ISSN 1684-9434
N° 38
February 2015

Inter-American Center of Tax Administrations

Generating synergy

Managing knowledge

Best practices

Tax administration review

CIAT/AEAT/IEF
Tax Administration Review

No. 38
February 2015

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 Board formed by CIAT officials (The Executive Secretary, the Director of Tax Studies and Research, the Heads of the Spanish and Italian Missions) is responsible for determining the topics and select the articles for each edition of the Review.

The articles are selected by the Editorial Board, through a public announcement made by the CIAT Executive Secretariat for each edition of the review. It is open to all officials of the Tax, Customs Administrations and/or Ministries of Economy and Finance of the CIAT member countries and associate member countries. Likewise, those members of the MyCIAT Community not belonging to any of the aforementioned entities may also participate, following evaluation by the Editorial Council

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

Content

No. 38
February 2015

Message from the Executive Secretary

Márcio Ferreira Verdi

Dear Readers,

I have the great pleasure to present this new issue of the Tax Administration Review for 2015.

This new edition addresses highly diversified topics. The articles have in common to contribute to knowledge. Six articles are published: Analysis of the low VAT Collection Capacity in the Small Taxpayer Sector: Bolivia´s Case; Tax Education and Citizenship Development in Latin America; Tax on Gross Income: Treatment in Argentina of Income from Abroad; Towards a Contractual Model of the Corporate Group Concept; Sustainable Tax Measures for Responsible Mining; and finally the issue of Cryptocurrencies, a new Obstacle on the Road to International Tax Transparency.

As you can see, this variety of articles address relevant current issues of interest and concern for our Tax Administrations.

We are confident that the Review will stimulate the transfer of knowledge, converting information into learning and into a useful resource for the International Tax Community.

Márcio Ferreira Verdi
Executive Secretary

TAX ON GROSS INCOME: TREATMENT IN ARGENTINA OF INCOME FROM ABROAD

Christian Canova

SYPNOSIS

This article analyzes the power of taxation of the Subnational Tax Administrations of the Republic of Argentina and the encumbrance with the Tax on Gross Income of revenues originating abroad. Also considered is the local competency of the local treasuries, the constitutional issue, the treatment of exports and double taxation assumptions.

The Author: *Obtained his degree as Attorney at Pontificia Universidad Católica Argentina (UCA). Specialist degree in Tax Law from Universidad de Buenos Aires (UBA). Postgraduate degree in Law from Pontificia Universidad Católica Argentina (UCA) in the city of Buenos Aires. Professor at Pontificia Universidad Católica Argentina (UCA). Member of the Argentine Association of Fiscal Studies. Author of articles on the subject matter of which he is a specialist.*

Contents

One can no longer talk about a mere international exchange of economic goods. Its exponential dimension day by day exceeds the borders of a country, with an ever strong trend toward economic globalization, and an ever more predominant role of the private sector through the transnational companies.

Thus, with greater or lesser interference, modern States have become essential actors in the development of such an event, positioning themselves in favor of free trade, or else, by promoting a protectionist orientation. In both cases use was made of fiscal instruments – among them, tax disencumbrances, tax refund and direct subventions-, or regulatory measures for maintaining their autonomy.

The dynamics of the global market has challenged the national normative frameworks, and to a greater extent, the regional and local ones, thereby urging the tax administrations to adapt their regulations, given the progress of complex commercial operations and likewise to implement tools aimed at avoiding evasive maneuvers.

Our country is not unaware of said circumstance. The regulation of Transfer Pricing in Profit Tax or the treatment of services export in the case of VAT are examples of national taxes which not only consider this new situation but are currently subject to an extensive doctrinal and jurisprudential development.

The situation is not the same with respect to local taxes, among which there is mainly the Tax on Gross Income, where background information is scarce and in many cases contradictory.

There are ever more inquiries made to local tax entities requesting that opinions be issues on several issues: loans to parent companies abroad, a comercial transaction carried out from a office with a local domicile, which consists of the purchase of godos abroad for sale abroad as well, interest obtained from deposits made abroad, sale of environmental certificates abroad which are obtained through a local activity. In sum, the question is whether a Provincial State may determine the tax base of the Tax on Gross Income with revenues originating outside our territory?

1. THE POWER OF LOCAL TAXATION

The juridical-tax relationship consists of four elements: a) the active party considered as the holder of the credit municipality, province, nation- according to the various taxes it has the power to apply; b) the passive party or taxpayer, who has the taxpaying capacity,as debtor of the tax credit without diregarding those who are responsible for another's debt or substitutes of the tax obligation; and c) the budget per se, with sufficient juridical effects to give origin to the juridical relationship that is commonly known as taxable event. With respect to the importance of this element Dino Jarach stated

"The analysis of the juridical-tax relationship can only be made on the basis of the actual event. This constitutes the center of the juridical theory of the tax, much like the analysis of the offense in criminal law. It is the basis of the dogma of material tax law".[1]

Thus, a real event, classifed by the tax law as taxable event, activates the power of the state to demand the fiscal credit from those administered –an obligation to give, by way of tax, rate or contribution, according to the traditional tripartite classification.

The state´s power of taxation arises only through the legal classification of the taxable event. Otherwise, there would be a mere ex lege power, wiuth potential for improvement, although only effective following the aapproval of the regulation.

Tax Competency

The series of state competencies appears to be distributed and assigned to various levels of state entities with a territorial basis: State (or Central State, Nation or Federation, among its synonyms), Provinces (or Member States, Party States, Autonomous Communities, Regional Governments and other equivalent terms) and Municipalities (or City Councils, Communes, Local Governments and names of similar entities).[2]

As far as Argentina is concerned, according to the allocation of tax competencies by the National Constitution the federal government is in charge[3]:

a. articles 4, 9 and 75, paragraph 1, and 126 of the National Constitution);
b. jointly with the Provinces and permanently, indirect taxes (articles 4, 17, 75, paragraph 2°, and 121 of the National Constitution);
c. on a temporary basis and in situations of exception, direct taxes, that must be proportionally equal throughout the territory of the Nation (article 75, paragraph 2);
d. provinces may establish direct and indirect taxes on a permanent basis, except for customs duties;
e. the Nation must participate in the proceeds from the collection of taxes provided in article 75, paragraph 2, of the NC to the provinces and to the City of Buenos Aires, in keeping with the system of agreed laws;

1. *Jarach, Dino. (1982). El hecho imponible. Teoría General del Derecho Tributario Sustantivo. Tercera Edición. Editorial Abelardo-Perrot. Página 68.*
2. *Álvarez Echagüe, Juan Manuel. (2010). Tributación Local Provincial y Municipal. Editorial Ad-Hoc. Buenos Aires. Página 197.*
3. *Spisso, Rodolfo R. (2011). Derecho Constitucional Tributario. Quinta Edición. Editorial Abelardo-Perrot. Buenos Aires.*

f. the City of Buenos Aires, which has been recognized an autonomous government system with its own legislative and jurisdictional powers, it has the same taxing powers as the provinces and must exercise them according to the provisions of act 23.548 (article 129, NC, and article 12, law 24.588);
g. in the City of Buenos Aires, as long as it continues to be the Federal Capital, the Congress of the Nation, in its capacity of local legislature, in the aspects that deal with the interests of the Nation, it preserves the taxing powers.

Thus, there is full coincidence in the exercise of the taxation power between the Nation and the Provinces with respect to indirect taxes, except for customs duties, which are exclusively granted to the Nation. In turn, with respect to direct taxers, the Nation's concurrent power is limited by the statute of limitations of article 75, paragraph 2, although the constitutional practice has totally nullified the aforementioned restriction, getting round it by means of successive extensions which endeavor to be justified on the basis of an alleged state of national emergency which, according to the legislator, has been indefinitely extended since 1932, when the tax on income at the national level was initially approved..[4]

In this respect, and in order to coordinate the fiscal relationships between the Nation and the provinces, which has been highlighted by the Supreme Court of the Nation in the "Simon Mataldi S.A." case-, a unification law has been promoted which requires the adherence of the provinces in order that they may participate in the proceeds of the collection of the national taxes.

Currently Law N° 23.548 on FEDERAL COPARTICIPATION IN FISCAL RESOURCES is in force. Like its predecessor Law 22.006, in addition to mentioning the right of the provinces to participate in the distribution, it provides certain commitments which they must fulfill by obliging themselves and the municipalities to refrain from applying local encumbrances similar to the national ones distributed by the Law. It also ratifies the validity of the Federal Tax Commission in relation to its strict compliance (article 10) which decides when a provincial or municipal tax is forbidden by the system because it is analogous to one that is coparticipative.

There are exceptions to the aforementioned prohibition, which in practice means that while they are adhered to the aforementioned system, the taxation power of the local treasuries has been reduced to the following taxes:

- Fees for services actually rendered
- Real estate taxes
- Tax on gross income
- Tax on ownership, location, circulation or transfer of automobiles ("patents")
- Stamp tax
- Tax on free transfer of properties
- Provincial taxes or fees with specific effect on December 31, 1984 while such effect lasts.

It should be noted that the 1994 constitutional reform on providing in article 75, paragraph 2 that the direct and indirect taxes of an internal nature, except for the parties having specific allocation, are shared between the Nation, the Provinces and the City of Buenos Aires by means of laws-agreements, has allowed for overcoming the objections which part of the doctrine based on the nullification of the federal regime, as a

5. Spisso, Rodolfo R. (2011). Derecho Constitucional Tributario. Quinta Edición. Editorial Abelardo-Perrot. Buenos Aires.

result of the relinquishment which, in its opinion, implied the temporary and partial limitation to the exercise of the provincial taxation power included in the laws-agreements.

The City of Buenos Aires

The Autonomous City of Buenos Aires, on its part, enjoys an exceptional juridical status as a result of the 1994 constitutional reform, which even though it does not allow for putting it at a level with the provinces, it does allow it to enjoy a special autonomy regime.

Thus, article 129 of the National Constitution provides that "the city of Buenos Aires will have an autonomous government regime, with its own legislative and jurisdictional powers, and its head of Government, shall be elected by the people of the. A law will guarantee the interests of the national State as long as the City of Buenos Aires continues to be the Capital of the Nation".

The "Law that Guarantees the Interests of the National State in the City of Buenos Aires" (Law 24.588) or "Cafiero Law", was approved on November 8, 1995 and promulgated on November 27, 1995. In its article 12 it is provided that "the city of Buenos Aires will have the financial resources determined by its Organizational Statute subject to the provisions of paragraphs b), c), d) and e) of article 9 of Law 23.548" of Federal Tax Coparticipation, to which regime the City has adhered through local Law N° 4, unilaterally committing itself to refrain from establishing taxes similar to the national ones.

It should be noted that through Decree 705/2003 it has been determined that starting on January 1st, 2003, the participation corresponding to the Autonomous City of Buenos Aires as a result of the application of article 8 of Law N° 23.548 and its amendments, is a coefficient equivalent to one, comma forty per cent (1,40%) of the total amount collected from the encumbrances provided in article 2 of the aforementioned law and its amendments. Said transfers shall be made through Banco de la Nacion Argentina, on a daily and automatic basis.

On the other hand, the Constitution of the City of Buenos Aires has included the "Cafiero Law" in its article 7, on providing that "The State of the Autonomous City of Buenos Aires is the successor of the legitimate rights and obligations of the Municipality of the City of Buenos Aires and of the National State as regards the competencies, powers and functions that are transferred to it through articles 129 and related ones of the National Constitution and the law of guarantee of interests of the Federal State, as well as any other which may be transferred in the future.."

2. THE POWER FOR APPLYING THE TAX ON GROSS INCOME

With respect to Taxes on Gross Income, it should be adapted to certain basic characteristics, as has been provided in the successive tax coparticipation laws Law 20.221 with the applicability of the tax on profitmaking activities and laws 22.006 and current 23.548, with the applicability of the current Tax on Gross Income. Among them:

- They shall be applied to income originating from the exercise of business activities (including unipersonal ones) civil or commercial for profitmaking purposes, from professions, occupations, intermediations and any other regular activity, excluding those carried out in a dependency relationship and the holding of public positions;

- They shall be determined on the basis of the revenues of the period, excluding from the tax base the amounts corresponding to internal taxes for the national highway, technological, tobacco and fuel funds.

- This deduction can only be made by the taxpayers paying fees for the aforementioned encumbrances, as long as they are registered as such. The amount to be calculated will be the fiscal debit or the assessed amount, depending on whether it is the value added tax or the remaining encumbrances, respectively, and in all cases, to the extent they correspond to operations of the activity subject to tax, carried out in the fiscal period being asessed;

- In special cases, taxation may consist of a fixed amount according to relevant parameters;

- Activities related to export may also be taxed (transportation, slinging, stowage, warehouse and every other of a similar nature);

- One may tax activities carried out in areas of public interest or national usefulness subjected to the jurisdiction of the National State (ports, airports, railroad stations, fields and every other of a similar nature), as long as taxation does not interfere with said interest or usefulness;[5]

- As regards interjurisdictional transportation, taxation will be applied in the manner provided in the multilateral agreement referred to in paragraph d);

- In relation to international transportation carried out by companies established abroad, in States with which the country may have signed or signs agreements or conventions to avoid double taxation on the subject, from those arising —on the condition of reciprocity— that the application of taxes be solely reserved to the country wherein the companies are established, the tax cannot be applied;

- As regards oil-derived fuels, taxation cannot be applied to the production stage as long as prohibition in said sense continues in force as provided in Decree-Law 505/58 and its amendments.

- In subsequent stages one may tax the difference between acquisition and selling prices;

- The complementary activities or ítems of a main activity-including financing and adjustment for monetary devaluation shall be subject to the rate provided for it;

- In determining the tax base one will take into consideration the gross revenues earned in the fiscal period, with the following exceptions:

a. Taxpayers who have no legal obligation to keep accounting records: shall be the total revenues earned in the period;
b. In transactions carried out by financial entities included in the system provided in Law 21.526 amounts earned on the basis of time in each period shall be considered gross income;
c. In real estate sales transactions by instalments for terms exceeding twelve (12) months, the gross earned income will be the total of instalments or payments that expired in each period;

5. *This in keeping with article 25, paragraph 30 NC. Functions of the National Congress: Exercise exclusive legislation in the territory of the capital of the Nation and issue the necessary legislation for complying with the specific purposes of the national usefulness establishments in the territory of the Republic. The provincial and municipal authorities will preserve the police and taxation powers of these establishments, to the extent they do not interfere with the compliance of such purposes".*

Fiscal periods shall be annual, with advances on a certain base, which in the case of taxpayers included in the multilateral convention system of August 18, 1977 will involve monthly periods;

- Taxpayers included in the multilateral convention of August 18, 1977 will pay the respective tax in a single jurisdiction. To this end, the adhered jurisdictions must agree on the respective mechanism and the uniformity of the expiration dates.

In response thereto, the provincial jurisdictions and the Autonomous City of Buenos Aires have established in their respective local fiscal regulations the description of the taxable event, either with respect to the repealed Tax on Profitable Activities, as well as the current Tax on Gross Income. Among them:

Autonomous City of Buenos Aires

"For the regular and onerous exercise in the Autonomous City of Buenos Aires of commerce, industry, profession, trade, business, location of properties, works and services or any other onerous activity, regardless of the result obtained and the nature of the individual carrying it out, including cooperatives and all forms of association without legal standing, regardless of the type of contract chosen by the participants and the place where it is carried out (port zones, railroad areas, airports, transportation terminals, buildings and places of public and private ownership and every other of a similar nature), a tax is paid according to the regulations provided in the present Chapter" (Article 150 Fiscal Code T.O. 2014 and concordant of previous years)

Province of Buenos Aires

"For the regular and onerous exercise in the jurisdiction of the province of Buenos Aires, of commerce, industry, profession, trade, business, location of properties, works and services, or of any other onerous activity profitable or not regardless of the nature of the individual carrying it out, including cooperatives, and the place where it is carried out (port zones, railroad areas, airports, transportation terminals, buildings and places of public and private ownership and every other of a similar nature), will be subject to a tax on gross income according to the conditions provided in the following articles" (Article 182 of the Fiscal Code T.O. Law 10.397. Text updated with the modifications introduced through laws 14.301, 14.333, 14.357, 14.394 and 14.553)

Province of Cordoba

"For the regular and onerous exercise in the jurisdiction of the province of Cordoba, of commerce, industry, profession, trade, business, location of properties, works and services, or of any other onerous activity profitable or not regardless of the nature of the individual carrying it out, including cooperatives, and the place where it is carried out (port zones, railroad areas, airports, transportation terminals, buildings and places of public and private ownership and every other of a similar nature), will be subject to a tax on gross income according to the conditions provided in the following articles and in the annual tax law" (Article 145 Law 6.006 Tax Code of the Province of Cordoba T.O. with the amendment of Law 9.025)

Province of Santa Fe

"For the regular exercise in the territory or jurisdiction of the province of Santa Fe, of commerce, industry, profession, trade, business, location of properties, works or services, or of any other onerous activity profitable or not regardless of the nature of the individual carrying it out, including cooperatives, and the place where it is carried out (port zones, railroad areas, airports, transportation terminals, buildings and places of public and private ownership, etc.), a tax will be paid according to the regulations provided in the present title." (Fiscal Code of the Province of Santa Fe. Law 3.456. Article 122)

To conclude, the taxable event is understood to be the series of events or situations described by the law as reason generating the tax obligation from where it is derived that following the actual configuration of said factual reason, and after determining its relationship with a specific individual, there originates the tax relationship with its binding juridical consequences.[6]

In the case being discussed, the generating budget is the regular exercise of any onerous activity carried out by a specific individual, regardless of the way it is carried out, with the binding juridical consequence that results in the obligation to pay a tax.

On the other hand, with respect to the sphere of application, there is generalized consensus in the juridical-tax dogma in the sense that "...taxable events objectively determined by law, must necessarily be territorially delimited to cover only those that take place in the sphere provided by the law itself and which, automatically excludes the taxable events which, although they respond to the objective delimitation, they must do so with respect to the sphere determined by the law for exercising its taxing power..."[7]

Conclusion: A territorial tax as is the case of ISIB- (Spanish acronym for tax on gross income) contrary to those of a personal or subjective nature, means that it only comprises those activities carried out wholly or partially within the physical sphere of the jurisdiction that applies it. The provincial fiscal laws and those of the City of Buenos Aires have circumscribed the local taxation power within the limits of their territories. The sine qua non condition is that only the activities carried out within said jurisdictions are subject to the encumbrance.

3. TAX BASE OF THE TAX ON GROSS INCOME

Another element which, in principle, is theoretically easy to understand, but in practice becomes a complex truth is to determine, for purposes of ISIB assessment, the onerous activities carried out and classified by law as taxable event.

The tax base, thus arises from the need to transform the taxable event into an economic expression in order to apply the corresponding rates to that amount and to definitely determine the amount of tax or the amount of payment which the treasury may demand and the taxpayer must pay.[8]

The main dificulty lies in that, although only the activities carried out within the sphere of the respective jurisdiction, the truth is that according to the way the "tax base" of the tax (for example, total gross income) is determined, said tax may be applied to the total income of the taxpayer acting in said jurisdiction, even on the part originating from income produced outside thereof, but which has resulted from the activity carried out.

In this respect, the Supreme Court of Justice of the Nation has specified that "...one cannot confuse the "taxable event" with the base or measure of taxation, since the first determines and gives origin to the tax obligation, while the second is but an element to be taken into account to quantify the amount of said obligation..."[9]

6. *Bulit Goñi, Enrique G. (1997). Impuesto Sobre los Ingresos Brutos. Segunda Edición. Editorial Depalma. Buenos Aires. Página 56.*
7. *Jarach, Dino. (1996). Finanzas Públicas y Derecho Tributario. Editorial Abeledo-Perrot. Buenos Aires. Página 386.*
8. *Bulit Goñi, Enrique G. (1997). Impuesto Sobre los Ingresos Brutos. Segunda Edición. Editorial Depalma. Buenos Aires.cit., página 57.*
9. *CSJN. Fallos 286:301 del 13/9/1973 "S.A. Indunor C.I.F.I. y F. v. Provincia del Chaco".*

For example, the Fiscal Code of the City of Buenos Aires has established that the encumbrance is determined on the basis of the gross income earned during the fiscal period as a result of the taxed activity, with Gross Income being uderstood as the total value or amount -in cash, in kind or in services, including among others, the sale of properties, rendering of services, locations, royalties, interests updates and every other compensation for the placement of capital (articles 174 and 175 of the Fiscal Code T.O. 2014 and related ones of previous years).

Conclusion: the territoriality of the Tax on Gross Income is only applicable to the taxable event, and not to its tax base. The law specifies that the activity must be carried out in the local jurisdictions, but does not provide anything regarding the territoriality of the income. It is also thus stated by the Law of Federal Coparticipation, which serves as normative framework for regulating it: “In determining the tax base, one will take into account the gross income earned in the fiscal period”.

4. THE ENCUMBRANCE WITH THE TAX ON GROSS INCOME OF REVENUES ORIGINATING ABROAD

Within the limits of the Nation’s territory, the Multilateral Agreement has coordinated among all the Provinces and the City of Buenos Aires, the distribution of the tax base among all those jurisdictions in which a taxpayer carries out one, several or all its stages of activity. In this way one manages to avoid tax overlapping since, as mentioned, every one of the treasuries has the power to tax the totality of income produced if the activity were carried out in its jurisdiction.

So, it follows that in the case of taxpayers, if one does not verify territorial evidence in any of the other jurisdictins, the local treasuries have the power to encumber the totality of gross income.

Nevertheless, what happens with the income from abroad?

The issue at stake is to determine whether the local treasureis have the taxation power to encumber said revenues.

We already mentioned in the previous chapter that, according to the Federal Coparticipation Law, the local treasuries may encumber the taxpayers’ gross income, although without making any distinction regarding their origin. A priori, the conditioning element would the completion of the taxable event and duly proving its relationship with the earned income.

It is worthwhile to recall that stated by the Supreme Court with respect to the fact that “the provinces may encumber the wealth produced in their territory, although part thereof may cross its borders, on the condition that the encumbrance will not be discriminatory or in some way prevent or render difficult the interjurisdictional activities” (judgments 306:516, amont others).

Regardless thereof, the positions are ambivalent.

On the one hand, we find the conceptual theory, according to which the taxable event of the ISIB would only be the “activity”, while the “income” only constitutes the basis for measuring the encumbrance (tax base) this was the base of the Supreme Court of Justice’s judgment in the “Indunor” case.

Among the tax experts, Enrique Bulit Goñi is n favor of said position, stating in his work “Tax on Gross Income” that: “…gross income does not constitute the taxable event, but rather, it is only the tax base, ideas that are well differentiated”.

Others, on the other hand, come to the conclusion that the existence of revenues is vital for determining the source of the tax, by means of the integration of all the elements of the tax relationship.

Thus, Jorge Tejerina criticized the theory of considering the "activity" as sole constitutive element of the taxable event, stating that "gross income", as qualitative phenomenon (not as measurement unit), were integral part of the the taxable event, although not included in the legal definition.

Tejerina states: "perhaps the reason for the confusion of concepts on the subject is in the trend of seeing the taxable event where there is an activity encumbered by the tax. If our tax encumbers the exercise of a regular profitable activity, it does seem unreasonable to consider that the exercise of such activity constitutes the taxable event".

"But one thing is the encumbered matter; that is, the economic phenomenon to which the tax is applied and another very different is the juridical configuration of the taxable event".

"Obviously the "gross income" in its quantitative aspect, that is, the total amount of compensation received from the activity, is a way of measuring the magnitude of the taxable event; that is, the tax base. However, in its qualitative aspect, the capacity of an "activity" for generating "gross income" reflects the very particular nature, toward which the tax is precisely directed.

"Thus the object of our tax is not just any activity, but rather those that produce income, and that is the base of the taxable event".[10]

In the same line of thought, Giuliani Fonrouge considers it a mistake to state that the taxable event is the exercise of the profitable activity (currently oneous) and that the income only provides the measure of the tax. In this regard, he emphatically states that, "such type of considerations constitutes a sophism, since the juridical-financial nature of a tax does not depend on the text of the law or the denomination given it, but rather, as the Supreme Court has always said one must investigate the way in which it actually affects the cases or transactions involved".[11]

Thus, according to said theory, the taxable event of the Tax on Gross Income has a complex nature, inasmcuh as it consists of two elements, "activity" and "gross income", which are interrelated.[12]

Adopting one position or the other not only has theoretical effects. As already mentioned, one of the elements of the taxation power of the ISIB is the space element. If we understand that the gross income is within the composition of the taxable event, one could only tat that income which would be generated within the jurisdictional sphere of the provinces.

On the other hand, if we consider that the gross income is only the object of measurement or the tax base, it would only suffice, for purposes of taxation that the activity be carried out in the territory of the provinces, regardless of the place of origin of the income, including that coming from abroad.

Conclusion: Tejerina's doctrinal line, according to which "gross income" is an integral part of the taxable event (it being possible to tax only that income generated within the jurisdictional sphere of provinces), is not acceptable in practice.

10. Tejerina, Jorge. Nuevas Consideraciones sobre el Impuesto Municipal a las actividades lucrativas. Derecho Fiscal. XVI – 2097217.
11. Tejerina, Jorge. Nuevas Consideraciones sobre el Impuesto Municipal a las actividades lucrativas. Derecho Fiscal. XVI – 2097217.
12. Mario Enrique Althabe. "El Impuesto Sobre los Ingresos Brutos". Tercera Edición Actualizada. La Ley. Página 18.

An example thereof is that the very Multilateral Convention Law splits the configuration of the taxable event with the power of the tax base between the jurisdictions, through the determination of a distribution coefficient, which many times does not correspond to the total income actually obtained in each of them (General Regime of the Multilateral Convention, except for that provided in its article 14 "direct income").

5. THE CONSTITUTIONAL ISSUE

Foreign trade is subjected by constitutional mandate to the legislation of the Congress of the Nation (article 75, paragraph 13, C.N.), which implies "immunity" with respect to local powers. This is a logical consequence of Nation's interest in trade, which is considere dan economic unit.[13] From there follows that the provinces have been correlatively forbidden to issue laws on foreign trade (article 126 C.N.), which is specifically related to that provided in article 4 C.N. which states that: "the federal Government contributes to the expenses of the Nation with the funds from the National Treasury obtained from the import and export duties".

However, during the application of the Tax on Profitable Activities –currently the Tax on Gross Income -, there arose the issue as to whether the tax could be applied without affecting the "commercial clause". One of the first arguments was submitted to the Supreme Court of the Province of Buenos Aires, which considered it irrelevant for purposes of said tax, if the products would have been fully or partially devoted to exports.[14]

Said argument was favorably accepted by the CSJN in "Indunor c. Provincia del Chaco" where the Maximum Tribunal was definitely in favor of said position, stating that provinces have the power to select the adequate method for the assessment of the tax, being valid and legitimate, although not specifically serious, extraterritorial activities and that one does not impose as reason or requisite for allowing products to leave the territorial sphere, disregarding the fact that they may be intended for consumption or elaboration within or outside the Republic. Likewise, in the preceding quotation it was stated that if it cannot be proven that the local law hinders, thwarts or prevents the circulation of products or negotiations with foreign counries, it cannot be considered in opposition to article 67, paragraphs 1 and 2 of the National Constitution, -currently article 75, paragraph 13, called "comercial clause".[15]

Subsequently in judgment "Moos, Elías, S.A. c. Provincia de Buenos Aires" (28/11/78, ED 82-475) the Supreme Court of Justice of the Nation, with a quotation from its predecessor "Bovril S.A." (30/03/78, ED 78-158), stated that to endeavor that the application of a tax on that subsequent destination may be a cause of unconstitutionality would involve rendering practically impossible the exercise of provincial autonomy with respect to the legitimately encumbered wealth and the contrary would be equivalent to consecrating an unequal traetment vis-a-vis those who carrying out the same task of producing godos, would be subject to a different taxation regime, no longer based on the profitmaking activity but on the eventual commercialization of said goods abroad.

13. *Tejerina, Jorge. Nuevas Consideraciones sobre el Impuesto Municipal a las actividades lucrativas. Derecho Fiscal. XVI – 2097217. Página 211.*
14. *SCJBA. (10/8/71). "Elías Moos S.A.I.C c. P. Ejecutivo. Causa B 45.889.*
15. *CSJN. (13/09/73). "Indunor S.A.".*

The same is maitained by Doctor Rodolfo Spisso, when:

"Neither can the provinces establish taxes on the import or export of goods (articles 4, 9 and 75, paragraph 1, CN), or approve discriminatory taxes by reason of the interjurisdictional trade, because if it does so, the tax established by preventing consideration of the goods subject to said trade as part of the general mass of goods of the local jurisdiction, if there is no suspension of the mere territorial circulation is identified as a tax on the import or export, thus becoming an internal customs. Apart from these assumptions, the provinces are constitutionally qualified for establishing direct or indirect taxes, having to abide, obviously, by the constitutional principles that delimit the taxation power".[16]

Conclusion: Until this date there is no constitutional obstacle which prevents the provinces from establishing the tax base with the income from abroad, for which reason such incorporation is nothing but the quantitative expression of a taxable event, whose material and territorial basis lies in the exercise of an activity in those jurisdictions.

6. THE CASE OF EXPORTS

The aforementioned jurisprudential taxability criteria are also applicable to exports. According to Bulit Goñi, from the strictly constitutional viewpoint, the local Treasuries may apply taxes on the activities carried out or the goods produced in its sphere, even though the income to which they are applied may originte in the export of said goods.

Beyond the constitutional validity of taxing the income from the export of goods, it has been the criteria of local governments to refrain therefrom. As stated by Revilla, the nonexistence of constitutional obstacle for taxing income originating from the sale of products abroad, does not prevent the provinces from voluntarily restricting their taxation powers. In this respect, the Supreme Court has said: "…the law in force in the country allows the provinces to conditionally restrict the exercise of their taxation powers, through agreements between them and with the Nation" (Judgments: 191-373).

Thus we may mention the commitment assumed by the nation and the provinces in the "Agreement on tax policy guidelines law", signed on December 3, 1975, wherein all the adhered jurisdictions expressed their intention to adjust the tax on profitable activities (currently Tax on Gross Income) to a scheme according to which the exemptions would have "a very restrictive criterion, but which would be applicable to exports".[17]

With respect to provincial regulations on the subject, the fiscal laws in general establish that exports do not constitute a taxed activity, to then state: "This exemption is not applicable to such related activities as transportation, slinging, stowage, warehousing and every other of a similar nature".

Such taxability of "related" activities is based on the authorization granted by the Nation through the Federal Coparticipation Law, to apply the tax on said part of foreign trade. Up till now, the delegation made through the Federal Coparticipation Law has not been declared unconstitutional and the local authorities exercise taxation powers on said base.

16. *Spisso, Rodolfo R. (2011). Derecho Constitucional Tributario. Quinta Edición. Editorial Abelardo-Perrot. Buenos Aires.*
17. *Revilla, Pablo. Tratamiento de las exportaciones en el Impuesto Sobre los Ingresos Brutos bajo el prisma de la ley de coparticipación federal. Publicado en Álvarez Echagüe, Juan Manuel. (2010). Tributación Local Provincial y Municipal. Editorial Ad-Hoc. Buenos Aires. Página 487.*

In this way, according to the principle of the country of destination, with the sound criterion of not exporting taxes, in order to compete in the international market, the provincial tax codes have endeavored not to subject export transactions to taxation.[18]

The only exception is the Province of Misiones, which according to Law 4.255 repealed article 128, paragraph d), of the Fiscal Code, inasmuch as it considered the sale of products and goods abroad as income not subject to the tax on gross income, which regulation entered into force starting in January 2006.

Regarding the taxability of export of goods, the Province of Misiones filed an inconstitutionality complaint that was brought befgore the Supreme Court of Justice. The High Court discussed the arguments and the conclusión of the Fiscal Attorney was that the case was not within her competency and therefore the process had to be submitted to the local justice, without issuing a decision on the essence of the subject under ligitation.[19]

Conclusion: The provinces except for Misiones and the City of Buenos Aires, refrain from taxing income derived from the export of goods, based on the aforementioned article 9 of Law 23.548 of Federal Coparticipation.

7. ANALYSIS OF ARTICLE 9 OF THE FEDERAL COPARTICIPATION LAW

ARTICLE 9 — Each province will adhered by means of a law that provides:

1. With respect to taxes on gross income, they should abide by the following basic characteristics:

    - Activities related to exports (transportation, slinging, stowing, warehousing and every other of a similar nature) may be taxed;

In this regard, with respect to the scope of the term "may", Revilla stated: "It cannot be understood that it is an authorization granted by the nation to the provinces to tax export- related activities. This would be senseless, since, as the Supreme Court already explained this precept in Judgments 310-45, "… it did not matter to grant a prerogative which the provinces would not have reserved" (according to whereas clause 6 in fine).

"That is, that the provinces had and still have undoubtable constitutional powers to tax export-related activities and no authorization was necessary from the Nation in this respect". And it adds: "On the contrary, it could be stated that this precept includes a consensus among the provinces, with the Nation's guarantee and within the framework of a law agreement that delimits the tax competencies of both state levels".[20]

Bulit Goñi explains that this unique drafting, to make the coparticipation law less assertive and less mandatory than in other parts of its text, responded to the constitutional nature of the eventual obstacles which, at that time, were posed vis-a-vis the provincial intent of taxing export-related activities.[21]

The reason why the treasuries would delimit the issues and specify that even though they

18. *"Las exportaciones y el impuesto sobre los ingresos brutos, a la luz de la ley 23.548 (2° parte). Autor: Almada, Lorena Publicado en: PET (Periódico Económico Tributario) – Abril 2013.*
19. *CSJN. Causa "Henter Industrial y Comercial S.A. y otros c/Provincia de Misiones". (27/12/2006). Fallos: 329-6033.*
20. *Revilla, Pablo. Tratamiento de las exportaciones en el Impuesto Sobre los Ingresos Brutos bajo el prisma de la ley de coparticipación federal. Publicado en Álvarez Echagüe, Juan Manuel. (2010). Tributación Local Provincial y Municipal. Editorial Ad-Hoc. Buenos Aires. Página 488.*
21. *Revilla, Pablo. Tratamiento de las exportaciones en el Impuesto Sobre los Ingresos Brutos bajo el prisma de la ley de coparticipación federal. Publicado en Álvarez Echagüe, Juan Manuel. (2010). Tributación Local Provincial y Municipal. Editorial Ad-Hoc. Buenos Aires. Página 488.*

would grant the benefit to exports as such, it was not extended to the other related activities, had its inspiring origin in judicial conflicts with the invocation of art. 67, paragraph 12 (currently 75, par. 13), and allegation of the nature of accessories to international trade of such activities as the transportation of goods that are to be exported, their slinging, stowing, warehousing, etc.[22]

Therefore, this ítem allows for inferring the prohibition to the provinces of taxing export activities per se. A proof thereof is that the treasuries relinquished the tax, without disregarding, of course, the convenience that exports not be locally taxed, by incorporating within their local legislations, the treatment of exports as exempt, or excluded from the taxable event, or excluded from the base.[23]

Certainly it was not necessary for Law 23.548 to insist on the issue, since all the provinces had given up the collectoin of the tax on these revenues. Nevertheless, instead, it was necessary to clarify the issue discussed then with respect to the related activities. As stated by Bulit Goñi, it may be argued that the restriction to tax income originating from the sale of product abroad has not been expressly included in the tax coparticipation law, but a systematic and reasonable interpretation allows us to conclude that it was not necessary to forbid the tax from being applied to revenues originating from sales abroad, since this had been expressly agreed between all the provincial jurisdictions.

As stated by Dos Santos and Velasco Carabajal, the historical and normative background clearly shows that the decision not to tax exports was established at two levels: a) in each province's local tax legislation, and b) in Law 22.006, upon modifying article 9 of the Coparticipation Law -Law 20.221-, which has been currently maintained in law 23.548. Thus, following approval of Law 22.006, the Secretariat of Finance of the Ministry of Economy, for purposes of horizontal tax coordination and harmonization, established, as guideline to be followed, that the export activity would not be subject to the tax on gross income b6y the provinces, but the related services could be taxed.[24]

When law 22.006, of May 24, 1979 entered into force, none of the provinces taxed the gross income from the export activity. In this way, as Revilla mentioned, if the Province of Misiones adhered to the federal tax coparticipation regime, without limitations or reserves and –based on the standard consensus of not taxing exports- accepted to tax only the income originating from said related services, it cannot thus adopt a behavior that is incompatible with that previous assumed (Judgments: 307-1602; 315-1738).[25]

Revilla added that the decision to tax exports, without previously waiving the regime of law 23.548, also leads to a conflict with the commercial clause of the National Constitution, because if the Nation agreed that exports would not be subject to the tax on gross income and the provinces agreed to said franchise by adhering to the law-agreement, any action to the contrary by one of them also implies going against the federal powers in the regulation of trade.[26]

In this way it is inferred that the Province of Misiones' pretension of avoiding the commitment acquired by adhering to the law-agreement, in order not to tax exports, on the one hand without such attitude modifying or altering, on the other

22. *Bulit Goñi, Enrique G. (1997). Impuesto Sobre los Ingresos Brutos. Segunda Edición. Editorial Depalma. Buenos Aires. Página 99.*
23. *Almada, Lorena. (2013). Las exportaciones y el Impuesto Sobre los Ingresos Brutos, a la luz de la ley 23.548 (2° parte). Publicado en: PET (Periódico Económico Tributario).*
24. *Velazco Carabajal, Aníbal y Dos Santos, Hugo. (2008). Ingresos Brutos a las actividades de las exportaciones. Inconstitucionalidad por violación de una normativa de rango superior. Ley 23.548. Ponencia en el VIII Seminario Internacional de Tributos Locales. Ciudad Autónoma de Buenos Aires.*
25. *Revilla, Pablo, ob. cit., p. 493.*
26. *Revilla, Pablo, ob. cit., p. 493.*

hand, its pretension to collect coparticipating taxes, according to the system for distributing such resources as provided therein, subverts the very essence of the regime provided in the law-agreement and generates inequalities in the application of the distributive fair value to all those involved.[27]

On the other hand, it is to be noted that the precedent of the Supreme Court of Justice in the "Indunor" case (Judgments: 286-301), is not applicable as basis of the Province of Misiones' pretension to tax the exporting activity, because it solved an issue generated in a period prior to the existence of the prohibition to tax the activity (provided in article 9 of the Coparticipation Law), which currently has constitutional rank[28].

In view of this circumstance, and following the noncompetency of the Arbitration Commission to deal with this issue, on July 26, 2006, the Federal Tax Commission received the following proceedings: *file 637/06, entitled "Argentine Industrial Union (UIA) c/ Province of Misiones IIBB on/ exports"; * file 646/06, entitled "Argentine Chamber of the Cosmetic and Perfume Industry (CAPA). Tax on gross income from exports. Annulment of par. d) of art. 128 of law 2860 (Fiscal Code) Province of Misiones"; *file 647/06, entitled "Coordinator of Food Product Industries (COPAL). Tax on gross income from exports. Annulment of par. d) of art. 128 of law 2860 (Fiscal Code) Province of Misiones". This annulment resulted from a letter from the chairman of the Arbitration Commission wherein it is stated: "…given the noncompetency of the Arbitration Commission, this document is sent for the purposes you may deem appropriate". The presentation by the Argentine Industrial Union was addressed to the Undersecretary of Relations with the Provinces, expressing the concern for the reform introduced through said law 4.255. Something similar occurred with the presentations by the Coordinator of Food Product Industries and the Argentine Chamber of the Cosmetic and Perfume Industry for the same purpose: challenge law 4.255. Through resolution 364/2007, the Executive Committee of the Federal Tax Commission given the identity of the matter and the defendant resolved to accumulate files 646/06 and 647/06 to the original cause. Bearing in mind that the entity is obliged to ensure "…strict compliance by the respective treasuries, of the obligations they acquire on accepting this distribution system (art. 11, par. c), law 23.548)", the Executive Committee considered, without expressing itself regarding its competency for discussing the matter, that it must transfer it to the jurisidction involved so that it may exercise the right of defense. As a result, determination of the competency of the aforementioned entity for considering the issue is pending resolution.

27. *Velazco Carabajal, Aníbal y Dos Santos, Hugo. ob. cit.*
28. *Velazco Carabajal, Aníbal y Dos Santos, Hugo. ob. cit.25.*

8. CALCULATION OF REVENUES ORIGINATING FROM EXPORTS: PROVINCES AND MUNICIPALITIES

As previously stated, in general, provincial jurisdictions do not subject export transactions to taxation, thereby resorting to exclusion of the object, others to exemption and still others to noninclusion in the tax base.

According to this treatment, the Arbitration Commission, through article 7 of the General Resolution 1/2008 -former General Resolution 44/93, ratified through General Resolution 49/94 article 7°, Resolution 2/2010-, has determined that income originating from export transactions, as well as the corresponding expenses, shall not be considered for purposes of the distribution of the taxable matter.

This statement does not eliminate the nature of "income" of the exports within the taxpayer's economic activity, which has been ratified by the Plenary Commission[29], but it does allow to conclude that the item under discussion exceeds the concept of "computable income" for purposes of application of the Multilateral Agreement.

Thus, it has been considered that although it is true that the composition of the final tax base for the application of every tax depends on the local legislations and that the treatment given by every State to the taxable amount, is beyond the scope of application of the agreement, one cannot compare the situation of income included or computable for distribution purposes, with those excluded or not computable.

To conclude, with the first ones every State may design the fiscal policy it may consider more appropriate as regards exempt items, bonuses or rates, without the municipalities being restricted to adopt similar criteria by virtue of the regulation of the federal law, because that is beyond the regulation of the agreement. However, one cannot in any way follow the same criterion with the income that was expressly excluded from the matter to be distributed among the adhered parties because this is a decisión that must be taken at the interprovincial regulation level and accordingly obliges the local states.

9. TAXABILITY OF REVENUES ORIGINATING ABROAD WITH THE TAX ON GROSS INCOME: ANALOGY WITH THE PROFIT TAX

As mentioned in the previous chapter, article 9 of Law Nº 23.548 provides that the adherence of every province to the Federal Coparticipation Regime obliges them not to apply by themselves and the administrative and municipal entities of their jurisdiction, whether autarchic or not, local encumbrances analogous to the national ones distributed by said Law among which there is the Profit Tax. Nevertheless, the regulations themselves provide for exceptions, expressly excluding from said analogy the provincial taxes on gross income[30].

In this respect, the Executive Committee of the Federal Tax Commission, in the Executive Committee's Resolution Nº 53/1987, has considered that:

"There is no analogy between it (because of the Profit Tax) and the provincial Tax on Gross Income, bearing in mind that the first one is personal and the second is actual; that the taxable event of the first one is the income obtained from Argentine source and the second is the regular exercise of onerous activities for profitmaking purposes, the tax base of the first is the net income and that of the second the taxed gross income; the rate of the first one is progressive while that of the second is proportional; the first is direct and the second indirect, etc."

That is the reason, according to said Comission, why Law 20.221 expressly excludes the Tax on Gross Income from the assumed analogies that are not permitted.

"That since there is no analogy between the National Tax on Profits and the Provincial Tax on Gross Income, one cannot determine a violation of the coparticipation regime from the eventual analogy that could exist between the latter and the objected municipal encumbrances."

Regardless of this conclusion, it is necessary to highlight that according to the jurisprudential background, the inapplicability of the analogy on the ISIB has not been absolute.

In this respect, it is worthwhile to bring up the case submitted to the CSJN, "Transportes Automotores La Estrella S.A. c. Mendoza, Provincia regarding the unconstitutionality action" dated 06/03/2012, where a declarative action was initiated against the Province of Mendoza, for purposes of declaring the unconstitutionality of the Tax on Gross Income which said local state intended to apply to the interjurisdictional transportation activity carried out by the company, on understanding that it is contrary to articles 31 and 67, paragraph 12, of the National Constitution and the Federal Coparticipation Regime of Law 20.221 and its amendments.

---

29. *Resolución N° 32/2013 (Comisión Plenaria – Convenio Multilateral). Expediente C.M. Nº 953/2011 "Monsanto Argentina S.A. c/Municipalidad de Pergamino, Provincia de Buenos Aires". Recursos de Apelación contra la Resolución C.A. Nº 44/2012, "Esta Comisión reitera que los ingresos por exportaciones forman parte integrante de los ingresos brutos del contribuyente de acuerdo a la regulación del art. 1° del Convenio Multilateral".*
30. *As described by Casás, the analogy is understood to be the procedure aimed at developing in its logical (and axiological) expansion, the ratis legis, to adapt it to several of the anticipated cases, but which are similar to them: procedure known as extensio. It is considred to be based, no longer on a specific identity, but in a correspondence and congruence at the logical basis of the juridical treatment: convenentia rationis. It is not a matter of the identity verified by means of an analytical procedure of confrontation of terms already included in the regulation, but of the identity induced by means of a synthetic procedure of comparison between such terms –which, although diverse, turn out to be similar in the decisive event for the juridical treatment, "sufficient reason", common in both cases, implicit in the unit eadem ratio ibi eadem iuris dispositio. In the case of our coparticipation system, it goes without saying that the analogy may operate even between a national tax and a municipal fee, inasmuch as the latter improperly classified as such, either because there is no actual rendering of the service or it loses all relationship with the direct and indirect costs of the uti singuli public activity. Casas, J. O. (2007). Coparticipación y Tributos Municipales. Las Tasas apócrifas y la prohibición de analogía. Editorial Ad-Hoc.*

In this case the Supreme Court of Justice of the Nation concluded that since the income of the carriers who were the plaintiff was subject to the Profit Tax Law 20.628 and amendments, the application of the provincial Tax on Gross Income had the configuration of the double taxation hypothesis, contrary to the basic principle consisting of the prohibition to maintain or establish local taxes on the taxable matter subject to coparticipative national taxation, by virtue of articles 31 and 75, paragraph 13 of the National Constitution.

It adds that the Tax on Gross Income which a province endeavors to apply to a provider of the interjurisdictional public transportation service is not valid, if it was determined that the rates had been set by the national authority, without considering the cost of the encumbrance among the elements and as long as the carrier pays the Profit Tax.

On the other hand, there are Court precedents which annulled the Tax on Gross Income that was intended to be applied to the providers of an interjurisdictional public transportation service in those assumptions in which it noted that the pertinent rates had been set by the national authority, without considering among the cost elements the tax on the provincial gross income and that the provider was a taxpayer of the Profit Tax.[31]

Thus it was maintained that when the provincial tax on gross income is not transferrable[32] because it is not considered in the price set through official rate, its assessment leads it to be inexorably borne by the taxpayer, in which hypothesis the encumbrance is excluded from the provision of article 9, ítem b, fourth paragraph, of Law 20.221 (text according to Law 22.006, amended by Law 23.548), and framed within the second paragraph of the same article, whose text included the basic pinciple which the legislator favored and which consisted of the prohibition to maintain or establish local taxes on the same taxable matter subject to coparticipative national taxation.

Thus, in relation to the aforementioned judgment, and with respect to the transfer of taxes, it has been understood that the application of the provincial tax on gross income on having to be exclusively borne by the companies authorized to provide the public transportation service, would accordingly result in a decrease in profitability of the business, thus affecting the companies' net worth.

Some authors believe that the inability of transferring the tax burden, as seen in the previously examined jurisprudential cases, affects the constitutional principles of the taxpaying capacity, nonconfiscation capacity, equity (by establishing discriminatory treatment with respect to individuals with the same payment capacity, but with the possibility of transferring the tax) and neutrality of the encumbrance with respect to the economic decisions of the taxed individuals. And from the economic standpoint, these inconveniences generate increase in the transaction costs, thereby negatively affecting tye the competitiveness and efficiency of the economy as a whole.[33]

31. *Fallos: 308:2153; 311:1365; 316:2182; 316:2206; 321:2501; 328:4198; 330:2049 y causas T.166.XXXIV "Transportes Automotores La Estrella S.A. c. Neuquén, Provincia del s/ acción declarativa", sentencia del 1° de diciembre de 2009; S.463.XXXIV "Sociedad Anónima Expreso Sudoeste c. Buenos Aires, Provincia de s/ acción declarativa" y T.167.XXXIV "Transportes Automotores La Estrella S.A. c. Mendoza, Provincia de s/ acción declarativa", antes citadas.*
32. *Habitualmente se llama traslación al fenómeno mediante el cual un sujeto incidido por un impuesto traslada a otro la carga económica que el tributo comporta. Fernández, Luis Omar. La Traslación de los Impuestos. FCE/UBA.*
33. *Ferullo Claudio, Grecchi Ana María y Vitta José María. (2007). Incidencia económica de la legislación impositiva y su vinculación con los principios de la tributación en el Impuesto Sobre los Ingresos Brutos. Duodécimas Jornadas Investigaciones en la Facultad de Ciencias Económicas y Estadística. Instituto de Investigaciones Teóricas y Aplicadas, Escuela de Contabilidad.*

It is worth highlighting that although in the case analyzed the Supreme Court has circumscribed the application of the "analogy" only in activities with determination of oficial rates, the truth is that it allows the possibility for classifying in specific cases the prohibition of encumbering certain taxable events with the ISIB.

According to the Federal Tax Commission in Judgment N° 27/2007, the criterion for defining analogous taxes is not established in the law, for which reason it has been left to the interpretation by said organization. The following analysis is made in said Judgment:

"In our opinion, the analogous nature of the encumbrances must be established according to the function of taxes in the respective tax systems. This thesis was upheld by the Federal Constitutional Court of Germany on interpreting article 105.2.a.of the 1949 Constitution as forbidding the Federal States to establish taxes on consumption and local expenditure for pure luxuries that may be equal to others regulated by the Federation".

"In fact: the power of the tax legislation is distributed between the Federation and the States in the Federal Constitution (art. 105 GG). The Federation has the exclusive right to enact the tax legislation relative to consumption taxes and on financial monopolies as well as the right to enact concurrent legislation for any other type of tax. The states only have taxation power in the legislation concerning internal local taxes and the selling rates."

"The states cannot use the same type of taxes established by the Federation. The state taxes cannot be similar to any federal tax. Since the distribution of normative competencies deals with direct as well as indirect taxes, the Federation and the states may observing this constitutional regime use direct or indirect taxation. The states cannot encumber tax events which have already been taxed by the Federation, provided that federal taxation is according to legality."

It was well stated by Dino Jarach in his Bill for the 1967 Federal Investments Council:

"The problem to be solved consists of determining which are the provincial or municipal taxes or encumbrances that may infringe the unification system. The gathering of the regimes in force into a single one advises the adoption of a general concept. One has observed in the concept already used by Law 14.788, and which in turn is derived from Law 12.956 with some modification intended to make it more flexible or, that is, the prohibition to unify taxes that are analogous to the national ones. However, this general concept may lend itself to interpretative difficulties and the experience of past years, thus shows it. That is why interpretative norms were sought for inclusión in the very legal text to facilitate the specific task to be faced in the future by the judicial or administrative authorities that will apply the system; initially, the provincial legislative bodies that must comply with the obligations agreed."

Now then, the Bill tends to illustrate what is meant by analogous taxes: namely those wherein any of the following circumstances occurs:

1. Substantial coincidence in the definition of the taxable events. This coincidence may be partial in the sense that the taxable events of the local taxes are broad and comprise in their concept the taxable events of the unified taxes; or else, it may be more restricted, in such a way that the taxable events of local taxes are included in the broader definition of the taxable events of national taxes.

2. In spite of the different definitions of the taxable events, the measurement bases are substantially the same. In other words, the same magnitudes are used, such as, for example, value of the asset of the net worth, amount of sales, subscribed capital, earnings, gross or net income. The perfect identity of tax events or bases is not required,

but rather a substantial coincidence. This has as a consequence that the interpreter must examine case by case, in spite of these interpretative norms. But, I repeat, in my opinion it is useless to try to eliminate the interpretative problems on this matter.

3. Also added is the complementary criterion that the identity of the taxpayers or those responsible is not relevant, in order to establish the analogy of taxes, provided there is the substantial coincidence of taxable events or bases of measurement, or with a greater reason, both of them. For example, if a local tax encumbers the sales of products of the country, the analogy with the national tax on sales is not excluded, because of the fact that the taxpayer of the local tax is the buyer, with the seller being responsible or not for the tax, while in the national tax the taxpayer is the seller.

It was thus that in the Bill, article 10, ítem b), second paragraph Dino Jarach proposed the following wording:

"Notwithstanding the evaluation of the particular circumstances of each case, it will be understood that local taxes are analogous to the unified national ones when any of the following hypotheses is verified: substantially coinciding definitions of the taxable events or broader definitions comprising the taxable events of national taxes or more restricted ones that are included within these, although different measurement bases may be adopted an, likewise, in spite of a different definition of the tax bases, adoption of substantially equal measurement bases. The fact that the taxpayers or those responsible for the taxes do not coincide will not be relevant for rejecting the analogy, provided that there is total or partial substantial coincidence of taxable events or measurement bases."

On the other hand, in the case of Pan American Energy LLC. Sucursal Argentina c/ Chubut, Provincia del and another (National State) regarding declarative action CSJN, Judgments, P. 2738. XXXVIII., 19/06/2012, the Prosecutor stated:

"The analogy concept of the law-agreement in force undoubtedly constitutes the technical-juridical mechanism which is the pivot of the coparticipation regime, inasmuch as it tends to avoid double or multiple internal taxation, within our form of Federal State, as provided in article 1 of the Magna Carta.

For an adequate approach to this matter, I must recall that although the 1994 constitutional reform clearly expressed the concurrence of the Nation and the provinces as regards the power for establishing indirect taxes (art. 75, item 2), this matter had been definitively solved in our positive law following V.B. judgment of September 28, 1927, regarding "Sociedad Anónima Mataldi Simón Limitada versus the Province of Buenos Aires, for repetition of tax payment" (Judgments: 149:260). Accordingly, the constitutional reform was only limited to further clarify this possibility. Accordingly, I insist, we are not discussing here that the Nation as well as the province have concurrent powers with respect to indirect taxation, but, rather, precisely, the determination of the limits which the jurisdictions have imposed on themselves through the intrafederal pact of law-agreement 23.548.

Therefore, it is necessary to determine the scope of the "analogy" concept linked to the tax coparticipation system, and I believe it should begin by indicating that it was the result of a coherent legislative evolution. Although laws 12.139, 12.956 and 14.390 established as obligation assumed by the adhered provinces the non-application of local encumbrances "of a nature similar to those involved" in the system (art. 4, item 1, law 12.956), or of not encumbering by way of tax, rate, contribution or other tax, the taxable matters subject to national internal tax (art. 9, item b), its appearance occurred recently with the approval of law 14.788 (art. 8, item b) and as of that time, it continued to be received through laws 20.221 and the one currently in force.

Beyond the acceptance which the term "analogy" may have in our code of laws in general, here it is necessary to determine it not only for tax purposes, but for those more specific ones which are the objectives pursued by the coparticipation law, as regards avoiding double or multiple internal taxation, illegality which was precisely denounced by said Court in the previously mentioned precedent of Judgments: 149:260.

I believe that Dino Jarach's opinion expressed when drafting the Bill on the Tax Unification and Distribution Law (Provincial coparticipation in national taxes, Chapter II, publication of the Federal Investment Council, Buenos Aires, 1966, page 183 and subsequent ones) acquires particular relevance in this sphere.

By means of these words, it seems essential that in our law 23.548 the analogy does not require a complete identity of the taxable events or taxation bases, but rather a "substantial" coincidence.

Such interpretation explains, in my opinion, why the very legislator left outside the sphere of prohibition of the analogy, although circumscribed to specific matters and to more or less strict rules, the taxes on real estate, on ownership of automobiles, gross income, stamps and the free transfer of properties (third paragraph, in fine, item b, of art. 9 of the coparticipation law)."

Subsequently, the Supreme Court of Justice of the Nation, adhering to the terms of the Prosecutor's Judgment, indicated:

"That the concept of analogy included in law 23.548 undoubtedly constitutes the technical-juridical mechanism that serves as basis of the tax coparticipation system, inasmuch as it tends precisely to avoid the indicated internal double or multiple taxation within the framework of our federal form of State.

Accordingly, as precisely observed by the Prosecutor in her judgment what is being precisely discussed here is the determination of the limits which the jurisdictions have imposed upon themselves through the intrafederal pact implied in the law-agreement in force.

That the scope of the "analogy" concept linked to tax coparticipation is the result of a normative evolution in time.

Although laws 12.139, 12.956 and 14.390 set as obligation assumed by the adhered provinces the non-application of local encumbrances "of the same nature of those involved" in the regime (article 4, ítem 1, law 12.956) or not encumber with tax, fee, contribution or other tax, the taxable matters subject to national internal tax (article 9°, item b), its express inclusion in the legal text occurs following the approval of 14.788 (article 8, item b) and, as of that moment, it continues to be received according to law 20.221 and the one currently in force.

The meaning of the concept must be focused on those more specific purposes which are the objectives pursued by the coparticipation law, as regards avoiding double or multiple internal taxation, which issue was certainly observed by the Court in the well-remembered precedent of Judgments: 149:260.

Which as noted by the Prosecutor according to these interpretative categories, in the regime of law 23.548 the analogy does not require a complete identity of taxable events or taxation bases, but rather a "substantial" coincidence. Such criterion explains why the legislator himself left outside the sphere of prohibition of the analogy, although circumscribed to specific matters and to more or less strict rules, the taxes on real estate, on ownership of automobiles, on gross income, on stamps and the free transfer of properties (third paragraph, in fine, item b, of article 9 of the coparticipation law).

Conclusion: Following Dino Jarach's doctrinal line, only substantially coinciding definitions of the tax bases and adoption of substantially equal measurement bases will prove the presence of an "analogous" tax.

As for the Profit Tax, in general it encumbers all the profits obtained by persons of visible or ideal existence, including yields, income or enrichments of a periodicity that implies the permanence of the source that produces them and its qualification.

On the other hand, the Tax on Gross Income encumbers the regular exercise of onerous activities, carried out in each of the local jurisdictions, regardless of the result achieved and the nature of the individual carrying it out.

As described, the conditioning element for the establishment of the taxable event is, on the one hand, the "profit" and on the other, the "activity". From there it follows that activities may be taxed even though there is no profit, there being a diametrically diverse structure in the constitution and configuration of the taxable event.

The gross income concept is broader than that of profit, income or benefit. This means that whenever the gross income of a taxpayer is encumbered, one will be indirectly encumbering the taxable matter that is the object of the profit tax.

In the particular case of the taxability of income from abroad, the Profit Tax provides that profit from a foreign source is that originating from properties economically situated, located or used abroad, from any act or activity carried out abroad which is susceptible of producing a benefit or from events occurring outside the national territory.

In the case of ISIB, the conditioning element for purposes of taxing income from abroad, is for the taxable activity or event to be configurated within the limits of the local jurisdictions. At this point, it would not enter into conflict with the taxability of profits from activities capable of producing a benefit outside the national territory.

With respect to events that have occurred outside the national territory, as stated in the description, the issue is more conflictive, inasmuch as every income from abroad obviously originates from an event occurring outside the national territory, which would in principle confirm a substantial analogy in taxation.

On the other hand, the problem of establishing that such an element is "substantially coincidental", is faced with the situation that the Profit Tax encumbers all of a taxpayer's income including income from a foreign source, which originates from events outside or inside the national territory, articles 5 and 127 T.O. Decree 649/97.Thus, according to such reasoning, all the variations of the tax on gross income legislated in all of the Argentine provinces, as well as all municipal taxes that use such gross income as tax base, would weaken the coparticipation regime, which in practice would turn our to be unreasonable.

10. DOUBLE TAXATION: INTERNATIONAL TRANSPORTATION

Conceptually, "double or multiple taxation is meant to be when the taxpayer is taxed two (or more) times, for the same taxable event, in the same time period and by two (or more) individuals with taxation power".[34]

As it has been mentioned, with respect to taxes on gross income, these should be adjusted to certain basic characteristics, as provided in the Federal Coparticipation Law. Article 9 states: with respect to international transportation provided by businesses established abroad,

34. *García Vizcaíno, Catalina. (1999). Derecho Tributario. Segunda Edición. Editorial Depalma. Buenos Aires. Página 211.*

in States with which the country has signed or signs agreements or conventions to avoid double taxation on the matter, from which it may arise on the condition of reciprocity that the application of encumbrances is only reserved to the country where the companies are established, the tax cannot be applied.

In this respect, it is worthwhile to bring up the case of British Airways PLC Sucursal Argentina c/ GCBA s/ repetition (article 457 CCAYT), with judgment from the Chamber of Appeals in relation to Action under Administrative and Tax Law of the Autonomous City of Buenos Aires, Court/Tribunal: II, of March 7, 2013).

It considered exempt from the payment of Tax on Gross Income, the company's main activity which is international air transportation of passengers and cargo and it was ordered that the money received by the defendant during the periods claimed be recovered, in view of the application of article 9 of the Federal Coparticipation Law.

It was noted that double taxation occurs by the mere pretension of several entities to tax the same event or activity of the same taxpayer, regardless of whether or not it may have paid such encumbrances and although this is not in itself unconstitutional, the adherence of the City of Buenos Aires to the Federal Coparticipation Law through Act Nº 4, implied a self-limiation to its power of encumbering taxable matters subject to co-participative national taxation.

It adds that through the application of article 9 of the Federal Coparticipation Law, one must render effective the limitation imposed therein, inasmuch as there is an Agreement entered into by Argentina and the United Kingdom of Great Britain to avoid double taxation on tax matters which was incorporated to our legislative pyramid through Law Nº 24.727 which provides for the nontaxability by the local Treasury of the international air transportation of passengers and cargo, when it is carried out by a company established in the foreign co-contracting country

With respect to the subject of interest to us, it is concluded that mention of the Tax on Gross Income is not necessary to understand that the Treaty in question is applicable, since the Federal Coparticipation Law does not provide for such requirement, but rather refers to the application of encumbrances reserved for the State of origin of the transportation Company, in order to comply with the reciprocity condition.

Conclusion: We understand that the application of the ISIB to the international transportation activity implies an assumption of double taxation forbidden by Law N° 23.548, provided that one verifies the existence of an agreement or treaty signed with a country of origina that establishes the exemption, regardless of the nature of the tax, it being sufficient to configurate compliance with the reciprocity condition referred to in article 9 of the Federal Tax Coparticipation Law;

11. CONCLUSION

- The effect of the respective tax coparticipation laws, along with mentioning the right of participation in the distribution by the provinces, has established certain commitments for them, on obliging themselves and through the municipalities not to apply local taxes that are similar to the national ones distributed by the Law. The aforementioned prohibition has exceptions, among which there is the Tax on Gross Income.

- Said tax only covers those activities carried out wholly or in part within the physical sphere of the jurisdiction that imposes it; that is, only the

35. *Bulit Goñi. "Impuesto sobre los..." cit. Página 57.*

activities carried out within said jurisdictions are subject to the encumbrance.

- Another element to be taken into account is to measure, for purposes of the ISIB assessment, the taxable events. The tax base arises, then, from the need to transform the taxable event into an economic expression in order to apply the corresponding rates on said amount and thus definitely determine the quantum of the tax or amount of payment which the entity may request and which the taxpayer must comply with.[35]

- The principle of territoriality of the Tax on Gross Income is only applicable on the taxable event, and not on its tax base. The law specifies that the activity must be carried out in the local jurisdictions, but does not provide anything regarding the territoriality of the revenues. It is also thus stated by the Law of Federal Coparticipation which serves as normative framework for its regulation: "For determining the tax base one will take into consideration the gross revenues earned in the fiscal period".
- We believe that the gross revenues only represent the object of measurement or the tax base, for which reason, for purposes of taxation, it would suffice that the activity be carried out in the territory of the provinces, regardless of the place of origin of the revenues generated. An example of this is that the very Multilateral Convention Law splits the configuration of the taxable event with the powers of the tax base among the jurisdictions, by means of the determination of a distribution coefficient, which many times does not agree with the total revenues actually obtained in each one of them.

- Up till now there is no constitutional obstacle which prevents the provinces from integrating the tax base with income from abroad, for which reason such incorporation is nothing but the quantitative expression of a taxable event, whose material and territorial support is in the exercise of an activity in said jurisdictions. CS, "Indunor SA" 13/9/73 and "Moos, Elías, SA c/ Pcia. De Buenos Aires" (28/11/78, ED 82-475)

- In the case of exports, although from the strict constitutional viewpoint local Treasuries may apply taxes to the activities carried out or goods produced in their sphere, the local governments have refrained therefrom. With respect to the provincial regulations on the subject, in general fiscal laws provided that exports do not constitute a taxed activity, to then state: "This exemption is not applicable to related activities such as transportation, slinging, stowing, warehousing and every other of a similar nature".

- The taxability of the "related" activities is based on the authorization given by the National thorugh the Federal Coparticipation Law to apply the tax on that part of foreign trade. UP till now, the delegation made through the Federal Coparticipation Law, has not been declared unconstitutional and the local authorities exercise tax powers on this base.

- The application of the ISIB to the international transportation activity implies an assumption of double taxation forbidden by Law N° 23.548, provided there is an agreement or treaty signed with a country of origin that provides for such exemption, regardless of the nature of the tax, it being sufficient to configurate compliance with the reciprocity condition referred to in article 9 of the Federal Tax Coparticipation Law;

- With respect to the integration of the tax base of the ISIB with income from abroad, Law 20.221 expressly excludes the Tax on Gross Income from the assumptions of analogies not allowed, including the Profit Tax. On establishing such elements as "substantially coinciding", one faces the situation that the Profit Tax encumbers all the revenues of a taxpayer among them the income from a foreign source, which is produced by events outside or within the national territory,

articles 5 and 127 T.O. Decree 649/97-, thus according to such reasoning, all the variations of the tax on gross income legislated in all of the Argentine provinces, as well as all the municipal taxes that use as tax base such gross income, would affect the coparticipation regime, which in practice would turn out to be unreasonable.

12. BIBLIOGRAPHY

Almada, Lorena. (2013). Las exportaciones y el Impuesto Sobre los Ingresos Brutos, a la luz de la ley 23.548 (2° parte). Publicado en: PET (Periódico Económico Tributario).

Althabe, Mario Enrique. (2008). El Impuesto Sobre los Ingresos Brutos. Tercera Edición Actualizada. Editorial La Ley. Buenos Aires.

Álvarez Echagüe, Juan Manuel. (2010). Tributación Local Provincial y Municipal. Editorial Ad-Hoc. Buenos Aires.

Bulit Goñi, Enrique G. (1997). Impuesto Sobre los Ingresos Brutos. Segunda Edición. Editorial Depalma. Buenos Aires.

Casas, J. O. (2007). Coparticipación y Tributos Municipales. Las Tasas apócrifas y la prohibición de analogía. Editorial Ad- Hoc.

Ferullo Claudio, Grecchi Ana María y Vitta José María. (2007). Incidencia económica de la legislación impositiva y su vinculación con los principios de la tributación en el Impuesto Sobre los Ingresos Brutos. Duodécimas Jornadas Investigaciones en la Facultad de Ciencias Económicas y Estadística. Instituto de Investigaciones Teóricas y Aplicadas, Escuela de Contabilidad.

García Vizcaíno, Catalina. (1999). Derecho Tributario. Segunda Edición. Editorial Depalma. Buenos Aires.

Jarach, Dino. (1982). El hecho imponible. Teoría General del Derecho Tributario Sustantivo. Tercera Edición. Editorial Abelardo-Perrot.

Jarach, Dino. (1996). Finanzas Públicas y Derecho Tributario. Editorial Abeledo-Perrot. Buenos Aires.

Spisso, Rodolfo R. (2011). Derecho Constitucional Tributario. Quinta Edición. Editorial Abelardo-Perrot. Buenos Aires.

Tejerina, Jorge. Nuevas Consideraciones sobre el Impuesto Municipal a las actividades lucrativas. Derecho Fiscal. XVI – 2097217.

Velazco Carabajal, Aníbal y Dos Santos, Hugo. (2008). Ingresos Brutos a las actividades de las exportaciones. Inconstitucionalidad por violación de una normativa de rango superior. Ley 23.548. Ponencia en el VIII Seminario Internacional de Tributos Locales. Ciudad Autónoma de Buenos Aires.

Electronic References

Institutional and official Web site of the Supreme Court of Justice of Argentina.

Official Site of the Supreme Court of Justice of the Province of Buenos Aires.

Official Site of the Arbitration Commission of the Comarb Multilateral Convention.

TOWARDS A CONTRACTUAL MODEL OF THE CORPORATE GROUP CONCEPT

Manuel José Castro de Luna

SYNOPSIS

This paper discusses the need to reach a basic agreement about the definition of “group of companies” as a reality existing in the economic life and focus of legal economic interests, which sometimes overlap and contrast or contradict the entities that integrate them. They are still a “strange” or “abnormal” figure of our legal system, which partially regulates it in each of its legal categories.

The Author: *Degree in Law. State Tax Inspector. Technical Team of Finance Ministry. Master in Public Administration from the University-Menéndez Pelayo and the International and the National Institute of Public Administration. Professor of the School of Public Finance. Speaker at the Master’s Degree in Public Administration, Public Policy and Taxation at the National University of Distance Education, UNED.*

- ***Article based on the normative of December 31, 2014.***

Content

It is noteworthy that even if the group of companies as reality is fully accepted in the economic and legal life of our country, we do not have a clear legal concept or legal definition. The "group of companies" is still not totally accepted by our legal system, which approaches it in a biased and fractional manner, not only in the different branches of the legal system, but also within each of them, by establishing different concepts of the group, according to the perspective from which it is addressed . There is no legal certainty about what deserves to be considered as a group, and it may not be considered as such for the purposes of corporate tax or the value added tax.

That is why I consider convenient to reach a minimum consensus and definition about what should and should not be considered as a group of companies, without leading us to a unique concept. In this article we consider the different definitions of group that exist in our law, highlighting the similarities and differences between them, to finally consider the experience of some neighboring countries, as a guiding tool in the search for a clear concept or definition.

1. ECONOMIC CONCEPT OF GROUP OF COMPANIES

Our daily activities show the constant presence of groups of companies or economic partnerships in the economic life. The economic agents find many advantages to associate their purposes in favor of a common goal: to achieve the maximum profit for their activities. Such advantages may be market positioning, or logistical, financial, and fiscal advantages, as we will see.

However, a systematic regulation of the group of companies' concept continues to lack in our country's regulation. There are only partial regulations considering it, such as Article 42 of the Code of Commerce[1]; in Articles 64 to 82 of the Consolidated Corporate Tax Law approved by RD L 4/2004 of March 5; Articles 163 of Law 37/1992 on Value Added Tax of December 28. There are various other laws, none of which has established a comprehensive legal regime. It is also noteworthy that none of the existing sectorial regulations refers to the concept or definition already existing in another legislation, or even in the same sector of the system, as in the case of CT and VAT. In short, we have a concept of group of companies for the purpose of the obligation to prepare consolidated financial statements, another for the purposes of the income tax, and another for VAT purposes.

1. *It was the Law 19/1989 of July 25, the partial reform and adaptation of commercial legislation with EU directives on companies, which first introduced the concept of group of companies.*

In other situations, the jurisprudence has been able to fill this loophole, developing a concept and associating legal consequences to the existence of groups of companies. This is the case in the field of labor law.

Based on the economic reality, we can highlight that corporate groups always present two characteristics:

- **Legal plurality,** as though in some regulations the group is recognized as such, as subject of rights and obligation (this is the case, as we shall see, for income tax and Value Added tax purposes) but its legal corporate identity is not recognized, although its components are the ones that hold such corporate identity.
- **Economic Unity,** i.e., unity of goals or purposes. In other words, subordination of the particular interest of the members to a "common good".

The doctrine agrees on both aspects and defines the group of companies as "the grouping of two or more companies in one economic unit"; or as "a plurality of separate legal entities under one power only"[2]. Another definition is "a set of entities that are related to each other through corporate relationships, by owning shares of a company in the capital of other companies. From a business point of view, even if all of them are legally independent, they act as an economic unit as a result of the influence, control or dominance that one company has over others"[3].

2. CONCEPT OF GROUP OF COMPANIES FOR COMMERCIAL PURPOSES[4]

The Law 19/1989, of July 25, partially reformed and adapted the commercial legislation on corporate matters to the Directives of the European Economic Community. It introduced Article 42[5] of the Code of Commerce in our law for the first time: the requirement to consolidate the financial statements and a management report. Here there is no definition of the group of companies, but only a number of assumptions to submit the consolidated financial statements. Such assumptions are in force today. In the original text, they were included in the original drafting as a closed list, unlike the wording in force today, which provides for an open list, by establishing that: "control will be presumed to exist". It also did not include the presumption of control established in the present article 42.1.d, stating that "this situation is presumed when most members of the board of the acquired company are members of the board or senior managers of the dominant company or other dominated by it .... ". Also in Law 19/1989, the dominant company was required to be a partner of the dominated one by providing that "it is mandatory for all corporations to prepare the annual accounts and consolidated management report (...), if, as a member of another company, "the assumptions that require consolidation are present". On the other hand, the current wording of article 42 allows being able to reach the majority of the voting rights of the dominated company, through agreements with third parties; without being specific, although the status of the dominant partner will be the common base for the assumptions.

2. *MANÓVIL, Rafael M. Grupo de Sociedades en el Derecho Comparado. Abeledo Perrot Editorial. Buenos Aires, Argentina. 1998. Pg 155; tomado de RUEDIN Roland. Vers un droit des groupes de societés. Societé suise des juristes, Helbing and Lichtenhahn Verl., fascicule 2, 1980.*
3. *Definition taken from Memento Consolidated Group 2010, Pg 1. Editorial Francis Lefebvre.*
4. *LIRA, Mónica. El concepto de grupo de empresas en el Derecho español. Ediciones Deusto. Referencia nº 3334.*
5. *See original wording of article 42 of CCo.*

In 2003, through the Law 62/2003 of December 30, on fiscal, administrative and social measures, there is a change in the definition of the group for the purposes of consolidation, which are going to be based on a single management unit. This is provided in the new wording of Article 42[6] of the Code of Commerce, which states: "a group exists when several group companies constitute a unit of decision". It then establishes that "it will be assumed that there is a decision unit" on the same assumptions on which the previous legislation established the obligation to consolidate, but with the difference that it opens the door to the decision unit in cases other than those listed. It also introduces the single management unit concept, as one of the assumptions on which such decision unit is presumed, and as the current regulation, this decision unit is presumed to exist "when most of the members of the board of the acquired company are board members or senior executives of the parent company or another dominated by it." By leaving the door open so the decision unit outside the cases listed could be proven, the group concept was much broader than in the previous legislation, since it "horizontal or coordination groups" concepts are now possible, in which such unity could be achieved by contract decision and by assumptions determined by financial or technological dependence. Against this concept, we can mention its lack of definition, since although there would be cases in which such decision unit was evident, it would not be the same in many others, since the concept is an indeterminate legal concept.

It was precisely the criticism of legal uncertainty that prompted the new reform of Article 42 of the CCo[7] via Law 16/2007 of July 4, reforming and adapting the commercial legislation on accounting matters for international harmonization based on the regulations of the European Union, which regulations are still in force. With the new wording, "the decision unit" is abandoned as the focal point of the group of companies, and be based on the control that a dominant company exerts on the dominated ones, assuming such control when attended an open list of factual circumstances that otherwise are virtually identical to those cases where the previous rules assumed the decision unit. The new wording of Article 42 of the CC seems to omit completely the horizontal or coordination groups, giving instead a place for the so-called Multi-group concept characterized to be a joint management as associated companies, in which one or more of the components of the group exerts a significant influence.

Regardless of the obligation to present or not consolidated financial statements, the group's existence for commercial purposes is expressly recognized by Article 18 of Royal Decree Law 2/2010, of July 2, approving the revised text of the approved Act on Corporations, referring their definition to the provisions of Article 42 of the CCO. This express recognition of the group should serve to interpret and clarify certain rules that, applied in strict terms, frustrate the existence of the group as such and would make impossible the intra-group transactions. We refer in particular to the possibility provided for in art. 204 TRLSC, to challenge the agreements of the General Meeting when "they affect the public interest for the benefit of one or more partners or third parties." In view of this article, one might wonder: Would it be possible to challenge a Board agreement harming a company that adopts it, if it may be beneficial for the group? This Agreement, in the case of groups, would obviously be adopted by the affirmative vote of the parent company, which ultimately decides about the group's interest. If we choose the possibility of challenging such agreements, this would make impossible the functioning of the group, and in addition, we would create the paradox of leaving the company operated by a minority of shareholders. However, we must also bear in mind the interests of minority shareholders and corporate creditors, who must be able to react to social agreements if these adversely affect the interest or assets of the entity.

6. *See Article 42 CCo as worded by Law 62/2003, December 30.*
7. *See current wording of art. 42 of CCo, Law 16/2007, July, 4.*

The same balance of interests should be considered in situations of conflict, which within the governing bodies, is expected in the art. TRLSC 229. That article provides that "managers should communicate ... .Any direct or indirect conflict that they may have with the interests of the company "by providing that" the affected administrator will refrain from participating in agreements or decisions relating to the operation to which the conflict refers to." As for the case of the General Meeting, the legal mandate should also be understood in a way that will not hinder the performance of the group. A literal interpretation would lead the administrators appointed by the parent company to refrain from participating in any decision of the intra-group transactions, leaving again the decisions in the hands of administrators appointed by the minority shareholders.

The Italian Corporate Law stands in the same line, which after the reform of January 17, 2003, applies the so-called "Rozemblum doctrine" Articles 2497-2497, seventh paragraph of the Civil Code. In summary, this regulation states[8]:

1. The parent company control on subsidiaries is legitimate, although this concept is replaced by "activity of direction and coordination."
2. Such activity of direction and control will only determine the responsibility of the parent if it is proved that it acts in its own business interest or otherwise in violation of the principles of the corporate and business management of these companies. In addition, with effective damage to the social benefit or the value of the participation of partners of the dominated one, which is not compensated by the synergies generated by the central management and coordination activity or appropriate compensation measures.
3. The liability towards the creditors is solidarity, external, but subordinate to the non-payment by the dependent company.

Similarly, the conflict of interest that should compel a manager to refrain from participating in the decision-making process should be a personal interest in the issue at stake and not in his capacity as designated by the parent company.

By contrast, in the tax law field, in particular in Article 16.5 of the TRLIS tax law as amended by Law 36/2006, the deduction of expenses is conditioned for services between related entities, not for them to produce an advantage or profit in the group considered as such to produce such benefit or value in the target company individually considered. Thus abandoning any notion of "interest group" as legitimizing budget for the deduction of expenditure.

8. *VICENT CHULIÁ, Francisco. Grupo de sociedades y conflicto de intereses.*

3. CONCEPT OF GROUP IN TAX LAW [9]

In tax law, we also did not find a single group concept that could be used for all taxes. Thus, we find a concept for the purposes of CIT and another for VAT purposes. But indeed, the very concept established for CIT purposes when the tax consolidation regime is regulated is not used as a reference by the regulations included in the TR approved by RDL 4/2004 of March 5, that in numerous articles, for instance articles 11.4 s, art. 12.3.6.7 and art .21 TRLIS tax law, refer to the commercial concept included in Article 42 of the CCO, but not as it is established in the commercial regulation, but by introducing nuances to it. Thus in Article 107 of the CIT Law, which regulates the international fiscal transparency, several references are made to art. 42 CCO, but for purposes of determining the degree of participation necessary for the implementation of such scheme, it states that it requires an equity of 50% and includes the computation of indirect interest to persons or entities related to the purposes of Article 16 of the same law. The example of Article 108 of TRLIS tax law is even clearer, when for the purposes of calculating the turnover, which determines the application of the incentives system for small companies, it determines that the turnover of all entities belonging to a group within have to follow art. 42 CC, "regardless of the residence and the obligation to prepare consolidated financial statements". It specifies that it would also compute in such business figures those companies in which an individual along with their spouses and direct or collateral relatives, reach the majority of voting rights required by the commercial regulation "regardless of the residence of the entities and the obligation to prepare consolidated financial statements." That is, we are reaching a situation in which, not only every area of law has its own definition of a group, but each special regime or article introduces clarifications or exclusions to existing concepts.

3.1. Concept for the purposes of fiscal consolidation

Currently the possibility of being taxed at the consolidated group tax rate is established in Articles 64-82[10], Chapter VII, and Title VII of the special tax regime of Legislative Real Decree 4/2004 of March 5. It approves the revised text of the Corporation Tax Act, as amended by the First Final Provision approved by Royal Decree Law 2/2011 of February 18, to strengthen the financial system.

The first thing to say about the tax consolidation is that it is a voluntary scheme, in which the group is recognized as a taxpayer, that is, as a subject of rights and obligations. Its representation corresponds to the parent company, which also corresponds to pay the tax debt without prejudice to the joint responsibility of all the companies included in the group. This is a beneficial regime, which main advantages can be summarized as[11]:

- Deferred taxation of income generated in transactions between companies in the group. These revenues are eliminated at the time of determining the taxable income of the tax group, because the taxable income are exclusively from transactions with third parties

9. *It has been taken from the reference article of ROMEO IBAÑEZ, Miguel Ángel y GARICANO DEL HOYO, Juan Ignacio, published in Revista Ekonomiaz, nº68, 2º four month period, 2008.*
10. *The tax consolidation regime was introduced in Spanish law by Law 43/1995 of December 27on Corporation Tax. With this, starts the possibility to establish that the group of companies may be the taxable person.*
11. *Lopez SANTACRUZ MONTES, José Antonio, ROS AMORÓS Florentina and ORTEGA Carballo, Enrique. 537. Quote Memento Groups Conso lidados 2011. Editorial Francis Lefebvre.*

- Compensation in the same period of the taxable income obtained by companies of the group with negative tax bases obtained by other companies in the tax group.
- Application of the total tax deductions at group level.
- Exemption from the obligation to withhold and to pay in respect of dividends or shares in profits, interest and other income paid between companies part of the same tax group.

It is Article 67[12] of TRLIS TAX LAW, which defines the composition of the group without establishing a definition for it. Far from the composition as established by corporate legislation, the TRLIS TAX LAW establishes its own composition. Therefore, the group states that the fiscal consolidation purpose will consist of "companies, limited and joint-stock limited by shares and credit institutions[13] referred to in paragraph 3 of this article, Spanish residents formed by a parent company and all its subsidiaries." Precisely the incorporation of credit institutions in an institutional protection scheme as possible components of the group for the fiscal consolidation purposes has prompted the reform of Article 67 of the TRLIS tax law

Then paragraphs 2 and 3 of art. 67 of TRLIS tax law define what should be understood as a parent company and subsidiary, basing these definitions in the control exercised by the first over the second, control based on a participation in the capital that must achieve 75% or 70 %, if in this last case, the companies' shares are traded in a secondary market[14].

However, and without having to achieve the above mentioned percentages of participation, the paragraph 3 of Article 67 of TRLIS tax law provides that: "this same consideration will be given to credit institutions in an institutional protection system which is referred in letter d) paragraph 3 of Article 8, Law 13/1985 of May 25, on Investment ratios, internal resources and obligations of information from Financial Intermediaries. As long as the main entity of the system is part of the tax group and is sharing 100% of the results of the system members and the mutual commitment to solvency and liquidity between such entities reaches 100% of the funds of each one of them. Such requirements are considered fulfilled in those institutional protection schemes through which central entity, directly or indirectly, several savings banks in a concert manner engaged exclusively its objective as credit institutions, as provided in paragraph 4 of Article 5[15] of Royal Decree-Law 11/2010 of 9 July on governing bodies and other aspects of the savings banks legal regime. "

The Royal Decree Law 2/2011 of February 18, to strengthen the financial system has also been introduced in the TRLIS tax law the Thirty-Third Transitional Provision. It sets January 1, 2011 as the date from which the integrated entities in an institutional protection system may be taxed in the tax consolidation regime. It includes in it "the companies which fulfill the conditions laid down in Article 67.2a) of this Law. When their representative shares of capital stock have contributed to the central entity in compliance with the system integration plan and if this entity holds its participation until the end of the tax

12. *See Art .. 67 TRLIS approved by RDL 4/2004 of March 5.*
13. *This refers to the credit institutions in a comprehensive protection system that letter d) of the third Article 8 of Law 13/1985 of May 25 on investment ratios, own resources and reporting obligations of financial intermediaries.*
14. *In the original wording it was understood by dominant company a direct or indirect ownership of at least 90% of the share capital of another or others. This percentage has been declining over the years. So, as from January 1, 2002, Law 24/2001 of December 27, reduced to 75%. For tax periods beginning on or after January 1, 2010 the first disposal. Four Law 11/2009 of October 26 reduced it to 70% , "if it is companies whose shares are admitted to trading on a regulated market ". Finally the third final provision, one of the Law 2/2010, of March 1, with effect from January 1, 2010, this percentage reached in the case of indirect interest held by companies listed on a regulated market.*
15. *Original wording of art.5º of Royal Decree-Law 11/2010 of July 9.*

period, through operations benefiting the tax regime established in Chapter VIII of Title VII of this Law. They can be also provided in Article 7.1 of Royal Decree-Law 11/2010 of July 9, of governing bodies and other aspects of the legal regime of savings banks, and that they had the consideration of subsidiaries of the credit institution because the latter entity is taxed in this regime as the parent company. "

It also provides in item 3 that "In the case of indirect exercise of the financial activity of savings banks according to the provisions of Article 5 of Royal Decree-Law 11/2010, of July 9, governing bodies and other aspects of the legal regime of savings banks. The savings bank and the bank to which all its financial business contribute, may apply to the tax consolidation regime regulated in Chapter VII of Title VII of this Law from the beginning of the tax period corresponding to the period in which such contribution is made, as long as the requirements in Article 67 of this Law are fulfilled."

The above articles and the doctrine of the Directorate General of Taxes must be interpreted in light of the recent Judgment of the European Court of Justice of June 12, 2014 , Joined Cases No. C-39/13, C-40 / 13 and C-41/93. It states that "arts. 49 and 54 of the Treaty on the functioning of the EU must be interpreted as opposed to a Member State legislation under which a resident parent company may constitute a single tax entity with a resident subsidiary if it controls it through one or more resident companies, but not if it controls it through non-resident companies without permanent establishment in that Member State. Furthermore, the aforementioned items must be interpreted as precluding legislation of a Member State under which a single fiscal unity regime is granted to a resident parent company that controls certain resident subsidiaries, but excluding sister companies residents whose common parent company has not its registered office in that Member State nor has it with a permanent establishment". Therefore, it must be allowed, that participation in the companies of the group is reached indirectly through non-resident companies in the Spanish territory.

In turn, Article 67.4 of the TRLIS tax law establishes a series of circumstances, which prevent group membership, namely:

a. Being exempt from this tax.[16]
b. That at the end of the tax period they are in situation of insolvency, or in financial position under Article 363.1.d) of the Consolidated Companies Act, approved by Royal Decree 1/2010 of July 2, even without being corporations, unless before the end of the year in which the annual accounts are approved this situation had been overcome[17]. Such exclusion is justified "from the time this tax regime is taxing the group as an economic unit, to the extent that the parent company exercises control and decision-making on dependent ones[18]."Such decision power is lost in the necessary insolvency, and is suspended in voluntary insolvency; therefore, entities in such situation should not be included within the limits of the group.

16. *The Consultation 1489-2002, DGT 4/10 states that exempt companies, which cannot be part of a group of companies, are entities exempt from art. 9 TRLIS, so Venture Capital companies, which enjoy an exemption of 99%, can be part of it.*
17. *In order to interpret the cause of exclusion in the art. 67.4.b) the following consultation of the Directorate General of Taxes (hereafter DGT) V0804 / 11 29/03 should be considered . The consultation of the Institute of Accounting and Accounts Auditing (ICAC) See 4 BOICAC nº79 of 01/09/2009, regarding the accounting treatment of cancellations of appropriations between the parent company and subsidiaries companies. Also the interest from the criterion of TEAC resolution of July 25, 2007 , (No. Resolution: 00/1435/2004, Third Investigation Board) which declares unlawful the exclusion by the Inspectorate of Finance, of a company belonging to a tax group which was understood as to be affected by any circumstance of dissolution, as "the dissolution must be of social accounting and non-accounting criteria from Inspection. That is, to determine whether or not the cause of social dissolution corresponds to administrators and the general meeting of the company, and where appropriate, the judge, but not to the administration".*
18. *See footnote 9.*

c. The subsidiaries that are subject to a corporate income tax rate different from the tax rates of the parent company[19].
d. The subsidiaries which participation is achieved through another company that does not meet the requirements to join the tax group. Although, based on the EU Court judgment of June 12, 2014, mentioned above, the indirect interest in the subsidiaries should be allowed via non-resident companies.
e. The subsidiaries which fiscal year, as determined by law, cannot adjust to the dominant company[20]

Finally, and even if we will show later the differences between the different concepts of group existing in our law, it is important to highlight that the separation between the different sectors of our system reaches the point where the taxable income in the tax consolidation regime is not obtained from the consolidated financial statements. In fact, it results only from adding the individual tax bases of each of its components.

3.2. Concept for the purposes of Value Added Tax

Article 4, paragraph 4 of the Sixth VAT Directive, introduced the concept of VAT group into Community legislation[21]. As in the preamble[22], the aim of the provision relating to the group for VAT purposes is that Member States, aims at administrative simplification, and at fighting abusive practices (e.g., division of a company in several taxpayers, so that each of them can benefit from a special regime).

Therefore, they cannot consider companies as independent taxable persons if their 'independence' is purely legal.

Article 4, paragraph 4 was amended by Directive 2006/69 / EC of July24, 2006[23], whereby a second paragraph was included. As stated in the preamble of the proposal[24], with such modification is intended to help Member States to avoid unfair situations resulting from the creation of VAT groups. Therefore, by the second paragraph Member States are authorized to take measures to prevent that group arrangements for VAT lead to tax evasion or tax fraud.

Once the recasting of the Sixth Directive is done, the provisions on VAT groups are now included in Article 11 of the VAT Directive. With this rewriting, there have been no changes in the scope of the regimes of grouping for VAT purposes nor in the pre-conditions to qualify for them.

The main effect for the possibility of grouping for VAT under Article 11 is to allow taxable persons linked in the financial, economic and

---

19. *The V0102 / 2006 Consultation 19/01 DGT, to a situation where a subsidiary that is considered as a small sized company, and therefore may apply for a reduced rate, which is a parent company that is taxed at the rate generally not excluded from the group, as appears from the art.67.4.c), but merely states that cannot apply the tax incentives provided for small companies.*
20. *The Consultation V1739 / 2008 of 26/09 DGT, interpreted this requirement as a "company that by operation of law or regulation is required to have a different fiscal year as of the dominant one ... that fact does not determines the exclusion of the group, so that the company should be part of it ... .the end of the tax period of a subsidiary at the date of completion of the fiscal year in accordance with the standards of individual taxation, date not coincide with the the parent, no tax incidence in the group".*
21. *Sixth VAT Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - common system of value added tax: uniform basis (DO L145 of 13.6.1977, p.1).*
22. *Proposal for a Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover tax of business- Common system of value added tax: uniform basis (COM (73) 950 of 20.06.1973.*
23. *Directive 2006/69 / EC of July 26, 2006 amending Directive 77/388 / EEC as regards certain measures to simplify the procedure for applying the value added tax imodified and contribution to the fight against tax evasion or tax fraud and amending certain Decisions granting derogations (OJ L 221, 12.8.2006, p.9).*
24. *Proposal for a directive of the Council amending Directive 77/388/EEC as regards certain measures to simplify the procedure of application of the value added tax and contribution to the fight against tax fraud and evasion and that repealing certain decisions for A the granting of exceptions. (COM(2005) 89 fine, 16.3.2005).*

organizational orders to stop being considered as independent taxable entities for VAT purposes and become a single taxpayer. In other words, a series of closely related taxable persons merge into a single taxable person for the purposes of VAT. The European Court of Justice in Case C-162/07 has confirmed this effect[25]

In this regard, a VAT group could be described as a 'fiction' created for the implementation of this tax, in which economic substance prevails over legal form. A VAT group is a particular type of legal entity that exists solely for tax purposes, based on financial, economic and existing organizational links between companies. While each member of the group remains legally a separate entity, for exclusively VAT purposes, the group takes precedence over secondary legal forms, e.g. civil law or corporate law.

The logical consequence of considering a group for VAT purposes as a single taxpayer is that the group can only be identified with a single VAT number, in accordance with Article 214 of the VAT Directive, to the exclusion of any other individual VAT number.

The use of just one number answers the need, of both economic operators and the tax authorities of the Member States, to identify with certainty the authors of transactions subject to VAT[26]. The tax authorities can keep the ID individually number for each Member, but only in order to allow control of the internal activities of the VAT group.

As we see, in the spirit of the Community regulations, it is possible to consider the group as a unique taxpayer. It was not only as a possibility of introducing a benefit for them (as has been translated into Spanish law), but also as a prerogative of the State for not allowing the division of the group activity when economically they act as a single subject, grouping all the companies legally separate, under one deduction system. As it seems, the purpose of the Community provision was to enforce the deduction system that "economically" correspond to the group, regardless the legal divisions created by the different legal entities. In such cases, one could envisage the obligation to apply the special scheme, empowering the Tax Administration to implement it, not leaving it solely to the discretion of the taxpayers.

A clear example of artificial division of activity, with the sole purpose of benefiting from a favorable deduction system, are today in the real estate business of financial institutions. Financial institutions, due to their activity, mainly performed VAT exempt activities under the provisions of Article 20 of Law 37/1992 Uno.18º Value Added Tax, being therefore, it's pro rata share (percentage deduction) very close to 0%. This is why, during real estate sector crisis in which we are immersed, financial institutions in cases of non-payment of property developers, do not directly claim promotions. Because if they did so, they could not be allowed to deduct the VAT on such purchases. Therefore, they created intermediate holding companies, of which they are sole shareholder, and have no personal media or materials other than those of the financial institution itself, for, by sales of loans or through direct funding to them, acquire such promotions by legally independent companies and are entitled to deduct VAT. Something similar happens with the incorporation of holding companies by educational institutions or providing health services for which they bear the fees arising from the construction of new schools or educational institutions, and then conclude it with the same assignment contracts of such facilities.

In all the above cases, although in certain cases, if the works are directly assigned by the financial, educational or hospital entities,

25. Case C-162/07, Ampliscientífica, paragraph 19.
26 Case C-162/07, Ampliscientífica, paragraph 20

they could constitute differentiated sectors, and therefore be indifferent to the constitution of such instrumental entities, if at least a deferral of payment of tax is achieved.

In such cases the community regulation should be considering that regardless of the legal independence, the corresponding deduction rules apply to a true activity of the group to each of its members. But as we shall see, the translation into domestic law of this legal option has been quite different.

Under Spanish law the concept of group under the Value Added Tax is found in Chapter IX of Law 37/1992 on Value Added Tax, introduced by Law 36/2006 of November 29, Articles 163. Such concept is a result of the authorization included in Article 11 of Directive 2006/112 / EC of November 28,2006, which states: "After consulting the Value Added Tax Advisory Committee, a Member State may consider as a single taxable persons those established in the territory of that Member State, legally independent but which are closely linked to one another by financial, economic and organizational links. A Member State exercising the option in the first subparagraph shall take the necessary measures to prevent that the application of that provision could make possible fraud or tax evasion."

The European Commission in its Communication to the Council and the European Parliament of July 2, 2009, discusses the aforementioned art.11 of Directive 2006/112 / EC, as follows: "The members of a group, dominant and dominated must be entrepreneurs or professionals. Financial, economic and organizational ties, having seen the concurrence of all, must join dominant and dependents. "To this end the Commission understands "by financial ties those defined in accordance with participation rates above 50%, which hold the majority of voting rights or be a franchise agreement to ensure control of an entity over another. Meanwhile, economic ties serve the activity of all entities of the group that should be the same, or in other words, the entity must provide services globally for the group. Finally, organizational ties are those determinants of common partial or total structure.

The only condition required by both Article 11 of Directive 2006/112 / EC of November 28, 2006, as the Communication of the European Commission on July 2, 2009, is that all group members have individually considered taxable status as "Article 11 falls under Title III 'Taxable persons' in the VAT Directive. Furthermore, Article 11 does not provide for any exception to the definition of taxable n Article 9, paragraph 1 thereof. It follows that people considered as a single taxable person must also be taxable persons in their own right, since the meaning of the concept of "group" is to "gather" to different people engaged in all activities that fall within the scope of the VAT Directive". Therefore, in principle, nothing would prevent a taxable person who was individual membership to be the same. However, as the "financial ties" are defined it only seems possible to occupy the dominant position thereof. However, as currently drafted, the Spanish regulation excludes this possibility when referring to dominant and subsidiaries.

Meanwhile paragraph one of Article 163 of the LIVA states that the special regime for groups of entities is voluntary for "entrepreneurs or professionals that are part of a group of entities. It is considered as a group of entities formed by a dominant entity and its subsidiaries, provided that the headquarters of business or permanent establishments of every one of them are situated in the territory where the tax is applied"[27]. It must be clear that in the case of VAT, not only non-resident entities are excluded from joining the group, as in the case of IS, but also to companies located in the Canary Islands, Ceuta and Melilla, since they are not part of these territories where the tax is applied.

27. Art. 163.dUno Law 37/1992, December 28 on VAT.

We should emphasize that, unlike what happens in the IS, where the application of the consolidation regime is voluntary, the inclusion of companies under the dependency requirement is mandatory, with the VAT, companies can be chosen, by fulfilling the requirement of participation according to Article 163d. One form part of the group for the purposes of applying this special scheme.

Paragraphs Two and Three of Article 163d define what should be understood as a dominant y dependent company[28], basing those definitions, as in the case of IS in the control exercised by the ruling on dominated ones, this control is assumed when the shareholding is equal to or more than 50% . Is this point, we should note that the Spanish regulation separates from the interpretation of the Commission on two points:

- The Commission when defining the financial ties that should bind to the parent with dependent is about "participation above 50%, which hold the majority of voting rights." On the contrary, the letter b) of paragraph two of Article 163d of the LIVA, only mentions direct or indirect participation percentages of at least 50%, avoiding any majority of voting rights[29]. The options left open by the Community law motivated at first to raise the possibility of requiring a percentage of participation in the dependent company of 75%, even referring to the computation of indirect participation with the rules established in Article 69 of the Consolidated Corporation Tax Law, approved by Royal Legislative Decree 4/2004, March 5. (See in this regard Amendment 147 introduced in the Senate by the Parliamentary Socialist Group).

  If the final text was to be approved in these terms, it would have been close to the group concept in the IS and the VAT, but finally this wording was not adopted, establishing a need to hold at least 50% in the capital of the subsidiaries
- Similarly, the Commission presupposes financial ties between dominant and dominated ones when "there is a franchise agreement to ensure control of an entity over another." By contrast, the Spanish regulation does not refer at any point to the possibility that the franchisor and franchisee can form a group for VAT purposes if such franchise agreement is not associated with the participation percentage in the terms described.

However, the delimitation of the group for Vat purposes has recently been extended under the provisions of paragraph 5 of Article 7 of the Royal Decree-Law 11/2010 of July 9, governing bodies and other aspects of legal regime of savings banks. Under these, "The special regime for groups of entities regulated by Chapter IX of Title IX of Law 37/1992 of December 28, states that the value added tax may be applied by businessmen and professionals that integrate a protection institutional system under the conditions provided in paragraph d) of paragraph 3 of Article 8 of Law 13/1985 of May 25, Coefficient of Investment, Equity and Reporting Obligations Financial Intermediaries[30]". This is without apply to them the requirements of Article 163d of the LIVA, by express provision of paragraph 7 of section 5 of this article. For these effects, the dominant will be considered as the "central entity determined by binding policies and business strategies and levels and measures of internal control and risk management of institutional protection scheme",

28. *Art. 163d Two Law 37/1992 of December 28 of the Value Added Tax.*
29. *<?> The DGT Query V0266- 09 , sees no obstacle to an entity which owns 75% of capital, but which as a result of statutory clauses, only owns 25% of the voting rights is integrated in the group. However, it seems to go beyond the percentage of participation, which provides that "the shares equal to or greater than 50% must be accompanied by" a financial, economic or organization ties, without the concurrence of the three orders simultaneously. " However Query V2437- 09 , 30/10, leaving any hint of going beyond the percentage interest to determine the dependency relation.*
30. *Article 8 of Law 13/1985, of May 25, as amended by RD-L ey 11/2010 of July 9.*

and as dependent "entities belonging to such institutional protection scheme as well as those in which they maintain a direct or indirect ownership of more than 50% of its capital ". However the requirement is maintained, that both dominant and dependents must be registered for tax purposes.

Finally, to make it clear that this special scheme supports two ways of implementation, a basic pattern and other advanced, being also the voluntary option for the advanced mode.

In summary[31], we can say that the basic form consists in that the self-assessment of the group will be the result of integrating and compensating the self-assessments of each of its components. This implies that the self-assessments to enter any of the entities can be offset by other accredited balances with consequent financial savings, since in the general scheme can only obtain the repayment of those balances to offset in the last self-assessment of the year.

The advanced mode in turn involves three advantages with respect to the general scheme:

- The taxable amount of supplies of goods and intra-group services delivery amount is determined by the cost of goods and services used directly or indirectly in their elaboration, for which VAT has been input.
- The intra-group transactions are a distinct sector in order to determine their deduction system.
- There is the possibility of giving up to all exemptions of art. 20. One of the VAT law and not just the real estate companies as in the general scheme.

Again, given the wide margin of autonomy that Article 11 of Directive 2006/112/EC of November 28, 2006, leaves the States, the Spanish legislation is different from the approach taken by the Commission[32]. When "with regard to the internal operations of the VAT group, that is, for consideration among its members taken individually, another consequence of considering single taxable group is that these operations must be considered by the group itself. In this case, this is one of the most important effects of the creation of a VAT group, since, except for assimilated deliveries[33] (Articles 16, 18, 26 and 27), internal operations against payment within a VAT group do not exist for VAT purposes; they are "outside its scope." Therefore, the possibility for a VAT group to be established may also be advantageous for companies in terms of cash flow"

The Spanish norm establishes the specialties listed above for intra-group operations, but in any case remain within the scope of the taxation.

31. *ROMEO IBAÑEZ, Miguel Ángel and GARICANO DEL HOYO, Juan Ignacio, en Ekonomiaz nº 68, 2º fur month period, 2008*
32. *Comunicación al Consejo y Parlamento Europeo de 2 de julio de 2009.*
33. *See Articles 16 , 18 , 26 and 27 of Law 37/1992 of December 28 of the Value Added Tax.*

4. MAIN DIFFERENCES BETWEEN THE EXISTING LEGAL CONCEPTS

The common link between different definitions of group in the Spanish legal system is the equivalence between control and group. Both the CCo, as in the TRLIS Tax law and the VAT Law, the existence of the group is identified with the situation where a company (dominant) obtains control over other/s. This equation, otherwise common to other systems in our environment, seems only appropriate to reflect the existence of so-called hierarchical groups, but leaves out the concept called peer groups or coordinated groups, where a group of companies independently decides to subordinate their individual interests for a common interest, yielding to that effect part of their administration and management powers.

The European Commission also seems to consider hierarchical groups in its Communication to the Council and the European Parliament on July 2, 2009, when, analyzing various issues relating to Art.11 of Directive 2006/112 / EC, for the purposes VAT states the following: "The members of a group, dominant and dominated must be entrepreneurs or professionals. Dominant and dependents must be joined by financial, economic and organizational ties, all of them being justifiable". "To this end the Commission understands "by financial ties those defined in accordance with participation rates above 50%, which hold the majority of voting rights or be a franchise agreement to ensure control of an entity over another. Meanwhile, economic ties mean that the activity of all entities of the group should be the same, or in other words, the entity must provide services globally for the group. Finally, organizational ties are those determinants the constitution of a total or partial management structure."

The Tax General Directorate also seems to equate control with the existence of a group of companies. The Consultation V0266/2009 of February 12 appears to require more than a percentage of equity to affirm the existence of a group of companies. It claims that to be effective for the VAT "the percentage must be equal to or greater than 50%, and must be accompanied by strong financial, economic or organizational links, without requirement of the simultaneous concurrence of the three orders ". Consultation V2437/2009 of October 30, once again associate the existence of the group and percentage of ownership. It provides that: "an entity that acts as senior partner of the participating entities in the group needs a majority of shareholding. It exercises authority or issue instructions binding on the grouped cooperatives, so that a unit decision is formed within the scope of those powers, it is not considered a dominant company of a group of entities if it does not meets the requirement of direct or indirect participation, with at least 50% of the capital of another or other entities ".

This is the single point of connection of the Spanish legislation, which differs in everything else, so in summary but not limited to we may note the following differences:

- The different way of calculating these percentages, because although corporate legislation talks about the majority of voting rights in the field of taxation it refers to percentage of ownership[34].

34. *See in this sense Consultation V1660- 08 , of 12/09 DGT. Which provides that the requirement in art. 67.2.b), it is about the corporate interest in the acquired entity, any time, although this participation is subject to a ceiling of voting rights, the requirement of participation is understood as fulfilled, which the investee be integrated into the consolidated group. In turn the Consultation Number 918 04 05/04 DGT provides that for purposes of computing the degree of participation if the acquired company owns shares 'nominal value of treasury shares will reduce the amount of share capital in order to determine the percentage of participation in the implementation of tax consolidation regime"*

- The CCo covers other ways to gain control apart from obtaining the majority of voting rights, mentioning as ways to achieve it, the agreements with other entities to obtain such majority, and having appointed most members of the governing body, or be in position to do so. It also leaves the door open that for other forms of control, by providing "Control is presumed to exist ".

- The trade group is much broader than the fiscal group concept, integrating the Jointly controlled entities characterized by joint management, and Associated companies, which are characterized as such if a component of the group has a notable influence on them.

- The different subjects that can be part of it, as both the TRLIS tax law and VAT Law, require that all members of the group should be resident in the Spanish territory

- (VAT in the territory of application of the tax, since Canaries, Ceuta and Melilla are excluded), while the CC does not restricts it in any way[35].

- Similarly, Article 29 of Law 12/2002 of May 23, on Economic Agreement with the Basque Country, paragraph seven, section 7 must be considered. "Entities benefiting from the special group regime will be taxed applying the rules contained in this section 7, with the following specialties": First: the subsidiaries whose inspection (...) is entrusted to administration entities, statutory or common, different from that applicable to the parent will be considered excluded from the Group of entities. The rules of attribution of competences for inspectors are detailed in paragraph 6 of that article.

- Besides, art. 67.1 of the TRLIS tax law limits the legal figures of companies that can be part of the tax group to "corporations, and limited joint-stock companies as well as credit institutions in paragraph 3 of this article refers to" (integrated in an institutional protection scheme), although those required legal forms appear only for subsidiaries. By contrast, there is no limitation of legal forms for VAT purposes.[36]

- Meanwhile the VAT legislation requires that both dominant and dependent threshold be considered as professional or entrepreneur pursuant to Article 5 of VAT Law for general purposes.[37]

- The of the rules related to the existence of "group" in the case of TRLIS TAX LAW and VAT Law are default rules, relying on voluntary application, compared to the binding nature of the regulations governing the account consolidation.

- The adoption of the application agreement of the aforementioned rules correspond to different entities. The Executive Board of each company in the case of IS[38], and the Administrative board in the case of VAT.

---

35. This requirement has been interpreted in different consultations DGT, see to that effect Consultation s s V0075- 10 of 20/01, the Consultation V2146-10 , of 28/09, and V0668- 11 , of 16/03, which supports the existence of mercantile group, in the case of two foundations, in which one designated to most employers the Board of the second.

36. In this sense Consultation DGT V1021-09 of May 8, allows the inclusion in the scope of the corporate group for VAT, a European Economic Interest Grouping, which is considered to entrepreneur or professional.

37. See Consultation V2642-09 , of 30/11. Therefore DGT Queries V0022-10 , of January 18, and V2051-08 of 05/11 denies the possibility that a municipality and a holding company whose sole purpose is to acquire holdings in other undertakings without intervene directly or indirectly in the management thereof, may join the group. By contrast, there is no impairment for an dependent, inactive, but not dissolved company to be part of the group. See V0037-10 of January 18th.

38. The judgment of the High Court of December 20, 2007 underlines the character of constitutive requirement and not merely formal agreement to be adopted by the Shareholders' Meetings of all companies will be integrated into the tax consolidation group in the period immediately preceding so that without such agreement, the regime is not applicable.

- Finally, commercial consolidation allows the financial years of the companies of the group not to be concluded on the same date as that of the dominant, while fiscal consolidation requires the coincidence of financial years, although failure to do so is not a cause for excluding it from the tax group.

There are therefore important differences that underlie the concept of group of each of the normative presented. Such differences are observed not only between different branches of law, but even within the Tax Law, given that the regulation differs between the TRLIS tax law (Corporate law) and VAT Law. Not even part of the regulation of one sector is used in another. Thus, rather than starting from the consolidated results of the group, the Fiscal consolidated regime starts from the individual accounting of each of the companies, i.e. the individual tax base of each of them, being the aggregation of each of them corrected in the incorporations and deletions imposed by the regulations, which form the tax base of the consolidated group.

5. THE GROUP OF COMPANIES CONCEPT IN LABOR LAW

In this area of the law, in the absence of a legal regulation, the jurisprudence has been outlining the notion of group of companies for labor purposes. The base that has served as a basis for such concept has been the flexibility of Article 1.2 of the Workers' Statute, which defines the entrepreneur as "all persons, natural or legal, or community property receiving delivery services of the persons mentioned in the preceding paragraph." Article 1.1 provides that "This Act shall apply to workers who voluntarily provide their paid services to others and within the scope of organization and direction of another person, natural or legal, called employer or company owner." The reference to community property as devoid of definition as a legal entity has allowed the Spanish jurisprudence to identify the group of companies as an employer, in order to extend their liability for contractual breaches. The issues raised by the groups of companies in this area of law determine who "the subject that must face labor obligations to the employees" is. The company that has formally engaged the employee or the group of companies as such"[39], i.e., who holds the position of labor entrepreneur, and not simply accepting the name that appear as such in the labor contract.

The Spanish jurisprudence is of the idea that "the Group of Companies is not presumed by mere commercial matches, but the burden of proof of the existence of the conditions to declare a Group of Companies for labor purposes lies on the plaintiff", and should not "set guidelines or general criteria"[40]. "The general principle of independence and no communication of responsibilities between the companies of the group, on the basis that the economic links and organizational management, do not alter the status of companies as independent or separate entities; they have separate legal personality and therefore are independent of each other and responsible in their scope"[41]. Thus, "it is not enough that two or more companies belong to the same business group to derive from this a solidarity responsibility in respect of obligations to their own workers[42]. That «a company holding shares in another or several companies undertake an economic collaboration policy does not necessarily entail the loss of their independence for labor legal

39. *Judgment No 487/2008 of 27 May, the Social Chamber of the Superior Court of Madrid.*
40. *Judgment of the Supreme Court of May 3, 1990 cited in Judgment No 487/2008 of 27 May, the Social Chamber of the Superior Court of Madrid.*
41. *Judgment No. 487/2008 of May 27, cited above.*
42. *Judgment of the Supreme Court of 30 January 1990 cited in Judgment No 487/2008 of 27 May, the Social Chamber of the Superior Court of Madrid.*
43. *Judgment of the Supreme Court of May 3, 1990 cited in Judgment No 487/2008 of 27 May, the Social Chamber of the Superior Court of Madrid.*

effect"[43]. For creating a collective liability of the group towards employees, "it is necessary that the group of companies act fraudulently. They make an abusive use of independent legal personality of each of the entities in prejudice to the workers; this is an abuse of rights or a fraudulent intent based on a legal framework that disguises factual situations in which one employing entity acts under the formal appearance of different independent legal companies. So one can only deduce a group liability towards the workers, when a fraudulent and misuses of legal norms is done, but we will not require such liability, when the group of companies is acting according to the law, when the constitution of such groups to operate in the market is perfectly legitimate".[44]

The premises that have allowed the courts to disregard the legal independence of the group of companies, highlighting their economic unity, declaring the joint responsibility of all of them are as follows[45]:

- **Confusion of workers or existence of a single payroll**, a situation that occurs when the services are simultaneously performed or successively undifferentiated for various group of companies, denoting a single field of organization and management. Notes evidencing this confusion according to the courts are the existence of a single workforce, the simultaneity of services delivered to various companies, dissonance between the provision of services and the formal affiliation to a company.[46]

- **Confusion of corporate assets,** a situation that occurs when between companies in the group there is a high degree of communication between their assets. Notes evidencing this confusion according to the courts are: existence of a common fund, payment of debts relating to another company of the group.[47]

- **Unity of management,** a situation that occurs when the companies of the group operate under one management power. For example, the existence of a single governing body for labor purposes, the competence to decide the members of the management bodies or supervision of subsidiaries.

- **External appearance of business unit,** a situation that occurs because of a common operation in the market and which produces an appearance of unity confusing the good faith of those entering in contractual obligations.[48]

As a summary of the criteria mentioned before, it can be said that "for the joint and several liability in the fulfilment of the duties of employment between the components of the group, it is necessary that the connections between its members are no longer economic or financial, but labor type: single workforce or separate….. Confusion of assets, single external appearance and unity of management".[49]

In similar terms this jurisprudence appears in the tax field in Article 43.1.g) and h) of General Tax Law 58/2003, of December 17, as a vicarious liability case of "persons or entities holding the control, total or partial, direct or indirect, of legal persons or with a common leadership... "and" persons or entities that taxpayers have the full or partial control, or where a common leadership will concur with those parties governing common tax... "when" it is established that such persons or entities have been created or used improperly or fraudulently"[50].

44. Judgments of the Supreme Court of September 25, 1992 and June 27, 1994.
45. AYLWIN Chiorri, Andrew and RED MINO, Irene "Enterprise groups and labor legal effects in comparative law" . Ius et praxis 2005, vol. 11 No. 2 pg. 197-225.
46. Judgments of the Supreme Court of June 19, October 7 and December 16, 1986 and January 30 and May 3, 1990.
47. Judgments of the Supreme Court of November 10, 1987, June 8, 1989 and January 30, 1990.
48. Judgments of the Supreme Court of October 8, 1987 and December 22, 1989.
49. Judgment of the Supreme Court of June 30, 1993.
50. Art. 43.1 L GT 58/2003 of December 17.

6. TOWARDS A CONTRACTUAL GROUP MODEL

The economic practice shows how the reality that underlies the idea of group is that of "unitary leadership", as independent subjects they put their particular interests in the service of a common interest, which usually come to match with their individual interest, but sometimes but sometimes may come into conflict. At this point, match doctrine and jurisprudence,[51] pointing out as delimitations for the existence of the group:

- Multiple independent companies.
- Instrument for obtaining the leadership power.
- Joint management as a necessary element for the constitution of the group.

However, the difficulty of delimiting the concept of "Joint management", coupled with the need to provide some legal security to the concept of group, lead the Spanish legislation to consider the control as an equivalence for the group.

Precisely, this need for legal certainty, coupled with the fact that the equivalence between control and group is not appropriate because it leaves out of the concept economic realities that should deserve the qualification of group since they act as a decision unit. This has led to a sectorial doctrine referenced by Embid Irujo[52], which proposes the concept of GROUP CONTRACT as a correct formula to narrow the group concept, similar to the German notion of control agreement. Thus, the group would consist of entities (with a broad understanding of the term) that in the free exercise of their autonomy choose to join the group, subordinating their specific interests to the interests of the group. This contract should be provided with the necessary formalities, certainty and advertising, via a public deed and open registration for each of the companies participating. It would not be a bilateral contract as the German contract, but multilateral, open to all types of entities, although with the qualifications that each domestic rule imposes according to the relevant legislation. Similarly, we would move away from synallagmatic contracts of obligation exchange to join the scope of the contracts of organization, where the concept of joint management should be reflected in the background of the concept of group. This contract, in addition to setting the basic legal regime for the group operation, should articulate appropriate protection measures for the legal defense of the interests of the different agents that could be harmed by subjecting the individual interests of each of the components of the group, to its dominant interests.

We refer mainly to the creditors of the companies, their workers, and the minority shareholders.

This seems to be the legislator's current position in Article 4 of Decree-Law 11/2010 of July 9, on governing bodies and other aspects of the legal regime of savings banks. In the process of reorganization of the Spanish financial sector, which openly talks about "contractual agreement" between savings banks as a source of the new financial institutions which, in their corporate form, are the result of the merging.

51. *Judgement Audiencia Provincial de Vizcaya of 13.06.2002, No. 311/2002*
52. *EMBID IRUJO, José Miguel . "Introducción al Derecho de Grupos de Sociedades". Colección de Estudios de Derecho Mercantil. Editorial Comares 2003.*

7. CONCLUSION

For the sake of legal security, I favor this last commercial or contractual conception of the Group. Therefore, this would be formed by those entities that, in the free exercise of their autonomy, decide to belong to the group.

Based on this business concept of the group, there could be the case of dominants and dominated companies that would not join the group, distinguishing in this case between factual and legal groups. The establishment of such group would be attractive in those legal sectors that provide favorable legal disposition to the group as in the case of Tax Law. This does not happen in those sectors where belonging to the group can only have negative consequences, as it may occur with the social responsibility statement for labor debts in labor law.

Regardless such cases, abusive or fraudulent use of the legal personality may be covered by the doctrine of piercing the corporate veil, maintaining the presumption of the existence of the group in case of control for these abusive uses of factual groups.

This opinion is linked to the voluntary nature that the legislator has granted to the tax rules associated to the existence of the group, since the various consolidated tax regimes are optional in CIT and in the special regime for groups of entities in VAT. More recently, it seems to be the choice of the legislator in Article 4 of the Royal Decree-Law 11/2010, July 9, on government entities and other aspects of the legal regime of savings banks.

Based on this basic idea of linking the rules on the group to the existence of the contract, there would be no problem in introducing refinements to its legal regime and including to the intervening subjects, depending on the interests involved in each area of the law.

8. BIBLIOGRAPHY

AYLWIN CHIORRI, Andrés and ROJAS MINO, Irene “Los grupos de empresas y sus efectos jurídico laborales en el Derecho comparado”. Ius et praxis 2005, vol. 11, nº 2 pg 197 a 225.

EMBID IRUJO, José Miguel. “Introducción al Derecho de Grupos de Sociedades”. Colección de Estudios de Derecho Mercantil. Editorial Comares 2003.

LÓPEZ- SANTACRUZ MONTES, José Antonio, ROS AMORÓS Florentina andORTEGA CARBALLO, Enrique. Cita 537. Memento Grupos Consolidados 2011. Editorial Francis Lefebvre

LIRA, Mónica. El concepto de grupo de empresas en el Derecho español. Ediciones Deusto.

MANÓVIL, Rafael M. Grupo de Sociedades en el Derecho Comparado. Abeledo Perrot Editorial. Buenos Aires, Argentina. 1998. Pg. 155; fom de RUEDIN Roland. Vers un droit des groupes de societés. Societé suise des juristes, Helbing and Lichtenhahn Verl., fascicule 2, 1980.

ROMEO IBAÑEZ, Miguel Ángel y GARICANO DEL HOYO, Juan Ignacio. Artículo publicado en la Revista Ekonomiaz, nº68, 2º cuatrimestre, 2008.

VICENT CHULIÁ, Francisco. Grupo de sociedades y conflicto de intereses.

TAX EDUCATION AND CITIZENSHIP DEVELOPMENT IN LATIN AMERICA

Borja Díaz Rivillas and Antonio Henrique Lindemberg Baltazar

SYNOPSIS

Fiscal education awakens a growing interest in various regions of the world, especially in contexts where the balance between rights and obligations is suffering. This work conceptualizes the tax education and shows its relevance in regions such as Latin America, where high tax fraud and corruption coexist in scenarios of crisis of values, confidence and legitimacy of institutions and public policy issues. The article argues that a new relationship between the State and society in fiscal matters based on trust and cooperation, and not only coercion is necessary.

The Authors: Borja Diaz Rivillas. *PhD in contemporary political processes from the University of Salamanca and Technical Senior of the EUROsociAL II / FIIAPP Cooperation Program of the European Union with America Latina.* ***Antonio Henrique Lindemberg Baltazar.*** *Master in Constitutional Law from the Brasiliense Institute of public law, University Professor and Coordinator of Tax Education and Institutional Memory of the Receita Federal in Brazil.*

Content

Law, from the positivist perspective of Kelsen, is understood as a coercive order of human behavior, which means that when there is a behavior considered harmful from a legal point of view, this will be imperatively followed by the application of a sanction by the State (Kelsen, 1998, 181).

For the legal positivism, the validity of legal standards is independent of the universal ideals of ethics. Thus, the rules are valid not because they are good or moral, but because they have been created by the competent authority. While the natural law is based on moral values, legal positivism is indifferent to values, not seeking what is right, but what will be useful.

The classical positivism was a landmark of the legal system during the first half of the 20th century, but the finding, especially after the two world wars and the experience of fascism, Nazism and communism, that the formal legality could conceal barbarity, led it to be overcome by the development of the post-positivism.

The post-positivism comes with the aim of returning to positive law the ethical principles of Justice, incorporating explicitly or implicitly, through the axiological principles, values which before were left roaming in a very abstract field. In a nutshell, it seeks to analyze the law not only as a coercive order based on the dogma of authority, but as an socially legitimized instrument of social construction.

Leading figure in modern political philosophy, Jürgen Habermas criticizes the legal positivism in diverging from the idea that the law has to be obeyed simply because of the sanction of the State. For Habermas, on the contrary, the law should be followed due to its legitimacy. Therefore, the state has the duty of showing in a public and transparent manner the legitimate reasons leading the individual to comply with the legal norms, since the law must be justified in order to be accepted (Habermas, 1997, 215).

Therefore, from this theoretical perspective, the individual can act in relation to rules by calculating the costs of compliance and their violation, looking for the best private result, or can act from the perspective of interpersonal relationships, and comply with a moral duty. For Habermas, as for Kant, rules must be obeyed both as moral duties and because of their social legitimacy. For him, the law must be justified to be accepted, under penalty of being breached for being only imposed.

The question being put in these terms, and admitting the inability of the State to require enforcement of laws, and specifically the tax laws, simply by invoking the possibility of imposing sanctions, in the 90s of the last century emerged in several countries of Latin America the first initiatives of tax education aiming to serve as a set of practices for expanding understanding of the socio-economic function of taxes, in order to socially legitimize taxation.

It should be reminded that taxes were initially conceived from the perspective of a relationship that is imposed as an act of power, of coercion. However, despite the colonialists and imperialists practices of yesteryear, when taxation was one more mechanism of appropriation, in modern

democratic States of law, taxes are essential instruments of the State action in various areas, especially in the social and economic life.

It is this perspective Casalta Nabais points out to the payment of taxes as the first duty of citizenship, because if that obligation is circumvented by part of a society, any possibilities for realization of their own rights will be voided, especially those of benefits and services delivery (Casalta Nabais, 2009, 53).

On the other hand, the question of the efficient management of public resources did not come into the agenda of the States of Latin America until the reform of the civil service management that took place in the 90s of the last century. At that time they began to realize that one of the reasons for the fiscal crisis of the State was due to structural inefficiencies of bureaucratic public administration.

However, despite the management reform, Latin American States are still in a social context of low legitimacy. It is under this vision of the world that emerges, especially after the economic crisis started in 2008, a certain governance reform, which, with the aim of ensuring the legitimacy of the State, seeks to implement different mechanisms of direct democracy or social control, along with greater transparency in the public service and the work on social networks (Castells (, 2013, 18).

In this context the Fiscal education can be understood as an instrument of democratic vanguard and strengthening of social cohesion the construction of a collective and participatory reflection on the social and economic role of taxes and the efficient management of public resources, and allows the formation of a relationship of trust between the State and the citizen.

In this sense, the article aims to search reference theorists on the conceptualization of the education tax, contributing to alleviate the shortage of existing studies on the fiscal culture in Latin America, and offer an analysis and systematization of the policies of Fiscal education being implemented in the countries of the region.

1. STRATEGIES TO PROMOTE TAX COMPLIANCE

Fiscal education never seeks to eliminate or weaken the coercive State power, since this would omit any theory of the contemporary State that monopolizes the use of force. The establishment of relations of trust through educational strategies and the State coercion are complementary variables. With greater social acceptance, lesser is the need for the use of force and, conversely, the smaller is the acceptance, greater is the need for coercive efforts.

While the coercive face of tax administrations has been a historical constant, in modern democratic societies, mechanisms only based on deterrence and punishment are not consistent with reality, since they would mean an unsustainable cost in terms of human and material resources. As Torgler and Schaltegger ironically underscore, “it would be necessary to have a tax collector under every bed” (Torgler and Schaltegger, 2006, 397).

However, in practice individuals not only seek to selfishly maximize their own personal benefit in relation to the payment of taxes. Different works, largely based on opinion polls, have shown that taxpayers also pay their taxes voluntarily, not only from the existence or not of risk of being punished. The tax moral, understood as the intrinsic motivation of paying taxes, plays an important role in this regard (Feld and Frey, 2002;) Torgler, 2004; Saldias, 2010; FJELSTAD and Heggstad, 2012; Fjeldstad, Schulz-herzenberg and Hoem Sjursen, 2012 and Daude, C., H. Gutiérrez and a. Melguizo, 2012).

There is a diversity of factors that appear to influence the behavior of taxpayers towards their tax obligations: socio-economic variables (age, religion, gender, employment status and education), institutional variables (satisfaction with democracy, confidence in the Government, satisfaction with the quality of public services against payment of taxes, the perception that tax administrations deal with taxpayers in a fair and transparent manner)the perception that others are paying the fair amount of taxes that corresponds to them or knowledge of taxpayers about how to pay their taxes, among others.

Therefore, identifying the variables that motivate tax compliance is a huge challenge and is an unresolved problem that requires deeper research in each context. So far has not been possible to find a model that forecast the behavior of the taxpayers. Thus, theories about the determinants of tax compliance, broadly based on citizen perceptions, pose a genuine puzzle and vary from a reality to another, which require detailed analysis of economic and political factors (Fjeldstad et al, 2012).

It seems clear, in the light of these studies, and the everyday experience of tax administrations, that understanding the relationship between the State and the citizens regarding taxes requires a prism that is much broader than the one solely based on fear of the sanction. This situation, in practice, has prompted a change in own administrations regarding strategies to taxpayers.

Indeed, the massive nature of the modern tax systems requires to implement a new model of communication between taxpayer and TA, according to the number of citizens to “convince” rather than “defeat”, since the burden of work in the tax administrations cannot be managed optimally without the more or less voluntary collaboration of broad sectors of society. We cannot ignore that detecting and correcting tax fraud is a task that is complicated and costly, since in the modern Tax Administrations, of the total amount collected, only 2 or 3 percent comes from this type of actions, while the 97 or 98 percent comes from the voluntary self-assessment (Díaz Yubero, 2003, 13).

Given this situation, it seems logical that tax administrations, worried about enhancing total tax, grant along with the fight against fraud a high importance to strategies to promote voluntary compliance with tax obligations: improvement of care and guidance face-to-face, telephone and Internet services, programs and tutorials to complete returns, facilitation of the income draft, communication campaigns, informative talks about tax news, etc.

In this way, tax administrations determined to be efficient, modern and close to the needs of citizens should provide better services to facilitate the payment of taxes, but must also promote civic education programs, especially from an early age in the context of socialization that school represents (Díaz Yubero, 2008).

As Delgado and Valdenebro underscore: “Civic awareness is not something natural; it is a social product and, therefore, result of education. The ethical values of Justice, solidarity and cooperation are the product of social processes where, by trial and error, we have reached the conviction that it is more useful and efficient to integrate them into the conduct, to the detriment of those others that drive to predation. Civic and fiscal awareness is acquired through various educational processes, which may increase according to the will of those who want to promote them. Therefore, one of the strategic lines of the tax administration is something seemingly so far from its legal and economic function as it is the education in values of fiscal responsibility of citizens”(Delgado and Valdenebro 2010, 4).

2. THE CONCEPT OF TAX EDUCATION

Tax education is a process of teaching and learning which aims to promote active, participative and solidarity, citizenship by understanding both of their tax rights, especially proper management of public spending by Governments, as their obligations, specifically fundamental duty it of paying taxes.

Concerning the fundamental duty of paying taxes, Marciano Buffon reminds us that "the fact of the human condition be thought from social inclusion, i.e., the man exists only within society, this fact would be sufficient to justify the fundamental duty to pay taxes, since the society is organized around the figure of the State that", in a capitalist economy, include tax collection" (Buffon, 2007, 112).

It is important to note that, under this line of thinking, the respect of fundamental rights presupposes the presence of fundamental duties. That's why Casalta Nabais points out that the fundamental duties are directly related with the existence of the community, this being the case of obligations such as the defense of the homeland, electoral duties and taxes (Casalta Nabais, 2009, 65).

In the framework of the Fiscal State, the duty to pay taxes is closely correlated with the principle of solidarity. That is because, in a democratic system, which aims to guarantee the fundamental rights, the evasion of revenue undermines the Organization of social coexistence.

In this sense, Albano Santos says that "in any case, it should be reminded that the indulgence with the tax evasion contrasts sharply with the widespread practice to hold the State responsible for activities increasingly important for the development of society, thus creating an inconsistency that has since been called ´the typical dilemma of our time´": People expect the maximum from the state but reject the inevitable economic consequences of that attitude". (Albano Santos, 2003, 359).

We must not forget that freedoms depend heavily on taxes (and how they are spent). The absence of State means the absence of rights, such as Holmes and Sunstein write: "To the obvious truth that rights depend on Governments it is necessary to add a corollary logical, rich in implications: rights cost money." It is impossible to protect them or claim them without public funds and support. Paying attention to the costs of individual rights can shed new light on old issues, among others, the appropriate size of the regulatory State / welfare State and the relationship between the modern government and classical liberal rights. Decisions of public policy should not be taken on the basis of an imaginary hostility between freedom and the tax collector, because if they really were enemies, all of our basic freedoms would be candidates for abolition"(Holmes and Sunstein, 2011).

It is precisely in this reconciliation between "freedom and the tax collector" where tax education is key, especially in the current environment of global economic crisis, when selfish interests and short-term behavior increase and there is a growing dissatisfaction with the management of public resources.

From this perspective, the Tax Education can be understood as a new practice which aims the development of values, attitudes and skills intended to stimulate a critical judgment that orients its relationship with the State and with other citizens in tax matters in the context of democratic coexistence in citizens. This new approach starts from a better understanding of life in society, the structure and the functioning of public administration, socio-economic function of taxes, and the use of public resources, strategies and means for the exercise of social control.

Tax education is, therefore, a fundamental democratic process. It aims, on the one hand, to develop the awareness of people regarding their rights and obligations regarding social and economic function of taxes and, on the other hand, to promote the social control of the State, encouraging the effective exercise of citizenship. In this way, tax education contributes to transform a purely electoral democracy into a democracy based on a real and effective popular participation. Under this point of view, the participation of the society in the public sphere, using the language of Boaventura de Souza Santos, is conceived as a way of democratizing democracy (Santos, 2000).

3. TAXATION AND SOCIAL COHESION IN LATIN AMERICA

Latin America is at a crucial time for the course of its development policies. Although slowing down, and in a context of deterioration of the world economy, the regional countries continue on the path of economic growth, the reduction of poverty and unemployment, as well as a noticeable improvement in their tax accounts. After almost two decades without progress in the distribution of income, hints of a reduction of inequality finally start to appear, with a decrease of the Gini index of 5% in the whole of the area in relation to the value of 2002 (CEPAL, 2010).

This vibrant period for many of the region's economies coincides with important challenges. The euro zone crisis and the slowdown in the United States and China are affecting the growth of Latin America, which fell to 2.6% in 2013. According to the World Bank report "Latin America and the Caribbean are without wind in favor: in search of growth", the tail wind that pushed the region is no longer blowing and future growth will depend more and more of the policies of each country, and not so much on external factors (World Bank, 2013).

Despite the significant reduction in poverty, 28.2% (164 million) of the population is still poor and an 11.3% live in extreme poverty (66 million) (ECLAC, 2013).

Inclusive growth remains the major outstanding challenge. Latin America is not the poorest region of the world, but the most unequal. The poorest quintile (20% of households with lower income) captures on average 5% of the total income, while the richest quintile capture 47% (Bárcena, 2014). Ten of their economies continue to be among the 15 most unequal of the world (OECD, 2012).

Despite the fact that since 2002 the total public spending has increased in the region, it is still insufficient, to be in 25 percent of the annual average GDP in the period 2002-2008, compared to the average of 44% for the OECD countries. Social spending has been gaining weight, reaching 65% of the total public expenditure in Latin America in 2007, but the quality of goods and essential services such as education is still poor (OECD, 2009).

Only 44% of Latin Americans consider that public policies improve their lives, and there is a low valuation of the services provided by the State, including justice, police, public hospitals or education (see figure 1). The same goes for specific municipal utilities (see figure 2) such as paving, green areas and public spaces and public transport (Latinobarómetro, 2010).

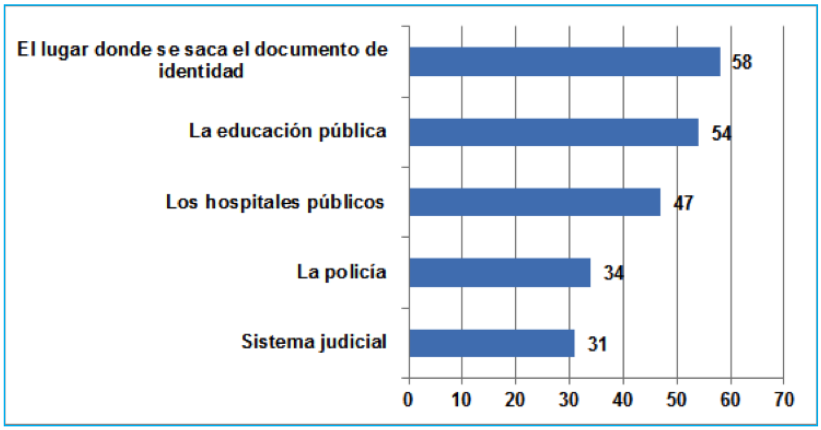
In this new scenario, the Governments of Latin America need more than never to mobilize higher tax revenues to articulate a higher quantity and quality of the expenditure if they want to reduce the structural gaps in relevant way and get revenue from the progress achieved.

Despite the important acceleration of revenues over the last decade and the differences between countries, the average tax burden in the region -

equivalent to 20.1% of GDP - is remarkably low and still far from the 34.1% average of the OECD countries (see figure 3). Only five countries would be collecting taxes according to their degree of development in terms of GDP per capita (ECLAC, OECD, CIAT 2014).

Figure 1
Satisfaction with public services,
total Latin America 2010

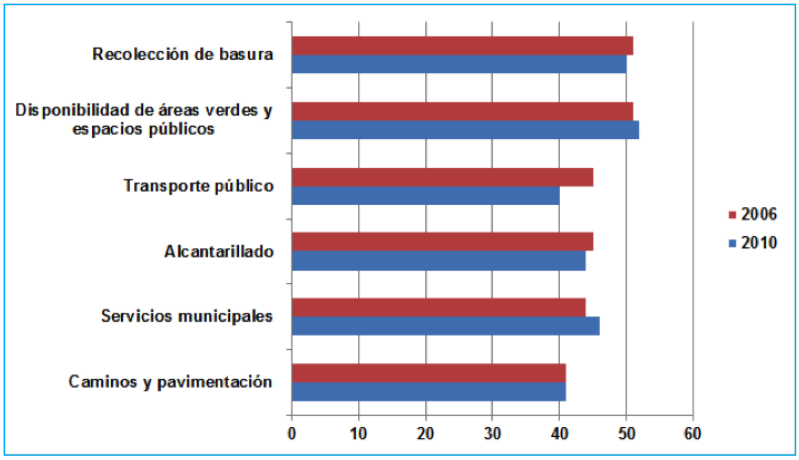
Would you say that you are very satisfied (1), rather satisfied (2), not very satisfied (3) or not satisfied (4) with the way that work... * here only “very satisfied” plus “Satisfied”.?



Source: Latinobarómetro, 2010

Figure 2
Satisfaction with municipal services in
America Latin 2006 versus 2010

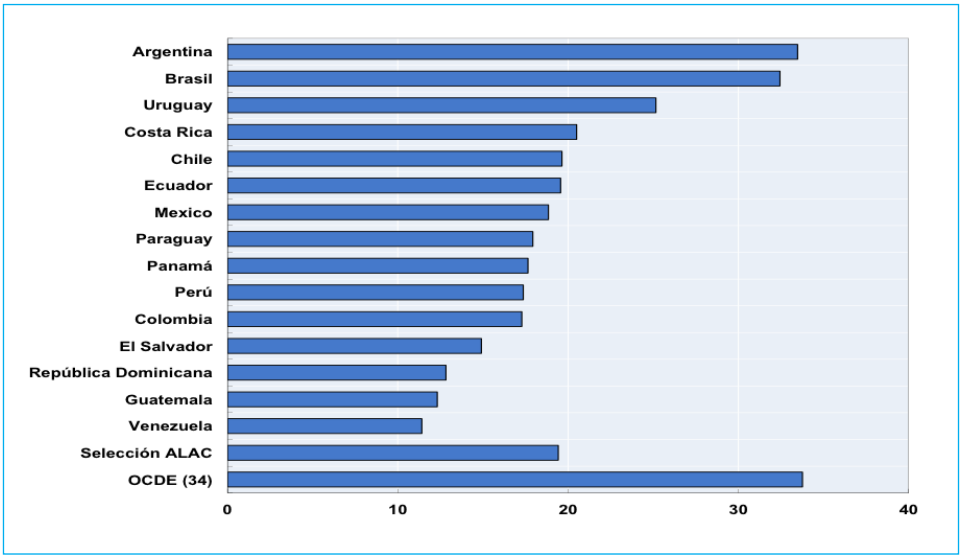
Question: would you say that you are very satisfied (1), rather satisfied (2), not very satisfied (3) or not satisfied (4) with the way they work? Here only “very satisfied” and “Satisfied”



Source: Latinobarómetro, 2010.

As the OECD emphasizes: “Low levels of income of Latin America prevent States from doing the necessary investment in education, infrastructure and productive development, which, together with the health and social protection, are key instruments to increase productivity, competitiveness and social inclusion (OECD, 2012).

Figure 3
Tax revenue as a percentage of GDP in Latin America and the OECD (2011)



Source: Revenue Statistics in Latin America 2014 – © OECD 2013

The tax structure has still a strong regressive character, with a large proportion of indirect taxation, which erodes the tax equity. General consumption taxes represent 33.8% of the total tax revenues in Latin America, compared with 20.3% of the OECD. The social security contributions represent 16.9%, compared with 26.2% in the OECD. Meanwhile, taxes on income and earnings are equal to 25.4% in the region compared with 33.5% of the OECD (OECD, ECLAC, CIAT, 2014).

This situation is aggravated by the existence of a high tax fraud level and problems in the management of public spending. According to the available information, in the case of personal income tax, fraud is between 40% and 65%, which means a loss of 4.6% of GDP on average (CEPAL, 2010). In the case of VAT, the average fraud is 26.8% (Gomez Sabaini, 2010).

Another element to consider in relation to tax evasion is that Latin America has the highest percentage of informal economy in relation to GDP in the world, 43.4% of GDP compared to 30.4% in Asia and 16.3% of the OECD (Jiménez, Gomez Sabaini and Podesta, 2010).

Despite the efforts that are being made with the creation of specialized anti-corruption agencies and advances in transparency and access to public information, corruption remains a serious problem that limits the potential of Latin America’s development and erodes confidence in the institutions. Most of the countries are still stuck in the bottom of transparency International’s corruption perception index. Thus, in 2013 as only three countries obtained a score above 50/100, where 0 means “Highly corrupt” and 100 (“ very clean”) (transparency international, 2013).

4. NATURE OF TAX NON-COMPLIANCE IN LATIN AMERICA

Tax evasion practices are so rooted in Latin America that, on average, only 34% of Latin Americans consider tax evasion as "never justified", compared with 62% of the economies of the OECD, and 20% justifies tax evasion compared with 7% of the countries in the OECD (OECD/ECLAC (2011).

The Latin Americans themselves perceive that half of their fellow citizens do not properly pay their taxes (Latinobarómetro, 2010). The Latin-barometer report of 2010 states: "The fact that there is a perception that approximately half of the population of the region pays their taxes properly, implies that the other half does not." This is the main problem of public policies. The State is perceived with the power to solve problems, but it cannot solve his main problem, which is to convince its citizens that without taxes it does not have the power. This is an impossible situation, because the state faces social demands but does not have the goodwill of the population to pay the taxes in such a way that it can satisfy the demands".

It is important to inquire about specific factors that lead Latin Americans to maintain a relationship of social permissiveness with regard to tax evasion. The Latinobarometro survey data offer some clues in this regard, including the asymmetry between the tax exchange between the State and citizens and low tax culture/low tax morale (see figure 4).

4.1. Imbalance in the tax exchange between citizens and the State

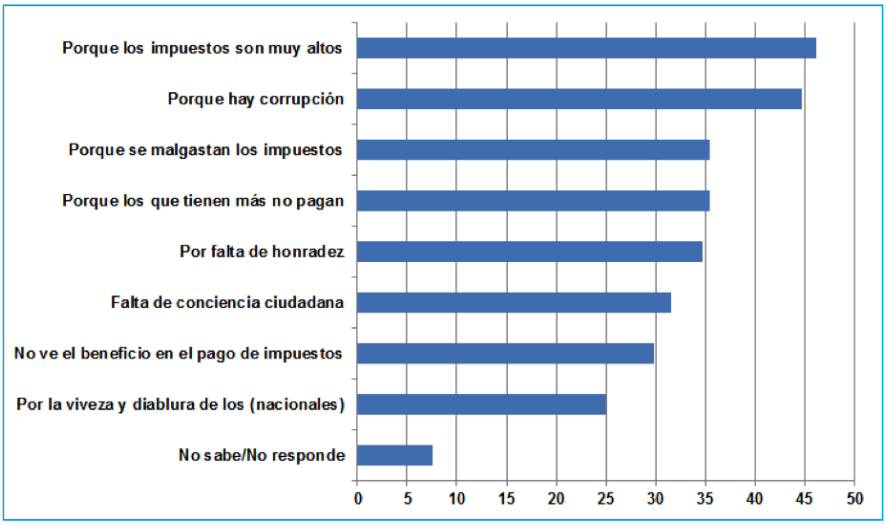
Curiously, in general terms, the society says that the high tax burden would be the main justification that leads people not to pay their taxes, followed by corruption and misuse of public funds by the State.

It is interesting to note, as previously mentioned, most of Latin America has, in fact, a low tax burden. Therefore, a hypothesis is that criticism of the high tax burden could be related to a low citizen knowledge on the nature of the tax burden of their countries in comparison with those of other regions, and/or that the tax burden is considered high according to the quality of public services which are received in return.

According to data from the Latinobarometro in 2011, through a specific question on the subject, 74.8% of the population considered that the taxes that they paid in their country were high or very high. This perception was especially high in Brazil (95.8% of respondents), which has a tax pressure similar to the average pressure of the OECD. But it was also high in countries with a low tax pressure as Paraguay (71.7%), country with a below-average tax burden and where in 2011 a personal income tax didn't even exist, or Guatemala (73.9%), while their tax burden reaches barely 12.3% of the GDP and is the smallest of the region.

Figure 4
Reasons to avoid paying taxes
(Latinobarómetro 2004)

Question: Reasons why do you think that people stop paying taxes (total multiple response sum more than 100)



Source: Latinobarómetro, 2004.

The imbalance in the contractual relationship between the society and the State in relation to what citizens are given in Exchange for the tax is also clearly manifested in perceptions that point to the "existence of corruption", that "the payment of taxes does provide any return" or "you never see benefit in payment of taxes". The lack of return of taxes seems to have a very important weight. Thus, according to the Latinobarometro in 2005, only 22% of the population trusted the way in which the tax money was used. We must add to this element, as mentioned above, a low valuation of public services by broad social sectors, 51% being the average of satisfaction for public services in the year 2011 (Latinobarómetro, 2011).

A last element has to do with the perception that "those who have more don't pay", that would show that the tax system is perceived as inequitable, either because there is a perception that taxes are not collected in an impartial manner. With regard to this last aspect, what does seem clear is that there is a strong perception, by 68.6% of the citizens, that taxes are not paid fairly (Latinobarómetro, 2011).

This last element shows the existence of an alarming public distrust in the tax administration, despite the important efforts of modernization in the last two decades.

4.2. Crisis of democratic values and tax payments

Failure to comply with tax obligations seems to be also much related to the crisis of democratic values and the lack of solidarity from some sectors of the population. As you can see in chart 4, "lack of honesty", "lack of tax awareness" or" selfishness or mischief of the nationals" are also perceived as reasons why the population pays no taxes.

These factors may help explain the high tolerance of tax evasion recorded in Latin America. If tax evasion is not considered a negative value in the society, the moral costs in the event of non-

compliance with tax obligations are low, which creates a culture of hostility toward taxes.

A central problem is that the compliance with tax obligations is not considered by many Latin Americans as a central element of the exercise of citizenship. Latin America is dominated by a conception of democracy and the exercise of citizenship, based fundamentally on the exercise of the vote (see figure 5) and only 47% of the population estimated in 2011 the tax as a must in the exercise of citizenship. This perception was even lower in the case of "obeying the laws", "help the nationals who are worse off "or "participate in political or social organizations".

Figure 5
Things that you cannot avoid in order to be a citizen.
2011 Latin America

Question. Which of the following do you think a person cannot avoid doing if he or she want to be considered a citizen? * Multiple-answer question, total sums more than 100.

Source: Latinobarómetro, 2011.

These perceptions should be considered in a broader context, in which even though 79% think that, despite problems, democracy is the best system of Government, 57% of the population of Latin America is dissatisfied with the way democracy works (Latinobarómetro, 2013).

Ultimately, reciprocity between duties and obligations of the State and citizens in tax matters is has failed to become institutional. Latin American citizens demand efficient and effective State responses to their problems and needs, and despite Government efforts, they keep a strong distrust in the functioning of democracy and its institutions, including taxation. To change this situation it is essential to break the vicious circle that leads many citizens not to pay taxes under the pretext that public services are poor and their taxes are badly managed, what causes that there are not resources to improve the quality of public services; in this way, the circle is perpetual.

It is obviously required to advance on many fronts, including enhancing strategies for detection and correction of tax evasion, and to increase the feeling of risk and impartiality, but above all, it is essential to foster a new relationship between the State and citizens based on mutual cooperation and trust. The challenge is to build a new tax culture in the context of opportunities and challenges Latin America is facing.

The success of the inescapable tax reforms that many countries need will depend on the link between taxes and spending, but that population must be fully aware that taxes are allowing to generate public services that benefit the entire society (OECD, 2012).

Tax authorities in the region have confirmed that it is not possible to achieve major changes in the tax culture without strategies to achieve voluntary compliance, providing better services, but also educating from an early age so that people internalize the payment of taxes in their own conviction. To this, we must add the pragmatic fact that monitoring is very costly in terms of human and material resources.

This evolution has been of great relevance, since in Latin America a coercive and repressive vision of tax administrations has largely dominated (Santos and Carballo, 2009, 82).

As recommended by the OECD in its report Latin American Economic Outlook 2012. Transforming the State for Development, the institutional strengthening of tax administrations and the expansion of the tax base should be accompanied by efforts to raise the quality of public services, but also initiatives that improve tax morality through the education of the citizens (OECD, 2011, 8).

Although it has not yet received the due attention, already many countries in Latin America dedicate efforts in tax education[1], under the leadership of the tax administrations. The tax education begins to be seen increasingly as an element that can accelerate tax citizenship and generate societies more committed to taxation.

While in other regions[2] there are countries that carry out actions of tax education, such initiatives are achieving a higher degree of institutionalization in Latin America through the collaboration between the ministries of Finance and of Education. There is also a learning and regional exchange of experiences relevant to promote various programs on this issue.

5. TAX EDUCATION IN LATIN AMERICA

In view of the urgent need to promote tax awareness among citizens, tax education has been included among the action lines of most tax administrations of Latin America, albeit with a different scope. The oldest programs are those of Brazil (1996) and Argentina (1997), and the most recent is of Bolivia (2011). Most have been created between 2005 and 2011, so in general they are recent initiatives (see table 1). Colombia, Nicaragua, Panama and Venezuela are the only countries that still do not have structured national programs of tax education.

With some exceptions, consolidating tax education as strategy has taken several years. It should not be forgotten that the priority of tax administrations is to comply with short-term collection goals, and it is difficult to allocate resources to a medium and long term process of cultural change that requires pedagogical techniques unrelated to the daily work of tax institutions.

To consolidate the programs, it has been essential to achieve their institutionalization within tax administrations, forge alliances with educational institutions and to consider tax education as a State policy, rather than a government policy.

1. *For a systematization of experiences of fiscal education in Latin America, see "Fiscal education and Social Cohesion: experiences from Latin America" (Rivillas Diaz and Fernandez Perez, 2010).*
2. *For an analysis of experiences of fiscal education focused mainly on cases from developing countries and emerging from Africa, Asia, Latin America and Europe, see OECD 2014.*

Table 1
Tax education in Latin America and the Dominican Republic

Country	Year of creation	Institution responsible	Denomination	Full time human resources
Bolivia	2011	Bolivia National Tax Service	Program Creating Tax Culture	10
Costa Rica	2009	Directorate General of Taxation	Tax Education Program	3
El Salvador	2008	Directorate General of internal revenue	Tax Education Program	5
Paraguay	2008	State Sub-Secretariat of Taxation	Tax Education	1
Honduras	2007	Executive Revenue Directorate	National Tax Education Program	8
Chile	2006	Internal Revenue Service	Tax Education Program	1
Dominican Republic	2006	Directorate General of Internal Revenue	Tax Education Program	13
Uruguay	2005	Tax General Directorate	Tax Education Program	1
Guatemala	2005	Superintendence of Tax Administration	Program of Tax Culture	8
Peru	2005	National Superintendence of Tax Administration	Program of Tax Culture	7
Ecuador	2002	Internal Revenue Service	Program of Tax Culture	1
Mexico	2001	Tax Administration Service of Mexico	Tax citizenship program	22
Argentina	1998	Federal Public Revenue Administration	Tax Information Program	12
Brazil	1996	Escola de Administração Fazendária	National Tax Education Program	50[3]

Source: Own elaboration

5.1. Institutionalization of initiatives in the tax administrations

Except in Brazil, tax administrations are institutions that lead tax education in Latin American initiatives, in some cases with specific support from other entities within the ministries of finance, and they are increasingly supported by educational institutions.

Brazil presents an organizational and program management structure different from the rest of Latin American countries, motivated by the emphasis on the promotion of the social control of public spending. The national program of Tax education of Brazil (PNEF) is coordinated by the school of tax administration (ESAF), the entity that is part of the structure of the Ministry of finance. The implementation of the program is the responsibility of the so-called working group of Tax Education (GEF). It is composed of a representative of each of the following institutions: Ministry of education, ESAF, Secretary of Federal Revenue of Brazil (Receita Federal), Secretariat of the National Treasury, Finance Secretariat of each State and the Federal District and the Ministry of Education of each State and the Federal District (Lindemberg Baltazar and Aquino, 2010, 75).

3. *The staff includes part of the PNEF in different institutions.*

Dedicated and trained human resources, as well as material resources, are essential for providing programs with the desired impact and sustainability. Most of the countries have limited economic resources. Annual budgets generally do not exceed $500,000.

The number of officers dedicated full time to these tasks in the tax administrations is also rather small and ranges from one in countries such as Ecuador, Chile and Uruguay, to 13 in the Dominican Republic, 22 in Mexico and 50 in Brazil, in the institutions that are part of the PNEF

To compensate for the shortage of human and material resources, the collaboration with other institutions of the State, mainly educational, has been fundamental. Also, looking for allies within the own tax administrations and other agencies of the Ministry of finance. In addition to obtaining additional resources, the goal is to promote an internal cultural transformation and strengthening the role of officials as promoters and public servants of a new tax culture.

Thus, El Salvador, even though it has a Tax education Unit composed of five officers, has also 10 officials of the Directorate General of internal revenue to support teacher training programs. **Argentina** has a team of 31 agents, called 'Tax Education referees"' in the different provinces of the country and they are involved part-time in all the program's strategies. **Chile** has 23 staff members who support the actions of tax education combining them with their daily work. In **Peru**, 20 officials from the taxpayer service area work part time and have different functions and goals according to their regional direction. In **Costa Rica**, a group of 40 volunteer officers, have worked with the students of technical colleges in non-working hours. In Brazil, a part-time agent is responsible for tax education activities is appointed in each of the 194 decentralized units of the Receita Federal.

Countries such as El **Salvador**, **Costa Rica**, **Chile** and **Argentina** try to involve organizational officials in visits to schools, such as in the case of initiatives as "The Finance Ministry goes to school". Officials attend their children's schools to tell them in an attractive way, through interactive games, what their work is and the importance that it has for the collective well-being, encouraging also the sense of belonging to the institution.

New technologies are also used as a vehicle to enhance performances. In addition to seeking synergies with institutional communication campaigns, many countries used their Internet sites to achieve a greater dissemination of their programs. The national tax administration of Uruguay and the SII of Chile are the clearest examples. Both institutions focus most of the efforts in offering different multimedia and instructional materials on their website for teachers, students and the public in general.

In general, the main recipients of tax education are elementary and secondary school children. This is because this segment is located at a key moment of socialization and training of their tax awareness. Once actions with these groups are strengthened, different programs have begun to work to a greater extent with university students Despite the fact that they have not been their natural addressees, initiatives don't put aside work with adults, that are object of campaigns in media, contests, fairs and festivals, plays, educational visits to customs or radio programs, among others.

It seems logical that if tax administrations want to lead the transformation of the tax culture, this should starts first by a transformation of attitudes within the institutions themselves. Thus, in some countries tax administration and training officials receive training to reinforce their sense of belonging to the institution and raise awareness about the importance of tax education for the well-being of the population, thus fostering a greater commitment to the public service.

At the El Salvador Ministry of finance, the staff must undergo a mandatory annual training on tax education. The Receita Federal of Brazil has

incorporated a specific tax education module for every new officer. The Tax and Customs Institute of development of Peru, institution responsible for the training of officials who have access to the tax administration, teaches an introductory module on tax culture in all its training activities.

5.2. Alliance with the educational system

The Alliance with the educational system is essential to provide programs with the desired impact and sustainability. There is no way of entering the school if the educational area does not accept and value the contents. This is why agreements with education are convenient, to jointly discuss the approach, content and methods.

The search for understanding between the tax and educational institutions has been a main workhorse of tax education programs, which has limited sometimes their ability to become real public policies. The lack of coordination has to do with different factors.

First, the ministries of education have other priorities and when the curriculum opens there are many pressures from different sectors of the society to include other civic issues such as environmental, road, sexual education, etc. Secondly, at an initial time the topic is perceived as an interference of the tax institution without teaching experience and little social respect in the educational field. Another element of friction is the perception that teachers are not familiar with these issues and they would involve new costs in pedagogical resources and training needs that the ministries of education are not willing to assume (Díaz Rivillas and Vilardebó, 2010).

Today we are witnessing a scenario that invites to optimism. After years of disagreements, the ministries of education begin to see how beneficial the partnership with tax authorities for the teaching of these topics in the classroom, as part of social and civic studies, within the tax training or transversely. Already nine[4] countries have included tax education in their school curricula and materials jointly with the ministries of education. It is a recent process that has taken place in almost all countries in the past five years.

This progress rests on the commitment of the tax administrations with the tax education, in using best pedagogical tools, a more effective training of teachers and, above all, because educational authorities recognize the linkage between tax education and the construction of citizenship. In the teaching of citizenship, it is important to relate to rights and duties of citizens for the strengthening of democracy. Tax culture is understood as one component of the ethical and civic training of citizens aware of the social role of taxation, the importance of transparency and proper management of public expenditure and the damage caused by tax evasion, piracy, smuggling and corruption. The tax technical part is more or less complex depending on ages and the nature of the academic specialty.

El Salvador is the country that has achieved a greater inclusion and development of tax education in the curriculum, and formal school materials thanks a solid alliance between the ministries of finance and education, which it has developed in a phased manner in line with the practice through mixed teams both in the design of contents and in the training of teachers. In this Central American country, tax education is included as compulsory education in elementary social studies and media, in the commercial technical high school degrees and in option logistics and customs, and transversely in the axis of values and citizenship for school years from kindergarten to third grade. Only in elementary and middle school, tax education would be reaching more than 800,000 school children each year.

4. *Peru, El Salvador, Honduras, Argentina (in some provinces), Costa Rica, Guatemala, Dominican Republic, Brazil, Uruguay and Paraguay.*

A key element is to achieve training teachers, to deal optimally with the issues in the classroom. Except Guatemala, that has managed to train through campaigns 24 per cent of the total number of teachers, the majority of the programs are still very limited to train a significant number of teachers in a systematic, sustainable manner and without a high cost.

The use of new technologies opens up important opportunities to increase recipients and optimizing resources through strategies of online training. Thanks to the use of online training in its diploma of tax education, El Salvador has managed to train more than 900 teachers, which has allowed as indirect beneficiaries over 150,000 school children throughout all the editions (OECD, 2014).

The ESAF of Brazil, through its online course for " tax education agents", has offered every six months a total of 160 scheduled hours, and has formed since 2004 more than 100,000 agents in all Brazil, mainly teachers of basic and middle education.

In Uruguay, Plan Ceibal has led to an excellent opportunity to implement tax and civic education projects in the area of social sciences and citizenship, with a potential coverage of 100% of the students. Plan Ceibal is part of the international project 'A laptop per child' and aims to promote digital inclusion, in order to enable greater access to education and culture. Through an agreement with the Ministry of education, the Ceibal platform has enabled the tax administration introduce two video games aimed at young people of 5th and 6th year elementary and third-year basic cycle of secondary education. This initiative improves the reach (319.238 in elementary school and 155,000 in middle or high school) and the sustainability of the actions in an innovative way, very important to reducing costs.

5.2.1. Tax education in higher education

There is special interest in tax administrations by encouraging greater fiscal awareness and professional ethics in the field of higher education, because students are at ages close to the labor insertion and because the business and economic careers train the would-be entrepreneurs and tax advisors to a market in which sometimes the circumvention and evasion strategies are rewarded.

From the University level, working with tax administrations means for students to acquire up-to-date technical knowledge, free and very useful for their professional future. At the same time, in the context of University extension, the topic is attractive in the search for greater interaction of the University with the society from a critical, creative and social perspective responsibility to the community.

Brazil is a pioneer in this field. The Receita Federal of Brazil, through the initiative of the Tax and Accounting Support Nuclei (NAF), trains University students on issues of tax culture so these students, in their hours of practice and under the supervision of their teachers, will in turn provide free of charge advice to low income individuals and legal entities. This initiative is present in more than 40 universities in Brazil and has recently spread to several universities of Costa Rica, Guatemala, Honduras and Mexico. The initiative proved clear benefits for all participants. The community benefits of aid to meet basic tax issues, while the tax administration fulfills its role of tax and citizenship training, and provides support to the most disadvantaged. The University, for its part, strengthens its ties with the community and empowers its students with an updated and practical knowledge on tax issues free of charge. Accounting companies benefit from redirecting the simplest cases - often with a difficult communication with customer - to the NAF.

The University of São Paulo develops a curriculum of undergraduate named ‘ the Constitutional City: Capital of the Republic ‘, which combines teaching and research with the public finances: income, expenditure, budget and control. It is implemented in in the capital of Brazil, Brasilia, in collaboration with different institutions of the State, including Federal revenues and the ESAF, which are visited by students. Through visits to public institutions, occurring during the week prior to Memorial Day of the political independence of Brazil, the students are introduced to a reflection on public governance and the exercise of citizenship.

The State University of Maringa, in Parana, has the “music, poetry and citizenship” project and various plays directed and represented by students, officials of the tax administration and the University itself. These show alleged tax evasion and corruption, misuse of public money and its negative consequences on the population, and invite the society to act to change this reality. The plays have reached more than 106,000 people. The University has also included transversely the issue of tax education in nursing career, involving students in tasks of social control of spending, and there are annual writing competitions on tax citizenship in which more than 100,000 people have participated in seven years.

The Tax Education program of Honduras offers a diploma aimed at students and teachers of different races in public and private universities. The topics covered include the impact of piracy on the national economy, the effects of corruption in public expenditure and social investment, tax fraud, transparency in public administration, the importance of social responsibility and the effects of smuggling. They also hold an annual Conference of Tax Education with universities that include forums, symposia, plays, dance, painting, poetry and contests.

In Mexico alone, and very recently in some universities in Brazil, tax education works within the curriculum. The Mexican Tax Education program promotes ‘Formation and tax information,’ balancing tax and technical knowledge with democratic values and professional ethics in the Law, Accounting and Economics degrees. In the University of São Paulo, within the course of Public Policies Management, Tax education has been included in transversally within the discipline of constitutional law.

Another important aspect of collaboration between universities and administrations is developed in the field of internships in tax institutions. In El Salvador, University graduates are located in the offices of the Directorate General of internal taxes (DGII), where they complete their professional practices and at the same time know the services provided by the institution.

In Brazil, the Receita Federal has a program of internships, ‘Oriented self-help’, through which students are trained to assist taxpayers in meeting their tax obligations through the internet, thus promoting greater digital inclusion.

5.3. Non-formal tax education strategies

As a complement to formal education, the Latin American countries have developed non-formal strategies which are more open, flexible and even playful, in tune with cultural preferences of children, youth and the population in general.

Over time, the non-formal educational initiatives have provided with a greater educational intentionality and a more rigorous character, following the maxim that “the game is not a game”. Experiences include recreational spaces of tax education, exhibitors at fairs or theme fairs, plays, video games, television series, music, contests, radio programs, comics in children’s magazines or newspapers, among others (Diaz Rivillas and Vilardebó, 2010).

In 2009, in El Salvador was created within the Ministry of finance, a 120 square meters tax education games room called “RecreHacienda”, which receives more than 10,000 visitors a year; schoolchildren aged between 6 and 12

learn about taxes and spending while they build their ideal city with public and private buildings, pretend to be customs officers or follow the path of State funds. In 2013, another educational space in the same facilities was opened: "Express yourself", through which young people between 15 and 20 years learn about tax reality, in order to appreciate their contribution to social development and economic growth, as well as to change behaviors in relation to evasion, avoidance and smuggling, generating critical and responsible attitudes about the use of public funds.

Argentina, pioneer in this field, has a space of tax education located in one of the malls of Buenos Aires. Costa Rica has created the room 'Tribute to my country' in the Museum of the children of San Jose, in what formerly was a former penitentiary, to promote the understanding of the relationship between income and expenditure and the role of the legislature in the process. Mexico entered a space of this type within a city for children called Kidzania, where youngsters take contact with the tax administration, which is part of a small town where children play at being adults working in various occupations, paying taxes and deciding how to use the collected funds. The program of Uruguay also has a space in the city of children in Montevideo called 'The time machine', in which a video and a video game teach the importance of taxes. In Peru, in 2014, the National Superintendent of customs and tax administration (SUNAT) inaugurated a fiscal education in the infant city "Diversity" module, and Bolivia (SIN) national tax service launched the pedagogic games room - "learning with Don Finances", located in the Central Office of the SIN.

Some countries have used television as a massive tax education channel. We can highlight the experience of the SAT of Guatemala with the children's series 'Monkeys and parrots', and the television series promoted by the Internal Tax Service of Chile (SII). The SII included its character IVO in a well-known children's series, and most recently launched the series 'The Debut of the Rock Band', through which the issue of taxes is reported in a pleasant way. This last series, in addition to being available on the Web and displayed on the visits of the initiative "SII goes to school", was broadcast by the channel of Novasur of the National Council of Television, which has a network of 5,000 schools.

Other means of reaching citizens has been the participation of tax education fairs and festivals, which ensures a considerable influx of visitors. Bolivia and Guatemala made fairs and festivals with concerts, competitions, theater and stands on the history of taxes.

In order to optimize the human and material resources, Costa Rica and El Salvador celebrated every year the so-called "tax culture week", as a way of promoting greater civic awareness. These actions include music and dance shows, games and competitions for young people. The participation of schools in initiatives such as extracurricular activities in the school calendar not only represents a considerable saving, but it allows to link the work of the formal and informal education.

Aside from the work with teachers in the classroom, through these non-formal actions a greater connection between tax education programs and global communication strategies of tax administrations take place, to achieve a new relationship with citizens and narrow the gap between the ideal and the real image which is essential to achieve greater legitimacy (Díaz Rivillas and Vilardebó, 2010).

6. INTERNATIONAL COOPERATION AND THE PROMOTION OF TAX EDUCATION

Agencies of international cooperation for development and cooperation between the countries of the region have played an important role in the strengthening of fiscal education in Latin America. Thus, the Inter-American Development Bank (IDB) and UNICEF have initially supported Argentina's program, while the Spanish Agency of international cooperation for development (AECID) has supported the Under-Secretary of State of taxation of Paraguay and the El Salvador Ministry of finance in the preparation of teaching materials. In Guatemala, UNICEF collaborated with the SAT and has counted with the support of the German technical cooperation. From United States, USAID supported the construction of the space of games in 2012 "Express yourself" in El Salvador. The Receita Federal of Brazil and the State University of Maringá contributed to the creation of the national program of tax education of Honduras.

Within the efforts to promote social cohesion, the cooperation of the European Union through the EUROsociAL program has supported since 2008, through the exchange of experiences among peers, the strengthening of practically all of Latin America's tax education programs, both formal tax non-formal education strategies. Clear examples are the support provided for the design and implementation of programs of El Salvador and Costa Rica, taking as a reference the experience of the AFIP in Argentina, through a triangular mechanism of cooperation, and the momentum that is being given to the creation of nuclei of accounting and tax support to natural and legal persons of low income with the support of the Receita Federal of Brazil.

A network of education tax by tax administrations and ministries of education of Latin America was created in 2008 within the framework of EUROsociAL. Working together for the exchange of experiences of this community of practice has made possible to identify the regional best practices: strategies of curricular inclusion, teaching methodologies and initiatives of extension and Social Responsibility College, multimedia, or recreational spaces, among others.

7. CONCLUSION

The fact that the ministries of finance work on education in values and citizenship related to taxation constitutes a step forward for the democracies of Latin America. It suppose abandoning only coercive approaches and a new direction in the relationship between the State and citizens.

The compromise between the finance ministries and educational institutions, based on mutual benefit and innovative teaching strategies, is creating bases for developing tax education as public policy, in elementary education as well as in high school and University.

The recent advances and recognition demonstrate the existence of considerable interest to strengthen such program and the trend is that in the coming years, tax education will have greater relevance on the public agenda and in the international cooperation and development.

In 2013, through an Executive Decree, the President of Costa Rica and the Ministers of Finance and Education of this Central American country declared tax education as national public policy. In 2012, the culture-tax service website of internal taxes of Chile won the 'Queveo'

Foundation[5] as best child educational site for its contribution to civic education. A year earlier, the program of tax education of El Salvador was awarded the good practice and innovation 'Es Calidad' national award granted by the Presidency of the Republic, while the tax culture of Peru was finalist of the prize to best practices in public management 'Ciudadano al dia'.

The OECD, in its recent publication 'Building Tax Culture, Compliance and Citizenship: A Global Source Book on Taxpayer Education' has systematized experiences of education tax of 30 tax administrations of Latin America, Africa, Europe and Asia, in what constitutes the first comprehensive study on the subject. The conclusions highlight that we have a "new era" for tax education to play an important role in development policies, as a bridge between the tax administrations and citizens, and as a transformative tool for the tax culture of the present and future taxpayers (OECD, 2014).

It is essential to highlight the central position of tax education in the generation of citizen confidence in state taxation. This fact is recognized by the Inter-American Center of tax administration (CIAT) in the technical resolution adopted at its 45th General Assembly, which states the following: "Tax administrations should introduce and strengthening, wherever possible, the concept of tax compliance through continuous improvement of programs and consistent implementation of education programs and tax assistance"[6].

This educational perspective is important because confidence in the state taxation is high when taxpayers are treated with respect and with their cooperation, and reduced when one considers the individual as a predictable evader that only pays taxes if he is forced to do it (Alm and Torgler, 2006)

We cannot ignore, however, that the coercive field strength and the feeling of presence of the State are also components to build confidence. Therefore, the tax administration must insist in the search for effective mechanisms to combat tax evasion, such as investment in highly qualified staff and the computerization of data, with a view to a rigorous use of mechanisms for cross-checking and control corruption.

The Latin American States increasingly need to act effectively in the detection and correction of tax fraud. However, in contemporary societies, to establish trust only inductive mechanism must not be coercive. Confidence and the legitimacy of the State require in addition a policy of efficient public services and communication strategies for the development of networks, as well as the expansion of tax education programs, all of which contribute to creating a greater sense of belonging and legitimacy. This is one of the great challenges of contemporary tax management.

In summary, along with the need to convey the idea that taxes are necessary to maintain public services, the contemporary reflection leads to the need for a change in the position of the State in which the mindset of 'us versus you' (tax hostility) is replaced by a more open and collaborative vision (tax friendliness).

Tax Education strategies, as all educational process and cultural change strategies, results in the medium or long term and require sustained work and appropriate methodologies. The bet in the short-term is to achieve that tax education becomes a key piece of social transformation in the eyes of citizens and public authorities, allowing a critical reflection and a greater understanding of taxation and its relevance in the complex network of social cohesion.

5. *Chilean foundation dedicated to the development of digital awareness and behaviors that contribute to a responsible digital citizenship.*
6. *Resolution of the 45th General Assembly of CIAT. <http://www.ciat.org/index.php/es/cooperacion-internacional/actividades-internacionales/asambleas-generales.htmlZ >*

8. BIBLIOGRAPHY

Albajari, Augusto; Bruzzone, Gastón; Velasco, Marcela; Sanguinetti, Juan; Zanini, Carol; Mobilia, Maria Fernanda (2006): Educación tributaria y formación ciudadana. Módulo para el docente. Buenos Aires: Administración Federal de Ingresos Públicos (AFIP).

Bárcena, Alicia (2014): Caminos de igualdad para América Latina y el Caribe. Columna de opinión. Centro de Prensa de la CEPAL <http://www.eclac.cl/cgi-bin/getProd.asp?xml=/prensa/noticias/columnas/9/52189/P52189.xml&xsl=/prensa/tpl/p8f.xsl&base=/prensa/tpl/top-bottom.xslt>

Banco Mundial (2013): Latin America and the Caribbean as Tailwinds Recede: In Search of Higher Growth". Washington, D.C.: International Bank for Reconstruction and Development / The World Bank.

Benno, Torgler (2004): Tax Morale, Trust and Corruption: Empirical Evidence from Transition Countries. Working Paper No. 2004 – 05, Center for Research in Economics, Management and the Arts.

Buffon, Marciano (2007): A tributação como instrumento de densificação do princípio da dignidade da pessoa humana. São Leopoldo. Unisinos.

Casalta Nabais, Jose (2009). Estudos de Direito Fiscal: por um estado fiscal suportável. Lisboa: Almedina.

Castells, Manuel. Redes de indignação e esperança. Movimentos sociais na era da internet. São Paulo: Zahar, 2013.

CEPAL - Comisión Económica para América Latina (2013): Panorama Social en América Latina. Santiago de Chile: Naciones Unidas.

CEPAL - Comisión Económica para América Latina y el Caribe (2012):

CEPAL - Comisión Económica para América Latina y el Caribe (2010): Estudio económico de América Latina y el Caribe 2009-2010. Santiago de Chile: Naciones Unidas.

CIAT (2000): Capacidade de Administração Tributária, Aceitação Social do Imposto, Desenho Normativo. Brasília: Esaf, (mimeo).

Daude, C., H. Gutiérrez and Á. Melguizo (2012), "What Drives Tax Morale?", OECD Development Centre Working Papers, No. 315, OECD Publishing.

Delgado, María Luisa y Valdenebro, Maria Luisa (2010): "La Educación Fiscal: ¿por qué y para qué?", en Díaz Rivillas, Borja y Fernández Pérez, Ángeles (Coordinadores) Educación Fiscal y cohesión fiscal: experiencias de América Latina. Madrid: Instituto de Estudios Fiscales de España. Madrid: Instituto de Estudios Fiscales de España.

Díaz Yubero, Fernando (2003): Aspectos más destacados de las Administraciones Tributarias. Avanzadas. Madrid: Instituto de Estudios Fiscales, Doc. No. 14/03.

Díaz Yubero, Fernando. [Coord.] (2009): La experiencia educativa de la Administración Tributaria española. Madrid: Documentos del Instituto de Estudios Fiscales 13/09.

Díaz Yubero, Fernando 2008): "Educar en solidaridad". Sección de Documentos del Portal EUROsociAL Fiscalidad. <http://eurosocialfiscal.org/uploads/documentos/f8dccf882f9c2f2baa2ef0a05dfe3ff d.pdf>

Díaz Rivillas, Borja y Fernández Pérez, Ángeles (Coordinadores) (2010): Educación Fiscal y cohesión fiscal: experiencias de América Latina. Madrid: Instituto de Estudios Fiscales de España. Madrid: Instituto de Estudios Fiscales de España.

Díaz Rivillas, Borja y VIlardebó, Andrea (2010): "Orígenes y situación de los programas de Educación en América Latina", en Díaz Rivillas, Borja y Fernández Pérez, Ángeles (Coordinadores) Educación Fiscal y cohesión fiscal: experiencias de América Latina. Madrid: Instituto de Estudios Fiscales de España. Madrid: Instituto de Estudios Fiscales de España.

Feld, L.P. y B.S. Frey (2002), "Trust breeds trust: how taxpayers are treated", Economics of Governance, 3, 87-99.

Gómez Sabaini, Juan (2010): "Evasión tributaria y equidad en América Latina". Presentación realizada en el Taller "Políticas públicas e impacto distributivo" organizado por la División de Desarrollo Económico de la CEPAL y las agencias de cooperación alemanas GTZ e inWent y el Ministerio Federal para Cooperación y Desarrollo Económico, 17-18 de agosto, Santiago de Chile, Chile. <http:// www.gtz-cepal.cl/fi les/gomez-sabaini.pdf>.

Habermas, Jürgen (1997): Direito e democracia: entre facticidade e validade. Rio de Janeiro: Tempo Brasileiro.

Holmes, Stephen y R. Sunstein, Cass (2011): "El costo de los derechos. Por qué la libertad depende de los impuestos", Buenos Aires, Siglo XXI, 2011.

Instituto de Estudios Fiscales (2008): La evasión fiscal: origen y medidas de acción para combatirla. Madrid: Instituto de Estudios Fiscales.

Instituto de Estudios Fiscales (2005): La educación fiscal en españa, Madrid: Instituto de Estudios Fiscales.

Jiménez, Juan Pablo; Gómez Sabaini, Juan Carlos; Podestá, Andrea (2010): Evasión y equidad en América Latina. Santiago de Chile: United Nations.

Kelsen, Hans (1998). Teoria Pura do Direito. São Paulo: Martins Fontes.

Latinobarómetro (2011): Informe Latinobarómetro 2011. Santiago de Chile: Corporación Latinobarómetro. www.latinobarometro.org

Latinobarómetro (2010): Informe Latinoba-. rómetro 2010. Santiago de Chile: Corporación Latinobarómetro. www.latinobarometro.org

Latinobarómetro (2009): Informe Latinobarómetro 2009. Santiago de Chile: Corporación Latinobarómetro. <www.latinobarometro.org>.

Latinobarómetro (2008): Informe Latinobarómetro 2008. Santiago de Chile: Corporación Latinobarómetro. <www.latinobarometro.org>.

Latinobarómetro (2007): Informe Latinobarómetro 2007. Santiago de Chile: Corporación Latinobarómetro. <www.latinobarometro.org>.

Latinobarómetro (2005): Informe Latinobarómetro 2005. Santiago de Chile: Corporación Latinobarómetro. <www.latinobarometro.org>.

Latinobarómetro (2004): Informe Latinobarómetro 2004. Santiago de Chile: Corporación Latinobarómetro. <www.latinobarometro.org>.

Lindemberg Baltazar, Antonio y Aquino, Monica (2010): "El Programa Nacional de Educación Fiscal de Brasil", en Díaz Rivillas, Borja y Fernández Pérez, Ángeles (Coordinadores) Educación Fiscal y cohesión fiscal: experiencias de América Latina. Madrid: Instituto de Estudios Fiscales de España. Madrid: Instituto de Estudios Fiscales de España.

Odd-Helge Fjeldstad, Kari K. Heggstad (2012): "Building taxpayer culture in Mozambique, Tanzania and Zambia: Achievements, challenges and policy recommendations". Bergen: Chr. Michelsen Institute (CMI Report R 2012:1) 62 p.

Odd-Helge Fjeldstad, Collette Schulz-Herzenberg and Ingrid Hoem Sjursen (2012): "Peoples' views of taxation in Africa: a review of research on determinants of tax compliance. Brighton: International Centre for Tax and Development at IDS (ICTD Working Paper no. WP 2012:8) 50 p.

OECD/CEPAL (2011), Latin American Economic Outlook 2012. Transforming the State for Development, OECD Publishing.

OCDE/CEPAL/CIAT (2014), Estadísticas tributarias en América Latina, OECD Publishing.

OCDE (2014): 'Building Tax Culture, Compliance and Citizenship: A Global Source Book on Taxpayer Education', Paris: Organisation for Economic Cooperation and Development OECD (en imprenta).

Schweizerische Zeitschrift für Volkswirtschaft und Statistik,142(3): 395-425.

Saldías, Carmenza (2010): "La cultura tributaria y la construcción del Estado local: el caso de Bogotá 1990-2010" en Díaz Rivillas, Borja y Fernández Pérez, Ángeles (Coordinadores) Educación Fiscal y cohesión fiscal: experiencias de América Latina. Madrid: Instituto de Estudios Fiscales de España. Madrid: Instituto de Estudios Fiscales de España.

Santos Ruesga Benito & Domingo Carbajo Vasco (2007): Retos para la Reforma Fiscal en América Latina Madrid: Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas (FIIAPP).

Santos, J. Albano (2003). Teoria Fiscal. Lisboa: Universidade Técnica de Lisboa – Instituto Superior de Ciências Sociais e Políticas.

Santos, Boaventura de Souza. Democratizar a democracia. Porto: Afrontamento, 2000.

Transparencia Internacional (2013). Índice de Percepción de la Corrupción (IPC) 2012. < www.transparency.org >.

Torgler, B & Schaltegger, C. A (2006), "Tax Morale: A Survey with a Special Focus on Switzerland",

SUSTAINABLE FISCAL MEASURES FOR RESPONSIBLE MINING

Ana María Fernández Gómez del Castillo

SYPNOSIS

This article aims to study how, through the establishment of incentive tax measures in the development and implementation of a mining project, not only a sustainable mining, but also a responsible mining can be achieved. Social and environmental liabilities that mining companies produce are widely known, and a responsible mining should not only take into account these liabilities but do everything possible to mitigate their impact and recover from the damage caused.

The Author: *Attorney and Tax Advisor, is Professor of Tax Law in the College of Osuna. She has a PhD in Financial Law and Taxation from the University of Seville, a Master in Taxation and Tax Advice by the Center for Financial Studies in Barcelona, and a Master in Banking Management and Financial Markets by the Centre for Legal and Business Studies El Monte in Seville.*

Content

The evolution of the human being and the development of civilizations have been intimately linked to the use of mineral resources. These mining activities, and their ultimate goal, the use of natural resources, constitute a major part of the economic activity in any country, contributing also to achieving the sustainability of many communities.

It is generally admitted today that this sector help others to improve and develop; it promotes development, generate jobs and services, create infrastructures, manage the labor and social regime in a zone of influence, contribute to environmental conservation and recovery, among others, and contribute to the resources of the State.

On the other hand, we know that minerals are non-renewable resources, so the mining activity has resulted in the decrease of available mineral resources. Their exploitation is a complex process, which begins with the exploration and investigation of the mineral resource, then proceed to mining process itself, and still extends beyond the sale of the resource, the treatment of waste generated throughout the process and the restoration of the areas affected by mining. Hence, we consider vital to facilitate objective and transparent information on the efforts and investments made by mining companies, so that institutions and society be informed and share those efforts and to promote business partnerships at all levels to favor the transmission of knowledge and experience.

At all stages of the mining process, from exploration to the closure of the mine, a proactive attitude in protecting the environment is required to avoid major environmental impact on the ecosystem and on the human, social, economic and cultural environment. It will be necessary to think that while minerals are essential for the economy and quality of life of a territory, this should involve at the same time, as we will discuss, that their availability must be achieved through legal instruments of environmental protection and social responsibility throughout the life of the exploitation. They must minimize, as much as possible, the socio-economic costs with an equitable allocation of burdens generated in these processes, especially of environmental type.

We see for example how mining constitute a special case regarding waste generation. The fact that abandoned waste can generate a damage to the environment and the health of citizens has led Spain, among various European Union countries, to adopt a specific normative to regulate the various processes in which residues are involved.

Thus, the mining of any kind has problems of social adaptation, because it is seen increasingly as an activity that damage the environment. Traditionally it has withstood the image of an aggressive activity, causing major environmental impacts, and despite being essential for development, has been attacked from almost all environmental fronts. Mining has deserved this bad reputation, because until recently the concept of environmental sustainability could not find its place in the strategic approaches of mining companies.

Europe, whose environmental legislation is governed, in a fundamental way, by Community

regulations on waste, water and air quality[1], is involved in these social trends and in recent years has launched a series of initiatives to try to adapt the exploitation of mineral resources to the environmental needs of modern societies, in order to curb this trend.

One of these steps was the adoption of the European initiative on raw material[2], which establishes a series of measures aimed at the promotion of this industry; among others, the promotion of sustainable development in the exploitation of deposits. This increases the compatibility between extraction and the protection of the environment, and legislative reforms to promote ground access for exercising the extractive activity.

Similarly, a growing concern for environmental issues has caused, in addition, that in recent years, many OECD member countries have established different taxes that weigh on industrial waste. They try to prevent the most harmful behaviors, and we cannot ignore that in general the knowledge of the tax regime applicable to a particular industrial activity is of utmost importance for potential investors; in the evaluation of the profitability of their project, the tax issue may constitute a very important decision factor.

This article combines the area of administrative law with tax law and aims to study how through the establishment of incentive tax measures in the development and implementation of a mining project, and particularly in the Spanish territory, the achievement of a more sustainable and responsible mining can be reached. Social and environmental liabilities that mining companies produce are widely known and a responsible mining should not only take into account those liabilities but do everything possible to mitigate their impact and recover the damage caused. Actions to reward corrective behaviors include subsidies and bonus systems and environmental taxes appear among strategies that criminalize actions that are harmful to the environment.

1. Sustainable development in the extractive sector

The protection of the environment is present in most of the national and international legal systems. The field of international environmental treaties has grown over the years, taking as starting point the United Nations Conference on the human environment, held in Stockholm in 1972, which culminated with the institution of the United Nations Environment Program[3] and with the establishment in 1983, by the UN, of the World Commission on Environment and Development[4].

The European legal basis of environmental policy stems from the single European Act[5] and later the European Union Treaty[6], and derives essentially from two objectives:

1. *Directive 2011/92 / EU, on environmental impact assessment, include open pit mining and quarrying which area exceeds 25 hectares. For other extractive operations, the Member States decide, based on analysis of each individual case or by setting thresholds or criteria, whether the operations are to be assessed under the provisions of the Directive.*
2. *Communication from the Commission, 4.11.2008, "The raw materials initiative: meeting our critical needs in Europe to generate growth and employment", COM (2008) 699 final.*
3. *The United Nations Conference on the Human Environment was held in Stockholm on June 5 to 15, 1972 and led to the creation of the United Nations Environment Program (UNEP), the main program of the United Nations in charge of environmental issues.*
   In 1987, the World Commission on Environment and Development (WCED) presented its report (also known as the "Brundtland Report") to the General Assembly. The report, based on a four-year study, presented the issue of sustainable development, the type of development that "meets the needs of the present generation without compromising the ability of future generations to meet their own needs".
4. *Ruiz Galdón Ruiz, J. M. and Jiménez Fernández, A., "The Spanish municipality facing environmental taxation in times of economic crisis" in ANTÓN SERRANO, F. (Director) and Travel Agencies, Environmental Taxation and Local Taxation, Civitas, Taxpayer Advocate Collection, Madrid, 2011 , p.162.*
5. *DO C 191 de 29.7.1992.*
6. *DO C 191 de 29.7.1992.*

- Preventive actions for the conservation, protection and improvement.
- Action for correction at the source of attacks against the environment, punishing those who pollute, ensuring thus a prudent and rational utilization of natural resources.

The access to the land, which is a key factor in industrial competitiveness, should be carefully evaluated from the point of view of the environmental impact. Since mining operations often involve the use and transformation of large tracts and volumes of land, and both the operational phase and the phase after the abandonment, a series of environmental effects of greater or lesser extent may take place depending on the local conditions and the type of exploitation.

To build the economy of tomorrow, we must take care of our environment today, which means that the extraction of raw materials must be made without obviating the respect for nature and sustainability.

Sustainable use must be understood as allowing both the present generation and future generations to enjoy natural resources necessary for their reasonable development with a certain degree of well-being. While nature has the capacity to maintain their physical, chemical and biological processes, all of them in the scientific, technological, economic social and cultural framework that exists at any time[7].

Thus, sustainability is not a concept defined on some static references; it takes into account a changing reality. Sustainable development does not mean leaving the planet's resources untouched, but to maintain economic development to meet the demands of current generations but not preclude future generations to meet theirs. This should be done to generate a better quality of life, more goods, and increased revenue for the world's population and without destroying the ecological basis of society[8].

In synthesis, we could say that sustainable development is a framework that considers social, economic, and environmental and governance objectives at the same time[9].

In recent years, since the emergence of the concept of sustainable development, the EU has made great efforts in the field of legislation, carrying out a new conception of the pollution in the industrial sector, giving it a new approach to consider it as a whole, in terms of the media on which it interacts. In addition, since it is necessary to prevent their effects, to control and reduce pollution through the adoption of the best available techniques, hereinafter BATs[10].

Thus, the responsibility of the mining sector with respect to sustainable development that we analyze involves achieving patterns of production and consumption, which contribute to saving resources and limit the generation of pollution and degradation of the land.

Responding to this interest, the European Commission has already established in the year 2000 a set of general policy guidelines aimed at the promotion of the integration of sustainable development in the non-energy extractive industry of the European Union that allowed reconcile competitiveness and respect for the environment[11]. This way, the concept of "sustainable mining" has been developed from the discourse of sustainable development[12] and

7. *See Brundtland Report(1987), A/42/427, August 4, 1987.*
8. *Herrera Herbert, J., Introducción a los Fundamentos de la Tecnología Minera, Universidad Politécnica de Madrid, 2006, p.30. See Rio Tinto Borax (2002), "Borax and Sustainable Development. 2002 Progress Report".*
9. *Mining, Minerals and Sustainable Development (MMSD) Project, London, 2002.*
10. *Gracia Navarro, S., "Industria y Minería", Fundación CONAMA, Madrid, 2002, p.195.*
11. *See European Commission (2000), Communication "Integration of environmental policy. Promotion of sustainable development in non-energetic extractive industry".*
12. *Herrera Herbert, J., Introducción a los Fundamentos de la Tecnología Minera, Universidad Politécnica de Madrid, 2006, p.30.*

the development of the international legislation that supports it[13].

To this, the project "Mining, Minerals and Sustainable Development" considers as the principles of the sustainable development[14]:

In the economic sphere:

- Maximizing human welfare.
- Ensuring efficient use of all resources, natural or otherwise, through an optimization of the incomes.
- Try to identify and internalize environmental and social costs.
- Maintain and improve the conditions for the existence of viable enterprises.

In the Social sphere:

- Ensuring a fair distribution of the costs and benefits of development among all the inhabitants of the planet.
- Respecting and strengthening the fundamental rights of human beings, which include civil and political freedoms, cultural autonomy, social and economic freedoms and personal safety.
- Maintain progress over time. Ensure that the depletion of non-renewable natural resources will not affect future generations, by replacing these resources with other forms of capital.

In the environmental sphere:

- To encourage responsible natural resource management and the environment, including rehabilitating and repairing the damage of the past.
- Reduce as much as possible the residue and environmental damage in the whole supply chain.
- Act with caution when impacts are unknown or uncertain.
- Operate within ecological limits and protect the critical natural capital.

In the governance area:

- Support the representative democracy, including participatory decision-making.
- To stimulate free enterprise within a fair and clear system of rules and incentives.
- Avoid an excessive concentration of power through an efficient system of appropriate checks and balances.
- Ensure transparency by offering access to relevant and accurate information to all stakeholders.
- Ensure accountability for decisions and actions, which should be based on comprehensive and reliable analysis.
- Encourage cooperation in order to build trust and promote the goals and common values.
- Ensure that the decisions are taken at the appropriate level and following as far as possible, the principle of subsidiarity.

On the other hand,[15] the enactment of the Directive 96/61/EC of the Council of 24 September 1996, concerning the Integrated Prevention and Control of pollution[16], known as IPPC Directive, meant a substantial change in the way in which the industrial sector contemplated their effects on the environment and their control. The Directive lays down principles that affect in a substantial way in the future deployment of the environmental strategies of the industrial sectors concerned.

13. *Herrera Herbert, J., Introducción a los Fundamentos de la Tecnología Minera, Universidad Politécnica de Madrid, 2006, p.27.*
14. *Mining, Minerals and Sustainable Development (MMSD) Project, London, 2002, p.22.*
15. *GRACIA NAVARRO, S., "Industria y Minería", Fundación CONAMA, Madrid 2002, pp.195-196*
16. *DOCE núm. L 257, 10 October 1996*
    DO L 24 de 29.1.2008. This Regulation is a modification of Directive 1996/61/CE.
    Véase Pernás García, J.J., "La Directive 96/61/CE, de 24 de septiembre, relativa a la prevención y al control integrados de la contaminación", MAPFRE SEGURIDAD nº. 82-segundo trimestre, Madrid, 2001, pp.37-47.

The first principle is the prevention. This means you have to replace the traditional strategies of correction, which meant the establishment of purification systems normally at the end of the production processes, with systems based on prevention, where the different effects of the process of production on the environment can be eliminated or at least minimized by acting on the environment. Fruit of this principle is the establishment of the BATs, already mentioned.

The IPPC Directive, in its second article, defines, briefly, the BATs as the most effective techniques to achieve a high level of protection of the environment as a whole, developed on a scale that will allow their implementation in the relevant industrial sector, taking into account their impact on the overall and sectorial economy.

The second principle that mark the IPPC Directive is that of integration. The definition of the BATs implies this principle, which is to be seen in an integrated way all the effects on different elements (air, water and soil) in order to avoid the transfer of pollution from one element to another. As a direct consequence of the above principles, the need for establishing emission limits values or ELVs, as low as possible and to relate them with the technologies of production, in such a way that the ELVs will be those achievable with the BATs.

The Public information of the potential environmental impact of an industrial plant would be another principle in the IPPC Directive. This information will be held through processing public information during the authorization process and through the European register of pollutant emissions (ERPE), for installations that exceed certain thresholds of emission.

Finally, the IPPC Directive presents the need for coordination of the different administrative authorities, aspect that presents difficulties in my country due to competition of autonomous communities and other administrative entities on environmental issues.

This Directive recasts Directive 2008/1/EC, which will be replaced by industrial emissions Directive 2010/75/EU[17].

In addition, statements were made in the six summits of Heads of State and Government of Latin America, the Caribbean and the European Union. These were held respectively in Rio de Janeiro (28-29 June 1999), Madrid (17 and 18 May 2002), Guadalajara (28 and 29 May 2004), Vienna (11-13 May 2006), Lima (15-17 May 2008) Madrid (18 May 2010) and Santiago de Chile (January 26-27, 2013). Along with the Euro-Latin American Parliamentary Assembly and its Committee on sustainable development, environment, energy policy, research, innovation and technology, they approved the report of 7 March 2014, entitled 21st century mining based on responsible and sustainable development[18], which recognize and recommend some aspects such as:

- It recognizes the importance of the mining sector; it underlines, however, the major challenges faced by countries wishing to translate their mineral wealth into economic and social development. These include: the ability to attract investment and the adoption of sound mining policies; the creation of natural wealth at the same time protecting the environment and other social and cultural values; sharing benefits from mining, among different levels of Government, local communities and the mining companies, in a balanced way and preventing and addressing potential social conflicts;

- It considers that the magnitude of the adverse environmental impacts and sustainability of the development of mining activities depend on different factors, among which the tax and

17. DO L 334 de 17.12.2010.
16. AP101.590v01-00.

royalty system and the legal and regulatory framework. Therefore it urges countries to provide a legal framework and transparent and clear regulatory covering all phases of the mining, especially the aftermath of the closure of a mining operation; (...)

- remember that the partnership of the EU and Latin America in this aspect is the most important, if taking into account the interest of both parties to promote sustainable development and environmental balance, which should create more synergies in multilateral fora in the field of mining;

- Believes that the mining sector could and should contribute to the fight against climate change through the transfer of technology and a responsible investment; (...)

- It reminds Governments that mining activities should maximize the social and economic benefits and carry out a fairer distribution of the benefits of mining among mining companies, the Government and local communities, without need to go to the detriment of the environment; (...)

- Urges Governments to enable local authorities to responsible and transparent management of mining resources, promoting long-lasting projects and promoting sustainable development; (...)

- Recognizes that in recent decades, the European mining industry has made considerable progress in terms of protection of environment and notes with satisfaction the general acceptance within the companies in the sector that they have to harmonize their activities with sustainable development and the environment. However, it calls on the European Commission that actively promotes corporate responsible behavior among the EU companies operating in third countries, ensuring strict compliance with all legal obligations, in particular as regards international standards in the field of human rights, labor and environment; (...)

- It urges Governments and mining companies to promote a continuous increase of accountability and transparency, including the regular dissemination of information related to their operations, as well as the effectiveness of the existing relevant mechanisms to prevent illicit profits arising from mining activities.(…)

- Considers positive the recent revision of the European Directives on transparency and accounting which introduces the obligation to notify the payments made by the extractive and logging industries to Governments; It urges States members of the EU to implement these Directives quickly; requests that the data collected on income be available in an open and accessible format;"

In general, the international community has to respond to these demands, which are essentially:

- Adoption of strong mining policies
- The need to share the benefits from mining between the Government, local communities and the mining companies in a balanced way.
- Need to provide a legal and transparent tax framework, encompassing all phases of the exploitation.
- Promotion of responsible business conduct, implementing standards of quality, and accepted by the international community.
- Transparency must be promoted in accounting practices and accountability of mining companies.

17. *DO L 334 de 17.12.2010.*
18. *AP101.590v01-00.*

The EU has already regulated some of the mentioned requirements for extractive industry and they are, among others:

a. The Directive on environmental impact assessment that regulates open-pit mining and quarries to heaven of more than 25 hectares[19].
b. The deposit of waste resulting from the treatment of minerals in a pond covered by Directive 99/31/EC on the landfill of waste[20], which establishes the limitations and characteristics of landfills, the types of waste that can be accepted and the procedures applicable to its supervision.
c. Treatment of minerals governed by the Directive on the prevention and integrated control of pollution (IPPC Directive) establishing, in addition, that it is necessary to prevent or reduce pollution using best available techniques[21].
d. The community management and audit scheme, EMAS, provides a tool for the integration of environmental concerns in the extractive industry. The reports to be submitted under that system allow extractive industries to show their ecological performance[22]. The EMAS aims to promote continuous improvements in the environmental performance of European organizations and the dissemination of relevant information to the public and other interested parties.
e. The extractive industry activity is also regulated by the new Framework Directive on water[23].
f. The Commission proposes to extend the scope of the Seveso II Directive[24] on extractive activities.
g. The Commission proposes to make an inventory of abandoned sites and quarries not rehabilitated which may destroy the landscape and can result in risks to the environment.

In general, we could summarize that the most aspects important aspects to integrate environmental issues into the extractive industry are to prevent mining accidents, improve the overall environmental performance of the industry and improve the generated waste management.

What is being done or recommended in Europe? Which standards of action can be taken as a reference to try to remedy environmental liabilities arising from the mining industry?

As best practice in mining, we can mention the following:

1. **Collaboration:** For this purpose, it is necessary to create a public, private, or public-private collaboration network that allows sharing the responsibility of future investments, infrastructure and environmental protection.

2. **Information and transparency:** Any new extractive waste treatment process would have to be accompanied by information on the physical and chemical waste characteristics, in order to make sufficient information available to the authorities and companies that may initiate possible recycling activities or environmental protection programs. It is also important to achieve a better understanding of the legal, political, administrative and social obstacles

19. *European Parliament and Council Regulation 2001/42/EC of 27 June 2001 on the evaluation of the effects of specific plans and programs on the environment DO L 197 de 21.7.2001.*
20. *DO L 182 de 16.7.1999.*
21. *European Parliament and Council Directive 2008/1/EC, 15 January 2008, on pollution integrated prevention and control. DO L 24, 29.1.2008.*
22. *European Parliament and Council Regulation (CE) nº 761/2001, 19 March 2001, allowing organizations to join on a voluntary base a common system of environmental management and audits (EMAS) DO L 114 de 24.4.2001.*
23. *European Parliament and Council Directive 2000/60/EC, 23 October 2000, establishing a community system of wager management. DO L 327 de 22.12.2000 .*
24. *European Parliament and Council Directive 2003/105/EC, 16 December 2003, modifying Directive 96/82/CE of the Council related to management of risks pertaining to serious accidents involving toxic substances. DOL 345 de 31.12.2003.*

to the treatment of minerals by means of an appropriate process of consultations with the affected stakeholders.

To achieve this goal, Spain is already using the Strategic Environmental Assessment, (EIA in Spanish), as a tool for land use planning, and it has also strengthened and the anticipated participation of communities affected by mining to the processes, providing reliable, sufficient and understandable information. We believe that the full implementation of EIA Studies describing, among other things, the possible general environmental effects that could be generated in the activities of exploitation of metallic minerals or non-metal is necessary.

The Social and European Economic Committee has recommended[25] the EU and the Member States to develop innovative policies and tools to address as efficiently as possible the issue of sustainable industrial and mineral waste, , on the basis of research, statistics and scientific facts.

This issue raises great concern among European citizens and organized civil society. Today a significant number of industrial projects risk to remain paralyzed due to the opposition of local communities and civil society organizations, concerned about the impact of mining and industrial activities on public health and the environment.

In many cases, unfortunately, the concerns of society stem from a lack of information and transparency; therefore, it is necessary to ensure a full and proper implementation of the EIA to ensure accurate information and the participation of civil society. In addition, territorial entities are facing the question of industrial and mining waste because dumps and landfills are located in their jurisdiction. For this reason, it is possible to find solutions to transform the «challenge» into an opportunity, promoting collaborations to establish "industrial parks" that allow a maximum utilization of residues in the processing industry, construction and infrastructure.

3. **Establish mine closure projects:** (Plans of the land use and site rehabilitation, site security, closing, landfill, waste, water management of the site, employees programs and socio-economic community programs)

4. The current political initiatives aimed at ensuring the security of supply of raw materials will have to increase financial aid from the EU and the Member States to research and develop technologies for the treatment of industrial and mining waste and the recovery of valuable metals and minerals.

5. **Conversion of mine tailings:** To date there is no database of European level about the location and the physical and chemical characteristics of the waste from mining and other industrial landfills. Some Members States, like Spain, for example, have already developed national plans for management of waste from extractive industries based on relevant statistical data on the number and volume of registered tailings, rafts and dams, in activity as well as abandoned[26].

The conversion of waste and tailings, with or without economic incentives, could provide employment, a better environment, better social, and living conditions for affected communities; in particular, better landscapes and the elimination of contamination hazard.

In addition, because some Member States have developed and implemented methods for evaluating the safety of old tailings, dams and

25. *El tratamiento y la explotación de los residuos industriales y mineros de la Unión Europea con fines económicos y medioambientales» (Dictamen de iniciativa), CCMI/087, Processing and exploitation of industrial and mining waste, Brussels 26 October 2011.*
26. *See the I Plan Nacional de Residuos de Industrias Extractivas 2007-2015 (I PNRIE), showing that in Spain there are 998 registered mines and quarries, with a total of 325 878 800 cubic meters, and that the total volume of tailings generated in period 1983-1989 reached 1. 375. 673. 315 cubic meters. 47,2 % of the total amount of residue are abandoned.*

landfills and have determined the priority actions necessary to prevent significant pollution (such as the Ministry of environment of Slovakia)

Treatment of closed and abandoned mining waste facilities which may entail a risk to the safety, health or that may pollute the environment, and that has an economic value in the current economic climate, should have priority in relation to the scrupulous but quick granting of licenses; to stimulate investment

6. In terms of the EIA of the project especially, environmental and evaluation as well as control/sanction standards must be delimited and defined as part of a collaboration strategy.

7. We propose to promote a specific legislation on corporate social responsibility, (CSR), so that the companies operating in this field will do it with the proper state control.

8. The integrated pollution prevention and control Directive is, as mentioned before, a vital EU legislation in the fight against industrial facilities that are potentially large sources of pollution. These facilities may only be used if the operator has a permission that complies with the requirements for protection of air, water and soil. We must reduce waste immediately, potential accidents that can be prevented, and if necessary, ensure the cleanliness of the place. These requirements should be based on the previously mentioned principle of best available technology.

9. Finally, it is necessary to mention that the World Economic Forum is presenting since 2010 reports as part of its Responsible Mining Development Initiative, RMDI. During 2012, the RMDI focused on the "management of the value of mining", or MVM[27], as a tool designed to improve the mutual understanding of the value coming from the mining, based on seven aspects or areas that drive the creation of value for all stakeholders, and among them is the fiscal environment.

A new mining makes its way, which advocates for environmentally sustainable development and which is exercised under the direction of companies socially responsible. Ultimately, mining activity should find the way enabling it to meet the growing needs of supply of raw materials and mineral with the requirements of the society that demands a clean environment.

Thanks to technological advances and new environmental approaches, the negative environmental impacts of the extractive activity can be corrected. But developing countries will again be the least equipped to face these negative impacts, not only by a minor technological development but also for a smaller development of their mining and environmental administrations, responsible for the proper implementation of sustainable environmental management systems in the mining sector [28].

We see how in Spain environmental impact assessments seek to introduce preventive environmental actions in mining projects to minimize the negative impacts. The starting point is a field research for the archaeological and environmental characterization of the area of the project, culminating in a Base Environmental Study, from which the required assessment can be drafted, to obtain a favorable environmental impact statement[29].

In our opinion, for a truly responsible mining, efforts in this regard must be driven and supervised by the State and society. The State should monitor that the studies of the

27. *Responsible Mineral Development Initiative, 2013.World Economic Forum. In Collaboration with the Boston Consulting Group. Abril, 2013, p.7.*
28. *GARCÍA CORTES, A., "Minería y Desarrollo Sostenible", Instituto Geológico y Minero de España, Madrid, 2005, p.7.*
29. *GARCÍA CORTES, A., "Minería y Desarrollo Sostenible", Instituto Geológico y Minero de España, Madrid, 2005, p.10 Véase Memento 2000. AENOR N.A., Madrid 2000, pp.19-20.*

environmental and social impacts of mining projects are adequate, to ensure compliance with the environmental management plans, that companies act diligently in case of accidents (such as spills, etc.) and do everything at their disposal to prevent them.

So it would be convenient that public administrations implement tools of environmental mining management, and that the companies' taxes should be transparent and are reinvested in the recovery of the exploited land.

2. TAX INITIATIVES TO ACHIEVE A SUSTAINABLE MINING

Any economic policy should take into account some principles of mining taxation to encourage this sector of the industry. Therefore, it would be desirable to strengthen the following aspects:

- The need to make decisions taking into account the extended periods of mining activity and not only the present situation.
- The need to evaluate the results and risks of mining investment including all their stages, from prospecting and exploration (which often do not have successful results) to the projects operation.
- The objective of public policies, including tax, must be achieving the proper use of mineral resources, so the overall impact of the tax regime on the profitability of the mining investment should be measured.
- It is fundamental to the above objective to achieve a proper distribution of the total risk of the mining investment between the State and mining investors, so the charges on mining income should apply to its profitability.
- The tax burden is a key factor of competitiveness to attract international investors, therefore in assessing the costs and benefits of the tax regime the effects on the international competitiveness of the mining should be considered[30].

There are various strategies to ensure a sustainable extractive activity, and we want to defend the idea of how tax incentive measures can mitigate environmental liabilities, as well as encourage and strengthen this sector of the industry, in addition to facilitate the recovery of environmental damages.

Environmental taxation is not an expression devoid of ambiguity, but in the broadest sense, it can be understood as measures taken in tax law with a protective purpose of the natural environment. Logically, the long-term nature of this idea allows integrating both the specifically environmental taxes and the rest of taxes, which contain elements for this purpose such as certain deductions, bonuses or exemptions.

There is no doubt that the main function of taxes is obtaining financial resources to deal with the public spending, however for decades there is a widespread acceptation of their use for purposes other than strictly collecting resources[31]. Thus, within actions intended to reward corrective behaviors, we find systems of subsidies and bonuses and inside the strategies for criminalizing harmful environmental actions are environmental taxes, some of which will be specific to the extractive industry.

Many of these taxes responds to the economic principle "who pollutes pays" which, we must point out, is not mandatory to the introduction of environmental taxes. The mentioned principle,

30. *La tributación minera en el Perú: contribución, carga tributaria y fundamentos conceptuales, Document elaborated by thel Instituto Peruano de Economía on behalf of SNMPE, Lima, 2011, pp.4-5.*
31. *Chamorro y Zarza, J.A., La Fiscalidad Ambiental, ¿Una disyuntiva entre protección del medio y Desarrollo sostenible?, Communication presented at the XXXVIII International Conference on Regional Science, Deusto, p.12.*

in today's legal world, does not fully cover the purpose of these taxes since many of them aim at modifying behaviors harmful to the environment. The establishment of ecological tax in European countries in the second half of the 1980's led to the well-known "Green Tax Reform", which consisted, inter alia, to incorporate environmental elements into the tax system and eliminating the tax structures that could motivate harmful behaviors.

The Reform had three objectives:

1. Include environmental provisions to modify or delete the tax structures that could encourage environmentally harmful behaviors.
2. Establish tax schemes respectful of the environment.
3. Inspire the design of big taxes (Personal Income Tax, Value Added Tax and Corporate Income tax) with a philosophy of protection based on the concept of sustainable development.

In addition, the introduction and development of the green tax reform were carried out in three phases:

1st. In-depth review of the existing tax system, with three goals:

- Under the principle of fiscal neutrality, replace taxes that penalize the labor with taxes on harmful activities;
- Introducing ecological elements in indirect taxation, in particular those concerning the energy sector and
- Eliminate tax incentives that promote activities inconsistent with the natural environment.

2nd. Establish new indirect ecological taxes, for example, on the use of fertilizers or oils.

3rd. Introduce compensation and mitigation policies for the hardest hit countries.

In short; the aim of this instrument is not the extinction of the taxed behavior or activity, which would obviously lead to a null collection; If such objective, a more appropriate measure would be the radical prohibition of the activity accompanied by severe penalties and corresponding administrative controls.

Environmental taxes only make sense in the context of legally accepted behaviors, which they intend to reduce only to efficient levels from the economic point of view and this can be compatible with a reasonable collection within the global tax system[32].

We began to realize that many Governments are asked to go beyond tax collection to the mining companies, because they are forced by citizens to answer complaints about if obtained revenues are reversed to the community. As an advisor to the South African Government said. "I am not sure that we want companies only dedicated to dig wells. We want companies that create links and build our economy for a post mining future"[33].

Responding to these demands, in 2010 the initiative for responsible mining development, RMDI, was created to develop a better understanding of the challenges and complexities involved in responsible and sustainable mining development, and to identify and put in place possible solutions for dealing with them, which has identified the following weaknesses:

32. *Carrera Poncela, A. y Movellán Vázquez, A.: "Aspectos económico-jurídicos y análisis descriptivo de la tributación ambiental en Latinoamérica" in Observatorio de la Economía Latinoamericana Nº 88, November 2007, p.5.*
33. *Responsible Mineral Development Initiative 2013.*

Discussions are focused on the tax structure and in regimes of royalties; amounts paid, and overlook much of the generators of value, especially those that are difficult to quantify, for example the social.

Local communities are often not taken into account and/or the appropriate persons are not consulted, which means that their concerns and real objectives are not well understood. In addition, when the negotiations between miners and Government are limited to the ministries of mining - as usual - opportunities to contribute beyond the direct taxation and employment cannot be explored.

3. CONCLUSIONS

The foregoing leads to the conclusion that if a resource is not renewable, in traditional terms, that is not a ground to raise the tax pressure. The answer is to combine economic compensation to the country or region owning these non-renewable natural resources, allowing an adequate distribution of wealth to reach the peoples and communities of the mining deposit; with the necessary social and economic environment allowing that the investment, mainly in exploration, can fairly value t wealth[34], even if its extent is not yet known.

As tax solutions, we propose additionally:

- To grant benefits during the exploration phase - capital risk - but apply the general tax system during production.
- Elimination of barriers to investment in the extractive sector.
- Equality of conditions to domestic and foreign investors.
- Graduation of taxation according to essential and speculative mining projects.
- Propose that a portion of public revenue generated by mining projects, for example through tax, should remain in the regions where projects are implemented.
- Introduce new environmental indirect taxes as incentives, and modify or delete existing tax measures that have a potentially negative effect on the environment.

It is interesting to mention that, through the new Directive on energy taxes[35] the EU will discourage polluting behavior and reward the positive behavior in terms of saving energy and environmentally-friendly activities, offering special tax exemptions to businesses in response to a reduction of emissions of gases and pollutants. It also imposes taxes to sources of energy such as electricity and fuels such as coal.

This makes that the user focuses more on efficiency: i.e. consuming less to keep their taxes low. Ultimately, the mining companies that have invested in having an efficient use of their consumed energy can receive a refund of part of these taxes, representing an additional incentive[36].

Another probably most commonly used measures by European States, not only to encourage the mining industry through direct taxes (corporate tax, individual tax income

34. *Polo Robilliard, C., "Las Industrias Extractivas y la aplicación de regalías a los productos mineros", CEPAL-Serie Recursos Naturales e Infraestructuras 98, Santiago de Chile 2005, p.18.*
35. *DO L 283 de 31.10.2003.Council Regulation 2003/96/EC,, 27 October 2003, restructuring the tax community regime for electrical and energy products.*
36. *Guide for the European strategy of sustainable Development, European Commission- General Secretariat, Brussel, Belgium, 2007, p.74*

individuals, etc.) but also to identify and internalize environmental costs, are quotas deductions for investments for environmental purposes, such as:

- Facilities designed to reduce the air or water pollution and to promote the reduction, recycling and treatment of industrial waste.
- Acquisition of industrial or commercial new transportation vehicles with low air pollutants emissions.
- Facilities and new equipment for using renewable energy sources.

In addition, as we have mentioned, the States are allowed to carry out their own environmental policy in this industrial sector and develop their own taxation, such as direct and indirect taxes along with the specific rates payable for the use of the public domain. Thus for example in Spain we have the tax on storage of residues, spillage control tax or the tax of emission of gases into the atmosphere, among others.

4. BIBLIOGRAPHY

CARRERA PONCELA, A. y MOVRELLÁN VÁZQUEZ, A.: "Aspectos económico-jurídicos y análisis descriptivo de la tributación ambiental en Latinoamérica" in Observatorio de la Economía Latinoamericana Nº 88, november 2007.

CHAMORRO Y ZARZA, J.A., La Fiscalidad Ambiental, ¿Una disyuntiva entre protección del medio y Desarrollo sostenible?, Presentation XXVIII, International Conference on Regional Science, Deusto.

Comission Brundland (1987), A/42/427, 4 August 1987.

Commission Information, 4.11.2008, «La Iniciativa de las materias primas: cubrir las necesidades fundamentales en Europa para generar crecimiento y empleo", COM (2008) 699 final.

Council Directive 2003/96/EC, 27 October 2003, restructuring the Community framework for the taxation of energy products and electricity.

European Comission (2000), press release "Integration of environmental policy. Promotion of the sustainable development in the non-energetic extractive industry".

European Parliament and Council Directive 2000/60/CE, 23 October 2000, establishing a framework for Community action in the field of water. DO L 327 de 22.12.2000.

European Parliament and Council Directive 2001/42/CE, 27 June 2001 on the on the assessment of the effects of certain plans and programs on the environment.. DO L 197 de 21.7.2001.

European Parliament and Council Directive 2003/105/CE, 16 December 2003, amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances.

European Parliament and Council Directive 2008/1/EC, 15 January 1996 concerning Integrated Pollution Prevention and Control (IPPC).. DO L 24, 29.1.2008.

European Parliament and Council Regulation (CE) nº 761/2001 of March 19, 2001, allowing voluntary participation by organizations in a Community eco-management and audit scheme (EMAS) (EMAS).

GRACIA NAVARRO, S., "Industria y Minería", Fundación CONAMA, Madrid, 2002.

Guide for the European Strategy of sustainable Development, European Comission, General Secretariat, Brussels, Belgium, 2007.

HERRERA HERBERT, J., Introducción a los Fundamentos de la Tecnología Minera, Universidad Politécnica de Madrid, 2006.

I Plan Nacional Español de Residuos de Industrias Extractivas 2007-2015 (I PNRIE).

La tributación minera en el Perú: contribución, carga tributaria y fundamentos conceptuales, Documento elaborado por el Instituto Peruano de Economía por encargo de la SNMPE, Lima, 2011.

Memento 2000. AENOR N.A., Madrid, 2000.

Mining, Minerals and Sustainable Development (MMSD) Project, London, 2002.

Rio Tinto Borax (2002), "Borax and Sustainable Development. 2002 Progress Report".

PERNÁS GARCÍA, J.J., "Council Directive 96/61/EC of 24 September 1996 concerning Integrated Pollution Prevention and Control (IPPC). Official Journal L 257.", MAPFRE SEGURIDAD nº. 82-segundo trimestre, Madrid, 2001.

POLO ROBILLIARD, C., "Las Industrias Extractivas y la aplicación de regalías a los productos mineros", CEPAL-Serie Recursos Naturales e Infraestructuras 98, Santiago de Chile, 2005.

Responsible mining Development Initiative, World Economic Forum 2013.

RUIZ GALDÓN, J.M. y JIMÉNEZ FERNÁNDEZ, A., "El Municipio español ente la Tributación ambiental en momentos de crisis económica", en SERRANO ANTÓN, F. (Director) y AAVV, Tributación Ambiental y Haciendas Locales, Civitas, Colección Defensor del Contribuyente, Madrid, 2011.

ANALYSIS OF THE LOW VAT COLLECTION CAPACITY IN THE SMALL TAXPAYER SECTOR: BOLIVIA´S CASE

Roberto Ugarte Quispaya

SYNOPSIS

The present study evaluates the VAT revenue capacity in the small taxpayers sectors called micro and small enterprises (MSEs). It identifies problems in the application of the VAT and raises important steps to promote an abbreviated alternative payment for these sectors, encouraging them to join the formal sector regarding tax compliance.

The Bolivian tax system faces a structural problem due to the importance of the informal economy, where the revenue collection falls to few taxpayers while many coexist in the noncompliance, fraud and tax evasion.

Author: *Master's in finance of enterprises of the University Catholic Boliviana de La Paz; Bachelor's degree in Economics from the Universidad Mayor of San Andrés; Executive Chairman of the National Tax service of Bolivia (2010-2013); Deputy Minister for tax policy (2008-2010); Director of internal tax policy (2006-2008); Guest Professor of tax policy and Administration (various universities).*

Content

The purpose of this work is to analyze the components that determine the actual revenue capacity and evasion of the value added tax, in the sector of small taxpayers and to propose measures that would help to improve the effectiveness of VAT implementation.

In Bolivia the Value Added Tax takes effect from the tax reform enacted by the law 843 (20 May 1986) and its subsequent regulations which complemented them. After more than two decades of validity of the current tax regime, it needs to be evaluated and adjusted in the context of the new economic and political realities. This tax regime is characterized by:

1. The Bolivian tax system relies on indirect taxes and therefore has an inequitable character, and a tax that would strictly affect the income and assets of individuals does not exist. This situation allows many persons to accumulate wealth without sharing any part with the State.

   Today's tax policy should seek a fair and progressive system in favor of those who have lower revenues and should favor tax compliance for small productive sectors.

2. The informal economy constantly increases in Bolivia, affecting negatively tax compliance. Smuggling and the increase of small activities affect the bulk of the small taxpayers, who do not afford to pay properly their taxes, especially the VAT

3. Analysis of tax compliance according to the taxpayers' size (their declared sales) shows higher levels of evasion from taxpayers with a lower annual income. The logical answer is that these small taxpayers have a rational economic behavior. They do not have the capacity to transfer VAT to the final consumer, as medium-sized, and large enterprises can do and therefore, in order to be competitive with other informal activities and smuggling, they ignore the payment of taxes to the extent that this grant them profit margins.

In this logic, this work offers an alternative solution, proposing to apply a simplified VAT, which consists in levying a direct tax on sales of goods and services, and without recognition of tax credit, thus facilitating compliance of the VAT payment for these sectors.

1. THE BOLIVIAN TAX SYSTEM

The Bolivian tax system is characterized as simple, with a broad base (from the normative point of view), supported by taxation on consumption. It includes special systems for marginal activities that even though they are not desirable in the system, are seen as a need for social policy. The system also highlights the absence of an effective income tax or tax on the individual assets.

The tax regime in Bolivia focuses on the compliance and tax responsibility of very few taxpayers.

As shown in **Table 1**, there are 393,811 taxpayers registered on December 31, 2013. The main and major taxpayers represent about 1% of the register, but their collection reaches 90% of total revenue. The rest of the General taxation regime (small and medium taxpayers) represent 86.16% of the taxpayers' register, but their collection only reach 9.93% and special regimes have little presence in the register of taxpayers, only 12.85%, and their collection is almost zero.

Table 1
Bolivia. Registry Structure and collection
(To December 31, 2013)

	REGISTRY		COLLECTION	
Type of taxpayer	**Quantity**	**Percentage**	**In thousands of $US.**	**Part. percentage**
Large Taxpayers	3.911	0,99%	5.926.494,3	89,98%
Other from General Regime	339.302	86,16%	653.922,4	9,93%
Special regimes (*)	50.598	12,85%	5.706,8	0,09%
TOTAL	**393.811**	**100,00%**	**6.586.123,4**	**100,00%**

To show who bears the tax burden, taxes are usually classified into direct and indirect. "Direct taxes are collected to place the tax burden on the subject who actually pays the tax, while indirect taxes are levied on taxpayers who are supposed to shift the tax burden on other subjects."[1] The income tax of individuals or societies is defined as direct tax, while consumption taxes are classified as indirect.

The Bolivian tax regime, is composed of five (5) **indirect taxes** (VAT, IT, ICE, IEHD and HDI) and ten (10) **direct taxes** (RC-VAT, IUE, IPBI, IPV, ITF, IVME, ITGB, IJ, ITM, and GA), in addition to special regimes.

A tax system tends to be more equitable if the bigger share of collection is obtained from direct taxes. If direct taxes are lower, there is more inequality in the tax distribution. A tax system is equitable when the indicator of equity tends to one.

According to the collection composition, the indicator of the tax system efficiency is measured by taking the following relationship:

E = (CDT / TC) * 100

Where:
E: is the indicator of tax equity,
CDT: it is the total collection of direct taxes
TC: total revenue collection

By looking at this indicator we have that the tax equity of Bolivia rose from 16% in 2000 to 31% for 2013 (without taking into account HDI). This means that direct taxes in recent years have increased with respect to total revenues, so the tax equity has improved, but 31% of direct taxes is still low.

These results reveal that individuals do not contribute directly to the payment of taxes, and that these revenues are based mainly

1. *Matthijs Alink and Victor van Kommer, tax administration Manual... CIAT - IBFD. 2011. Pag. 2.*

on consumption-related taxes (VAT, IT and IEHD mainly) which provide on average 70% of the total revenues, giving the tax system a regressive character.[2]

Moreover, the tax burden in Bolivia is within acceptable levels in comparison with the countries of the region. According to an analysis by CIAT[3], the tax burden in Bolivia reaches 26% of GDP.

1.1. Characteristics of the Value Added Tax - VAT

In Bolivia the VAT legal structure (law 843), supposes a broad tax base with a general rate of 13% included in the price (which means an effective rate of 14.9%). It taxes operations of sales and purchases of goods and the provision of services. The tax normative provides for limited exemptions.

The VAT is applied at multiple stages of production, it taxes purchased items and is deducted from taxes collected on sales. e.it require vendors to charge the tax on all their sales, but they are allowed to deduct a credit for taxes affecting their purchases..

The advantage of this mechanism guarantees income to be collected along the entire production chain and does not distort production decisions. The following table explains through an example how VAT works, and the final consumer is the one who pays the tax (in the last phase), even if companies in the productive chain assume the responsibility of paying the tax.

Table 2
Chain of VAT
(in currency units)

Taxpayer	Purchases	Sales	VAT Tax debit	BVAT Tax Credit	Paid VAT	Output VAT
Company 1	0	1,000	130	0	130	0
Company 2	1,000	1,360	177	130	47	130
Company 3	1,360	1,850	240	177	64	177
Company 4	1,850	2,515	327	240	87	240
Final consumer	2,515			327	0	**327**
Total Collection					**327**	

Company 1 sells its production (it is assumed that inputs do not have the VAT support) at a price of 1,000 MU (included VAT) to **Company 2** which, in turn, sells its production for 1,360 to **Company 3** and so on until we reach the end consumer who buys for 2,515 MU. **Company 4** applies MU 327 in VAT to the final consumer, who ultimately pays the VAT in the last phase of the chain, even though the other companies complied with the payment to the State in different phases.

The tax regime is designed to tax domestic consumption. However, the tax normative also includes imports for the purposes of VAT, which must be paid at the time of customs clearance, applying a higher effective rate of 14.94% of the CIF value of imports.

2. *The term is "regressivity" is used to qualify for the taxes that require a greater effort from those who have less contributive ability. It is the case of VAT, which, being a flat tax in its aliquot, taxes products of first necessity and imposes a greater tax effort on the lower segments of taxpayers. http://www.enciclopediafinanciera.com/fiscalidad/impuestos/impuestosprogresivosvsregresivos.htm*
3. *Tax statistics for Latin America. 2014 CIAT*

According to the regulations, exports are released from the VAT tax debit (equivalent to zero rate), which means that exports leave the country without paying the internal VAT. This is the essence of the principle of taxation at destination, which is the international standard. In addition, from the principle of tax neutrality, the VAT fiscal credit (applied on the exporter who purchase inputs and capital goods) is refunded by the State once the exports of their products are completed, through fiscal values (CEDEIMs).

1.2. Special regimes and VAT.

Since the entry into force of the law 843, the supreme decrees have created the transitional special regimes for taxpayers that have marginal activities in Bolivia and find difficult to comply with their tax obligations, such as delivering invoices, for example.

The special taxation regimes are; the Simplified Tax Regime, which include those who perform activities such as craftwork, retailers, and housework. They must comply with the requirements of annual sales, capital and unit prices; the integrated tax system, intended for individuals who provide urban and interprovincial transport services and must comply with the requirement of having up to two transport units; the unified agricultural regime affecting natural persons engaged in agricultural activities in small lots.

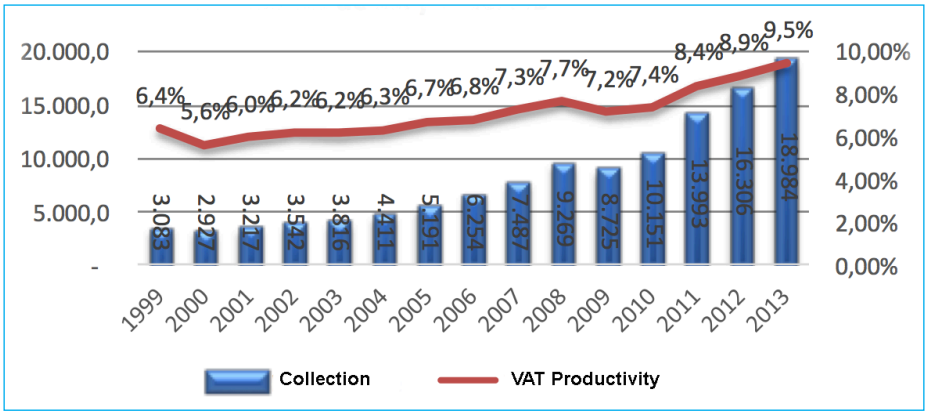
These special regimes aims at consolidating the liquidation and payment of value added tax, the tax on corporate profits and the transaction tax.

It is important to highlight that even if the regulations states that these special regimes are transitional, their validity will remain as long as there are small personal activities usually involved with informality in Bolivia.

1.3. VAT collection

The VAT is the tax with the highest growth rate, 266% between 2005 and 2013; the VAT productivity (Rec. VAT / GDP) increased from 6.7% in 2005 to 9.5% in 2013. This aspect, reflected mainly by the good performance of the Bolivian economy (4.5% average growth of GDP per year), is also due to a better collection capacity, resulting from tax code adjustments, efficiency in tax administration, better controls and improvement of tax culture.

Graph 1
VAT Collection
(In millions Bs. and % GDP)



2. IDENTIFICATION OF VALUE ADDED TAX PROBLEMS

2.1. Informal economy in Bolivia

The reports from the Bolivian Observatory of employment and Social Security of the center of studies for the Labor and Agriculture Development (CEDLA), from the Institute of Economic and Technological Social Welfare (Inaset)[4], as well as the government programs to reduce unemployment evidence that in Bolivia, the growth of the informal employment, unstable and of poor quality affect more than 70 per cent of the economically active population.

Another important fact from the CEDLA study show that among the registered companies, from these the single individual businesses represent 103.621 entities, the limited liability represent 17.635, followed by corporation 1492. Which means that the small enterprises reach 84% of the total. These updated indicators are good indicator to conclude that the informal sector in the Bolivian economy is very significant, since they skip the issue of social benefits, social security and taxes.

On the other hand it is important to mention that the Government of the Plurinational State of Bolivia has developed public policies for the sector of small and micro-enterprise (SMEs) in recent years. However, there is still a contradiction being informality a source of precarious employment and at the same time being a refuge of smuggling and tax evasion activities.

2.2. Revenue capacity and VAT evasion

The VAT collection capacity it is measured by the efficiency of VAT (determined by tax policy and the tax culture of taxpayers who comply with their payment) and the efficiency of the tax administration to carry out optimal controls and audits. In order to measure the tax evasion, we subtract the collection capacity from the potential collection.

To achieve the VAT system sufficiency, we have two tools: i) increase the revenue capacity and ii) improve the efficiency of the tax administration. As noted, the first of them belongs mainly to the field of tax policy that defines the level of rates, the extent of the tax base, sanctions, etc., and the citizens' tax culture. The second refers to the efficiency of the tax administration, mainly to reduce evasion and improve control.

Moreover, the tax base and tax compliance in Bolivia is concentrated on few taxpayers (**see Table 1**), and on the other hand, there are a number of small companies mainly related to informal activities. The issue studied in this work is assessing the implementation of the VAT payment by taxpayers with smaller economic capacity (SMEs). Various factors are evident on this aspect, which are:

- VAT has an important condition to function; the entire production chain must be part of the **formal activities**. VAT is paid through the method of deduction by invoices, credits and debits, requiring all operators to be included for obtaining compliance.

- In countries with lower degree of development as it is the case of Bolivia, the VAT has less revenue efficiency than other alternative taxes (for example the transaction tax). The collection costs are important for the tax

4. *RENÉ QUENALLATA elpais@opinion.com.bo 20/05/2014 |Ed. Imp. http://www.opinion.com.bo/opinion/articulos/2014/0520/noticias.php?id=128454.*

administration as well as the compliance costs faced by taxpayers. This happens in spite of that the compliance costs tend to impact more small businesses (for example, if we take the data in **Table 3**, the taxpayers of the RGT with annual sales of $US.) 30,200, on average assume a cost for tax compliance of 2.2% compared to their annual income, while a GRACO company that has average sales of $US. (3.3 million/year, assumes the 0.37 per cent of its sales)[5].

- The controls that the tax administration performs regarding verification issues are limited (verification of issuing tax invoices at the time of the sale, the veracity of the tax credit VAT statements, smuggling and informality, the correct payment of VAT, etc.) and do not cover a large percentage of taxpayers. This situation shows that the VAT control is especially irregular for small taxpayers.

- The tax administration can only generate the sentiment of risk and control potential taxpayers, which are usually large companies, by the cost/benefit criterion, and for meeting its collection objectives.

- According to data presented in the 2012[6] SIN Report, during the period there were 193 comprehensive audits, 3,036 external verifications and 11,176 internal controls, reaching a total of 14.405 controls and review of tax payments. The taxpayers' register of 2012 includes 300,000 registered taxpayers; therefore, only 3.7% of the universe of taxpayers are verified per year.

Table 3
Sales, Purchases and profits by type of Taxpayers
Tax year 2013
(n thousands of USD)

Taxpayers classified acc. to annual sales			Data submitted by Taxpayers				Indicators	
From	To	Number of Taxpayers	Sales of invoiced goods and services	Declared purchases b. internal market	Added value (tax base)	Taxable Net Profit (Taxable base/IUE)	Added value / sales	sales / Nr. Taxpayers
2.454,0	Forwards	1.729	29.903.751,5	23.412.608,2	6.491.143,3	1.295.347,9	21,7%	17.295,4
1.077,6	255,7	1.643	2.616.952,3	2.312.870,7	304.081,6	39.992,5	11,6%	1.592,8
613,6	1.077,6	1.924	1.548.499,3	1.350.807,9	197.691,4	19.161,16	12,8%	804,8
301,7	613,6	3.817	1.624.335,1	1.424.684,7	199.650,4	24.906,3	12,3%	425,6
122,8	301,7	9.246	1.739.762,1	1.580.500,4	159.261,7	34.732,8	9,2%	188,2
64,7	122,8	11.191	993.597,8	924.439,2	69.158,6	12.208,3	7,0%	88,8
30,2	64,7	19.487	856.544,9	792.680,4	63.864,5	13.819,5	7,5%	44,0
-	30,2	212.821	1.033.620,5	2.251.261,1	(1.217.640,6)	32.208,0	-117,8%	4,9
General Total		**261.858**	**40.317.063,4**	**34.049.852,6**	**6.267.210,9**	**1.472.377,0**	**15.5%**	**154.0**

Source: Author, based on SIN Data

5. *A MSE pays an accountant and other expenses $450 per year, while a GRACO company hiring personal for accounting and other expenses pays $ 9,270/year.*
6. *National Tax Service. 2012 institutional report.*

As shown in the preceding table, large taxpayers with more than $US. 2.5 million sales per year, declare 74% of annual total sales, a 21.7% added value and average $US. 17.3 million per company.

Taxpayers with sales of up to $US 30,200 declare 2.6% of total annual sales, a negative 117% value added and on average $US 4,900 of annual sales by company.

This picture reflects that the Bolivian system of taxation is concentrated on about four thousand taxpayers (1.3%).

Taxpayers with sales lesser than $US.30, 200 / year show a high level of informality regarding tax compliance. These taxpayers (81.3% of total) declare more purchases than sales, without being large investors.

This segment include the one-person or family companies, professionals, independents, and cooperative production units, in general MSEs.

With regard to tax compliance, with data from 2013, large taxpayers, which represent the first two rows of **Table 3**, pay 85.7% of the total collected VAT.

Table 4
Taxes by type of Taxpayers
Year 2013
(In thousands of USD)

Taxpayers classified by annual sales			Data provided by Taxpayers			Indicators		
From	To	Taxpayer Number	IVA	IT	IUE	VAT / TOTAL	IT/ TOTAL	IUE / TOTAL
2.454	Forwards	1.729	903.147,3	834.087,0	1.019.345,6	79,3%	71,7%	86,6%
1.078	256	1.643	74.494,1	72.202,5	39.495,0	6,4%	6,2%	3,4%
614	1.078	1.924	39.577,4	45.510,6	18,757.7	3,4%	3,9%	1,6%
302	614	3.817	36.521,2	49.507,7	22.139,0	3,1%	4,3%	1,9%
123	302	9.246	34.693,0	56.091,5	26.580,5	3,0%	4,8%	2,3%
65	123	11.191	18.409,3	30.746,5	11.451,9	1,6%	2,6%	1,0%
30	65	19.487	16.422,3	34.913,5	12.428,6	1,4%	3,0%	1,1%
-	30	212.821	22.472,2	39.485,0	27.084,4	1,9%	3,4%	2,3%
General Total		**261.858**	**1.172.736,8**	**1.162.544,4**	**1.177.282,6**	**100%**	**100%**	**100%**

Source: Author, based on SIN Data

While taxpayers with sales up to $US 65,000 (the last two rows of **Table 3**), pay only the 3.3% of the total VAT.

This behavior means that when the size of the taxpayer decreases, the tax compliance is significantly reduced. In these lower-income ranges, there is a higher level of tax evasion.

This is due to several factors; they do not invoice all their sales, don't receive the VAT tax credit because they buy without invoices, mostly from informal markets and in many cases forced to transgress presenting false purchases invoices.

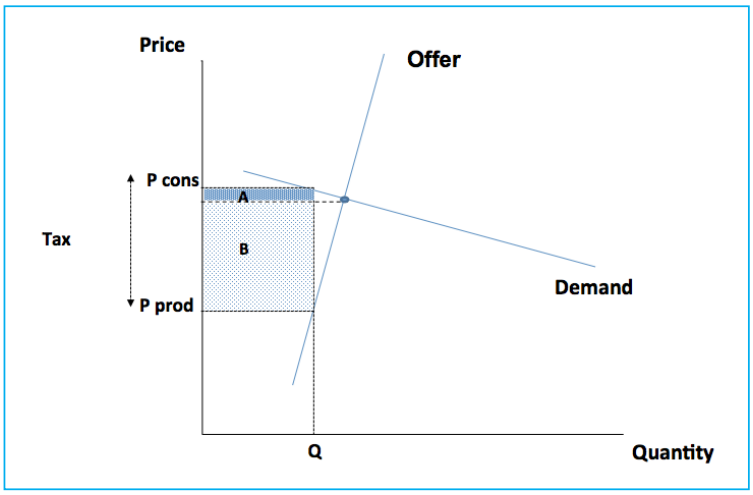
3. ANALYSIS OF VAT EFFECTIVENESS FOR SMALL TAXPAYERS

3.1. VAT as incentive for informality and evasion

According to microeconomic analysis, taxes on goods and services should not reduce the benefits, since the companies are only transfer them to consumers, as it is the case of VAT. In reality, the effect of taxes falls on transactions between producers and consumers. They raise the prices that consumers pay and reduce the profits of the companies. The theory indicates that the transferred part depends on the characteristics of demand and supply[7]. The effects of the tax burden on the market of goods and services will be given by the elasticity of the supply and demand.

In the case of small businesses, by the rigidity of their scale of production, and mostly because of externalities that arise from disloyal competence of informal economy, they have usually an elastic demand and an inelastic supply. This situation makes that indirect taxes affect more the producer and less the consumer, as explained in the following **Graph 2**.

Graph 2
Translation of taxess



The area **A** of the previous graph represents the taxes transferred to the consumer, while area **B** is the tax that is transferred to the producer. This means that small businesses and small activities in general face difficulties to comply with their taxes. Therefore, from the point of view of development activities in the sector of MSEs, the tax policies should consider this situation.

3.2 Improving the effectiveness of the VAT for small taxpayers

As previously stated, the VAT is a tax model that functions effectively in an economy where all economic agents are in the formal sector. In Bolivia, the important influence of underground economies, activities that are concealed within

7. *Hal R. Varian, Microeconomía intermedia. 1996.*

the illegality, smuggling, etc., induce other companies to avoid becoming formal.

For these reasons, in order to stop maintaining a non-effective tax in sectors of small taxpayers, retail, one-person and independent professionals and to create opportunities for these groups, to give them the incentive of becoming formal and not remain contravening the laws, it is necessary to create an alternative tax complementary to the current VAT tax.

A more simple and effective rate would be applied, on basis of the same constituent elements of the value added tax, which would tax the sales of goods and services, within preset parameters (for example, taxpayers who have less than 30,200 USD/ year in sales, number of employees, or business size).

The taxable transaction of the simplified proposed VAT, takes place at the time of the transfer of the good or service, with an aliquot that substitute the current VAT would not imply a decrease in the amounts currently collected by the State. The liable subjects of this new burden would be for small (MSE) activities.

Table 5 describes a sequence of the VAT operation as established in the current regulations and the liquidation of the CIT (IUE) is incorporated for demonstration.

As can be seen in the marketing of the product chain, final payer of the VAT is the consumer (UM. 280) and under the assumptions defined for the analysis, the CIT paid by different agents is UM. 175, which results in the Treasury capturing UM. 455 in taxes.

Table 6 displays the simplified VAT proposed for MSEs. On the tax compliance behavior of the marketing chain, the tax credit recognition is suspended and with a simplified 4% VAT tax on sales, the problem of the tax credit will not exist anymore. This will facilitate and encourage the formalization of the MSE sector. On the other hand, the fulfillment of the corporate income tax (IUE) is taken into account, and the simplified VAT taxpayers will be required to take as expenses the tax credit not used, for the determination of the CIT.

Table 5
How VAT and CIT operate in the productive chain. Under regulations in force
(Expressed in MU)

Taxpayer	Sales	Purchases	Tax Debit	Tax Credit	Determined VAT	CIT to pay	Tax Collection
Company 1	1.000		130	-	130	33	163
Company 2	1.360	1.000	177	130	47	44	91
MyPes	1.850	1.360	241	177	64	60	124
Company 3	1.156	850	150	111	40	38	77
Final consumer (*)		2.156		280			
TOTAL					**280**	**175**	**455**

Source: Created by author
(*) Final consumer purchase of MyPes and Company 3

7. *Hal R. Varian, Microeconomía intermedia. 1996.*

Table 6
How VAT and CIT operate in the productive chain.
Under proposal
(Expressed in MU)

Taxpayer	Sales	Purchases	Tax Debit	Tax Credit	Determined VAT	CIT to pay	Tax Collection
Company 1	1.000		130	-	130	33	163
Company 2	1.360	1.000	177	130	47	44	91
MyPes	1.677	1.360	67	-	67	15	82
Company 3	907	667	118	27	91	30	121
Final consumer (*)		1.907		248			
TOTAL					335	122	457

Source: Created by author
(*) Final Consumer purchases of MyPes and Company 3

In the way taxes are settled, according to **Tables 5 and 6**, a value-added of 36% is considered on purchases in the productive chain, and 15% on income. The simplified VAT for the MSE would apply a rate of 4% on sales; a tax credit of 4% is applied for small businesses taxed with this aliquot and for didactic purposes, we suppose that the sales of the MSE to the company sales are UM. 3,667 and 1,000 to the final consumer.

The result of the exercise described above shows that the application of a simplified VAT on small taxpayers, product of the decrease of the rate from 13% to 4% and without recognition of the tax credit for this sector result in the following aspects:

- It makes tax compliance easier for MSEs.

- It reduces the problem of discharge of tax credits, the problems of the existence of informal sectors, which find it difficult to have invoices for the purchase of inputs and raw materials.

- It discourages tax evasion, because to avoid the impact of the tax burden, they do not invoice the totality of their sales.

- Reduces criminal practices by the presentation of illegal invoice of purchases or submit invoices that do not correspond to their activities.

- It benefits tax payment and incentivize the productivity of the sector. They would decrease their tax compliance costs and especially relieve the burden that currently small producers must pay and not the consumer, due to the strong presence of informal economy.

- Other small activities that are in the informal economy will have the incentive to register for their tax payments, and become legally constituted activities.

- It prevents loss of revenue for the state, adding new small businesses and decreasing tax evasion. In addition, the Treasury would no longer consume human and material resources to pursue criminal activities such as illegal trade in bills.

Finally, to implement this simplified VAT mechanism, a billing system must be enforced, differentiating invoices for purchases of intermediate goods and “sales notes” for final consumers. This measure will allow the tax administration to cross control more effectively the purchases and sales declared by taxpayers through its taxpayers´ statements database.

4. CONCLUSIONS

This paper has sought to describe the low capacity of VAT collection in the sectors with small economic capabilities, the micro and small enterprises (MSEs). Since Bolivia is a country with high incidence of informal activities, VAT as applied today does not work in these sectors.

The current VAT discourages small activities from becoming formal and adequately comply with their payment. These sectors are not ready to assume the burden of VAT in the present market conditions with the competition of informal activities.

To facilitate tax compliance and to encourage the formalization of small economic activities, it is necessary to apply a simplified VAT, ignoring the tax credit statement and applying directly on sales an aliquot similar to the value-added tax.

This essay is intended to generate discussions about new ways of applying VAT.

5. BIBLIOGRAPHY

National tax service. Plan Estratégico Institucional; PEI 2010 – 2015. Matthijs Alink and Victor van Kommer. Manual of Tax Administration,CIAT - IBFD.

Inter-American Center of tax administrations - CIAT. Tax statistics for Latin America. 2014

Servicio de Impuestos Nacionales. Memoria Institucional 2012.

Hal R. Varian, Microeconomía intermedia. 1996

Electronic references

INTERNATIONAL TAX DIALOGUE. THE VALUE ADDED TAX EXPERIENCES AND PROBLEMS. Prepared for the Conference on VAT organized by the international tax dialogue. Rome, 15-16 March 2005. http://www.itdweb.org/VATConference/Documents/FINAL%20conference%20paper_Spanish.pdf.

6. ABBREVIATIONS AND ACRONYMS

CTB	Bolivian tax code
CEDEIMs	Certificate of tax refund
GA	Tariff assessment
GRACO	Large taxpayers, classified by the SIN.
ICE	Specific consumption taxes
IDH	Direct tax on hydrocarbons
IRPF	Individual income tax
ISAE	Tax on Air Travel Abroad.
IJ	Gaming tax
IT	Transaction tax
ITF	Financial transactions tax
ITGB	Tax on successions and free transfers of goods
VAT	Value Added Tax
Currency Sales Tax (IVME)	Tax on Foreign currency sales

IEHD	Special tax on hydrocarbons and their derivatives
CIT	Tax on the profits of companies (Corporate income tax)
MEPF	Ministry of economy and finance
MyPes	Micro and small enterprises (MSEs)
NIT	Tax identification number.
GDP	Gross domestic product
PRICO	Main taxpayers, defined by the SIN
RAU	Unified agricultural regime
RC-VAT	VAT Complementary Regime
RGT	General taxation regime
RTS	Simplified tax regime
SIN	National tax service
STI	Integrated Tax System
TGN	Treasury General of the nation

CRYPTOCURRENCIES, A NEW OBSTACLE IN THE PATH TOWARD INTERNATIONAL FISCAL TRANSPARENCY

Working Team of the Deputy General Directorate of National Large Taxpayers Tax Operations (DGI - AFIP)

SYNOPSIS

Cryptocurrencies constitute a threat to the States. Attempts are made through intentional advertising strategies to show their presumably positive aspects. Nevertheless, there is very little investigation on their true nature.

It is necessary to create awareness in the tax administrations regarding the dangers they may cause. Minority sectors endeavor to vulnerate the sovereignty of the States, against a world recognized trend toward international tax transparency.

In this paper an analyis will be made of the characteristics of cryptocurrencies and their incidence in the examination power of the tax administrations, to conclude with the negative effects that could result from their acceptance and use.

The Authors: *Working team of the General Sub-Directorate of Tax Operations of National Large Taxpayers (DGI- AFIP)* ***Mariana de ALVA,*** *(UBA). Currently Deputy General Director of Inland Tax Operations (DGI –AFIP)* ***Alberto Vicente Diaz,*** *(UBA). AFIP official since 1987.* ***CP Diego Esparza*** *(UBA). AFIP official since 1991.* ***CP Alcira Margarita Laino*** *(UBA). AFIP Official since 1977.* ***CP Rubén Valentín Perez*** *(UBA) AFIP official since 1980.* ***CP Mariano Fabio Rodriguez*** *(UBA). AFIP Official since 1990.* ***CP Sergio Oscar Vieiro*** *(UCA) AFIP Official since 2004.* ***CP Luis Fernando Villan*** *(USAL). AFIP Official since 1992.*

Contents

Intentional advertising strategies are attempting to show the presumably positive aspects of cryptocurrencies, which constitute a threat to the States, since they are being offered as coins that do not require the support of some central or government entity. Nevertheless, there has been very little research regarding their true nature.

It is therefore necesssary to create awareness in the tax administrations regarding the dangers they may entail, on considering that minority sectors seek to vulnerate the sovereignty of the States, against a world recognized trend toward international tax transparency.

Bearing in mind that cryptocurrencies are presented as an evolution in the handling and use of money as a means of value exchange and reserve, this paper will include a brief conceptual and historical account of money, in order to determine whether it can be considered in said sense. To this end, we will describe the main distinctive characteristics and their operationan analysis will be made of their juridical nature in the Argentine legislation and its impact on the examination power of the tax administrations to conclude with the effects that could result from their acceptance and use.

Much has been written about international tax transparency in recent years. It is obviously an issue that has deserved — and continues to deserve — great attention from the tax administrations at the global level. It is not the purpose of this study to speak at length about this phenomenon or its advantages, although it is necessary to abide by those concepts that to a great extent contextualize the current situation of the relationship between the so-called global taxpayer and the tax administrations.

Because of the hard work that has been carried out in international forums, today it may be said that many countries, such is the case of Argentina, devote all their efforts to eliminating harmful tax competition, expression contrary to international information exchange and, therefore, contributing to aggressive tax planning carried out by some taxpayers.

This joint work carried out by the tax administrations of different countries, — endorsed by the corresponding political authorities — frequently faces obstacles, generated by the great concentrators of wealth that significantly benefit from possible divergences between the tax legislations of the different countries and the difficulty for obtaining the information when it is well beyond their jurisdictionl.

These players have been able to develop numberless amounts of maneuvers, always adapting themselves to the new requirements and evolution of the work of the tax administrations.

Today, in particular, we believe that the irruption of the cryptocurrencies has become a new opportunity for those who love to sketch strategies according to their own interests, in search of tax evasion, even knowing full well that lower tax collection weakens through time, fair, competitive, equitable and sustainable economic growth which in turn generates economic development and social inclusion[1].

1. *Echegaray, Ricardo.(2013) La Administración Tributaria frente al Contribuyente Global. Buenos Aires: La Ley.*

1. GENERAL CONCEPTS

1.1 Concept of Money

Any person in the current society is familiarized with money. It is used on a daily basis to pay for products or services. On the other hand, it is generally obtained as a compensation for labor and daily effort, through any of the possible and legitimate means. There is no doubt that money is essential in the current world.

The purpose of money is to facilitate and improve the barter system used in the initial exchange of goods by human beings. Money must fulfill the following conditions:

- Be accepted, recognized and generate trust among a greater part of the population as a means of exchange in commercial transactions;
- It should be a long-term and lasting value reserve, allowing for facing uncertainty that may occur in the economic sphere and at the same time for being kept (saved) in order to have purchasing power in the future;
- It should be a unit of measure, so that prices of goods and services may be fixed in a quick and equitable manner, allowing for comparing the price of same or similar products and services; and
- It should be easily transportable and manageable, allowing for carrying out economic transactions in a simple and comfortable manner.

A definition of money would be: “Any means of exchange generally accepted for the payment of goods and services and the refund of debts. Money may also serve as a measure of value to determine the relative economic price of different goods and services”.

1.2. History of Money

In ancient times, economic transactions were not paid with money. When someone wanted to acquire a certain amount of some good, he had to pay it in-kind with another good. These economic transactions were carried out by way of barter, it being an effective form of exchange to the extent a few products were exchanged. A very important problem that arose with the barter was the equivalence between the products available and which one wanted to exchange. To solve this, a sort of bank was established, which used to be operated in the temples. There, individuals deposited their products to receive others in exchange, according to the amount given, the product required and the equivalence between both.

Many things have been used by way of money; some were valued because of their usefulness and others because they were lasting and easy to transport. Approximately 50,000 types of primitive money have been discovered in the world.

Metals made their appearance and started to be popular as symbol of money because of their duration and also because one could make small and different pieces with them to cover different needs. Already in 3,000 B.C., gold and silver were used as money in Babylon. Metals were preserved and they were cut into small pieces in order to make payments.

In the Roman Empire, a homogeneous coin was created in the different regions and one that was unitary in weight, size and value: the Denarius (Latin root for the word money). It was regulated through a central and state minting which prohibited any type of particular minting.

In 845 B.C., a representative paper started to be issued, much lighter and manageable and which, although developed from a material of very little value, was worth through governmental decree a specific amount of gold and silver.

Paper money became popular throughout the XVIII century. Private Banks were replaced for the issuance of paper money with central banks. In the late XIX century, an international pattern on the value of gold and the value of money and their parity was established. During World War I, all the governments suspended the convertibility of their currencies, thereby losing all interest for once again introducing the international gold pattern following the Great Depression. Years later, the transformation of world currencies to fiduciary money with values totally fixed by the market's demand concluded with the abandonment of the U.S. dollar's convertibility to gold in 1971.

Any money circulating as paper money must fulfill certain conditions to appropriately achieve its purpose. Bills are issued massively and they should be standard and adaptable by the entire community.

The characteristics of money are:

1. **Portability**: The money should be easily portable;
2. **Durability:** The money lacking the quality of physical durability will lose its value as money;
3. **Divisibility:** The money should be easily divisible in equal parts to allow the purchase of smaller units;
4. **Uniformity:** The money should be standardized in its units and must be of equal quality. Only if there is standardization of the money will the persons have the certainty of what they receive when they carry out their transactions;
5. **Recognition:** The money must be easily recognizable; otherwise, there would be difficulty for determining if what one has is money or another asset;
6. **Liquidity:** The money must be easily interchangeable for goods and services without high costs and with relative security as regards its nominal value; and
7. **Incorruptibility:** The money should not permit its easy falsification; this characteristic denotes the purpose of avoiding distortion.

Currently, use is made of electronic money, which is a value pre-stored in a smart card or the hard drive of a personal computer. It may be transferred to another card, another computer or another country via Internet. Payment with electronic money is final, as opposed to payment with a credit card which requires a subsequent payment process.

1.3. Legal Tender

Legal tender is that currency which the creditor cannot juridically reject if offered by the debtor to comply with his obligation. Such obligatoriness of acceptance is provided by law and the creditor who does not accept this rule affects himself to the extent he has not right to demand something else. This is so because the currency issued as legal tender is compulsory and must be accepted as means of payment throughout the country.

In this line of thought, it must be pointed out that the bills and coins isued by the Central Bank of the Republic of Argentina, will be legal tender throughout the territory of the Argentine Republic for the amount stated therein, as provided by the regulations in force.

As for the payment capacity of the currency, it may be added that according to article 725 of the Argentine Civil Code, payment means "compliance with the prestation which is the object of the obligation, whether it is an obligation to do, or an obligation to give".

1.4. International Monetary System

The international monetary system is defined as a series of rules, mechanisms and institutions relative to the uses and exchange of various currencies among themselves, which

serve to organize the international economic relations, which are generally accepted by the world community. This structure, which is a consequence of globalization, arises to solve the inconveniences posed by the existence of a different monetary system in each country.

Taking into account the difficulties caused by the abandondment of the gold standard in the early thirties and as a consequence caused by World War II, there was an evident need to establish a new international monetary system. To that end, on July 22, 1944, the United Nations held a Monetary and Financial Conference in Bretton Woods. Some of the main purposes of this conference were:

- Assist in the reconstruction of the countries devastated by the war;
- Establish a fixed rate of Exchange system based on the U.S. dollar;
- Create the necessary means for correcting imbalances in the balance of payments of the countries; and
- Achieve freedom in the movement of international exchanges.

A result of said meeting was the creation of the International Monetary Fund which began operating on December 27, 1945.

The need for an International Monetary System is derived from the fact that international transactions (trade, transfer, investments, etc.) are carried out with different national currencies linked to each country's economic reality and the trust they may generate in the others whose measures are the relative prices or types of exchange of each currency. The operations between currencies that are used as counterpart of said transactions are carried out in the exchange market. The different types of exchange depend on the regulation carried out by the various central banks that control the fluctuations of said currency, with the international monetary system's fundamental objective being that of ensuring certain stability to the value of the currency. One of the advantages is to allow the member countries to achieve certain stability, by generating trust and endeavoring to achieve economic growth, thus avoiding uncertainty and instability which promotes speculation, a destabilizer of certain economic actors.

1.5. Sovereignty

Sovereignty is the essential characteristic of the State's power since this is the greatest power recognized by society. Thus, it is said that the State's power is "sovereign". Germán Bidart Campos defines sovereignty as the "quality of said power which in order to juridically organize itself, does not recognize, within the sphere of relations it governs, another superior order from whose positive nomination there may logically derive its own normative validity"[2].

Naturally, the concept of sovereignty is deeply rooted within any society since — considering the current social forms of organization —i t is through the State that communities exercise their freedom of action and decision.

As tax administration officials we have no doubt regarding the importance of collection as a fundamental component of sovereignty. Exercise of the taxation power — with all its limits, strictly analyzed through the years by such sciences as Public Finances, among others — determines the field of action of the States as regards the exercise of their financial activity, which is the factual and juridical background for carrying out all its most essential functions. Furthermore, bearing in mind that an unprecedented participation is currently demanded from the State, this acquires even greater relevance.

2. *Bidart Campos, Germán. El mito del pueblo como sujeto de gobierno, soberanía y representación (p. 41-42). Buenos Aires: Abeledo –Perrot.*

On the other hand, something similar occurs with the monetary administration, which arises as another of the basic public functions, as well as the administration of justice among others. In this line of thought, it must be borne in mind that article 30 of the Organic Charter of the Central Bank of the Republic of Argentina — Law N° 20.539 — provides that the latter will be "exclusively in charge of the issuance of bills and currencies of the Argentine Nation and that no other entity, neither from the national government, provincial governments, municipalities, banks or whichever other authorities, may issue bills or metallic monies nor other instruments that could be susceptible of circulating as money".

2. THE CRYPTOCURRENCIES

2.1. What is a criptocurrency?

A cryptocurrency is a virtual currency that serves to exchange goods and services through a system of electronic transactions without the need of an intermediary. They are also known by the names of cryptomoney, electronic currency, virtual money, etc.

Unlike other attempts at electronic money, cryptocurrencies incorporate the principles of criptography[3] to implement a presumably safe, anonymous and decentralized economy, where the basis of the operation is in using codes to decipher the encrypted message through complex equations by each one of the intervening parties. The exchange of currency can only occur through the personal codes.

The cryptocurrency is a security certificate with an "owner" number which through general agreement has a floating value, its behavior is somewhat similar to that of a negotiable instrument or the shares of a company, its value increases or decreases according to various factors such as:

- **Demand:** as any market good, the more people buy it, the greater will its value be;
- **Trust:** as any other credit instrument, when a company that is devoted to the commercialization of cryptocurrencies experiences a theft or loss, the cryptcoin loses value before the public; and
- **Acceptance:** every currency is as valuable as its capacity of being converted into products, services or another type of currency.

2.2. First cryptocurrencies

Satoshi Nakamoto is the pseudonym of the persons or group of persons that designed the Bitcoin protocol in 2008 and created the network in 2009. Until the invention of the Bitcoin (BTC) it was obligatory that all payments in electronic commerce were channelled through trustworthy centralized entities, generally banks and other financial enterprises that where in charge of the follow-up of all transactions.

On January 3, 2009, the bitcoin P2P network (peer to peer or system of exchange between peers) entered into operation with the publication of the first open code client and the creation of the first bitcoins. As of that moment, dozens of cryptocurrencies with different specifications have appeared, but most of them are similar or derived from the first totally implemented cryptocurrency: the Bitcoin.

3. *The sphere of cryptology is the one in charge of the coded techniques intended to alter the linguistic representations of certain messages in order to make them ininteligible to unauthorized receivers. It is in charge of the study of algorithms, protocols and systems used to protect the information and provide security to communications and the entities that communicate among themselves.*

Although the Bitcoin continues to be the main cryptocurrencie, there are several virtual currencies worth noting because of their technological contribution with respect to their security and anonymity: Darkcoin, Monero, Vertcoin. Quarkcoin, Litecoin, Dogecoin.

Darkcoin is a cybercoin specifically designed for use in the Deep Network. Aspects regarding security and anonymity have been maximized to achieve absolute privacy in the transfers. The transactions in bitcoin are public (that is, any person can see them in the chain of blocks) and when a transaction is carried out with a third party (money-exchange office, bank or specific stores) the information may be linked to the user. Through its own payment system (Darkwallet), Darkcoin manages to solve these inconveniences.

2.3. Characteristics of the cryptocurrencies

Cryptocurrencies have innovative characteristics and would stand out for their presumed efficiency, security and ease of exchange. The main ones are:

1. They do not belong to any State or country and may be used equally throughout the world;
2. They are decentralized: they are not controlled by any State, bank, financial institution or company;
3. Their falsification or duplication would be impossible, thanks to a sophisticated cryptographic system;
4. There are no intermediaries: transactions are carried out directly from person to person;
5. Transactions are irreversible and instantaneous (sending and receipt of money is done in a few seconds, although the money transferred requires a few minutes to be available for expenditure);
6. It is possible to change cryptocurrencies to other currencies and viceversa, like any other currency;
7. Low commissions: small rates are charged per transaction that end up in the nodes of the P2P network;
8. It is not necessary to disclose the identity when doing business, thus preserving the privacy of the parties. The addresses to send and receive cryptocurrencies are anonymous and consist of an alphanumeric series generated at random. One may créate as many addresses as one wishes;
9. The license used for publishing the Bitcoin "protocol" allows anyone to develo phis own cryptocurrencie.

2.4. Operation

2.4.1. Addresses

Much in the same way that there are electronic mailing addresses, there are also addreses that allow for sending and receiving digital money.

To begin using the cryptocurrencies the first thing that must be done is to generate one of these addresses using a Cryptocurrency application, which are free and do not require to be connected to Internet for their generation, since there is no institution or Company wherein one must register.

These addresses are generated through some mathematical parameters that render all the addresses unique and that there are no two of them alike This is done through a cryptographic algorithm that generates a public and a private code (similar to the digital signature).

The public address is the one with which you identify before the world. Anyone who knows the public address may send you cryptocurrencys at any time. The private code is that which allows to authenticate yourself, access the funds you may have in that address or send them. Most of the applications for handling cryptocurrencies make sure to keep the private code protected with a password (coded).

The balance of available bitcoins is an attribute which the address has. It is a value attributed to the account and which may increase or decrease according to the transactions carried out.

2.4.2. Transactions

Bitcoins are used by means of any application or program specifically designed for such purpose, and it should verify the following characteristics: free or open code, supported by other users and incorporation of measures to protect the private code.

Cryptocurrencies include the public address of their owner. When user A transfers something to user B, A delivers the property and adds B's public code and then signs with his own private code (http://es.wikipedia.org/wiki/Cryptocurrency-cite_note-38) A then includes those cryptocurrencys in a transaction, and disseminate it to the network P2P nodes connected. Para algunas cryptocurrencies, todas las transacciones son absolutamente públicas y transparentes, algo que en el sistema tradicional no ocurre. Nadie conoce la identidad de la persona que hay detrás de la dirección usada (a menos que ésta lo haga saber) y se preserva la privacidad de los usuarios. Para el resto de personas la transacción será solo un número, sin que sepan quién ha enviado o quién ha recibido el dinero. No obstante ello, se están desarrollando cryptocurrencies donde se lograría el total anonimato.

These nodes validate the cryptographic signatures and the value of the transaction before accepting and relaying it, being backed into a collective and unalterable registry (blockchain). This procedure transmits the transaction indefinitely to reach all nodes in the P2P network.

For some cryptocurrencies, all transactions are absolutely open and transparent, which in the traditional system does not. No one knows the identity of the person behind the used address (unless it may inform) and the user privacy is preserved. For other people the transaction will be just a number, without knowing who has sent or who has received the money. Nevertheless, cryptocurrencies where total anonymity is achieved are being developed

2.4.3. Block mining

All nodes that are part of the network maintain a collective list of all known transactions, which is called block chain.

The generation of blocks is known as "mining". The generators nodes, also called miners, by executing a program on your computer, create new blocks, adding in each of them a code (hash) of the last block of the longest known chain and the new transactions published in the network.

All the nodes generators of the network are competing to be the first to find the solution to the cryptographic problem of their block-candidate, so that the system operates in a decentralized way. When a miner finds a new block, it transmits it to other nodes to which it is connected. For a valid resulting block, these nodes add it to the chain and retransmit it again. This process is repeated indefinitely until the block has reached all nodes in the network. The miner who first validates the chain is rewarded with some new cryptocurrencies that are injected into the economy and their fees for the verified transactions.

This reward or prize will diminish over time to zero, ensuring that no more more than one X number of coins can exist (Ex .: 21.000.000 for BTC, 84,000,000 for Darkcoin, etc). In the long run, all the rewards of the generators nodes come only from transaction fees.

Then, the chain block contains the history of ownership of all coins from the source creation direction to the current owner. Therefore, if a user tries to reuse currencies already used, the network will reject the transaction.

2.5. How to negotiate them

In general it can be said that there are only two very obvious ways to get cryptocurrencies:

- Offering products and services in return for cryptocurrencies;
- Exchanging them for euros, dollars or other currencies.

2.6. Subjects involved and / or causing events

In transactions with these virtual currencies we can identify the following subjects involved, in relation to each of the situations that could have commercial and/or tax implications:

1. Used as a means of payment for a product or service, they will impact both for those who offer it as to its recipient.
2. By the same operation, when processed by a "miner" for purposes of validation, the miner receives a transaction fee, which would be the payment for its service.
3. The miners who validate transactions and include a new block in the chain receive bitcoins as a reward.
4. Agencies operating in the exchange of virtual currency charge a fee for their activities.
5. In all cases, the value at which it operates should be taken into account due to gains or losses that may affect the currency exchange rate.

2.7. Legal nature of cryptocurrencies for the legislation of Argentina

As a preliminary analysis, it should be remembered that-as it often happens with those realities that emerge from popular initiative, our country has not yet adopted any specific legislation on cryptocurrencies.

For reference, we might mention that in the United States, a federal judge found the cryptocurrencies as equivalent to real money[4]. Also, in Germany the Ministry of Finance, at the request of a party, has stated the cryptocurrency is a monetary unit and operates as private money[5].

In the case of Argentina law, we might consider the cryptocurrencies -under the Civil Code terminology - as things, intangible property or rights, or as a currency.

As for the first two hypotheses, considering the cryptocurrencies as things in the terms of Article 2311, we must remember that such legislation defines them as those "material objects likely to have a value". Then, Article 2312 defines "goods" encompassing the already mentioned "things" and intangible property.

Under this view, the cryptocurrencies should meet two basic requirements for their consideration within the meaning of things.

On the one hand, it would be necessary to analyze whether the cryptocurrencies have value. In this case, we find that the value is given by the economic role that society gives them, a situation that often depends on the autonomy of individuals wills. In general, we the present context refers to people performing transactions with cryptocurrencies covering requirement value to the initial level. However, we must also take into account the importance of the social function that something must acquire to be considered "valuable". In the case of cryptocurrencies, we understand that this would be given from fulfilling its role as a means not only effective in perfecting the exchange during a transaction but also providing the appropriate transparency and respecting the rights of the various associated parties and

4. *Retrieved from: http://ia800904.us.archive.org/35/items/gov.uscourts.txed.146063/gov.uscourts.txed.146063.23.0.pdf.*
5. *Arthur, Charles, (2013, 19 de Agosto). Bitcoin now 'unit of account' in Germany. The Guardian. Retreived from: http://www.theguardian.com/technology/2013/aug/19/bitcoin-unit-of-account-germany.*

the rest of society with legitimate interest in the transactions. Needless to say that in the case of cryptocurrencies, the transparency that administrations are accustomed to demand is not observed- at least from a tax administration point of view.

As for the materiality of cryptocurrencies, we would be facing the analysis of a highly technical issue and exceeds the purpose of this work, especially in consideration that a possible negative answer regarding this question would only make us conclude on the need to deepen the assumption of the intangible asset for which the above analysis is applied.

It is important to note that although we might consider to cryptocurrencies as things, this does not imply assimilating them to the category of currency under the current Argentina legislation. This latter concept, as currently regulated in the Argentine legal system, is associated with the idea of centrality. Clearly, this concept does not follow that notion and hence it is not possible to include it into that category.

However, cryptocurrencies do respond to economic qualities of money and therefore it is possible to include them into this legal category. There is no doubt about the true intent on characterizing the cryptocurrencies. This will to shift the function of money in sovereign states leads to the conclusion that they must be considered as an instrument that seeks a value comparable to the legal tender, and for that reason must be fought due to the lack of control that can be generated as a result of their use.

2.8. Tax treatment according to how they are considered

By way of introduction, it is noteworthy that the Central Bank of Argentina has issued a Communication to the general public that warns of the risk involved in the use of virtual currencies as not being issued by any international monetary authority does not have legal tender and have no support, and their value has a great volatility, also warning that various international authorities have warned about their possible use in money laundering operations and various types of fraud. In short, the risks associated with these operations are supported exclusively by their users.

Finally, the Central Bank is currently analyzing various scenarios to verify that transactions with these assets do not constitute a risk for those aspects which monitoring is expressly stated in its Charter.

Furthermore, the Financial Intelligence Unit, Agency responsible for the analysis, processing and transmission of information for the purposes of preventing and deterring crimes of Money Laundering and Financing of Terrorism, issued in July 2014 its Resolution No. 300/14.

Beyond its operative part, which states that certain subjects are compelled to monthly report all transactions with virtual currencies through Systematic Operations Reports online, through the website of the Financial Intelligence Unit, it is worth highilighting the main grounds of this resolution.

In this regard, the unit motivates their actions that virtual currencies involve a number of risks to the system of prevention of financial crimes, one of the most being their anonymity, preventing the nominative traceability of operations.

Additionally, virtual currencies are often marketed via transactions made through Internet; allow the trans-borders movement of assets, and involve entities from different countries, and the jurisdictions that do not have appropriate controls to prevent Money Laundering and Financing of Terrorism may participate; all of which makes it difficult for regulated entities to detect suspicious transactions which can be exploited by people who seek to avoid the preventive system established by our country through the enactment of Law No. 25,246 and its amendments.

Finally, in regards to what specifically refers to the tax treatment that could have a transaction with cryptocurrencies or a taxable fact generated by their possession or sale, we need to remind their legal nature. In this sense, bearing in mind that this is an instrument which attempts to fraudulently be installed as an alternative to currency, although with no legal validity-, it is not possible to define the subject of the tax system or taxable events, because it would mean to give recognition - even partial - to the cryptocurrencies.

2.9. Exchange, monetary and tax aspects in the world

The sudden rise of this type of good and the speed of their integration into global markets make that beyond the knowledge we have about the criptocurrencies, ther is not much consensus regarding opinions and options on how to deal with them.

Opening the spectrum worldwide, contacts with different and varied Embassies and Consulates have been taken in order to obtain information regarding their global treatment. Research on the issue led us to gain awareness of the different positions taken or to be taken by some countries.

First, it is critical to note that the theoretical development that can be done about this situation is likely to be invalidated shortly. If any State take the initiative to start legislating on cryptocurrencies, the panorama will change.

As an example, we show the list of the top twenty countries in terms of movements that reflect transactions by number of downloads of the original program of Bitcoin (being the main cryptocurrency), also called cryptocurrency-Qt or client Satoshi since its launch in 2009 until 01.09.2013:

Order	Country	Download
1.	USA	1.073.037
2.	China	340.176
3.	Germany	234.559
4.	UK	208.293
5.	Russia	193.414
6.	Canada	147.919
7.	Australia	94.014
8.	Poland	88.903
9.	Netherlands	85.490
10.	France	65.913
11.	Ukraine	59.530
12.	Italy	57.317
13.	Spain	56.629
14.	Brazil	52.938
15.	Sweden	51.906
16.	Finland	29.645
17.	Argentina	28.390
18.	India	28.375
19.	Romania	26.058
20.	Switzerland	25.705[6]

We must remember here the proportion of these downloads to the total population of the country, because we think that the United States is the country with the highest implantation of cryptocurrency, having the first place in number of downloads, but this is not the case if we sort the list by number of downloads per inhabitant; then the vision changes completely.

6. ***Fuente:*** *Sourceforge. The bitcoin original program, also called Bitcoin-Qt or client Satoshi, (although this programprograma can be used as server or web node and and including mining) is used as a guide for the penetration of de Bitcoin.*
Criptocurrencies. In "Which are the main countries using bitcoins?". Retrieved from: http://criptomonedas.org/cuales-son-los-principales-paises-que-usan-bitcoin/

Considering the treatment provided by the various countries, it can be noted that **the United States** considers the cryptocurrencies as intangible property and not as currency, which is subject to tax in that country, according to the Internal Revenue Service (IRS). Nevertheless, federal authorities issued a warning about the risks of using virtual currencies such as the Bitcoin, while the Consumer Financial Protection Bureau (CFPB) stressed that these currencies are not backed by a government, their exchange rates are volatile and that they are targeted by hackers and scammers. Unlike bank accounts, they are not insured by the federal government

Silk Road incident

In the US Senate, several opinions converge to require that the regulation of decentralized currencies must be sufficiently strong.

The case of the online black market "Silk Road" which was closed by the FBI illustrate the unresolved challenges. Due to the lack of legal and regulatory tools it was not possible to to access the records of their clients, and virtual currencies face the same challenges, including the relation between cryptocurrencies and child pornography and sex trafficking.

As highlighted above in **Germany**, the Ministry of Finance, at the request of a party, issued a statement saying that the cryptocurrency is a monetary unit and operates as a private money.

Moreover, **in Spain**, the Ministry of Finance General Subdirectorate of Taxation of Legal entities has responded to a Binding query (V2228-13) concerning the treatment applicable to those who operate as exchanger (person dedicated to the sale and exchange of virtual currencies).

This answer considers the virtual currency as a means of payment that can be commercialized and that is usable on the acquisition of goods or services. Regarding this, it indicates that the income received as commission for the sales is part of the taxable corporate income. As for the Value Added Tax, although the transactions in the development of such activities would be subject to tax, an exemption could take place to the extent that electronic money meets the defining criteria established by Law 21/2011 on electronic money.

Asimismo la Agencia Estatal de Administración Tributaria manifestó que está vigilando la evolución de estos productos por si su difusión pudiera suponer un riesgo respecto del control tributario o utilizarse en esquemas de blanqueos de capitales y otros fines ilícitos, agregando que ya existen diversas normativas aplicables a los medios de pago, en especial en efectivo, por lo que podrían resultarle aplicable las mismas limitaciones.

Likewise, the State Tax Administration Agency said it is monitoring the development of thees products to check if they would pose a risk regarding tax control or used in money laundering schemes and other illicit purposes, adding that there are already various regulations applicable to means of payment, especially in cash, so that same limitations could also apply here.

On another note, **in the United Kingdom**, the position was expressed by the HM Revenue & Customs (HMRC) by the 9/14 Summary noting that adopt the usual treatment for the sales of goods would apply, according to the value of the cryptocurrency at the time of the transaction, recognizing the existence of gains or losses according to the difference in value.

Bolivia has taken a different position. The Central Bank of Bolivia (BCB) has issued the Directorate Resolution 44/2014, under their powers to regulate the payment system, specifically prohibiting the use of coins unissued or regulated by states, countries or economic zones, referring in its preamble to a long list of cryptocurrencies. It is the first country in Latin America to make this official determination regarding virtual currencies.

Finally, from various news sources consulted on the web we can highlight the positions taken by **Mexico** and **Sweden**.

Mexico has argued that cryptocurrency is not legal tender and that financial institutions are not allowed to operate with that virtual currency.

Sweden would not recognize them as currency and tends towards an interpretation of cryptocurrency which would allow the country to tax capital gains for any transaction that use the software. They hae also pointed out that virtual currency risk becoming tools for criminal activities such as money laundering and terrorist financing.

3. TAXATION AND CRYPTOCURRENCIES

In relation to the characteristics and backups inherent to currencies and the frontal opposition that emerges with the cryptocurrencies, it is possible to highlight the negative consequences that would result from their acceptation for all countries. Their acceptance in any form, essentially considering them as money, constitute a flagrant breach of sovereignty, loss of the tax base, facilitation of offenses regarding foreign exchange, tax, money laundering, financing of terrorism.

The use of this type of virtual currency carries risks in relation to the anonymity and the impossibility of the traceability of the operations, which as a result are beyond any control of the tax administration.

We must point out there are no procedures that make possible any control of such operations through the use of cryptocurrencies, from the operational tax administration experience of collection and control, there is no information system which can be considered efficient or accounting audit that could evidence what is intended to be hidden, when these cryptocurrencies have been used for payment. This leaves the tax administrations in a State of total helplessness and unable to fulfill their basic obligation.

Considering the “advantages” that the use of the cryptocurrencies pretend to offer, we must consider here how the Tax Administration could deal with verification and control of a taxpayer capacity, either for purposes of taxing an asset to a certain date, assigning operations and their results to a specific taxpayer, determination of a difference in assets value.

In addition, the possibility of making transactions between private individuals without the need for a third-party that certifies the accuracy of a transaction or report its existence would facilitate unreported operations, given that cryptocurrencies could be transferred at certain times to addresses whose owner is not known.
As we see, the apparition of these virtual currencies raises serious questions, not only from the point of view of the tax administration, but also for a responsible society that can be deprived of genuine resource due to the loss of tax base, maliciously hidden by subjects who reject responsible tax behavior.

Beyond the tax consequences of the issue, which may be local or international, regarding the transfer of taxable income to other territories for the purpose of achieving a low taxation, we must highlight the implications identified by the Financial Information Unit (FIU) that were previously mentioned. They refer to cryptocurrencies as allowing the cross-border movement of assets involving entities in different countries where they do not always apply adequate controls for prevention of money laundering or financing terrorism.

In this sense, unscrupulous people can take advantage of those poor preventive controls, as well as the existing lack of regulation regarding this topic, in many jurisdictions, and they "whitewash" their assets and then transfer them to states which are permanently fighting this scourge.

We must differentiate privacy from anonymity. The privacy of individuals is very defensible; but the absolute anonymity given to transactions over the Internet can be diagnosed as "a catastrophe". Therefore, a very strong control aimed at achieving an appropriate balance should exist.

At this point, the cryptocurrencies share their harmful characteristics with tax havens – which harbor (abroad or offshore according to the investor's residence) tax shelters, territories or offshore regimes (outside the territory) also refer to areas that generate an aggressive, harmful and unfair tax competition at the international level.

So, these cryptocurrencies, in addition to qualify for everything harmful in the transnational area, add that it is not possible to know the residence of the investors, because the digits that identify them are not known as we have explained above, and only the owner knows the number.

Returning to concepts introduced in the previous paragraphs, some countries also poses challenges to fight against the relocation of businesses seeking to achieve a location away from the tax authority to lead them to a low or nil taxation.

These are challenges, since cryptocurrencies are characterized by a strong relation to intangible assets, the massive use of data (especially personal data), the widespread adoption of business models in various places that capture the value of externalities generated by free products and the difficulties to determine the jurisdiction where:

- How the digital economy businesses add value and create benefits;
- How to determine the origin and residence or the characteristics of the income for tax purposes.

The use of cryptocurrencies can lead to the relocation of the central functions of the business, and therefore a different powers to tax distribution can lead to a low tax.

It is relevant to determine whether the adoption of rules is necessary and to what extent. Given the risks, complexities and complications arising from the digital economy it can be considered that using the cryptocurrencies in the operation is an aggraving factor, corroding the pillars on which taxation relies: subject, object, space, and jurisdiction. The phenomenon is the ability of a company or an individual to have an important digital presence in the economy of another country without being liable to tax. The basic premise in the health of a nation is to ensure tax revenues, that all taxpayers pay a fair share of taxes.

Tax evasion, the harmful practices and aggressive tax planning have to be faced, and in this sense the world has been working for several years.

Cooperation between States is today a recognizable trend, primarily thanks to the pressures that are being developed around the world in international bodies dealing with international tax transparency. This collaboration can already be considered today a rule and not the exception. It extends also to related fields, such as the fight against the laundering of assets of criminal origin. This is mainly due to the fact that even if each State holds its own tax authority, different from their peers, the relevance of the joint action on certain evils afflicting all societies is understood by all.

It is worth clarifying that this new trend has affected the sovereignty or the ability to attract investment in a genuine way, even in

certain countries which in the past had shown little will to tax cooperation or exchange of information.

The cryptocurrencies also differ significantly from what is known as electronic commerce. While it represents many difficulties for the purposes of the audit, as well as discussions for the purpose of framing it within the tax rules, it is possible to get information about the monitoring of operations, products or services. Taxable operation, tax base, and operators can be identified in e-commerce, while this does not occur with the cryptocurrencies, which seek an appearance of transaction impossible to follow-up, in accordance with the concepts stated in previous paragraphs.

Tax effects are also notorious because in the first case a standardization has been achieved without damaging the tax revenue, while with virtual currencies all controls belong to cyberspace, and this lack of control has unimaginable adverse consequences.

The OECD is working on this issue because we are faced with the possible Commission of commercial fraud (smuggling, money-laundering) and other financial crimes, which involve a strong threat to political and economic interests of the countries and demand a firm decision to confront them and eradicate them.

As background, we can mention the Oslo Forum of the year 2011, which through its conclusions asked to encourage cooperation to tackle financial crime.

We believe that we should propose to the international centers of common projects such as the Organization for cooperation and economic development – OECD –, and of the Inter American Center of Tax Administrations - CIAT - the non-acceptance of the cryptocurrencies, because of all the harmful effects explained in this paper.

All of this leads us to the primary origin of the globalization problem, which attempts to successfully unify all the variables, among which we cannot exclude Double Tax Conventions (DTC), cryptocurrencies, money-laundering, among others.

In what refers specifically to the cryptocurrencies regarding the fraudulent attempt by some sectors to use them as an absolute replacement of national currencies, we can add that since remote times, and mainly since the formation of the modern State, economists and politicians have been given the task of finding an instrument that will facilitate and expedite trade relations between private as well as among the different Nations. This search has led even to the idea of creating an international currency; however, that purpose has been limited by the yearning of peoples to retain their monetary sovereignty, evenmore when this has been considered as an essential element of the sovereign State. Several authors have expressed that if a nation loses its monetary monopoly, then citizens would be at risk of a greater subordination to centres of wealth and power concentration that are completely beyond their control. In view of the benefits brought to the community by the existence of the currency, and with the idea of avoiding potential fraudulent alterations, the monopoly on the issuance of money has been left in the hands of the public authority.

As well as the tax authority, the Monetary Authority is a core part of States sovereignty.

As it has been developed previously, approximately 4 years ago, the world has witnessed the creation of the cryptocurrencies. This alleged new form of electronic currency comes with a clearly liberal spirit and seeks to create a new paradigm in monetary terms to break traditional conceptions of the currency, but brings as consequences the loss of sovereignty by States as well as the weakening of their possible negative effect on state policies, with

the possibility, on the other hand, to be used in illegal operations due to their total lack of control.

For the purposes of being able to use any kind of cryptocurrency, it is necessary that people develop a new behavior with respect to the safety of their money since they need to be informed about the public and private keys that govern the safety of their accounts. It should be borne in mind that if you use, for example, the cellm phone as “virtual wallet”, if you save the keys in that same device, then there is a clear exposure to risk of illegal use of such copies thus obtaining access to the wallet.

Access to the wallet is given in two parts, to deposit and knowing that it exists, what is called a public key that identifies the account is sent. To make changes and access to funds, a privileged access that is written to a file called private key is required. Who has a copy of the private key, has access to the wallet.

Another not minor issue is that all movements of the criptodivisas are public; there is a file that grows and is maintained by computers that are specifically dedicated to validate these movements. There is a process that is vital to the cryptocurrencies: “I mineo” or “mining”. This process means to utilize the resources of the computer processing to validate a chain of transactions. The award for using the computer to this process is a new cryptocurrencies package.

On the basis of the above so far, while several Governments are considering charging tax on earnings in this currency, it is known to the anonymity of the virtual wallets has encouraged unscrupulous people to use various types of cryptocurrencies in payments for illegal goods and services. This should function as a warning to States seeking to safeguard public interests, the community as a whole and not just some few.

Transactions are public because they are distributed publicly, but anonymous participants therefore only listed source addresses and the fate of the cryptocurrencies that can cause in the operation. Payments are not controlled or validated by a central public body, for example the central bank of a country. It’s an exchange of currency as if they were files, but in reality the people exchange a cryptographic code as the currency of payment, and can even have several electronic “purses”.

These coins do not have the backing of a Government, their exchange rates are volatile and are targeted by attacks by hackers and scammers. And unlike bank accounts, are not insured by the federal Government.

It is necessary to stress the fact that we are against an electronic currency traded directly between sender and receiver, without intermediaries, without banks which charge commissions or triangulate the operation with agents, excluding tax. This is unacceptable for a sovereign State, without regulatory body, the speculation can not have limits and oscillations can be deep, with the consequential economic losses. Not much more than the current game played daily with derivatives (future formulas of prices, rates of interest, etc.) representing almost three times the physical economy every day.

A decentralized and potentially anonymous currency would threaten the hegemony of central banks in the control, returning the handling of opearations to operators. Monetary control is key to addressing the inflation processes that can undermine the confidence and the value of the currency. The issuance of dollars, on the other hand, is an asset of the United States and controlled by the Federal Reserve. The cryptocurrencies, with their limited number of issued units previously established, are an inherently deflationary currency that discourages the use of the banking system.

4. CONCLUSION

As we have shown throughout the development of this work, we could observe the growing trend of the use of the cryptocurrencies in the business world. This situation has been enhanced in recent times, inciting some countries to express their position on the issue.

After a brief historical and conceptual overview of money, we have analyzed the distinctive features of the cryptocurrencies. At the same time, we evaluated the aspects that have a negative impact on the social and economic policies of countries, as well as possible attacks on the sovereignty of States.

Finally, our conclusion is that cryptocurrencies are instruments to fraudulently install as an alternative to the currency without legal validity: therefore it was not possible to define the subjects of the tax relationship or taxable event, since they involve granting recognition - even partial - to the cryptocurrencies.

As officers of the tax administrations, our duty is to alert about the harmful intentions of certain sectors hidden behind a new strategy to erode the tax base of the States that require resources to achieve a fair and inclusive economic growth. Thus, under no circumstances we can understand and accept them as a different currency which or as legal tender in any way, because they do not respond to any of the aspects analyzed in such concept; on the contrary they represent a breach to the sovereignty of a country, helping crimes of all types to remain unpunished, and affecting the world community.

5. BIBLIOGRAPHY

Arthur, Charles, (2013, 19 de Agosto). Cryptocurrency now 'unit of account' in Germany. The Guardian. Retrieved from: http://theguardian.com/technology/2013/aug/19/cryptocurrency-unit-of-account-germany

Bidart Campos, Germán. El mito del pueblo como sujeto de gobierno, soberanía y representación (p. 41-42). Buenos Aires: Abeledo –Perrot.

Echegaray, Ricardo (2013) La Administración Tributaria frente al Contribuyente Global. Buenos Aires: La Ley.

Sourceforge. Cryptocurrencies. "¿Cuáles son los principales países que usan Cryptocurrency?". Internet. Retrieved from: http://cryptocurrencies.org/cuales-son-los-principales-paises-que-usan-cryptocurrency/

All the material contained in this publication was prepared and set up at the Publications Center of the CIAT Executive Secretariat, P. O. Box 0834-02129, Panama Republic of Panama. Concluded in February 2015.

My CIAT Services

Inter-American Center of Tax Administrations

We invite tax administration officials as well as the international tax community to register in the My CIAT Tax Information Service.

Find out about the benefits of registering in My CIAT.

When registering in My CIAT, you will:

- Receive the e-CIAT Newsletter and the Tax News Alert;
- Receive announcements of the innovations published in our Portal;
- Have access to all the information and documents available at CIAT's Web Site.

If you do not register in My CIAT, you will not have access to the restricted areas of the CIAT Portal.

Take advantage of registering in My CIAT.

Register Now!

Inter-American Center of Tax Administrations
Executive Secretariat
P.O. Box 0834-02129
E-Mail: ciat@ciat.org
Web Site: http://www.ciat.org
Tels.: (0507): 265-2766, 265-5994
Fax: (0507): 264-4926