to reach the origin of the manufacturing chain. Traceability is the ability to track the movement of a product through the various stages of the supply chain and trace its history, application or location.

Its implementation in the Tax Administration to support the process control of goods transportation and storage is a significant step forward in the implementation of data collection procedures and registration of samples to validate verification of lawful origin of the samples and control inventory of goods seized.

The GS1 traceability could facilitate the monitoring of the processing chain, very useful in verifying the origin and validity of the claim that they represent

The institutionalization in tax administration of a systematic and permanent control of this type is not usual, however the application of value added tax on imported goods and domestic production and validation of the use of the resulting credit are their responsibility.

5. AVAILABILITY OF INFORMATION TO FEED PROCESSES

In response to a legal or accounting needs of taxpayers, huge volumes of paper documents supporting the facts of economic activity, its mobilization, processing and storage to power the processes of management control, are practically impossible.

The units that focus on the economy scan the documents that support their operations and use electronic systems to feed their accounting processes, stored in this way millions of data that can be connected to the administration, in similarity with internet network servers.

If Internet search engines locate the objects of queries at incredible distances in nanoseconds, checking millions of servers located throughout the whole the planet, covering billions of records to locate binary responses: Is it utopian to imagine tax administrations becoming a mainframe computer of a community of peripherals computers connected to it in real time?

The existing technology on the market offers very high performance processors and relatively low cost.

The Internet facilitates communication with the taxpayer, today there is no administration that does not draw upon it to inform and train the existing legal regime, support compliance with obligations, report administrative action or obtain information from tax returns, huge databases serve million of consultations from anyone who has taxes to pay.

We are living the “great village” visualize in the 60s by McLuhan ... a globalized and electronically communicated world which facilitates the permanent conversation, today the virtual union is a reality, taxpayers may feel as assisted by Web services as well as controlled by them, so there is no argument for it not to be.

The structure support is facilitated the information that it provides can feed processes which analyze the registries that support transactions, distinguishing those who have not passed the tests of validity, requiring the resulting adjustments in the VAT returns, main provider of the information needed for , detecting the differences and require the tax adjustments.

Meanwhile valid information feeds crossings which allow to have returns of fact reported by third parties, compare their results with the returns presented,, identify differences and claim the adjustment.

Mass information examination and its complete and primary evaluation facilitate the selection of specific non compliers for further audits.

Sometimes the constraints results make administrations impose taxpayers the obligation to provide enough information without having prepared the bases for its registration and storage, so that information aimed at to detecting processing crossings and detect differences in both sales and purchases in the domestic and external markets, show errors in validation processes that eventually discourage its use.

The flaws and omissions in the information without prior preparation of the installation process and availability of data bases of the community generate high opportunity costs for both the administration and for the parties required to provide it.

Administrations need to operate continuously in the care and maintenance of infrastructure, updating the procedures for registration and validation of databases, adapting their own technology to the information providers developing applied software, adding new mechanisms to validate and improve the existing ones and demanding training for taxpayers if necessary, order more onerous penalties for repressing the faulty information.

But above all, no more information than which is needed for control purposes should be requested.

Carelessness in this regard are paid by the performance, after many years of having implemented the statutory order of sale receipts, some administrations which originally showed highly satisfactory results, today register high levels of error and omission in the performance of their obligations of delivery and quality of information.

The analysis of the sources of economic information available to the society in the registry of its operations, the ability to validate their legality during the development of its economic activity and access technology on the market to recover it, allows the administration to project the best available scope and methods.

6. BASIC TRANSPARENCY INDUCTIVE PROCESSES

The ability to detect illegally documented or undocumented transactions, to identify and determine the origin of goods circulating in the country, to locate the companies offering storage spaces and the availability of technology to access information, are some of the transparency variables of the economic activity.

Administrations have powers of different nature to induce the process of legalization, availability and sorting of information and for monitoring the lawfulness of the inventories, since special arrangements to formalize the taxation and the use of tax lottery, until the implementation of coercive actions.

6.1. Simplified systems

The special regimes for small and medium economic operators, some of which summarizes the obligations of the value added tax and income tax on a single set tax and other simplified conditions for the fulfillment of their obligations, to achieve two basic objectives: Mainstreaming marginal sectors of the economy and save administrative costs implied by the general systems for the control of unprofitable segments.

The mainstreaming of marginal sectors provide transparency to the informal markets incorporating the agents operating in them with minimum taxation quotas, emphasizing the control of the payment amounts committed and monitoring their purchases to estimate their income, adjusting the categories that must pay taxes and punish the "pettiness" of their behavior.

The issue of sale vouchers by the adherents to the simplified forms of taxation, does not serve the general support of the VAT tax credit but adds transparency to the management of this segment.

To induce adherence to these regimes in pursuit of transparency in their activities, facilities for obtaining bank loans, adjustment in pension systems and other benefits are provided by the administrative system.

6.2. Tax lottery games

In order to induce the community to participate in the delivery control and validation of sale, some administrations promote lotteries with the input of documents accumulated by it on purchases, with rewards stimulating some serial numbers chosen at random.

The sales receipts thus obtained subjected to manual validation processes or minimally digitized interventions are used to feed the administration interventions.

The awards, in some countries, oriented towards the improvement of the education systems and schools teaching equipment, contribute to the tax instruction of the students who participate in the collection, evaluation and recording of receipts and training them in their basic concepts.

Given the decision to implement these games, it is important to note that if the rising cost and validation of the receipts entered and the sanction of invalid documents have not been foreseen, the culture change does not take place and the tactic is vulnerable to actions that degrades it

6.3. Strategic alliances

Professional groups are a good support in the implementation of regulations for the production and availability of information, any requirement in this regard involves their own interests.

The necessary adjustments in the accounting software packages and mechanical registration devices that are offered in the market to adapt them to the required security conditions for its use and storage produce cooperative ties with their suppliers

The printers approved for printing formats of sale vouchers, offer good service to both the administration in the authorization control and the recovery of outstanding obligations, regarding the economic operators who mediate with the administration.

6.4. Coercive action

In some countries some special units have been installed to control the noncompliance of the obligation to provide proof of sale transactions and documentary support the goods transported and their storage.

The procedures of these units are supported mainly in the public trust conferred by law to government officials to testify their verifications and that explains their "notarial" name.

They are often integrated with college students in upper cycles in multiple professional disciplines

employed for periods not exceeding two years, trained through programs ranging from tax concepts to procedures to apply and are trained in self defense exercises, management of radio equipment, video recording and operation of computing devices.

The operation programs of these units include intelligence operations units, simulation techniques to verify the delivery of sales receipts, verification and examination of the documentation of goods in transit and in warehouse, application of closures and seizures; review of printing tools and software used by companies to issue sales bills, in this case with the help of specialized computer personnel administration.

For their actions of investigation, geo-reference tools available on the marked help them coordinate the location of control points devoid of addresses to record and allows the monitoring of field operations for security and surveillance of their movements.

Their actions generally are supported by armed brigades of law enforcement to deter frequent contempt and attacks against them.

6.4.1. Support of transactions

6.4.1.1. Failure to deliver sales receipts

The verification of documentary support for transactions under onerous regimes of sanction is an effective tactic for controlling the sale receipts delivery applied by simulating purchases.

The purchase simulation is a procedure by which the tax agent clients and acquires products being offered for sale in the local market. The action is recorded on hidden camera to collect evidence in case of dispute.

When the expected document is not received or the one received does not meet the legal requirements, they leave the intervened premises to complete the record with prima facie evidence of failure and reenter to notify offenders and close the intervened premises.

6.4.1.2. Failure of buyers to claim receipts

Some legal systems penalize consumers who do no claim receipts when making their purchases and empower the administration to the seizure of the goods purchased.

Not many institutions risk the scandal that common buyers promise at the time of seizures, usually they just request from the “consumer” to go to the sales premise with the tax agent and witness the complaint which has to support the application of sanctions to the issuer.

6.4.1.3. Transactions in informal markets

Informal transactions are not supported with the delivery of any legal proof by which the action of tax agents is aimed at finding illegal goods in warehouses.

The control of transactions in the informal sector usually runs in places of difficult access and with risks for those who make them. Informal populations are numerous and crowded operating in insecure areas devoid of minimal services.

Prior to the interventions, a deadbolt lock is implemented to block entrance on the field of operations, intercepting the supply and monitoring pushcarts and bundles used for the daily storage.

The seizure and, in some cases, eviction, are tactics used by tax agents in programs for controlling operations in these markets.

6.4.2. Support of goods in storages

This is a field of competence where the required rigor is not always practiced because of the complexity of its verification.

By starting the surprise actions that prevent the concealment or removal of the goods of illicit origin, are inhibited by the limits imposed by laws to control the powers to enter the warehouse without a warrant.

To control the limitation, the warehouse is entered overlapping the taxpayer`s will with the recognition of its authorization for entry, this is especially common in deterrent actions that do not include seizures.

A common impediment to entering the warehouses is their location in slum areas among informal operators or centers with high indigent population density who receive employment benefits or other and by complicity obstruct access for the interventions.

Access to them requires broad support from public forces with risk of disorders.

Examination of the products documents consists in selecting a sample of the storage and the requirement of the valid support used to establish their legal origin.

When the sample is not supported by documents, we proceed to its provisional seizure and transfer it to administration warehouses in order to complete the validation process. If the authority control allows it, the legal figure of deposit under the responsibility of the taxpayer can be used.

The provisional seizure is considered by some jurisdictions a way to hold merchandise and not considered a punishment, since once a valid support of the precedence of the goods is provided, the merchandises are returned after payment of the cost of storage, and otherwise it is preceded to final seizure concluding in the auction, donation or destruction of the goods.

6.4.3. Support of goods in transport

There are several possibilities for controlling movement of goods in national territory: from the most common involving the interception of vehicles on roads and highways, to the electronic authorization of waybills for release for transit.

This tactic works simultaneously with the control that monitors the storage of goods, if a vehicle carries cargo without documentary support, the carrier is not the only one involved in the illegal act, but who sent the goods and who is to receive them, all of them are severally liable for the support of the cargo and its seizure.

In pursuit of maximum objectivity of the review, the devices with remote access to databases and systems facilitate the issuance of automatic random orders of interventions establishing the examination depth.

The obligatory issuing electronic waybills for businesses located in border areas in coordination with Customs for control, facilitates the understanding of the origin of goods sent overseas outlets and their transactions, important clues to track smuggling operations.

As the control program of goods in warehouses, the transportation program concludes with the provisional seizure in case of lack of support, then the vehicle is escorted to the warehouse management and its contents emptied and stored until the legal verification is completed and returned in case of presentation of valid support or auctioned, destroyed or donated otherwise.

7. THE CONSISTENCY ANALYSIS

So far we have seen the existence of some methods for the preparation of information aiming at feeding management processes, yet the results arising from them should be compared and improved with other databases that support them.

The management control model as we have seen would respond to the VAT information basis complemented with information from the Customs for the foreign markets operations and the Institutes of Social Security and Pension on the labor component.

The result of the algebraic sum of these bases should be able to bring some estimate income and we know that this should translate into a savings/ consumption explanation which provide some inferences to detect concealment. The components of this relationship can be informed by relevant operational agencies that lead income to both destinations.

The main, more accessible and relatively reliable sources of supply of such data are: property records, records and financial system of consumption by credit cards. However, these are not the only possible income: investments in securities, mortgage loans, luxury consuming, purchases of automobiles, or works of art can be informed by as many sources, which transparency depends on their administrative status in the countries.

However, we will only consider those most commonly used in the search for the destinations of the income.

7.1. Property records

Investments in real estate, automobiles and other assets that require registration in public registers are reported at the time of registration with the intervention of notaries.

There are many problems in our countries with access to property information; records suffer from lack of updating in transfers and other multiple cadastral defects.

Geo-reference systems allow locate on cadastral maps the real owners of the properties, even with the discouraging failures involving the registration of transfers, are the beginning of a transformation process to identify the property.

Communication between tax bases and the property records is essential to identify investments that do not correspond to the declared income, contributing to fiscal identification of owners through their personal identity code.

7.2. Banks

The banking movements betray revenues and expenditures of money from the accounts of citizens. Most of legislations have secret banking laws violated only in special cases by judiciary order, to avoid it, bank debits are taxed at low taxation levels.

The value added tax could be better controlled if it were established that any movement of funds be made through the banking system, so sales would be described in revenue and purchases in expenses accounts.

Utopia aside, knowing the cost of such decision in money management, there are countries that have legalized the use of checks as the only means of payment for transactions above certain amounts.

As a general rule, bank accounts register the tax identification of the account holders in order to have access to them at the time of the consistency analysis.

7.3. Credit cards

The amounts of consumption financed through this payment method facilitate comparison with the figures reported by economic operators in their returns. Equally or more importantly, knowing how much individual consumers being subject to verification are consuming is integrated to the income tax returns level.

It's worth to highlight that as in case of the property, one of the underlying problems in the crossings for consumption determination is the lack of tax key to identify the individuals, however today the personal key identification is used to recognize taxpayers by personalizing their consumption and by completing their income estimate.

8. CONCLUSIONS

The most sophisticated forms of evasion enjoy the chaotic scene of the lack of social structures ordered and disciplined on which computers software can not operate efficiently enough to consolidate a general tax culture that would deter infractions.

By "looking at the tree sometimes we lose the view of the forest" the simplest actions may be the ones that underlie the ability to perform more complex ones.

To start by looking for transparency in the documentation supporting the facts of economic activity, is doing the most basic and simplest of actions, to establish its order, mass availability and validation helps to detect infractions and their sanction will result in forming the basis for voluntary tax compliance in society.

Within this context, some practices used by tax administrations are as follows:

- The generation and implementation of an information structure based on the one needed for VAT settlements with provision for separate registration of information regarding individuals, private and public institutions, activity or segmentation with validation mechanisms to ensure their legality.
- The implementation of a system of sales receipt with provisions for documentation of transactions and support of goods in transit and storage;
- Establishing an obligation to use universal codes for identification of goods
- The installation of electronic connection to the ongoing provision of information;
- The creation of units for the control and punishment of illicit transactions and goods that are object and
- The implementation of gradual audit programs from the "first floor" for the analysis and preliminary validation of the information, the "second floor" sustained in crossing processes the information received in the previous one and the "third floor "or in-depth with the selection of cases resulting from crosses

These practices must be maintained and strengthened by the administrations that initiated them and imitated by those that did not, in order to improve the transparency of the economic activity and the control of tax noncompliance.

9. BIBLIOGRAPHY

FLACSO, Ecuador, La georeferenciación: Un mecanismo de planificación en la Policía Comunitaria. (2007).

FRIEDMAN, Thomas. La tierra es plana, breve historia del mundo globalizado del siglo XXI. (2005).

GARCÍA RÍOS, José Luis. Cumplimiento tributario y el sector informal / José Luis García Ríos, Alberto Radano, Rosa María Vásquez. (Documento elaborado para el módulo 5 del curso" Fiscal policy for poverty allleviation". Banco Mundial). (2001).

GARCÍA RÍOS, José Luis. Evasión y cumplimiento tributario. -- In: Boletín DGI Nº 377, Mayo de 1985.

GARCÍA RIOS, José Luis. La función de auditoria de veracidad, facultades y deberes de la administración / José Luis García Ríos, Eduardo Augusto Rossen. -- In: Boletín DGI, Mayo 1985.

Gs1.The value and benefits of the gs1 system of standards. www.gs1.org

MCLUHAN, Marshall. El medio es el masaje. Un inventario de efectos/ Marshall McLuhan, Quentin Fiore. (1967).

ZAMBRANO, Raúl. Documentos y transacciones electrónicas (Sección de Blogs) http://www.ciat.org/index.php/es/blog/item/30-documentos-y-transacciones-electronicas-i.html

THE CONSTRUCTION SECTOR AS A MOTOR FOR DEVELOPMENT. STRATEGY FOR ITS TAX CONTROL IN PERU

José Maria Peláez Martos

Summary

The factors causing that the construction sector becomes the motor of the development in many countries, and the necessary requirements for its effective control are exposed. In addition to having a suitable legal frame, it is essential to carry out a specific strategy by the tax Administration for the control of the sector, by means of actions and studies of sectorial type, application of appropriate audit techniques, and the development of control programs on construction companies, and on fraudulent real estate operations.

The Author: *State Tax Inspector in Spain. Bachelor in economics and business sciences. International Consultant for the control of the construction sector. Speaker in international seminars on money laundering. Professor of the Masters on Fiscal Consultancy of the Institute of Fiscal Studies and the Masters in Taxation of the Official School of Economists. Author of various books on fraud in the construction sector, on tax procedures and money laundering. Author of opinion articles on tax topics on diverse mass media.*

CONTENT

In certain circumstances, the construction sector acquires a fundamental importance in the economic development of countries. In order to translate that situation in a substantial increase of tax income, an appropriate regulatory framework must exist in order to tax the construction activity and the real estate operations, and, in addition, the tax Administration must adopt a series of measures, on performance programs, organization and of attribution of human and material resources, which is exposed in detail as follows.

1 IMPORTANCE OF THE CONSTRUCTION SECTOR IN THE ECONOMIC DEVELOPMENT

1.1 The construction sector as the engine of the economic development

In the developing countries a series of circumstances that have a special incidence in the construction sector takes place.

The first of them are the movements of population from the countryside to the city, as a result of changes in the economy of the countries, abandoning the primary sector, or agriculture, and increasing the industrial and services sector.

Those migratory flows, within the country, have as a consequence, mainly in the great cities, the necessity of new houses, of industrial buildings and services, as well as of new infrastructures, as those relative to sanitation or schooling.

The increase demand for housing by low-income families is usually served primarily through the adoption by governments of subventions or aids for the purchase of these houses, such as the construction program “Techo Propio” carried out in Peru in the last years. On the other hand, the increase of the family income, mainly in places where the employment grows significantly, also generates an important activity of self-construction of houses, which in the case of Peru represents between 50% and 60% of the construction market in the last years.

Another circumstance of special incidence, at times of economic growth, is the construction of commercial centers in large and medium cities, as well as the construction of new hotels, or buildings for services.

Finally, it is necessary to mention the importance of the public investment in the construction sector, by means of improvement of infrastructures and highways, sanitation in the great cities marginal areas, the construction of new school centers, or investments in the energy sector.

As an example of the importance of the construction sector in the growth of a country, Peru can be mentioned, where in the last years this sector has been constantly growing in very superior percentage compared to the rest of the

productive sectors, reaching in 2010 a growth rate of 17.4%, the highest rate in 16 years[1].

The growth rates of the sector, and the importance that it acquires in the country's development, have as consequence a substantial increase of the number of registered companies and, therefore, an increase in tax collection from these companies, as well as from specific real estate operations.

As an example, in the case of Peru[2], the rates of variation of the national collection in 2009, respect to the previous year, was of -3,30% altogether, - 24.82% in the Income Tax and of + 9.97% in the Sales Tax, and rates relative to the construction sector had increases of +27.23%, +38.82% and +31.34%, respectively.

However, it is necessary to consider the risks that can exist if the growth almost exclusively depends on the construction sector. An illustrative example can be the case of Spain, where this sector has been the gine of the economy during one decade, until the 2007 crisis of the so-called real estate bubble which totally changed the panorama.

1.2. The spanish experience

Housing construction

Since1998 to mid-2007 the so-called real estate bubble existed in Spain, characterized by the existence of a speculative situation in the real estate market. Its main symptom was the abnormal price increase much over the Consumer Price Index (IPC), increases that are explained mainly resorting to external factors, like speculation and land use qualification, circumstances that have been the cause of the numerous cases of city-planning corruption that have been discovered in this country. Other symptoms to emphasize are the high number of buildings built and a great amount of real estate sales and purchases transactions, all together with an extraordinary development of the credit granted by the banking organizations. The real estate bubble began in 1998 and until August of 2007, revealing itself mainly in an constant elevation of the property prices above an annual of 10%, reaching some years almost 30%.

By the end of 2007, Spain had a park of 25.502.640 houses, according to data of the Bank of Spain, on a total of 16.69 million Spanish families. These numbers indicate an average of 1.56 houses by a spanish family, one of the highest rates in the world. According to the same sources, 86% of the houses in Spain are occupied by their owners, and only a 14% are rented or leased.

The participation of the construction sector in the national GIP represented around 11% in each one of the years 2004-2007.

Some significant data of this period are the following:

- **Number of houses built**

According to information of the Bank of Spain, the number of new houses built from 2004 to 2007, has been superior to 800,000 in each year. A comparative data to consider is that, in each year, the number of new houses surpassed to the total sum of all the ones built in Germany, France and Italy together.

- **House prices by square meter**

House prices in euros by square meter, according to official data of the Ministry of Housing, tripled during the 10 years of bubble, according with the price evolution from the year 1998, with a price of 756.7 euros, to 2007, with a price of 2,085, 5 euros.

1. *Source: Multiannual Macroeconomic Framework 2012-2014. MEF Peru.*
2. *Source: SUNAT taxations notes.*

Award of public work contracts

The amount of public contracts by the spanish public administrations, state, autonomous and Local, in the last years has been around 40 billion euros, amount that represents 17.31% of the total of investments.

The investment in public work, by type of work, has been distributed in these years with 35.4% to the construction of housing, social equipment (educational, sanitary, sport) and to the other constructions (administrative, industrial), and a 64.6% of the civil work relative to transports (roads, railroads, ports), urbanization, hydraulic and environment.

Present crisis of the sector

In mid 2007, a change in the trend started to show, that has been accelerating during the years 2008 and beyond, causing an abrupt fall of all the indicators of the sector, including the demand and the prices.

Among other causes, this situation would be caused by the exit of the speculators from the market, when reaching a maximum price by square meter, and the inability of the market to absorb the enormous supply of constructed and empty housing units available. By the end of 2008 in Spain there were more than a million of unsold new houses, so it was considered that it would take more than three years for real estate companies to get rid of all that volume of buildings, to which new constructions are to be added. To this it was necessary to add the important number of housing units that were acquired as investment, and which were offered to the market as soon as the situation would change. In 2011 the situation did not change significantly, except that many buildings are now owned by banking entities, due to the lack of payment of the holders of mortgages or the real estate promoters. At the present time there are 700,000 housing units for sales, and several years will be needed before the sector could dispose of them, according to estimations.

Another factor to consider is the influence of the international financial crisis, which together with the change of the Spanish real estate cycle, has aggravated the economic crisis in this country. The crisis of the construction sector, due to the real estate bubble, is added the reduction of the fiscal deficit that Spain has had to undertake to fulfill the objectives imposed by the European Union, and the consequence has been the freezing of important public works, mainly those in public infrastructures. According to SEOPAN, the big association of construction employers, the volume of public work bid by all the public administrations has suffered a yearly reduction of more than 60%.

2. NEED FOR AN APPROPRIATE REGULATORY FRAMEWORK

One of the requirements, for an effective control strategy in the construction sector, is the regulatory framework that regulates the taxes and procedural regulations to be adapted. In addition, the existence of public registries with updated real estate information can facilitate the control of the sector.

2.1. Taxes

The possible taxes that may tax the construction activity and the ownership of the buildings are the general sales tax, the Income Tax and the property taxes.

Below are detailed the aspects that regulate each one of them:

General sales tax

This tax must regulate the following aspects:

- To tax the construction contracts and the first sale of buildings made by the constructors.
- To define the construction concept and who will be considered as constructor.
- To regulate the alleged origin of the tax liability in the event of first real estate sale and of the construction contracts.
- To establish the alleged exonerated operations.
- To define the taxable individuals.
- To regulate the specialties in the determination of the tax basis, as can be the value of the construction, the value of the first sale of properties, and if the land is included in these values.
- Establish the procedure to determine the fiscal credit in the case of individuals that conduct taxed and nontaxed operations

Income tax

The specialties in the construction sector that have to be considered in this tax, mainly refer to the regulation of work contracts which results from more than one tax period, the public works specialties, and the interdependence with the existing accounting regulations. It should also regulate business figures usually employed in the sector, as the partnerships or the temporary unions of companies.

A regulation of the operations of enterprise reconstruction, and of their associated fiscal benefits, as well as of certain operations of fiscal engineering must also exist, in order to avoid their abusive use to decrease the tax basis or the tax quotas to be enter.

Property taxes

Property taxes must establish the obligation to annually submit the property returns by their owners to the tax administration, being indicated those that are in their patrimony until December 31rst of every year, as well as information relative to them.

The information contained in this Property returns will allow the tax administration to improve the control of compliance with the tax obligations and to stimulate their voluntary compliance.

The persons that must submit the property returns would be the individuals, conjugal partnership and undivided estates, which by december 31of every year are owners of two or more properties.

In Spain there is no similar obligation to the property returns of Peru. Until 2008 the tax on property existed, with a very reduced rate, but in the tax returns the properties were related as well as all the rights and debts of the declarants. This tax has been recently suppressed and has not been replaced by any statement containing information on real estate that was included in it.

Another tax on properties is a municipal direct tax on real estate (IBI) which is constituted by the cadastral value of the properties. Each municipality fixes the quota to pay and issues the receipts.

2.2. Normative framework of the audit procedure

An adequate audit procedure must regulate the following aspects:

- The programming and selection of taxpayers object of the audits.
- The auditors legal power, for verifying the declared properties and investigating those not declared.
- The phases of the procedure.
- The documentation that can be requested from the taxpayer and its analysis.
- The circumstances of place, time and term of the audit development
- The documentation to use in the audit and the resulting liquidations.

- The distribution of competences between the auditors and the headquarters.
- The power to obtain data of third parties.
- The power to adopt precautionary measures during the audit procedure to protect the evidence obtained, or the collection of the resulting debts.

2.3. The public registries

Public registries are available to provide valid information on properties, so they can help to control the construction sector. The characteristics of the Cadaster and the Property Registry, in the case of Spain are explained below.

The cadastre

Uses and purposes of the cadaster

The cadaster is an organization whose fundamental function is to describe the real estate property in its different uses and applications. The full set of data and descriptions that define the territorial property forms the Real estate cadaster which is constituted as a data base, for the service of the cadastral holders and the local, autonomous and national administrations of the state. In the cadastral data base (BDC) the real estate properties are described by means of a set of attributes or physical characteristics (cadastral reference, surface, situation and boundaries, graphical representation, year of construction and quality of the construction, use or culture, among other aspects), legal (personal data of the holder/files) and economic (value of the ground, value of the construction and cadastral value).

The cadastral reference is the official and mandatory identifier of real estate. It consists of a code that is assigned by the Cadaster so that each real estate property must have only one cadastral reference.

The cadastral reference is formed by twenty characters and allows the location of the real estate properties in the cadastral cartography. Thanks to the cadastral reference is well known what real estate properties are referred to in the legal businesses (transactions, inheritances, donations, etc.), without confusions.

Through the cadastral reference a better legal security is provided to the people who make contracts relative to real estate, constituting an effective tool of fight against the fraud in the real estate sector.

The cadastral reference must consist compulsorily in following documents relative to real estate:

- Public Instruments, court orders and judicial decisions.
- Files and administrative decisions.
- Documents where important facts, acts or businesses related to the property and other rights in them are described.
- Real estate rental or transfer contracts for any right of the use of the property.
- Contracts of provision of electrical energy.
- Documents in which any alteration of physical, legal or economic type is shown (tax declarations, technical projects, certifications of work completion, etc.).
- Private documents that affect the real estate.

The cadastral reference must also appear in the Registry of the Property, except in cases specifically expressed in the regulations.

Fiscal use of the cadaster

All rural, urban and special real estate properties must be registered in the real estate cadaster, through a mandatory declaration by their owners. With the data that appear in the cadastral inscriptions, the Main directorate of the cadaster assigns the cadastral value that is used in several taxes, such as the tax on successions and donations and property transfers.

Legal uses of the cadaster

Protection of the real estate market.

The real estate market requires minimum elements that provide security to the system, preventing the purchase or the sale of nonexistent properties or with characteristics different from the real ones. The general directorate of the cadaster provides graphical and alphanumeric information that it is inserted in the private or public title contributing to the precise definition of the property object of the transaction and reinforcing therefore the legal security of the real estate transfer.

For such effects, the cadastral reference must obligatorily be included in public notarial deeds stating the acts or businesses related to the property and other rights in rem on real estate.

Support to the Property Register

The cadaster and the registry of the property are coordinated by law with the purpose of giving certainty and transparency to the real estate market, so that the cadastral reference must be specified in all the documents object to inscription in the Property Registry that affect the acts or businesses relative to the property and other real estate rights.

The property registry

The Registry serves to register and to make public the real estate properties and the rights that affect them.

The documents to be registered are the ones relating to the acquisition of real estate, the liabilities that affect them such as mortgages, easements and judicial or administrative resolutions that can affect them such as embargoes. Under the Spanish Law the registration is voluntary.

3. REQUIREMENTS FOR AN EFFECTIVE CONTROL

For the control strategy to be effective in the construction sector it must meet the following requirements:

a. **Appropriate legal framework.** Already exposed in the previous section.
b. **Sectorial studies.** It has to have a precise knowledge of the sector, of the fiscal risks and of the tax noncompliance that occur in it.
c. **Tax payers census.** An updated census of taxpayers must be available, which is necessary for massive actions carried out by the competent tax administration agencies.
d. **Databases.** The data bases should have as much information as possible about companies of the sector and transactions with real estate at the lowest possible cost, which will be necessary for the support of computer departments of the tax administration. The existence of information is very important in the control of taxpayers, as to make a proper selection of taxpayers that would be subject to inspection, as to the actual performance of the audit.

Within the information sources we can distinguish three blocks, based on their origin:

- Internal sources (taxpayers' returns, tax returns and other internal informative statements).
- Coming from external sources, compulsory or not, to be periodically submitted.
- Coming from specific actions of the administration, with the objective to obtain the specific data of the sector.

The experience demonstrates that the noncompliance taxpayer adapts his behavior based on the level of performance and information of the administration. In respect to the information, it is proven that it is more efficient when the taxpayer ignores how much the tax administration knows, so the most interesting information for the selection and control of taxpayers is that coming from external sources, and that the taxpayer is unaware that it is held by the administration.

The collection of information must respond to two basic principles:

To obtain the best possible information from the companies of the sector and the real estate operations, to be able to introduce it in the data bases and to later use it in the crossings of selection, or by the auditors.
Obtaining information at the lowest possible cost. According to the sources of information that are detailed below, we can distinguish the following situations:

- Sources that already are in the data base and can be crossed without additional cost.
- Sources that, coming from the taxpayers returns, only require the design of a computer application for their treatment and crossing.
- Sources coming from requirements to the companies of the sector, like, for example, manufacturers or marketers of raw materials (cement, brick, iron). The information should be provided in a computerized way that allows its direct introduction in the data bases.
- Sources coming from requirements to the Public Administrations and other organizations and Public Institutions, like, for example, building permits and municipal urban development permits. Just as in the previous case, the information should be provided, if possible, in a computerized form. Institutional contacts from the Tax Administration with other Public Administrations and entities can be necessary, with that objective, among others.
- Finally, sources that cannot provide computerized information, for not having data bases, or if there is no proportionality between the interest of the information to obtain and the cost to obtain it due to the situation of the information, geographic location or other circumstances.

e. Performance of sectorial type. A performance of sectorial type has to be carried out in all the phases of performance of the tax Administration for the control of the taxpayers, such as the planning, programming and audit:
- In the criteria of selection to be used, using mainly the specific sources of information on the sector.
- In the planning of specific programs of performance in the construction sector, taxpayers control as well as specific real estate operations.
- In instructions to verify operations that have relation with the construction sector when other programs are executed, as they can be related to proof of payment, or to the benefits coming from operations of the properties sale.
- In the material execution of the audit, with a specific formation of the auditors, and the necessary material and human support.

f. Audit techniques. Adequate procedures and audit techniques stressing the investigation activities have to be applied.

The main objective of the audits has to consist in detecting and correcting the most serious tax breaches. In case of limited resources, which is usually the situation in all the tax administrations, the existing staff should mainly detect and correct the most serious breaches.
It is sometimes common that the main objective is to finalize the audit in a specific term, and that the assigned time is mainly used in verifying the inconsistencies in the phase of selection, or the inconsistencies deduced from the analysis of the countable information,

without dedicating the necessary time to detect other more serious inconsistencies or breaches.

In the analysis of the fiscal risks, it is necessary to also have in consideration the type of taxpayer, since it is unthinkable that, for example, a great national taxpayer does not appear in the Administration census, but, nevertheless, will use other more sophisticated instruments to decrease the tax bases.

Different types of audits can also be developed, based on the type of taxpayer or performance program that is going to be performed, distinguishing three different types:

- **General.** Its objective is to control the situation of a taxpayer, including one or several taxes.
- **Partial.** In order to verify only some partial aspect of a tax, or a certain real estate operation, such as those set out later in the performance programs.
- **Preventive.** The objective of the audit is not to correct and to sanction a tax breach, but of preventive character, to avoid a risk situation, which is common in the taxpayer behavior of the sector. In the performance programs, for example, these preventive performances are proposed in relation to the subcontractors.

g. **Real estate investigation team**. It is necessary to create a real estate investigation team, integrating experts (architects or engineers) whose functions would be:

- The analysis of the tax fraud in the sector, the elaboration of studies and proposals for its fight and early detection, the elaboration and systematization of methods, protocols and work techniques to use in the control tasks.
- The direct accomplishment of the tasks in all type of organizations and institutions for obtaining all the information related to the construction sector.
- The setting of programming criteria.
- The selection at national level, and in a centralized form, of the taxpayers who are going to be object of control every year.
- The completion of technical studies for the control of taxpayers of the sector based on economic criteria.
- The technical coordination of the control activities of the construction sector, in coordination with the headquarters of the offices.
- The analysis of complaints that affect taxpayers of the construction sector or real estate operations.
- Collection of the information published in mass media on companies of the sector or on real estate operations, and their introduction in the data bases.
- Investigation of operations of fiscal engineering, or abusive fiscal planning, through operations conducted with buildings, or intervention of construction companies.

h. **Humans and materials resources.** Sufficient audit group must be available so that the sector feels some pressure from the Administration. In the case of Spain, in the years before the crisis, 40% of the Tax Agency cash dedicated to control were used on the construction sector.

On the other hand, for the treatment and operation of the specific information of the construction sector, the design of a computer application that allow data crossing of all the obtained data, of internal as external sources, would be necessary, allowing to cross the census of the sector with all the existing specific information.

i. **Institutional performances.** An institutional implication of the Tax Administration in some performances to develop should exist; establishing channels of communication and coordination, necessary obtain data from other Administrations or Public entities relevant for the sector.

4. CONTROL PROGRAMS OF CONSTRUCTION COMPANIES

4.1. Construction companies registered in censuses and reporting

Most important fiscal risks

In the sector the following modalities of tax evasion are possible:

- Execution of works that have not been object to be declared.
- Omission of income in certain works.
- Use of nonexistent tax credit for an operation that did not exist, or that is sustained with false proofs of payment for the purchase of goods, and the use of services of informal suppliers.
- Use of fiscal credit originating from expenses not related to the business and/or unnecessary to produce and to maintain the source generating the income
- Understatement of income.
- Overvaluation of costs
- Deferral of income.
- Creation of elusive figures.
- Other breaches by inappropriate application of the specific tax regulations of the sector, like the incorrect imputation of the income in works that are spread over several years.

The evasion modalities will vary based on the type of work, public or private, since in the first type incomes are normally controlled.

Selection Criteria

One of features of the construction sector is the diversity of types of works that can be executed. Thus, works for the construction of a highway, a school, an airport, or of an electrical power station do not have terms of comparison. The absence of common characteristics to all of them, except in the construction of housing units, determines a degree of important difficulty, in the phase of selection as well as in the material execution of the audits.

In the selection of taxpayers to control the criteria based on the gravity of the breach are to be prioritized, and the tests or indications that are controlled, in agreement with the obtained data from crossing of information.

In first place taxpayers have to be selected according to the information relative to serious tax breaches, like, for example, the existence of non declared works, or the use of false invoices.

For the rest of taxpayers, the most suitable criterion of selection is the obtained profitability, by comparison with what is known in the sector, for which is necessary to have knowledge of the usual economic variables.

Audit Procedures

The verification should focus primarily on getting the integral verification of the magnitudes that determine the accounting result and determine the true benefit in view of the overall situation of the construction activity - accounting, cost analysis, benefit of the sector, existence of losses of financial character and their nature, etc.

To do this, it would have to be analyzed what is the cause for which the entity has declared a lower profit than expected one (smaller income or greater expenses than the expected ones) and to take a correct approach to determine from this point of view the true countable result, without being just the mere formal presentation of invoices that simulate a result of the activity that does not correspond with the reality.

Within the verifications to carry out in the execution of the audit, an in-depth study of the work project and its comparison with the real costs will be essential, and in its case, to verify the costs items in which greater deviation exists and to try to investigate the reasons. In this study in depth, it is possible that the auditor does not

have the necessary technical knowledge to be able to carry out it, this is why the advising from an architect or civil engineer could be necessary, depending on the type of work.

In respect to non-declared works, the tests to make by the auditor to detect them, consists, among others, in verifying the information coming from the following sources of intelligence, if available:

- Building licenses by the Municipalities.
- Consumption of electrical energy in different work centers.
- Information of the places of delivery in the transport guidelines emitted by the suppliers of raw materials or services.
- Operations on buildings in which the notaries are involved.
- Information of the professional schools of architects and engineers, and other that has information of interest for the sector.
- Information affecting the taxpayer published in mass media.
- Information on civil construction workers coming from the declaration of the national health systems.

4.2. Unregistered or no reported construction companies

Fiscal risks

Based on the operations imputed by the companies of the sector, from their income, and their repetition in several years, information can be obtained from individuals or organizations that could be dedicated to the construction, and that do not appear registered in the Administration, or do not report their work.

Selection Criteria

The sources of intelligence to be used in the selection are the following, if available:

- Annual returns of operations with third parties (model 347 in Spain and DAOT in Peru). Amounts of sales that appear in the annual returns of operations with third parties submitted by manufacturing companies of raw materials of the sector, companies selling these products, machine rental and construction equipment companies.
- Information coming from requests to the suppliers of raw materials and services companies, respect to sales that do not appear in the annual returns of operations with third parties.
- Consumption of electrical energy in different work centers.
- Information from Licenses of operation of the Municipalities.
- Work licenses of the Municipalities.
- Information on the contracted employees.

Selection Procedure

The main procedure consists in crossing the census of taxpayers under construction headings with the information from the mentioned sources, and selecting those in which the available information shows an irregular situation.

A previous visit to the taxpayers who appear as owners of the previous information will take place to verify their situation. Supposing that the work is considered self construction, the identification of the contractors and other professionals that have taken part in the work will be requested.

4.3. Subcontracting companies who do not enter the GST

Fiscal risks

Outsourcing, especially in the real estate sector, presents special characteristics for the tax control, so special attention should be paid to this activity. The subcontractors, for the conducted operations, invoice the taxpayers who contract them and, therefore, generate cost and, in their case, the GST that generates tax credit.

The fiscal risk that has been usually detected in this type of operations consists in that the

subcontractors stop fulfilling their tax obligations and disappear, without properly declaring the income generated by the emitted invoices.

This operation form shows that the tax control should take place immediately after the economic operations are made, and justifies that the investigation performances and control intensify on this type of operations.

Usually taxpayers do not have goods, and the legal administrators of legal entities also are insolvent. Their modus operandi consists in operating entities during a brief period of time, to leave them later inactive, in such a way that if action is not taken against them with immediacy, carrying out all the performances necessary to assure the collection the debts which can be recovered, the minimum possibility of collection is frustrated.

Selection Criteria

It is essential to take into account the following criteria in the selection of taxpayers:

- Companies of recent discharge in the census of economic activities.
- Registered individuals in activities related to the construction sector.
- That have not submitted self assessments for GST, or that the submitted ones show little significant amounts.

Preventive type actions

An effective mode of action is the anticipation of the risk situations by the Administration, by means of performing actions which purpose is to obtain the identification of the individuals with risk and their follow-up, as well as to dissuade, if possible, these individuals from the later undertaking fraudulent behavior, dissuasion that is obtained with a continuous presence of the tax control agents besides the tax payer his possible payers.

To this purpose, the procedure could consist in visiting taxpayers who join the auxiliary construction activity, and who have showed intention to act as subcontractors. The object is that shortly after attending the discharge and normally before the term of GST return is finished, for them to have the feeling of being controlled, dissuading them of possible defraud behaviors. From the visit, in addition, basic information that could be obtained which would allow:

- The follow up and estimation of the potential risk of the taxpayer, proposing the later completion of an audit performance.
- To facilitate the fast adoption of a precautionary measure to assure the tax debt collection, such as the embargo of the receivable credits of the construction company.

The action to take place must consist mainly on a verification of census type, ensuring the correction of the declared address and the reality of the created company, as well as to obtain basic data about its operation (type of works that are made and description, nº of workers, assets, clients, etc.).

Control Strategy

The main requirement of the control performances is to be the immediacy of the action taken in respect to the following taxpayers:

- Individuals that appear as at risk from in the preventive actions, anticipating the time of the beginning of the verifications to match the time of the outsourced services.
- Taxpayers whose tax revenues are not consistent with the labor input, which have a reported operating margin too low in contrast to that should be derived from its corporate structure, or those who attended other reason to believe the existence of fiscal risks.

4.4. Outsourced companies that issue false invoices

Fiscal risks

According to the most common schemes, a great deal of the possible irregular invoicing received by the companies dedicated to construction concentrates in invoices received from subcontractors.

It is essential to study the tax behavior of the taxpayer who provide these services, since, as it can be understood, usually they generate a high added value and high amounts of fiscal credit to the contractors companies, who should have a correlation with the income by GST made by the subcontractors.

Operating schemes

In the usual operating patterns, the following circumstances in the invoices are examined:

- Employers that, previously were listed as workers of the controlled taxpayer, specially when the controlled company and its partners appear as only clients.
- Related businesspeople (administrators, partners, authorized in banking accounts) or their relatives.
- Suppliers that, by the computerized data available, appear not to have the material or human equipment for the accomplishment of the services that they invoice (imputed purchases and workforce).
- Short-living entities, ie consisting of returns and /or imputations of operation on the annual tax return (347 in Spain or DAOT in Peru) consist in one or, at the most, two exercises. A high alteration, exercise to exercise, of the composition of the suppliers usually serves like a first warning that this circumstance can take place.

Selection criteria

Information crossings should be performed to obtain the following information in respect to each one of the taxpayers to be audited:

- That has not declared purchases, and does not have entries imputed by other companies in the annual tax return operations.
- That has been a worker of the company in previous periods.
- That he has ties with the company.
- That an important part of his workers have been, as well, workers of the construction company in previous periods.
- That he has been registered, or had submitted tax returns, only during a brief period of time.

Finally, in case inconsistencies are observed, the financial flow of funds related to the invoicing of which irregularity indications exist must be analyzed.

Adoption of precautionary measures

Since part of the amounts that these subcontractors have been able to enter include GST quotas, it should be possible, in the course of the audit, to adopt precautionary measures to ensure the collection the debt.

Considering that, as much in the case of irregular invoicing, as in the assumption of real invoicing possibly not declared, the issuers usually are unavailable, the possibility of demanding tax responsibilities to the receivers of these invoices should also be regulated.

5. AUDIT PROGRAMS FOR REAL ESTATE OPERATIONS

5.1. Introduction

The main characteristic of the operations that are exposed below, is that their detection can only be possible with a previous work of investigation, for which it is necessary to have the appropriate information, and to process it in computerized applications. Those functions would be carried out by the real estate investigation team that was previously proposed.

There are no selection criteria that can be applied in a generalized manner, but, depending on their characteristics, in each type of operation it will be necessary to use different sources of information. What is common to all of them is that the selection is individualized, having to decide, in view of the circumstances of each operation, and of the documentation available, if it is finally going to be object of control.

Another characteristic of this type of operations is that no taxes are controlled by a taxpayer, but a specific operation may be involved in the many contributors who have to be subject to supervision by their participation in this transaction, or taxes, in general, if decided in order of supervision. In general, the scope of the audit must be limited to verification of the said operations.

5.2. Corporate restructuring operations with tax evasion purposes

Operations with tax risk

Outlined below are examples of some fiscal risk operations, which have been subject to investigation and verification in Spain, given the tax benefits for corporate restructuring operations existing in that country, and their improper use.

The possible investigation of these operations in other countries will require a previous study of the specific rules, a role that would have to carry out by the real estate research team mentioned in the preceding paragraphs.

- **Acquisition of a land through the purchase of shares and subsequent merger**
  An entity has planned to acquire a corporation B which only asset is land. For this purpose, it acquires the shares of B and later it proceeds to an inappropriate merger. The shares were acquired to a price superior to their theoretical value. The difference between the value of the participation and the theoretical value is entirely imputable to the land. In addition, there is no economic reason that justifies the acquisition of a land that instead of being made directly is made through an acquisition of participation and a later fusion, although it produces a taxation level more advantageous than the direct disposal.

- **Division of a property, and splitting the corporation for its allocation to the shareholders**
  The division for a rustic property into five parts that are assigned to five new corporations within each of the five shareholders of the corporation being divided by differences in management, is not a valid economic motivation, because in reality it is just a division between shareholders.

- **Corporate Spin-Off to avoid capital gains taxation**
  The operation corresponds to a tax evasion of removing the capital gain taxation as a result of a property sale. Having occurred the corporate spin-off in favor of other two corporations, the assets are divided in two parts, each of which is transferred in bloc to them with all their assets and liabilities. This is a case of universal succession.

- **Merger of an inactive corporation with land in its assets**
  The merger operation by acquisition of another corporation with transfer in favor of the absorbing one all of its assets are extinguished without liquidation, The existence of a valid economic motive is does not appear given the inactivity of the acquired corporation, in which over 95% of total assets corresponded to the lands that were not affected by any economic activity of the entity and remained inactive in the assets since the merger until its sale proceeded. It is considered proven that the merger was made mainly for fraud or tax evasion without valid economic reasons.

- **Split with the subsequent sale of the shares to real estate entities**
  The conducted operation does not pretend to carry out any restructuring or rationalization of the activities that would allow a greater effectiveness in the management or operation of the developed activity, but it is intended to make a transfer of assets, which takes place when transmitting the shares of two corporations in which the corporate spin-off is performed to real estate entities in that same year. Through this operation a clear tax advantage is obtained as if the assets were sold directly.

- **Partial split with property awarding used for urban development**
  Inadmissibility of exemption for partial split in awarding to the beneficiary corporation a land used for urban development, not receiving an piece of activity but a block of assets capable of being classified as a cash contribution, with subsequent dissolution of the beneficiary corporation.

- **Partial split of properties to sell the rest of the assets**
  A holding corporation that participates in several operative corporations that has with its assets industrial and commercial buildings has received an offer for the acquisition of shares from a group, subject to the fact that the corporations do not own properties. This suggests that corporations that are carrying out a partial division of their property to a corporation which is dedicated to its lease.

5.3. Operations of tax engineering

The investigations have to be directed to the detection of forms of fraud based on the use of abnormal negotiation figures or on the inadmissible use of certain fiscal benefits that suppose the development of abusive structures of tax planning.

Some operations with tax risk investigated in Spain are the following ones:

- **Chain of contributions from the same property, which ends in the corporation that initially contributed**
  Chain of contributions to a same property between different corporations that finally ends in the same corporation that initially contributed to it, but at a very superior value, without being taxed at any moment through the successive increases, due to the conjunction of operations of contribution and mergers. The increase existed when the property was transferred for the first time, a simulated corporation was used in order to avoid the valuation of the contribution by an independent expert.

- **Operations with unusual or complex figures**
  Operations involving the use of unusual or unnecessarily legal concepts that apparently lack of economic logic.

- **Constitution of corporations with non monetary contributions in properties**
  Constitution of corporations, or capital extensions, consisting of non monetary contributions in properties which valuation does not consider the revaluation of assets in terms of market price of the provided properties.

- **Constitution of corporations with figureheads**
  The only purpose of their constitution is to make the assets appear in their name, interposing a figurehead associated with the true owner.

- **Fraud law to be a double transfer to defer capital gains taxation**
  We face double transfer, a first between corporations of the group and a second one by the corporation of the group purchasing a third party, locating in the first transfer, at market value, important benefits, which taxation is a tax deferred fractional instrumentalization of payment. Nevertheless, in the second transfer (the one by which the properties leave the group), the payment is cash, and even, in advance. From the aforementioned it is clear that the economic result for the group is equal to which would have been obtained from not mediating the transmission of the properties between the corporations of the group; however, for tax effects, this intergroup transfers creates an important tax deferral, of 13 to 14 years, of the taxation of the total benefit. The intergroup transmission fundamentally responds to fiscal reasons of deferring the taxation.

5.4. Purposes of simulation in real estate operations

Some operations with fiscal risk investigated in Spain, in which the existence of simulation is examined, are the following:

- **Property sales through an untraceable corporation**
  Corporation A transfers two properties to a corporation B, which is untraceable and issues irregular invoices, that transfer them immediately at a higher price to a third party (corporation C). The payment of the final price by corporation C takes place through corporation D that shows the 100% shares of corporation A (1ª transmittance). The sale really takes place between the corporation A and C.

- **Simulation with interposition of corporation in a real estate sales-purchase transaction**
  Corporation X is the owner of some properties. Its shareholders incorporate another corporation "Y" and this one purchase the properties to corporation X at a low price. Latter corporation "Y" expands its capital by selling subscription rights to another corporation to its shareholders. It is considered that the true operation is the sale of the property by corporation X and distribution of dividends to its shareholders (who perceive them as subscription rights sale).

- **Transfer of property through an increase operation and reduction of capital**
  It is a land sale through an interposed corporation that finally sells it to the true purchasers. With the purpose of selling the lands, a capital increase is completed by subscribing a new shareholder, previous transfer of the subscription rights to the old shareholders, to later reduce the capital by transferring the lands to the new shareholder.

- **Simulation of a property sale**
  If to avoid paying the tax, a father sells to his son a property at a price that does not charge, we are before a transaction that disguises a donation, ie, a relative simulation, because it was convened to transfer the property but not to charge the price.

- **Capital gain deferral tax**
  A right of surface is created in favor of a third party at a high price, and simultaneously it is granted to this same third party an option of property purchase that allows to acquire it for a symbolic amount. The true legal nature of the operation is the land sale purchase. With this a capital gain deferral tax is obtain and for the buyer the amortization of the surface right.

- **Property sale through an interposed corporation which is not reporting**
  Sale of a property to another corporation using another interposed entity to which a purchase option is transmitted, and this one yields as

well to the corporation buyer of the property for a very superior price. This interposed corporation is issuing false invoices and no reporting. The true legal business here was the direct sale of the property to the buyer and the performance of the intermediary took place to reduce the increase of asset value for the seller.

- **Property Sale through an interposed corporation, without movement of funds in the operation**
  As the only payment made was the one of the last buyer to the initial sellers, without that the interposed one neither received nor gave no money, the second sale is qualified as fictitious. The land sale through the owner capital increase subscribed by another entity and followed by a reduction with adjudication of lands.

5.5. Transfer of properties through operations with securities

- **Fraud through the use of sales of securities of entities with properties in their assets**

The transfer of shares or social participation does not pay in any case the GST, reason why it is possible to evade the tax by transferring the properties through the sale of shares.

5.6. Urban planning operations and urban rating

The real estate investigation team, whose creation sets out within the control strategy, would have to investigate the fiscal risks that can exist in the urban lands rating operations.

The topics with tax implications, and the areas of fiscal risk that have been object of investigation and verification in Spain are exposed here, their transfer to other countries requiring a previous study of their specific legal framework.

The city-planning process consists of two phases: one of planning and one of its corresponding executions. The city-planning processes have interesting tax repercussions from the perspective of both direct and indirect taxation. The important revaluation that experiences lands providing higher revenues in their transfer affects the income tax, and they can be described like yields derived from enterprise activities or as capital gains.

The most important fiscal risks are the following: When holders of land in city-planning developments and reappraised properties:

- Hiding the ownership of the lands
- Declaration of transfers for an inferior amount of the real price.
- Operations in which correspondence between lands contributed to the compensation board and the assigned city-planning advantages do not exist, which allows concealing real estate transfers.
- Received indemnifications from the city-planning entity by elements that will disappear in the urbanizing process.

When dealing with promotional agents or land developers involved in the city-planning development:

- Concealment of the intervention in the urbanizing process.
- Concealment of urbanized land sales.
- Concealment of urbanized land exchanges.
- Additional capital gains in agreements with the Municipalities (City councils).
  Agreements or arrangements with city councils that suppose additional capital gains to grant a greater advantage to the use of the land, or transferences of city-planning advantage between polygons, equivalent to exchanges.
- Private agreements with the initial owners for obtaining lands, in exchange for supporting the costs of the urbanization.

6. CONCLUSIONS

The main measures to carry out an effective control strategy of the construction sector would have to be the followings:

- Create in the responsible entity a real estate investigation team, that, in the exercise of its functions, maximizes the information of the sources of interest for the sector, and acts like an intelligence unit to reduce the fraud index of the sector.
- Regarding the sources of information, a calendar to obtain and introduce information from the data bases should be established, depending on the type of information, and the difficulties to obtain and process it.
- The investigation must be strengthened, both in the selection of taxpayers and the execution of audits, changing, if necessary, targets and indicators for the construction sector audits.
- The control plan should consist of programs of action on different types of companies in sufficient numbers for taxpayers in the sector to feel the pressure of the Administration, and on certain specific operations.
- To reinforce the institutional performance of the tax Administration in certain topics, as it can be the promotion of the relations with the Municipalities, Regions and Public organizations.
- To invest in the average necessary humans resources, and to modify the computer science applications, for an effective control of the sector.

7. BIBLIOGRAPHY

El Catastro en Iberoamérica. Varios autores. Dirección María José LLombart. IEF Madrid 2007.

Fraude fiscal, corrupción y blanqueo de capitales en el sector inmobiliario. Jose María Peláez. Editorial CISS. 2008.

Estadísticas tributarias. Página Web de la SUNAT. Perú.

Estadísticas del Banco de España, del Ministerio de Fomento y del Instituto Nacional de Estadística. Páginas Web de dichos Organismos.

THE MERCOSUR CUSTOMS CODE FROM ITS CREATORS' POINT OF VIEW

Tristán Conde and Héctor H. Juárez

SUMMARY

The present work details the history taken into consideration when writing the MERCOSUR Customs Code, it explains the main legal institutes, describes the modern control considered, it analyzes the differences between the effective national legislations, and finally, underscores the importance of this legal framework creating a unique customs territory, the second largest one in the world, with a 11.889.654 surface of km2, 250 million inhabitants, and a GDP of approximately 2,300 million dollars.

The Authors: Tristán Conde *Doctor in Legal and Social Sciences, National University of La Plata. Masters in International Taxation Law. University of Barcelona-Spain - Professor of the National Training Institute of Tax and Customs. Member of the Technical Committee Nro. 2, Technical Subcommittee of Customs Legislation of the MERCOSUR. Member of the drafting group of the Customs Code of the MERCOSUR - Head of the Legal Area of the Customs Region of La Plata.* ***Héctor H. Juárez:*** *Attorney (UNC); Specialized in Higher Education Teaching (UCC). Professor at the Blas Pascal University (Cordova). Head of the Legal Division of the Cordoba Customs Region. Member of the Technical Committee Nro. 2, Technical Subcommittee of the MERCOSUR Customs Legislation. Member of the drafting group of the Customs Code of the MERCOSUR.*

CONTENT

At the time of re-launching the MERCOSUR during the year of 2004, the Decision CMC Nº 54/04 that fixed the directives for the transition process towards making the Customs Union totally operational was approved.

In agreement with the mentioned decision, this transition process implies to advance in regulations and procedures that facilitate the circulation as well as the control of the freight imported into the common customs territory, and to establish a distribution mechanism of the customs incomes and elimination of the multiple collections of the External Common Duty (AEC in spanish), in order to stimulate the incorporation of added value to products originating from the Customs Union and to promote new productive activities.

It established the principle that the imported products from the rest of the world which fulfilled the common tariff policy would receive the same treatment as the freight coming from the MERCOSUR, for their circulation within the territory of the member states as well as for their incorporation to the productive processes.

With the purpose of allowing the implementation of the established in the article 1° of the Decision CMC Nº 54/04, was required:

The adoption of a Customs Code of the MERCOSUR

The online inter-connexion of the existing customs management computer systems of the MERCOSUR member states

A mechanism, with definition of modalities and procedures, for the distribution of the customs income.

The approval of the MERCOSUR Customs Code (CAM), through the Decision CMC Nº 27/10, and the approval of the guidelines for the implementation of the elimination of the double collection of the common external tariff and distribution of the customs income, through Decision CMC 10/10, sanctioned simultaneously during the XXXIXth MERCOSUR summit carried out on the 2 of August 2010, in the city of San Juan, Argentina, have fulfilled these objectives, creating a benchmark in the harmonization process of community rules towards the further development of the Customs Union.

The MERCOSUR CUSTOMS CODE contains a feature which distinguished and differentiates it from other community legal rules already incorporated into the national legislations and that justifies its special consideration.

We are speaking of a legal norm with structure of “Code”, this is, a systematic body that aims to regulate integrally its topic: The international freight traffic of the MERCOSUR member countries.

In order to obtain such purpose, this regulation endorses a holistic approach of the customs question, defining and regulating its main constituent institutes, unifying the system this way.

The integration process in the MERCOSUR customs is “evolutionary” nature, starting from the simplest to the most complex. Thus, at this stage

of the development cycle, this legal framework approved, unifying the concepts and establishing the fundamental legal institutions in customs matters, to progress further in more complex regulatory and complementary aspects, which require new policy definitions and greater time for debate and harmonization.

Without doubt, the MERCOSUR has awoken from its slumber with the approval in Ouro Preto of the common external tariff, since the issuing of this legal framework constitutes the renovating impulse that the regional block needed for its definitive consolidation and progress.

1. CUSTOMS AND INTEGRATION

One of the determining factors in deepening and developing an economic integration project lies in a uniform proceeding of customs administrations that serve the countries involved in the integration process.

The common external borders of the integrated countries must provide neutrality in the treatment of exchanges, and provide certainty and legal security to economic operators. They must know and see that the consequences of customs laws enforcement will produce identical results in any place of the area of integration. This resulting legal certainty is essential to the credibility of the integration process.

Customs management in the integration process should have as main purpose a service that provides an identity of results regardless of the country chosen for the exchanges. In the same way as in a State Party the various customs do not discriminate between operators, but provide equal treatment, also in the process of integrating the customs of different countries, applying the same rules must yield the same results.

Currently in the MERCOSUR exists over 25 common customs regimes, i.e. approved and current in the four states parties: Baggage Rules, Border Transit, Cultural Goods circulation, Promotional material circulation, rules for individual and rental tourist vehicles traffic, Package Transport by passenger bus, just to name a few.

These customs regimes, independents and different, require a regulatory structure that integrates and consolidates them as a legal system.

To this end, on August 2, 2010, during the XXXIX MERCOSUR summit held in the city of San Juan, Argentina, the Common Market Council (CMC) approved the MERCOSUR CUSTOMS CODE (CMC Decision 27/2010), a common regulatory body of 181 articles that defines and harmonizes the customs fundamental institutions, and that as soon as endorsed by the legislatures of the States Parties, shall regulate the entry and exit of goods from and to the MERCOSUR, as well as their internal circulation.

2. MERCOSUR CUSTOMS CODE IMPORTANCE

The adoption of the MERCOSUR Customs Code (CAM in Spanish) is a landmark in the process of customs rules harmonization to improve the customs union.

Undoubtedly, MERCOSUR “awoke from a long nap” since the adoption in Ouro Preto in 1994, of the common external tariff (AEC in Spanish), since the provision of this rule, along with commitments

to implement the elimination of double collection of the AEC, and the distribution of customs revenue are the fresh impetus needed by the regional bloc for its final consolidation and progress.

What is the importance of the adoption of a MERCOSUR Customs Code? The answer appears to be immediate and accurate. Not only because the demarcation of a single customs territory, where the import as well as export of goods through any port and/or airport of MERCOSUR allow the application of a common customs legislation, but also will provide legal certainty and transparency to regional operators, unify the treatment given to the merchandise and optimize the procedures to carry out by customs services, thus taking the road to facilitate international trade as promoted by the World Trade Organization.

In turn, we believe that this body of law will also help to create a favorable climate so the businesses in the region, in the new international economic scene, will take common decisions aimed at promoting productive changes so the MERCOSUR will successfully conclude the negotiations of trade agreements with other countries or regional blocs.

3. HISTORICAL BACKGROUND

In the Brazilian City of Ouro Preto, on December 16, 1994, the CMC decision No. 25/94, by which it approved a MERCOSUR Customs Code draft was signed. The legislative approval at least by two of the four MERCOSUR member states was required for its entry into force. However, despite being a shared common goal, only the Republic of Paraguay approved it.

As a result, the Technical Committee No. 2, "Customs Matters", under the Trade Commission of MERCOSUR was instructed to review the text and to develop an additional Protocol to the CAM, which took place between 1997 and March 2000. The draft thus obtained (ACAM) did not reach the necessary political and technical consensus on a set of issues of varying degrees of complexity.

On 12/15/2003, at the time of giving new impetus to the MERCOSUR, the Common Market Council, by Decision No. 26/03, established a timetable for the years 2004/2006, instructing a working group to identify basic conceptual aspects of MERCOSUR Customs Code that required definitions by the GMC.

Once these concepts were identified, on July 20, 2006, during the Pro Tempore Presidency of Argentina, in Cordoba City, Argentina was signed the GMC Resolution No. 40/06 which established the guidelines and definitions that this Ad Hoc Group has taken into consideration for drafting the project. These guidelines and definitions contained in the annex to this regulation, refer, on one hand, with topics whose harmonization was considered feasible (have a code "framework" that also regulates the movement of the intra-zone goods during the transition process until the final formation of the Customs Union; scope of application and customs territory; specific regulation of the export customs; a regime of exports, the responsibility of the foreign trade operators, the event causing the tariff obligation and the customs warehouse) and on the other hand, those which taking into account the asymmetries identified in national legislation of the members of the bloc, decided, in a first stage, not regulate in the Customs Code of the MERCOSUR. This category includes prescribing the action to demand the payment of customs duties, financial penalties, and territorial sea, among others.

In this PPT the decision CMC No. 25/06 which created an Ad-hoc group (GAHCAM) attached to the GMC was also approved. It was formed by of customs and tax law official specialists for drafting of the CAM project on the basis of the guidelines specified in the aforementioned Res. GMC Nº 40/06.

Once the group was formed, they began the drafting work in Brasilia in November 2006, completing then twenty-one consecutive monthly meetings one week in each country holding the PPT of MERCOSUR.

In the course of the GAHCAM negotiations, substantial differences were detected in numerous legal systems of each State Party, which made necessary in some cases, to set aside the local rules or choose not to include in the referred project certain institutes included in some national legislation, which will continue to be applied according to the supplementary principle provided in Article 1, paragraph 4 (e.g. subordinated statement). A third solution was to postpone, at this stage, the regulation of some aspects which could not be consistent with the regulations.

Finally, in August 2008 reaching an important degree of progress in the drafting, the customs authorities of our country submitted it for consultation with all operators and professionals represented in the Customs Consultative Council, giving them a deadline to complete their observations. 72 recommendations emerged, both partial and total, from various articles and institutes, out of which 57 were collected, previous an internal review and a discussion at the international negotiating table.

4. SOURCES AND METHODOLOGY FOR THE CAM DEVELOPMENT

4.1 Sources

For the development of the MERCOSUR Customs Code, the following backgrounds were taken into account:

National Background:

a. Argentinian Customs Code (Law No. 22.415)
b. Paraguayan Customs Code (Law No. 2422/04 and Regulation Decree No. 4672/05).
c. Uruguayan Customs Code (Decree No. 15.691/84).
d. Brazilian Customs Regulations (Decree No. 4543/2002) and (Decree No. 6.759/09).

Regional antecedents (MERCOSUR)

a. MERCOSUR Customs Code (CMC Decision 25/94).
b. MERCOSUR Customs Code (version March 2000).
c. Implementation Rules of the MERCOSUR Customs Code (NACAM).
d. Decisions of the Common Market Council (in particular, CMC Decision No. 50/04).
e. Common Market Group Resolutions

International Background

a. International Convention on the Simplification and Harmonization of Customs Procedures. Revised Kyoto Convention.
b. European Customs Code (EEC regulation No 2913/92) and the "modernized" European Customs Code (EC Regulation No 450/2008)
c. Central American Customs Code (CAUCA III - Year 2002)
d. Draft of the Andean Community Customs Code (Version 2007).
e. General Agreement on Tariffs and Trade (GATT)

4.2 Methodology

To begin with the drafting of the CAM, considered that the customs law duty is to regulate the legal relationship established between customs administrations and individuals (natural or legal)

involved in the entry, permanence, and departure of goods in a territorial context (customs territory), so in the first part (Title I), the territory where the rule applies is defined, then to mark out the territory where the goods enter, remain or exit is defined, and definitions have been developed related to these movements.

These movements of goods generate a range of rights and obligations attributable to various subjects clearly identified: first, the customs administration, a state agency in the exercise of sovereign rights delimited in space has the essential function to "control" the movement of goods, and on the other hand, the "related subjects" natural or legal persons involved directly or indirectly in the entry / exit / stay of the goods (importers, exporters, customs brokers, carriers, etc.), so we proceed to their regulation under Title II.

Then in titles III, IV, V, VI, VII, VIII, and IX is developed everything connected with the subject of customs legal relationship, ie the purpose considered by the legal system: the customs control on imports and exports. To this end, the various forms of entry of merchandise admitted to the customs territory are regulated, either through voluntary human acts, such as simple natural legal facts (livestock, jettison, loss, etc.), and the various destinations to which merchandise may be subject, the requirements and conditions for its stay, concluding with the various ways goods they can be removed from customs territory.

In Titles X and XI the causes of the customs legal relationship are explained, i.e., the reasons or bases for control, i.e., the system of prohibitions and restrictions and the regime of tax imposition, among others.

In Title XII, the rights of the taxpayers are stated, in Title XIII are transitional provisions, with two articles, one related to internal movement of goods within MERCOSUR (art. 178) and other related with the Documentation from the Falkland, South Georgia and South Sandwich Islands (art. 179) and finally, Title XIV is related to the breach of obligations (art. 180) which expressly refers to the legislation of the States parties and the customs code committee (art. 181), which is the body responsible for ensuring the uniform application of this code.

Finally, it is mentioned that on May 26, 2008, (Meeting GAHCAM No. XVI), the delegation of Argentina presented a proposal of explanatory statements for treatment at the GAHCAM, in spanish and portuguese. This proposal was harmonized by about 70%, its completion being subject to the conclusion of the code itself. Unfortunately, the political times that achieved the CAM approval did not allow its joint approval, so its full harmonization and subsequent incorporation by a complementary standard is in process of evaluation.

5. RELEVANT ASPECTS

5.1 Legal framework

The CAM is a code conceived as a legal "framework" which sets the fundamental customs principles and institutions to be applied in all areas of land, sea and air under the jurisdictions of Argentina, Brazil, Uruguay and Paraguay. Moreover, together with complementary and regulatory norms, its provisions will govern the international traffic between MERCOSUR with third countries, and also intra-regional trade in the improvement process of the Customs Union.

This legislative technique of legal framework has allowed us concluding, after four years of intense and complex negotiations, this MERCOSUR Customs Code - a difficult task considering the differences between partners that we had to overcome on legislation, concepts, interests, and needs. Some have technically been overcome

through general formulas, others had to be analyzed and solved on the basis of the national political authorities' instructions and some of them required decision by the governing bodies of MERCOSUR.

We have to remember that the customs integration process in MERCOSUR is "evolutionary" in nature, starting from the simplest to the most complex. Thus, at this stage of the development cycle, this legal framework is approved. It unifies the concepts and establishes basic legal dispositions in customs matters, and then advance on two simultaneous and parallel fronts: a) Regulating procedural and operational areas, and b) through a complementary way for those aspects not harmonized in this legal basis, either because they were voluntarily excluded, or because they are new institutions that may arise with the development of global international trade.

In this way, we would achieve an almost complete Community customs legislation as in the European Union, where national customs laws exist as residual and regulate those aspects related to the organization and functioning of national customs administrations.

In short, the dynamics to complete this process through regulations, understanding that these also will be community law and that their development will have to include the corresponding political definitions and the necessary timeframes, will allow adjusting the legal rules applicable to the changing scenarios in which international trade is conducted.

5.2 Definition of customs territory

In the GMC Resolution N ° 40/06 was stated that the customs territory would be the part of states parties territory in which a single tariff is implemented and economic restrictions on their imports and exports, excluding exclaves and tax - free zones, i.e., it was based on the "classical" notion contained in Article XXIV of GATT, based on a tariff scope. This notion, despite its acceptance by all MERCOSUR Member States by their adhesion to this general agreement was not sufficient at the regional level because special customs areas were not included since with it, the tariff regime would have been the same for the whole territory and such areas would have lost the special benefit of a lower tariff.

In fact, the classification made by the Argentine Customs Code between general customs territory and special customs territory - which would cover a different tariff for special customs areas - did not have the acceptance of Uruguay nor Paraguay, because they believe that such distinctions undermined the integration process and, consequently, led to exclude those areas from the Community territory, but such proposal, in turn, violated the concepts agreed upon by the Common Market Council Decision No. 8 / 94, about the convenience of maintaining within the MERCOSUR the existing special customs areas.

Thus, the possibility of adopting the customs territory definition provided by the Kyoto Convention was submitted to the consideration of coordinators of the GMC -International Convention on the Simplification and Harmonization of Customs Procedures - Kyoto Convention (Revised)-, based on the territory on which the customs legislation applies. This option was accepted by the Common Market Group and this was the base of Article 2 of the customs code adopted by Decision CMC No. 27/10. In addition, the GMC considered appropriate to include in this code a definition for the special customs areas.

Please note that this "innovative" definition allows the MERCOSUR States to be in line with more than 70 countries currently part of the Kyoto Convention. In addition this will help our country to overcome existing asymmetries in the national legislation on internal taxation arising from the current differences between the customs territory and political territory.

On the other hand, as to the definition of duty free zones, the criterion of the Kyoto Convention and the European Union Customs Code now in force were also followed, structuring these areas, unlike

the art. 3 º par. b) of the Argentine Customs Code as part of the MERCOSUR customs territory, without prejudice of the treatment of the goods introduced there, since they will be considered as not being within that scope in regard to taxes or duties of import.

Similarly, it is clear from the CAM provision Art. 126 paragraph 4., which provides that the free zones must be authorized by the state party governing their location, emerging plainly that with this the MERCOSUR is not empowered to create this type of customs area, but countries do have this power, respecting their internal regulations. In the case of Argentina only one free trade zone can be created by province (see art 2 ° Law 24.331), except the province of Buenos Aires, which enjoys this privilege for being the standard for the creation of the Free Zone of the Port of La Plata No. 5142 in the year 1907, pre-existing to the law 24,331 governing the National Free Zones.

5.3 Supplementary provisions

In Article 1, paragraph 4 of CAM is expressly defined the "supplementary" character of the national laws. In other words, when the CAM comes into force, our national customs laws will not lose validity, but shall apply to all cases not specifically covered by the Community rules, thus avoiding the gaps and loopholes while the MERCOSUR Customs completes its legal system.

These supplementary or alternative mechanisms are of fundamental importance to the "completeness" of the legal system because they provide solutions that are triggered when the supplied standard does not provide a direct response to the case presented.

In those cases in which the provision refers explicitly to the mandatory or supplementary regulations and they have not been issued yet (as is currently happens in most cases), under the supplementary provision principle the national laws are immediately applicable, thus we conclude that the CAM approved and in force in all states parties will be fully "operational", not requiring the issuance of any additional rules to be immediately applicable.

In the current stage of the MERCOSUR customs law evolutionary process, the national provisions retain their significance until they are replaced by the Community regulations to be written.

At this point we understand that it is "premature" to conclude that this referral to mandatory (and complementary) regulations to be issued are improper delegation to officers with no legislative power, since it has not been determined within the MERCOSUR who will be responsible for the development of the regulations, even less if in respect to them the same process is not followed as with the current MERCOSUR Customs Code, i.e., their presentation to the National Congresses for approval, through which the Legislators of States Parties, with the power legitimately granted on their behalf will give sanction and validity to the regulations.

Notwithstanding the foregoing, please note that all Community legislation - derived legislation - which arises from the block, has been issued by executive bodies of the MERCOSUR, i.e. the Common Market Council (Decisions), the Common Market Group (Resolutions) and Trade Commission (Directives), which are composed of officials belonging to the executive powers of the States Parties and not to their legislatures, so a question to this effect would be extendable to all the MERCOSUR regulations and not only to the CAM regulation.

Concepts should not be confused, one thing is the issuance of the MERCOSUR rules and quite another is the "process" by which it is incorporated to national law. If the MERCOSUR rule, issued by officials of the executive powers of the States Parties, is incorporated into national legal systems by "law" of Congress, this gives all the guarantees and constitutional assurances required by the republican representative system of government, no matter whether or not the rule is regulatory of another MERCOSUR rule.

The reference to the regulations to be issued should be seen as a mandate for the evolutionary development of the community customs law. The CAM aligns the definitions, key institutions and the structure of the customs system and, in addition, indicates who must continue the process, what aspects should be regulated.

5.4 Customs Administration. Competencies. Prominence in Primary Zone

The internal organization of the customs service is a prerogative of the states parties so that in this respect the project generically names them as "Customs Administration" and includes those organisms that in national courts have been empowered to implement customs legislation, regardless whether they are autonomous, self-sufficient or part of the central state, nor whether they are independent or merged with the internal taxes control areas, leaving at the discretion of the states parties to determine the jurisdiction and powers of the various customs offices in their respective territories.

Regarding the powers of the national customs authority, an "enunciating" criterion has been followed, consigning those powers common to the state parties, leaving their fulfillment to the complementary, national and other regulation, built in the same customs code.

Following national sources (art. 12 of paraguayan Customs Code, Art 17 of Brazil customs regulations), international background (Art. 8 of CAUCA) and taking into account the principle of specialty, and the modern security trends to combat international terrorism, in the primary areas the "prominence" of the customs service in monitoring the international traffic of goods has been established in relation to the other security forces operating in the same physical space.

This implies that in the specific task of controlling imports and exports that are performed in the primary zones enabled for this purpose, such as airports and ports, the customs service will be the top (see term) authority and may require the assistance of the other security forces and coordinates their actions in order to fulfill its specific control task. This is without prejudice to act and exercise by itself the police power. This way, the action criteria are unified in all states parties of MERCOSUR.

5.5 Mutual assistance

Among the modern trends in customs control, information exchange and mutual assistance between customs institutions are effective instruments in the fight against fraud, enhanced by the customs administrations control structures with the consequent positive impact on the prevention and repression of illicit trade, indispensable for achieving the common good, ultimate goal of the Treaty of Asuncion.

This has an international foundation in the OMA legal framework (June 2005), which is based on two pillars: Customs-Customs collaboration and Customs-Business collaboration. This framework provides a legal platform which seeks to promote world trade, improve security against terrorism and enhance the customs administrations contribution to countries economic welfare and social development, strengthening the customs capacity to detect high-risk shipments and manage an efficient management of the loads.

For these reasons, following the international antecedents in this respect, the criteria agreed upon by the Common Market Council by Decision No. 26/06, establishes the general principle of the obligation of mutual assistance and exchange of information between the customs administrations of the States Parties.

5.6 Customs administrative acts

The inclusion of this provision seeks to establish a "refutable" presumption of validity of administrative customs acts of particular scope, made by the customs administration of a State Party, which will produce full legal effect throughout the whole MERCOSUR Customs Territory, thus avoiding

the administrative and jurisdictional problems that a double treatment could create, and the risk of different or contradictory criteria for the same event.

This important legal instrument helps to provide security and certainty in legal relations related to international traffic of goods, enabling customs acts of particular scope, such as checkups, assessment, classification of goods, which were issued by the customs authorities of a State shall be deemed valid and effective in the territory of the other MERCOSOUR member states.

However, for the presumption of validity to be held, the foreign administrative act must be considered valid under its own law, i.e. it must meet the substantive requirements and formalities laid down by the administrative law of the authority that issued it ("auctor actum regit ").

5.7 Qualified economic operator

To facilitate the flow of global trade by ensuring the security of international supply chain, in 2005 the World Customs Organization has developed a system of principles and standards known as the WCO Framework of Standards to secure and facilitate global trade, the adoption of which is recommended to the entire community.

Within these principles is regulated the figure of the Qualified Economic Operator (or Authorized, or Reliable), which is a special qualification given to the agents operating in foreign trade as manufacturers, importers, exporters, shippers, carriers, intermediaries, ports managers, airports and terminals, integrated transport operators, storage operators, etc., depending on various criteria, such as their history of compliance with customs regulations, demonstrated commitment to the supply chain security and a satisfactory system for managing their commercial records.

Following this precedent, it is planned to incorporate this figure among the subjects related to the customs activity, making them subject to requirements and regulations applicable for the granting of such status.

This system is a mutual commitment between customs and foreign trade operators whose primary purpose is to ensure the safety and fluidity of customs operations, providing the operator greater competitiveness and improving the allocation of resources by the customs. It is based on the concepts of collaboration and mutual assistance to improve export performance, import and all the factors and issues related to the operation of international traffic.

Within the doctrine, the designations "Reliable economic operator ", "Authorized economic operator" or "Qualified economic operator" are all used. We opted for the latter alternative on the understanding that the status indicated is due to a special "qualification" of the operator, who meets certain criteria differentiating them from other economic operators.

5.8 Customs brokers

It is important to note the favorable impact of the various entities of the MERCOSUR which gather the customs brokers, as these auxiliaries of foreign trade are described in the MERCOSUR Custom Code (CAM). In the particular case of the Centre for Customs Brokers in Argentina-CDA-, and on the occasion of the celebration of the regular meeting of the Association of Professional Customs Agents of the Americas-ASAPRA- in Panama City in 2008, their representative said they were called by the Advisory Council of Argentina Customs to deliver a copy of the CAM and they would make the observations they deem appropriate, stating verbatim: "... the fact that the project introduces the figure of customs broker is reassuring ..."

Among its guidelines, the mentioned Resolution GMC N º 40/06, decided to regulate specifically the figure of the customs broker, agreeing that the MERCOSUR Customs Code only establish general provisions on the matter and the specific regulation of these agents will be subject to legislation of each State Party. Those general provisions should establish procedures for the following: i) technical qualification criteria for the exercise of the profession, ii) the possibility for

each State Party to regulate their mandatory or optional character or and iii) the requirement of guarantees for the professional practice.

It should be reminded that in the MERCOSUR Customs Code adopted in 1994 it was stipulated that companies could directly handle customs operations, or do it through a customs broker representative. In the year 2000 project version, nor their actions nor their responsibility was regulated.

Moreover, since the customs broker is not just a dealer but a qualified auxiliary of the customs service, he must meet a high level of technical expertise related to the rules and customs operations, enabling him to interact with the customs competently and proficiently, ensuring a smooth and safe external trade with knowledge of rules and customs operations. in San Juan, CAM criteria of technical qualification for the exercise of that profession and minimum standards were established, requiring the approval of a competence examination with guidelines defined by States parties.

Similarly, the possibility was also given for each State party to regulate the profession of customs broker, thus following the appropriate approach adopted by the European Customs Code (Art. 5) which provides that national legislation may, in their territory, allow interested parties be represented to the customs authorities for performing acts and formalities laid down by customs rules, through a customs broker.

In Latin America there are several countries that make the intervention of a customs broker compulsory for customs clearance: Bolivia, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Uruguay and Venezuela. While in Argentina, Brazil, and Peru, the customs broker intervention can be replaced by the owner of the goods, who may act directly as an importer or exporter.

Finally, the professional exercise regulations are left to the national legislation.

5.9 Customs duties

The “taxable event” is the budget specified by law as a constraining hypothesis which gives rise to the obligation to pay the duty.

Today, the argentine and uruguayan customs codes establish as a taxable events the “import for consumption” and “export for consumption”, while brazilian and paraguayan law consider taxable event the input/output of goods from the customs territory.

What matters economically is the introduction of merchandise which will be incorporated into the community economic circulation, and not taxing the lawful introduction of goods merely aiming to transit or temporarily stay and therefore not affecting the economic activities developed in the States parties.

This conception of the tax customs prevalent in the world today is the most convenient since it serves two main purposes of the customs tariff: the competitiveness of the communitarian goods against the foreign goods and the adequate supply of the market, circumstances that only occur when the goods enter the economic circuit of the community.

For this reason, according to the principle of legality that no person is obligated to pay a tax that the law does not oblige, and following the parameters established in Resolution GMC N°40/06, it has been established as a taxable event the final import (for consumption) which is the regime that allows free movement of goods within the customs territory, to be defined as those which will not be leaving the territory, they can remain indefinitely or, under the terms of the Kyoto Convention which are disposable without customs restrictions.

Consequently, not all import or export is subject to payment of taxes, but only one that is inserted or removed in a “definitive” way by: a) a declaration of intent through a request and customs declaration, which we will call regular final import

or export, or b) as of right, by operation of law, which we call irregular final import or export.

Regarding the first, the final regular import or export, which is done by an final import or export office, it has been expressly stated that the customs tax liability is a "personal" link born with the occurrence of the taxable event and compel the declarant or who has the legal availability of the goods to pay taxes, responsibility that each state party may extend jointly to the person exercising the representation of these subjects.

The irregular event has been included in a rule of general application which allows the country whose laws so provide, apply not only administrative, civil or criminal in case of any breach of customs legislation, but also to fully exercise its taxing powers (Article 180), thus fulfilling the mandate of Resolution GMC N° 40/06 in the sense that, given the many asymmetries in this area, illicit customs goods will at this stage, stay outside the MERCOSUR Customs Code therefore shall be governed by the laws of each state party.

6. CLASSIFICATION OF CUSTOMS OPERATIONS

Taking into account the different stages or sequences of an importation, the following general principles have been collected: 1) all goods arriving in the MERCOSUR customs territory must be declared, 2) all goods declared and registered with MERCOSUR destination must be entered and downloaded at the places authorized for that purpose, which is subject to temporary storage (unless expressed by specific exceptions), 3) all goods in temporary storage must be submitted to any of the following customs-approved destinations: a) included in an import regime (which may be permanent or temporary), b) re-embarked out of the territory (it is understood that transshipment is not a destination), c) voluntarily abandoned to the National State d) destroyed with the consent of the specific state customs administration. If there is no request for a destination within a fixed period, the merchandise will be automatically considered abandoned in favor of the national government.

Consequently, the enumeration of the "customs destinations" is not open; it does not provide other legal alternatives for the treatment of the imported products.

In exports, although the process is reversed (the exporter's declaration first and then the carrier´s), we can outline the adopted general principles, criteria, and organizational structure as follows: 1) all goods intended to be exported must be declared (with some specific punctual exceptions), 2) at the time of the statement, the exporter must apply for inclusion on one of the authorized export regimes, 3) all goods declared and recorded abroad should be loaded and unloaded at the places authorized for this purpose.

In this respect, it must be pointed out that the destinations that an operator can choose from are limited and precise: if it is a tax-free commodity within MERCOSUR, it can only be exported and, on the contrary, in the case of goods that are not tax exempted within MERCOSUR and are intended to enter it, they must be either imported, re-embarked, abandoned or destroyed. Such movements constitute the first level of the qualification structure for the operations carried out at a customs office: the customs destination of the goods. Turning to the next level of the qualification structure, we must point out that customs procedures are "legal alternative treatments" that the law gives to the declarant at the time of entry or exit of goods from the customs territory. These options are freely chosen by the importer/exporter at the time of filing their return according to their business needs.

Nine possible customs general regimes are distributed in three categories which take as distinguishing criterion the possibilities or legal alternatives of the declarant: first we find the five customs regimes that the law offers as a set menu to the importer, i.e. the alternatives or roads The legislation gives the importer to enter goods into the customs territory of MERCOSUR, second, three customs procedures are available to the exporter and, finally, a common customs regime, i.e., treatments that can be used both in imports and in export of goods (Note that the transit regime can be requested for import as well as for export). The temporary destination of "Removed" provided for in Articles 386 to 396 of our national legislation is incorporated as one of the modes of the transit regime.

In addition to the general customs regimes, in Title VIII thirteen special customs regimes have been regulated, which are specific regulations that allow entry, exit, or circulation in the MERCOSUR customs territory the goods, vehicles and cargo units, totally or partially exempt from payment of customs duties and subject to a simplified customs clearance procedure, because of the quality of the declarant, the nature of the goods, the type of shipment or destination.

7. ELECTRONIC CUSTOMS - COMPUTER SYSTEMS

The vertiginous advance of information technologies and in particular the strengthening of mechanisms for secure transactions has allowed the use of electronic systems for the transfer of customs information in real time.

In light of this, and in order to move towards a paperless customs office, the "prevalence" of computer systems and electronic transmission of data has been planned in the registry of customs operations, enabling the widespread electronic registration of customs statements of goods.

The electronic transmission of data is planned for relations Customs-Customs (intra and extra MERCOSUR) as well as for the relationship Customs-Linked subject (in accordance with modern collaborative strategies of public and private sector for legal trade facilitation).

This also paves the way for those customs that wish to advance "single window" projects, i.e., the ability to perform all procedures related to customs operations (health checks, phytosanitary area, etc.) in a single control point.

Taking into account the asymmetries in the implementation of electronic data Interchange in the public offices of the states parties, as well as the differences in requirements as the state entities in charge of implementation, it has been established that each state party shall provide the required security standards within their territorial jurisdictions, clearly prescribing the unification of criteria for their effects and legal status, i.e. that the duly certified digital signature or a secure electronic signature is equivalent to the holographic signature of the participants.

8. PENALTY SYSTEM

There are different conceptions of the types of customs violations reflected in the domestic legislation of the states parties, and in the case of such an essential topic make very difficult to standardize the structure of offensive behaviors.

Because of this, in section D of Resolution GMC 40/06 it has been decided that the harmonization of customs offenses is postponed to a later stage of the MERCOSUR integration process, excluding the subject from the present CAM project, leaving

the treatment of customs offenses and crimes to the national legislations of states parties.

For this reason, and in order to provide greater certainty and precision about the legal system applicable, in the Final Provisions (art. 180) it is provided that the breach of obligations stated in the MERCOSUR Customs Code shall be punished, when applicable, in accordance with the national laws of the states parties.

9. FORCE

In accordance with the provisions of Article 42 of the Ouro Preto Protocol, MERCOSUR Customs Code adopted at the CMC is "mandatory" throughout the whole territory of MERCOSUR, requiring internal legislative approval of all states parties to enter into "force".

After its incorporation into national law, states parties should notify the Secretariat of the MERCOSUR, which will inform when all states have fulfilled. The code will become simultaneously effective 30 days after communication by the secretariat. Each state should advertise this in their respective official bulletin (Article 40 of the Protocol of Ouro Preto).

The adoption of the MERCOSUR Customs Code by the Honorable Congress of the Nation will: a) Overcoming the Free Trade Zone stage and progress on the path towards Customs Union; b) Strengthen the MERCOSUR position in trade negotiations with other countries and economic blocs (in particular with the European Union); c) Strengthen the legal security of the customs community legal system, and d) Facilitate the movement of goods between the states parties of MERCOSUR.

10. CONCLUSIONS

The natural attachment of the MERCOSUR member states to their legislative autonomy and the fact that each national customs law is firmly rooted in their history and legal and administrative traditions have made arduous the task assigned to the Ad hoc Group for the drafting of the MERCOSUR Customs Code (GAHCAM).

In addition to the important efforts made to conciliate the existing differences of treatment and existing asymmetries in the national legislations, we must remember that the conclusion of this code has required political definitions on very sensible subjects for the MERCOSUR, such as the definition of the customs territory, the application of the specific rights of export and import, the treatment for the circulation of merchandises between the member states and the operation of the special treatments areas.

Keep in mind that in the scope of the MERCOSUR the decisions are taken by "full consensus" or "unanimity", that is to say, that only one the disagreement from a member state with a legal proposal is sufficient to block it.

Despite this, and after 4 years of exhaustive writing work and negotiation, the approval of this one communitarian normative body has been obtained in order to establish the foundations for the MERCOSUR customs legal system.

MERCOSUR customs code harmonizes and defines fundamental "concepts" and "institutions", with a strong impression of "permanence", which will enable progress in the development of the "evolutionary" integration process from strong bases, and later, through the establishment of regulations (more operative and dynamic), to

gradually replace the “non-common” provisions of the national customs legislations towards a common customs normative framework.

The greatest virtue of this normative body, and is its importance, is that it creates a unique customs territory, the second greatest one in the world, with a total surface of 11.889.654 km2, with 250 million inhabitants, and a gross internal product of approximately 2,300 million dollars, which constitutes an important instrument of economic policy that that will allow us to fortify the economic position of the MERCOSUR in the commercial negotiations with other countries and blocks.

11. BIBLIOGRAPHY

Acuerdo General sobre Aranceles Aduaneros y Comercio (GATT). Organización Mundial de Comercio, año 1994.

Código Aduanero Argentino, Ley No. 22.415/81.

Código Aduanero Centroamericano (CAUCA III), Año 2002.

Código Aduanero del MERCOSUR, Decisión CMC Nº 25/94.

CODIGO ADUANERO DEL MERCOSUR, Decisión CMC Nº 26/06.

Código Aduanero Europeo denominado “Modernizado”, Reglamento CE Nº 450/08.

Código Aduanero Europeo, Reglamento CEE No. 2913/92.

Código Aduanero Paraguayo, Ley No. 2422/04 y su Reglamento: Decreto No. 4672/05.

Código Aduanero Uruguayo, Decreto Ley No. 15.691/84.

Convenio Internacional para la Simplificación y Armonización de los Regímenes

Aduaneros. Convenio de Kyoto Revisado. Organización Mundial de Aduanas, año 1999.

Reglamento Aduanero Brasileño, Decreto No. 4543/02 y Decreto No. 6.759/09.

TRANSPARENCY OF TAX INFORMATION WITHIN THE IBERO-AMERICAN SPHERE: AN UNFINISHED EFFORT?

Isabel Carolina Véliz Nieto and Claudia Cecilia González Torres

Summary

In this work the different tax information exchange agreement models in the Latin American countries are compared, determining their similarities and differences. The current trend experienced in this exchange is also reviewed briefly.
From this comparison, basic elements are extracted for the analysis of their practical application proposing a agreement model of optimal information exchange that would allows to obtain greater efficiency and utility of the information exchanged, with special attention to their practical use in states domestic legislations.

***The Authors: Claudia C. González Torres**. Commercial engineer of the Pontifical Catholic University of Chile; Magíster in Management and Public Policies of the University Adolph Ibáñez; Supervisor of the Control Subdivision of the Service of Internal Taxes of Chile.*
***Isabel C. Véliz Nieto** Attorney; Magíster in Law University of Chile; Bachelor in Law of the Pontifical Catholic University of Chile; Attorney of the Direction of Large Taxpayers of Internal Revenue Service of Chile; Professor of the Mastery in Tax and Customs Law with Mention in Spanish and European Union Tax Law of the National University Andrés Bello, joint Program with the University of Castilla La Mancha, Spain*

CONTENT

A vital element within a world without borders is the need for accurate information to be able to make the best decisions. In tax matters, this requirement is fundamental since the faculty to conduct operations of international character generates to the taxpayer the possibility of creating and using new schemes of avoidance and evasion applying the different legislations between countries, data that not always are within reach of the corresponding Tax Administration, making difficult its management when having its competence limited the borders of its nation. As opposed to this situation, formal international agreements of tax exchange information are on the rise, which in order to maximize their efficiency, should consider the fulfillment of certain minimum standards to assure the quality of the interchanged data as well as the possible use of the information submitted.

In order to determine if the present state of things allows identifying those aspects, we will compare the diverse proposals of models, hoping to find these elements that deserve special attention, which in our understanding must be revealed as essential or important to optimize the effectiveness and utility of the tax information transparency at the Latin American level. From there, we will look for examples of Latin American regulation to get to know the different countries approaches to delivering tax information to other States, and the adequacy of internal rules. Also, we will expose what could be the weaknesses that reduce effectiveness and usefulness to the exchange, trying to provide a solution proposal.

1. INFORMATION EXCHANGE MODELS USED IN IBERO-AMERICA: THE DIVERSITY

1.1 Basic elements for the analysis

There is a recognized need for counting on formal international tax information exchange agreements. However, at the international level, reciprocity is a valid tool that renders theoretically possible the delivery of such information. In fact, there are agreements between tax administrations that allow for such exchange, even though they lack the effect of a Treaty or Convention and, they should therefore be considered in the analysis.[1]

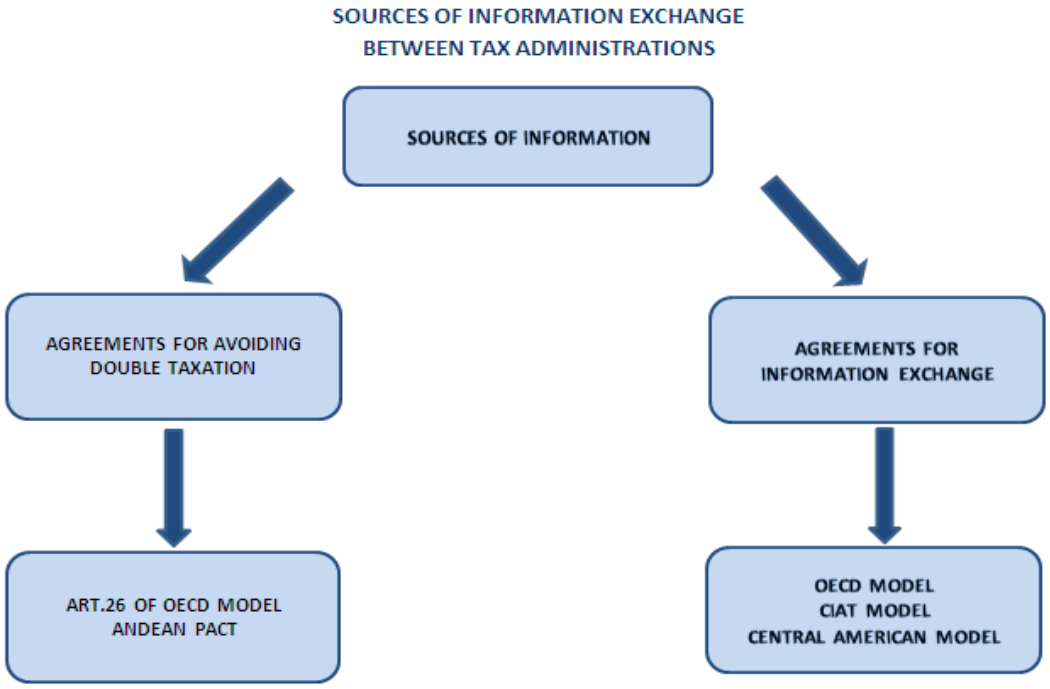
There are various forms of agreements: articles or clauses within treaties dealing with tax issues or special conventions that only cover bilateral or multilateral information exchange.

1 *There are numerous examples of administrative assistance, e.g. Council of Europe Convention on Mutual Administrative Assistance in Tax Matters. There are also other model conventions which allow exchange of information for particular purposes, for example the Model Convention on Mutual Assistance in Collection of Tax Debts.*

For purposes of this analysis we will consider the following models that are applied at the Ibero-American level: [2] [3]

a. Article 26 of the OECD Model Tax Convention.[4]
b. OECD Agreement on Exchange of Information on Tax Matters.
c. CIAT Model Agreement on Exchange of Information.
d. Article 19 of the Andean Community Model Tax Agreement.
e. Agreement on Mutual Assistance and Technical Cooperation between Tax and Customs Administrations of Central America.[5] [6]

Graph 1



Source: *Self-prepared*

2 *Ibero American countries considered in this paper are: Andorra, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Spain, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Puerto Rico, Dominican Republic, Uruguay, and Venezuela.*

3 *The United Nations Model was not analyzed because there are none in Latin America.*

4 *Model Tax Convention on Income and on Capital, OECD Committee on fiscal affairs. Version with modifications until 1995. OECD 1997. Especially introduction, paragraphs 37 to 40.*

5 *The contracting States are: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.*

6 *We hereafter refer to :a) Art. 26: article 26 of the OECD Model Tax Convention on income and on capital; B) TIEA, OECD Tax Information Exchange Agreements or Model Agreement on Exchange of Information on Tax Matters; c) CIAT Model: CIAT Model Agreement on the Exchange of Tax Information ; d) Model Andean Pact, Agreement among Member Countries to avoid double taxation and of the Standard Agreement for executing agreements on double taxation between Member Countries and other States outside the Sub region, article 20, decision 40 ; and e) CCAM: Convention for Mutual Assistance and Technical Cooperation among Central American Tax and Customs Administrations*

1.2 Comparison of the models

There are considerable differences and similarities between the models. Shown below is a comparative chart of their main elements to facilitate the analysis.

Chart 1: Comparison

Elements	Model	Art. 26 OECD	TIEA OECD	CIAT	Andean Pact	CCAM
Types	Bilateral	✓	✓	✓	×	×
	Multilateral	×	✓	✓	✓	✓
Framework	Foreseeable interest for the administration	✓	✓	×	×	×
	Omitted if it is a national or resident	✓	✓	✓	×	×
	Adaptation of Legislation	×	✓	×	×	×
	Language agreed, English or French	×	✓	×	×	×
	Possibility of other agreements	×	✓	×	×	×
	Exhaustion of Internal Source	×	✓	×	×	×
Taxes	Delimits Taxes	×	✓	✓	✓	✓
	Taxes of Pol. Subdiv. are expressly included	✓	✓	×	×	×
	Income or benefits	×	✓	×	✓	×
	Capital	×	✓	×	✓	×
	Net wealth	×	✓	×	×	×
	Inheritance or donations	×	✓	×	×	×
	Indirect only by express ratification	×	✓	×	×	×
	Tax analogy clause	×	✓	✓	×	✓
Purpose	Determination	×	✓	✓	×	×
	Assessment	✓	✓	✓	×	×
	Collection	✓	✓	✓	×	✓
	Recovery	×	✓	✓	×	×
	Execution of claims	×	✓	✓	×	×
	Investigation	×	✓	✓	×	×
	Prosecution	×	✓	×	×	×
	Offense	×	✓	✓	×	×
	Infringements	×	×	✓	×	×
	Others	✓	×	×	✓	✓
	Used only for tax purposes	✓	✓	✓	×	✓
Reservation	Reservation	✓	✓	✓	✓	✓
	Only informs tax administrations	✓	✓	✓	✓	✓
	Exception public judicial proceed. and judgments	✓	✓	✓	✓	×
	Written authorization to trasmit to others.	✓	✓	×	×	×
	Taxpayer rights	×	×	×	×	×

Elements	Model	Art. 26 OECD	TIEA OECD	CIAT	Andean Pact	CCAM
Types	Previous requirement	×	✓	✓	×	✓
	Tax examination abroad	×	✓	✓	×	×
	Automatic	×	×	✓	×	×
	Other forms of assistance	×	✓	×	✓	✓
	Simultaneous examinations	×	×	✓	✓	×
	Spontaneous	×	×	✓	×	✓
Request	Information that should be included	×	✓	×	×	✓
	Acknowledge receipt of request in writing	×	✓	×	×	×
	Term for observations	×	✓	✓	×	✓
	Term for response	×	×	✓	×	✓
	Term for refusal	×	✓	✓	×	✓
Causes for Rejecting Request	Infringement of internal law	✓	✓	✓	✓	✓
	Not formulated according to agreement	×	✓	×	×	×
	Disclosure commercial, bus., indust., prof. secret	✓	✓	×	✓	×
	Professional secrecy	✓	✓	×	✓	×
	Contrary to public order	✓	✓	✓	×	×
	Discriminates against national of req. State	×	✓	✓	×	×
	Cannot reject if there is controversy of tax claim	×	✓	×	×	×
	Cannot reject for lack of local interest	✓	×	×	×	×
	Cannot reject because they are in banks, finan., trust inst., etc.	✓	×	×	×	×
Duration	In keeping with international regulations	×	✓	×	×	✓
	Previous date	×	✓	×	×	×
	Exchange of instruments	✓	✓	×	×	✓
Others	Notification, modification of taxes and judgments of treaty	×	×	✓	×	✓
	Simple legal presumption of validity of the evidence	×	×	✓	×	✓

Source: *Self-prepared*

Types

Article 26 does not provide for multilateral exchange but does not prohibit it. However, in the comments the Fiscal Affairs Committee explains that "there are no reasons to believe that entering into multilateral fiscal agreements between all the countries is viable at present." It must be taken into account that since it is an article within an agreement on income and net worth, it will follow the same fate of the treaty.

The TIEA was expressly conceived to be multilateral and bilateral. The multilateral version is not an agreement between multiple parties in the sense used in international law, but it is rather a series of integrated bilateral agreements. For this reason it modifies operational aspects in order to adapt itself to being signed by multiple parties.

The CIAT model does not include a differentiated version, although it admits the possibility of bilateral or multilateral agreements considering the application to a number of States.

The Andean Pact is multilateral in essence. Its whereas clauses provide that its objective is "to eliminate double taxation of activities carried out by individuals and corporations domiciled in the Member Countries of the Andean Community, which act at the community level and to establish a scheme and rules for collaboration among the tax administrations for achieving such purpose." It also states that "it is essential to update the regulations regarding avoidance of double taxation between the Member Countries, in order to promote exchanges between the Member Countries, attract foreign investment and prevent tax evasion."

The CCAM is multilateral, framed within the initiatives of economic integration of the Central American countries, with a view to promoting the economic and social development of its members. It is the only mixed model that considers both technical cooperation and mutual assistance on tax and customs issues.

Framework

This category includes the elements that provide for external limits to the exchange of information and which, therefore, constitute the basis or minimum standard of the agreement or convention.

- Foreseeable interest for the administration

Article 26 considers the need that the information exchanged may be foreseen as pertinent for the application of the agreement or for managing the taxes of the contracting State. This is a complex concept which is aimed at avoiding what is known as "going fishing", "fishing expeditions" or "throwing the nets". The exchange is not intended to request senseless information, seeking to eventually succeed in the information search and examination processes, and this is the reason for including the concept of usefulness of the information requested.

The OECD comments clarify that the purpose is to establish an as broad as possible exchange standard, emphasizing the fact that it does not imply protecting fishing expeditions or information requests that may unlikely be relevant for controlling the fiscal affairs of a specific taxpayer, allowing for arriving at an alternative wording that may keep the same sense. It is thus adapted to the standards introduced by the TIEAs.

The TIEA clarifies that the parties cannot carry out preliminary interviews in search for compromising evidence. The comments indicate that the foreseeable interest cannot be an obstacle to the delivery of information, when the final evaluation as to whether the information of an investigation in process is pertinent can only be determined after examining the information provided.

Neither the CIAT model, or the Andean Pact or CAMM consider this element.

It is important to determine whether this element only establishes a theoretical framework or is

a limitation or prohibition, with effects on the validity of the evidence obtained; for example, in a fishing expedition.

It is a common rule between Article 26 and the TIEA; therefore, every exchange based thereon, is restricted by the foreseeable interest.

It is worth noting that its compliance does not seem clear in the case of either automatic or spontaneous exchange.

- It does not take into account whether it is a national or resident

Article 26 disregards the nationality or residence for its application. This also applies to the CIAT model which expressly states that the exchange will take place notwithstanding the fact that the person to whom the information refers is a resident or national of the States that are parties to the agreement.[7]

The TIEA as well as the CCAM are focused on the territorial location of the requested information, while disregarding the nationality or residence of the person whose information is being requested.

The Andean Pact, given its nature, is restricted to the individuals and corporations domiciled in the Member Countries of the Andean Community.

This is a logical element inasmuch as otherwise, "information havens" could be created, wherein the individuals would be fiscally transparent. Information asymmetry would produce a harmful trend toward seeking a tax advantage in those countries where the taxpayer may be protected, thus favoring crossborder planning. By disregarding this fact, information regarding a resident or someone domiciled in a third State not included in the agreement may be provided, thereby triangulating the information.

- Adaptation of the legislation

Article 26 does not suggest the need to adapt to the internal regulations for compliance therewith. On the other hand, the TIEA provides for the obligation to enact every necessary regulation to comply with the agreement and rendering it effective, while adding that the States must refrain from introducing new legislation that is contrary to the obligations of the agreement.

The CIAT, Andean Pact and CCAM models do not include this obligation.

In any case, the internal adaptation will depend on the legal structure of the countries and the form of incorporation of the treaties to the internal regulations.[8] [9] [10]

---

7 Doctrine on article 26 prior to the amendment of 1977 do not apply this excluding criteria.

8 There are some interesting examples of Latin American Tax Codes that include as direct source of tax law the conventions or treaties on tax matters, or agreements which contain tax provisions where they are contracting States. For example the third article of Honduras Tax Code, establishes as a source of its domestic tax law the treaties or tax agreements or agreements containing tax provisions, where Honduras is a contracting part. Article 4 adds that, in the implementation of the tax provisions, administrative organs shall comply with that hierarchy. It also draws attention that in case of conflict between a treaty and domestic law prevails the latter.

"Republic of Honduras. Tax code. Constitute sources of the Honduran tax law: 2) treaties or tax conventions or treaties that Honduras is part of, that have such provisions.

Article 4. In the implementation of the tax provisions, administrative organs must adjust to the following hierarchy: 2) treaties or agreements containing provisions of tax nature that Honduras is part of; ; the first will prevail in the event of conflict between a treaty or Convention and a law."

9 Bolivian tax code. Section II. Sources of the tax law. Article 5. (Source, priority rules and residual right.) The sources of tax law are exclusively the following, with the following normative priority: 2 agreements and international treaties approved by the legislature.

10 Tax code Peru. Provision III: Sources of tax law. Tax law sources are:... b) international treaties approved by Congress and ratified by the President of the Republic.

The CCAM provides direct powers to the Administrations of the States, which draws the attention since it provides them directly to the administrative body, without incorporation to the internal regulations. This appears to transgress the principles of classification of regulations. It does not seem clear that a treaty may regulate the administrative powers of a State without being incorporated to the internal legislation, either at the constitutional or legal level.

Some States consider that modification of the internal regulation is not required, since the powers are included in the regulations, regardless of the signing of treaties or legal modifications.[11] [12]

- Languages agreed, English or French

Article 26 does not provide for the language, agreeing to that of the agreement. The TIEA is flexible as regards the language used in the formulation of the requirement and in the responses, establishing English or French by default. It considers this clause unnecessary in bilateral treaties between countries using the same language.

The CIAT, Andean Pact and CCAM do not take the language into consideration.

The language will be relevant in the examination of operations or crossborder reorganizations, wherein the translation may influence the occurrence or verification of the taxed event, especially if no definitions are established in a framework agreement.[13]

None of the models considers bilingualism or official translation characteristic. We believe that the latter is the only one having sufficient certainty to be used in a beneficial exchange.

- Possibility of other agreements

The TIEA allows the possibility for using the instrument considered most effective according to the circumstances. Article 26, CIAT, the Andean Pact and CCAM make no reference to this matter.

Given the freedom for entering into international agreements there is nothing that may hinder entering into various information exchange agreements that may superimpose or complement each other. There would be compatibility limitations, it being impossible to participate in a treaty that would openly be contrary to the TIEA, nor it being possible to use a subsequent agreement to triangulate the information. In the same way, in regional agreements only Member States could join, unless the incorporation of nonmember states would be expressly allowed under the same or another status.

- Exhaustion of the internal source

The comments of Article 26 state that prior to the request the regular sources of information provided by the internal legislation should be

---

11 Other legislations have transposed it in the relevant parts of the codification, enabling the competent authority to carry out the exchange of information. In that way the enforceability of the treaties has materialized expressly.
Chilean Tax Code . Article 6 °.- Corresponds to the Revenue Service the exercise of the powers conferred on the Organic Statue, this code and the laws and, in particular, the application and administrative control of the tax provisions. Within the powers conferred by law to the Internal Revenue Service, corresponds to:
A. The Director of Internal Revenue Service:
6° Maintain an exchange of information with Internal Revenue Service from other countries for the purposes of determining taxation affecting certain contributors. This exchange of information should be requested through the Ministry concerned and must be carried out on the basis of reciprocity, being covered by the rules concerning the secrecy of tax statements.

12. In such cases, it would not require adjustment of the treaty direct incorporation, but the adequacy of the rules of execution may be required.

13 For example, the scope of the English word "fee", in the requirement of information on the existence of payments to certain taxpayer in the application of additional tax.

exhausted. Such comment could imply that the requesting State should previously provide evidence of its exhaustion, thereby inducing to noncompliance with the exchange it has requested.

The TIEA comments add that the request should not imply a burden for the administration. Since it is something unusual, the request should be made after exhausting all internal means. This takes into consideration the proportionality between the efforts that would have to be devoted by the administration and the ease with which the petitioner could obtain the information internally.

An issue pending solution is the effect resulting from nonexhaustion of the internal source in the exchange and whether this element may be used as basis for reciprocity in compliance with the agreement.

Taxes

Article 26 does not only consider information exchange in relation to the taxes comprised in the agreement but is rather applicable to every tax imposed by the State, regardless of its type or nature.

The multilateral version of the TIEA lists the taxes to which it is applicable, adding those that originate from the state's subdivisions. The bilateral version requires, as a minimum, coverage of the first four categories of taxes. (These are income or profits, capital, net wealth and inheritance or donations).

Both versions include the taxes of the political subdivisions or local entities, which must be expressly mentioned in the TIEA.

CIAT provides a list with cases for each one of the contracting States.

The Andean Pact limits it to income and capital tax that are the subject of the agreement itself.[14]

The CCAM is applied to information and documents related to the taxes in force, as well as any legislation amending or providing for new taxes.[15]

Only the TIEA expressly considers indirect taxes. The broad wording of Article 26 allows for including taxes of any nature.

Some models consider an "analogy clause" that allows for applying the agreement to identical or similar taxes established after the date of their adoption or which may substitute them.

Purpose

This refers to actions that constitute the basis for information requests, such as: examination, collection, pursuit of tax fraud, etc. It must necessarily be noted that its use is restricted to tax issues.

The CCAM establishes general principles for determining provisions and mechanisms of mutual assistance and technical cooperation between administrations, framed within the managerial, examination and collection functions, namely: a) Legality; b) Confidentiality; c) Promptness and; d) Reciprocity and restricts its use to compliance with the functions and powers of the administration.

This limitation, which restricts the use of information for other purposes, seems to be inefficient, inasmuch as it displays the state's activity whose potential is not being fully used to prevent other crossborder frauds or violations. Nevertheless, it must be used in the light of preserving and protecting the constitutional or individual rights of the person on whom the information is based. The background

14 In Bolivia income tax.

15 This is not surprising, since it is a Convention that deals with both, tax matters as customs, necessarily it could not be restricted by type of tax

information or data transmitted will be protected by tax secrecy on the part of the receiver only if vested with the characteristic of tax information. In addition, if used for other purposes it could be contrary to the particular statutes for obtaining evidence in nontax cases.[16]

Reservation

All the models consider the information exchanged as secret, reserved or confidential.

Article 26 protects the information as secret in accordance with the internal law of each State.[17] Its violation is sanctioned according to the laws of the State where it is transgressed, and involves administrative or criminal responsibility. The CIAT model allows for applying the secrecy regulations of the State that provides the information.

Article 26, only allows for disclosing the information to individuals or authorities in charge of the tax administration and to use it for such purposes and protecting all the information provided or obtained under the internal law regulations.[18]

Some consider that this clause creates the so-called "international secrecy", by directly regulating secrecy through the agreements and not through the internal legislation and establishing limitations to the use of the information, with respect to the persons accessing it and the use made thereof.

The TIEA considers it as confidential, under the "international reservation" format. The comments allow for triangulating the information only in accordance with an express clause in the agreement, with the express and written consent from the competent authority of the requested party, to thereby provide the information obtained to another person, entity or authority. It does not provide for consulting the taxpayer in that case, notwithstanding the fact that the comments mention the taxpayer's right to be aware of the request for information.

The Andean Pact and CIAT models do not provide for the transfer to third parties.

The Andean Pact does not limit the use of the information; it only restricts its transmission to authorities in charge of the administration of taxes.

THE CCAM establishes confidentiality as principle, requiring that the documentation and information obtained be kept under secrecy in accordance with its internal legislation, expressly regulating confidentiality and the protection of personal data that is the subject of the exchange.

In all cases, reservation ends with the disclosure in public judicial processes and judicial rulings, where it loses the secrecy capacity.

Types

The text of Article 26 does not provide for types of information exchange, although the comments indicate three: previous, automatic and spontaneous request, it being possible to combine them. Likewise, it does not restrict the methods to be used. It also mentions simultaneous examinations or verifications, examinations abroad and the sectorial information exchange.

The TIEA specifies two types of exchange: previous request and tax examinations abroad.

---

16 For example, if used in the determination of amounts of children´s maintenance payments. Therefore, it´s considered that it must be confined only to the particular use in tax matters

17 For example Peru, has reflected the international secret, equating it to the inner secret.

18 The last paragraph of Article 35 of the Chilean Tax Code indicates that "the tax information, that according to law is provided by the Internal Revenue Service, can only be used for the purposes of the institution that receives it," restricting the internal use of the information.

The CIAT model refers to usual or automatic, spontaneous and specific information, simultaneous examination and examinations abroad.

The Andean Pact considers direct communications and simultaneous audits.

The CCAM deals with previous requirement, spontaneous, specialized technical cooperation and request for investigation.

- Previous requirement

This is the request par excellence. It complies with the framework elements and external limitations, when verifying its form and substance requisites, since it identifies the specific taxpayer, according to the tax required and for the purpose it is requested and to a greater extent ensures the foreseeable interest of the tax administration.

- Tax Examination Abroad

This does not constitute an exchange of information as such, since the requestor appears in the territory of the requested State and directly finds the information without the need of an intermediary.

The comments of Article 26 include a variation by allowing representatives of the requested State to question persons or examine accounting or taxpayer records, in the presence of officials from the requesting state. The examination action is carried out by an official from the requested state.

This will either be information exchange or not, depending on the modality of use of the background information as evidence. If carried out through the memorandum of action of the official from the requested state, it will be exchange, with the presence of the official from the requested state being irrelevant. In case the official from the requesting state's deposition is used, in his capacity of witness, it will not be exchange.

The CCAM provides for it, but does not consider it a type of assistance.

- Automatic

These are standardized periodic information transmissions, in keeping with exchange protocols signed between the States.

It does not comply with the framework elements, in particular the prohibition to go on a fishing expedition. No information is requested with respect to a specific person or within the framework of an examination. The foreseeable interest is not identifiable and, in addition, in this case there could be an eventual or indirect, but not a specific interest. It rather seems as a preparatory action for a formal request regarding a specific taxpayer, thereby contradicting the contradiction for undertaking actions prior to the requirement in search of background information thereon.

Its use involves a series of complexities, among them the lack of formality.

- Simultaneous examinations

This does not appear to be information exchange. The comments of Article 26 consider it an agreement reached between the contracting parties to verify or examine the same taxpayer on which there is a simultaneous common or related interest in their respective States, with the intention of exchanging information considered important within the own State's framework.

It is an exception to the absence of the duty to generate the information requested, since it is not maintained by the requested State and violates the prohibition to go fishing, inasmuch as an examination is being requested and not specific background information on the taxpayer.

In this type of exchange one cannot omit the connecting factors of nationality or residence provided by certain model agreements, since the tax administration will be empowered to carry

out the examination only if there is a connection with the individual, be it either nationality or residence.

- Spontaneous

It is the official delivery by the contracting State of information it may become aware in exercising its functions.

The CIAT model provides as requisite that it be relevant and of considerable importance for achieving the objectives provided in the agreements and indicating to the authorities the contents, manner and language in which it will be transmitted.

There is no clear difference in relation to the automatic exchange. However, from the comments to Article 26 it is inferred that the difference is in the periodicity and regularity of the exchange, since it is the spontaneous delivery of information which a contracting State obtains on its own and in an exceptional manner and which it unilaterally decides to transfer to the other State. Therefore, the feasibility of determining the background or type of information to be exchanged becomes blurred, inasmuch as it is not restricted to any parameter agreed by the parties. Likewise, it is impossible to state that there is a foreseeable interest on the part of the State being informed, it being a contradiction to the very article.

- Request for investigation

The CCAM provides for requesting another administration to implement actions involving control, investigation or obtaining information on specific operations carried out in its territory that may be relevant or essential for providing assistance and they should be reporting the capacity for responding to the request within a five-day term.

The requested State should not be compelled to undertake special actions for collecting information. This is a general principle or guideline regarding the exchange which is provided in the models and which is contradicted by this type of exchange.

One of the necessary elements for the effective operation of the exchange system is that it should not imply an excessive cost for the requested State, in terms of man-hours used for responding. This type of request does not fulfill this parameter.

- Other Forms of Assistance

The models allow for agreeing on other types of assistance.

Most of the countries consider that the exchange of statistics or general considerations with respect to economic activities, without specifying the taxpayers, does not constitute exchange of information, nor are they protected by tax secrecy.[19]

Request

The TIEA provides for the contents of the requests, in order that they may prove the foreseeable interests. For this reason they include the relevant or sufficient background for identifying the person whose information is being requested, the nature and tax purpose thereof, the reasons why it is believed that the information is in the hands of the tax authority of the requested state, that it is carried out in compliance with the internal regulations, within the framework allowed by its own regulations and the agreement and that all internal means available for obtaining the information have been exhausted.

The purpose is thus to avoid the fishing expeditions, ensuring the seriousness of the

19 *For example, the third paragraph of article 35 of the Chilean tax code, points that the secret does not preclude the publication of statistical data in a way that it cannot identify the reports, statements or items for each particular taxpayer..*

request, but it should not be an obstacle to the exchange, for which reason it must be interpreted in a flexible manner. Therefore, the request is satisfied with some form of identification of what is being sought, which may allow the other administration to find the information.[20]

The requested State must acknowledge receipt in writing only in the case of the TIEA model. It is necessary that this indication be extended to the other models, since it generates the juridical certainty and allows for correcting the defects of the request, thereby rendering the exchange efficient.

The establishment of deadlines is necessary, but the effect is uncertain on not establishing a particular sanction for delivery out of term or nondelivery. The general sanction would be termination of the treaty for noncompliance within International Law, which appears to be excessive.

The CCAM incorporates the internal sanction in the case of noncompliance, indicating that if no response is given within the terms provided, it will be made known to the superior authority of the requested Administration. This is somewhat odd, on allowing a State to interact with the other's administration, seeking compliance at the level of the hierarchical superior authority. This violates International Law since the ones obliged are the States and the only solution is denunciation of the treaty for noncompliance, but not resorting to the authority of the contracting party.

Causes of denial of request

The models provide for causes of denial of delivery, both positive and negative. The models consider these as limitations to the delivery rules.

In general, internal secrecy cannot be alleged as reason for not complying with providing the information, on being part of the State's own legislation, it is unexceptionable to the other contracting party.

The CIAT model expressly provides that the State laws or practices regarding limitation of tax information dissemination cannot be used for not delivering the information.

- Positive causes.(The States might not deliver information)

Article 26 provides for a series of assumptions that authorize the State not to provide information: a) If it has to adopt administrative measures contrary to the legislation or administrative practice or to those of the requesting State in order to fulfill the requirement. b) If it has to provide information that cannot be obtained in accordance with its internal legislation, or by exercising its normal administrative practice or that of the requesting State c) That may imply disclosing commercial, managerial, industrial or professional secrets, commercial procedures or information that may be contrary to public order.

The Andean Pact includes a practically identical clause.

Both consider the law and practice of the requesting as well as requested State, as regards the logic of reciprocity, so as not to produce asymmetry in the information delivery capacity. The recommendation is to be flexible, without arriving at strict material reciprocity, because otherwise countries with restrictive laws cannot provide or receive information.

The comments are based on the presumption that it is possible to obtain information in the requested State in the same conditions as that of the requesting one.

With respect to professional, commercial secrets, etc., the comments to Article 26 moderate their

20 For example, not identifying in any way the taxpayer or the operations for which information is requested

importance, noting that they should not have an effect on taxation issues. In the case of secrecy in the attorney-client relationship, it should be limited to certain aspects, with the possibility of limiting the clause to specific communications.

The TIEA considers as cause of noncompliance, the fact that the information is not held by its authorities, or not in possession or control of the persons in its jurisdiction.

In general, the models provide as exclusion that communication of the information be contrary to public order, not obliging the requested State in these cases. The comments to Article 26 restrict it only to the threat to the vital interests of the state or violation of a State secret.

The only exception provided in the CCAM model is that the constitutional provisions of the contracting States may prevent it.

The TIEA and CIAT models provide for the power to refuse delivery when attempting to ensure compliance with a regulation that discriminates against a national from the requested State in relation to a national of the requesting State. The comments of the TIEA prevent the application of this regulation when taxation varies according to the residence factor; that is, taxation is different depending on whether one is a resident or national of a State. It is applied to the substantive as well as procedural law.

- Negative causes. (The States cannot refuse to provide information.)

The requested State cannot refuse alleging that it does not need that information for its own tax purposes, unless it is contrary to its own legislation or administrative practice, or cannot be obtained according to its internal legislation or normal administrative practice, in keeping with article 26, with the limitation that their own legislation not be interpreted for the sole purpose of preventing the delivery of information for "lack of internal interest".[21] The TIEA also excludes the lack of internal interest.

It is no acceptable excuse that the information is maintained by banks, financial institutions or persons acting as "representative" or fiduciary or because they refer to participation in ownership by a person. The TIEA does not admit it as a cause of nonrefusal, but rather as a guarantee that must be provided by the Contracting Parties when signing. On its part, the CIAT model notes that the requested State's laws or practices relative to obtaining or disseminating the type of information requested, shall not prevent or affect the actions for obtaining it from the financial entities, proxies, fiduciary agents, the identification of stockholders or partners of social entities or maintained by the Tax Administration, it being an expression of the nonuse of internal tax secrecy as exception to international tax transparency.

The TIEA does not allow the refusal of information due to controversy as regards the tax claim which originates the request for information. There is no comment in relation to this regulation, but it is a measure that endeavors to ensure that the State will not protect investors by not delivering information, thereby becoming an information haven.

It adds that the information will be exchanged notwithstanding the fact that the behavior being investigated may constitute a violation in accordance with the laws of the requested party. The CCAM does not consider exclusion clauses.

Duration

The models that take into consideration double taxation agreements have the same duration for which reason they generally have future effect since their entry into force.

Independent models, because they are self-sustainable, consider the duration they may

21 For example, do not deliver the information of those taxes that didn´t exist before its ratification.

deem necessary or appropriate to their interests. The comments of the TIEA indicate that there are no obstacles to requesting information prior to the date in which the agreement enters into force, provided that it is related to a fiscal period or taxable event subsequent to its execution and without detriment to the fact that if the information could not be obtained prior to the date of execution, it shall not be understood as a violation of the treaty.

The CIAT model does not propose any duration.

The CCAM model includes a duration according to the international standards; that is, deposit and ratification.

Others

The CIAT and CCAM models present two particular clauses

- Update

In the CIAT model, the competent authorities commit themselves to notify any change in their legislation and the judicial decisions that may affect the obligations of the State, according to the frequency they may agree.

THE CCAM model renders the requested tax administration responsible for the accuracy of the information. When it is detected that the date delivered were inaccurate or that the information has been modified, they should be modified or updated and sent to the receiving administration.

- Presumption of validity of the evidence

In the CIAT model, the information exchanged is presumed to be true by the mere fact of being accepted by the requesting State, except for proof to the contrary from the interested party.

In the CCAM model the information as well as the documents obtained by virtue of the agreement may be used as means of conviction or evidence in the administrative and judicial procedures.

2. TRENDS OF INFORMATION EXCHANGE

2.1 Statistics

Ibero-America

The Ibero-American countries have joined the trend of favoring information Exchange as part of the cost of signing agreements to avoid double taxation. The tendency toward signing the TIEA has been slow and only in the past years.

More customs tan tax exchange conventions or agreements have been signed, since by the very nature of customs examination the exchange or assistance from other administrations is necessarily required.

The existence of other international cooperation instruments (administrative agreements) between tax and customs authorities seems to be an efficient means of cooperation in spite of lacking the binding force, based on reciprocity as incentive.

- Trends in signing.

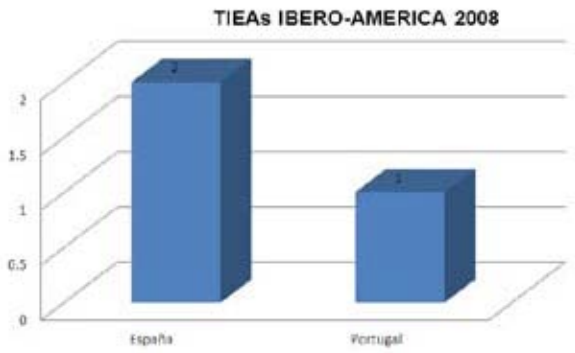
Chart 2

Sample of Treaties, Agreements and Other Instruments in Ibero-America

Country	N° Tax Agreements in Force	N° of Customs Conventions and Agreements	N° of Exchange Agreements	Other Instruments
Argentina	17	12	6	15
Brazil	28	8		
Chile	24	14	9	
Spain	71			
Mexico	45			
Panama	10		1	
Peru	4			
Dominican Republic	1		1	
Venezuela	27	9		

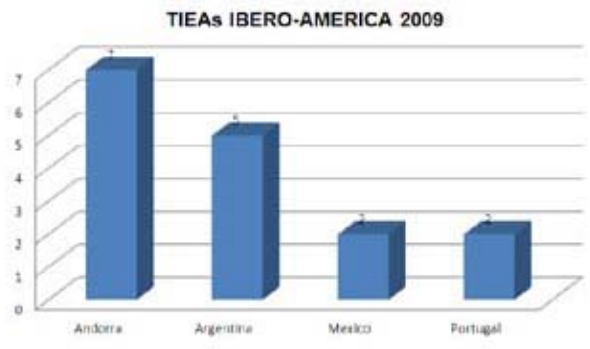
Source: *Self-prepared*

Graph 2: TIEAs 2009



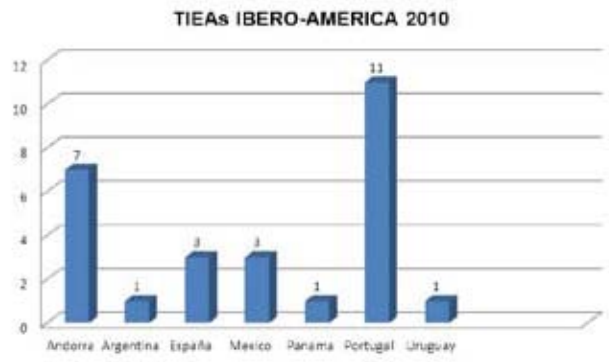
Source: *Self-prepared based on OECD information*

Graph 3: TIEAs 2008



Source: *Self-preparation based on OECD information*

Graph 4: TIEAs 2010



Source: *Self-prepared based on OECD information*

Chart 3: TIEAs 2009

Ibero-American Country	Contracting State	Date
Andorra	Netherlands	07.12.2009
Andorra	Belgium	03.12.2009
Andorra	France	30.11.2009
Andorra	Liechtenstein	23.11.2009
Andorra	Monaco	06.11.2009
Andorra	Austria	26.10.2009
Andorra	San Marino	23.10.2009
Argentina	San Marino	15.10.2009
Argentina	Bahamas	14.10.2009
Argentina	Costa Rica	13.10.2009
Argentina	Andorra	22.09.2009
Argentina	Monaco	21.09.2009
Mexico	Bermuda	18.09.2009
Mexico	Netherlands Antilles	18.09.2009
Portugal	Andorra	17.09.2009
Portugal	Gibraltar	01.09.2009

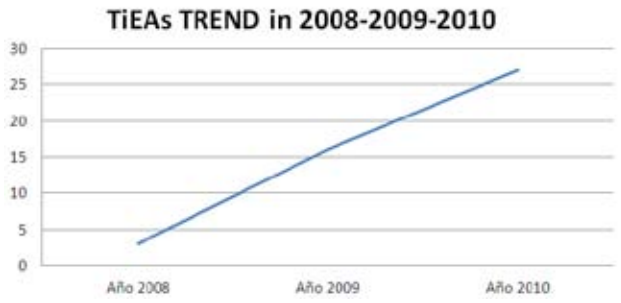
Source: *Information available at www.oecd.org*

Chart 4: TIEAs 2010

Ibero-American Country	Contracting State	Date
Andorra	Sweden	24.02.2010
Andorra	Iceland	24.02.2010
Andorra	Greenland	24.02.2010
Andorra	Norway	24.02.2010
Andorra	Faroe Islands	24.02.2010
Andorra	Finland	24.02.2010
Andorra	Denmark	24.02.2010
Argentina	People's Rep of China	13.12.2010
Spain	San Marino	06.09.2010
Spain	Bahamas	11.03.2010
Spain	Andorra	14.01.2010
Mexico	Bahamas	23.02.2010
Mexico	Cook Islands	22.11.2010
Mexico	Cayman Islands	28.08.2010
Panama	USA	30.11.2010
Portugal	Brit. Virgin Islands	05.10.2010
Portugal	St. Lucia	14.07.2010
Portugal	Isle of Man	09.07.2010
Portugal	Belize	22.10.2010
Portugal	Dominica	05.10.2010
Portugal	Antigua & Barbuda	13.09.2010
Portugal	St. Kitts and Nevis	29.07.2010
Portugal	Jersey	09.07.2010
Portugal	Guernsey	09.07.2010
Portugal	Cayman Islands	13.05.2010
Portugal	Bermuda	10.05.2010
Uruguay	France	28.01.2010

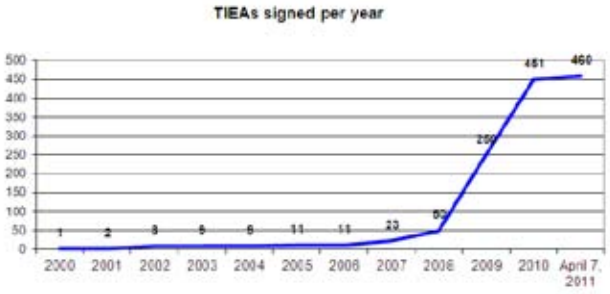
Source: *Information available at www.oecd.org*

Graph 4: TIEAs 2008-2009-2010



Source: *Self-prepared based on OECD information*

Graph 5: TIEAs per Year



Source: *OECD Report*

The graphs show the increasing world trend in the signing of exchange treaties between 2008 and 2010, regardless of a greater slope in the TIEAs, which reflects a sustained and accelerated increase in the signing of these agreements, especially with tax havens. Ibero-America does not deviate from the world trend.

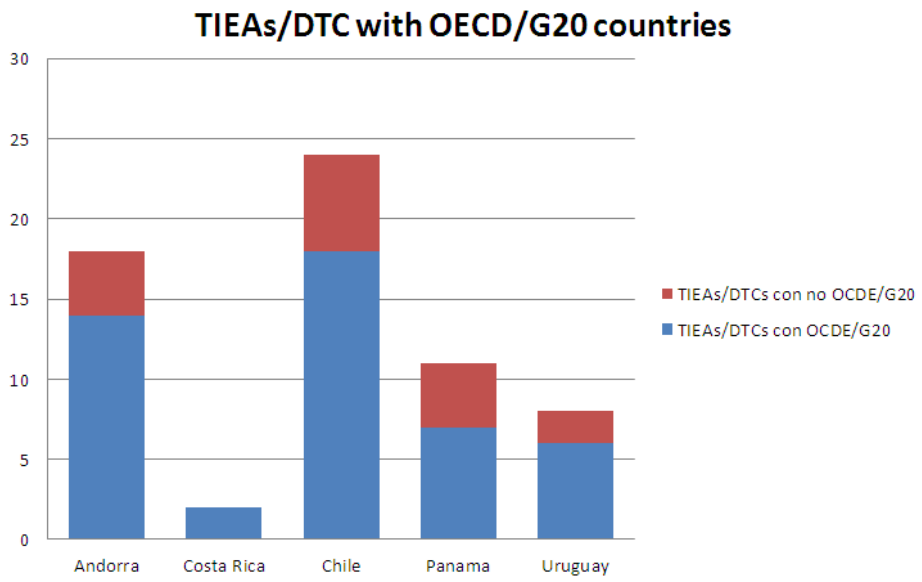
Starting in 2010, there is a world downturn, except in the Ibero-American countries. It is explainable since Ibero-America is in a different stage from the rest of the countries considered in the analysis, it being still necessary to consolidate information exchange as a common and necessary practice.

In our opinion, the world downturn corresponds to the consolidation or maturity of the treaties signed, with the countries considered having signed with a high percentage of the potential universe of counterpart States. It may be stated that in the current state of affairs the non-Ibero-American countries have greater access to information.

It is to be expected that in the future, the curve of Ibero-American countries may experience the same downturn as that of the world curve. For the time being, and especially due to the compliance review agenda established by the OECD's Global Forum on Transparency and Information Exchange for 2011, it is probable that such curve may tend toward an increase, since it includes Andorra, Chile, Costa Rica, Guatemala, Mexico and Uruguay. Likewise, the opening of the Convention of Mutual Assistance in Tax Matters of the OECD and the Council of Europe carried out by recommendation of the OECD through the signing of an additional protocol may foreseeably generate an increase in agreements.

- Trend toward signing TIEAs with OECD or G20 member countries

Graph 6



Source: *Self-prepared, based on OECD information*

There is a trend toward signing TIEAs with OECD or G20 member countries rather than with nonmember countries, which appears to be logical, given that within the OECD or G20 sphere there are clear rules and specific international regulations that afford greater certainty and security to the signatory country.

The increase indicates that the initiatives of the G20 and the OECD's Global Forum on Transparency and Information Exchange have influenced the signing and expansion of the agreements in OECD Ibero-American member and nonmember countries on affording substantial relevance to information exchange

since 2008. One particular initiative has been the removal of signatory countries of information exchange treaties from the list of noncooperative tax havens.

The implementation of the Caribbean and Pacific pilot projects has also resulted in an exponential increase in the signing of information exchange agreements.

- Ibero-Americans

Chart 5

Tax Agreements and/or Conventions between Ibero-American Countries

Countries	Andorra	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Cuba	Ecuador	El Salvador	Spain	Guatemala	Honduras	Mexico	Nicaragua	Panama	Paraguay	Peru	Portugal	Puerto Rico	Dominican Republic	Uruguay	Venezuela
Andorra		●									●								●				
Argentina	●		●	●	●		●				●			●									
Bolivia		●				○			○		●							○					
Brazil		●			●				●		●			●				●	●				
Chile		●		●		●			●		●			●			●	●	●				
Colombia			○		●				○		●			●				○	●				
Costa Rica		●								Δ	●	Δ	Δ		Δ								
Cuba											●								●				●
Ecuador			○	●	●	○					●			●				○					
El Salvador							Δ				●	Δ	Δ		Δ								
Spain	●	●	●	●	●	●	●	●	●	●				●		●		●	●			●	●
Guatemala							Δ			Δ			Δ		Δ								
Honduras							Δ			Δ		Δ			Δ								
Mexico		●		●	●	●			●		●					●			●			●	
Nicaragua							Δ			Δ		Δ	Δ										
Panama											●			●					●				
Paraguay					●																		
Peru			○	●	●	○			○		●												
Portugal	●			●	●	●		●			●			●		●						●	●
Puerto Rico																							
Dominican Republic																							
Uruguay											●			●					●				
Venezuela								●			●								●				

Source: *Self-prepared*

Note
- ● *DT Conventions and/or Exchange Agreements*
- ○ *Andean Pact*
- Δ *Central American Mutual Assistance Conv.*

Note 1: The chart was prepared with information available at the time of the Report.
Note 2: Did not consider agreements dealing with transportation.
Note 3: Some agreements included are still in the process of ratification by the Congresses in each country

2.2 Chilean Case

The Chilean case is an example of the usefulness and effective use of information exchange between 2008 and 2010.

Exchange of Information on Request: Chilean Case

Chart 6

Consultas Recibidas

	Año 2008		Año 2009		Año 2010			
Consulting Country	N° of Inquiries	N° of Taxpayers Involved	N° of Inquiries	N° of Taxpayers Involved	N° of Inquiries	N° of Taxpayers Involved	Total Inquiries	Total Taxpayers
Argentina	2	15					2	15
Canada	1	2					1	2
Spain			2	2			2	2
New Zealand	1	1					1	1
Peru			1	1	1	1	2	2
France					1	1	1	1
Total	**4**	**18**	**3**	**3**	**2**	**2**	**9**	**23**

Consultas Enviadas

	Año 2008		Año 2009		Año 2010			
Receiving Country	N° of Inquiries	N° of Taxpayers Involved	N° of Inquiries	N° of Taxpayers Involved	N° of Inquiries	N° of Taxpayers Involved	Total Inquiries	Total Taxpayers
Argentina	2	3	1	1	3	101	6	105
Mexico					3	28	3	28
Peru			1	1	1	28	2	29
Spain					1	52	1	52
Total	**2**	**3**	**2**	**2**	**8**	**209**	**12**	**214**

***Fuente**: Subdirección de Fiscalización, SII*

It may be concluded that the exchange is not a procedure that takes place frequently, but is rather of an exceptional nature.

It must also be added that Chile is one of the jurisdictions that has substantially implemented the international information exchange standards agreed by the OECD, according to the Progress Report issued on April 7, 2011.

3. INCORPORATION TO THE INTERNAL REGULATIONS

The OECD-CIAT Manual includes a series of minimum attributes that should be part of an information exchange program, namely:

a. "A TIEA treaty network (although it may only be one);

Part of the general premise is to consider necessary an international legal base of the States' commitment to exchange tax information. However, due to the sources of International Law and the practice in the States, information could be exchanged between nations in an informal manner,

simply on the basis of reciprocity. Although this is not wrong within the international sphere, it may pose problems. The usefulness of the information obtained would be practically null, since the evidence against a taxpayer obtained in this manner would be an "illegal evidence"; on transgressing an internal regulation; one's own and that of the requested party and in addition generating the administrative responsibility of the entities involved, for undertaking actions that go beyond the powers allowed by their internal regulations, in particular the Constitution.

Counting on an Agreement or Treaty appears then to be the basis of the pyramid of requisites, but is not a guarantee per se of the effectiveness and usefulness of the information.

b. National laws that may allow the tax administration to compile information in the name of another tax administration and then exchange the information with another tax administration.

This requisite appears as not fulfilled in all of the tax administrations, since it involves extreme complexity on implying the abandonment of sovereignty.

c. Legal decisions supporting the administration's skill for compiling and exchanging information.

In Administrative Law, the State's bodies can only carry out those acts for which they are expressly empowered. The powers are provided in the Constitutions, while specific taxation powers are stipulated in the Tax Codes, which are given various names.

There is disparity in the Ibero-American regulation. Some countries have incorporated the international treaties or agreements within the tax sources, thereby acquiring direct force, while others have modified their internal regulations so as to expressly grant the power of information exchange to the administrative body and to protect by means of secrecy the information received through the exchange.

Other States have not included any reference to this particular power, on interpreting that this originate from the existing powers, for which reason it is not necessary to amend the international regulations for such purpose.

d. Rules of disclosure of information secrecy and the effects of unauthorized disclosures.

The Ibero-American regulations cover secrecy or tax reserve in their codes. However, only part of it is adapted to the exchange. There are two aspects to be clarified in the effect of unauthorized disclosure: a) the information obtained from a foreign tax administration cannot be disclosed. b) The unauthorized disclose to another foreign authority is sanctioned in the same manner as the violation of internal tax secrecy. Both situations must be considered protected with the same secrecy as internal actions, for which reason the official is subject to the duty of reserve and its subsequent administrative sanction.

The most important question is how to combine this secrecy with the taxpayer's right to learn about the tax administration's file in cases when the internal regulations consider that it may be made known.

e. The legal capacity to delegate the authority to Exchange to others if the Competent Authority identified in the treaty/TIEA will not be the person/office that will actually carry out the exchange. The capacity for delegating this authority to Exchange must be recognized by the "requested" countries.

This aspect has not been included in the general Ibero-American legislation. In the

Chilean case, it has been expressly stated that the Director of the Internal Revenue Service has been delegated the power to exchange information and thus has been expressly appointed as the official actually carrying out the exchange.

There is confusion between this requisite and the powers granted to the director by the internal regulations, which expressly allow him to exchange information with his peers, outside the framework of a previously signed agreement. This requisite refers to the actual operator of the information exchange in cases of international agreements or conventions signed by authorities with power to oblige the State, in accordance with International Law. This official is only allowed the exchange operation, but not the modification of the agreements or conventions.

4. USE OF INTERNATIONAL INFORMATION: IN SEARCH OF EFFICIENCY AND USEFULNESS

The information exchange shows weaknesses that must necessarily be improved to optimize its usefulness. The trust between States and of the citizens toward the exchange system should tend to make them smoother and more efficient.

4.1 Taxpayer rights

According to CIAT, the Tax Administrations must ensure respect for taxpayer rights, which are provided in most of the Ibero-American Tax Codes.[22] These are relevant in information exchange, which situation is not considered in the Ibero-American internal regulations, thereby not determining the interrelationship between both regulations. In our opinion, fundamental rights are more important that information exchange, but the practical application of the former render doubtful their superior hierarchy.

The lack of coding leads to think that international regulations and internal legislation are in a basic

22 *For example, article 8 bis of the Chilean tax code. Paragraph 4 Taxpayers Rights article 8 bis.- Notwithstanding the rights guaranteed by the Constitution and laws, the following are taxpayer's rights:*
1 ° Right to be attended politely, with all due respect and deference; to be informed and assisted by the Internal Revenue Service on the exercise of their rights and the fulfillment of their obligations.
2 ° Right to obtain refunds considered in tax laws complete and timely, duly updated.
3 ° Right to be informed, at the beginning of any audit, on the nature and subject to review, and know at any time, for an expeditious means, his tax situation and the status of processing of the procedure.
4 ° Right to be informed about the identity and position of the officials of the Internal Revenue Service under whose responsibility the processes in which he is interested party are processed.
5 ° Right to obtain copies, at his own expense, or certification of performed actions or documents submitted in the proceedings, in the terms provided for by law.
6 ° Right to exempt off providing documents that do not correspond to the procedure or that have already been accompanied to the Internal Revenue Service and to obtain, once completed the case, the return of the original documents supplied.
7 Right that the tax statements, except in cases of legal exception, are reserved, in the terms provided for in this code.
8 ° Right that the actions are performed without delay, requirements or unnecessary retardations, once it´s certified, by the officer in charge, the receipt of all requested records.
9 ° Right to make allegations and submit records within the time limits provided for in the law and that such records are incorporated into the procedure in question and properly considered by the competent official.
10 ° Right to raise, in respectful and convenient manners, suggestions and complaints about Administration performances that affects him or in which he is interested.

state in the development of the correlation between fundamental rights and exchange, which could imply its violation. International noncompliance only results in international consequences, but noncompliance of internal rules, as those that cover essential rights, imply the violation of the State of Law.

The main rights recognized by the OECD and accepted by the Ibero-American countries are the following:

Chart 7

	Countries	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Cuba	Ecuador	El Salvador	Spain	Guatemala	Honduras	Mexico	Nicaragua	Panama	Paraguay	Peru	Portugal	Puerto Rico	Dominican Republic	Uruguay	Venezuela
Main Taxpayer Rights according to OECD	*Information, Assistance and Attention*	√	√		√	√	√		√	√	√	√		√	√			√		√		√	
	Appeal	√	√		√	√	√		√	√	√	√		√	√			√		√	√	√	√
	Confidentiality and Secrecy	√	√		√	√	√		√	√	√	√		√	√			√		√	√	√	√

Source:*Self-prepared.*

Models touch upon taxpayer rights in the exchange in an express or concealed manner. Secrecy, for example, is a measure for protecting personal data but it is not given such capacity.

The TIEA explains that the rights and guarantees that are recognized to the individuals by the legislation or administrative practice will continue to be applied, provided they do not prevent or delay the effective exchange of information. Along this same line, the comments add that the application of the agreement does not prevent the procedures from obtaining the information in keeping with the protection of the rights of the person, according to the internal regulations.

A taxpayer right is being aware of the examination to which he is being subjected. There is a doubt as to whether he should be made aware of the request for information exchange. Likewise, in the examinations upon request, and in the joint or simultaneous ones they should be aware of the circumstance that these are examinations within the framework of an information exchange.

The comments to Article 26 and TIEA indicate that it might be necessary to notify the taxpayer so that he may authorize the delivery of information and to the requesting authority so that it may indicate whether to disclose to the taxpayer the information being requested, while recognizing the right to object to the exchange. It even notes that it could be an effective mechanism for avoiding errors of the data transmitted and allowing taxpayers to voluntarily collaborate with the tax authorities.

The comments also consider the right not to incriminate himself as a limitation that prevents obtaining the requested information, recognizing that said right is stipulated in most of the legislations, but which should not occur frequently in information exchanges. In examinations abroad and in simultaneous examinations, one may probably verify, on obtaining the taxpayer returns, either directly or through the officials of the other administration, whether they might be considered a violation. In any case, the validity of such evidences as self-incriminating is arguable.

This is convergent with the denial of the requirements, since the comments allow for the internal legislation and the internal administrative procedures to be an obstacle to complying with

the requirement. An example would be the need to notify the person who provided the information or the taxpayer subject to questioning prior to the transmission of data, it being an important or relevant procedure within internal law.

We believe it is necessary to stress respect for fundamental rights, and not lose sight of the importance of universal rights provided in international agreements or internal regulations (which include the protection of personal information or personal data) over information exchange agreements. The signing of exchange treaties does not in any way allow for omitting procedures that protect the disclosure of sensitive background information, nor repeals the general taxpayer rights. Compliance with the exchange must always be framed within the non-violation of these rights.

One must bear in mind that the delay in delivery of information one seeks to avoid is the undue one; that is, those delays which unjustified, are sustained on the rights of the requested, but not the delays that abide by the law. (This would be the case of consulting the taxpayer about the delivery.)

It is also worth mentioning that within the ten essential elements for transparency and information Exchange for tax purposes, the OECD mentions the respect for taxpayer rights and guarantees.

On the other hand, the countries have become aware of the need for transparency in governmental action, whereby citizens are informed about the development of the administration's bodies. It is not clear that information exchange is supported by an exception to the duty of active transparency of the State, having to be informed to the community as part of the state's activity. International secrecy does not cover the very exercise of the power of information exchange, since active transparency does not infringe it, by not identifying in particular, a taxpayer or income, etc., but does allow citizens to have clear and timely information on the destination and use of their data.

Likewise, it does not disseminate the sources of information exchange, (information exchange treaties, administrative agreements or other mechanisms which the State would have agreed), background information which should be at the full disposal of the administered, inasmuch as it discloses a power of a State body.[23]

Article 26 clearly establishes the problem on dealing with international secrecy, indicating that the information cannot be disclosed, regardless of the regulations that call for dissemination of the information or other which allows access to public documents.

We are faced with the clash between international tax transparency and transparency of the State's function. As regards the prevalence of the rights and duties of the State and the citizens, the transparency of the public function is of greater importance than the protection of international tax secrecy, which latter obligation is acquired with another State and not the administered.

Unfortunately, this is not fulfilled, inasmuch as the texts of the agreements of the Latin American countries or administrative agreements on tax information exchange are not at the disposal of the citizen, which is a contradiction of international tax transparency for the taxpayers. It is part of the juridical certainty and of taxpayer rights to be aware of the normative framework that regulates them and which includes the information exchange agreements.

4.2 Use of international information: unlawful evidence

Obtaining information by infringing the framework elements of the agreement, purpose of the treaty

23 *For example, the affidavits exchanged with other tax administrations in automatic exchange basis, should been available to taxpayers.*

or other doctrinal infringements could generate effects in the subsequent use of the information, depending on the way in which the agreement is incorporated to the internal law.

The purpose of the models leads one to think that the information is useful as means of evidence in taxpayer examination, eventual lawsuits, and in actions for pursuing infringements and offenses. The evidence will only be useful if it is impossible to object it due to some irregularity in its generation or dissemination. In the opposite situation we would be faced with unlawful evidence, which would not be qualified in a trial and would therefore be useless, thereby generating a useless expenditure of resources and failing to comply with the purposes of this type of agreements.

The CIAT and CCAM models consider the validity of evidence. The CIAT model includes a simply legal presumption of validity of the evidence, susceptible of being destroyed by the taxpayer's evidence to the contrary. CCAM only allows its use as means of conviction or evidence in administrative and judicial procedures.

We are thus faced with a series of questions: What is the fate of information that has been obtained by means of breach of the information exchange agreement? Noncompliance with the agreement would bring about consequences within the framework of Public International Law, but what would happen with the evidence obtained contrary to the agreement?[24]

A distinction should be made in keeping with the system for incorporation of exchange agreements to internal legislation. In those deemed as directly incorporated to the national legislation, the infringement should generate direct consequences, thereby considering illegal the information exchange and, accordingly, generating unlawful evidence.[25]

That which provides rules for the execution of agreements originating from national legislation should be used to determine the legality or illegality.

The same situation will occur with respect to those principles, requisites or necessary validations for the use of information. Some examples would be, having exhausted the internal means, foreseeable interest of the administration, etc.

It is necessary to consider that for examination purposes, it could be necessary to obtain another type of information; for example, undertaking in-depth consultations between tax administrations, which is something not considered in the exchange models. (In general, the tax law is interpreted by the entity in charge of examination.)[26]

This would simplify the examination of international reorganization figures, which are potentially complex, by avoiding evasion gaps through the simple exchange of information with contents and essence, not merely generic taxpayer information.[27]

---

24 For example, spontaneous exchange, in the two previous scenarios, could generate the following case. The Convention does not consider spontaneous exchange of information. The Contracting State which receives the records incorporates the Convention to its domestic legislation in a direct way, considering that the Convention was a source of the tax law in force in his country. The other Contracting Party gives spontaneous information, which is useful, and settles tax differences against the taxpayer for his State. Could the taxpayer indicate that the differences settled are based on information obtained violating de domestic law, being therefore unenforceable against him?

25 In the event that the State establishes rules for the implementation of the Convention, could the taxpayer exclude the evidence, because it´s been obtained in transgression of the administrative powers?

26 Exemplary way, the legal qualification of a particular taxable event, than by the application of a double taxation agreement eventually could be determinate that is not included in the agreement. This eventually leads to breaches of non-taxation.

27 For example, Spain considers de figure of "escision", that legal term is not included in the Chilean legal system. An international reorganization adopts this figure, generating legal effects in Chile, and eventually tax effects. The tax consequences depend strictly on the legal qualification of the figure in question. It would be possible to obtain the certainty of those effects with the exchange of information between tax administrations, especially in the capital. For example, if Spain reported the occurrence of a partition, it would be desirable that the meaning of the specific operation is attached, since this figure of reorganization is not considered in Latin American legislation, or may have and different legal meaning.

4.3 Updating

The CIAT and CCAM models consider the updating of the information delivered. CIAT provides for the obligation to keep the other party updated with respect to the information sent and the modifications of the internal regulation or legal trends regarding the application of the treaties, considering the notification of legal modifications and court judgments that may affect the obligations of the contracting parties.

The Central American model considers the correction and updating of the information, by attributing responsibility to the administration for the accuracy of the information provided. If the State determines the inaccuracy, it must correct the information delivered and the same situation will apply in the case of the modification.

The updating is of great importance for the usefulness and reliability of the information, bearing in mind, in particular, that the taxpayers may correct or modify their returns, or the administration may modify the tax assessment, as a result of an administrative investigation which modifies the original information.

5. CONCLUSIONS

From the analysis of the models and exchange trends it is possible to extract principles that should be taken into consideration in the agreements and minimum content of an optimum information exchange model.

Principles

- **The reliability of the source and trust between the parties is one of the fundamental axes of information Exchange. This is only achieved when the information is reliable and useful.**

  The effort devoted by a State for obtaining information, by removing the officials from their regular duties to respond to a request, only seems reasonable if the information to be delivered will generate a potentially useful effect, endeavoring to be provided information in the same manner. Without this reasoning, there is no sense in the exchange.

  Its usefulness will be conditioned to the reliability of the background data provided and its possible effective use.

- **Trust between States is established on the basis of the reliability of the information, and certainty of the treatment it will receive in the other State.22**

  The State will not provide information which is internally protected as secret, if it fear that it will be unprotected. It will not waive the right to take care of it, by itself, if it lacks specific background that may allow it to trust in its non-dissemination.

- **Reliability and usefulness is achieved to the extent the information is updated.**

  The quality of the information must fulfill standards that may allow for trusting in its integrity and validity, generating positive effects in the other State, thereby avoiding uncertainty and to which end it must commit itself to keep the information updated, although not permanently but in a limited manner so as not to limitlessly wear out the administration.

- **The usefulness of the information is vital to determine whether the effort devoted to obtain it is sustainable.**

  It must be determined whether the information may be considered unlawful evidence and not be useful for the purposes for which it was obtained.

- **It is necessary to apply the taxpayer rights in international tax information exchange, thereby generating certainty and clarity of the limitations and requisites thereof.**

Optimum model

There are elements that should be present in an optimum information Exchange model, which may overcome the deficiencies analyzed.

Chart 8: Optimum Model

Elements		Optimum Model
Type	Bilateral	
Framework	Disregards whether national or resident	
	Language agreed, English or French	
	Possibility of other agreements	
Taxes	Taxes of Political Subdivisions are expressly included	
	Income or benefits	
	Capital	
	Inheritance or donations	
	Indirect only by express ratification	
	Tax analogy clause	
Purpose	Determination	
	Assessment	
	Collection	
	Recovery	
	Execution of claims	
	Investigation	
	Prosecution	
	Offense	
	Infringements	
	Others	
	Used only for tax purposes	
Reservation	Reservation	
	Only informs the tax administrations	
	Taxpayer rights	
Types	Previous requirement	
	Other forms of assistance	
	Simultaneous examinations	
Requirement	Information that should be included	
	Acknowledge receipt of request in writing	
	Term for observations	
	Term for response	
	Term for refusal	
Causes of Refusal of Request	Infringement of internal law	
	Disclosure of comm., business, industr., prof. secrets	
	Professional secrecy	
	Contrary to public order	
	Discriminate against national of requested State	
	Cannot reject if there is controversy in tax claim.	
Duration	According to international regulations	
	Previous date	
Others	Notification, modification of taxes and judgments of Treaty, Updating	
	Simple legal presumption of validity of the evidence	

Source: *Self-prepared*

Type

The specific information exchange treaties appear to be the adequate international instrument for satisfying effective exchange needs. The clauses appearing in general treaties on tax matters cannot regulate aspects that are only common to an exchange treaty. This generates the lack of certainty and accuracy, with respect to duties as well as obligations between the contracting parties in relation to the exchange. Likewise, given the fact that it resorts in many aspects to the regulations, it does not allow for rendering its compliance flexible, on being subjected to the main agreement.

They should also only consider a bilateral version, since the multilateral version involves a series of difficulties which should preferably be avoided. This is even more so, when the multilateral nature does not correspond to the traditional international concept, but rather is the super-positioning of several bilateral agreements.

Regional treaties have the disadvantage of allowing for the triangulation of information. The need to give adequate protection to the information obtained, does not make them advisable, since they could disclose information to a third State where the information would be protected by the legislation of that State, but not by that of the state of origin.

Framework

- **The need for foreseeable interest and exhaustion of the internal source should be eliminated, since they may result in the inapplicability of an exchange agreement.**

  Demanding the requesting State to prove compliance with the two requisites or one of them, adds an excessive effort to the tax administration. Likewise, it does not regulate the quality or satisfaction of the requested Entity with the evidence of compliance with the requisites, thereby leaving to the free will of the requested State to consider whether it is sufficient or not.

  The exhaustion of the internal source, prevents comparison of the information obtained by the requesting tax administration with the background information maintained by he requested State.

  Although it appears reasonable to prevent fishing expeditions, given the effort which a State must devote to answer the requests, we believe that such formula does to efficiently solve the problem.

  A compliance protocol appears to be adequate to the need for regulating the exchange.

  It is deemed convenient to recommend the creation of a supranational conflict resolution entity that may take care of discrepancies in interpretation or specific application of the agreement, of which the highest level authority of the respective tax administration should be part.

- **Omission of the nationality or residence of the individual who is the subject of the consultation. Territoriality appears as the correct response in the structuring of an optimum model, since it allows for transmitting all the information generated or maintained with the territory of a State, while disregarding the links that may bring them together.**

  Otherwise, the creation of information havens would be promoted, thus resulting in asymmetry when it comes to determining where to make the international investment. It should be taken into account that the concept of resident or domiciled is generally found in the particular legislations, unless it is defined in the treaty or agreement, thereby causing that some taxpayers not be considered domiciled or residents in any of the countries subject to the exchange.

- **Adaptation of the legislation. As a general rule, States must adapt their regulations to comply with their international commitments. The obligation to establish internal regulations for the execution of treaties is unanimously recognized.**

  Infringement of this article will only generate eventual responsibility at the international sphere and shall never be an excuse for noncompliance with a treaty, according to the regulations of international law and the normative pyramid.

  In its current treatment it is confused with the causes whereby a State is allowed not to respond.

  On the other hand, if the exchange agreement were unconstitutional or illegal, it could not be ratified by the contracting State. Accordingly, the agreement should not be in force, regardless of the international responsibilities that could result from non-ratification.

  In view of the above, it is deemed convenient not to include said article.

  It is considered appropriate to include in the internal regulations the powers of the administration for carrying out the exchange, since it is the one that generates greater certainty, particularly in the use of evidence obtained in civil or criminal lawsuits.

  Its non-incorporation generates uncertainty and eventually the administrative nullity of information compilation activities, with administrative responsibilities. It is advisable to include it in the internal regulations, thereby allowing the administrations to carry out the exchange, as well as determining the responsibilities or possible appeals against the requests for information.

- **Agreed language:** English or French. Although this requisite seems to be unnecessary, it would be advisable to use glossaries of technical terms in information exchange.

- **Possibility of other agreements.** In essence, the freedom to enter into international agreements allows for signing various exchange agreements that are superimposed or complement each other. It is considered convenient to create a mechanism of information and transparency of the tax exchange agreements.

It is recommended that the text of the agreements signed by the Ibero-American States be made available to the public in some tax issues dissemination media. For example, the CIAT web page, regardless of counting with the publication in their respective countries, for purposes of active transparency of the State.

This measure will generate positive collateral effects, among them, discourage international tax planning, on being aware of the feasibility for exchanging information between specific States and protecting the rights of the taxpayers, by keeping them informed about the tax regulations that are applied in this respect.

Taxes

The open clause that provides for the exchange in relation to any tax required by the State appears to be the correct one.

Application by analogy also appears to be an effective means, when it comes to trying to prevent a historical interpretation of the application of the agreement.

The formula adopted by the CCAM, which determines that its sphere of application involves information and documents related to the taxes in force and any legislation modifying them or establishing new taxes, appears to ensure the effectiveness of application of the agreement within long term, without the need to modify the treaty.

Purpose

The precise listing of the administration's actions is a limit to the application of the agreement that is not considered convenient.

Determining that one may exchange any information that may be necessary for complying with the institution's own purposes, tries to prevent its restriction to specific matters.

The establishment of general principles that provide for the exchange, as stated in the CCAM, generates a reasonable framework for the application of the treaty, which is considered worth including in an optimum model.

Reservation

This is a fundamental aspect, which is the basis of trust between the States. All the models consider the information exchanged as secret, reserved or confidential.[28]

It is worth considering the possible disparity of sanctions vis-a-vis the infringement of secrecy, on protecting the information under the internal law of each of the States. For this reason, it is deemed convenient to standardize the sanction vis-a-vis the infringement by means of a suggestion to the contracting States.

It is absolutely necessary to evaluate communicating to the taxpayer or individual about whom information is being requested. Secrecy should not cover up the existence of a request with respect to some specific person and likewise informing said person that such information is being requested. Otherwise, this would be contrary to the taxpayer's right to be aware of the tax administration's actions that involve him, while the latter, by updating said information, could add an additional value to it.

If information is requested from the taxpayer in order to comply with a request, the purpose for obtaining it must necessarily be stated.

With respect to the disclosure of the information to a third party, there is agreement with that stated in the comments to Article 26, noting that it is not possible unless there is an express clause that allows it. Otherwise, an agreement between two parties would be applied to a third.

Classes

These should be restricted only to previous request and to request for investigation. Only in these cases is there an effective exchange of information, without infringing any of the principles, while not affecting taxpayer rights either. (Not going out fishing, preparatory actions, foreseeable interest, etc.)

Obtaining information upon request from a contracting State is considered feasible, without detriment to considering in general that the requested State should not undergo an additional effort for obtaining the information. It is possible that a State may specifically request the search for information, through the investigation request. This would generate greater efficiency of the requested information.

In order to establish a limit to these requests that would not distort their nature, it is deemed convenient to state that these would be carried out on the basis of the reciprocity principle, in order that the States would establish self-limits to their requests.

Request

The request for information should include the necessary background data so that the requested State may reasonably comply with the request.

---

28 *As noted on paragraph 11 of the commentary about article 26, mutual assistance between tax administrations is only viable if every one of them are sure that the other considers confidential the information received as a result of their cooperation.*

The lack of any of these requisites should be regulated in order to allow the requestor to complement or modify it.

The purpose of these requests is to avoid the fishing expeditions and the searches for impossible information.

It is considered convenient to establish a written request system with acknowledgment of receipt thereof, since it will generate legal certainty with respect to the background information requested, allowing for correcting its defect, thus rendering the exchange more effective, with a view to complying with the appropriate information regarding the taxpayer on which the request is based.

Deadlines are totally necessary, since they will allow for considering an information exchange unsuccessful, thus refraining the tax administration from devoting excessive resources to an ineffective exchange.[29]

Causes for rejecting the request.

- **Positive causes.(The States might not deliver information)**

The States cannot fail to comply with their obligation to deliver information based on the infringement of its internal law, except when it infringes International Law. For example, if an attempt is made at ensuring compliance with a discriminatory regulation against a national from the requested State in relation to a national from the requesting state. This goes beyond the national sphere, with international law forbidding the application of regulations that may be harmful to nationals.

Regarding the disclosure of commercial, managerial, industrial or professional secrets, commercial procedures, etc., one must abide by the international regulations governing such secrets. The lack of information in the requested State which implies a special way for obtaining it does not appear to be a limitation with positive effects. On the contrary, one could request the investigation in the requested State as well as the specific information. The limitation to this request would originate from reciprocity, as previously stated.

- **Negative causes. (The States cannot refuse to provide the information.)**

According to the TIEA model it is necessary to expressly indicate that the information cannot be denied due to controversy regarding the tax claim that originates the request for information. Otherwise, the door is open to a form of avoiding the delivery of information to a third party.

- **Applicability**

Practice suggests that the ideal applicability would be that which allows the parties to request information prior to the date in which the agreement enters into force, provided that the information requested is related to a fiscal period or tax event subsequent to its execution.

It acquires relevance when requesting information relative to tax issues that may bring about effects in future tax periods.

- **Others**

Updating of the information and presumption of the validity of the evidence appears to be preponderant when structuring an optimum model agreement.

If the information is not updated, its certainty and security are reduced and, of course it loses usefulness. It likewise affects trust and reduces credibility of the data delivered.

29 For Example, response denial.

The competent authorities should commit themselves to notify any change in their legislation as well as the court judgments that may affect the obligations acquired, with the frequency they are agreed, thus disclosing their effective compliance and objections to their application arising from the internal legislation. Nevertheless, this may generate an excessive burden to the requesting as well as requested tax administration which must obtain and maintain the information, for which reason it should be limited.

It is advisable to establish a presumption of validity of the evidence, since it prevents the eventual objection of the probative value of the information. Otherwise, it will depend on the national legislation to determine the probative value that may be given to the exchanged information. The simply legal presumption appears to be correct, since it allows the taxpayer to prove by other legal means the lack of accuracy or completeness of the information, thereby not leaving it defenseless vis-à-vis errors of the informing administration.

6. PROPOSALS

As fundamental background for preparing proposals, we consider it necessary to review the result at the Ibero-American level, of the latest progress report on the implementation of the OECD information exchange standards, issued on April 7, 2011.

As previously stated, Andorra, Argentina, Brazil, Chile, Mexico, Portugal and Spain are considered as jurisdictions that have substantially implemented the agreed standard. On the other hand, Panama, Costa Rica, Guatemala and Uruguay are among those that have not made any substantial implementation.

Considering that there are 23 Ibero-American countries, with only 11 of them included in the report which represents 47.8% of the total countries analyzed in this study, 63.63% comply with the OECD standards, while 36.36% do not comply. With respect to the totality of Ibero-American countries, 30.43% comply with them, versus 17.39% of noncompliance.[30]

For this reason, it is deemed that an additional effort is required so that the Ibero-American States may comply with the OECD's minimum standards, especially, to increase the usefulness and effectiveness of the information Exchange, through the adoption of at least the following measures:

a. Development of an adapted and unified model that may include the relevant contributions from each one of the models analyzed, in a manner similar to the proposed optimum model.

b. Clear determination of the preponderance of Taxpayer Rights in relation to the exchange of information, especially the special authorizations that should be given them.

c. Clearly determine the probative value of the information obtained.

30 *It is necessary to indicate than in the development of the present work, diverse nature sources where consulted, coming across numerous difficulties to get the information about the agreements in use between the Latin American countries. Transparency is not the keynote in the publication of this kind of agreements or conventions, especially in the administrative agreements. In the same way, the statistical information seems to be lined of the secret than accompanies the exchange of international information.*

7. BIBLIOGRAPHY

- **Website**

- Administración Federal de Ingresos Tributarios de Argentina. www.afip.gov.ar
- Agencia Tributaria de España. www.aeat.es
- Centro Interamericano de Administraciones Tributarias www.ciat.org
- Comunidad Andina
- Direccao-Geral dos Impostos de Portugal www.portaldasfinancas.gov.pt
- Dirección de Impuestos y Aduanas Nacionales de Colombia www.dian.gov.co/
- Dirección General de Impuestos Internos de República Dominicana.www.dgii.gov.do
- Dirección General de Ingresos de Panamá www.dgi.gob.pa
- Dirección General de Tributación de Costa Rica www.dgt.hacienda.go.cr
- Dirección General Impositiva de Uruguay www.dgi.gub.uy
- Dirección Nacional de Ingresos de Nicaragua DGI. www.dgi.gob.ni
- Ministerio de Hacienda Gobierno de El Salvador www.mh.gob.sv
- OCDE www.oecd.org
- Oficina Nacional de Administración Tributaria de Cuba www.mfp.cu
- Reserva Federal de Brasil. www.receita.fazenda.gov.br/
- Secretaría de Estado De Tributación de Paraguay. www.set.gov.py
- Servicio de Administración Tributaria de México www.sat.gob.mx/
- Servicio de Impuestos Internos de Chile. www.sii.cl
- Servicio de Rentas Nacionales de Ecuador. www.sri.gov.ec
- Servicio Nacional Integrado de Administración Tributaria de Venezuela www.seniat.gob.ve
- Superintendencia de Administración Tributaria de Guatemala. www.sat.gob.gt
- Superintendencia Nacional de Administración Tributaria de Perú www.sunat.gob.pe

- **Documentation**

CARMONA FERNÁNDEZ, Néstor. Coordinador. “Convenios fiscales internacionales y fiscalidad de la Unión Europea”. Ed. Wolters Kluwer España S.A. Primera Edición Abril 2008.

CLARKE, Roland “Transparencia, política pública y administración tributaria”, Exposición 4to. Seminario Internacional “La Transparencia en las Políticas Económicas y Sociales”, Banco Mundial, Noviembre 2010

FONDO MONETARIO INTERNACIONAL. Manual de Transparencia Fiscal versión 2007.

GARCÍA PRATS, Francisco Alfredo . “El Intercambio de Información en el Modelo de Convenio de las Naciones Unidas. El artículo 26”. España, Año 1999.

LUNA PLA, Issa; Ríos Granados, Gabriela “Transparencia, Acceso a la Información y el Secreto Fiscal: Desafíos en México”, Instituto Federal de Acceso a la Información Pública, 2010, México

VILLEDA V. Rudy. Licenciado. Superintendente de Administración Tributaria de Guatemala. “Transparencia e Intercambio de Información en Materia Tributaria” Seminario Internacional Transparencia y Rendición de Cuentas: las dos caras de la gestión pública. Guatemala, diciembre 2010

- **Seminars.**

- Seminario “Intercambio de Información y Asistencia Mutua entre Administraciones Tributarias”, San José de Costa Rica, Noviembre 2010

- Exposición “Guatemala ante el Estándar Internacional de Transparencia en el Intercambio de Información Tributaria”, San José, Costa Rica, Febrero de 2010

MODELS OF DATA MINING ASSOCIATED TO FRAUD. THE CHILEAN EXPERIENCE

Hugo Sánchez Ramírez and Brandon Peña Villagra

Summary

The article presents a new approach to proceed with the selection of taxpayers, in the particular case of tax fraud using false invoices, by using techniques of data mining and a shift of focus from the taxpayer to its monthly VAT return, all of the above, without having to make a previous document analysis, but using the evidence of past cases. It shows the change of conduct of selected taxpayers, reflected in an increase in the monthly average VAT payment, finally exposing an improvement in the levels of compliance.

***The Authors: Hugo Sánchez Ramírez**; Civil Industrial Engineer, University of Chile, MBA University Chile-ESADE Spain, Head of Risk Area, Control Subdivision. **Brandon Peña Villagra**, Commercial Engineer University of Santiago of Chile, Magister in Planning and Tax Management University of Santiago of Chile, Risk area advisor. Jorge Bravo Albornoz, Commercial Engineer University of Santiago of Chile, Magister in Industrial Engineering University of Santiago of Chile, Risk Area Assessor. Rodrigo Canales Merino, Civil Engineer Industrial University of Concepcion Area Risk Advisor.*

CONTENT

The increasing complexity of the evasion and fraud figures, as well as the dynamism that their recreation, modification and transformation presents, added to the exponential growth of the information available to tax administrations which have large part of their procedures and actions of compliance on Web platform, such as the sworn Income returns and third parties VAT, the taxpayers returns in these taxes, the stamping and emission of electronic tax documents, the electronic bookkeeping entries, in the case of micro and small taxpayers (all of the above in the Chilean case), and many other sources and types of information, pressure the Tax Administrations to count with Fiscal Intelligence and Risk areas focused in the use of new methods and more effective and efficient techniques in the detection of evasion and fraud, specially in this last case, where the classic approach requires an intensive case to case control, by means of review of tax documents, crossing of invoices, information, and many other actions that finally can become unproductive in some case.

Those new methods and techniques referred to, known as data mining, offer, based on the statistics and the artificial intelligence, extraction of workable implicit knowledge, implicit present in the data bases and source of available intelligence. By using extracted models and data mining techniques the solution to problems of prediction, classification and segmentation are approached.

These techniques have been used for a long time in industries such as Banking and Retail, where they have demonstrated to be effective in the determination of the risk, for example, the credit risk, and in the application of commercial techniques of loyalty marketing and customer profit optimization, for example cross-selling.

What this article tries to show is that these techniques can also be implemented in the Tax Administrations and their effects and contributions in the improvement of the fulfillment levels are real.

The problem is approached to predict which taxpayers, from a list in which there is no past or relatively recent evidence of having committed fraud by the use of false invoices, are more likely to have one or more returns in which false invoices have been used as part of the imputed fiscal credit, increasing the probability of success in the selection, and reducing the costs by applying the investigations only to those with greater probability of having committed fraud.

1. TAX ADMINISTRATION IN CHILE

The Tax Administration in Chile is represented by three dependent institutions of the Ministry of Finances, which are the Service of Internal Taxes, the National Customs Service and the General Treasury of the Republic Service.

The Service of Internal Taxes is in charge of the application and control of all the internal taxes that are or that will be established, public prosecutors or of other character in which the tax administration has interest.

The National Customs Service is in charge of the application and control of all the taxes associated with foreign trade.

The Treasury Service is in charge of collection and payment of all the taxes, the handling of the unique tax account of the taxpayers, among other activities of collection associated to the State.

Internal Tax Services (SII)

Focusing on the present role of SII, with the purpose of briefly presenting its strategy reflected in its mission and management plan, from an operational perspective, it is necessary to point out the SII mission as:

To administrate with fairness and justice the internal taxes system, facilitating the voluntary compliance through the provision quality services, adapted to each type of taxpayer; ensuring the correct tax compliance with an strict and effective legality and focusing the control effort on tax payers with a risky tax behavior[1]."

For which at the present time has a management plan based on three fundamental pillars which we summarize in the following way:[2]:

Control: Focused on control actions and application of fiscal intelligence, detecting areas with potential fraud risk.

Services: To provide services that facilitate the taxpayers' compliance, and that respond to their necessities according to their own characteristics.

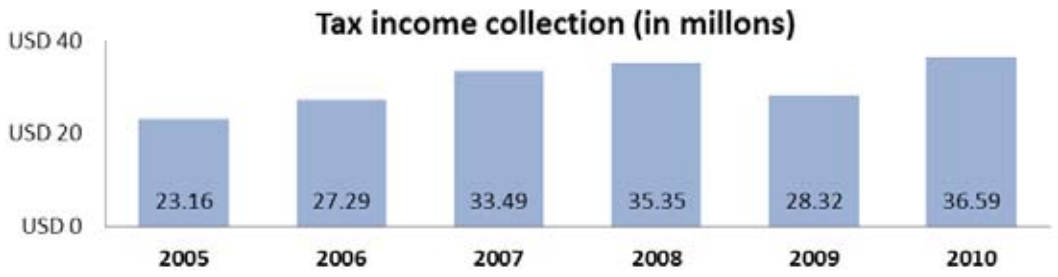
Institutional support: To empower the lines of Support to the interior of the Service by the development of human and technological resources.

2. COLLECTION IN CHILE

The tax incomes correspond to the effective collection registered in a calendar year, by the different tax concepts established in the present tax legislation, excluding the taxes associated to the corporate incomes of Codelco[3].

1. *www.sii.cl on the SII, Mission guidelines and History.*
2. *Public account Service of Internal Taxes- year 2010.*
   (*) Calculated in agreement to Quotation of the Dollar Observed (Weights by 1US$) in agreement with the established thing in N° 6 of Chapter I, Title I, the Compendium of Foreign Exchange Regulations (CNCI), Observed Dollar average October 2011 $ 483,69.
3. *Service Internal Taxes Report year 2010, p. 23.*

Graph 1



Source, own creation with information provided by the Sub department of Studies (SDE)

It is important to emphasize that the data correspond to the tax Incomes of the Central Government budget[4], and it excludes the corporate income from Codelco.

Graph 2

Source: Own creation with information provided by the sub department of Studies (SDE)

Numbers in currency of December of 2010 are shown and used for comparison effects.

Evasion

In the VAT, which is the main tax of our taxation system, all mechanisms to evade payment take place necessarily through a sub statement of debits, or by an inflation of the credits. In simple terms, this means that the tax evaders register fewer sales and therefore less VAT debits, or otherwise, more purchases and more VAT credits than what they really make and that according to the laws they should register to determine their tax obligation.

The most recurrent debits tax evasion figures are the sales without proof, particularly sales made to a final consumer[5]; the fraudulent use of credit notes, partial statements in the accounting registries and the tax returns. In order to inflate credits, the evaders resort to other mechanisms, to false proofs of transaction; personal purchases that are registered in the name of the company; purchases to fictitious taxpayers and over returns in tax registries and the tax returns.

In order to have an idea based on the collection potential that the State fails to collect because of tax evasion, each percentage point of this graphic in Chile represents US$ 300 million approximately[6].

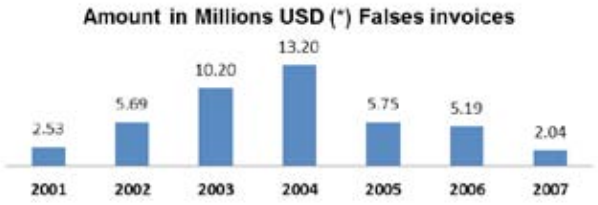
Graph 3

4. *With information provided by the Subdivision of Studies of the SII, on the basis of the Information of tax Incomes of the General Treasury of the Republic.*
5. *Estimation of the tax evasion in Chile, Patricio Barra, Michael Jorratt, June 1999, note of the authors "In the transactions at final consumer level the proof of sale is a `sale ticket'. In the intermediate transactions, the prof of payment is one `invoice".*
(*) Op.Cit p. 3.
6. *SII. (2000). Analysis AT in Chile, Subdivision of Studies SII p. 22, with updated information, this amount divides in US$160 million by concept of VAT and US$140 million by concept of Income Tax*

False documents

According to estimations from the SII, from 2001 to 2007 only[7] the collection for false invoices detected by the SII exceeds at the present time USD$ 41,335 million. The number of taxpayers demanded by the SII because of false invoices reached more than 1600[8] taxpayers who have presented false documentation with the objective to reduce their tax burden and have been detected.

Graph 4



Source: Own creation with information provided by the sub department of Studies (SDE)

The decline starting in the year 2005 is explained by the change in the direction of the plans and programs made, that focus in hypotheses of control attacking more specific illegal behaviors associated with the Value Added Tax, which implied for strategic reasons, not to isolate the phenomenon of the false invoices.

For effects of the model construction, are considered those who have entered false invoices in their accounting, reducing their tax payment for the sales and services, not the issuers of these documents. This project was developed in agreement with the strategic guidelines of the Internal Tax Service with applied techniques of Fiscal Intelligence.

3. DATA MINING TOOLS USED

Artificial neuronal networks

The artificial neuronal systems imitate the hardware structure of the nervous system, with the intention to build parallel, distributed and adaptive systems of parallel information processing, which can display a certain intelligent behavior[9].

A conventional computer is in essence a Von Neumann machine, build around a single central processing unit (CPU), that executes in a sequential way a program stored in the memory.

On the contrary, the brain is not made up by only one processor, but of thousands of million of them (neurons), although very elementary. It is possible to emphasize, that the neurons are much more simple, slow and trustworthy than a CPU, and in spite of it, many problems exist as speech recognition, vision of immersed objects in natural environments, among others; in which a conventional computer is far from being efficient in performing the task. Thus, the idea which sub lies in the neuronal artificial systems is to approach the type of problems that the brain solves with efficiency.

---

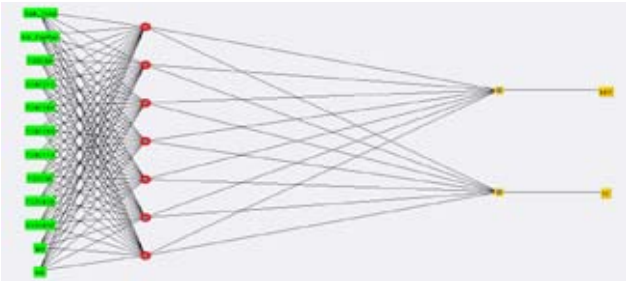
7. *In year 2001 the anti-you False Invoices Public Prosecutor Office is created, in the year 2005 it was replaced by the Committee of False Invoices, data provided by those units of the SII.*
8. *Public accounts data collected from year 2001 to year 2007.*
   (*) Op.Cit p. 3.
9. *Martin, Bonifacio and Sanz M. Alfredo; (2007). "Neuronal Networks and Blurred Systems", 3rd edition. Alfaomega editorial. Mexico.*

Neuronal network architectures

We understand as architecture the topology, or connections pattern, of a neuronal network. In an artificial neuronal network the nodes are connected by means of the synapses, this synaptic structure determines the behavior of the network. The synaptic connections are directional, i.e., the information can only propagate in one direction, from the pre-synaptic neuron to the post-synaptic one[10].

The neurons are grouped in structural units called layers. The neurons of a layer can be grouped into a neuronal cluster. Within a group or a layer, the neurons have a tendency to be of the same type, next the set of one or more layers constitute a neuronal network. Basically three types of layers exist: entrance, exit, and hidden [11].

Graph 5
Neuronal Network scheme



Entrance layer (Processing | Hidden layer (Sensorial) | Exit layer

The neuronal network denominated perceptron multicapa was used for the modeling since this network allows establishing much more complex regions of decision than those of two semi plans, as the Perceptron Simple.

Due to the problem of training the nodes of the hidden layers of the multilayers architectures, the algorithm of back propagation of BP errors was used (back propagation[12]).

In order to solve some disadvantages of BP in relation to the convergence, a term of inertia or momentum was used in the modeling, consisting of adding to the variation calculation of the weights an additional term proportional to the increase of the previous iteration, which provides certain inertia to the process[13].

As far as the application of neuronal networks in the detection of tax fraud, models in countries like Spain (valuation of real estate[14]), Peru (merchandise Importation[15]) and in holland (clustering of e-businesses by means of Maps of Kohonen)[16]. In the case of Chile, an application in the National Service of Customs was successfully completed in 2002, in the detection of fraud in the import (contraband).[17]

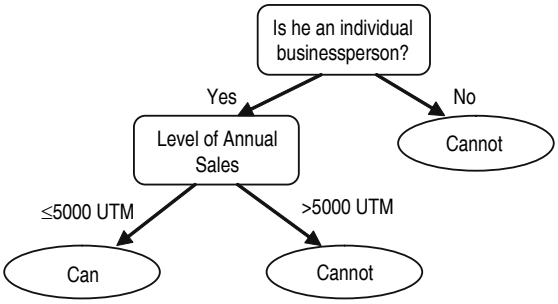
Decision trees

The decision trees are techniques of data mining that allow to infer or to classify observations of a dependent variable, using attributes of a set of observations by means of the construction of decision rules. The decision trees have been applied in various scopes. The decision trees are made up of a root (node root), which contains all the elements of the set of observations to analyze, and by leaves, that indicate the category or prognosis for this subgroup, passing through

10. Rumelhart, D. E., McClelland. J. L (1986). Parallel Distributed Processing., Vol. 1, MIT., U.S.A.
11. Figure Extracted from modeling with Software Rapid Miner.
12. Rumelhart, D.E., Hinton, G.E., Willians, R J., (1986). Learning representations by backpropagating errors. Nature. U.S.A. P. 533.
13. Bischop, C.M, (1995). Neural for Networks Pattern Recognition, Clarendon Press, Aston University.
14. Galician M., Julio. (2004). The artificial intelligence applied to the valuation of buildings. An example to value. Cadastre. Madrid, Spain. P. 5.
15. SUNAT, National Supervision of Tax Administration Peru, Management 2001-2005. P. 6.
16. System Xenon developed by the Dutch Tributary Administration (Belastingdienst)
17. Information provided by the Subdivision of Control of the SII.

branches, that allow to carry out partitions of the set using the possible values of the attributes such as decision variables. In the following diagram is a hypothetical decision tree to verify the feasibility that a contributor can register in specific simplified tax regime:

Graph 5
Example of Decision tree, own elaboration



The decision trees are characterized by their simplicity at the time of interpreting them, because the decision rules are explicit, allowing to verify if the results have congruence with the real problem to model.

Algorithms

In order to build the decision tree diverse algorithms exist, that are different in the kind of problem to model, for example some allow multiple predictions (more than two classifications), or binary (only two categories), or use different criteria for the construction and evaluation of decisions, among which appear:

CHAID (Chi Squared Automatic Detector) a classification method, that uses statistical Chi-square to identify optimal divisions, reviewing the dependency between the attributes and the result of classification, selecting the most important.

CART (also call C&RT, tree of classification and regression) a method that divide the tree in binary partitions, having for objective to reduce the impurity of the subgroups.

ID3 (iterative dicotomía 3) Is a method developed by Ross Quinlan, which selects the attributes splitters using a statistic based on the entropy (measure of the disorder level) of the generated sets.

Algorithms ID3, C4.5 C5.0

The algorithms based on ID3, are in most of the commercial packages of data mining and have been improved in terms of performance and new functionalities, originating the algorithms C4.5 and C5.0. Here comes a more detailed description of how these algorithms work, because the algorithm finally used is of this type.

As mentioned in the previous section, the algorithms based on ID3 use the measurement of entropy of the subgroups obtained with each attribute, to choose a specific one with which the tree must open. Entropy is defined as the level of disorder of the set of observations. For our case, it would be in proportion of each type of answer present in each node. In the case of a binary classification problem, i.e., that has only two classes: positive (+) and negative (-), the following formula would calculate the entropy of the set of observations:

$$Entropia(S) \equiv -p_{(+)} \log_2 p_{(+)} - p_{(-)} \log_2 p_{(-)}$$

Where $p_{(+)}$ represents the proportion of positive cases on the total of cases, $p_{(-)}$ the proportion of negatives and $\log_2$ is the logarithm in base 2.

The construction of the tree begins from the root node and then selects the attribute that best categorizes the set, using as criterion a statistical measurement called information gain. It calculates for all the attributes A; substracting from the entropy of the node, the sum of the entropies of the possible values υ of the attributes, weighed by their amount of elements on the total S_υ / S, as shown in the formula:

$$profiit(S, A) \equiv Entropy(S) - \sum_{\upsilon \in Valores(A)} \frac{S_\upsilon}{S} Entropy(S_\upsilon)$$

Next, the algorithm takes the new generated sets and carries out again the calculations of profit and chooses the new attributes, repeating it until no more attributes available are left to open a new branch or until the entropy of the subgroup is zero.

In the last update of the ID3, the C5.0 algorithm, some improvements are added, in processing time and in precision. Some of the new functionalities and built-in improvements are:

- The inclusion of costs of erroneous classification: the objective function can also be to minimize the cost for misclassifying a case instead of the quantification of the classification error.
- Automatic reduction of attributes: in case the attributes are too many, C5.0 automatically discards those attributes that it does not consider relevant.
- New data types: it allows the inclusion of attributes with dates, hour, ordinal and marks formats.
- Missing values: the algorithm also accepts data blank for the attributes, interpreting them in a suitable way, without necessity of assimilating them with another existing value.

4. CONSTRUCTION MODEL

First modeling using artificial neuronal networks

A data base obtained with historical data of contributors from year 2002 to year 2006 was used, where 2,219 cases were obtained of which 832 corresponded to individuals that, even if been audited, resulted in detection of use of false invoices (FF), the other 1,387 were selected as no false Invoices (NFF), the data base was segmented in 2 clusters: the small and microbusinesses and the medium and large businesses.

Of the chosen segment of the small companies, the sample was composed by 660 cases of contributors who used false invoices (FF) and 494 that did not use false invoices (NFF).

With the idea to expand the countable data, the averages of assets, liabilities and balance of the cases labeled with class FF are calculated, replacing the missing values by the average of the segment. The NFF received the same treatment. codes forms are used[18] and in addition ratios were constructed, some of them are in the following picture:

Chart 1
Calculated ratios, own elaboration.

Ratios	Glosary
Deb/Cred	Relation on the total of debits and credits
RLI/Ing	Taxable cash income on the total income perceived
RLI/Act	Taxable cash income on the total assets
Ing./Cost	Total of income perceived on direct cost of goods and services
(Cost+Gas) /Ing	Direct cost of goods and services plus expenses on the incomes perceived

18. Given the strategic nature of the variables of the model all the used variables are not individualized.

The information available from the monthly returns of the taxpayers was used as well as the income statement (annual characteristic), the monthly information was set into annual and 13 variables were used. The results were compared with information of year 2006; the matrix of coincidences was the following one:

Chart 2
Matrix of Coincidences of the model of Neuronal Network, own elaboration

		Predicción		
		NFF	FF	Total
Real	NFF	77 47%	23 39%	100
	FF	87 53%	36 61%	123
	Total	164	59	223

Error Global	49%
Aciertos	51%
Sensibilidad	29%
Precisión	61%

These results imply that the neuronal network for the year 2006 has 29% sensitivity. Next, FF is classified erroneously as NFF with a 53% and finally a 39 %NFF is wrongly labeled as FF, which are acceptable results from the perspective of a first experience using this type of models.

The detail of the process in the stage previous to the modeling and the methods used to transform the data to a necessary standard (transformations, treatment of variables among others), is described in the following section.

Given the necessity for the users of the generated model of defining clear rules (difficult if we work with artificial neuronal networks), with the objective of comparing them with businesses rules, known by the specialists, the problem was reformulated and also the algorithm to use in the modeling.

Second modeling, change of the subject of study

From the obtained feedback of the model conducted with neuronal networks, the modeling of the problem and the used method were modified.

The set of observations was composed by the VAT Tax returns of the taxpayers (not by a listing of taxpayers), extending therefore the sample of observations.

One of the observations conducted by the business areas was that difficulties to interpret the results of a neuronal network were found, thus, it was modeled by means of a decision tree, that would allow a better explanation of the variables that the model used to classify a tax return as good or bad. Specifically, the used algorithm was the C5.0, included in software SPSS clementine, given its good results in precision terms and running time.

Definition of the objective variable

to model the problem, the bad and good tax returns were defined, and the ideal option would be to take all the returns that contain tax credits supported with false invoices, nevertheless this is not feasible since all the tax returns are not controlled. Therefore, an estimation must be used, that in this case was to detect those VAT returns which were controlled and in which differences were found.

In order to determine that, control data bases were used, where it was found that a 12% of returns generated a correction with yield (greater payment), product of a control while to 88% no problem was detected or no audit was made.

Selection of the attributes

The base attributes that were used to model the problem correspond to fields of the monthly Tax return (form 29), among which are some types of:

- Fiscal Debits: The tax associated to the sales conducted by the taxpayer during the month.
- Fiscal Credits: The tax associated to the purchases conducted by the taxpayer during the month that can be reduced from the fiscal debit.

- Surpluses of tax Credit: In the case that a taxpayer has more fiscal credits than fiscal debits.
- VAT paid amount: It is the amount of paid VAT stated in the form.
- Retentions: In some special cases, to diminish risk in the VAT collection, one of the parties retains the tax corresponding to the transaction.

Extreme value treatment

One of the first operations made to the variables, was to treat missing and outliers values, dismissing them, so that they do not distort the set of observations.

Transformation of attributes

Since the attributes themselves are in different scales for each taxpayer, such measures are not comparable between different taxpayers, making the detection of differences between good and bad statements very difficult. Therefore the creation of new attributes compounds through ratios between various codes of form and moving averages was considered. At the same time, these ratios were categorized, so they could be compared with each other, for the model not to take into account the scale of the ratio, but its deviation from the rest.

Modelated

To model the problem subsets of observations were extracted, leaving a group of them as a partition of training and the other ones to measure the result (checkout). With this, an over-training of the model was avoided, ie the model will be adapted only to that set of observations and also these sets took similar proportions of good and bad cases, with the purpose to model them in a better way:

- The training set contained 12,627 monthly tax returns, of which 50% have false invoices.
- The checkout set contained 21,327 monthly tax returns, of which 30% have false invoices.

Results

For the training set, a success rate of 66% was obtained, a level of sensitivity (false invoiceers successful on the total of false invoices) of 63% and a level of accuracy (false-successful invoicers of the total classified as false invoicing) of 68%.

For the checkout set, where the proportions between good and bad is closer to reality, a success rate of 68% was obtained, a level of sensitivity (false billers successful on the total of false invoice) of 65% and a level of accuracy (false-successful billers of the total classified as false invoicing) of 48%. The last value is important because it tells us that from all the taxpayers that we classify as false invoicing, 48% actually will be.

Chart 3
Matches Matrix from the Decision Tree for the checkout set, own prepared

		Prediction		
		NFF	FF	Total
Real	NFF	10.339 70%	4.527 30%	14.866
	FF	2.279 35%	4.182 65%	6.461
	Total	12.618	8.709	21.327

Global error	32%
Successful hits	68%
Sensitivity	65%
Precision	48%

5. APLICATION OF PILOT THE CONTROL PLAN

The Risk Area led this project established as the last stage of this study, measuring the performance of the model, for which an experiment was designed: taxpayers who had a high probability of having large VAT tax credits, in a significant proportion of the last 24 tax periods at the time the model was running were subject to audit.

This exploration was carried out under the method that is internally known as "Pilot Control," which is to conduct compliance audits of tax obligations to a sample of taxpayers, in order to determine the accuracy of the selection and implementation of the elusion figure sought.

Selection of taxpayers

From the micro and small business segment, 27.184 taxpayers were selected, especially from Coquimbo, Valparaiso and Metropolitanas Regional Departments. The order of magnitude of the sample was given by the attention capabilities of taxpayers operative units in those jurisdictions, estimated at 14,000 taxpayers in 6 months.

The methods used for the evaluation are: simple difference method, which involves comparing the group that was under control with another group that was not, pre-post evaluation is a particular type of simple difference evaluation. Instead of using another group of people as control group, the same group of people before the beginning of the program is used; and difference-in-differences, combining the above two methods to take into account the differences in level between the two groups as secular trends.

But to be a good representation of the counterfactual, the control group should represent what would have happened to the treatment group if the tax review would have not been applied. That´s why the following selection technique was applied:

- The groups were separated using a geographical basis, ie, divided into 5 different groups: Coquimbo, Valparaiso, Central Metropolitan, South Metropolitan and West Metropolitan.
- In each of the groups the selected taxpayers were categorized using 3 consecutive criteria:
  a. Number of tax periods presenting a high probability of fulfilling the control hypothesis, giving priority to those who had a greater number of periods.
  b. The percentage that represents the amount of tax periods with a high probability of fulfilling the control assumption, in respect to the total stated periods, giving priority to those who had a higher proportion.
  c. The sum of the VAT tax credit weighted by probability of occurrence of the studied phenomenon in each tax period.

- In each group, using the established order of ranking, each taxpayer was qualified in turn as :
  a. Treatment Group
  b. Control Group

- Treatment Group taxpayers would be subject to audit within 6 months of selection, and the taxpayers of the Control Group would not be audited in this period, or within the pilot experience, or any of the other activities planned by the control Tax Administration.
- As a result of the prioritization and ranking was obtained 2 large groups, composed of the following:
  a. Treatment Group: 13,608 taxpayers.
  b. Control Group: 13,575 taxpayers.

Control modalities

The powers of control are implemented through actions that can be classified into 3 main groups:

Selective Control

Selective control programs consist of conducting audits to verify the correct implementation of tax obligations by taxpayers, testing a specific hypothesis of control.

Massive Control Processes

The massive Control processes are plans to deal with a significant number of taxpayers, through more structured processes of attention and control.

Preventive Control

The control presence in the field is a continuous review process that covers all economic activities with the ultimate goal that all taxpayers meet their tax obligations with respect to the issuance of the relevant documents, their registration, returns and payment of taxes.

Control Program

The control program implemented in the period from april 2010 is a mixture of selective control and massive control process since the selection process and the items to be audited are more suited to the first one, while the platform used and the time of review makes it more similar to the second type of control.

6. ANALYSIS OF THE RESULTS

To measure the results of this pilot activity 3 methods were used:

- Direct Gross Performance
- Compared Direct Performance
- Indirect Yield:
  - Comparing post-control behavior of the Treatment Group with the Control Group (**simple difference method**)
  - Comparing the Treatment Group behavior with pre-and post-audit (**pre-post evaluation**)
  - Comparing the Treatment Group behavior with the Control Group, pre-and post-audit (**difference-in-differences**)

Gross direct performance

The Direct Performance is the result as direct application of a control program, and is given by the amounts collected by:

- Money orders issued by the tax authority for detected tax differences in a monitoring process
- Rectifying the tax returns submitted by taxpayers due to:
  - That in recognition of the tax differences detected they decide to submit a tax return showing the real amount that should have declared within the legal deadline.
  - Receiving the notice and prior to the audit they decide to rectify the data that do not correspond to the truth in their earlier submitted tax return.

After having notified the 13,608 taxpayers in the treatment group the following response was obtained:

Chart 4
Response of the Treatment group, own performance

	Amount	%
Notified	13.608	100,00%
Current	8.700	63,93%
Differences	1.381	10,15%

The direct yield of the Plan implementation was $ **636.502.491**:

Chart 5
Direct yield of the plan application, own performance

Direct Yield	Amounts CL$
Total	$ 636.502.491
Unitary by Notified	$ 46.774
Unitary by Competitor	$ 73.161
Unitary by Productive Case	$ 460.900

Direct compared yield

This method consists in comparing the audit process in assessment to another with similar characteristics, applied at the same time, but the selection process belongs to a different nature.

This comparable control process used as selection an indicator of variation in the taxpayers monthly tax payments, and the ones with smaller variations than the average of taxpayers with similar characteristics were selected.

Chart 6
Comparable Direct Yield, own performance

		Treatment Group	Comparable[19] Control	Difference
Amount of Taxpayers	Total	13.608	603	
	Concurrent	8.700	342	
	with Yield	1.381	296	
Yield	Total	$ 636.502.491	$ 16.957.821	
	By Notification	$ 46.774	$ 28.122	**$ 18.652**
	By Concurrent	$ 73.161	$ 49.584	**$ 23.577**
	By Taxpayer with yield	$ 460.900	$ 57.290	**$ 403.610**
Rate	Concurrent / Total Notified	63,93%	56,72%	**7,22%**
	Taxpayers with yield /Total Notified	10,15%	49,09%	**-38,94%**
	Taxpayers with yield /Total Concurrent	15,87%	86,55%	**-70,68%**

Indirect yield

In this paper we call indirect yield the one which is associated with the taxpayer behavior after it has been influenced by the audit process. Therefore we have applied 3 methods:

Simple difference method

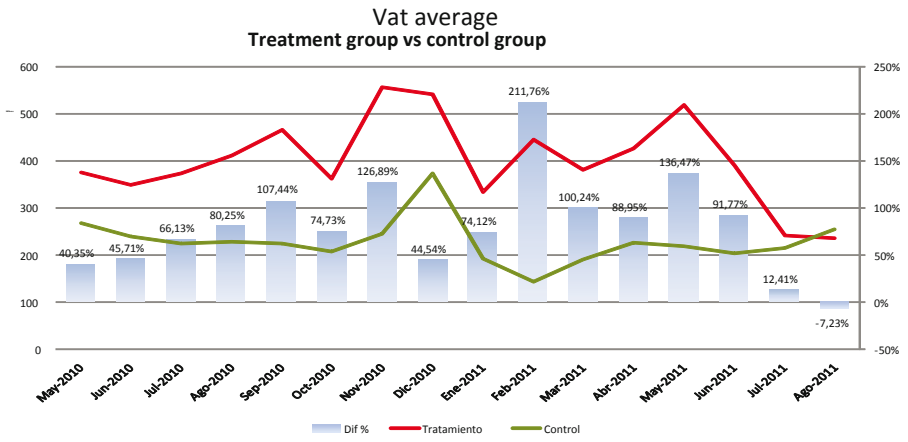
What is sought by using this method is to estimate what would have happened with the observation group (treatment group) had nothing be done. Unfortunately, in reality, a taxpayer may be either audited or not, but not both, for this reason, a similar group (control group) was randomly selected, which was not involved, nor by the control program and no other program, this way the effect that might produce some contact with the Tax Authority was voided.

The following chart shows the average monthly tax payments of taxpayers from the Treatment

19. *Other programs on a massive scale, which does not have its genesis with some differences in the payment of taxes, are due primarily to business rules*

Group and the average monthly tax payments of taxpayers from the Control Group and it is also is plotted (on a secondary axis) the difference between both curves

Graghic 7
Average VAT Treatment Group vs. Control Group, own performance



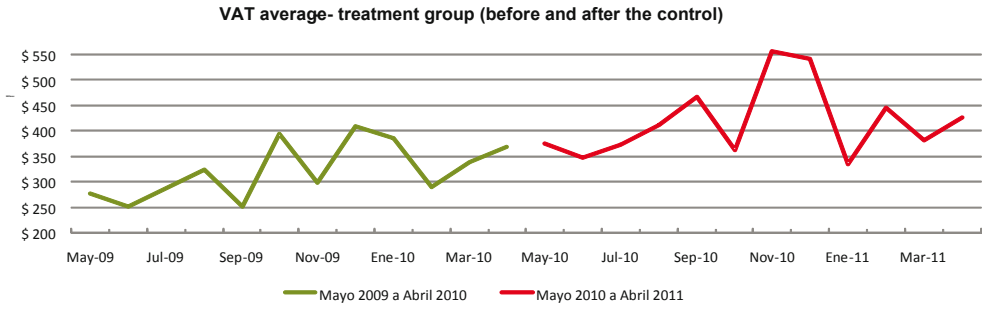
The graph analysis shows that the average tax payment is higher for the treatment group than the Control Group for the period between May 2010 and August 2011 except for the last period.

However, it is very likely that the control group would not have shown the same behavior that the treatment group would have, if it had not been audited. For this reason we apply the following method.

Pre-post Method

This method does not use another group for comparison, but in contrast the level of monthly tax payments for similar periods before and after the Tax Administration have informed the taxpayer that will be audited.

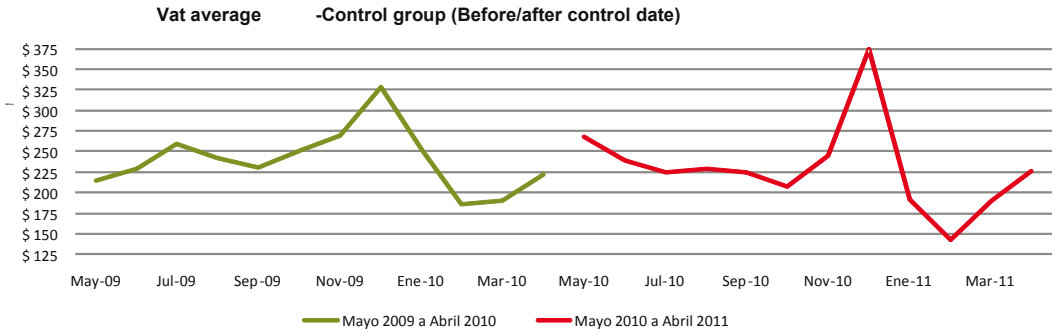
Graph 8
VAT Aver. Treatment Group (Before and After Control), own performance



Looking at the graph, you can see an improvement in the payment after April 2010. However, by observing the curve it seems that this “improvement” is due to a trend, which sets out the following chart, which shows the behavior of the Control Group, Pre and Post cut-off date:

Graph 9

Average VAT Control Group (Before and after the audit), own elaboration

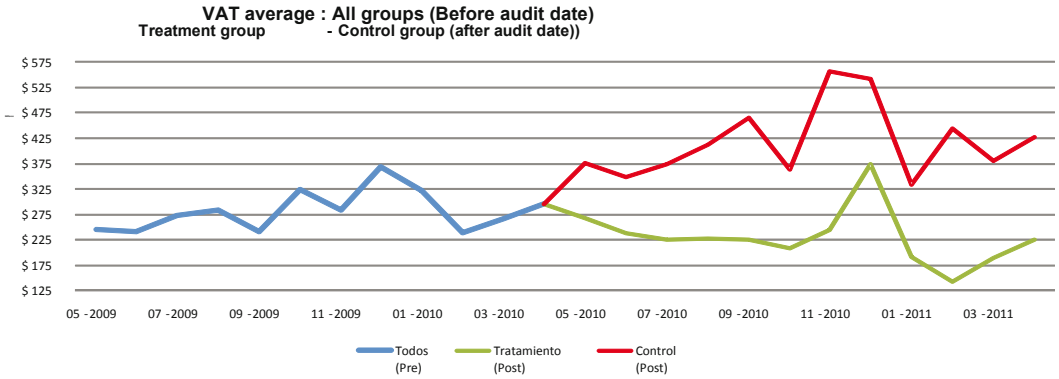


In this graphic we see that there is not an upward trend in the average monthly tax payment for the control group.

In the following graphic, which unite the two previous one, it appears that there is not an upward trend in average monthly tax payments. It shows all taxpayers selected for the experiment, Treatment Group and Control group (in blue), prior to the cutoff date (April 2010), and the Treatment Group (in red) separated from the control group (in green), after that date.

Graph 10

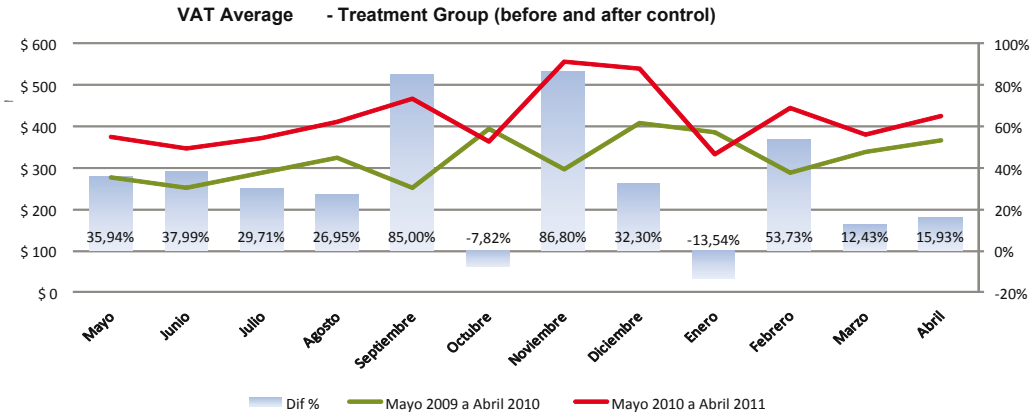
Average VAT Both Groups before audit and separated after audit, own elaboration



The consecutive layout of the curves does not allow a comparison, this is why in the following graphic we superpose the curves of the pre and post periods for the treatment group, appearing simultaneously in order to compare month by month the average monthly tax payments.

Graph 11

Average VAT Treatment Group (before and after audit), own elaboration



The graphic analysis shows that the average tax payment is higher in the period after the audit, between May 2010 and April 2011, which in the previous comparable period, ie between May 2009 and April 2010 except for the periods October 2010 and January 2011.

However, to be studying an economic phenomenon, some factors may have affected the operation of the taxpayer in a different way for each of the indicated periods. That's why we go to the following method, which eliminates many of the distortions that might have occurred.

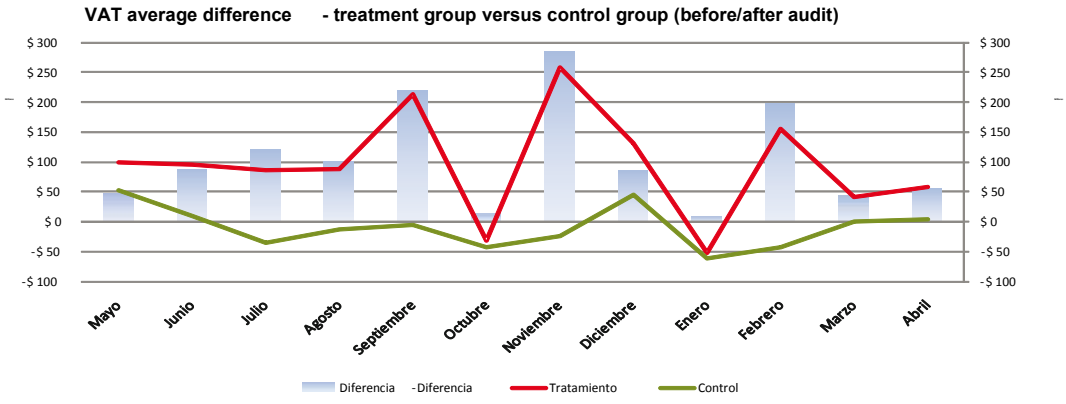
Difference -in- Differences Method

This method consists of two parts:

- Calculation of Differences: First differences are calculated each month for each group. For example, the difference of the average monthly tax payment in the Treatment Group in May 2009 and May 2010 is calculated and the difference for May in the treatment group is determined. Then the difference for all months is calculated. And the procedure is replicated for the Control Group.
- Then, in red on the graph, the differences for the treatment group, in green for the Control Group, and in bars for the difference in difference, which is the difference in treatment group minus the difference of the Control Group

Graph 10

Average VAT Difference Groups (Before and After audit), own elaboration



Observing this graphic, we see that the differences in the treatment group, are higher than the Control Group, i.e. the first group payment has increased its average monthly tax payment more than the second one.

7. CONCLUSIONS

The new SII strategic plan for the period 2011-2014 establishes the need to focus enforcement actions, identifying potential areas of fraud risk, which is made possible with the implementation of fiscal intelligence. This strategic decision gives strength to the project referred to in this article, and all related mining data application and the acquisition of complementary tools to the existing ones.

This strategic decision comes from an analysis of the previous situation, marked by an important VAT tax (almost 50% of the year 2010 collection), and an evasion rate of 18%, far from the single-digit rate (9 -8%) that Chile showed in the years 2006-2007.

This increase in VAT evasion is directly related to the resurgence of evasion figures that directly affect the tax throught an inflation of tax credits, where the use of false invoices has been one of the oldest industries and most used by taxpayers who, due to several factors, including the most important, the economic crisis (the last one is the sub prime crisis that hit Chile in late 2008, early 2009), have resorted to the introduction of tax credits based on nonexistent operations.

An important conclusion of the model is the most important thing is to have very clear the problem and the subject of study, before going to define our dependent variable model and our vector of attributes that explain the first. In this article, it has been shown that the definition of a “monthly VAT Declaration with a potential appropriation of credits from false invoices” reports a better performance to use as a research subject once more to the taxpayer. This was due to the existence of much richer information on each of the returns, which address a taxpayer’s average behavior of a kind.

Another important conclusion is that an optimal selection by data mining techniques does not guarantee success in obtaining yields in the control, but requires a control mode definition (selective, massive or preventive) for a proper detection in the field, Office or both, of the phenomenon being modeled (evasion / fraud). It also requires a correct definition of the work plan that contains the revisions, and cross checks necessary for a correct assessment of the level of occurrence of the phenomenon and proper implementation of these verifications by the front-office officials who are our regulators.

On the other hand, it is necessary to measure the effects of the implementation of control in different manner from the classic, which is to measure the direct yields (twists and rectifying) obtained from the control of the taxpayer group treated (treatment group). These new forms of measurement include measurement of indirect income, represented by changes in levels of taxpayer compliance in the monthly payment of VAT, the use of control and treatment groups objectively defined according to statistical criteria (“Design Experiments”), and the use of methods such as” Simple Difference”, “Pre-Post” and “Dif-in-Dif “.

In terms of project results analysis in this article, we could observe an increase in the monthly average payment in the treatment group over the control group, for the period after the audit, between May 2010 and April 2011, compared

with the previous period, ie between May 2009 and April 2010. This means that the selection of taxpayers to the phenomenon of fraud through false invoices using data mining methods is shown to be effective in terms of generating a change in compliance behavior in the monthly VAT payment, which is what each Tax Administration looks for. It is important to note that this change in compliance levels are not exclusive to the selection of taxpayers with data mining techniques, but generally occurs after the application of any control action to a greater or lesser extent than the one presented here .

Finally, collecting lessons learned from other experiences in the SII Sud department of control, where have been applied together classical criteria of taxpayers selection, by crossing data provided by third parties (eg affidavits) and the taxpayer's own returns, and as a second criteria, the application of risk scores, obtained from models such as the one presented here has led to better results than those obtained from the application of data mining models as the sole criterion. This is so because the risk models do not show their full potential in their first version, but are improving as the learning experience from the feedback of audits will be included in future versions.

8. BIBLIOGRAPHY

Abadie, Alberto. "Semiparametric Difference-in-Differences Estimators". Review of Economics Studies. 72. (2005): 1-19

Bischop, C.M, (1995). Neural Networks for Pattern Recognition, Clarendon Press, Aston University.

Manual de Ayuda IBM PASW® Modeler 14, Sección Árboles de Decisión

Martín, Bonifacio y Sanz M. Alfredo; (2007). "Redes Neuronales y Sistemas Borrosos", 3era edición. Editorial Alfaomega. México

Rumelhart, D. E., McClelland., J. L (1986). Parallel Distributed Processing., Vol 1, MIT., EEUU.

Rumelhart, D.E., Hinton, G.E., Willians, R J., (1986). Learning representations by backpropagating errors. Nature,. EEUU. Pág. 533.

T. Mitchell: Machine Learning, Capítulo 3, McGraw Hill, 1997

All the material contained in this publication was prepared, set up and printed at the Publications Center of the CIAT Executive Secretariat, P.O. Box 0834 – 02129. Panama, Republic of Panama. Printing was concluded in December 2011.