Tax Administration REVIEW

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EDITORIAL POLICY

The Technical Cooperation Agreement signed by CIAT and the State Secretariat of Finance, 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 disseminat 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 Director of Training & Human Talent Development and Head of the Spanish Mission) is responsible for determining the topics and selecting the articles for each edition of the Review.

The articles are selected, 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.

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Content

Editorial

Dear Readers,

We are pleased to present to all tax administrations officials of the member countries and associates of our organization and, in general, to the entire international tax community, the new design of the Tax Administration Review that is published as part of the Technical Cooperation Agreement that CIAT maintains with the Ministry of Finance and Budget, the Institute of Fiscal Studies (IEF) and the State Agency of Tax Administration (AEAT) of Spain

This edition presents (8) articles:
Corporate fiscal e-government; Public-private partnerships (PPP) and the organic law of tax incentives in Ecuador; Control of the electronic commerce and the collaborative economy; Maturity and performance of fiscal management - MD GEFIS: an evaluation proposal; The regime of fiscal incorporation, its collection and tax stimulus in Mexico; Enforced collection - Diagnosis and proposals for improvement; Personnel development in the Chilean Internal Tax Service within the framework of a tax reform.

In addition to these articles, we include a new section of reviews of other publications of interest; in this issue in relation to the book “Overview of challenges and first developments of the BEPS project in Latin America”

We are grateful for the great reception of the call for contributions for this edition of the Review.

We reaffirm our commitment to disseminate information of interest that contributes to learning and encourages the transfer of useful knowledge to the international tax community.

Márcio Ferreira Verdi
Director de la Revista

THE CONTROL OF **LABOR TAXES AND LABOR INCOME** IN THE LARGE BUSINESS SEGMENT

Fredy Richard
LLAQUE SÁNCHEZ

SYNOPSIS

This document is a review of the risks involved in labor taxes and social security contributions. It also recognizes the advantages of the technological developments applied in Peru within the Standard Business Reporting initiative for adequate compliance management. The paper also includes a labor risk matrix, as well as an inventory remuneration concepts used by large and medium businesses which could be unduly used for tax saving purposes.

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INTRODUCTION

In recent years, Peru's economic growth generated an improvement of the labor market[1], which is evident in the reduction of some labor informality and unemployment indicators. With respect to this latter indicator, between 2004 and 2014 unemployment was reduced from 5.1% of the economically active population to 3.7%[2].

On the other hand, the number of persons in the formal payroll has increased significantly. Thus, in September 2001, there were 1,107.2 thousand workers and by September 2016 the number amounted to 5,985.2 thousand workers[3].

Labor informality is not only an issue in Peru. The International Labor Organization[4] (ILO) notes that the condition of informal worker in Latin America may be attributed to over 130 million persons with informal jobs, without social protection or labor rights[5]. The statistical information produced in Peru indicates that between 2005 and 2013, labor informality –according to data from the Ministry of Labor and Employment Promotion (MTyPE) –went from 69% to 56.4%.

In spite of this reduction, Peru continues to be in the group of the five countries with the greatest labor informality rated in Latin America. It is estimated that 2.5 million Peruvians work informally, with the employees of microbusinesses being the most affected within the private wage earing segment.

The aforementioned reduction may be attributed to the improvement of the Peruvian economy in general, but also to the work of the entities dealing with this matter, such as the National Superintendency of Customs and Tax Administration (SUNAT), which is in charge of controlling social security contributions (EsSalud and ONP)[6] as well as taxes applied to labor income (4th and 5th Category Income as they are classified in the country).

Also recognized is the effort of SUNAFIL[7] and MTyPE[8], state entities responsible for the labor sphere which supervise compliance with labor regulations, determine and improve the labor framework, as well as labor policies.

As may be seen, labor informality is a phenomenon whose control is beyond the effort of a single entity. The country's greatest effort toward labor formalization has been at the level of tax regulations through the creation of differentiated systems -in favor of small and medium businesses and specific activities- with reduced social burden rates. However, everything indicates that the impacts of these measures are ever less effective in reducing the aforementioned labor informality.

1 An aspect to be highlighted is that the greater dynamism of the labor market has occurred together with the increase of the worker's average productivity, for which reason the increase in salaries has not been "perceived" by all as an increase in labor costs. Nevertheless, in terms of legal currency, without taking productivity into account, the cost of the payroll has increased.

2 RPP.pe. (2016). This is Peru in 2016: Seventy percent of workers have informal jobs. Recovered on 20.11.2016 from: http://rpp.pe/economia/economia/asi-esta-el-peru-2016-el-70-de-trabajadores-labora-en-la-informalidad-noticia-935544.

3 See chart 49 recovered on 20.11.2016 from: http://www.sunat.gob.pe/estadisticasestudios/busqueda_cuadros.html

4 See the Institution's web page: http://www.ilo.org/global/lang--es/index.htm

5 ILO (2016) Informal economy in Latin America and the Caribbean. Recovered on 20.11.2016 from: http://www.ilo.org/americas/temas/econom%C3%ADa-informal/lang--es/index.htm.

6 In our case, these contributions have been created in favor of EsSalud (http://www.essalud.gob.pe/). The latter is a decentralized public entity, with internal public law legal capacity, attached to the Labor and Social Promotion Sector whose purpose is to provide coverage to the insured and their beneficiaries through prevention, promotion, recovery, rehabilitation, economic and social assistance which correspond to the Social Security Health system, as well as insurance in other human risks.

On its part, ONP, (https://www.onp.gob.pe/), is the Social Security Normalization Office – which was created through Decree-Law N° 25967, amended through Law N° 26323 which entrusted it, starting on June 1, 1994, the administration of the National Pensions System - SNP and the Pensions Fund regulated through Decree Law N° 19990. Additionally the institution was assigned the management of other pension systems administered by the State.

7 SUNAFIL (http://www.sunafil.gob.pe/) is an entity whose objective is to supervise compliance with social-labor regulations which carries out the verification functions within its sphere of competency, supervise and demand compliance with the legal, regulatory, conventional standards and the contractual conditions in the social-labor sphere which may deal with the common application or special systems; impose legally established sanctions for noncompliance with the social-labor standards in its area of responsibility, among others.

8 The Ministry of Labor and Employment Promotion (http://www.trabajo.gob.pe/), is the ruling entity with respect to the development and evaluation of social-labor policies and the promotion of employment and labor insertion, self-employment and decent work which guarantees compliance with the labor rules in force, the prevention and solution of conflicts, the improvement of working conditions, among others.

A better analysis of the labor informality phenomenon, using the information provided by the *Electronic Payroll* and the *T-Register* developed by SUNAT and the National Home Survey (ENAHO) carried out by INEI[9], undertaken by a multidisciplinary group with a holistic and systemic approach which may commit the different state entities involved, as well as civil society, could serve as basis for arriving at a better response to the related risks[10].

In the presentation of this paper, we will focus on the control of risks arising in large taxpayers with respect to taxes on labor income and social security contributions, which in the Peruvian case are administered by SUNAT.

The paper explores the use of information provided by the Electronic Payroll and the T-Register[11], among other sources of information, for identifying and evaluating the risk and thereby propose mitigation actions for reducing evasion and avoidance in the formal part of employment in Peru.

In addition, we have discussed some concepts used by large businesses for granting direct or indirect remunerations that must be correctly classified for purposes of an effective control.

1. LEGAL ACTION FRAMEWORK OF THE PERUVIAN TAX ADMINISTRATION

One of the necessary conditions for the adequate management of any tax is a strong legal framework that may allow the Administration to adequately carry out its function. The details of the rules shown below are not complete; only the main legislation is highlighted, without a complete inventory of all the applicable rules.

In our case, we identified a strong set of rules that may be classified as follows:

1.1 Administrative rules

According to article 5 of Legislative Decree N° 501, amended through Law N° 27334 as well as Law N° 29816, Law for the Strengthening of SUNAT and its Regulation, Supreme Decree N° 029-2012-EF and modifying rules; SUNAT is qualified to manage, collect or carry out any other function that may be compatible with its purposes, with respect to Health Social Security contributions – Es Salud and the Office of Social Security Standardization – ONP, referred to in Rule II of the Preliminary Title of the Single Ordered Text of the Tax Code, approved through Supreme Decree N° 135-99-EF and modifying rules.

The aforementioned rule also indicates that SUNAT may exercise administrative powers with respect to other Es Salud and ONP[12] nontax obligations, as provided in the corresponding interinstitutional agreements[13].

The regulatory framework on the subject specifies that SUNAT exercises the functions provided in article 5 of Legislative Decree N° 501, amended through Law N° 27334, with respect to Social Security contributions, according to the powers and functions allowed by the Tax Code and other tax rules. It also provides that the administrative powers of the entities will be implemented according to what the aforementioned institutions may agree.

9 The National Statistics and IT Institute –INEI, see https://www.inei.gob.pe/sistema-estadistico-nacional/, is a specialized technical entity with internal public law legal capacity, with technical and managerial autonomy, dependent on the President of the Council of Ministers. It is the central and governing body of the National Statistics System, responsible for regulating, planning, directing, coordinating and supervising the country's official statistical activities.

10 It must be recalled that acceptable risk treatment alternatives, according to ISO 31000 may be: Avoid the risk by deciding not to initiate or continue with the activity that causes the risk; Accept or increase the risk in order to pursue an opportunity (the foregoing options are not valid within the context of the Tax Administrations); Eliminate the risk source; Modify the probability; Modify the consequences; Share the risk with other parties (or, as appropriate, transfer it to the Executive Body requesting a change in the rule); and Hold back the risk based on an informed decision.

11 Additional information on these developments may be found at: http://orientacion.sunat.gob.pe/index.php?option=com_content&view=category&layout=blog&id=358&Itemid=565 y http://orientacion.sunat.gob.pe/index.php?option=com_content&view=category&layout=blog&id=270&Itemid=483

12 On its part, article 3 of Law N° 27334, provided that the scope, periods and other aspects required for applying the expansion of SUNAT's powers should be regulated through Supreme Decree. It is thus that regulatory rules are approved through article 5 of Supreme Decree N° 039-2001-EF which provides that, according to article 5 of its General Law, SUNAT is in charge of the administration of Social Security Contributions, including issues related to the registration and/or declaration of the employment entities and their workers and/or pensioners, regardless of the taxation period.

13 According to the paragraph included through the Single Complementary Provision Modifying Law Nº 30003, published on March 22, 2013, SUNAT is in charge of the aforementioned functions dealing with the contributions to the Special Pensions System (REP) for fishing workers and the Special Fisherman Fund (FEP).

1.2 Labor rules

Among the most important one may mention Legislative Decree N° 728 (12/11/1991) which approves the Employment Promotion Law amended through Law N° 28051, Supreme Decree N° 002-97-TR (27/03/1997). Single Ordered Text of Legislative Decree N° 728, Labor Training and Promotion Law. Additionally, Supreme Decree N° 003-97-TR (27/03/1997). Single Ordered Text of Legislative Decree N° 728, Labor Productivity and Competitiveness Law and Supreme Decree N°007-2002-TR (04/07/2002). Single Ordered Text of Work Day, Schedule and overtime.

In addition, the legal framework includes: Supreme Decree N° 008-2002-TR (04/07/2002). Regulation of the Single Ordered Text of Work Day, Schedule and overtime; Supreme Decree Nº 004-2006-TR (06/04/2006) Issues Provisions regarding the Attendance and Departure Control Registry in the Private Activity Labor System; Supreme Decree Nº 011-2006-TR, (06/06/2006) Amends S.D. Nº 004-2006-TR, which Establishes Provisions regarding the Attendance and Departure Control Registry in the Private Activity Labor System.

The foregoing is only included as reference. The web pages of SUNAFIL and MTyPE include the inventory of all rules in force on the subject.

1.3 Tax regulations

Tax regulations may be classified in two large groups: One dealing with substantial obligations: Articles 34 and 71 of the Income Tax Law, Single Ordered Text (TUO) of the Income Tax Law approved through Supreme Decree Nº 179-2004-EF and amending rules.

The other group deals with formal obligations, such as: Supreme Decree N° 018-2007-TR, published on August 28, 2007. It includes provisions relative to the use of the document known as "Electronic Payroll"; Supreme Decree N° 008-2011-TR (05/06/2011) which approves rules of adaptation to the T-Register and PLAME; Ministerial Resolution N° 250-2007-TR, published on September 30, 2007. They also approve information of the Electronic Payroll and annexes; Ministerial Resolution N° 121-2011-TR which approves information of the Electronic Payroll and its main elements.

In addition to the previously mentioned provisions, there are others issued by SUNAT with respect to the use of the Electronic Payroll and T-Register which may be seen in the web page of the Peruvian Tax Administration[14].

2. CONTROL DEVELOPED BY SUNAT

One of SUNAT's opportunities for improving control of the tax applied to labor income was the fact of being entrusted the administration of social security contributions. Initially, such task was very complicated; the development of new computerized systems was necessary in order to support the needs arising from the orientation, collection, examination and appeals solution processes.

After overcoming the initial stage, the improvement process was begun. It included the redesign of the existing extensive and intensive controls. The analysis made resulted in a series of initiatives required for developing the compliance and noncompliance controls.

2.1 The electronic payroll

One of the main initiatives for improving compliance with contributions and taxes on labor income was the development of what may be considered as the most successful SBR[15] initiative undertaken in the country: the ***Electronic Payroll***[16], document managed through the computerized media developed by SUNAT

14 Additional information may be obtained at: http://orientacion.sunat.gob.pe/index.php/empresas-menu/planilla-electronica/pdt-plame

15 The SBR prevents taxpayers from having to fill out several forms with similar (or the same information) to comply with requests for information from several government entities, thereby reducing the compliance costs of taxpayers, the state and improving the timeliness and quality of the information received. This issue has been developed by the OECD. See: https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/admin/43384923.pdf

16 To date, the ones responsible are those: Having one (1) or more workers; Having one (1) or more service providers and/or third party staff; Paying retirement, severance, disability and survival or other pensions, regardless of the legal system to which it is subjected; Hiring staff in the training process – labor training modality; Having one or more workers or pensioners that are insured under the National Pensions System; Obliged to make any third or fourth category withholding; Being responsible for one or more artists, as provided in Law N° 28131; if they would have hired the services of a Health Providing Entity or providing their own services according to the provisions of Law N° 26790; among others.

which have information on the employers, workers, pensioners, service providers, staff undergoing training: labor training modality and others (practitioners), third party staff and beneficiaries (persons entitled to social services).

Starting in 2011, the document consists of two components: the Labor Information Registry (T-Register[17]) and the Monthly Payment Payroll (PLAME[18]). This information is useful for SUNAT's own purposes and additionally, allows for filling in the needs for information of Es Salud, ONP, MTyPE, SUNAFIL and SENATI[19], as well complying with other commitments regarding the Exchange of Information at the request of other Foreign Tax Administrations of countries with which we maintain information exchange agreements. Annex N° 1 shows the information that is requested from the taxpayers.

This document directly provides the information requested by the aforementioned public entities, thus reducing the compliance cost of the public administration as well as of the taxpayers. This initiative also generated a reduction of additional explicit costs as the one dealing with the authorization of the payroll[20] and substantially improved the timeliness and quality of the information used by the different entities.

The electronic payroll is a high quality source of information that allows for undertaking simple as well as complex analyses, for detecting inconsistencies that must be subsequently treated through various mechanisms, including the execution of intensive and/or extensive control actions or other risk management actions.

It must be admitted that its usefulness exceeds the application at the level of labor taxes, there being interesting derivatives that allow for improving the control of the Income Tax and GST.

2.2 Labor taxes risk matrix

In most of the countries, payments to workers are subject to social security contributions by the employee or employer, while at the same time they are subject to labor income tax. Under normal conditions it would be expected that the rules that support formal and substantial obligations of these taxes would be the same with respect to taxes that affect labor, but generally this is not so.

The rules that support the obligations derived from these taxes and the labor rights recognized in favor of the workers are not necessarily developed in a coordinated way and there may be contradictory or duplicated obligations as a result of this independent development.

The autonomy of the labor and tax legislation and their different origin, on occasions generate gaps or gray areas with respect to the treatment of some concepts. Although on occasions this is a perfectly valid decision for arriving at a greater benefit for the workers and/or the achievement of a greater objective of fiscal or labor policy, in other cases, it is the result of an incomplete treatment that generates the opportunity for arbitrage, evasion and avoidance.

The same objectives in tax planning are also sought in labor planning; that is: to avoid the tax, reduce its cost or defer to the extent possible, payment of the taxes that could be generated. In some cases, this could generate not only the loss of collection or social security contributions, but may additionally generate the loss of labor benefits for the workers.

It will also generate greater need for funds in the future, in order that the government may directly or indirectly take care of the greater demands of its older population.

17 It is the Labor Information File of the employers, workers, pensioners, service providers, staff under training – labor training modality and others (practitioners), third party staff and beneficiaries. One may access it through the code SOL, OPCIÓN MI RUC Y OTROS REGISTROS.

18 Electronic document comprising labor, social security information and other data regarding the type of revenues of the registered, individuals, workers and beneficiaries. See: http://orientacion.sunat.gob.pe/index.php?option=com_content&view=category&layout=blog&id=271&Itemid=484.

19 The National Training in Industrial Work Service, SENATI, according to Law Nº 26272, amended through Law Nº 29672, is a public law legal entity whose purpose is to provide professional development and training to the workers of the productive activities considered under category D of the Standard International Industrial Classification (CIIU) of all the economic activities of the United Nations (Revision 3).

20 This procedure had to be carried out before the MTyPE, it was time-consuming and in addition involved a fee which could be –in an aggregated manner- relatively high in the case of employers with several working centers who were obliged to maintain an authorized *payroll register* for each working center.

The matrix shown below seeks to expose a scheme of the risks that may be found with respect to this subject matter, from the perspective of the administration of taxes carried out by SUNAT. The matrix is a summarized version which shows the results of the labor risk[21] assessment process.

Labor tax risk matrix

RISK FACTOR	LABOR TAXES	
	Large Business	Medium and small business
1) Non-reporting of Workers	L	M
2) Under-reporting of Workers	L	H
3) Payment of remunerations above market to reduce the tax cost, contriving ways of handling rates and the dividend tax	L	M
4) Payment of remunerations to related third parties which do not actually render services in order to justify disbursements of profits in favor of shareholders and/or partners	H	H
5) Non-characterization of remunerations to avoid the payment of social contributions	H	L
6) Consider in the payroll nonexisting employees to withdraw profits or justify nondeductible payments	L	H
7) False affiliations - to obtain undue social benefits (health and/or pensions)	L	H

Legend: *H (High), M (Average), L (Low).*

The previously shown risk matrix allows the Tax Administration to develop detection mechanisms and propose risk management measures –including intensive or extensive control actions – that may allow for improving compliance of the taxes involved.

2.3 Detection of employment entities showing signs of noncompliance

In addition to the Electronic Payroll, SUNAT –like the greater part of Tax Administrations –requests active taxpayers to file a series of information or assessment returns whereby it may carry out consistency controls that may result in alerts that should be investigated, inasmuch as they may be indicators of noncompliance.

Having information from the greater part of businesses and the capacity for distinguishing between economic sectors, geographical areas, sales ranges, among others, allows for generating patterns and trends for proposing noncompliance hypotheses.

The observations that deviate from the expected range must be investigated, and after comparing and validating the noncompliance hypotheses, control or other risk mitigation actions may be undertaken.

The list of inconsistencies that may be detected also depends on the type and purpose of the analysis carried out. Thus, one may detect errors in the assessment of taxes up to the workers' undeclared revenues or indications of undeclared revenues by the companies[22], among others. One must take into account that there may be appropriate explanations of the differences found among taxpayers, although they may show similar magnitudes

The greater or lesser use of technology, the decision to use a greater or lesser number of staff according to the different service models, the decisions regarding

21 As stated by CIAT (2011): *"The risk assessment comprises the following elements:*
– assessment of risk probability
– assessment of risk urgency
– assessment of risk frequency
– assessment of the amount of revenue loss
– assessment of possible consequences of public trust in the system and the tax administration
– assessment of possible impacts on other risk areas".

Upon conclusion of this process, one may develop more sophisticated and complete matrices than the one shown in this document.

22 The value added generated by the companies in their purchase (transformation) and sale operations should allow them to assume their obligations with the suppliers and workers, while at the same time, under normal conditions it should allow them to obtain a profit for the shareholders.

operation of the industry and staff hiring, the decisions regarding the maintenance of a plant only focused on the *core business and to outsource* the rest may be reasons that may explain the differences.

One may find taxpayers who, having obtained business income declare commercial operations but have no workers under their responsibility or, on the other extreme, one may detect taxpayers who make false affiliations to obtain undue social benefits (health and/or pensions) based on the profile of those who do not declare income but have workers under their responsibility.

In this latter case, one would have to be careful with the false detection that could occur if one finds entities which although not declaring any revenue, do have staff members as a result of receiving donations or because they receive government transfers or transfers from other donors that justify their availability of funds.

The strategy for managing labor risks should include the use of all mechanisms available in order to mitigate or eliminate the risk. An appropriate risk management system should include all critical functions and processes of the Tax Administration which requires, among other things, the development of:

- A sound tax (in this case labor) legislation which, to the extent possible, will not show legal gaps and/or generate interpretation conflicts.
- An adequate organizational structure, that may best respond to the context where in the Tax Administration operates and which considers the different taxpayer segments.
- An effective planning and control system that may allow the permanent monitoring of key indicators and guarantee accountability.
- Sound, effective Information Technology Systems that may guarantee that integrity of safe and current information may adequately support the Administration's processes.
- Sufficient qualified staff to operate and manage the different systems and processes of the organization.
- An effective set of rules that may guarantee cooperation and information[23] exchange with local institutions and other Tax Administrations.

3. TREATMENT OF LARGE BUSINESS RISKS THROUGH CONTROL ACTIONS

With respect to labor taxes, it is considered that in the country there are two very high risks in the Large Business[24] segment. In many cases their detection requires audit actions, even though the risk may be determined based on the information available in the administration's systems.

The first risk is that involving Payment of Remunerations to related persons who do not actually provide services. In this case, simulating a labor relationship is the means whereby profits are transferred at a much lower fiscal cost.

The analysis of family or affinity relationships, identification of high remunerations for functions that contribute little to the results of the business or the existence of jobs that add no value are indications that they should be evaluated in order to identify the existence of this risk. The impact on the reputation which this type of risk may generate in the Administration, although not necessarily the impact on collection makes it important to pay attention to this risk.

The second risk, with a strong impact on collection is the non-characterization of remunerations to avoid the payment of social contributions. Medium and large businesses use the asymmetries between the labor and tax treatment of payments to workers in order to reduce labor costs.

The existence of a great variety of labor systems with different tax effects and the existence of a great variety of ways of arriving at direct or indirect remunerations with lower labor and tax costs calls for a permanent review of this issue.

The use of these forms requires the signing of sophisticated contracts, such as, for example, *payments*

23 The CIAT MANUAL FOR IMPLEMENTING AND CARRYING OUT TAX INFORMATION EXCHANGE (2006) reads as follows: "Information exchange is a key element of international cooperation in tax affairs. It is an effective means whereby countries may maintain sovereignty over their own tax bases, as well as to guarantee the correct assignment of taxation rights among the various national jurisdictions".

24 Given the significant number of Large Businesses in the country that are part of local groups, mainly of the family type.

turned into shares programs which we will discuss further on. In other cases, their detection becomes complicated since the company may opt for assuming and registering them as the company's "current expenses". In all cases, the objective is to reduce and/or eliminate labor and/or fiscal costs.

In the Peruvian case, there are situations wherein, according to the legal framework, these items are encumbered with income taxes, but not labor taxes. Law N° 28051 and its Regulation, Supreme Decree N°013-2003-TR provides for a series of items that are not given the "remunerative nature" in order to improve the workers' income.

By not being of "a remunerative nature", a worker's payment is free from the payment of labor taxes. In spite of the foregoing, in the Peruvian case, the fact of being released from labor taxes, does not necessarily release it from the taxes on labor income, since regardless of the labor treatment, these items qualify as income subject to fifth category income tax, as provided in Article 3 of Law N° 28051 and Supreme Decree N° 013-2003-TR.

The following are some examples of direct or indirect remunerations identified and agreed with workers of medium and large businesses which need to be reviewed in order to establish the correct labor and tax treatment:

- **Support payments – indirect supplies (food vouchers):** In the Peruvian case, there are situations wherein according to the legal framework these items are subject to income taxes but not to labor taxes. Thus, Law N° 28051 and its Regulation, Supreme Decree N° 013-2003-TR, provide that the support benefit through indirect provision in favor of the workers subject to the private activity labor regime, for the purpose of improving their revenues, through the acquisition of food consumption goods provided by their employer with the participation of third parties, under adequate conditions, is not of a remunerative nature.

  The exclusion also depends on the accreditation which requires working contracts or collective bargaining agreements. The regulation calls for compliance with a series of formal requisites that condition it, such as, for example: agreements with the administrating companies and/or food suppliers and registration of the contracts at the Ministry of Labor and Employment Promotion.

  In addition, there should be payment vouchers and documents proving the payments made to the suppliers, reports, among other documents. The formula for calculating the benefit must be proven at the time of the review, in order to establish the correct calculation and eliminate the presumption of an arbitrary act.

- **Payment of snacks which are not the main nourishment:** In the case of the Peruvian enterprises, as provided in article 5 of Supreme Decree N° 004-97-TR, of SD N° 001-97-TR TUO of the CTS Law, snacks which do not constitute main nourishment, according to Article 12 of the Law, shall not be considered remuneration for any legal purpose.

  Proof of the item would require that the taxpayer submit and/or exhibit working contracts, individual agreements, documents which prove accountability of the amounts provided as snacks, contracts with food suppliers or concessionaires, among other documents, which may show that the amounts given to the workers by way of snacks may have been actually used for such purpose, as well as the methodology used in calculating the amount granted.

- **Food expenses[25] paid by the company:** In this case one should try to avoid that amounts which in a strict sense are greater remunerations be considered as "current expense" or "representation expense". The analysis of the company's expenses compared with the payroll information and the identification of the person incurring in the expense allows for identifying

25 According to article 15 of SD N° 001-97-TR TUO of the CTS Law, when the payment is agreed to be paid through in-kind remuneration, the latter being understood to be the goods received by the worker as compensation for the service, its value shall be determined through common agreement or, for lack thereof, according to the market value and said amount shall be included in the payroll and payment vouchers register. Likewise, according to articles 12, 13 and 14 of the aforementioned regulation, if it is the case of the in-kind main nourishment, its value shall be determined through common agreement. If it is provided through concessionaires or other forms that do not imply cash payment, the value to be considered is the one in force on the last working day of the month prior to that in which the corresponding deposit is made.

the concentration of the expense and continuity that would allow for detecting the misuse of the item.

- **Automobile Plan:** Some companies provide some of their workers loans for the acquisition of vehicles or guarantee debts with financing entities so that the workers may acquire the vehicles, with the company being responsible for the payments which are subsequently charged to the workers. The vehicles may facilitate the workers or not the rendering of services to the company. The loans may be subject to the payment of interest at reduced rates.

  Likewise, the companies make additional payments to the workers by way of Allowance for mobility, Allowance for use of vehicle, Allowance for Gasoline[26], or the like in order to reduce the cost to the worker or provide funds for the automobile installment payments.

  It would be necessary to determine in these cases, whether these payments qualify as working conditions; if not, they constitute additional income for the workers and it has thus been determined by the Peruvian Fiscal Court in such resolutions as: RTF N° 05794-5-2003, RTF N° 8729-5-2001 and RTF N° 215-5-2002, which allow us to determine the cases wherein this characteristic may be recognized or not.

- **"Company Car":** Companies directly acquire vehicles or enter into financial and/or operational leasing contracts in order to acquire vehicles which they provide to their workers. In this case, it would be necessary to establish, first of all, if the payments serve as basis for the activity of the company and if they qualify or not to be considered indirect remuneration or indirect dividends in favor of the stockholders.

  Normally, clauses are agreed regarding the option to purchase at market values or at reduced values. In this case the form of payment or the cancellation of the debt must also be considered with respect to their effects on labor or income taxes.

- **Educational Payments, Bonuses or Scholarships for the staff or persons related to them:** Another concept used by the companies is the partial or total assumption of expenses for the training and development of the staff or persons related to the latter[27]. These payments may be considered as gifts or indirect remunerations subject to one or the other type of tax. To this end, the analysis of the conditions under which this payment was made would allow for determining it remunerative or non-remunerative nature, for purposes of the corresponding taxes.

- **In-kind remunerations to expatriates or staff assigned to another location:** In principle, in-kind remunerations in the Peruvian case are subject to the application of social benefits and taxes on labor income. Regardless of the foregoing, in an erroneous accounting classification one may be considering as per diem, representation expenses or other expenses which classify as income in favor of the worker.

  It is normal to make payments to expatriates, such as housing lease, schooling for their children, travel expenses once a year for the expatriate and his family, which have a special treatment[28] according to the application of the Peruvian legislation.

  Regardless of the foregoing, it is usually agreed with the staff that the Company assume special insurance expenses, or recruitment or retention bonds, payment of housing lease[29], or payment of memberships in professional entities and/or clubs,

26 One must take into consideration the criterion stated in REPORT N° 155-2001-SUNAT/K00000, wherein it was established that the delivery of cash money by way of fuel in favor of the Military and Police Staff for the activity referred to in article 1 of Supreme Decree N° 037-2001-EF, constitutes fifth category income for purposes of the Income Tax legislation, to the extent said allocation is considered freely available, since it is a fixed and periodic amount, not subject to return of the portion not used in the performance of the functions of the aforementioned staff.

27 It is suggested that a review be made of payment vouchers presented by the workers showing education expenses, enrollment or payment of studies receipts, evidence of studies or of having concluded the respective cycle, grades notebook, among others.

28 Numeral 1.2 of paragraph c) of article 20 of the Income Tax Law Regulation provides that the amounts paid to the worker by way of nourishment and accommodation generated during the first three months do not constitute fifth category taxable income. Thus, following expiration of said term if the company continues to make those payments, they should be considered as a greater remuneration.

29 The understanding in the country, generated by several resolutions is that the granting of housing in urban areas on account of the employer must be considered a salary benefit and only by exception, a working condition; that is, when the working area is located in places which, because of their characteristics, it is not reasonable to demand the worker to solve through his own means, his housing needs (mining, oil camps, etc.).

or payments for the "maintenance of the living standard" or installation expenses, among others which should be reviewed in order to determine their assignment.

- **Stock based payments:** The use of this instrument is ever more frequent by large businesses. In theory, its use allows for aligning the interests of the stockholders and officials and accordingly, that the objective of increasing the value of the business be one that may motivate the effort of the workers to whom the plan is offered.

  The *Stock Options*[30] programs or *Stock Appreciation Rights* are used in our country not only for the purpose of aligning these objectives, but additionally as staff retention mechanisms. Until the payments or flows in favor of the workers are specified, these amounts paid to the worker or obtained by the worker constitute remuneration[31].

  The foregoing is a consequence of the Peruvian definition of "remuneration" which states that for every legal purpose, the entire amount which the worker receives for his services, in cash or in kind, regardless of the form or denomination, provided that he may freely dispose thereof, classifies as remuneration.

  The Peruvian Fiscal Court has stated in Resolution No. 10569-3-2012 that the stock estimation programs (SAR Plan) are remunerative concepts. The Court considers that the benefits obtained by the workers inasmuch as they had a contract in force, and according to the terms referred to in the documents that supported them, represent a compensation given by the employer to the worker as a result of the existing working relationship. That is, as consideration for the services rendered by them for achieving the economic goals of the business, in addition to the duly agreed remuneration, and which mainly responds to the need to promote their adequate performance and participation in the results of the business[32].

- **Payment of "gratuitous amounts" or incentives for establishment of businesses as a result of the forced or voluntary separation of the worker:** Article 57 of SD N° 001-97-TR TUO of the CTS Law states that, if at the time of concluding his working relationship or subsequently, he receives from the employer as a gift, in a pure, simple and unconditional manner, any amount or allowance, these will be compensated with those which the judicial authority orders the employer to pay as a result of the complaint filed by the worker[33]. The issue as to whether the amounts paid are taxable or not has been discussed on several occasions.

  Thus, for example, in the case referred to in RTF N° 5981-4-2012, the Court considered that the amounts paid by the employer by way of compensations, provided in article 57 of the CTS Law, are not an unencumbered item as provided in article 18, inc. a) of the LIR, since they are not of a compensatory nature or originate from agreements within the framework of a negotiation between employer and worker.

  The use of "respectful disentailment" is nowadays more frequent. Within these programs of labor disentailment the company binds a series of termination benefits whose tax effects must be analyzed in order to determine their appropriate treatment.

- **Allowance for festivities, birthday, wedding, birth of children, demise or other of a similar**

30 The accounting standards issued by IASB develop this mainly in IAS 19 and IFRS 2, which may be accessed in the following electronic addresses: https://www.mef.gob.pe/contenidos/conta_publ/con_nor_co/vigentes/nic/19_NIC.pdf yhttps://www.mef.gob.pe/contenidos/conta_publ/con_nor_co/no_oficializ/nor_internac/ES_GVT_IFRS02_2013.pdf

31 Generally, according to the Company policies, payment of this benefit is made after complying with the specific conditions of the plan. That is, after concluding the term of permanence or at the time of exercising the option on the part of the worker, it is then that the option acquires free availability of the economic benefit. Thus, it is the time when the income obtained and its subjection to the corresponding labor taxes is determined.

32 The court considered in the RTF being discussed that the variable nature of the compensation granted, on being determined according to quotation of the ADRs in the New York Stock Exchange, does not change its remunerative nature, or the fact that said benefits would not have been considered for purposes of the contributions to the AFP.

33 For further clarification it must be considered that the Peruvian regulations provide that the amounts the employer voluntarily pays to the worker by way of incentive for resigning, regardless of the way granted, cannot be compensated with the payment of social benefits or that ordered to be paid by the judicial authority, and therefore subject to tax on fifth category income.

nature, contingencies or other reasons given once; payment of special gratifications or other gratifications provided as non-remuneration; payment of maternity or disability due to illness subsidies; provision of uniforms; payments of garages, gyms, nurseries, insurance, service vouchers: The companies' remuneration policies may generate special gifts or disbursements for the previously mentioned items. It is undeniable that when the Company assumes this type of expenses, it facilitates the task of the workers, thereby generating greater identification with the company and eventually improving the working environment which increases the staff's productivity.

Here in addition to establishing[34] that the expenses were actually incurred in favor of the persons indicated as beneficiaries and evaluating the direct or indirect cause with the generation of the company's income, one must also consider the legal limits and the definitions that may allow for determining whether these items may be considered or not in-kind remunerations and accordingly having to additionally settle the labor taxes.

34 The certainty is achieved through the review of the labor contracts, individual and/or collective agreements, personal file, civil registry certificates, birth or demise certificates, agreements signed with the board of directors; and/or any other pertinent document.

CONCLUSIONS

- The administration of taxes, encumbering labor income, controlling the labor rights of the workers and developing public policies that promote labor are tasks normally carried out by different public entities that are not necessarily coordinated. An opportunity for improvement is the simultaneous review of the legal and tax regulations in order to re-evaluate the asymmetric treatments in order to reduce the planning opportunities.

- A common need of the entities dealing with labor taxation and the rights of the workers is to obtain timely and quality information to adequately face their functions. Along this line, one recognizes the advantages that would be obtained by developing a *Standard Business Reporting* initiative similar to the one carried out in Peru.

- In spite of the initial cost of this type of initiative, the reduction of compliance costs for the administrations as well as the taxpayers, and especially the opportunity of an integrated work between the different government entities interested in this mater, would potentially allow for achieving better results in endeavoring to reduce informality.

- At the level of management of labor related taxes, the Peruvian experience indicates that the Electronic Payroll, used jointly with SUNAT's other sources of information, allows for better risk management, as well as for focusing better on the mitigation efforts.

- With respect to this group of taxes, each taxpayer segment has its own risks which require different managerial actions. In the Peruvian case, a reality shared with some countries of the region, there are conditions that generate a strong incentive toward noncompliance. Thus, different risk mitigation measures may be implemented in a specific or general manner to the different general risks identified.

- In the large taxpayer segment, one may find high levels of compliance with respect to formal obligations. However, the use of labor cost planning is widely disseminated. In some cases, taxpayers may be very aggressive in the measures adopted in order to reduce those costs.

- The paper shows some aspects wherein the administrations must have clarity and uniformity of action with respect to the way of taxing income and social security. Although their administration may be carried out through audit-type control actions, one should not discard the possibility of requesting improvements of the legal framework.

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ANNEX - MONTHLY PAYROLL OF PAYMENTS (PLAME)

	SUNAT	EsSalud	ONP	MTyPE y SUNAFIL	SENATI	*EOI*
Monthly Information of Workers, Pensioners,Service Providers, Staff being Trained – Labor Training Modality and others and Third Party Staff	X	X	X	X	X	
TMF number of the employer						
Period covered by the information	X	X	X	X	X	
Data of the worker registered in the T-File	X	X	X	X	X	
Data of the monthly period	X	X	X	X	X	
Indicator of contribution to "+ Life Accident Insurance" (16)	X	X		X	X	
Indicator of contribution to "Ensure your Pension"	X		X	X		
Indicator of type of contribution to the Artist's Social Rights Fund – FDSA	X		X	X		
Information regarding receipt of other fifth category taxed income: (Includes TMF N°)	X	X	X	X		X
Indicator of domiciled, according to Income Tax regulations	X	X	X	X		X
Rate of SCTR Es Salud, in case coverage may have been contracted withEs Salud	X	X		X		
Number of days actually worked	X	X		X		
Subsidized days: Type and number of subsidized days of the monthly period	X	X		X		
Days not worked and not subsidized: Type and number of days not worked and not subsidized in the monthly period	X	X		X		
Regular hours and overtime (18)	X	X		X		
Amounts of revenues or remunerations: earned and paid	X	X	X	X	X	
Amounts of discounts	X	X	X	X	X	
Basis of calculation of taxes and contributions linked to revenues or remunerations	X	X	X	X	X	
Amount of taxes and contributions	X	X	X	X	X	
Type and rate of the agreement	X	X	X	X	X	X
Pensioner						
Data of the pensioner registered in the T- File	X	X	X	X		
Data of the monthly period	X	X	X	X		
Amounts of revenues or pensions: earned and paid	X	X	X	X		
Amount of discounts	X	X	X	X		
Indicator of contribution to "+ Life Accident Insurance"	X	X	X	X		
Basis of calculation of taxes and contributions linked to revenues or pensions	X	X	X	X		
Amount of taxes and contributions. 4. Of the Service Provider referred to in numeral i) of paragraph d) of Article 1 of Supreme Decree N° 018-2007-TR and modifications	X	X	X	X		
Indicator of income obtained with respect to which Agreements to Avoid Double Taxation are applicable	X	X	X	X		X
Indicator of domiciled, according to Income Tax regulations	X	X	X	X		X
Service Provider						
Voucher issued	X			X		
Type ofvoucher, series and number	X			X		
Date of issuance	X			X		
Date of payment	X			X		
Total amount of payment for service	X			X		
Indicator of Income Tax withholding	X			X		
Amount of Income Tax withheld	X			X		
Staff being Trained – labor training modality and others. Data of monthly period: Amount of economic subsidy or salary paid	X	X	X	X	X	
Third Party Staff – Data of monthly period: Amount of economic subsidy or salary paid	X	X	X	X	X	

CORPORATE FISCAL

E-Government

Daniel Alejandro
SORIA

SYNOPSIS

The work covers a new vision in integrated collection management by the Tax Administrations in Argentina, with the strategic tool being Fiscal E-Government. It involves a “Federal Tax Account System”, a common website forthe National-Provincial-Municipal tax administrations in charge of tax surveillance.

The benefit for the taxpayers is that they may file their sworn tax returns and make their payments at a single site. This approach endeavors to overcome the deficits in technological capabilities in the various tax administrations, through cooperation between them.

CONTENT

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INTRODUCTION

Argentina is the eighth largest country in the world because of its territorial extension. As a country, this represents a series of competitive advantages in different fields and disciplines. However, as far as taxation is concerned, because of its federal and republic form of government which is based on the constitutional mandate, Argentina distributes the taxation power, separating the tax sources between the national, the provinces and (following the 1994 Constitutional reform) it incorporates the Municipalities with their own taxation power. This leads to a decentralization of the Tax Administrations (TAs).

In other words, every treasury has legitimate capabilities for managing its own tax collection as a result of the taxation and jurisdictional powers agreed. The results of TA management are partly conditioned by the material and human resources available. Thus, it may be observed that tax administrations show in budgetary terms, heterogeneity in their figures (due to different causes and reasons) particularly, with respect to investments in technological and computerized equipment as well as communications. This budgetary inequality –financial and technological - has a direct impact on the development and changes of computerized control platforms and surveillance of the taxpayers' fiscal compliance, thus putting at risk the achievement and sustainability of projected public revenues and thereby reducing the capabilities for financing the State's actions.

In addition to this problem, there are the vast territorial extensions which constitute an obstacle to best tax management practices, vis-a-vis the labor precariousness, slave and child labor, the development of informal economies, among other aspects that may be mentioned. Along with this, there is the dispersion of information from the different provincial and municipal registries which prevents adequate visibility of the different taxpayers who, in principle, should be registered in a single (agreed) and global taxpayer data base, with these data being transparent for the TAs, in keeping with the limitations related to tax secrecy.

This lack of coordination in the registries, poses distances in some taxes, which has a direct effect on the gap between potential and actual collection. By way of example, this is evident in the real estate tax in a discrete territorial global collection with respect to the potential. Although it is one of the taxes with greatest redistributive potential, inasmuch as it encumbers one of the obvious objective manifestations of wealth; it does not contribute enough to the treasuries of the provincial Governments[1].

In view of this context, cooperation through conventions and agreements between the different levels of tax administration, is a possible solution for part of the dilemmas posed, along with reconsidering the structuring of a federal vision of the common problems experienced by the Tax Administrations.

The new communication technologies, based on different systems and applications that are successful in different campaigns dealing with tax control, favor efficiency in (electronic) tax management and reinforce the idea of a Federal Fiscal e-Government. This idea may be materialized in a tool intended to increase the levels of tax collection of the National, Provincial and Municipal Governments, with the fiscal computerized control systems being the main characters in this vision.

In other words, the purpose is to project a "Federal Tax Account System", website of the Tax Administrations, with the environment being feasible to promote the surveillance of tax obligations, as regards the filing of the sworn tax returns, control and follow-up of compliance with the payment of taxes collected by the treasuries (national, provincial and municipal).

The current trends in the tax administrations are based in the continuous search for achieving the quality standards of the information to thus, be able to undertake a more objective measurement of wealth to establish the taxpayers' real payment capacity. The coordination of actions and exchange of data afford advantages and strengths among the different tax administrations, thereby allowing for an improvement in global tax collection.

1 Net worth taxation in the province of Buenos Aires (in the rest of the provinces as well). In 1983 represented 36% of total collection and currently is around 7%.

1. THE TAX POWER IN ARGENTINA

Article 17 of the National Constitution (NC) of Argentina[2] provides that the Congress of the Nation is the one that imposes the contributions established in article 4 and in turn stipulates that: "The Federal Government contributes to the Nation's expenses with funds from the National Treasury obtained from the import and export duties, sale or lease of the Nation's lands, income from Postal Services, and other contributions equitably and proportionally imposed on the population by the general Congress …."

From there follows that the Nation has the exclusive and excluding power in the area of customs; temporary and exceptional in relation to direct taxes; while the Nation and the Provinces are concurrently responsible for the collection of indirect taxes (article 75, paragraphs 1 and 2-NC). With the reforms incorporated in the NC in 1994, each province must ensure its municipal autonomy, by regulating the scope and contents of the tax power (art. 123 NC).

In this way Argentina adopts a tax source separation system, distinguishing between direct and indirect taxes, with the taxation powers of the provinces being stipulated in articles 121, 125 and 126 - NC.

The Tax Power has rights of an "original" nature, which are all those that arise from the National Constitution and in addition, derived rights which correspond to a specific Government by virtue of that provided in the constitutional mandate (art. 5 NC), whereby it may delegate, through a legal regulation, the autonomy regime of the municipalities - (art. 123 of the NC).

The Tax Power should not be confused with tax competency, since the first is an expression of the "State's power" to impose taxes to the population; while tax competency represents the Government's power to collect the taxes, which may be delegated through a legal regulation thus providing it.

2. ARGENTINE PROVINCES AND MUNICIPALITIES

The territory of the Republic of Argentina consists of a total of 23 provinces and the Autonomous City of Buenos, Capital and seat of the Federal Government.

All the provinces have a republican and representative constitution which organizes its own powers: Executive, Legislative and Judicial and which also regulates the municipal autonomy system. Some provinces divide their territory into Departments, which consist of Municipalities, except for the province of Buenos Aires, where the Municipalities are called Districts. Departments, in general, do not have administrative functions, although in the provinces of Mendoza, San Juan and La Rioja, each Department is a Municipality.

A characteristic of the Municipalities of Argentina is their capacity for adapting to the diversity evidenced in the cultural configurations with indigenous roots and immigration, as well as economic, political and social conditions in a population dispersed throughout a territory of almost 4 million square kilometers[3]. All of this affords the Municipalities great heterogeneity in their capabilities for providing services, based on their economic perspective as a result of their geographical location and thereby leading the population to its autonomy or dependency. In the 2010[4] census there were 144 registered Municipalities with their own Organic Charter, whereby they obtain "full autonomy". Said otherwise, these are entities with autonomy which do not only have the capacity for administering themselves, but also for issuing their own regulations, as well as to govern themselves through elected authorities. One of its powers is the financial one which allows the establishment of specific taxes for paying its expenses.

Each of the Argentine provinces has a provincial Collection Entity in charge of managing provincial taxes and which, in turn, has a specific number of

2 http://infoleg.mecon.gov.ar

3 http://www.argentina.gob.ar

4 http://www.indec.mecon.ar/

delegations distributed throughout the territory where they have jurisdictional tax powers according to their responsibilities. Thus, each of the provinces applies five taxes which, in general, are the ones with the greater collection: 1) Tax on Gross Income; 2) Real estate tax; 3) Motor vehicle tax; 4) Stamp tax; 5) Free transfer of properties tax[5].

On their part, Municipalities in most of the provinces cannot apply taxes, but rather service rates, such as for lighting, cleaning, security and hygiene, occupancy of public property space, etc.

In sum, the number of subnational Tax Administrations is more than reasonable for creating a true confederation of Argentine Tax Administrations (Nation, Provinces, Municipalities) where one may agree on common issues such as that posed in this paper, regarding the electronic Federal Tax Account System and the Federal fiscal e-Government of those Administrations willing to accept this new challenge and to establish a new paradigm on Tax Management.

The development of this vision calls for paying greater attention to the context wherein the control and service activities are to be defined as an integrated and continuous whole based on the information available.

3. THE ELECTRONIC GOVERNMENT (EG)

The Government is the largest juridical unit capturing and generating mega volumes of information. Therefore, it is essential to use technological tools that are capable of absorbing these tasks, in addition to allowing an adequate distribution in dealing with data. This dynamics in management and the capability for responding to the needs and requirements of the population in general, results in a substantial improvement in the image of public and institutional management, while affording greater transparency to the different public acts, related to such events.

In view of this situation, it essential to use Information and Communication Technologies (ICT) and as necessary instrument for this achievement, the intensive use of Internet. This has transformed relationships between individuals, public and private organizations and resulted in an appropriate instrument for facilitating access to information and the Government's services, thus allowing for considering multiple integrations of the different levels of government, affording transparency to governance, digitalizing public documentation with adequate legal validity –digital signature- and permitting the fluid flow of information between the Governments and individuals.

In the sphere of all tax administrations intervening in the collection process of the Nation's territory (Nation, Provinces and Municipalities), one may verify that there is inequality in the technological and communications equipment available for tax management. This leads to specific advantages or competitive obstacles in tax collection management and it subsequent compliance with the collection goals, or else, quantitatively spaces out budgetary compliance.

Part of the objective of the so-called Electronic Government (EG) is to expand and deepen the Government-Society interaction. Its priority is the development and performance of its applications in all jurisdictions that hope to strengthen the public sector services intended for the citizens/taxpayers. This is thus the starting point of this EG vision for facing the real challenge of consolidating a government in a network.

The new technological horizons are accompanied by significant changes in specific processes, along with the necessary cultural integration. Thus, undoubtedly, one of the missions of part of these changes is the active participation of the community, for which it is intended; that is, the population/taxpayer universe. This requires and implies an integrating perspective in public management, thereby crossing the digital jurisdictional limits, in such a way as to coordinate this initiative between the Nation, the Provinces and the different intervening public organizations.

This tax integration and federalization does not change the Constitutional mandate of the Tax Power of the intervening parties -Nation, Provinces and Municipalities – since the latter must not, at any time,

5 Applicable only in the Province of Buenos Aires to enrichment obtained by virtue of every free transfer, including inheritance, legacies, donations, gifts, and any other transfer that may imply free patrimonial enrichment.

give up the different jurisdictional powers, sovereignty and powers that were delegated to them.

In sum, reconsideration of an Electronic (federal) Government promotes the intensive use of information and communication technologies which allow for distinguishing several concurrent purposes, such as: offering better services to the citizen/taxpayer, optimizing public and tax management, guaranteeing transparency in governmental acts, reducing processing costs, generating new participation opportunities, including individuals, businesses and communities in almost all areas and maximizing this vision in the territorial extension[6] itself and EG is the appropriate communication tool between the different governmental levels. It is therefore, necessary to consider different information exchange agreements, as well as others of a social nature involving public management, security in order to undertake this study, which involves a fiscal order perspective, with a federal vision.

Having proposed part of the EG instructions, the different levels of the governments should continuously reconsider the institutional links between the different government structures in order to encourage the necessary synergies for the inclusive and integrating territorial development, with a view to arriving at a tool for ensuring adequate management, control and substantial improvements for complying with the budgetary goals established at the National, Provincial and Municipal collection levels.

4. THE CORPORATE TAX ADMINISTRATION

Because of its form of government –republican and federal- (art. 1 NC) Argentina has tax collection entities in the three levels (Nation, Provinces and Municipalities), which provide taxpayer services and likewise demand that the tax administrations fulfill their administrative obligations, in accordance with their own tax and territorial competencies.

From the perspective of the citizen and businesses' vision, these tax obligations are perceived as an "administrative burden" which are assigned their associated economic costs. Another added divergent factor is the decentralization of competency levels of the tax administrations, given that the taxpayer assistance sites are, under certain circumstances, hundreds of kilometers apart one from the other. This implies an analysis of transfer times, transportation and superposition of assistance schedules in the different tax administrations, which jointly involve for the businesses (single taxpayer) indirect and additional problems for complying with their tax obligations.

Given this situation, cooperation among the different levels of tax administrations, is the possible road toward structuring a federal vision that may contribute to solve the taxpayers' problems and needs.

The new communication technologies, based on different systems and applications, contribute to an effective tax (electronic) management and reinforces the idea of a corporate tax e-government.

In this regard, part of this interaction between the different tax administrations (TAs) should take place within a framework of cooperation and complementary exchanges, other than those that have already taken place between AFIP, the Provinces and Municipalities during these past years.

To think about a "corporate tax administration" that may bring together those tax administrations with the legitimate will –through their authorities- to advance toward this new paradigm of tax collection management, established through cooperation conventions and agreements, may be a strategic step toward achieving the tax e-government vision. Based on that coalition, it will be possible to plan new capabilities for solving common tax issues, thereby contributing a series of specific benefits between the participating tax administrations and the taxpaying community.

In the Argentine tax context, the corporate tax administration may be incorporated to elements already existing in the assistance and service agreements. There are two clear perspectives from the standpoint of this work:

6 http://www.argentina.gob.ar/Official portal of the Government of Argentina

- The pursuit of citizen control in integral tax issues and
- Offering a service with simplicity, celerity and speediness intended for the universe of taxpayers, regardless of the geographical area in question or the taxation system administered.

There are various examples that serve as approximation such as the "single window in relation to Social Security" in the "My Simplification"[7] application that was created and administered by AFIP. It deals with the procedural incorporation of several entities, (Federal Administration of Public Revenue, the Ministry of Labor, Employment and Social Security with the participation of all those involved in the social security system), thereby achieving a system which is the "only data source". The taxpayer also has a single channel for interacting with the various entities, sending the authenticated information with a "tax code" and receiving the notifications through the "electronic window".

This window is also used by all those involved for sending and receiving information, in addition to the so-called "web services" for the exchange of data from specific applications. The great advantage of the system is the real time access, via web, to the data of the employers and workers. Since it is the only repository, the data are reliable and consolidated, allowing for the exchange between the administrations and thus avoiding the reiterated requests to the taxpayer. In this way fraudulent maneuvers, in this case dealing with social security issues are minimized, since there is a single form of filing, paying, communicating, etc.

In sum, the aforementioned system affords a clear and overall view of electronic tax administration, looking for better and new practices that may reduce, to the greatest extent possible, the administrative burdens which citizens and businesses must bear in their relationships with the tax administrations and the different public entities.

This cooperation and integration vision may be made extensive to "tax single window" (V.U.F) which may be used by the different tax administrations even in such sensitive issues as, the registration of a business or individual, opening of a business, factory or the rendering of services, suspension thereof, modification of activities, filing of sworn returns, payments, collection control systems, tax procedures, etc., and that such changes may have a real time impact on the bases of each of the corresponding provincial and municipal jurisdictions according to the taxpayer's domicile and activity.

In this same line of thought, it is feasible to include the electronic "single tax mailbox" (BUF) intended for each of the taxpayers registered in the single file, where one may see "all the communications from any Tax Administration". This may turn out to be a more than notorious achievement in the new managerial practices, resulting in resource savings for the organizations. And from the taxpayer's perspective, an integrated tax organization, even more so when the entire universe, belonging to different jurisdictions, should be registered in AFIP's Single Taxpayer File, with common data for all the data bases of the tax administrations.

To uphold this viewpoint, it would seem appropriate to establish the Federal Tax Agency, institutional place or site wherein the AFIP staff could interact and coexist jointly with the staff in charge of income of the provinces (depending on the geographical site), as well as the municipalities (the part in charge of tax collection management). One would thus offer a true integrated tax service and single place where the different taxpayer problems may be solved. This increasingly tends toward tax integration and establishes a new archetype in the transformation of a federal fiscal government, in the tax administration and its management.

This tax integrating vision covers the universalization of the sworn tax return filing system, using the OSIRIS system as the sole channel for filing tax obligations of a national, provincial and municipal nature. The same is applicable to the procedure of payment of tax obligations, interest, sanctions, advance payments, two month periods, contributions, etc., supported by the same system.

In addition, will be designed an application with character "collective" destined to the universe of managed so that they can put orders, disclaimers, for

7 http://www.afip.gob.ar/genericos/guiaDeTramites/categoria_list_detail.aspx?id_padre=671

all the TAs using the same system OSIRIS as income and this work as a distributor of data, depending on the selection in the grid options of the application to the TAs to which it is directed and which, at the same time It can be redirected using codes that enable the transmission of data to different systems of the TAs concerned.

With respect to data traffic, either input and output, these should be considered and treated with the limitations and scope which provides the law, in terms of levels of visibility into information, taking account of the restrictions provided for by the tax secrecy (art. 101 of law 11683 t.o. in 1998 and modifications)[8], carrying this hypothesis, analysis and study in a different framework to that of the object of the present work.

The tax organizations involved in this integration, thus, obtain different types of benefits and savings, collection costs, both in purchases of licenses of software, application development, systems maintenance, recognition, and technology investment. And, in the field of administrative management, it allows minimizing the reiteration of documentation requests, either from taxpayers or between the same TAs, on the grounds that the data can be available on the bases shared by the intervening bodies, what constitutes an improvement in the use of the man /hour.

Sharing and crossbreeding of data among information systems of the TAs, and inconsistencies that may arise, will help detect and correct inefficiencies in data bases. In this way, since the Administration/s is/are planning the development of alternatives in electronic transactions to taxpayers or for internal use, essentially prioritize services posed by the decompression of administrative procedures, in such a way of reducing the presence of taxpayers for issues that can be solved in the systemic form.

To think about moving towards an integration of the TAs in the long term, implies design jointly common actions, such as rules and procedures that harmonize and tend to the efficiency of the human and technological resources that facilitate tax compliance the obligated subject, tending to achieve maximum efficiency in the actions of these administrations.

Summing up the above, the main axis of the work, from the perspective of the tax e-Government, is to project a “Federal Tax Account system”, in such a way that the website designed by the TAs in which resides the tax surveillance on tax obligations in terms of presentation of tax returns, in relation to the control and monitoring of the national, provincial and municipal tax compliance.

5. THE PUBLIC REVENUE FEDERAL ADMINISTRATION THE FEDERAL ADMINISTRATION OF PUBLIC REVENUE

The AFIP, considered as a fundamental tool in the financial support of the State, plays a leading role in the socio-economic context. This is due first of all to the nature of its regulatory powers - which translates into something akin to intervention in economic activities-, with competence in the fields of taxation, foreign trade and social security, due to its territorial presence as well as for the provision of attention to taxpayers services, and its permanent responsibility to meet the tax collection goals.

The volume of transactions, processing capacity, and the computer network that it manages make it one of the technological leaders in the country and a reference in the development of the e-Government concept.

Based on these capabilities and functions, efforts have been made, in recent years, to provide more and better services to citizens. In this regard, significant improvements in the substantive processes have been carried out, such as the collection and control, speeding up the administrative and enforced recovery process.

As a result and following this order of ideas, here is a short review of the organizational and technological capabilities associated with this work.

5.1 AFIP’s Technological investment

The budget of the Federal Administration of Public Revenue for the telecommunications systems

8 http://infoleg.mecon.gov.ar

department represents considerable sums in recent years. This commitment to increase cutting-edge technological investment is capitalized in the exponential increase of services and systems that AFIP offers to more than 12 million users, as well as the constant increase of information from different sources to perform control processes of high complexity, which feeds an array of risk matrices and control parameters.

Mega data volumes, as well as the treatment of images, videos and scanned documents require significant storage, powerful and secure central servers, which are provided by the current computer equipment of the Federal Administration.

The service and technological equipment of the Federal Administration has the possibility of absorbing high volumes of information and users, in line with this vision of the corporate e-governance, the "Federal Tax Account system" constituting the first impulse for the achievement of this integration.

5.2 Tax Accounts System

Basically, the tax account system has two (2) simultaneous objectives: Favoring the tax administration on the "citizens' tax control" and to have the taxpayers, through the use of their "fiscal key" which include specific computer security, enter, as users, to their tax account and check their tax situation in real time on the web site of the Agency.

This "tax service" tends to increase significantly the tax administration transparency.

The system of tax accounts (SCT in Spanish) is based on the registration of information submitted by the taxpayers themselves, which, translated on various vouchers, focuses on the record of emerging debits and credits from tax and social security obligations.

The SCT allows the Federal Administration of public revenues to managein a massive and immediate way, the fulfillment of tax obligations, from the day of their deadline.

On the other hand, it's one of the few massive tax management systems, with more than three million users, showing online his balance to the taxpayer, as well as the actions of control and induction to compliance of the obligations that the Federal Administration may have engaged.

In this regard, the SCT allows taxpayers, among others:

- Access to the AFIP global maturity agenda
- Check the status of compliance with their obligations and their respective balances
- Controlling the amounts listed as due to the National Treasury.
- Learn about the payments that were recorded in the AFIP database.
- Cancel the tax obligations using VEP (electronic payment voucher).
- Submit the required tax returns and statements.
- Manage the credits in favor (available balances) through requests for compensation.
- Carry out options of retainers reductions.
- Consult the tax registry data.
- Certify withholdings and collections.
- Access to payment facilities plans.
- Calculate compensatory interests for late payments.

Similarly to a bank statement, the Tax Account System (SCT) creates credits and debts reports. Each taxpayer can quickly detect the errors related to the payments allocations and inconsistencies of his fiscal and/or social security situation, and can correct such errors, re-allocating the payments online, and avoid the administrative warnings and possible beginnings of judicial action to preserve the "legitimate resource of the state" by the collection agency.

This is, in short, the "Fiscal Control System" proposed for the national tax integration, where it can integrate the "Federal Tax Account system". It features vast capabilities, with a view to the inclusion of the rest of the provincial and municipal taxes that will be managed with the same criteria and pre-existing methods, by officials from each of the intervening TAs and powers in this regard. The success of the campaigns in the collection of the SCT management has been widely broadcast, because the system has sufficient capacities for the absorption of tasks and users. In addition, it is equipped

with a rigorous system of computer security and the data stored are safeguarded in the "safe room" of AFIP[9].

5.2.1 Osiris System

The Osiris system, as well as the internet payment and returns subsystem, has meant an important step forward in the facilitation of voluntary compliance with the taxpayers' obligations. These tools have managed to absorb the complex collection system of the agency, resulting in a clear "decrease in costs related to the revenue collection management", resulting in cost savings for the State of considerable sums in bank charges, as almost all returns are currently received via Internet , on the institutional web site.

This collection service is provided to several sub-national TAs (provinces and municipalities, without cost or any consideration). This is another example of the benefits that "consensual cooperation between TAs" provides, related to the federal integration.

5.3 Collaboration agreements between TAs

The Federal Administration of Public Revenue has within its organizational structure a department devoted exclusively to the collaboration agreements with different international and sub-national administrations. In that perspective, a large number of agreements have been signed with the provinces and municipalities in the course of the last few years[10].

These conventions were circumscribed to the cooperation and mutual assistance framework between Tax Administrations (TAs), with the primary purpose to comply with the common objectives.

Cooperation, assistance, and complementary agreements involve various cooperation exchanges between TAs. The forms of collaboration can basically reflect three generations, known as first, second and third generations:

- Those of first generation are characterized by the exchange of information and the result of the control activities. In addition, some of them contain a complement through which the OSIRIS system is implemented.

- Those of second generation are multi-purposes. Among them, we could mention tax education and exchange information agreements between OSIRIS and SOJ computer systems, as well as the agreement concerning the control of corporate registration.

- Those of the third generation have as main feature the implementation of the integration in specific fields of the Tax Administrations.

In a more detailed description of the agreements, they can be classified in:

a. **Automatic system of data exchange:** with a certain reciprocity between the TAs and AFIP, the provinces and municipalities transmit part of the tax information registered in their database, which is adapted to the parameters of the conventions and the limits related to the tax secrecy regarding access to the information exchanged.

b. **Joint audits and investigation:** under certain circumstances, which can be the type of taxpayer and complexity, the TAs can team together in order to study specific issues of particular groups of taxpayers, in relation to the movements, stocks, movement of goods and personnel, as well as other common themes and of interest to both parties, like for example, joint operations joint on the coast of Argentina, or, in the winter resorts, or massive sales centers, such as: The Salada[11], the Central market[12], etc.

c. **Exchange and use of the new communication technologies:** Cooperation and technical

9 A room twenty meters by twenty meters of steel walls. With 16 video cameras, humidity detection, capable of supporting up to 1,000ºC for one hour and with five levels of security that include an access code that operates under a biometric system. AFIP in 2010 was the first public and private organization in South America to obtain the highest certification from ICREA - an international association formed by engineers specialized in the design, construction, operation, maintenance, acquisition, installation and audit of computer centers

10 http://www.afip.gov.ar/Institucional/boletinImpositivo/listadodeboletines.asp

11 Largest venue of wholesaler and retailer shopping area, Buenos Aires

12 The Central Market Corporation of Buenos Aires is intended for the concentration of local and imported fruits and food products and their conservation, packaging, storage and classification for marketing and distribution to domestic consumption, as well as for their export ". It is the largest fruit and vegetable wholesaler market, incorporating the integration of retail food activities and logistics services.

assistance in the use of systems developed by the Federal Administration of Public Revenue, such as the Osiris system (System of Bank collection and banks serving as collecting agents), service of authentication of the key tax and web service authorization and the matrix of tax criminal information exchange, among others. And reciprocally, the provinces that so consider it, may also exchange data from their records with the Federal Administration.

At the same time, there are other methodologies that can be summarized in:

- **Spontaneous exchange:** If the administration of a province detect breaches in the exercise of its legitimate duties, information relating to evasion, illicit fraud, etc. of a tax nature, which could be of interest to the Federal Administration, without being under any formal agreement or Convention, but share such information on a voluntary basis, it is likely that the other administration offer its collaboration, by way of reciprocity.

- **Specific request:** If a tax administration (TA) needs another TA's information, it can formally request it. The administration which receives the request is required to obtain such information, using all the means at its disposal. There are, of course, certain restrictions, since the administration requiring information must have a tax interest, and is unable to request information not strictly applicable to its tax investigation field.

In attention to the foregoing, the present work is sustained in point c) of cooperation and exchange assistance agreements, use of new technologies and communications, considered as the third generation agreements. Therefore, this case is proposed with a view on the development of the SCT, SAHRA, OSIRIS, PUC and APLICATIVOS among others.

6. THE GLOBAL TAX MANAGEMENT TREND

As seen above, in cooperation between TAs (national and sub-national), there is sufficient evidence of the willingness to cooperate by the various officials involved in the evolutionary process of the management. The central idea is to deepen the different techniques of data exchanges and enhance experiences, using the technological advances made available for the predefined goals.

Trends in tax management continue the ongoing search to meet the information quality standards and thus, to develop a more objective measurement on the manifestations of wealth and the consequent taxpayer capacity.

To do so, regardless of data exchanges that may exist between the different TAs, we are in a strong trend for integrating the processes and procedures on the tax agenda that can be approached in different ways, such as the legislative aspects referred to concepts incorporated as a result of the modification, in 2011, of the criminal tax Act No. 24769. It is proposed to transpose the figure of the criminal offence to provincial tax omissions, in the same procedure as the one provided at the national level. Another point to consider would be the permanent readjustments in the various tax and provincial codes, the taxation and fixation of aliquots methodologies etc.

In fact, part of this coordination of actions and exchanges provides advantages and strengths among the different TAs, which can be stated as: legislative, communications, technological, procedural, etc., as well as the use of platforms for different applications, in order to concentrate the information on a single base. These efforts will result in a potential improvement in tax collection. On this front, TAs may reach agreements to design common procedures, outlining unique web portals where the totality of information pertaining to all the parties involved is gathered.

In the AFIP's field, this is called register of taxpayers (PUC), where the common and binding data for the associated TAs is concentrated, in order to resolve concrete problems, such as: tax residence, real domicile, alternative addresses, invoicing schemes, if the taxpayer is in the APOC base, etc. These data should be transparent to the TAs, although they belong to different levels of Government.

The cooperation agreement assistance can be based on different motivations, due both to the different technological levels of the different TAsand the strategic vision, to higher transparency levels, to potential

services, data integration and improvement in the substantial expenditures for software licenses, systems maintenance, software developments, technological investment, budget constraints, etc.

In this order of things, and without prejudice to have equal objectives between the national and provincial TAs, other type of strategic proposals can be added, summarized as follows:

Regarding corporate public facilities: use of building spaces with "better territorial and strategic position" to provide the services of the integrated TAs. In other words, the means to interact and coexist jointly will be mediated by the AFIP staff, with those of the revenues departments of the provinces concerned (depending on geographical location) and adding to the municipalities (the tax revenue collection department).

All these agents would be developing the missions and functions that were delegated to them in accordance with the rules in force. This, from the point of view of a large project - offering an integrated service and in one single place - where taxpayers can solve different problems. It would be the continuation of the vision of "one single electronic tax window", in the "Federal tax agency".

Regarding the returns: the widespread use of a unique system for filing and paying returns on consumption goods at national, provincial and municipal levels via the Osiris system.

This implies also, integrate the commercial, services and industrial operations statements through a single return form, based on the jurisdiction and the specific guidelines of geographical areas, considering also the respective differential rates, differences of aliquots of gross income, etc.

In such an inclusive statement, taxpayers may outsource operations, incorporating in this application, the value added tax (VAT) base, which consistently, will be the same as the tax on gross income (ISB)[13]. In this way, the quantification of the operations declared to one tax administration may not be undermined with respect to another. This application will serve as well as vehicle to record the corresponding statement in the tax control systems.

The methodical adjustment of the different provincial registries, properly related to the real estate records, will at the same time refer them to PUC with NIC, CUIL, or CDI. In case of having orphan data, research efforts about the owners are made via the proper register. If this bring no result, the case will be transferred to the area of intergovernmental tax research, to search for the taxpayer who must answer, in principle, the territorial tax (from provincial character), on lighting and cleaning (municipal level) and personal property (national) or minimum presumed earning (national), reducing this way the gap between the effective collection and the potential collection. This same situation could be applied with regard to vehicle park, in those provinces and municipalities whose governing councils have the will to improve and purge their records, and eventually, to increase tax revenue.

Control systems: an increase in the magnitude and diversity of the activities undertaken by the administrations according to the management skills, means to increase the risk perception by the taxpayers. To do this, the consolidation of control systems, converges in benefits for users (taxpayers), who can check their global tax compliance, interactively, as well as for the tax authorities that decide to progress with "The Federal Tax Account system".

The TAs, which may reconsider the described situation, keep maintaining, entirely, the competences, sovereignty and powers that administrations each possessed prior to the signing of the agreement of collaboration and interaction between TAs. These agencies continue to exist separately in the field of electronic fiscal management, which includes among others: the pre-definition of computerized processes of debt management; of the deadlines for claiming the due obligations; the verification of the amounts; the means, forms, and minimum notifications processes; schedules

13 This is an agreement or act of agreement 1/2012 (AFIP) dated January 20, 2012, where the AATT undertakes to carry out actions for implementing a Unified Tax Declaration (IUD) between the Nation and Pcia of Bs As. See http://www.dialogofiscal.gob.ar/panoramaFiscal/ARBA.aspx

to begin recovery efforts; events that determine changes from soft collection to enforced collection; the establishment of systemic global management reports; administrative outstanding debt or without notification, manual adjustments to the system using an adequate access and authorization levels to internal users; the development of a range of importance of taxpayers, according to the payment amounts of taxes administered; the schedules of payments and other tax action calendars, etc.

Benefits and advantages of this systemic control integration in a single system:

a. First, from the necessary work of interaction and intergovernmental coordination viewpoint, its transformation into the first unique tax web site, where all taxpayers can access a global (territorial) tax account, where they may check their global tax situation and the degree of tax compliance through a single key income tax.

b. From the tax administration viewpoint, access to each of the parties to the "Federal tax account system" will allow administer and manage the tax obligations, regarding collection, oversight and execution of the obligations.

- Each of the TAs involved will have the discretionary powers to manage the debt of the tax (or taxes) that they must manage, selecting the method of notification process which may be: by taxpayer, by taxpayer segment, global, by maturity, by tax, activity, etc.

- Each of the TAs may decide about the type of notice of breaches of the presentation of tax returns and payments due– either at national level, province, and municipality or on a consolidated basis.

- Also, tax compliance could be prompted at provincial, municipal, or global level through emails or telephone campaigns, according to the database on the AFIP's single register of taxpayers. As long as the taxpayers under the national tax control should be taxpayers at the provincial level (notwithstanding if they are taxed, exempt, or unreached by these taxes).

- The correction of the databases between each of the jurisdictions and the Federal Administration itself, through the incorporation of the Federal taxpayers' registry, will lead to a better tax management.

- Inconsistencies between data will lead to a verification of taxpayers in the "Federal Tax Agency" where the factors of distortion of tax data could be verified, debugging the registers and/or other records.

- Add to the global agenda of AFIP the deadlines for other tax maturities, sorted by province and municipality, giving them a federal framework.

- To include a schedule of AFIP's notifications and global actions -annual collection plan (P.A.R) and schedule, strategically with the provinces and municipalities that wish to join it, to claim jointly the respective obligations, by province, by region, globally, etc.

- Establish management guidelines in the planning of the administrative debt and the extinction or depletion of the management cycle, to move to the next stage, which is the transmission of data to start the enforced collection in each of the jurisdictions that are covered in the "Federal Tax Account"; alternatively, use as an alternative to management, the AFIP's judicial system called Athena - SIRAEF subsystem, since the provincial and municipal procedures should be administered in the same courts than national taxes and social security debts.

Budgetary consolidation: Taking into account that in principle, the three (3) levels of TAs are assigned individual budgets and that they may coordinate the common operational costs, it ultimately creates in budget savings and an improvement in the cost of collection.

Regarding the institutional arrangement, this would require a process of upgrading buildings and furniture in agreed locations for the attention of taxpayers within the Federal tax agency, inviting public universities (departments of architecture, communications and Informatics), in order to formulate a common project

to provide a single image of the consolidated tax administration.

Strengthen the process of unique registry of taxpayers (PUC in Spanish): If the Federal tax account is viable, it will be necessary, for each of its users, to be registered with the PUC and be included with their biometric data, regardless of whether the number is CUIT, CUIL or CDI. Therefore, this allows managing a permanently updated register of citizens, since there is a permanent upgrading. In synthesis, the register can be shared with the provinces and municipalities which adhere to the Federal Tax Account.

CONCLUSIONS

This work presents a brief constitutional law analysis of the tax power in Argentina. The distinction is set between the tax power ant the tax competence, the latter being a faculty that can be delegated to other public or private entities through a legal disposition. This is the starting point and the legal support for a tax administration management model, which can provide a possible answer to problems from the viewpoint of the taxpayer with respect to the large territorial expansion and three decentralization levels of the Tax administrations. In this sense, it is possible to define such conflicts in two large groups.

The first is confined to the conception of company/s - as a unique taxpayer - to national, provincial and municipal levels, regardless of the collection modality. They must cope with large distances in the countryside, depending on their luck in the geographical distribution of each TA, with overlap of schedules of attention, requests for data and reports and even administrative disclaimers. All of this contributes, as a whole, to a certain degree of difficulty for tax compliance, against various requirements and demands of each of the TAs that possess powers of collection and judicial control.

Regarding the second, the TAs themselves also experience these problems, although from another perspective, such as: the overlapping of administrative tasks, control and verification of payments, common designs and requirements definitions in the collection systems, computer developments in terms of procedures and tax control. All of this is associated with the costs of collection and accordingly, result in a lesser efficiency in the TAs' management performance. Accordingly, the acquisition of information technology and state-of-the art communications is almost essential to the achievement of the public control and when facing possible tax non-compliance, TAs should have an adequate response capacity in the dynamics related to the tax debt recovery.

From the analysis of TAs, they have, in general, different budget allocations to address these challenges.

The lack of technology investment may cause- in part - the gap of the enforceable collection goal, and therefore have a direct impact on public resources and public expenditure needed for the social issues, infrastructure and employment, among other factors, that constitute the state's economy.

In response to these issues, the "corporate tax administration" is a realistic and positive proposal, expanding the electronic e-government, which is a global integration of those Argentine TAs wishing to join a federal network, using the Fiscal e-Government in electronic form, from "a single tax portal".

The best instrument for the legal implementation of this vision is the conclusion of collaboration and technical assistance agreement of third generation between TAs (national and subnational jurisdictions), resulting in the genesis of "The Federal Tax Account System", whose realization will be feasible - in view of the type of system; design; objectives; applied technology; management capacity and data backup; parameters of functions; computer security; network system access; distribution of users and defining the scope of tasks and quality standards - from the current SCT administered by AFIP.

This work is fiscally limited exclusively to control systems and more specifically to the strict fiscal surveillance in compliance with tax returns submissions, payment system and distribution, to the control of the tax obligations at the administrative offices, management of recovery procedures in case of breaches and thus complete the cycle of summons and debt notifications through a "Federal Tax Account System". Its platform, the current SCT, should be integrated with other systems, in principle OSIRIS and ZAHRAA, which have a large potential for large

scale answers, increasing efficiency in collection controls, becoming global.

In this regard, it is should be noted that each of the TAs always maintains its constitutional delegated powers, both in tax matters and the decisions affecting its administration and management. In that same order, competent officials may decide their actions jointly or individually and perform those that were delegated to them. Likewise, within the conventions of cooperation and collaboration among TAs, it is possible to regulate the common technical and operational aspects, and at the same time, continue to use the different control systems.

The idea of a "corporate tax administration" can achieve one even greater significance and be associated to other common problems of TAs, such as the taxpayer's assistance and other specifics issues of collection, these being the first steps towards considering a possible "Federal Tax Agency", where the TAs with different jurisdictional powers would converge and each one would participate with their own material and human resources, in pursuit of the fulfillment of their objectives and services. We can mention, as illustration, and without exceeding the framework of this work, the cooperation and integration and the "single tax windows" that can be used in issues important for the different TAS. We could, moreover, focus on the universe of taxpayers to receive "all communications from any TA", in a "single tax mailbox", with the vision of unifying the notifications, which can lead to a breakthrough in management practices, whose maximum expression is the universalization of the system of statutory tax returns submission and payments, as a single channel for the submission of the provincial, national and municipal tax obligations. This implies to conceive a "multifaceted" application aimed at the taxpayers, so that they can express requests or disclaimers covering all TAs in a same system, which would distribute the data.

This is a vision which is likely to become a new paradigm to implement in our TAs, with a legislation accompanying the adjustments, granting powers and limiting the procedures that could arise as a result of these unprecedented challenges, so that the process would translates into possible substantive improvements for the taxpayers. However, this is also an attractive proposal for the participating TAs, taking into account their collection costs and their respective institutional visions, taking full advantage of the computing platforms of other administrations, which consequently encourages mechanisms enabling to coordinate the right tax policies, the redeployments and correct resources at different levels of each government, in compliance with the responsibilities that each of them manage.

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PUBLIC-PRIVATE PARTNERSHIP (PPP) AND THE ORGANIC LAW OF TAX INCENTIVES IN ECUADOR

Marlon
MANYA ORELLANA

SYNOPSIS

This article focuses on the analysis of the organic law of incentives for Public-Private Partnerships and Foreign Investment in Ecuador, in force from January 1, 2016, the tax incentives for the implementation of Public-Private Partnership projects, and the specific incentives to promote productive financing, national investment and Foreign Investment in general in Ecuador.

CONTENIDO

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INTRODUCTION

A Public-Private Partnership (PPP), also known as "APP" in Spanish, is the mode of management by which the State, instructs a private entity with the execution of a public project, for the provision of goods, works or services, including financing, in return for a consideration for the investment and work. This means that experience, knowledge, equipment, technology are incorporated, while risks and resources, preferably private, are distributed in order to create, develop, improve, operate and/or maintain public infrastructure, or providing public services.

The public project promoted by the law of incentives for Foreign Investment and Public-Private Partnerships in Ecuador may consist in the construction, rehabilitation or improvement, equipment when so required, operation and maintenance of a new or existing public work for the provision of a service of general interest; when the investment is substantial, the equipment, operation and maintenance of an existing public work for the provision of a service of general interest; operation and maintenance of an existing public work for the provision of a service of general interest, when substantial improvements are provided through private participation; the construction and marketing of social interest housing and urban development works; as well as in the activities of research and development; and in general, in which the State participates directly and in competition with the private sector, provided that these activities are qualified as of priority by the Inter-Agency Committee.

Among the topics of interest are the mechanisms of incentives for productive investment and the attraction of investment in general; the tax treatment for private participation in projects of public interest, and specific incentives to promote productive financing and foreign investment in general.

1. PUBLIC- PRIVATE PARTNERSHIPS: DEFINITION AND MODALITIES

There are different definitions and views on what constitutes a Public-Private Partnership (PPP). The OECD offers one of the definitions, which considers it as an *"agreement between the government and one or more private partners (that may include operators and financiers) under which private partners provide a service such that the objectives of the provision of government services are aligned with the private sector's objectives of obtaining utility and where the effectiveness is dependent on a proper transfer of risk from the private sector"* (OECD 2008). Moreover, the Multilateral Investment Fund (Bloomgarden and Maruyama, 2008) considers a PPP as *"a long-term collaboration scheme between a public authority and the private sector for the provision of a public service". For other agencies closer to the British model, PPP refers to "a contractual scheme between the public sector and the private sector in a shared project"* (Partnerships UK, 2006).

As described in the document prepared by the Inter-American Development Bank (IDB) *"Public-Private Partnerships for the provision of services. A vision towards the future"*, the main characteristic of a PPP is the scheme of risks allocation and mitigation between each of the parties, and the operation scheme based on the formation of a new economic entity, known as a Special Purpose Company. This new company is in charge of seeking financing, guarantees or other concurrent or necessary services during the lifecycle of the infrastructure project and its services. This way, the parties (Government and creditors) become permanent evaluators of the results obtained by the private operator.

The scheme of identification, allocation and distribution of risks is inherent to each contract and each sector, and each partner's capacity to assume the risk and mitigate it. This premise is based on the assumption that each of the parties assumes the risks that they have a better capacity to manage and mitigate, and the fact that each of the parties has integrated the actual costs of the project, and the higher risk and difficulty of mitigation, the greater will be the associated cost of the private sector. In addition, the availability of information affects the ability to assume and to quantify the risks inherent in a project.

For a Public-Private Partnership (PPP) project, the ability to identify, quantify and project the risk probability is essential, given its long-term nature.

The main forms of Public-Private Partnership are as follows:

TABLE Nº 1
Forms of PPPs

MODE	DESCRIPTION
Contracts for the provision of services	Contract for the provision of a particular service. The State keeps the ownership and requires a specified level of service. Risks may be assigned in accordance with contractual assignment. Example: Contracts of road maintenance by service levels.
Management contracts	A public good is operated and managed by a private agent under a scheme of shared risk and shared utilities. Example: management contract for a drinking water company.
Concessions	The State grants the right to the usufruct of a good in exchange for an economic agreement between the parties for a specified period. Example: Granting of Container Terminal and Multipurpose.
BOT (build, operate, transfer)	The private entity is responsible for the construction and improvement of a good, and its operation, and the ownership remains with the State or returns to the State at the end of the process. Example: Construction of a power generating plant.
Cooperatives	Community organizations are associated with public institutions to support a common interest.
Joint venture partnerships	Public and private agents are associated through a mixed company and share risks, costs and utilities.

Fuente: *IDB. Public-Private Partnerships*

In this way, we can determine that normally the private sector is responsible for the design, construction or improvement of the infrastructure, assumes the risks associated with the project, usually financial, commercial, technical and operational risks, receives a financial return for the provision of the service, either through charges to users or through financial arrangements with the public agent, and may or may not have a transfer of ownership on the asset. At the same time, the public sector keeps responsibility for the quality of the service provided and its provision under equitable conditions.

In this context, given the scope of the PPP, and this being a long-time agreement, which involves the appropriate allocation of risk between the parties, demanding a paradigm change in the traditional way of providing public services, the following aspects should be taken into account:

- They require high levels of investment in the economic, technical and contractual structuration. High transaction costs are a factor to be analyzed when the feasibility of this type of project is evaluated.

- They usually present asymmetries of information, since the private sector has usually more financial and human resources than the counterpart to manage and define a project.

- The fiscal impacts of unforeseen events and contingencies should be carefully quantified and, according to their probability of occurrence, included in the tax accounts. Equal treatment should be given to non-contingent liabilities. In some countries, there is a limit regarding the long term fiscal commitments for this type of project.

- Since they are long-term contracts, some of the initial conditions may require modifications, which can lead to renegotiations and higher transaction costs.

- The technical complexity is inherent to each sector. The complexity in the structuration and the

contractual and financial conditions can lead to economies of scale and are different for each sector.

- This kind of project requires greater effort in the field of regulation and supervision by the State, although on the other hand it releases the state from the execution and operation activities.

Among the PPP experiences and good international practices in Latin America, the implementation of these agreements covers the inclusion of various sectors, from energy infrastructure and transportation (roads, ports, and airports), provision of drinking water and sanitation services, to even irrigation schemes and services of education and health, among others.

However, according to the IDB, not all countries have laws dedicated to PPP, nor have the appropriate institutional framework for the project regulation and oversight of this degree of complexity, and there are even constitutional prohibitions if water and sanitation services were provided by private agents.

2. THE "INFRASCOPE" FOR LATIN AMERICA AND THE CARIBBEAN

The "Infrascope" for Latin America and the Caribbean developed by the Inter-American Development Bank (IDB) measures the ability of a country to mobilize private investment in infrastructure through Public-Private Partnerships PPP. The Infrascope index includes 19 indicators, both qualitative and quantitative.

Data for the quantitative indicators have been extracted from the Risk Briefing Service of The Economist Intelligence Unit (EIU) and the World Bank. Qualitative data come from a number of primary sources (legal texts, Government websites, news reports and interviews), secondary reports and data sources adjusted by the EIU.

The categories and their associated indicators refers to the analysis of the following factors: the legal and regulatory framework, institutional framework, operational maturity, investment climate, and financial facilities.

TABLE Nº 2
Infrascope indicators

CATEGORIES	WEIGHTING (%)	DESCRIPTION
Legal and regulatory framework	25%	Consistency and quality of regulation
		Selection and effective decision-making
		Equity/opening of tenders
		Dispute resolution mechanisms
Institutional framework	20%	Quality of institutional design
		Private Public Partnership contract. Risks
Operational maturity	15%	Public capacity to plan and monitor
		Methods and criteria for the attribution of projects
		Risks allocation history
		Experiences in concessions
		Quality of concessions
Investment climate	15%	Political distortion
		Business environment
		Political will
Financial facilities	15%	Risk in government payments
		Private financing in the capital market
		Marketable debt
		Government support
Adjustment factor	10%	

Source: *The Economist. Inter-American Bank of development 2014.*

The 2014 Ranking of the countries of Latin America and the Caribbean, is as follows

TABLE Nº 3
Infrascope ranking (2014) of Latin America and Caribbean countries

Nº.	COUNTRIES	SCORE (ON 100 POINTS)	SCALE
1	Chile	76.6	Developed (60 – 80)
2	Brazil	75.4	Developed (60 – 80)
3	Peru	70.5	Developed (60 – 80)
4	Mexico	67.8	Developed (60 – 80)
5	Colombia	61.0	Developed (60 – 80)
6	Uruguay	52.9	Emerging (30 – 60)
7	Guatemala	46.3	Emerging (30 – 60)
8	Jamaica	44.4	Emerging (30 – 60)
9	El Salvador	41.6	Emerging (30 – 60)
10	Costa Rica	39.0	Emerging (30 – 60)
11	Honduras	37.7	Emerging (30 – 60)
12	Paraguay	37.0	Emerging (30 – 60)
13	Trinidad and Tobago	37.0	Emerging (30 – 60)
14	Panama	34.0	Emerging (30 – 60)
15	Dominican Republic	24.2	Startup (0 – 30)
16	Ecuador	22.1	Startup (0 – 30)
17	Nicaragua	20.6	Startup (0 – 30)
18	Argentina	16.0	Startup (0 – 30)
19	Venezuela	3.2	Startup (0 – 30)

Source: *The Economist. Inter-American Bank of development 2014.*

Ecuador, according to this ranking, is No. 16 in 19 countries, with a score of 22.1, considered within the "Startup" scale. In this context, by implementing this new law, it is estimated that under the modality of partnerships public-private, according to the portfolio of the Transport and Public Works Ministry presented in September 2015, port infrastructure projects could be implemented in the next three years for 576 million dollars; with $ 1.737 million for railroad infrastructure; and $ 831 million for social housing.

3. CONSTITUTIONAL AND LEGAL ANTECEDENTS JUSTIFYING PRIVATE INITIATIVES

The Constitution of the Republic of the Ecuador, as highest depository of the rights of persons, in paragraph 25 of article 66, recognizes and guarantees the right to access to public and private goods and services of quality, with efficiency, effectiveness and good treatment, to individuals and legal entities as well as other fundamental rights.

In regards to public services and public participation, article 85 of the Magna Charter stipulates that public policies and the provision of public goods and services strive to enforce the quality of life and all rights, and will be developed starting from the principle of solidarity by also guaranteeing the participation of the people, communities, populations and nationalities in the formulation, implementation, evaluation and control of public policies and public services.

On the same subject, and with regard to public services, article 314 of the Constitution establishes the responsibility of the State in the provision of public services of drinking water and irrigation, sanitation, electric power, telecommunications, roads, port and airport infrastructures, and others to be determined by the law, ensuring that both public services as well as their provision respond to principles such as compulsory character, generality, uniformity, efficiency, responsibility, universality, accessibility, consistency, continuity and quality.

As an effective constitutional and legal guardianship, the same constitutional chart disposes that the State will determine that prices and tariffs of public services will be equitable, and establishes their control and regulation.

In addition, the Constitution of the Republic of Ecuador prescribes that the State has the right to manage, regulate, and control the strategic sectors that have decisive economic, social, political or environmental influence by their significance and magnitude, and must strive for the full development of the rights and the social interest.

However the Constitution also states in its article 316 that the State may, exceptionally, delegate to private initiative and the popular and supportive economy the exercise of these activities, in cases established by the law.

In accordance with those constitutional principles, the organic code of Production, Trade and Investments, in its article 100, determines that the mode of delegation may be of concession, association, strategic partnership, or other contractual forms according to the law, following, for the selection of the delegatee, the procedures of public bidding determined by the regulation.

4. ORGANIC LAW OF INCENTIVES FOR PUBLIC-PRIVATE PARTNERSHIPS AND FOREIGN INVESTMENT IN ECUADOR

For the implementation of the constitutional provisions referred to in the preceding subparagraphs, the law of incentives for partnerships and Foreign Investment was published the official registry supplement 652 of 18 December 2015, which objective is to establish incentives for the implementation of projects in the form of Public-Private Partnership and guidelines and institutional framework for its implementation also establishing specific incentives to promote overall production funding, national investment and Foreign Investment in Ecuador.

Complying with the provisions of the Constitution of Ecuador, the General Regulation of application of the organic law of incentives for partnerships and Foreign Investment was issued and published in Official Register no. 786 of June 29, 2016.

Within the legal framework to be considered in the implementation of Public Private Partnerships, the legal provisions laid down in the regulation of the regime included in Executive Decree No.. 582, published in official register no. 453, of 6 March 2015, should be considered.

This law applies to partnerships that are aimed at the provision of goods, works or services by the Central Government and the Autonomous Decentralized Governments. The public projects approved will benefit from the incentives proposed under this law, in accordance with the agreements made by the parties.
Structuring, implementation and evaluation of public projects, in the Public-Private Partnership modality must comply with the following principles and guidelines:

- **Fiscal sustainability.** The State's ability to pay should be considered for acquiring financial commitments, formal or contingent, arising from the execution of Public-Private Partnership contracts, without compromising the sustainability of public finances or the regular provision of services.

- **Adequate distribution of risks.** In all Public-Private Partnership, an identification and appraisal of risks and benefits should be performed for the duration of the project, which will be assumed, transferred or shared by the delegating public entity and the private party, in accordance with the provisions of the contract.

- **Financial Value.** Public projects executed in the form of Public-Private Partnership must provide the best results of value for money and obtain the economically most advantageous conditions for end users of the work, good or service as possible.

- **Respect for the interests and rights of users.** The State and the private Manager will be required to protect end users and provide them with clear and sufficient information upon their

rights, as well as meet and resolve their claims in a timely manner.

- **On property rights.** The public project and the delegated contract of management shall ensure the ownership rights for the parties, during the established period of validity.

- **Social coverage and Inclusion.** Geographical areas, social groups and peoples and nationalities that require the good, work or service generated by the project may not be excluded in the design and implementation of public projects. These projects should provide the use of the national component, technology transfer and the recruitment of national human talent. The profitability of the public project shall be calculated in an aggregated way, considering the possibility that exceptionally the State could provide subsidies, guaranteeing coverage and social inclusion for the population at risk.

4.1 Reforms to the Organic Code of Production, Trade and Investment (COPCI)

• New Investment

Article 13 of COPCI defines the term New Investment for the application of incentives provided for in said document. It is defined as the flow of resources aimed at increasing the economy's capital stock, through effective investment in productive assets that broaden the future production capacity, generating a higher level of production of goods and services, or generating new sources of employment. The simple change of ownership of productive assets that are already in operation as well as credits to acquire these assets do not imply new investment for purposes of COPCI.

This definition also includes as New Investment, *all investments made for the execution of public projects under the public-private partnership modality.*

• Classification of incentives

Article 24 of COPCI includes the following classification of incentives for the Productive Development:

General: Applicable for investment anywhere in the national territory. Examples: Additional deductions for the calculation of the income tax, such as mechanisms to encourage the improvement of productivity, innovation and eco-efficient production; the benefits for the opening of share capital by companies for their workers; payment facilities in taxes to foreign trade; the exemption from tax on the foreign currency outflows for financing external operations; the release of the advance income tax for five years for all new investment.

Sectoral and for the equitable regional development: for the sectors that contribute to the change to the energy matrix, strategic replacement of imports, to the promotion of exports, as well as for rural development in the country, the total exemption from income tax for five years is granted for new investments that are developed in these sectors.

For depressed areas: in the ZEDES special zones of economic development, the new investment will receive priority, in the form of tax benefit via the additional deduction of 100% of the cost of hiring new workers, during five years.

This classification of incentives includes also:

For Public-Private Partnership public projects: the investments carried out in the context of the implementation of public projects in the form of Public-Private Partnership may obtain exemptions to the income tax, to the currency outflows tax, foreign trade taxes and more benefits provided in the law of internal tax regime for this type of public projects.

• Validity of investment contracts

Article 26 of COPCI expresses that investment contracts will have a period of up to fifteen (15) years from the date of their signature, and their validity shall not limit the power of the State to exercise control and regulation through its competent bodies.

At the request of the investor, and as long as the Sectoral Council of Production considers it relevant, depending on the type of investment being developed, investment contracts may be extended only once, not exceeding the term originally granted.

The following provision is added, with respect to investment contracts within a Public-Private Partnership:

Investment contracts concluded on the occasion of a Public-Private Partnership public project will have the same term as the respective contract of delegated management. The termination of the delegated management contract entails likewise the termination investment contract without requiring any additional procedure or statement.

• Customs and foreign trade

Article 46 of COPCI determines that the ZEDES shall benefit from the customs destination treatment provided by the legal customs regime, with the exemption of tariffs on foreign goods entering such areas, to comply with the authorized processes, both for administrators and operators.

This treatment of the ZEDES includes:

Duties to foreign trade at the stage of design and construction in ZEDES: individuals or legal entities that sign contracts for engineering, procurement and construction ("IPC") with operators or administrators of the special economic development zones, shall enjoy the same benefits as the Contracting Parties in the field of import, provided that they are intended for the execution of these contracts and remain located in the ZEDE.

• Investment in strategic sectors

Article 96 of COPCI specifies that the State may delegate exceptionally, to the private initiative and the popular solidarity economy, investments in strategic sectors in the cases established in the laws of each sector.

It also includes the following:

Legal stability of the investment- In addition to the fiscal stability that is guaranteed in this Code, the legal stability of the specific sectoral legislation may be granted, when it has been declared as essential in the respective concession contracts or other qualifying titles for the management of strategic sectors or the provision of public services. The term of such legal stability will be the same as the investment contract.

• Foreign trade taxes exemptions

Article 125 of COPCI indicates that imports for consumption of the following goods are exempt from the payment of all taxes on foreign trade, except fees for customs services; this article include:

Imports directly intended for the execution of public projects in the Public-Private Partnership modality carried out by responsible private participants, in accordance with the delegated management contracts concluded with the State and its institutions, will be entitled to the same benefits, whether of a tax nature or of any other nature, as the delegating public entity in its imports, provided that the total amount of imports comply with criteria determined by the Interinstitutional Committee on Public-Private Partnerships for each prioritized sector.

For this purpose, the delegating public entity shall issue in favor of the private partner responsible for the corresponding import private a certificate attesting to the destination of the goods to be imported and the results of their evaluation studies carried out in the pre-contractual stage with regard to the quantity and quality of the goods to be imported.

• Need for officially enabling titles

Article 97 of COPCI, refers that the investment contract cannot be understood as authorization for the development of activities in strategic sectors if they require other specific qualifying titles defined by sectoral laws, such as contracts, permits, authorizations, concessions, etc. The existence of an investment contract will not involve a constraint of application for acts of regulation and control by the State, through competent authorities.

This need includes also:

The entry into force of the investment contracts concluded on the occasion of the development activities in strategic sectors, will be extended for

the same period that provided for the corresponding qualifying titles. In addition, investment contracts, shall be extended under the same terms that enabling certificates are renewed or extended.

• Limits (Hectares) for rural land tax

The twenty second disposition of COPCI is modified, which deals with the limits prior to the calculation of the tax on farmland located in the Amazon Region and in similar areas defined in the respective Executive Decree issued by the President of the Republic (hectares). *The limit of non-taxed hectares until 2017 will be 70 Ha, 2018 will be 60 has, and from 2019, will be 50 has.*

• Inter-sectorial participation

Within article 7 of COPCI, with the proposal of giving power to the Advisory Council to propose or suggest technical guidelines for the development of policies to be adopted by entities responsible for policies for productive development, investments, partnerships, public-private associations and foreign trade.

The integration and operation of this Advisory Council will be determined in the regulation of this code, which will consider the creation of sub-councils in areas previously designated, in which the stakeholders will participate; or by a resolution of the sectoral Council of production, in matters not provided for in that regulation.

4.2 Reforms to the Organic Law of Internal Tax Regime (LORTI in Spanish)

• Income tax exemptions for fixed-term deposits revenues and benefits

Within article 9 of LORTI, paragraph 15.1 the following changes are established:

"15.1 Profits and benefits made by individuals and societies, resident or not in the country, from fixed term deposits in domestic financial institutions, as well as investments in fixed income securities which are negotiated through the stock exchanges of the country or the special stock registration, including yields and benefits distributed by commercial investment trusts, investment funds and supplementary funds originated in this type of investment.

This exemption for fixed-income investments and fixed-term deposits must take place from 01 January 2016, issued for a term of 360 calendar days or more, and remain in possession of the holder, which benefits from the exemption at least for 360 days continuously.

This exemption shall not apply where the beneficiary of the income is directly or indirectly debtor of the institutions that hold the deposit or investment, or any of its related parties; as well as when this recipient is an institution of the national financial system or in transactions between related parties for capital, management, direction or control"

• Income tax exemptions for the financing of public projects in public-private partnership

Within article 9 of LORTI, a paragraph 23 is added, which says:

"(23) Income generated from titles representing bonds of 360 calendar days or more, issued for the financing of public projects developed in public-private partnership and in transactions operated with regard to such titles. This benefit does not apply in transactions among related parties."

• Income tax exemptions for capital revenue

Within article 9 of LORTI, a numeral 24 is added, which states:

"(24) Utilities received by companies domiciled or not in Ecuador and Ecuadorian individual persons or foreign, resident or not in the country, from the direct or indirect disposition of shares, participations, other rights representative of capital or other rights that allow the exploration, exploitation, concession or similar, performed in Ecuadorian stock exchanges, up to an annual amount of a basic fraction taxed at zero tax rate for the payment of the income tax."

• Income tax exemptions for the development of public projects in Public-Private Partnership

Subsequent to article 9(2) of LORTI, the following is added:

"Art. 9.3. Income tax exemption in the development of Public-Private Partnership projects. Societies that are created or structured in Ecuador for the development of Public-Private Partnership ("PPP") projects, shall enjoy an income tax exemption during a period of ten years counted from the first fiscal year in which operating revenues established within the APP object are generated, in accordance with the economic and financial plan added to the delegated management contract, provided that the project is carried out in one of the sectors prioritized by the Interinstitutional Committee on Public-Private Partnerships and comply with the requirements laid down in the law governing the application of incentives for PPPs.

Dividends or utilities that societies that are constituted in Ecuador for the development of public projects in PPP, paid to partners or beneficiaries whatever their domiciliation are exempt from the income tax during the term of ten years counted from the first fiscal year in which operational revenues established within the PPP object are generated."

• Payments abroad

Article 13 of LORTI indicates that expenditures abroad that are necessary and intended to obtain income are deductible, provided the withholding at source has been performed, if the payment for the beneficiary constitutes a taxable income in Ecuador.

The following payments abroad will be deductible, and will not be subject to the income tax or to withholdings at source in Ecuador:

"3. The payments originating from external financing to external financial institutions, legally established as such, or specialized non-financial entities described by the corresponding control bodies in Ecuador; as well as the interests of foreign loans granted from Government to Government or multilateral agencies. In these cases, the interest may not exceed the maximum interest rates of reference set by the Board's policy and monetary and financial regulation to the date of registration of the credit or its renewal. If they in fact exceed them, a withholding at source equivalent to the general tax rate of companies must be performed for the allowed portion to be deductible.

In the case of interest paid abroad not referred to in the preceding paragraph, withholding should be done at source equivalent to the general rate of corporate income tax, regardless of the residence of the financier.

The lack of registration of external financing operations, in accordance with the provisions issued by the Policy and Financial and Monetary Regulation Board, determine that the financial costs of the credit may not be deducted."

• Gold as taxed good with 0% VAT rate

In article 55 of LORTI, paragraph 16 is reformed as follows:

"16. The gold acquired by the Central Bank of Ecuador directly or through public or private economic agents duly authorized by the Bank itself. From January 1, 2018, the same rate will be applied to the gold acquired by holders of mining concessions or individuals or legal entities that have a trade license granted by the sectoral ministry."

• VAT withholding in Public-Private Partnerships projects

Article 63 of LORTI, regarding VAT withholding in Public-Private Partnerships projects, adds the following:

"Art. (…). "- VAT withholding in Public-Private Partnerships projects -the societies created for the development of public projects in the Public-Private Partnership modality will act as VAT withholding agents under the same terms and under the same percentages as public companies."

• Refund of VAT paid in export activities

Article 72 of LORTI is reformed as follows:

"The reinstatement of the tax value added tax, does not apply to the oil activity in relation to the extraction, transportation and marketing of crude oil, or other non-renewable resources-related activity, except in mining exports, which apply the refund of VAT paid for periods corresponding to January 1, 2018, hereinafter" in the terms referred to in this article."

4.3. Reforms to the Tax Equity Law

• Tax exemption on remittances of currencies in the execution of public projects in Public -Private Partnership

Article 159.1 is added, stating the following:

"Art. 159.1 exemptions in the execution of public projects in Public-Private Partnership. Payments abroad are exempt from the tax on foreign currency payments by companies that are created or structured for the development and execution of public projects in Public-Private Partnership, which comply with the requirements laid down in the law governing the application of PPPs incentives, regardless of the address of the recipient of the payment:

1. When importing goods for the execution of the public project, whatever the import regime used.

2. in services procurement for executing the public project.

3. Payments made by the company to the public project funders, including capital, interest and fees, provided that the agreed rate of interest does not to exceed the referential rate to the date of registration of the credit. The benefit extends to the subordinated credits, provided that the lending society is not in situation of sub-capitalization in accordance with the general scheme.

4. Payments made by the company for distribution of dividends or profits to its beneficiaries, notwithstanding the location of their tax domicile.

5. Payments made by any person or society because of the acquisition of shares, rights or interests of society structured for the execution of a public project in the form of Public-Private Partnership or by transactions on stocks or bonds representing securities issued for the financing of the public project.

For the application of the exemptions provided for in this article, only the corresponding return must be submitted, under the general regime, about the operation that is exempt."

• Generating event and rural land tax rate

Articles 174 and 178 of the reform law for the tax equity of Ecuador, detail:

"Article 174. Causing event. In the case of real estate located in the Amazon Region and in similar areas defined in the respective Executive Decree issued by the President of the Republic, the causing event occurs with the ownership or possession of land surfaces exceeding 50 hectares, value that may be extended to 70 hectares through Executive Decree by the President of the Republic for one or several fiscal periods, upon motivated request of the Ministry of Industry.

Properties located in other areas of the country in geographical conditions and productivity similar to located in the Amazon Region will receive a similar treatment, detailed in the respective Executive Decree issued by the President of the Republic, prior technical report of the Ministry of Agriculture, Livestock, Aquaculture and Fisheries, and the Environment Ministry, and fiscal impact report from the Internal Revenue Service. In these cases, the exemption basis shall be applicable from the fiscal year during which the mentioned Executive Decree is issued.

In the event that the taxpayer is owner or own land in the Amazon Region and/or in similar areas and other regions of the country, all the areas will be added for the purpose of calculating this tax and the number of hectares of land in the Amazon Region and similar areas will be subtracted to the limit of tax reduction applicable. The surplus resulting from this operation will constitute the taxable base."

“Article.”178. The taxable persons must pay the equivalent to one per thousand of the untaxed basic fraction of the individual income tax and undivided succession under tax law, per hectare or fraction of a hectare of land which exceeds the nontaxed threshold.”

CONCLUSIONS

- The Organic Law of Incentives for Public-Private Partnerships and Foreign Investment, valid from January 1, 2016, has as its main objective to establish incentives for the implementation of projects in the Public-Private Partnership modality, and guidelines as well as institutional framework for its implementation, establishing specific incentives to promote overall productive financing, national investment and Foreign Investment in Ecuador.

- Investments carried out in the context of the implementation of public projects in the Public-Private Partnership modality may obtain exemptions on the income tax for 10 years, on the currency outflow tax, on foreign trade taxes and more benefits are provided for in the law of internal tax regime for this type of public projects.

- Investment contracts concluded under Public-Private Partnership project will have the same duration as their respective contract of delegated management.

- In addition to the tax stability that is guaranteed in COPCI, legal stability of the specific sectoral legislation which would have been declared as essential in the respective concession contracts or other qualifying titles for the management of strategic sectors or the provision of public services may be granted. The term of such legal stability will be the same as the investment contract.

- To implement this new law, it is estimated that under the Public-Private Partnership modality, according to the portfolio of the Ministry of Transport and Public Works of the Ecuador presented in September 2015, that in the next three years port infrastructure projects could be implemented for 576 million dollars; $ 1,737 million in railway infrastructure; and 831 million in social housing.

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CONTROL OF THE **ELECTRONIC COMMERCE** AND THE COLLABORATIVE ECONOMY

Ignacio
GONZÁLEZ GARCÍA

SYNOPSIS

From a fiscal perspective, it would be possible to control the digital economy with traditional instruments. The control of electronic commerce has required the adaptation of the rules, especially VAT, and the use of new technologies as OSINT (Open Source Intelligence) tools. The collaborative economy is a disruptive change that will soon force tax administrations to modify the rules and change the control technology. This research, with data compiled by the author and carried out based on the AEAT experience, quantifies the activity, highlights the threats and recommends some actions to be carried out.

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INTRODUCTION

Electronic commerce and the collaborative economy have become realities that demand the full attention from the tax authorities. Their volume, during 2016, has been estimated at 1,796 trillion euros, ($ 1,915 trillion), with a growth of 23.7% per annum, well above the 6% experienced by the retail trade. A Brookings report highlights that the UK Office for National Statistics has found that in the year 2015, 275 European collaborative platforms have generated € 5 billion of turnover, through 28 billion transactions and that the estimates made by PwC point out that in ten years this collaborative trade will multiply by ten.

New players that deploy new business models with new technologies emerge with enormous dynamism. As reality changes, the concepts that describe it change- Hegel used the term self-movement of the concept-, including tax concepts, and the methods of control become obsolete.

The objectives of this research are: a) Present the concepts of digital economy, electronic commerce and collaborative economy, b) Show the existing methods for their quantification, describing, as a particular case, their use in Spain, c) Describe the specific difficulties present for their tax control, and the technology that may be used to carry out risk analysis and fraud control in these environments; and e) Describe the actions that a tax administration should take in response to this threatening paradigm shift.

1. CONCEPTS, BACKGROUND, QUANTIFICATION

1.1 Concepts

The concept of *digital economy* was divulged in *"The digital economy: promise and peril in the age of networked intelligence"* (Pascott, 1995) and in "Being Digital" (Negroponte, 1995) in which the difference between an economy based on atoms and one based on digital bits was conceptualized.

Electronic commerce is one of its manifestations. Everything that is the subject to e-commerce is part of the digital economy, while the opposite is not valid since digital goods can be obtained by traditional procedures. The *E-commerce White Paper* defined it as the buying and selling of products and services through electronic systems, mainly Internet, and *law 34/2002 of July 11, on The Information Society and the Electronic Commerce Services* incorporated the concept into the Spanish legal system, transposing the contents of the 2000/31/EC Directive.

The *collaborative economy* has been defined in the communication of the Commission to the European Parliament, the Economic and Social Committee and the Committee of the Regions as:

> "Business models that facilitate activities through collaborative platforms, creating an open market for the temporary use of goods or services often offered by private individuals. Collaborative economics involves three categories of actors: i) Service providers who share assets, resources, time and/or skills, —they can be individuals that offer services occasionally; "peers" or "providers of professional services" who act professionally. (ii) Users of these services; and (iii) intermediaries which - through an on-line platform - connect providers with users and facilitate transactions, among them the «collaborative platforms». In general, "collaborative economy transactions do not involve a change of ownership and can be made with or without profit" (COM (2016) 356 final).
>
> We will keep in mind that these are three very different concepts and that appropriate strategies for their tax control are very different.

1.2 Quantification

Studies on the size of the digital economy estimate it using data from; a) the relevant sectors, b) national statistics institutes' surveys, c) card issuers and d) survey data.

Some are sectorial, such as the *Study of the Digital economy: digital content and services*, developed for AEMETIC (Multi-sectorial Association of electronics and ICT companies). Some of them can be limited to *digital content*, like movies or mobile applications,

that quantifies them as 1.87% of GDP while others offer a more inclusive vision, such as the PwC view, or those carried out by the Ministry of Industry, which estimated that the volume varies between 2% and 6% of GDP with oscillation due to the different accounting criteria. According to estimates, it provide occupation to 386,009 workers (2.10% of the total private sector), in 24, 371 companies (1.61% of total).

In what refers to e-commerce, in addition, the National Observatory of Technologies of the information society (ONTSI), dependent of the Ministry of Industry, Energy and Tourism, regularly publishes a report. It has a continuous and most notable growth, which reached 13% annually, even in times when the economy was in recession during some quarters. In 2015, it grew at a rate of 29.5% and it is estimated to reach 24,600 million euros in 2106.

1.3 Quantification of the electronic commerce in Spain

Spain is a country with more than 47 M inhabitants, and will receive during 2016, 72 million tourists. According to data from ONTSI (2014) of the total value contracted using e-commerce platforms, 39.6% correspond to purchases of goods or services carried out by Spaniards on foreign sites, 40.4% to purchases by Spaniards in Spanish stores and the remainder, 19%, to purchases from abroad in Spain, basically transport and tourist services.

From the tax control perspective of AEAT, these last two components are the most relevant, and their sum is estimated at 14,612 million euros in 2016.

These figures can be valued in relative terms using tax data. The Spanish Government established a mandatory annual disclosure statement of revenue and payments, for entrepreneurs and professionals, in the form 347 in which the taxpayers declare, by supplier or customer, the total of transactions with each of them, if the annual total exceeds the threshold, established today at € 3005,06. In addition, information is available from the National Institute of Statistics and census information on the type of activity is declared in form 036. From the information contained in the 347, for 2014, we know the total sales reported by all the Spanish companies in this form was calculated: 1,565 billion euros, and the part corresponding to retail sales, 240 billion euros.

From the ONTSI survey, we obtained the sales from Spanish websites, 8,766 million, so it could be concluded that electronic commerce in Spanish sites was 3.62% of retail sales or, compared to the expenditure of families estimated bby INE, 2.95% of the households expenses, the most important items being expenses on transportation tickets reservations, tickets for shows, clothes and accessories.

The e-commerce of consumer goods delivered with transport (off-line electronic trade) represented 2,752 ms euros, the rest being online. Taking into account that the sectors cited in first place, transportation and hotels, are object of traditional tax control, the novelty or new risks from the fiscal point of view, reach an amount of 1% of the retail trade.

Although its absolute magnitude is not elevated, there is no doubt of its dynamism, and that is why an effort has taken place to be more informed about the participants and the difficulties of their control.

1.4 Census of e-commerce

To carry out an adequate risk control, it is essential to know the number of enterprises involved in the activity.

To find out the census, the AEAT has used different procedures, increasingly sophisticated. Since registration for e-commerce is not mandatory, and there is no heading identifying it in any tax figure, the initial goal consisted in estimating the number of companies that perform it. The task was not simple because: a) a company can maintain a web page without performing e-commerce automatically (without shopping cart), b) orders or reservations can be received by Internet, and it is unclear if it is electronic commerce or not.

The procedure initially used for the estimate employed data from AEAT and the National Institute of statistics. The data showed that 95.5% of the companies (3,195,210) were micro-enterprises at the time of the study (up to 9 employees). Those with more than nine

employees were 144,000 (according to INE data) or 163,874 (according to data of the General Treasury of the Social Security) and we could know how many of them (42, 928) had a terminal point of sale (POS processing the model form 170-2, a bank statement. By surveys of the INE, we knew that 13% of micro-enterprises were selling via Internet and that 71.6% had a website. It was estimated that the total of micro-enterprises "with shopping cart" were 18,720, of which a relevant part were hotels, transport etc. (1/3 of those with POS).

Then a similar estimation was performed with the companies of less than 9 employees (1,286,587) of which 29.3% had a web page (from the INE survey). Admitting that the ratio between those that only had a website and those that also had an "online shopping cart" was the same as in the previous segment, we concluded that their number was 40,000. Adding both groups, the number of companies selling directly from their pages to final consumers was estimated at 60,000.

Later, with the development of technology that we will subsequently present, we could access them, count them and register them, obtaining an actual figure of more than 67,000.

In relation with the collaborative economy, the estimate of their sales made in 2015, was EUR 500 million, via procedures which we will then describe, with an activity concentrated in residential rental companies, since carriers like UBER have a marginal presence in Spain. It was realized quickly that, beyond the technological issue, the difficulty of tax control is that this new environment creates problems associated to the emergence of new business models. We will describe them below.

2. DIFFICULTIES FOR TAX CONTROL

We group them into the following categories according to the cause of the problem: a) changes in business models, b) possibility of offshoring, c) difficulties of identification, d) conceptual and census problems, e) obsolescence of the tax rules and f) technological difficulties.

2.1 Change in business models

We might think that e-commerce off-line, in which when a consumer sends an order and the product is delivered at his home would bring no novelty to tax control, but the truth is that innovations appear that include new concepts, such as the one of "affiliators" and especially a fractioning of the value chain associated with the implementation of "multi-facets" business models, *with profound tax implications*.

We will explain the notion with data of a booming sector, the athletic shoes. We can find on internet 580 official shoes brands. The companies that manufacture them seek where to advertise their products and their new models: newspapers, popular races, etc. running or jogging users' pages etc. At the same time, the owners of these pages want advertising revenue. There are companies, called affiliators, as Zanox, which connect them together in the same way that formerly there were advertising agencies that connected manufacturers with newspapers and television.

The agreement between all is that, in the case that a visitor comes to a page where the advertising is inserted, presses the ad, navigate to the wholesaler and buy shoes there, the owner of the page with the ad or banner will receive compensation in the order of a 8% for driving the customer there, from the wholesaler or manufacturer who also paid the intermediary, for example, Zanox or TradeDoubler for their mediation work, which proves that the buyer came through that particular way.

From a tax perspective, problems accumulate because for a single transaction it would be necessary to know, if the tax auditor want to break down the revenue it generates, those of the manufacturer, those of the final seller, of the platform that brings them together, then of the affiliate and those of the owner of the page where the ads are inserted. In addition there are new players as Google, which sells page positioning to the clients. In the analyzed year, 30,123 Spanish companies hired services with Google Ireland, (data was obtained from form 349). This can be interpreted telling that half of the companies that have "a shopping cart" hire some service with Google and the other half through their marketing providers.

We retain the idea that in e-commerce, the two-face buyer-seller model is an exception, which makes more complex the control of the benefits of each of the parties.

2.2 Offshoring

A seller can use a server located in another country to offer his products and sell them or even to simulate that the server is in another country, when it is not the case.

It is simple to try this form of simulation it he perform the role of a mere intermediary, as often happens in the case of the sale of wines, where the owner of the page brings as added value the tasting notes or the formation of offers and only transmits orders to the winery. He can explain on the website that he is a only a taster and a resident in a third country, and the administration cannot access premises open to the public or stores or even access to the transport data, which will be outsourced, to probe that he is really a resident wholesaler.

On other occasions the entrepreneur temporarily stores products purchased at discounts and sale them in Internet hiding its real residence. It happens in the luxury perfume industry where the owner of a physical store commits to certain sales targets in return for becoming the official distributor of a brand. While some of the targets, for certain products of fashion, are easily reached, others are less successful, in which case the holder, for getting rid of them, resells them with discount to e-commerce stores that have a less local market.

Whatever the reason, the owner of the e-store, covered in that he does not have physical premises open to the public, sometimes seeks to hide the volume of his sales to the tax administration, using the extreme procedure of simulating with the data of his website that his activity is carried out in another country. The Administration must obtain the technology that we will mention later to prevent such fraud.

2.3 Difficulties of identification

The collaborative economy reduces the access barriers of the goods owner necessary to deliver the service to the market and thus multiplies the number of operators. Against a large chain of hotels like NH that has 60,000 rooms, Airbnb performs on occasions up to 1,000,000 reserves in one day and tens of thousands in each country, therefore, for each administration there will be tens of thousands of different owners who receive a remuneration instead of one. For tax administrations, this causes two problems, the number and that the agreement takes place in a page located on a cloud server in the United States, which has no obligation to report to the jurisdiction where the service of the transaction takes place.

There are ways that the Administration could detect, bids, announcements, prices but in the open data there aren't tax identification codes. They include the phone or name of who attends calls, but not the last name of the applicant, the approximate location of the property but not its cadastral reference, etc. The Administration must develop technology to identify the information obtained in open networks.

2.4 Conceptual and census problems

In the case of collaborative economy, the legislation should define what activities are subject to tax. For obvious reasons, it is not the case for collaborative activities such as participating in the drafting of an entry in Wikipedia or leading a crowdfunding initiative. The taxation of transporting sharing expenses, such as BlaBlaCar, has been considered, but has been rejected for now, based on data such as the Roland Berger study arguing that only in the 5 per thousand of the cases, after discounting the costs, participants obtained a profit exceeding the € 10. (It was carried out in 22 countries in 2014).

In the case of the transport of passengers, as it is the case of UBER, or in the accommodation by the Airbnb users, tax administration must decide if there is or not a limit above which carrying out the activity should be considered as entrepreneur or professional and in this case if a specific tax system should be established.

The concepts on which the current tax figures were created must be adapted to allow controlling the new emerging activities. We propose as an example the case of *ShareYourMeal* that emerged in 2012 in the Netherlands. People who like cooking offer dinners for groups at their home, for a reduced price, in order to

practice their skills, make new friends, and revitalize their community relations. It seems obvious that if the price charged to the guest is symbolic, and the meeting is casual, this activity should not be subject to VAT and there are no profits. But where does it crosses the line and happens by repetition of events or the number of attendees, that there is benefit and this conceal an unfair competition to the restoration business? The Netherlands has solved it by considering this activity "nonprofit" in contrast to Belgium where it is subject to income tax and VAT and in other countries, where it is simply is doubtful.

In the case of transport, it should be defined which is the way of deducting the expenses, such as the courtesies to the passengers, how to deduct garage or telephone costs or insurance expenses when the mode of transport is used with other purposes, etc. The United States has included these provisions (C.I.T, §§ 61, 162, 212), in the case of the automobile, sector and regulated the deductions in the accommodation. In Europe, in the case of accommodation, specific rules start emerging, as in Belgium and in Finland.

2.5 Technological difficulties

Tax administrations developed in the past procedures so that business could be controlled with a combination of the use of information provided by the participants and third parties and the physical presence of inspectors on the premises. In the case of e-commerce or collaborative economy, in most cases those premises do not exist and the actors are not compelled to provide information.

That facts forces the tax administrations to find information on the Internet, which supposes the use of tools of a category known as OSINT (Open Source Intelligence) and combine them with data acquired with a more general purpose. Understanding the potential, the training of technicians in its use and integration with conventional tools of acquisition and processing of information are new challenges.

3. CONTROL OF ELECTRONIC COMMERCE AND THE COLLABORATIVE ECONOMICS

We develop here the issue of the definition of the most efficient strategy for the control of electronic commerce and the collaborative economy. We specifically tackle first the problem of the criteria for the selection of taxpayers. We skip from this analysis the selection of businesses such as hotels or airlines where in fact the control is favored because reservations and payments are made through platforms.

For these, the existence of e-commerce does not offer new tax control reasons, in fact the control already existed and it is even facilitated since crossing with third party prevents fraud by the mere concealment of the provision of the service, such as when the airplane tickets were issued manually at airports and paid cash in money-laundering operations.

3.1 Strategies for selecting candidates

Having only statistics that quantify the percentage of e-commerce, we can estimate the volume of sales by sector (travel, textiles, etc.), but, from a tax perspective, these data, are consolidated and not distinguish purchases which are made on servers in our country or abroad, are not very useful to perform risk analysis which aims to examine and control certain taxpayers instead of others.

To do so, or at least try it, the researcher must consider several strategies, such as:

a) Absolute traffic

A possible strategy, but a wrong one, would be to select for their control the internet companies with highest internet traffic. It is possible to have statistics of the pages with most traffic in a country, available through news as *"The 100 most visited sites"*, which ultimately are prepared with data from companies such as *Alexa Internet*, offering them on their websites.

If we group companies with more traffic, four categories will appear a) companies that provide basic Internet services such as Google, Microsoft, Yahoo, Wikipedia b) News websites and television channels, c) banks and public institutions d) pornography and downloads of series e) pages of ads and auction pages. Companies with e-commerce, are not those that generate more activity; search engines or news websites have much more traffic. In addition, the pages have very different *conversion rate*, namely that in some there are many visits but few purchases, and others show the opposite.

(b) Analysis of potential risk in on-line commerce
A conceivable strategy is to identify areas of risk like gambling, pornography etc.

Games and on-line gambling

Multiple games and bets can be made on-line. The first on-line casino was opened in 1996 (InterCasino in Antigua) and the first bingo and poker sites opened in 1998. The number of platforms grew by thousands when a television series called World Player Series became popular, many of them not associated with a registered establishment. In the case of U.K the Total Gross Gambling Yield (GGY1) reached the figure of £12.6bn- (October 2014 - September 2015) compared to £11.2bn of the previous period.

In Spain, the game is subject to administrative authorization. There are 52 companies of which 40% are Spanish, some with the ability to distribute apps to their customers. The interested reader can analyze updates on the website of the General Directorate of Game Management[1]. From 1,206 million euros collected in taxes, 59 correspond to online game, the rest corresponding to games performed with the purchase of physical tickets; therefore from the point of view of tax control, online gamine is marginal.

From a complementary perspective, control of the players' profits, for example in poker games, may seem interesting. We must differentiate between those countries in which there are *professional players* that are taxed by their net assets, from those that tax all the income obtained in the game without deduction of losses. In April 2013, the National Bureau of Fraud investigation of the AEAT sent to all bookmakers a requirement asking for details of the prizes awarded between 2008 and 2011 superior to 300 euros, and those delivered from 2012, in this case, by application of a regulatory change discounting losses. It can be seen that control must be carried out for reasons of Justice and fairness but that, from the quantitative point of view, it is not significant and that, as in other areas, it is advisable to adapt legislation to the reality.

Social games

The use of Internet has spread other games than the games of luck, which rely on graphical manipulation, such as Candy Crush, on wordplay (Apalabrados) or numeric (Sudoku). In the business model we must distinguish the income derived from downloading the app, if they have a price, and subsequent revenues for the purchase of "Premium" versions or the delivery of "tricks" to the player "to achieve higher scores". As a reference, data can be analyzed from AppStore. It was created in 2008. Developers could receive income from advertising or single payments through sales of their software and then additional income. Apple has paid more than 13,000 million USD over six years to its developers as a result of the download of more than 1 M of Apps that have been downloaded more than 60,000 mm times. The benefits are shared (30% Apple and 70% for the developer).

Obviously, there are companies that have received high profits in the process, like Candy Crush reaching $860,000 per day. The payments are highly concentrated among the few companies with innovative activities, allowing them to control a distribution to hundreds of millions customers. In the case of Spain, we do not have seen appearing companies with significant earnings for these games.

Pornography

There are worldwide sites with enormous amount of access to this type of content, such as MSN with 220 million accesses per day. It seems there are more than

[1] http://www.ordenacionjuego.es/es/estudios-informes

340 million pages with this type of content, of which 88% are American 4% German, 3% English. From the Spanish tax perspective in the field of electronic commerce, which concerns us here, it is not relevant.
We must keep in mind that the risk analysis with added figures or referred to sectors that are supposed fraudulent in the public imagination does not lead to effective results.

3.2 Technical problems for selection and control

The characteristics of electronic commerce generate changes in two key aspects of risk analysis.

3.2.1 Identification

The first question to resolve, from the perspective of tax control, is to identify the owners of the pages where e-commerce operations take place. The Internet world has their own names (domain names) and their addresses, called IP. Our challenge is to associate them to a tax identity, to a tax identification number. *The problem therefore is to relate an identifier on the Internet to a taxpayer.*

In each country there are companies *registering domains* that allow to register a name (e.g. www.aeat.es) in a type of domain (example: .es, .com or. net, etc.), each one with rules and a price. That is why there are Spanish companies with domain names .es and others with the type .com in this case together with companies from other countries that have chosen that option. Companies request from their clients an email with their data and introduce part of them in the information offered on the website and associate the name required by the client with an IP address. Some data are required, as the personal identification with telephone and mail and also, and this is important, the name of a person to maintain a timely communication. *These data, in general, are not verified* and not all of them are exhibited a company that wants to register a name.com can use a domain registrar *in another country* and there can choose a type of service, that vary from mere name registration to the hosting of its web site. If a researcher enters in a page as www.whoises.com, the domain name used by a taxpayer, the supplied information is obtained and among the data appears the name of the technical manager who was declared by the applicant and an address that can be used in many cases to locate the company, although it may be false.

Moreover, in ordinary tax relations, regulations establish the mandatory declaration of the tax identification code, but the Internet operator must not always do so. In the Spanish case only the providers of services established by law. When announcing a rental floor on internet, or a service, a name of reference and a phone number have to be provided, but hosts must not to provide a TIN.

To improve the quality of the available data the AEAT has performed the following tasks:

a) Conclude an agreement of collaboration with the competent Ministry (MINETUR), responsible for the granting of domain names, so their computers connect in real time with those of AEAT to verify that the identification code provided by users to request a domain are correct.

b) To track online internet shops to detect those in which there is no CIF (TIN) and through collaboration with the body mentioned in the previous point, to correct the deficiency.

c) Develop computer procedures for identifying the taxpayer via phone number and the data contained in the ads.

3.2.2 Locating offshored taxpayers

It may happen that fraudsters decides not to declare their activity and to avoid being detected, locate their pages in another jurisdiction or even simulate it. From the perspective of inspection the doubt arises when analyzing the website of a company that delivers products, such as perfumes or lenses, shows an address in another country and checking, even the IP address seems to show that the server is located abroad. How it is possible that they deliver the product so quickly addressing our market from another jurisdiction? Is it truth?

If it's a page that offers offline trade with a physical delivery of goods, we can follow various tracks: a) the transport company which transports the product to the customer has data about the collection point, b) the

reference of the provider of customer service phoned. In case of delivery of intangible products, it is not possible to investigate using data obtained from the transport company but there are alternative strategies:

(a) Analysis of emails

Although the company is hidding its residence, it has to reply to emails from customers. It may be the case that the server (which is an application), has been installed in our country, being a computer service, other than the one which hosts the business webpage. If a mail is sent to the company in the meta-data of the reply the location, in this case in our country, can usually be found. If the fraud is more sophisticated and another address is simulated with an interposed computer, it is possible to draw, as in railroad, the trajectory of messages to the server. It can be done, although a specialist is needed.

(b) Analysis of payments and invoices

It is not easy for a company, but everything can be done, to have a TPV offshore, so in most of the cases the company accept payments and receive invoices from a server in its jurisdiction of residence. Both the place of the invoice's dispatch and the type of electronic certificate used to protect data are indicators of where the server is located.

(c) Analysis of the transport

Transport companies often work with franchisees that have the information of those customers who have signed specialized contracts in electronic commerce with them, with special rates, or who perform massive collections of products to some customers, for example traders of mobile phone covers or other products in small unit value. The control of these franchisees provides useful data for the control.

We retain that the selection and control are conditioned by variables other than the ordinary trade control.

4. INVESTIGATION TECHNOLOGY

Many tools have been created for accessing Internet and analyzing the information obtained. Many of them are commercial, built wit a general purpose, and others have been developed by tax administrations, of which some can be downloaded by officials. They can be classified according to two criteria: whether they are personal or corporate computing tools and whether they are free or not.

Capabilities that are required from these e-commerce research tools are basically of three types:

a) Crawler. The term is related with a spider. It indicates the function performed by a tool to explore the network following rules to find the information.

b) Scrapper. The term indicates the functionality of a tool to download and interpret the code in which a WEB page is written and which makes it accessible by browsers such as Explorer, to find data that we request, such as a phone or a price and copy them.

c) Support tools. Databases, text editors, interfaces with corporate tools.

Their general purpose is to obtain, from the webpage of a merchant under examination, which are the companies that are related to its page and for some or all of them, to extract automatically data such as domain names, relationships, phones, prices or other.

An administration may decide to train its officers in the use of personal tools. If this is the case each one of them should perform the risk analysis, cross their data with the corporate information technology. An alternative is to create a massive download tool and provide an integrated information environment in which all researchers, without the need for specialized computer skills, could perform the risk analysis.

This second option has been AEAT's strategy. We consider it a very superior approach for the following reasons. It avoids: a) the costs and the difficulty of training a wide number of auditors in relatively sophisticated information technologies, b) the disadvantage associated with the fact that data obtained for different officers could not be integrated without effort if the risk analysis is performed in isolated Pc, c) the loss of efficiency caused by the re-duplication of tasks and last but not least importantly, obtaining the information require in almost all cases a technical expertise, because it has to overcome the defenses built in the pages to avoid collapse with massive requests, to deal with the fact that data have a different formats in every page, (image, text), and many others.

Our criterion is that the necessary skills could not be imparted in a course. It is a work of professionals. Having said that, let's show the options.

4.1 Free personal computing tools for tax officers

EC-YES developed by the Swedish administration is a free tool for tax administrations connected with IOTA. It is designed to analyze websites and includes several browsers (browsers), a crawler, a database to store the data found, automatic consultations with Whois and tools to consult Domain Name System (DNS) etc., among other features.

OSINT SUITE. It is a web mining and data extraction tool developed by the Joint Research Centre. The tool extracts and downloads textual information from monitored sites, providing a method to download documents, structure their content and present it graphically to the user.

EBAY DOWNLOADER. It is a tool developed by an Austrian official. It is used to group Ebay sales by nickname.

XENON. It is a tool developed in the Netherlands by Senient and Parabots employed by a club of users, with prior payment, whose objective is to download the pages that belong to a category, e.g. hotels. The user enters the page to investigate, and performs a first exemplary case of search that interests him, for example a rural house with pool and cost of a room above a specific amount. The system then automatically repeats the process. It can be understood as a system that creates "macros" for searches similar to the one proposed as an initial example.

4.2 Estimates of activity

It is possible to compare data from existing economic activity in tax databases with the traffic available on the Internet, although for the aforementioned reasons it is not easy to make homogeneous comparisons. There is no perfect relationship between Internet traffic and sales or e-commerce sales and total sales. However, specialized pages data can be used as indicators to relate the variables of a questionable behavior with a well-known company. If the first has fewer sales with more traffic, for comparable products, it would be an indication of anomalies to explain. Google Page Rank can be used for this, offering a measure of the importance of a page on internet, or ALEXA, subsidiary of Amazon. Their data do not match because they are using different criteria. An example of a page where statistics can be obtained is www.statmyweb.com

4.3 Corporate tools

AEAT uses:
Scrapy as library, open source for download of data from different websites with programming in Python.

Scikit Learn, open source tool, programmable in Python for data analysis that allows tasks such as regression, cluster analysis, selection of models and multidimensional analysis.

Numpy. This is the package for scientific computing in Python

SciPy. It's a library in open sources for scientific computing

For the treatment of networks, this is for "Social Network Analysis", we can use **matplotlib, graphtool, igraph and networkx**.

Techniques have been developed to navigate on Internet with the crawler, download pages, (Scrapy), interpret

them and given that in some cases data are protected or have the format of images, process them, debugging them, and store them in the AEAT warehousing. It is possible to prompt the system to sign electronically the downloads to accredit judiciary its content The data downloaded are identified and crossed with the AEAT data stores, so that the inspector can use the data and perform a risk analysis without knowledge of these technologies.

Examples of information downloaded and used are:

- Data in advertisements for accommodation, prices dates telephones associated with its owner. Monthly analysis of the main hosting pages are made.
- Auction sales data.
- Data of used domains and trademarks of entrepreneurs
- Massive location phone address and e-commerce-related activities in the network.
- Quantification of the data of the restaurants activities by their activity on social networks through the number of comments and "likes" contained in their references.
- Notices, at the time of the delivery of the "income tax draft to online taxpayers, the AEAT has information obtained from the announcement of their networks levels and what income must be declared, which has resulted in a significant increase in the incomes declared by that concept.

All these data obtained with OSINT techniques complement those traditionally known by statement or requirements.

4.4 New strategies of information collection

All the owners who provide services through a platform, receive revenues that are due via transfers made by the payment processor of the platform. The platform open one account, often as non-resident, in a bank in Spain, and uses it as origin of the transfer payments to host o provider of services.

If it is known the account origin of payments for a host or provider, it is known known to all of them. Therefore, as it is the case for the control of reservations across platforms, or payments with credit cards, the administration, face a challenging environment, but it is also true that it has access to massive additional information that could be required.

5. CONSTRUCTION OF A NEW FISCAL REALITY

5.1 Introduction

Collaborative economy constitutes a new economic phenomenon that will produce a change of era, as the social networks once made it. The platforms offer four main type of services:

- *Contacts.* Their first mission is to reconcile supply and demand.
- *Contractual.* They set the conditions in which the supplier must provide the service through a contract signed by the parties.
- *Collection.* Charge the service and pays the provider, deducting their Comission.
- *Other services:* the main is to qualify (usually with stars) customers and suppliers to minimize risks for both.

Services must be differentiated because they are regulated in different ways: a) the services that *they provide*, bringing together supply and demand, are protected and b) there are services *that are provided through them*, such as transportation or rental and services. Administration may regulate them, prudently, establishing due insurance or conditions of access to their exercise.

Art 4 of the 2000 EU e-commerce directive provides that Member States shall assure that access to the activity of the information society service provider shall not to subject to prior authorization (OJ L 117, 7.5.1997, p. 15) nor to any other requirement purposes equivalent.

By contrast, underlying services (rental, transport, insurance etc.) can be regulated in accordance with the rules of these sectors, and this may include being subject to prior authorization.

Users access to platforms with three types of purposes:

- *Cooperation.* Voluntary contributions, such as those made to Wikipedia or crowdfunding platforms

- *Exchanges for non-profit reasons*, on occasions of sustainability, like when sharing the costs of a vehicle (BlaBlaCar)

- *Access to the market.* Paid transactions in which the lender intervenes in the market for profit and in which the platform can also receive a commission for their management.

We retain that there are important differences between the types of activity described generically as collaborative economy when establishing the tax regime. The first cases are exempt, in the seconds we must identify whether there is or not a business activity or profit, while the third cases assume a classic entrepreneurial activity

5.2 Estimation of the economic and fiscal impact of collaborative economy

The EU seeks to find an appropriate balance in the regulation of this market because it believes that its deployment will promote the economy due to the mobilization of idle resources and decrease unemployment by providing services not subject to commercial time rigidity and the reduction of access barriers to certain activities. It is a position of balance between those who defend the model (Katz. L, Krueger, A: 2016) and those who consider that it produces less quality work, which distorts the market, exploits workers and which will eventually lead to the need, in the future, to assist the vast majority of those who do not succeed in the initiative. Lawrence Sanders, of Harvard, explains it in *"Uber, Airbnb and consequences of the sharing economy"*.

At present, their contribution to the economy in the EU is estimated at 28 billion and it seems that, if it prospers, it could add[2] between 160-572 billion € to the European economy with an average of one thousand euros per capita, which in Spain would be 47 billion euros. According to the PwC for the Commission report, they contributes 0.2% of GDP and their existence contribute to 4% of e-commerce figures. In the case of Spain, since these will reached a volume of EUR 24,000 million in 2016, it would be 960 million euros.

In our country, the collaborative commerce is concentrated in the following sectors[3]: a) lodging, representing 31.9 percent of revenue, b) transportation 27. 3%, c) Professional services 12.7%, d) Crowdfunding 6.5%.

5.3 Estimation of collaborative economy in the lodging sector

According to Exceltur, in Spain the legal offer of accommodation places is 2.4 million of locations and 2.7 million Euro its turnover. During the year 2014, this form of accommodation was used by 15.693.912 tourists with 178,6 million overnight stays. It has been called by some "collaborative housing" and by other "hotelization of homes". A fast approach allows to estimate the income of all their owners, hosts, at 1.5 billion euros, the result of multiplying the overnight stays (Exceltur data) by the average cost (Trip Advisor data).

In what refers to the collaborative segment, the company with the highest volume of activity is Airbnb (USA). It offers in Spain 42,419 rental offers made by 11.795 different users. In Madrid accommodation was offered in 32,000 places *providing to their owners an annual average income of €5.000, were hired which meant them a total revenue of 160 million.* An anonymous survey shows that 55% of owners has an income inferior to 24,000 euros.

If we take into account that in Madrid there are 9,000,000 overnight stays for tourists, and those of Airbnb, are about 320,000, it is concluded that the collaborative market represent 5% of the total, although growing.

If we extrapolate the figures to the total number of overnight stays in Spain we conclude that they will be

[2] COM(2016) 356 fin, p.2
[3] PwC report for the EU. CFR. SWD (2016) 184 final, Brussels, 2.6,2016

about 8.93 million, of which their owners will obtain a revenue of EUR 449 million. By combining the invoicing data and the incomes declared in the surveys, we can know how much should be taxed at PIT and estimate the fees for purposes of risk estimation. The control should be performed with the software tools described above, or with physical control.

Possible strategies to improve the control in this sector are: a) collaboration with municipal authorities in cases where they have established rates or controls to promote sustainable tourism, or tourism fees and b) regulate the concept of *collection assistant*, so the platforms would withhold and pay or, otherwise, would withhold and report.

5.4 European Commission guidelines

Few countries have adopted any legal measures in this area but the growing volume of this market has caused a proliferation of scattered measures to protect operators and to eliminate unfair competition. The communication from the Commission of June 2, 2016, aimed to create a regulatory framework in the Union to enable consumers, enterprises and public authorities to participate with trust in the economy, has an impact on the problems that we noted.

CONCLUSIONS AND RECOMMENDATIONS

Tax administrations should:

a) Consider that platforms and marketplaces (such as Amazon, eBay, Airbnb...) perform an active commerce and are intermediates in the provision of *services* by electronic means (in the EU in accordance with art 9 of the Council Implementing Regulation (EU) 282-2011 9a) and that therefore they are *responsible for compliance VAT rules obligations*. (We underscore that this is valid only for services and not for delivery of physical goods).

b) Regulate information delivery via platforms and establish a mechanism for the exchange of information with platforms located in third countries outside the EU (this is without prejudice to those demanded from third countries) under the (EU) regulation 904/2010 or equivalent.

c) Consider the possibility of facilitating the use of the article 205 provisions of the Directive Council 2006/112/EC (the VAT directive) or equivalent could be studied, to demand joint liability (JSL) to intermediaries in the supply chain such as Internet platforms, specifying in the rules what is considered as fault or negligence.

d) Obtain the legal authority to order the closure of a web-shop platforms / IP address / or web account as punishment for failure to comply with the legislation of the VAT or customs legislation.

e) Consider the creation of a new obligation of cooperation with the tax administrations for platforms that operate in a jurisdiction independently of their fiscal residence and create an administrative register in which all of them should be registered. Registered platforms, "virtual stores", regardless of which had or not a permanent establishment in the national territory, would be subject to duty of identification information to the subjects who used them to carry out their transactions, the number of operations performed, amount of the agreed remuneration. A similar solution has been discussed currently in the Italian Parliament (C.3564 of 27 January 2016).

f) Improve tax and VAT rules to establish with precision when the collaborative activity of the taxpayer has become an economic business activity, through the enumeration of actions whose presence is understood by the regulatory authority as evidence of the development of an activity, such for example, setting a volume threshold for operations-rental days per year, a number of transports, deliveries of goods, etc. from which it is considered that there is economic activity.

   Examples of these initiatives have been developed in Italy where the catering activity at home is considered is considered as business for revenues of more than €5000 per year or when payments with a card are allowed, or in the Netherlands, where they have been exempted.

   In the United States, income tax deductions allowable have been regulated, for example establishing which part of the cost of the phone, of the car insurance or the garage cost are tax-deductible for whom enrolls in a platform like UBER and then offer occasional services, or when are tax-deductible insurances for a home that is only marginally rented.

g) The tax implications of these models should be announced to taxpayers to avoid the mistaken idea that collaborative economy offer greater chance of tax evasion. The tax administration of Australia (ato.gob.au), among other countries, already provide certain criteria on its web pages on when a participant in the collaborative economy would be considered as an entrepreneur or professional for tax purposes in a more comprehensive way than with the mere remission of the VAT standard.

h) Promote memorandums of understanding (MOU) with the main digital platforms in order to conclude bilateral agreements on the provision of all information available on the platform.

i) Promote exchanges of data between municipal and state administrations in this matter should be developed.

j) Keeping in mind that there are more and more Digital Wallets and means of payment (Android Pay, Google Wallet, ApplePay, PayPal); Mobile Payments (Mobile Wallets, Mobile Network Operator (MNO) Payments;) Crypto-money and virtual currency (Amazon Coins, Facebook Credits); other Crypto-Currencies (Ripple, Stellar, Bitcoin), which have been categorized as (Non-Bank/Third-party Alternative Payments), policy changes or agreements must be promoted with the Payment Service Providers (PSPs), Payment Processors (PPs) and financial institutions so that they could keep and supply identification data, account numbers and amounts paid in a country to collaborative economy providers

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MATURITY AND
PERFORMANCE OF

FISCAL MANAGEMENT-MD GEFIS:

AN EVALUATION PROPOSAL

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SYNOPSIS

The evaluation process in public administration is not simple, and despite having evolved a lot, it still needs improvements. This article presents a new methodology of evaluation focused on the fiscal area, called Maturity and Performance of Fiscal Management - MD GEFIS. This methodology considers the maturity of processes and the performance of the organization, bridging a gap in the treatment of the fiscal management in an integrated manner: corporate fiscal management and fiscal transparency; tax administration and tax litigation; and financial administration and public expenditure. Its application intends to complement the analysis of the fiscal reality and support the formulation of the organizational planning, contributing to the improvement of results

CONTENTS

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INTRODUCTION

In the past 20 years, the Brazilian public sector has experienced major changes in management. These changes included, among others, the improvement of quality standards in the provision of services, the adoption of transparency and social control mechanisms, the institutionalization of the planning process, the introduction of a culture of results, the creation of new institutional and organizational arrangements, the automation of workflows with the incorporation of new technologies and the improvement of the human talent management.

The principles of *New Public Management* (NPM[1]) were broadcast in Brazil since 1995 with the introduction of a new culture of results focused on the quality and efficiency of public services. Since then have been implemented initiatives of legal nature, such as the Constitutional Amendment 19/1998[2] which included the efficiency as a principle of governance, the Law of Fiscal Responsibility (LRF[3]), the laws of Social Organizations (OS)[4] and of the regulatory agencies[5], as new institutional forms. Innovative management tools have also been introduced as results management agreements (management contracts), government planning (multiannual) and quality programs (continuous process of improvement), associated with the strengthening of the typical state careers and the intensive use of information technology in the optimization of processes.

At the same time, the Brazilian society began to demand, more vehemently, a public service guided by the use of rational resources and more committed to the performance and the final results. To meet these demands, the government agencies, often supported by multilateral agencies, began to formulate and use public management evaluation systems in order to verify the actions effectiveness, spreading a culture of increased transparency in the use of public resources and promoting the accountability of managers and the control of the society over the governmental result.

The evaluation of management has been prioritized in the public service in general, and it is even more relevant when it comes to the fiscal areas of governments, responsible for collecting from the society the resources for the financing of public policies, ensuring their control, correct allocation and use.

Thus, the monitoring and evaluation of this area, with objective criteria, are essential to ensure the efficiency, effectiveness and transparency in revenue generation and in the control and improvement of the quality of public expenditure, in order to balance the public accounts and the demands of society.

Despite the importance of the process of monitoring and evaluation of fiscal management and the impact of this continuous assessment for the balance of public accounts, there is not yet a validated model that allows an integrated and continued analysis of its different areas and their critical processes.

In this context, the objective of this paper is to present a new methodology for the fiscal management evaluation, named “Maturity and Performance of the Fiscal Management – MD GEFIS”.

This methodology differs from the evaluation models available in the following aspects: (i) integrated vision of fiscal management; (ii) method of analysis based on the correlation between processes maturity and organizational performance; and (iii) standardization of concepts with normalization of the research tool for all areas of fiscal management.

1 The NMP management reforms were aimed at the adaptation and transfer of management expertise developed in the private sector to the public sector, which implies the reduction of the size of the administrative apparatus, increasing its efficiency and the creation of mechanisms for the accountability of political actors.

2 Chapter, article 37 of the CF included efficiency as one of the principles to be followed by all the powers of the Union, States, Federal District and municipalities, making unavoidable the focus on results and the delivery of quality services at the proper cost.

3 Complementary Act No. 101/2000 laying down finance rules aimed at responsibility and fiscal management, assuming a planned and transparent action in which risks are prevented and deviations that could affect the balance of public accounts are corrected.

4 Act Nº 9.637/1998

5 Act Nº 9.986/2000 and Act Nº 10.871/2004

It is assumed the effective fiscal results depend on a comprehensive analysis and definition of aligned strategic actions that allow effective interventions in the areas of corporate fiscal management, tax and financial administration and public expenditure management.

The motivation for the construction of the MD GEFIS is related to the difficulties encountered in the process of projects monitoring and evaluating results of the projects of modernization fiscal management of the Brazilian Federation[6]. Despite this initial approach, this methodology can easily be adjusted to other levels of government, as well as to the reality of fiscal management in other countries'.

In addition to this introduction, this article is divided into four parts. Section 1 presents the theoretical framework of evaluation of results in programs and organizations. Section 2 describes the experience of evaluation in the Brazilian public sector, with emphasis in the fiscal area and in their modernization projects. Section 3 details the guidelines, premises and objectives of MD GEFIS. Finally, the conclusion presents the main benefits and opportunities provided by the implementation of this new methodology.

1. THEORETICAL FRAMEWORK: EVALUATING PROGRAMS AND ORGANIZATIONS

a. Evaluation of results in tax programs

Fiscal programs are designed to increase revenues, reduce expenses or improve service delivery, among other results. However, in general, managers usually focus on measuring outputs or inputs (number units installed, courses offered, systems developed) rather than evaluating whether the programs achieved their objectives.

To address this shortcoming, the implementation of management by results in investment programs includes the monitoring and various complementary types of evaluation. The focus on results can be used both to set goals and for their monitoring, since programs need to know their results more and more for purposes of accountability to society, definition of budgetary allocations and guidance on prioritization of public policies.

Assessments are periodic reviews of a program, either under development or already finalized, and are used to answer specific questions related to the design, implementation and results.

During the evaluation, the monitoring phase is a continuous process that follows up on what is going on, from the collection of data on the implementation of products, by comparing the amounts achieved with the initial goals and projecting them along the estimated execution time. In agreed-upon periods, usually annual, the monitoring also verifies the progress towards the objectives.

The planning, monitoring and evaluation of programs can address issues such as:

- **Planning (diagnosis and design).** *This is the starting point for the participation and learning* - What are the main problems? Which program is more relevant and has the best chance of solving the prioritized problem? How much should cost the program? How much time does it take for its implementation?

- **Monitoring and evaluation of the processes and performance.** *Broaden the learning and generates data for course correction and accountability* – Does the program progress according to plan? Were all products implemented? Were the objectives achieved? What factors can explain possible changes in indicators? What should be done or adjusted to ensure that results are achieved in the most efficient possible way (in the shortest time and at the lowest cost)?

- **Impact assessment.** *It is the basis of learning and subsidize the economic evaluation* - in the absence of the program, what would be the situation of the beneficiaries? Impacts can be observed, but what is the return on investment?

6 Units of the Federation: 26 States and the Federal District

- **Ex post economic evaluation.** *Also generates learning, contributes to accountability, and uses the information in the evaluation of the impact (benefits) and monitoring - (costs)* - Would the program benefits outweigh its financial and economic costs? Are all the assumptions valid? What are the real costs?

b. Mechanisms for the evaluation of the results

The outcome evaluations of a program are usually based on three theoretical frameworks and their mechanisms: theory of change, general systems theory and causal relationships, and process and performance indicators.

- **Theory of change.** In essence, it is a comprehensive description of how and why a specific change is expected in a particular context. It exists to map and explain what will happen from beginning to end of a program, what are their products or interventions and how these will help to achieve the desired objectives. The theory of change begins when the long-term goals and the conditions necessary to achieve the desired outcomes are listed (with causal relationships). These elements support the definition of interventions required to achieve the results identified as preconditions for achieving the long-term goal. Its representation can occur through several graphic formats, such as the logical framework and the results framework allowing to demonstrate the causal chain that defines the program's results and the external conditions or influences.

- **General systems theory - GST and causal relations. Causal model.** The basis of GST is the systemic approach whose determinant is the need to organize the complexity of the world, manifested in several systems, allowing resolution of problems by a global analysis, rather than the analysis of specific parts. The GST places emphasis on the environment in which the organization exists, paying attention to organizational interactions, and recognizing that all of this has implications in the organizational practice. According to the GST, programs are formulated from a set of actions planned, prioritizing the systemic solutions capable of reducing or eliminating as many problems as possible. The main requirements for this systemic analysis are: (a) the correct and accurate formulation of the problem is essential, as well as the expected results and (b) the formulation and problem solution must be subordinate to a comprehensive approach.

- **Process and performance indicators.** A clearly defined causal chain offers a useful map for the definition of the indicators that will be measured, both to monitor the implementation of program products and to evaluate its results. With the direct and active participation of those involved, the indicators must meet criteria such as: *Specific*, to measure information as accurately as possible; *Measurable*, to ensure that it is possible to obtain the information; *Attributable*, to ensure that each indicator is associated with the expected results; *Realistic*, to ensure that data can obtain frequently and at a reasonable cost; *Focused* on the target audience.

c. Characteristics of the evaluation of processes maturity

Some years ago, the maturity models of the organizations processes began to be institutionalized. These models are used to map processes, seeking to evaluate and quantify their improvements. In principle, the models structure is based on the design of a development cycle of the basic processes of the value chain of the organizations. Most maturity models were built based on *the Capability Maturity Model* (CMM[7]) which adopts a structure of five levels of maturity (initial level, repeatable, defined, managed and optimizing) in the production of software.

The CMM is based on the assumption that an organization's processes have life cycles, in the form of levels or stages of development, which can be defined, measured, improved and controlled at the time. These processes can evolve from an initial stage until a final stage - mature, through continuous improvement, adapting the institutions to the constant external changes and the availability of new technological resources.

7 Developed by the Software Engineering Institute (SEI) at *Carnegie Mellon University*

Measurement makes it easier to identify areas where improvement actions are needs and are more likely to produce results. In this sense, the improvement of processes involves greater control over the results, a greater predictability in relation to the cost and performance objectives, a greater effectiveness in the scope of predefined goals, greater standardization and, consequently, a better capacity for organizational management.

d. Characteristics of the organizational performance evaluation

For some authors, the measurement of performance in the public sector has contributed to achieving multiple objectives, including the transparency of costs and results, the improvement of the quality of services provided and the motivation of the employees, being one of the most important pillars of the new Governance on the Network-state[8]. The importance of the process of evaluation of organizational performance can be characterized by the statement: *everything that is not measured is not managed*[9]. Thus, the act or action of managing an organization requires a process of evaluation of their performance.

Performance is a term subject to numerous semantic and conceptual variations, even if there are some mainstream consensus around a definition. According to a comprehensive approach, the performance can be understood as efforts in the direction of results to be achieved[10].

Measurement is an essential part of a performance management model. A measurement system should allow the generation of indicators in different dimensions of efforts and results, with different weights between them; and a note for each indicator, which requires not only to determine its value at the time of measurement, but to compare the calculated value with a target value. It is thus an aggregated and weighted measurement that allows the generation of a performance synthesis measure, a global score, which, in a certain way, include an evaluative component.

A performance evaluation model is an analytical resource with the purpose of representing the reality from the definition of a set of variables or aspects of reality that can be defined and measured in a quantitative or qualitative form, by means of indicators.

Performance models are a set of related indicators and the indicators are measurements that provide information about the performance of an object (be it the government, a policy, a program, or organization), with a view to control, communicating and improving. Indicators are essential instruments of management in monitoring and evaluation activities of organizations, their programs and policies, as they allow monitoring the achievement of the goals, identify progresses, quality improvements, correcting problems and the changing needs.

This way, it can be said that indicators have, as a minimum, two basic functions: the first is to describe through the generation of information the actual state of events and their behavior; the second is of value nature, consisting in analyzing the present information based on the previous ones in order to make improvement proposals. In general, the indicators are not simply numbers, i.e., they are attributions of value to objectives, events or situations, in accordance with the rules, which can be applied to the evaluation criteria[11].

2. EXPERIENCES OF EVALUATION IN BRAZIL

a. Evaluation of public policies

In order to meet the growing demand for transparency and improvement of public services, several government agencies at Federal, State and Municipal levels, Courts

8 Goldsmith & Eggers, 2006; Behn, 1995

9 Kaplan; Norton, 1997, p.21

10 Reference Guide for the Measurement of Performance and Manual for the creation of indicators, 2009, p.9

11 Reference Guide for the measurement of performance and Manual for the creation of indicators, GesPublica - 2010.

of Accounts and associations representing society began to formulate and use public management evaluation system in Brazil.

In the process of evaluation in the Brazilian public administration stands out as emblematic example the National Program of Management and Desbureaucratization (Gespublica[12]), which was responsible for the formulation of the Model of Excellence in Public Management (MEGP[13]).

This Model has become a reference for the evaluation and improvement of the public services quality, including in the scope of State administrations that established their own self-evaluation models. Initially, these models sought to analyze the phenomena and processes of public administration in a localized way in the internal aspects of a given program, agency, federated agency or federal government. Subsequently, with the dissemination of management by results in public administration and with greater access to information, enabled by technological advances, it was possible to make a more comprehensive and relevant analysis, establishing parameters of comparison and allowing to verify the similarities and differences. These comparative studies, despite their complexity, generate a significant amount of information and contribute to the improvement of processes.

b. Evaluation of the fiscal management

The edition of the LRF modified radically the stage of evaluation of fiscal management in the country, establishing a set of targets and indicators, to be used and disseminated in all areas of public administration, with a view to the sustainability of the fiscal balance. The standardization of concepts and indicators promoted by the LRF and the Fiscal Restructuring and Adjustment Program (PAF in Portuguese) signed between the Units of the Federation and the Federal Government is undoubtedly a great evolution that allows objective analyzes with historical data and comparisons.

However, these instruments are insufficient because they focus only on impact indicators, such as the public debt trajectory and the primary result, not including requirements that allow to objectively verify the performance of the units of the Federation in the tax and financial areas, nor correlate them with the maturity of the fiscal management processes.

Several methodologies, national and international, are also available evaluate the results of public management and fiscal management, among which are: Public Governance[15], Information Technology Governance[16] and Procurement Governance[17], developed by the Federal Audit Court (TCU); *Revenue Administration Fiscal Information Tool* (RA FIT[18]), *Tax Administration Diagnostic Assessment Tool* (TADAT)[19] and Fiscal Transparency Evaluation (FTE)[20] developed by the International Monetary Fund (IMF); and the Public Expenditure and Financial Accountability (PEFA)[21] and Debt Management Performance Assessment (DeMPA[22]), developed by the World Bank.

12 Created by Decree No. 5.378 of February 23, 2005

13 http://www.gespublica.gov.br/pasta.2014-06-02.7802240188

14 Created by Act No. 9496 on September 11, 1997, in accordance with the parameters defined in the issuance of Resolution No. 162/95, of the National Monetary Council (CMN).

15 Public Government Index (TCU - Manual and questionnaire)

16 Maturity of the Information Technology (iGovTI) evaluation methodology.

17 Government Index of acquisitions (TCU - Manual and questionnaire).

18 Tool for the evaluation of the performance of the tax administration, proposed and applied by the IMF, whose main objective is to establish baselines for the improvement of the performance of the revenue administration, based on studies and comparative evaluations.

19 Diagnostic tool that allows to evaluate, objectively and standardized, a country's tax administration system.

20 Methodology for the evaluation of the national and regional governments' fiscal transparency practices.

21 Methodology for the evaluation of public expenditure and financial accountability PEFA, proposed and implemented by a partnership of the World Bank and various international institutions whose aim is to help improve the financial systems of government.

22 Methodology for the evaluation of the performance management of the public debt, proposed and implemented by the Department of Economic and Debt Policy (PRMED) the World Bank, which aims to assess strengths and weaknesses of governmental practices in relation to the debt management.

These methodologies, however, were conceived on the basis of some concepts that limit integrated analysis of the processes and the performance of the body responsible for the fiscal management (tax and financial) of the units of the Federation. Most of these studies used benchmarks of national Governments (found in other countries, including in Latin America), whose models of organization, management and skills are very different from the Brazilian subnational governments. In addition, they focus on only one of the topics of fiscal management, analyzing processes of taxation, or finance, public debt, or transparency, for example, and checking the status of the all agencies of Government on that particular issue. Finally, the available research do not seek to study the correlation between the maturity of processes and organizational performance.

c. Evaluation of the tax programs

Since 1996 the Brazilian States produced significant advances in the definition of policies and priorities which must be observed by the fiscal management, which can be analyzed in two different modernization cycles: a first cycle in the 1996-2006[23] period and a second cycle that started in 2009[24] and is still in progress.

The analysis of the results achieved in the development of these cycles of modernization identified a common difficulty related to deficiencies in the methodology for monitoring and evaluation and the set of indicators of fiscal management.

In the first cycle, the excessive quantity and untying of the indicators with the processes of modernization were reported as negative critical factors of evaluation and their low institutionalization as a tool for the monitoring and evaluation of the results of the management. Even so, the findings of the evaluation were not used in the reorientation of activities and resources.

In the second cycle only the PAF indicators were included as a measure of impact of modernization. This lack of a performance measurement framework for fiscal management has made it difficult to monitor and evaluate the progress and results of modernization process.

In order to overcome this difficulty, the Fiscal Management Commission (COGEF), comprising the whole of the Brazilian States, has built and implemented two tools for the measurement of the progress made by projects of modernization in recent years, on two specific themes:

- Management by results (GpR), analyzes the degree of application of the model of management by results in the Secretaries allowing the identification of gaps and opportunities for[25] improvement.

- Index of Transparency and Fiscal citizenship (ITCF), measuring the ability of the websites of the fiscal administrations and portals of transparency of the units of the Federation to expose relevant information on public revenue and expenditure in a way comprehensible to the citizen[26].

23 National support program for modernizing tax of Brazilian States (PNAFE), financed by the Inter-American Development Bank (IDB), which benefited 27 Federation units.

24 Program of support for the management and integration of the tax administrations in Brazil (PROFISCO), available to the Brazilian States using a conditional credit line for investment projects (CCLIP), also funded by the IDB, and that benefits 23 States of the Federation and the Ministry of finance.

25 Management by results in public administration - instrument of self-assessment and document training. Technical cooperation-IDB/COGEF/PRODEV (BR-t1145).

26 Manual calculation of the index for transparency and citizenship Attorney - FITC. Technical cooperation-IDB/COGEF/PRODEV (BR-t1145).

3. METHODOLOGY FOR THE EVALUATION OF THE MATURITY AND THE PERFORMANCE OF THE FISCAL MANAGEMENT - MD GEFIS

a. Guidelines for the evaluation of the State fiscal management

During 2014, following a request from the National Council of Fiscal Policy (CONFAZ) and the Executive Secretary of the Ministry of Finance (SE/MF), the Inter-American Development Bank (IDB) supported the formulation of guidelines and technical recommendations for the improvement of the Brazilian fiscal management[27]. This document addressed the difficulties for the monitoring and evaluation of results of programs financed by the IDB. It was considered that the available models fiscal assessment did not cover, in an integrated way, corporate fiscal management and the different topics covered by the tax administration and financial management, in addition to having been formulated for national authorities, mainly in countries with a centralized fiscal structure. It also stressed that the information available on various databases was not complete or was following systematic concepts. Being so, it did not allow analyzing the performance and maturity of the subnational fiscal management or set parameters of comparison.

In this context, the document defined a set of expected results for the third modernization cycle of the fiscal management and proposed the formulation of a specific model of evaluation for the fiscal management of the Brazilian States.

The MD GEFIS was proposed and designed mainly to comply with this deliberation.

b. Premises and objectives of MD GEFIS

The basic premise of the proposed model for the MD GEFIS is that there is a direct relationship between the use of a set of efficient processes – which meet the requirements of best practices (*benchmarking*), and the performance of the Organization - verified through a set of reliable indicators. It is based, therefore, on the belief that interventions that seek to increase the level of maturity of processes contribute to the improvement of the performance, which can be verified by means of measurable indicators.

The second premise of the MD GEFIS is that the mapping of the correlation between the selected indicators contributes to the prioritization of actions and potentiates the benefits of performance, by pointing to those results with the greatest potential to benefit to the whole organization.

Finally, the third premise of the MD GEFIS is the efficient evaluation of fiscal management within the units of the Federation in Brazil must present an integrated view of corporate fiscal management; tax administration and tax litigation; and, the financial administration and public expenditure.

MD GEFIS's main objective is to contribute to improving the fiscal management results, especially those related to increasing transparency, increasing revenue and the efficiency of public spending.

To this end, it provides the government agencies responsible for subnational fiscal management an instrument for self-assessment of the maturity level of their critical processes and performance.

The use of the MD GEFIS seeks to also meet the following specific objectives:

- Identify opportunities for improvement in fiscal management processes, considering the best practices (*benchmarking*) of modernization in Brazil's recent initiatives, as well as the reports of international experiences.
- Support the monitoring of the evolution of the maturity of fiscal management processes and evaluation of the improvement of the performance, over time, considering the identified baseline.
- Subsidize the prioritization of modernization initiatives and guide allocation of the necessary resources for its implementation.

27 The CONFAZ Convention of December 2014 adopted the guidelines for Fiscal management improvement in the Brazilian States.

- Support design of modernization projects and, where necessary, the application for funding to national and international credit organizations.

- Expand the *accountability* based on results, providing *feedback* to the society, within the concept of fiscal transparency.

c. The structure of the MD GEFIS

The MD GEFIS considers that an efficient fiscal management comprises three axis of action, which should be evaluated in a harmonious and integrated manner, namely:

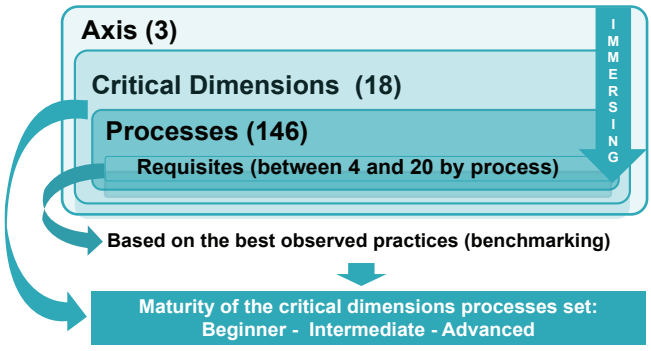
Axis I. Corporate fiscal Management and Fiscal transparency (GF)
Axis II. Tax administration and tax litigation (TA)
Axis III. Financial administration and public expenditure (AF)

The structure of measurement proposed by MD GEFIS provides three levels of analysis.

The ***first level*** of measurement verifies the maturity of critical processes of fiscal management. The ***second level*** determines the performance of fiscal management by means of indicators established for each critical dimension. The ***third level*** includes the impact assessment which will be conducted by an external entity to ensure the decoupling and exemption from the process.

To measure the maturity, every dimension was detailed in their critical processes. For each process, the requirements for the highest level of maturity were described. These requirements were selected based on national and international best practices, in a vision of the future of fiscal management.

Structure of Maturity Evaluation



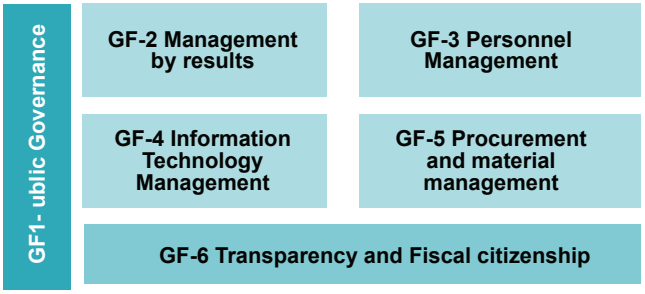
Measurement of progress in the maturity of processes is performed of means of yes or no responses, that lead to a score of 0 (lowest level of advancement) to 3 (most advanced level), in relation to best practice requirements described for process. Thus, the units of the Federation may identify what and how many requirements met and therefore analyze the level of maturity of fiscal management in each dimension.

This measurement helps in the identification of processes that need to move forward and offers a vision of the measures to be taken for the progress of maturity. It also allows identifying what conditions must be met to achieve higher levels of maturity, as well as define strategies and projects for the continuous improvement of these critical processes.

The first dimensions of each axis are transversal, i.e., they impact and determine other aspects. Each axis has also dimensions dealing with internal processes and, finally, those which have greater interaction and visibility in society, according to the images listed below.

MD-GEFIS: Axis and Dimensions

Axis 1: Corporate Fiscal Financial Management and Fiscal Transparency (GF)



GF-1 Public Governance - promotes autonomy, alignment, orientation and the monitoring of the performance of the Organization, based on a formal structure, complying with the principles of transparency, fairness, accountability and social responsibility.

GF-2 management by results - promotes a results-oriented management model based on indicators of performance, the search for increased efficiency, effectiveness *and accountability* of the management, ensuring monitoring and systematic evaluation of progress and agreed results.

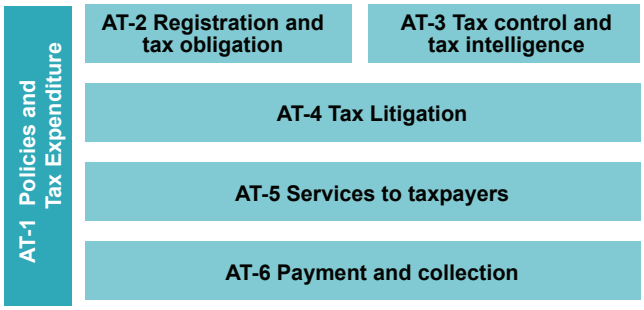
GF-3 Personnel management - stimulates the qualification of human resources and promotes the improvement of the performance of competences, in accordance with ethical standards, with an adequate allocation and distribution in the areas of the organization.

GF-4 information technology management - uses the best technologies for the production of information useful, timely and valid, with acceptable risks, adding value to the fiscal administration.

GF-5 procurement and materials management - decides and promotes actions relates to acquisitions, consumables and permanent materials aligned to the needs of the organization, seeking to contribute to saving resources and towards the achievement of the goals.

GF-6 transparency and fiscal citizenship - ensures citizens the right to transparency, providing information on the origin and the application of public resources, as well as the exercise of citizenship, through public expenditure and revenues control, for the production of public work and services of quality.

Axis II - Tax Administration and Fiscal Litigation (AT)



AT-1 policies and tax expenditure - generates information for the definition and evaluation of tax policies and tax revenues, including in tax exemptions, i.e., tax expenditure.

AT-2 registration and tax obligations – maintains updated and segmented listing by type of taxpayer and controls compliance with tax obligations.

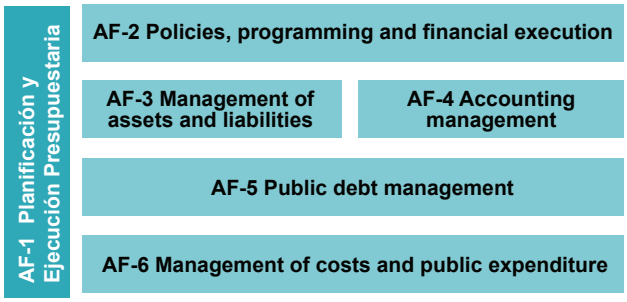
AT-3 Tax control and tax intelligence - plans and executes the tax action based on the analysis of tax risks and indications of irregularities detected through tax monitoring and tax research.

AT-4 tax litigation - judge challenges and fiscal resources of tax processes based on criteria of relevance and executes the active debt recovery according to the profile of the debtor.

AT-5 Services to the taxpayer - offers virtual and face-to-face services visible and resolving issues and prioritizes the administration-taxpayer relationship.

AT-6 Payment and collection - controls the collection and refund based on digital information and carries out the collection of released credit and in installments based on the debtor's profile.

Axis III - Financial Administration and Public Expenditure (AF)



AF - 1 Budget Planning and Execution - plans and executes the budget in an organized and predictable manner, based on realistic macroeconomic scenarios, supported on devices of control of public resources.

AF - 2 Policy, Programming and Financial Execution - defines and evaluates policies and executes financial resources with a focus on efficiency.

AF-3 Management of assets and liabilities – execute the management of assets and liabilities based on an analysis of cost-benefit and fiscal risks.

AF-4 Accounting management - produce accounting records and updated information to fulfill the purposes of control and taking of management decisions.

AF-5 Public debt management - supplements in an efficient way the information on the funding needs of the State Government, at the lowest cost in the long run, respecting the maintenance of prudent levels of risk.

AF-6 Management of costs and public expenditure - collects and analyzes the information of costs in order to improve the efficiency and quality of public spending. On the other hand, in order to measure performance, indicators were selected for each dimension, necessarily linked to the listed processes. For each dimension, on average four indicators were described, which quantitatively assess the results obtained regarding the maturity of the set of *organizational processes* (organizational performance).

With a view to standardizing detailed indicators, informing concepts, data, sources, periodicity and polarity. Some examples of indicators selected by the MD GEFIS are:

AXIS	DIMENSION	INDICATORS
I. Management of finance and Fiscal transparency (GF)	GF.2 Management by results	Index of maturity in management by results (GpR/COGEF)
	GF-6 Transparency and fiscal citizenship	Index of transparency and tax citizenship (ITCF/ COGEF)
II. Tax Administration and tax litigation	AT-3 Tax control and tax intelligence	Recovery of credit before starting litigation (audit-network): value of recovered-credit / credit notified - charged
	AT-4 Tax litigation	Participation of the recovered credit in the VAT collection: value paid in installments in 1st and 2nd instance and in the active debt / total value of VAT collection
III. Financial administration and public expenditure (AF)	AF-1 Planning and budget execution	*Income projection evaluation:* value of collected income / revenue estimated in the original budget value *Cost Performance index:* value of executed expenditure / value of expense in the original budget
	GF-6 Costs and public expenditure management	*Tax administration cost:* value of expenditure / value of collection *Evaluation of the expenses by sector:* number of sectoral programs with ex-post evaluation / number of *programs (health, education and public safety and infrastructure)*

The systemic approach used by MD GEFIS provides a verification of the relationships (cause and effect chain) between the selected indicators in each critical dimension of the fiscal management performance axes, in a way in which not only results are observed in each dimension, but also the existing causality between them.

The analysis of the direct cause-effect relationship on the behavior of the performance indicators to verify the influence of the behavior of each on the other and, in terms of planning the program or project to improve, the adoption of more effective solutions that have broad impact on their areas of operations.

c. Implementation strategies for the MD GEFIS

The methodology was defined in a participative process[28], with the involvement of technicians from the different Finance Secretariats, public attorneys and litigation agencies at the state level, with the technical groups of the CONFAZ[29] and also representatives of the Federal Government Tax agencies[30]. In addition, their stages such as the formulation of the conceptual model, the development of the matrix of indicators and processes and the implementation of the pilot scheme were validated by strategic actors at state level. In addition, the definition of the schedule for the data collection, validation and analysis will be performed in conjunction with the state staffs, as well as the frequency and commitment to permanent updating of the data.

The research will be carried out as a self-assessment, with the data collected and analyzed previously by a team composed and coordinated by officers from the Finance, Taxation, Treasury or Revenue Secretariats. The self-assessment will allow the manager to keep information about critical processes and identify the key strengths,

28 The workshops and technical meetings for the definition and improvement of critical processes involved about 100 technical specialists in the various identified dimensions.

29 Associations linked to CONFAZ: Finance Management Commission (COGEF); Council of State litigation (CCONT); State Finance Managers Group (GEFIN); National meeting of Coordinators and State Tax Administrators (ENCAT); Group of Development of Financial Server (GDFAZ); Fiscal Forum of Brazilian States (FFEB).

30 Executive Secretariat of the Ministry of Finance (SE / MF), Secretariat of National Treasure (STN), General Comptroller of national Treasury (PGFN), Federal Secretary of Revenue of Brazil (RFB), Administrative Council of Tax Resources (CARF).

weaknesses and opportunities for improvement. On the other hand, to ensure the uniformity of concepts and the process of data collection, a training stage is scheduled for the disseminators and evaluation responsible in each unit of the Federation.

To allow the segregation of functions, separating the data collection from the evaluation, the results of the research will be analyzed by an independent technical team, with a view to identifying situations subject to the verification of data and information.

Finally, to ensure the sustainability of the process, a Permanent Commission of evaluation of MD GEFIS will be created, linked to COGEF, responsible for the management of the implementation process, through the management of databases and issuing reports. This Commission will have the support of the IDB team and their consultants in the execution of their works.

Each cycle of evaluation, which will be led by the Permanent Commission of evaluation of the MD GEFIS, must incorporate a formal evaluation report. This report will present global information of the federated units, highlighting good practices of evaluation on maturity and performance of the fiscal management, without making a classification or stimulating competition between the units.

The State Secretary of Finance of Ceará (SEFAZ/CE) implemented the MD GEFIS in a pilot process. This test was intended to: (i) evaluate the validity and understanding of the concepts contained in each of the processes and requirements; (ii) identify the form of verification of evidence in the event that the answer to the request is positive; and (iii) analyze the relevance of performance indicators proposed for each dimension and identify which data is needed, with the respective sources of information.

The coordinators and technicians of SEFAZ/CE who are responsible for the areas of knowledge related to each dimension[31] participated in this occasion, with the objective of promoting discussions and reflections that took into account the greatest number of views about the process suggested in the methodology, so that the answers were reliable.

In addition to contributing to the improvement of the model, the application of the pilot scheme allowed verifying the receptivity of the SEFAZ/CE team regarding the methodology. There was consensus among the participants on the usefulness of this type of assessment to identify gaps or opportunities for improvement of work processes, as well as to support the strategic planning of the unit.

One of the benefits already observed with the application of the MD GEFIS was the immediate creation of an area of management processes for the development of a methodology for risk analysis. In addition, a project of corporate governance was initiated, which analyzed the processes with lowest level of maturity, giving priority to those that could be improved with a lower cost-benefit, and developing a plan of action involving the diverse areas of SEFAZ/CE.

31 97 technicians and managers of the SEFAZ/EC were involved.

CONCLUSIONS

This article presented the methodology for the evaluation of the Maturity and Performance of Fiscal management - MD GEFIS, that intends to subsidize the fiscal reality analysis of the various governments, as well as to support the formulation of their planning, contributing to the improvement of their results.

The methodology assumptions and objectives were detailed and their main expected benefits with their application were presented. Their structure and implementation strategies were also detailed. Finally, we described the benefits already observed in the implementation of the pilot scheme in the State of Ceará.

This methodology differs from the other instruments already available by analyzing fiscal management in an integrated way, despite the diversity of their structures and competences. It also solves the problem related to the heterogeneity of the concepts used in the description of the processes and indicators, and the lack of quantitative data to measure the performance of the agencies.

Nevertheless, the MD GEFIS is not intended to replace other methodologies described and is not exclusive in relation to them, once that their results may reveal specific aspects that should be subject to further investigation.

Finally, it is worth mentioning that, while the presented methodology was developed oriented towards the reality of the units of the Federation of Brazil, the instrument can be adapted for being used by other levels of government, or even in other countries.

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THE REGIME OF **FISCAL INCORPORATION,** ITS COLLECTION AND TAX STIMULUS IN MEXICO

José Manuel **Osorio Atondo**
Luis **Huesca Reynoso**
Jesús María Martín **Terán Gastélum**

SYNOPSIS

This work presents a study in relation to the implementation of the Fiscal Incorporation Regime in Mexico, mode of taxation instituted in the tax reform, which came into force in 2014, in analogy to the collection and tax stimulus provided in September 2016 to the Income Tax, the Value Added Tax and the Special Duty on Production and Services, the analysis showing at this date a greater increase in its stimulus than in the collection of the referenced taxes.

CONTENT

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INTRODUCCIÓN

The main recommendations made to Mexico by the Organization for the Economic Cooperation and Development (OECD in matter of tax policy in recent years underline the design of a more competitive and efficient regime in order to avoid dependency on oil revenues, as well as expanding the tax base, improve the simplification of the tax system and lower the costs of complying with tax obligations, contributing to the elimination of tax evasion and tax avoidance (OECD, 2012:14).

For this reason, the National Development Plan[1] 2012-2018 (PND), in its transversal strategy, aims at democratizing productivity through the projection of the generation of correct stimuli to integrate all the Mexicans into the formal economy, via the analysis of incomes and expenses in public policies (Presidency of the Republic).

Likewise, in the explanatory statement of the 2013 tax reform, which entered into force in 2014, the institution of the Fiscal Incorporation Regime (RIF by its acronym in Spanish), displays among its main reasons by the public administration in the period of study, a general increase of productivity, raising the economic potential, improve the well-being and reduce poverty; through the creation of the RIF, the simplification of tax obligations, the incorporation of small businesses to the formal sector in taxation and social security, replacing as well the regime of small taxpayers[2] (REPECOS) (Presidency of the Republic).

This way, this mode of taxation arises in the new Income Tax Law, being implemented in the new legal standard under study, via its publication in the Official Gazette of the Federation (DOF by its acronym in Spanish) on December 11, 2013.

So, the RIF arises in a context of social and public finance reform, which was proposed by the Federal Executive in the economic package[3] for the fiscal year 2014; that in view of the arguments expressed for its establishment, was an answer to the increase in economic productivity and sought to facilitate compliance with fiscal obligations as well, favoring the integration to the formal economy of taxable persons in Mexico (Avila, et al., 2016).

Among the main features of the tax regime under analysis is an optional regime for persons of low economic and administrative capacity (Victorio, 2014: 8), manifesting in its paragraphs 111 to 113 of the LIRS that it is aimed at individuals who only perform business activities, selling goods or providing services that do not require professional title; as long as the income of the business activity in the period immediately preceding has not exceeded the amount of two million pesos.

Also, articles of chapter II, section II of the law under study determine that subjects in this particular tax regime will calculate and pay their tax bimonthly, the final payment deadline being set on the 17th following the month of payment, i.e., on the 17th of March, May, September and January of the following tax year.

In addition, the section corresponding to the regime under study provides that for the purposes of determining the taxable base or the tax benefit, authorized deductions of revenues earned during the period to report and actually paid will be subtracted and instituted in the same legal standard; to which the bi-monthly rate established in article 111 of the Income Tax law applies to the difference.

Similarly, in order for those small businesses that were in the informal economy to be included in the income tax (ISR) determination process, the decrease in

1 Governing instrument of the national development planning which explains the policies, objectives, strategies and guidelines in economic, social and political matters in the country, designed in a comprehensive and consistent manner to guide the conduct of public, social and private policies (CEFP, 2006:39).

2 The regime of small taxpayers had its origins in the law of the income tax for the fiscal year 1998, which according to its explanatory memorandum was to incorporate the majority of sellers operating on a small scale and of whom many were in the informal sector of the economy (PRODECON, 2013:2).

3 It is the set of economic and fiscal considerations for next fiscal year that the Executive Branch makes available to the legislature for discussion and possible approval. It is basically composed of General Economic Policy Criteria, the Income Act Initiative, the Expenses Budget of the Federation draft and the miscellaneous taxes (CEFP, 2014:28)..

4 The intermediate regime was optional for individuals with business activities from the income tax law 2004-2013, provided that their income does not exceed

the applicable exempted percentage to the taxpayer according to the year is included from the first fiscal year with a stimulus of 100%, in the second year 90%, and so on during to ten years with such benefit decreasing.

In the same view, in addition to the benefits granted in relation to the Income Tax, the Value Added Tax (VAT) and the Special Duty on Production and Services (IEPS); taxes that will be addressed in detail later in this study, taxpayers who are also currently taxed in this mode have been granted administrative facilities with regard to the presentation of their accounting information, namely, that the authority has made available to the taxable person the application called "mis cuentas" (my accounts) for sending the income and expenses statements, allowing the issuance of Tax Digital Receipts by Internet (CFDI) and/or generation of the Digital Payroll (NDE), as well as for the submission of bimonthly statements, among other types of services that can be offered in the section available on the tax administration service (SAT) website.

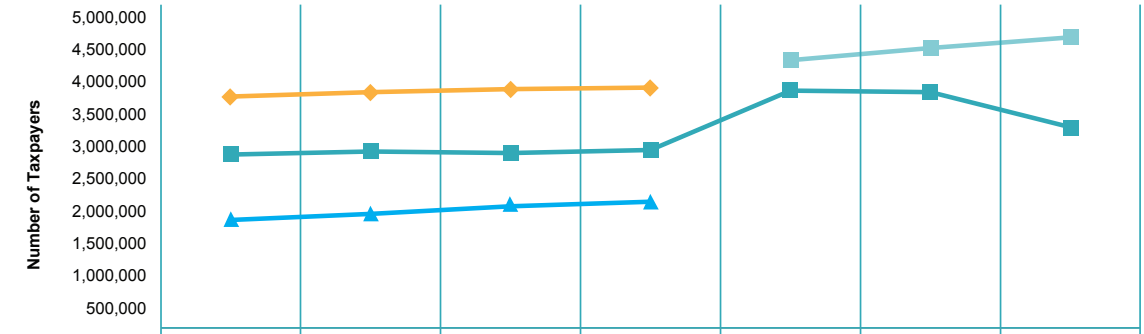
It is also necessary to point out that those taxpayers who were registered before the intermediate[4] regime (IR) and with an income in the fiscal period immediately preceding not exceeding two million pesos, might choose to pay taxes in accordance with the RIF or, alternatively, with the business[5] and professionals (RAEP) regime.

In this regard and in accordance with the data provided by the SAT, at the end of the fiscal year 2013, the sum of taxpayers registered in the three existing modalities in that period, amounted to 8,947,838. While at the end of September 2016, the total of taxpayers enrolled in the modalities of the RIF and RAEP amount to 7,943,818; representing 11.22% of registered taxpayers, two years nine months after the entry into force of the RIF.

While it is true that the new regime of taxation in analysis shows an increase in the period displayed, although it is not necessary for this research, it is interesting to analyze if its creation has contributed to reduce the informal economy indicators in Mexico.

GRAPHIC 1. MEXICO

Mexico. Behavior of the taxpayers' registry. Small and medium taxpayers, corporate and professionals and Fiscal incorporation to September 2016.



	2010	2011	2012	2013	2014	2015	2016
REPECOS	3,756,266	3,821,241	3,869,684	3,886,294			
RIF					4,309,106	4,507,015	4,664,620
INTERMEDIO	1,839,742	1,949,097	2,047,593	2,132,940			
EMPR Y PROF	2,857,123	2,898,544	2,889,678	2,928,604	3,850,198	3,829,058	3,279,198

Source: *Own elaboration with open data available on the portal of the SAT. http://www.sat.gob.mx/cifras_sat/Paginas/inicio.html*

four million pesos in a fiscal year.

5 This mode originated in tax reform that went into effect from the financial year 2004 and is still in force in the existing income tax law, by which individuals with business activities and individuals with professional activity can submit their return.

1. THE REGIME OF FISCAL INCORPORATION AND THE INCOME TAX

The Income Tax (ISR in Spanish), one of the most ancient tax of the Mexican tax system, has undergone a process of transformations in its essential tax elements since the time when has been implemented for the first time in the year 1921 (Flores, n.d).

According to its chronology, the law of July 20, 1921, also known as "Centennial Law" represents the oldest form of this tax in Mexico, by taxing the income or profits arising from the commercial and industrial activity, professionals and employees, as well as dividends.

Subsequently, the law of February 21, 1924 entered into force, organized in two main chapters, relating to salaries, wages and emoluments and profits of companies and firms. Later, the legal standard under study was modified in the law of March 18, 1925, which structured seven segments, undergoing from 1931 to 1939 essential modifications. After 17 years, the law of December 31, 1941 was published, taxing earnings, profits, income, products, revenues, shares and in general all cash flows among other concepts. Then, on December 31, 1953 a new law was established, whereas the income of the operating income of capital, labor, yields, utilities, profits, interests, products, advantage, participation, salaries, fees and any perception in cash.

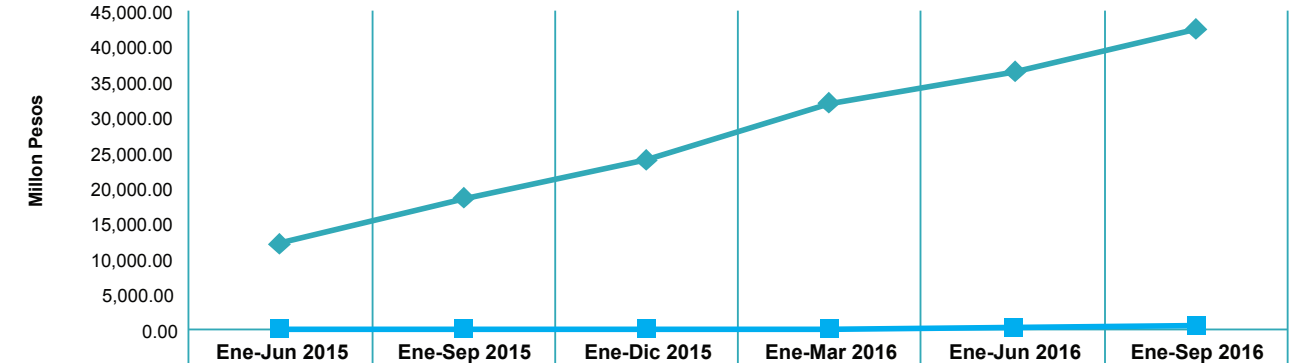
Later, comes the legal standard in analysis on December 30, 1964, by changing its structure from schedular rates system into global system (Flores, s.f.: 627-662), and additional existing legal provisions concerning the tax under study appeared in 1981, 2002 and currently the Income Tax law of 2014.

In addition to being the oldest tax of the Mexican tax system, it is the one of the most relevant in terms of its economic perception in Mexico, since both its projection and its collection represents the highest percentage in correlation to other sources of revenue for the support of public outflows by the State. For example, in the process of budgeting the fiscal year from 2012 to 2017, it has represented over 50% in correlation to the other taxes referred to in the first paragraph of the Federal Income Law (LIF in Spanish), referring to the revenue of the federal Government for these periods.

In the case that concerns us, in relation to the collection of the tax from taxpayers enrolled in the RIF mode, since its inception, and cumulatively they have only contributed to the month of September 2016 with 591.90 million pesos, collection that only represents 1.38% of the total of the resulting tax in the process of the tax determination by the universe of taxpayers in study , while the fiscal stimulus built up the same period total amount of 42,318.44 million pesos that were not collected, due to the priority given to the regulation relating to the above-mentioned levy.

GRAPHIC 2 MEXICO

Income Tax Collection and fiscal stimulus from taxpayers of RIF inSeptember 2016. Accumulated current pesos



	Ene-Jun 2015	Ene-Sep 2015	Ene-Dic 2015	Ene-Mar 2016	Ene-Jun 2016	Ene-Sep 2016
ESTÍMULO FISCAL	12,190.49	18,425.29	23,832.00	31,846.00	36,211.60	42,318.44
RECAUDACIÓN	7.78	12.19	16.57	119.07	303.21	591.90

Source: *Own elaboration with open data available on the SAT portal. http://www.sat.gob.mx/cifras_sat/Paginas/inicio.html*

It should be noted that figures obtained to the periods mentioned by the Government agency are detached from the 10% tax contribution obtained in the Income Tax assessment process, according to the legislation, which must be improved in the next fiscal years as the tax stimulus decrease for those taxpayers who are registered in the tax under study.

2. THE REGIME OF FISCAL INCORPORATION AND THE VALUE ADDED TAX

The Law on Value Added Tax (LIVA in Spanish), was published in the DOF on December 29, 1979, to enter into force on 1 January 1980; this legal standard has undergone several changes since its establishment, in its essential elements such as the object, the subject, the base and the applicable fee. Regarding its general rules, this levy is applicable to individuals and companies that carry out activities of sales or purchase of goods, provision of independent services, the granting of the use or temporary benefits from goods and importation of goods or services; applying the rate of 16% on the value of the abovementioned goods or services, specifying that some products and services are taxed at a rate of 0% or are exempt.

The VAT is the second most important tax in tax revenue of the Mexican State, and shows an increase in its budgeting and collection for each fiscal year; in such a way that in the past eight years it had an average projection above 35% in correlation to the other federal contributions according to the LIF study conducted from 2010 to 2017.

Regarding this tax in correlation to the RIF, in article 5-E of the LIVA describes that for taxpayers who exercise the option to pay under RIF and during the period in which they remain in this regime, instead of monthly filing the referenced tax, they must do it bimonthly, for the periods from January and February, March and April, May and June, July and August, September and October and November and December, making the corresponding payment at the latest on the 17th of the month following the applicable payment period, which shall be deemed as final payment; characteristic of the administrative obligations in terms of income tax. (LIVA, 2016).

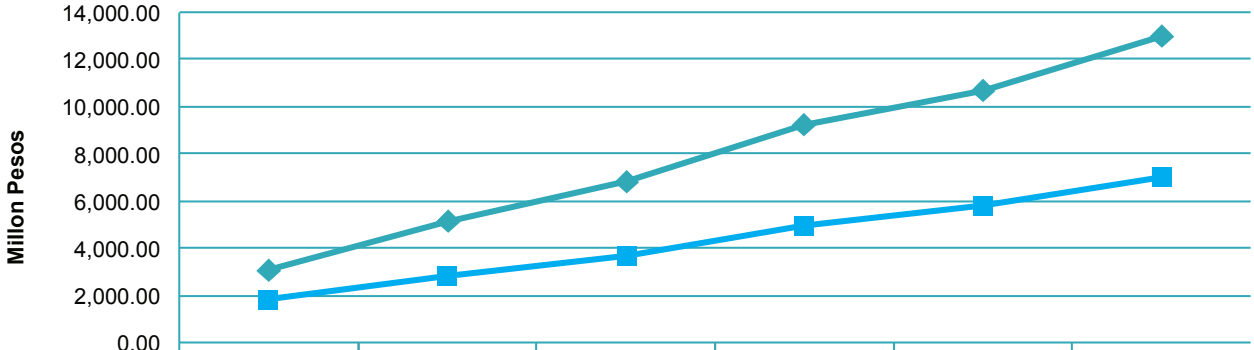
In the DOF of December 26, 2013, the Federal Executive published a decree in which a number of tax benefits and measures of administrative simplification for taxpayers who perform operations with the public in general were manifested for the fiscal year 2014, exclusively applying for VAT to taxpayers belonging to RIF, a stimulus of 100% of this tax that they had to pay for the sale of goods, provision of independent services or granting the temporary use or benefit of property; being creditable against the one they must pay for the above activities.

They may choose to apply this benefit as long as the tax under study is not transferred to the purchaser of the goods, independent services or temporary user of the movable goods, and if the tax that has been transferred to them is not credited.

Regarding the stimulus and VAT collection corresponding to the taxpayers registered with RIF, according to figures provided by SAT, at the end of the month of September 2016, from its creation and cumulatively, 6,987.90 billion pesos have been collected, a sum that represents 34.96% of the total tax that could potentially have been collected in the regime under study; and due to the amount of the stimulus granted for the period of reference, totaling 12,998.56 million pesos.

GRAPHIC 3 MEXICO

VAT Collection and fiscal stimulus granted to RIF taxpayers to September 2016. Accumulated current pesos.



	Ene-Jun 2015	Ene-Sep 2015	Ene-Dic 2015	Ene-Mar 2016	Ene-Jun 2016	Ene-Sep 2016
Estímulo fiscal	3,062.71	5,132.53	6,826.00	9,190.00	10,678.40	12,998.56
Recaudación	1,837.60	2,851.48	3,692.81	4,964.31	5,833.70	6,987.90

Source: *Own elaboration with open data available on the SAT website. http://www.sat.gob.mx/cifras_sat/Paginas/inicio.html*

3. THE REGIME OF FISCAL INCORPORATION AND THE SPECIAL DUTY ON PRODUCTION AND SERVICES

The law on the Special Duty on Production and Services (LIEPS in Spanish), was published in DOF on December 30, 1980, establishing in its general provisions the obligation for all individuals and companies to pay such financial provision for the sale of goods or provision of services, emphasizing among the first; drinks of alcoholic content and beer, denatured alcohol, combustible, tobaccos, automotive and, among its latest reforms energy drinks and non-core foods stand out, among others, applying the referred tax at the corresponding rate under the legal standard under study.

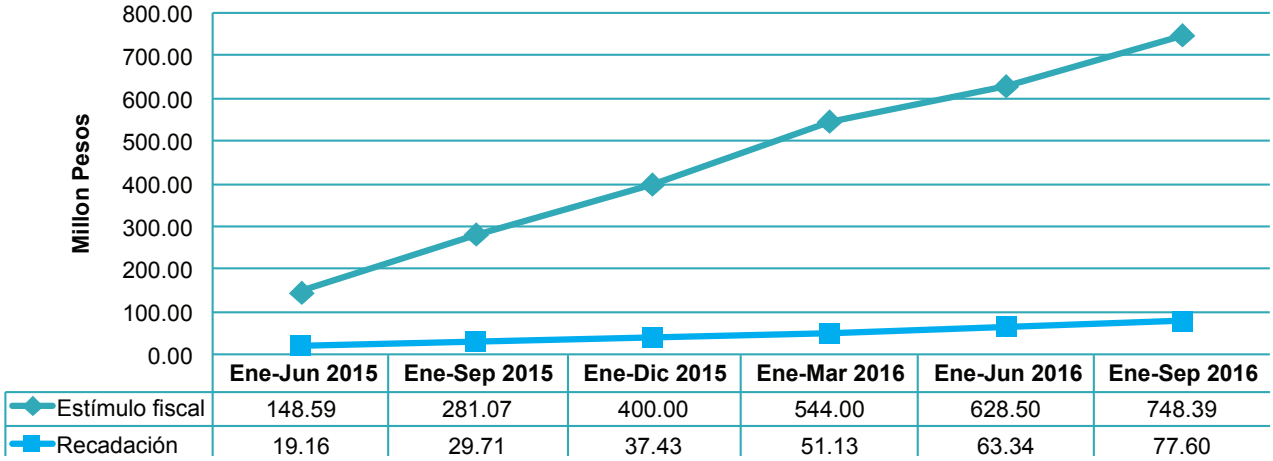
In the same way, section 5°-D of LIEPS establishes that those taxpayers who choose to pay taxes under the RIF regime and during the period in which they remain in this mode, rather than having to determine the standard assessment on a monthly basis, must be calculated bimonthly, per covered periods in January and February, March and April May and June, July and August, September and October, and November and December of each fiscal year, paying the taxes no later than the 17th day of the month following the payment period, which shall be deemed as final payment, process similar to the one of the Income Tax and VAT.

In addition, the December 26, 2013 Decree in its transitory article seven, also grants a stimulus of 100% of IEPS by the Federal State, for the 2014 fiscal year to the RIF taxpayers who perform operations with the public in general, for the sale or provision of services in accordance with the aforementioned Act, as long as the levy is not transferred to the purchaser.

In regard to RIF and the behavior of the IEPS stimulus and collection, in view of the numbers displayed by the SAT at the end of September 2016, the accumulated collection since the institution of the mode of taxation in reference and the tax study, shows an amount of 77.60 million pesos, which represents 9.39% of the total tax calculated from RIF taxpayers, since the stimulus given to the above date, represents a total of 748.39 million pesos.

GRAPHIC 4 MEXICO

IEPS collection and tax stimulus on RIF taxpayers to September 2016.
Accumulated current pesos



	Ene-Jun 2015	Ene-Sep 2015	Ene-Dic 2015	Ene-Mar 2016	Ene-Jun 2016	Ene-Sep 2016
Estímulo fiscal	148.59	281.07	400.00	544.00	628.50	748.39
Recadación	19.16	29.71	37.43	51.13	63.34	77.60

Source: *Own elaboration with open data available on the SAT website. http://www.sat.gob.mx/cifras_sat/Paginas/inicio.html*

CONCLUSIONS

The explanatory statement justifying the implementation of RIF was mainly to promote the insertion of small enterprises into the formal economy and increase their productivity and economic potential; However, according to the study, it becomes necessary to establish some measuring instrument of the regime and its incidence on the informal economy, since according to the figures described in the analysis, while it is true that the number of taxpayers registered in this tax regime has increased, we also notice a decrease in the regime of business and professionals activities; this suggests possible transfers between regimes or suspension of activities and new registry of the same business to the Federal taxpayers' registry, given that the sum of taxpayers at the end of 2013 in the three existing modalities were superior to the figures at the close of September 2016.

Undoubtedly, the mode of taxation instituted has shown a series of benefits in respect of administrative facilities for compliance with the tax obligations of taxpayers who have opted to pay taxes in accordance with RIF; as well as the fiscal stimulus in the three contributions expressed in the analysis.

Regarding the accumulated collection of the Income Tax to September 2016, it shows an increase; however, the increase in the exemption is becoming steadily higher, possible situation to the incorporation of new taxpayers to the mode, who benefit from a 100% of fiscal stimulus in their first fiscal year of operations; the situation of collection for the State should improve in the subsequent years, while the benefit granted to the taxpayers now formally identified will go decreasing.

After two years and nine months covered by the study since the creation of RIF, we are wondering if this mode will fulfill its cycle of ten fiscal years of stimulus and is on a path to contribute 100% to the income tax (ISR) of reference, since the closing of each government period normally show substantial changes in the legal standards regarding the modalities of this tax.

With regards to VAT and IEPS, they also show an increase in the accumulated exemption granted to the month of September 2016, however, in percentage terms, the income collected by the State for these levies is superior in relation to the Income Tax.

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ENFORCED COLLECTION:

DIAGNOSIS AND PROPOSALS FOR IMPROVEMENT

Working Group on Enforced Collection. General Tax Directorate of the Public Revenue Federal Administration of the Argentine Republic

SYNOPSIS

This work is the product of an interdisciplinary team created to promote solutions that could quickly and substantially improve the enforced collection, from an approach based on risk management.

To that end, lines of action designed to enhance the use of information were developed, to direct efforts towards the mitigation of the most relevant risks through the implementation of a matrix, and to promote operational improvements strengthening the enforced collection management and also the tax administration in general

CONTENIDO

AUTHORS

This paper was prepared by a team from the Tax General Directorate of the Public Revenue Federal Administration of the Argentine Republic. The team was composed by: ***Nestor del Cuadro***, Public Accountant, Director; ***Sergio Flosi***, Public Accountant, Director; ***Jorge Rodriguez***, Public Accountant, Director; ***Nancy Alvarez***, Director; ***Carlos Rubinstein***, Attorney, Technical advisor; ***Marcelo Maidana***, Lawyer, consultant; ***Adrian Salido***, Public Accountant, Head of Agency; ***Maria Victoria Fernandez***, lawyer, Head of judicial collections section; ***Maria Eugenia Fanelli***, lawyer, Head of judicial collections section; ***Miguel Moreno***, lawyer, Head of Judicial collection and Summons Division; ***John Salvucci***, accountant, Head of agency; ***Pablo De Brito***, lawyer, Treasury Representative, ***Mauricio Britapaja***, attorney, Head of the Judicial Collection Section; ***Diego Rigali***, lawyer, representative of the Treasury.

INTRODUCTION

To encourage the participation of all the staff levels and all areas for generating and evaluating proposals aimed at regulatory, procedural, or systemic changes, in order to improve the enforced collection, increase the tax recovery, a working group composed of three Regional Directorates has been appointed, responsible for a comprehensive diagnosis in matters of the tax recovery procedures, and the tracking, registration and control systems designed to facilitate their implementation.

Participating areas

The Working Group on enforced collection has been formed by officers who have experience in leadership roles as well as with those performing advice and control tasks, in order to ensure a global vision of the problem under study. In addition, efforts have been made to involve agents from various operational branches, to evaluate the compatibility of the solutions proposed with the reality of each unit.

Definition of the scope - Topics

In order to enhance the use of the available information and generate new tools to strengthen the procedure, an analysis was performed according to an agenda predefined and structured in two aspects:

a. Tax executions

Assess and propose adjustments in the management system (SIRAEF) considering aspects such as electronic file and digital information exchange, improvements in the functionality and management in line with the control systems.

Strengthening the institutional position in the use of Electronic Fiscal Domicile for notifications made within the framework of Art.92 procedure.

Application of risk factors or matrices in management and analysis of the portfolio, its segmentation and possibilities of recovery.

Application of probabilistic analysis and risk data for the selection of precautionary measures with higher expectation of success

b. Control of the process– Agency Boards

Analysis and definition of a system that integrates online data management, allows the permanent monitoring of the selected indicators and the correction of deviations.

Definition of comparative statistical reports standardized with different degrees of openness or breakdown according to the level of the requesting user.

The drafted proposals were exchanged by email between the members of the working group.

1. ANALYSIS OF THE CURRENT SITUATION

The conclusions of the diagnosis were issued from the data collection and analysis carried out by the Working Group and operational areas that drafted the proposals, determined the identification of the main problems and needs, as described below:

High number of procedures in process

- The volume of debt vouchers assigned by agent and under the control of every headquarters hinders the impulse, monitoring and adequate control of the portfolios. The tax executions start in massive form. There is no priority given by relevance (amount of pending debt, types of taxpayers, segments) nor origin (control, automatic determination, criminal complaint, joint liability, etc.), or the adequacy of the resources assigned to the task.

- The oversizing of the judicial portfolio causes to work on the “new” portfolio with massive tools (SOJ), postponing the judicial collection seniority. Here the elapsed time is inversely proportional to the possibility of recovery. Controls are carried out manually on portfolios of high-volume, not exploiting sufficiently the information available.

Lack of exploitation of information at different levels

- The methodology of using the information in the process of judicial collection conspires against the establishment of adequate recovery strategies and the selection of the most effective measures. The process is based on systems that absorb data but provide little usable information to effectively assist the recovery of the tax debt. The little use of other measures such as liens on personal property (approx. 1%), registered movable goods (approx. 3%), real estate (approx. 3%) or accounts receivable (approx. 2%) reflects the scarce existing assets information management (data to 31/07/2016 - annex I Genesis II).

- The dispersion of the data management on different computer systems (SIRAEF, SOJ, tax accounts system, EFISCO, my facilities, etc.) and the scarce communication inter-areas, contribute to the partitioning of the task and the waste of relevant information collected in the previous stages of the debt management. The SIRAEF system is not or almost not linked with other systems of AFIP. This “isolation” causes to use resources on manual loading of existing data from other systems (payments are loaded manually to the SIRAEF system from the existing tax accounts system); or prevent carrying out controls of payments through consultations trial by trial in the various systems (payment in my facilities plans control) to determine if they are outdated or for controlling debt cancellation before taking precautionary measures in EFISCO.

Lack of uniformity in the management of the debt throughout the Agency

- Currently, the management of the tax recovery process is led by the performance of the officers carrying forward these procedures, in the supervision and monitoring of the judicial collection section Head and the Agency Head, and in the definitions and controls of the Planning and Judicial Control Directorate. The actions of the actors in the process are executed according to guidelines established by internal and external normative, without having a strategy of differentiated collection for the main debtors and without a centrally defined plan coordinated in a uniform manner for all dependencies. There is no defined strategies for the different segments of judgments. The enforced collection is carried out in the same way for a great evader and a small taxpayer with financial problems, for a relevant debt that for a debt of amount medium or low, for a debtor with cash than for a debtor who does not register goods, for a new debtor and for a debtor listed as uncollectible.

- In the current methodology the success of the collection rests in blocking banks accounts through the SOJ and the massive use of the general inhibition of goods. The order of priorities in the seizure is established by the Disp. 276/08 (AFIP) and should apply only to those taxpayers who have banks accounts and significant funds that can be seized. For more than half of the debtors, the bank sequestration results are negative (50.13 percent of the cases have negative response from banks - data to 31/07 country level). It is not sufficient to request a precautionary measures, it has to be an effective one.

- The collection agents’ profiles are essentially oriented to procedural mechanics at the expense of aspects of capacity to exploit the economic and financial information of the taxpayer.

- The allocation of judicial cases for tax debt causes that a same taxpayer has several lawsuits initiated by different tax agents, which are managed separately, hampering the implementation of a common strategy.

- Work instructions and controls the different levels are basically oriented to the procedural aspects (the antiquity of pending trials appears permanently in various stages or the amount of

judgments without precautionary measures), without sufficient assessment of the efficiency in the fulfilment of the objectives.

Inadequacies of information systems

- Insufficient automation in the process of transferring the seized funds.
- Lack of communication technology for the procedure to seize receivables accounts from third parties.
- Lack of automation of processes of locking of precautionary measures (real estate foreclosures, embargoes on vehicles, new inscriptions of embargoed motor vehicles).
- Lack of suitability of the information generated by SIRAEF GENESIS II.
- Use of a system which is not approved for the monitoring and control of a process related to the procedure of tax executions. Use of non-certified systems.
- Lack of computerization for the tracking and control tasks. Use of manual tools.
- Lack of control of important stages of the process by systemic opposition.
- Weakness of control boards. Insufficient exposure of management information.
- Inadequate controls and alerts that allow the timely correction of significant deviations.
- Lack of automation in the generation of writings, orders and administrative notes
- Difficulty of storing the administrative folders.

2. PROPOSALS FOR IMPROVEMENTS

The various improvement proposals have been classified into two groups.

STRENGHTS	WEAKNESSES
- Large amount of information in databases. - Internal capacity for the development of solutions.	- Large number of procedures. - Lack of connection between the different systems.
OPPORTUNITIES	**THREATS**
- Ability to exploit available information. - Law 27.260 of Tax Adjustment.	- Taxpayers' strategies of insolvency. - Difficulties of coordination with the judiciary power.

The first chapter present those that relate to the exploitation of information, on understanding this main opportunity for improving the process. Within these activities of exploitation of information, some are classified as "immediate measure", on the grounds that they would have a quick impact on the improvement of the collection and could favorably impact the regime established by law 27.260.

In the second chapter, proposals for improvements on various operational aspects are proposed.

EXPLOITATION OF INFORMATION

Proposal 1

It is considered necessary to amend the debt management in the judicial recovery I through the exploitation of the information available to the agency in order to obtain a rapid impact on the collection levels, generate a strong perception of risk and optimize the allocation of human and material resources.

A timely action that recover the credit and/or avoid disempowering is necessary to affect the fiscal behavior.

Agents must find online the payment information and property details of the debtors.

The delinquent who has tax debt in judicial process of is not affected if assets, banking credentials, credits from third parties, etc.… are not timely detected, and could be locked with precautionary measures in order to recover the tax debt.

Information crosses to request

a. **Immediate measure:** it is important to have this information as soon as possible to impact quickly in the recovery process.

First crossing:
Finding information that allows identifying decisions about taxpayers with cash on which a general embargo of funds and securities through the banking SOJ should proceed immediately. The seizure will be integrated as follows:

Debt vouchers filed since the year 2013 onwards (current trials), pending related to taxpayers with relevant banking accreditation during the last month, in accounts where the taxpayer is registered as a sole holder or co-holder.

The list should be displayed with the following fields:
- Dependency
- Sentence number
- Year
- Record
- Court
- Document number (CUIT)
- Starting date
- Amount claimed
- Fiscal Agent
- Stage
- Sub stage
- Stage date

Second crossing:
Finding information that allows identifying accounts related to customers of executed borrowers, which should operate immediately locking liens on accounts receivable of the debtors under ongoing tax recovery execution. The links will be formed as follows:

Debt vouchers filed since 2013 onwards (current trials), pending referrals taxpayers without relevant bank accreditations, which recorded any of these indicators in the last year:
- With e-invoicing
- With withholding (in the last year)
- With data in Citi purchases

The listing should be displayed with the following fields:
- Dependency
- Sentence number
- Year
- Record
- Court
- Document number (CUIT)
- Starting date
- Amount demanded
- Tax Agent
- Stage
- Sub stage
- Stage date
- Identification of the indicators detected (FE, RS or CC)

b. **Middle term procedure**

Third crossing:
Information that allows identifying goods on which precautionary measures can be taken, with immediate effectiveness. The links will be formed in the following way:

Debt vouchers filed since 2013 onwards (current trials), pending with registrable goods reported last year (properties, vehicles, boats, aircraft and agricultural machinery).

The listing should display the following fields:
- Dependency
- Sentence number
- Year
- Record
- Court

- Document number (CUIT)
- Starting date
- Amount respondent
- Tax Agent
- Stage
- Sub stage
- Stage date
- Individualization of the registrable goods detected: Properties, (only the recorded high-type procedure) automotive, aircraft, boats, agricultural machinery.

Proposal 2

SCORING – RISK MATRIX - SEGMENTATION OF TAXPAYERS

A risk matrix will be established to provide guidelines for action to manage the debt collection in a uniform and efficient way, to assess the feasibility of the collection in the shortest time, with the allocated volume of processes and resources. Accordingly, and with the information available in the organization, parameterized in the described crossing, a **SCORING** is obtained that represents the likelihood of collection from taxpayers with legal debt, to then decide the actions to be implemented.

RANK I: High probability of recovery. Integrate those taxpayers who register *relevant banking credentials*.

RANK II: High probability of recovery. Integrated by those taxpayers who do not register relevant banking credentials and register *accounts receivables from third party customers*.

RANK III: Average probability of collection: Integrated by those taxpayers who do not register relevant banking credentials, nor register accounts receivables on third party customers, but *recordable goods* are detected.

RANK IV: Average probability of collection. Composed of those taxpayers that not registering relevant banking credentials, nor register accounts receivables on third party customers, not be detected registrable goods but display *activity rates* (Citi sales, payroll, relevant consumption, etc.).

RANK V: Low probability of collection. Integrated by those taxpayers that are detected not registrable goods and not be displayed activity rates.

To determine the portfolio impact level, a segmentation is established by amounts of taxpayer debt:

SEGMENT I: Integrated by the 50 taxpayers with the highest total debt.

SEGMENT II: Comprising the 25% of taxpayers with highest debt, or first quartile of the tax debtors' population, after segregating segment 1.

SEGMENT III: Comprising of the second quartile of taxpayers with most debt of the debtors' population after segregating segment 1

SEGMENT IV: Comprising the third quartile of the debtors' population after segregating segment 1

SEGMENT V: Comprising the fourth quartile of the debtors' population after segregating segment 1

OPERATIONAL IMPROVEMENTS

Proposal 1

IMPLEMENTATION OF SOJ FOR ACCOUNTS RECEIVABLES

Situation detected

The embargo procedure on accounts receivable is carried out on paper.

Problems / needs

The proposal for implementation of the system SOJ-T comes to solve three current problems mainly to highlight:

a. The manual task to obtain information on tax debtors one by one in order to proceed to the seizure.

b. Issuance, registration, monitoring, etc. of the embargo procedure also in manual form.

c. Insufficient number of precautionary measures at national level (less than 7%), in relation to their importance. This importance is based, according to the experience, in addition to a further possibility of transferring the withheld funds, mainly in the indirect commercial effect leading to the debtor to try to regularize his situation with the Treasury.

Actions

Implement an integrated system for management, monitoring and control of embargoes on accounts receivable, since this is an important precautionary measure to bind the delinquent taxpayers, within the framework of implementing the tax judicial procedure initiated by the Federal Administration.

Obtain systemic information concerning customers of delinquent taxpayers, for increasing the precautionary measures aimed at the recovery of the tax credit, both in quantity and in quality. Optimize the enforced collection and the notion of “subjective risk” in the debtor.

Incorporation of the operation as SOJ, resulting in a better and more effective control of the procedures.

To meet the goal of increasing the availability of information, generate an increase in the measures, improving the control and monitoring of the actions, the SOJ-T system will use information about the delinquent taxpayers and their clients, which is held by the Agency in different databases, and in addition, in the interaction with the different users it will manage and systematize diverse data.

Based on data from the tax delinquency in the (SIRAEF) base, a systemic query is performed with E-fisco of certain parameters validated previously, allowing the Tax Agent to have the information necessary to decide the generation of an embargo on receivables accounts from third parties.

In case he decides to proceed to the embargo, he can select the third party to embargo, the Agency where the party is registered, the note of indictment to the corresponding unit, the amount that prompts the measure and printing of the procedures (paper support) properly prepared for signature, and he can also request the officials needed for collaboration and delivery.

As the procedure is implemented, it will be incorporated the new tracking system, as well as the eventual response (positive or negative).

All the procedures or records that may be necessary will be generated by the system, to indicate the third party to proceed, from the withholding and information up to the transfer where appropriate.

On the other hand, it will generate also the procedures that must eventually be subject to objections.

The system is self-limitative, so it may not exceed the nominal amount set forth in the SIRAEF system, to avoid any damages to the tax debtor .

From the various reports that the system generate, it makes possible the control and monitoring of the measures (e.g. update on the process, transfer of funds, judgments regularized after the date of the embargo, etc.).

Benefits

The operational area has tested the system in different scenarios, and infers that it gives compliance to the requirements and objectives, understanding that its implementation will generate an increase in this type of embargo, initially precautionary, reliable control over the assets embargoed, an effective impact on taxpayers debtors and an increase (mainly via payment, acknowledgement, etc.) of the tax debt recovered.

Proposal 2

TRANSFER OF SEIZED FUNDS

Situation detected

After verifying the existence of funds withheld by the Bank, the agent verifies: a) if the taxpayer has payments related to debt vouchers b) if he submitted a payment plan. Failing that, an accompanying screen is written “Banks response” in which the sum seized and withheld is written, the intervening court order is requested to transfer the funds withheld (as long as the judgement

has a decision), since this is the appropriate stage of the proceedings to order the funds transfer.

Once the order provided, the funds are transferred using the option "transfer of funds" in the SOJ system. Such transaction becomes known to the Court together with the date on which the funds were transferred and the procedure number under which it was done, accompanying the corresponding records.

Now, the transfer order made impacts in a judicial account collecting the tax on behalf of the respective orders; that is, that even though the transfer was performed, the withheld sums have entered effectively to the Treasury. At the same time, the agency ignores the account number until the Argentine National Bank informs the intervening Court, in a written way.

On the other hand, the acting tax representative must practice a liquidation of the debt in which he calculates accessories and indicates which taxes and periods will come to affect the withheld funds. The demanded party is informed of the liquidation. Past the procedural term, unless the respondent has opposed repair to the emerging settlement sum, the court is requested to consent to it. Before this new presentation the Court issues warrant a provided that: a) it is considered approved b) calls for clarification, c) ordered a new notification (if the Court deems it appropriate).

Once the information is obtained from the Argentine National Bank and the liquidation is confirmed, the Court is requested to order the transfer of funds to the Bank (so far deposited in a judicial account), to the tax account. Finally the Collection Section from each agency must perform a manual adjustment in affecting the funds for each of the taxes and periods, according to the consensual settlement.

Problems / needs

The procedure of transfer of embargoed funds is extremely cumbersome, slow and hinders the rapid entry of funds into the coffers of the Treasury. The Argentine National Bank is slow in providing the information requested by the courts.

Actions

Computerize transfers via the system SOJ, directing them in two respects:

1. In the submission of information by the Bank to the Court (referring to the number of judicial depositary account of withheld funds), in way of radically streamline the processing time by having it in an automatic way.

2. Once such information is observed in the system, the option of transferring from the judicial account to the tax account of the respective taxpayer the seized CAPITAL should be available; affecting claimed tax, concept, Sub-concept and Fiscal period (starting from the most ancient debt, i.e. as if the taxpayer made a payment by Bank window or VEP).

It is necessary to indicate such operation would take place mode prior to practice the judicial liquidation, since there is a sentence and only transferring the amounts corresponding to the CAPITAL would be affecting the right of the taxpayer, in terms of taking knowledge and/ or do not allow the liquidation of accessories (which should be liquidated and notified to the respondent). Notwithstanding this last aspect, the transfer of accessories once such settlement is confirmed would be more agile, thanks to the computerization specified in paragraph 1.

Benefits

Simplify the steps for the transfer of embargoed funds. Speed times for entering the embargoed funds to the accounts of the Agency.

PROPOSAL 3

IMPLEMENTATION OF A REAL ESTATE SOJ

Situation detected

The process of real estate embargoes is carried out on paper. The processing of measures to property records is cumbersome and introduces delays.

Problems / needs
The process needs to be automatized in order to ensure greater efficiency in the result.

Actions
Coordinate with the Property Registries of each province the implementation of a computer system by which the judicially approved measure can be transmitted to the respective registry, via computer through the "SOJ properties system". In addition, the same computer system should issue a report documenting the precautionary measures or the General Embargo on goods for its transmission or presentation to the judicial record.

Benefits
Improve the tax claims recovery expectation. Improve the management of the resources of the Agency.

PROPOSAL 4

IMPLEMENTATION OF AN AUTOMOTIVE SOJ

Situation detected
The processing of automotive embargoes is carried out on paper. The processing of cases to automotive property records is cumbersome and delays the procedures.

Problems / needs
The process must be automated in order to ensure greater efficiency in the measurement result.

Actions
Coordinate with the National Directorate of Automotive Properties Registries the possibility of processing by computer transmission, through the system of judicial offices (once removed the intervening Court Office) the diligence of the precautionary measure. Similarly, that the receiving register by the same computer system submit a report acknowledging the precautionary measures for its transmission or presentation to the judicial record.

The operation must be coordinated with the help of DNRPA, because the measure will occur directly in the registry of each automotive domain.

Benefits
Improve the expectations of the tax debt recovery. Improve the management of the resources of the Agency.

PROPOSAL 5

RE-REGISTRATION OF THE AUTOMOTIVE SOJ

Situation detected
As already established in the General Instruction Nº 5/13 (DI PLCJ), the new measure must be taken through paper, until the re-engineering of the system is agreed and developed.

The system of judicial offices of annotation of precautionary measures by electronic-systemic office originally is done without any problem. But the reenrollment prior to its expiration operates in the following way:

- The general embargo of funds and securities, aimed at the BCRA, allows its lifting and lock without any inconvenience by electronic system.

- Once lifted, the general embargo of goods in the automotive property registration, cannot be reenrolled by electronic means.

Problems / needs
The procedure needs to be automatized in order to ensure greater efficiency in the result.

Actions
Perform a modification to automotive SOJ system, allowing the reregistration of the measure of General inhibition of goods via computer. The record should also forward a systemic report in order document that situation in the record.

Reactivate the negotiation with the national registry of the automotive property to find a computerized solution. Another alternative that is proposed (until the above-mentioned change occurs), is to be allowed sending the deed, signed by the judge involved, which is on paper, via a specific email assigned to the officer of the automotive national property registration (for its new

registration). This email will be sent from addresses validated by the AFIP, either by the attorneys responsible for fiscal executions, the headquarters of collections, of the Directorate of planning and Judicial Control, or addresses that are agreed upon. At the same time, the registry will respond similarly once registered (this also could be used to all the records of ownership of movable and immovable properties).

Benefits

Optimizing the precautionary measures and sustain their validity, to maximize the tax recovery. Avoid the jurisdictional and administrative expenditure with the consequent saving of time. Avoid the unnecessary expense of inputs.

PROPOSAL 6

AUTOMATION OF TEMPORARY UNCOLLECTIBLE ORDERS

Situation detected

Currently the management of disclaimers by temporary uncollectible requires a large amount of manual queries to bases, screen printing, preparation of orders and attached documentation. At the same time this task depends on to the actions of each Tax Agent and is relegated by others collection actions of higher importance.

Problems / needs

Large number of judgments in terms of uncollectible, which continue to form part of the judiciary with a low degree of filtering.

Lack of interconnection of data from different systems that are part of the process. Dispersion of the data management on different computer systems, for example, SIRAEF, SOJ, tax accounts, EFISCO, My Facilities, etc... This leads to a situation where the procedures must often be constructed by consulting one by one to the different systems without automatic interconnection of data.

In conclusion, to carry out an analysis of the information required for the order of release by temporary uncollectible debt is contained in different databases of the agency, which can be crossed in a systemic way to produce the same result, in better time and evenly, to reach the same result.

Actions

This proposal was already carried out by the Agency 50 in a first stage. The proposal consists of crossing "pending trials" from Genesis with "possibly uncollectible cases" of Genesis II, to finally add to the resulting file, the four missing columns that would come from another file that contains precautionary measures registered in SIRAEF for pending trials, information of SIRAEF of four data dates not listed in Genesis reports, i.e. date of judgment and banking embargo, automotive IGB and IGB RNPI.

This comes to complete details of the model type letter to the orders of provisional incapacity of payment.

Benefits

This would be proposal of a feasible implementation and very good impact. No regulatory change is necessary, except a modification in a general instruction. At the same time, given the experience of the past years in terms of the systematic management, it appears that good results are obtained.

Until the reengineering and unification of different systems for the management is performed, actions must carried forward, to progress towards the interconnection of data from disparate systems to improve the collection, and in turn, the fluidity of early warnings, mechanisms for the debugging of the judicial portfolio should be implemented, which then could provide feedback to control systems to generate new processes.

PROPOSAL 7

LAW 27260 - SYSTEMIC IDENTIFICATION OF CASES SUSCEPTIBLE OF BEING WRITTEN-OFF

Situation detected

Within the judicial portfolio the representatives of the Treasury, there are cases which, by rule of law 27.260 (art. 56) would be able to be completed since

they proceed from compensatory and/or punitive interests corresponding to capital cancelled prior to 22/07/2016.

The identification of these judgments is done using manual processes by the representatives of the State Treasury.

Proposal
Intends to make a crossing of the information in the databases containing the concepts and payments information (SIRAEF and current account), in order to more quickly identify the judgments that are in the situation described in the preceding paragraph.

This would make available to each agents the cases of compensatory and/or punitive interests corresponding to capital cancelled prior to the 22/07/2016, facilitating a faster management.

Benefits
Speed the filing the trials, reducing the universe of pending tax executions and favoring the portfolio management. This would facilitate the concentration of efforts by management on the cases that could be included in title II of the law 27.260. In addition, the portfolio of judgments would be decreased, with a view to management of those subsequent to 31/3/2017.

PROPOSAL 8

IMPROVEMENTS IN THE SIRAEF FUNCTIONALITIES - ON-LINE CONTROL OF PAYMENTS FOR TAX DEBT EXECUTION SENTENCES

Situation detected
The tax account generates the debt voucher and move it to the SIRAEF. Since the confirmation of the debt voucher by the collection area until its effective execution, a period of time occurs, in which taxpayers often make payments or obtain payment facilities plans, resulting in a lack of knowledge with respect to the payments made by the taxpayer.

Problems / needs
Risk of rejection of the demands and the generation of patrimonial damage to the agency by undue affectations of the taxpayers' assets.

Actions
Generation of a platform that allows controlling payments in fiscal executions and that provide up-to-date information on the payments/balances of the obligations, as well as the stages related to the determination of debt and the calculation of their respective interests (for example: punitive interest accrual).

Alerts/checks prior to the issuance of the debt voucher, demand and request for precautionary measures, based on current information on EFISCO.

The system should record the payments/adjustments updates and show the updated outstanding payments/balances amounts and in the case of cancelled debts, that the process of lifting embargo/filing/freezing is automatic/systemic with only the confirmations from the corresponding agents/headquarters.

That for each of the stages (filing/order) the system check for updates about the existence of payments (for working on exception) avoiding the manual review for each trial.

Information on the SIRAEF of the date of regularization through the approval of payment facilities plan (to avoid precautionary measures on taxpayers who have regularized their debts and cause the expiration of the remaining plans).

Benefits
Optimize the work of bailiffs, avoiding undue precautionary measures and avoiding an unnecessary use of resources.

The alert from the tax account to the SIRAEF reporting debt cancellation will be used to proceed to the filing of trials in a more expeditious manner.

PROPOSAL 9

IMPROVEMENTS IN THE SIRAEF FUNCTIONALITIES - MANAGEMENT OF PROCEDURAL DEEDS IN BATCHES

Situation detected
Deeds and different procedural parts used in the handling of the trials are processed trial-by-trial, taking long time in the drafting of each one. This situation becomes counterproductive when processing volumes rank from 3000 to 10,000 trials per agent.

Problems / needs
Delays in the process due to high volumes of records — task automation.

Actions
Generation of management files in the system that upload models of different orders (continuation, filing, etc.) in digital format for the record of the office by loading of updates (payments/stages) and to allow the printing for the Court (today's court digital and paper support).

Modeling of procedures, liquidations and specific deeds of each court to define for each unit (e.g. requested expedited via) that can be requested by batch of trials (e.g. written request for expeditious procedure via in certain records of a preset batch / judicial offices).

Issuance of global demands/commandments, not on an individual basis.

Signature digital facsimile of the debt vouchers and other documents which must arise in the conduct of the case.

Benefits
Efficient use of resources and information. Possibility to expedite the process, working in batches.

PROPOSAL 10

IMPROVEMENTS IN THE SIRAEF FUNCTIONALITIES - QUERIES THAT ALLOW IDENTIFYING THE KIND OF PRECAUTIONARY MEASURE

According to the internal rules of the Organization the legal representatives must (as first precautionary measure), proceed to the EGFV, once reaching the appropriate procedural stage of the. This is without prejudice to the timing of other coercive recovery measures.

Currently the control and monitoring of precautionary measures applied to judgments in the portfolio can be performed through the SIRAEF and the E-FISCO. Both indicate the total of pending lawsuits, which ones lack of any precautionary measure.

Problems / needs
Controls are not sufficiently effective because cannot identify what type of measure has been locked, without entering into the SIRAEF system and consult trial by trial. Currently only a consultation by management, in both systems, reports the detail of judgments without precautionary measures; which is useful, since it represents an alert with regard to those judgments whose tax credits are not guarded by any measure, but not enough to verify if the control measure adopted is the most effective in each case.

Acctions
Design more detailed inquiry levels and filters based on parameters that may be configurable through the combination of different options:

1. STATE OF THE TRIAL
1.1 In process
1.2. Paralyzed
1.3 Executed

2. FISCAL REPRESENTATIVE
2.1 By region
2.2 By agency
2.3 By individual agent

3. WITH PRECAUTIONARY MEASURES
3.1 current pm
3.2 overdue pm
3.1.1 with IGB
3.1.2 with EGFV
3.1.3 Moveable goods embargoed
3.1.4 Real estate embargoed
3.1.5 Accounts receivables embargoed
3.1.6 Intervening collection agent
3.3. Without precautionary measures

4. ORDER
4.1 By amount
4.2 By taxpayer
4.3 By seniority (Starting date)
4.4 By judicial stage

5. AMOUNT
Provide for the option of a filter enabling established ranking or cuts in certain maximum or minimum amounts to select. Ex: lawsuits greater than $1,000,000, lawsuits between $50,000 and $100,000, and lawsuits less than $40,000.

6. JUDICIAL STAGES REACHED

Benefits
Identify which the precautionary measure is taken and determine trials with weak coercive actions.

PROPOSAL 11

IMPROVEMENTS IN THE SIRAEF FUNCTIONALITIES - SYSTEMATIZATION OF THE CONTROL OF PRECAUTIONARY AND PREVENTIVE MEASURES

Situation detected
Currently the certificate of alleged debt that is issued administratively – to take autonomous judicial precautionary measures (article 111 of law 11683) - is made manually, following models set out in the legislation in force. The burden of this development for the areas generating the certificate (e.g. audit and/or review and resources) is made in the system of the Parana Region, which in turn is located in the intranet of the Subdirectorate-General for systems and telecommunications site.

The area of judicial collection receives an alert (from the PARANÁ system by e-mail) stating that there is a certificate to receive and, days after, they receive it on paper along with the case documentation. At this point, the updates on the process are loaded into the PARANA SYSTEM.

Also, by the application of 03/2008 general instruction (DI PLCJ) - Annex I procedural guidelines - The area of judicial collection must register the updates into the GELTEX system, version 3.0 - module preventive embargo. Such a system is not found on the network.
Once the deed is in judicial collection, we proceed to issue a demand and to settle it manually in the respective chamber. Once the requested measures are established they are sent in paper to the entity that corresponds. Once the procedure is completed, updates are loaded into GELTEX system.

Problems / needs
Use of different systems that are not networked.

Actions
Incorporate the data from the precautionary measures process to the SIRAEF and enable the use of the SOJ for the locking of the measures.

Benefits
Centralization of controls. Precision and certainty on the issue of the securities. Quick filing with the automatic judiciary decisions (similar to the fiscal executions). Unification in loading and viewing by all stakeholders in the administrative and judicial process. Speed in the lock to apply computer system. Reduction of the administrative and judicial expense. Reduction of unnecessary costs for inputs.

PROPOSAL 12

IMPROVEMENTS IN THE SIRAEF FUNCTIONALITIES - SYSTEMIC VALIDATION OF THE LOAD OF PARALYZED TRIALS

Situation detected
When facing any cause of blockage, bailiffs, once obtained in writing the respective order, proceed to load the procedure as paralyzed in the SIRAEF.

Problems / needs
A trial is declared paralyzed without the systemic intervention of the headquarters and without control by opposition. There is a risk of overlooking cases of designed controls, of passing from trial in process to trial stalled without control. The risk escalates because of the growing volumes of proceedings.

Actions
Design a systemic validation of the headquarters of judicial collection, for loading the codes of stalled trials.

Benefits
Avoid detours in the handling of trials that generate the postponement or frustration of the tax credit.

PROPOSAL 13

INCORPORATION OF THE ORDERS REGISTRY TO THE SIRAEF

Situation detected
The provision 276/2008 establishes a book of orders which register the date in which the lawyer delivers the orders to the Agency and the date in which the officers of Justice answer them.

Problems / needs
It duplicates the data payload. A centralized control is needed.

Actions
Incorporation of the orders registry to the SIRAEF. The system should register all the movements of the writ of summons through the judicial officer, which would complete in the same system all data needed to perform the procedure. It is proposed that the information contained should be systematically registered (Location/delivery to the Tax Agent) and that the signature could be produced through an authorized key, in such a way that all the record is digital and no paper impression is necessary.

Those data would allow the system to issue listings consigning all the orders loaded in this item for the purpose of having a precise summary of dates or status of the procedure.

Likewise, a system of alerts or updates for those orders that exceed 10 days will be implemented (e.g. list of injunctions, demand date, date of issue, dates of filing, allows precise control of the order, with significant control over delays).

Benefits
Shortening the processing times using the information in SIRAEF and avoiding duplication of data upload.

PROPOSAL 14

DEVELOPMENT OF A CONTROL BOARD

Situation detected
The GENESIS module provides management information exposed in quantities and amounts referred to lawsuits pending, paralyzed and finalized. The pending trials break down in terms of predefined risk factors that impact on the recovery of the tax credit: Delays trials and judgments without precautionary measure. The information can be selected at different levels: General Subdirectorate, Region, Agency and bailiff.

The module also allows individual consultations by trial or by taxpayer. With respect to each judicial portfolio the GENESIS module can generate information on various stages of the procedure of the judicial portfolio sorted by: amount, Starting date, date of the last stage, taxpayer, etc. These listings can be complemented by

the selection of the issues involved and the existence of precautionary measures or not.

Problems / needs
Requires information enabling to determine what type of precautionary measure was taken (General seizure of cash and valuables, seizure of movable property, seizure of real estate property, collecting agent intervention, etc.) and thus to assess the degree of effectiveness of each type of measure.

Currently the control areas must develop control reports manually, exporting the information obtained in the GENESIS module to different forms.

The results of blocking Bank repossessions (listing of foreclosures with positive results), referred to the withheld funds and the funds actually entered in the accounts of the body are not reflected in the SIRAEF.

Generation of automatic controls and payment plans.

Strengthen the control tools that facilitate the permanent monitoring, operational management and the timely correction of the most significant detours.

Actions
Define a management control Board with extensive selection possibilities for the generation of the information based on different criteria: by amount, by trial stage, by date, by agent, by type of measure, by past or current measurement by banking embargo with positive feedback, by banking embargo effectively transferred to the accounts of the body, etc.

Standardize the statistical information with different levels of openness or breakdown according to the level of the requesting user. It must be permanently updated and oriented to mitigate the risks of the process (delays in procedures / adequate protection of the tax credit from the most effective precautionary measure).

Ex: Number of cases discharged by judicial officer within a period of time selected by the consultant.

Alert generation

1. Payments entered for debt cancellation in judicial management at every stage of the litigation. Such information should be captured online from the tax account system.

2. In case of revocation of payment plans. Such information must be captured online from the system “Mis Facilidades”.

3. Expiration of precautionary measures.

4. By Levels of delay in processing files preset by the consultant.

Benefits
Integrate online data management and allow the permanent monitoring of selected indicators and the rapid correction of deviations.

PROPOSAL 15

DIGITALIZATION OF ADMINISTRATIVE FOLDERS AND JUDICIAL DEEDS

Situation detected
Currently in SIRAEF, routine and repetitive tasks require to enter trial-by-trial to make the same action over and over again.

Problems / needs
Since there is greater emission of debt vouchers, to carry out the tasks mentioned takes more time and resources, so it would be convenient that the process be done only once for all cases.

Actions
Design an administrative tracking module built-in to the SIRAEF or the module of monitoring, registration and control of the task that allows the issuance of all types of judicial writings and notification, using the data from the system to avoid the error in loading sensitive data.

The system must allow issuing communication notes to bailiffs (proceed orders, communication of payment). Communication of orders should be implemented via e-mail addressed to the trays of the judicial officers without need to be printed.

The mechanism should allow the digitisation of the external documents. That way a digital administrative folder could be available.

Benefits

It will reduce processing times, allows the saving of resources and the necessary spaces for the storage of administrative folders.

It facilitates agile centralized control of the trial process.

CONCLUSIONS

Based on the analysis carried out with the participation of agents in charge of duties corresponding to the enforced collection areas, it can be concluded that the Agency is able to take a leap in quality in the management of this process.

This strengthening of the process quality involves taking advantage of the opportunities, by exploiting the main strength, the abundance of information, the main challenge being its intelligent use.

Although the proposals are intended to strengthen the management in the medium and long term, we consider they should not be delayed in the current context, marked by the influence of the law 27.260. That is why, on the understanding that it means an opportunity to meet the objectives of Government and institutional policy, increase collections and reduce backlogs, action of short and medium-term courses have been defined.

In addition to the exploitation of the information, the quality jump requires the strengthening of the tools that are used daily for the implementation and control of the process, so various proposals concerning this topic have been exposed.

The implementation of the proposals outlined in this document, once tested and authorized by the responsible areas, will have a strong impact in the quality of a process of utmost importance for the fulfilment of the organizational objectives.

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PERSONNEL DEVELOPMENT IN THE CHILEAN INTERNAL TAX SERVICE WITHIN THE FRAMEWORK OF A TAX REFORM

Christian
HANSEN

SYNOPSIS

The article developed in the following pages aims to present a successful case of modernization and institutional strengthening in the Internal Tax Service (SII), from the perspective of personnel management, through the implementation of a law that reinforces its technical and specialized nature, generating an organizational structure and allowing the formation of a staff capable of making the tax collection processes more efficient, thus ensuring the financing of various public policies aimed at an integral development of the country.

CONTENT

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INTRODUCTION

The need for financing public policies by the State is a cross-cutting issue for all government teams that alternate in the administration of a country, independently of their programmatic priorities, according to their visions of economic and social development.

To dispose of resources that allow the well-being and integral growth of a country and its inhabitants make necessary to also pay attention to how these are collected and used in the long term to finance the deployment of policies and programs that are constant and benefit directly to the citizens' quality of life.

In Chile, coupled with a program of social reforms, a Tax Reform was designed to improve the tax processes, increasing tax collection and equity, encouraging savings and investment, and reducing evasion and avoidance.

This Tax Reform, in turn, triggered the modernization and strengthening of the Internal Tax Service, having as a center the management and development of its civil servants, who are ultimately in charge of implementing it.

The following pages presents the incidence of the implementation of the Law of Institutional Strengthening of the Internal Tax Service in the modernization of the organization, generating the human conditions to meet its new challenges of a better and higher collection.

This process, it should be noted, could be extrapolated to the various Departments or Agencies of the Central Administration of the State, because it relates with generating an institutional and organizational structure to respond to challenges and goals. There is, in short, a congruence between the requirements and the tools that are delivered to respond.

1. TAX REFORM: PRELUDE TO AN INSTITUTIONAL MODERNIZATION LAW IN THE INTERNAL TAX SERVICE

Since the decade of the 1990s, Chile has begun an opening and modernization process. The recovery of democracy awoke social needs, arising from new forms of relationships, within the civil society as well as with the State and its authorities.

A change of philosophy became necessary in the administration of the State. Methods to carry out the public work that take into account the new social and political context, with greater participation, more transparency; in which the priorities and objectives required a consensus between the State and citizens through their representatives.

During the 1990s and the following decade, the modernization process of the State administration was adapted to a scenario requiring the change of structures, methodologies and procedures. And, obviously, the generation of resources to adjust this State modernization with the modernization of the country.

The Internal Tax Service, institution precisely in charge of collecting and providing resources, concentrated this way on the professionalization and specialization of its human resources to meet its institutional mission more efficiently and effectively.

During the 18 years from 1990 to 2008, SII increased by 76 percent the number of professionals and incorporated new technologies to support the work of its agents, improve attention to taxpayers and simplify the tax processes.

At the same time, the role of persons in the State Administration and its various divisions began to appear as key to achieving the objectives. In this context, the New Labor Deal Law (Spanish: "Ley de Nuevo Trato") was promulgated in 2003 and the following year, the National Directorate of the Civil Service was created. This meant the adoption of a model based on transparency, merit and suitability

for the recruitment and development of managers, specifically through the Public Management System and the strengthening of the public servant career at other hierarchical levels, through the definition of policies and specific practices for the life cycle of public servants.

This was the prelude to impulse transformations and generate policies and guidelines focused on persons. The SII summarized this new approach through its 2006-2010 Strategic Development Project.

With the new decade that saw the light at the end of 2010, the progress required a new impulse to respond to the emerging needs. Citizens began to demand a higher social ground, to claim rights more than benefits, all of which mediated by the penetration of technological devices and platforms, allowing to expand the voice and opinion of individuals and communities of interest.

The 2014-2018 Government's program of the current administration endorsed these needs, emphasizing the increase in public spending for social investments, as an impulse to reduce inequality, introduce more social justice and provide greater opportunities and rights.

These commitments made necessary to study formulas for increased public resources. Under this scenario surged the vision of improving processes that increase revenue and tax equity, the incentive for saving and investment and the decrease of evasion and avoidance, and therefore we started to study alternatives to tax modifications. As a response in September 2014, Law N°20.780 on Tax Reform was promulgated.

This milestone meant that the work of SII had to overcome challenges such as developing greater effectiveness for inspection, provide more resources and strengthen the tax administration, as well as improving the services and attention to taxpayers.

These challenges, associated with the value given to persons in the achievement of institutional objectives, generated the need for strengthening the SII through a law that provided for the gradual increase of its staff and enhance the integral development of persons, in areas such as selection, career, and recognition, among others. The presidential guidelines on good practices on human development in the State, applicable to all public services, endorsed this idea.

Associated to this context, the SII has built in a participative manner its 2015-2020 Strategic Plan, determining in a roadmap that one of its priorities would be the Personnel development.

Two areas in this process in which persons are at the Centre are thus distinguished. The external scope, that influence through laws and guidelines the priorities and strategic determinations set out from the institution, which constitute the internal scope. The Institutional Strengthening Law of the Internal Tax Service is, in this logic, was the hinge that unites and illustrates this connection.

2. INTERNAL TAX SERVICE: DRIVING THE IMPLEMENTATION OF A TAX REFORM IN THE COUNTRY

To analyze the SII Strengthening Law, it is necessary to describe what we might call its genesis: the Tax Reform, which entailed an technical capacity assessment for each of the agencies that make up the Internal Tax Service - General Treasury of the Republic, Internal Tax Service and National Customs Service-, since the challenge , in terms of increased collection and decrease in the tax avoidance and evasion, created essential imperatives in the progressive process of implementing such reform.

In the specific case of the Internal Tax Service, imposing new institutional objectives without endowing it with additional powers and resources was unsuccessful, with the consequent risk to the proper implementation of this reform.

In this way, the presidential message that accompanied the tax reform law bill made explicit the Government confidence in the technical ability that SII has shown consistently throughout its history,

noting that “we will strengthen the control capacity of tax administration institutions, with more technology, more professionals and more capacities”.

This statement also expressed valuating the modernization process that SII has experienced in the 1990s, when it increased the professionalization of its civil servants, introduced advanced technologies, generated legal tools and information technologies, which would substantially improve compliance with the increasingly stringent goals, and began positioning itself as a model organizations, both in the Public Administration of Chile and among other tax administrations at international level.

3. NEGOTIATIONS FOR STRENGTHENING THE INTERNAL TAX SERVICE: PROTOCOL OF UNDERSTANDING

Since the tax reform, new goals and requirements have emerged, which made necessary to move forward in the design of a law creating the conditions for SII services to meet their commitments and strengthen their levels of professionalism, efficiency, integrity and transparency in the exercise of its public function. Clearly, the participation and involvement of its civil servants was a crucial element.

A Work Table formed by representatives of the Under-secretariat of Treasury, the Internal Tax Service Directorate, the Association of SII Auditors (AFIICH) and the National Association of employees of the SII (ANEIICH) was installed in October 2014. Its purpose was to discuss the bases of an institutional strengthening law.

In this exercise of participation and collaboration, multiple meetings were developed to establish the scope of the law, which would be defined in terms of incorporating new capabilities to the SII and strengthen the development of the civil servant career in the institution, which resulted in the signing of a protocol of Agreement, on 27 January 2015, between the Government through the under-secretariat of Finances and the SII, and the civil servants’ associations directorates, with the aim of creating conditions for reaching the immediate and future goals of the tax reform.

The Protocol of agreement was the basis for the enactment of a strengthening law which central points established:

1. Increase of staff for the strengthening of the Internal Tax Service
2. Modernization of the structure for the permanent contract and for the staff
3. Strengthening the career development
4. Adequacy of the Executive Board and Directorates
5. Adjustment of remunerations

Similarly, the major commitments to the Mission of the SII and the implementation of tax reform are declared in the introduction, stating that:

“In order to facilitate the achievement of these objectives (of the tax reform), an ambitious plan was developed, pushing for a new modernization cycle of the SII, which in accordance with all the relevant stakeholders of the organization, will be formalized in a draft bill and other normative instruments, including aspects such as the increase in staffing, the strengthening of the public administrative career in the entire working cycle and at all levels of the institution, the rationalization of salaries, reducing their variability, updating and modernizing of the conditions of recruitment, and the improvement of the functional organization of SII, among others.

All these improvements would not have the effects for which they have been created, if they were not accompanied by the commitment of each and every one of the persons who integrate the Internal Tax Service . For this reason, the parties here signatories undertake to support the processing of the bill which will enable the implementation of this agreement, and also reaffirm their willingness to comply with the goals and objectives established annually, through the mechanisms of management service, to increase the revenue collection level and decrease the evasion, as required for the SII to successfully fulfill its commitments to the country within the framework of implementing the tax reform process”

This process of dialogue, with the active participation of the parties, could balance the different interests involved.

The direction of SII focused on increasing the inspection capabilities of the institution through an increase in staffing, the creation of a structure devoted to the taxpayers' care and assistance, as well as the modernization of the status law to contribute to the career development of civil servants within the institution.

For their part, civil servants associations were strongly aligned with the institutional objectives previously exposed and, additionally, sought to improve the remunerations conditions of their constituents. In this sense, much of the discussion focused on the career development of all constituencies: Auxiliaries, Administrative, Technical, Professional and Tax Auditors.

Meanwhile, the Budget Directorate sought to create a balance between the injection of resources approved for SII, in order to support its modernization and improvement process, with the necessary assurance of a successful implementation of the tax reform goals; considering that the law on strengthening the SII could serve as a model for other institutions of the public administration.

This protocol of understanding, based on the participation and involvement of the various institutional and professional actors, would serve as an essential input for the subsequent discussion and enactment of the law on Institutional Strengthening of SII.

4. LAW OF INSTITUTIONAL STRENGTHENING AND MODERNIZATION OF THE SII FOR IMPLEMENTING THE TAX REFORM: LAW N ° 20.853

Act N° 20.853, institutional strengthening and modernization of the SII, was published in the official journal, which also came into force on July 8, 2015. This regulation establishes modifications both in the field of income and promotion of civil servants, and the structure of remuneration.

With regard to recruitment and promotion in the SII, the law:

- Modernizes the conditions of application for inspectors, technicians, administrative and auxiliary agents, which should be made through contests in which only contractual agents of SII could participate, and complying with the requirements and conditions of merit and suitability established. In other words, the career civil servant begins with regulated and open contests to enter the annually renewable contract, and from there through internal contests, the civil servant can choose to become permanent. Prior to law 20.853, the SII had regulated internally its recruitment processes, through policies and procedures. There is currently a legal obligation to complete in the public contest for admission to the annually renewable contract, as a future requirement for these civil servants who would apply to enter permanent contract.

- Strengthens the civil servant career in all departments of SII, provided that the promotion of inspectors and technicians will be processed through internal contests, and through promotion for administrative and auxiliary permanent contract.

- In the case of Professional Civil Servants Career, a new mechanism is designed in the Chilean public administration, which allows admission to the professional permanent contract status in any degree from the annually renewable contract allowing both contracted status civil servants to compete at the same time and under the same conditions. This solves a structural restriction that existed for professionals of different specialties - therefore with dissimilar salaries – in the permanent staff.

In terms of the SII remuneration structure, the law:

- Provides a restructuring of remunerations, for which the components of the special allowance for job performance are modified for performance in the fulfilment of goals: the variable part will be

associated with the achievement of goals related to reducing tax evasion and tax avoidance, including tax control and facilitation in tax compliance indicators, which will be specified the collective agreement on performance; while the achievement of the institutional goal of reducing evasion becomes associated to the tax management, fixed and paid monthly.

- Replaces the annual bonus linked to the service quality provided to users and taxpayers with a special bonus, which will be paid monthly.

- Establishes a bond for qualified experience of support to the tax management, which will be paid monthly, to incumbent staff of technicians, administrative and auxiliary personnel, when they reach ten years of service in the top tier of their respective division.

- Disposes that SII must annually defines a measuring instrument of the perception of users with respect to the tax administration. This evaluation will be conducted by an external company contracted by the Under-Secretariat of Finances. In addition, SII shall generate channels that allow the participation of civil servants in the process of designing and implementing the evaluation instrument.

5. DECREE WITH FORCE OF LAW NO. 1 OF THE FINANCE MINISTRY, WHICH ESTABLISHES THE NEW PERMANENT STAFF OF THE INTERNAL TAX SERVICE

Less than a year later than the entry into force of the Strengthening Law of the SII, dated April 25, 2016 the Decree with Force of Law N° 1 (DFL 1), which defines the new personnel structure of SII, was published in the Official Journal. In its transitional provisions, it defines rules concerning the process of integrating the agents to this new organizational structure, setting also an implementation schedule according to budget availability.

The main changes contained in this DFL 1, with respect to the previous one in force are:

1. **Permanent positions for each division were increased, according to the following table:**

Permanent personnel

Career Ladder	Occupied before the DFL	Regime 2018	When becoming permanent
Directors	183	238	55
Professional	40	800	760
Inspector	1.167	2.016	849
Technical	312	462	150
Administrative	496	880	384
Auxiliary	118	227	109
	2.316	**4.623**	**2.307**

With the increase of positions for civil servants in permanent contract at SII, and in relation to the total workforce, in 2018 a ratio of 80% of permanent civil servants and 20% annually renewable contracts is expected to be reached, complying with regulations of the Administrative Statute on this matter.

2. **New access requirements were established for the areas of:**

Managers: 55 posts were added in the third hierarchical level. Professional degree for ranks 1 to 9 are required and a technical degree is required for the ranks 10 to 12. The previous decree with force of law (DFL) required only a high school degree.

Professional: a professional degree with at least 8 semesters, awarded by a University recognized by the State, is required. This change is important for career development, because the previous decree with force of law, restricted access to certain ranks only for specific professions, placing caps to the career according to the profession.

Inspectors: Entry requirements are maintained and tier 9 is added as top of the ladder. In the previous DFL, the top was tier 10.

Technicians: two modes of entry, internal and external, are defined. Previously only the entry of internal personal was allowed, from the administrative staff roll, which limited the possibilities of appointment. In addition, three areas of functions are defined: auditing, evaluations and computer science.

Auxiliary: High school degree is required. Previously, only basic education was required. It should be noted that, in practice, due to the level of schooling development in the country, nearly all applicants already have at least a high school degree.

3. Establishment of rules and timetable for the processes of implementing the new permanent contracts:

To expand the new permanent personnel of SII, the process in which this process can be completed is also established, in an exceptional way. It gives priority for this purpose, to the SII's civil servants. Therefore this streamlining of career planning - through which the newly created positions are manned - is primarily a mechanism for the recognition of the public career, giving to the civil servants themselves, whether permanent or under annually renewable contract, an exclusive participation

Highlights of the admission contest:

Level	Scheduled actions
Professional	Consider two phases: a first phase of mobility under annually renewable contract (year 2016) and the second the integration to permanent staff (year 2017).
Inspector	Take place in three years. Mainly during 2016, to be completed in 2017 and 2018.
Technical	Will take place during 2016. Both permanent civil servants as those under contract could raise their ranking.
Administrative and Auxiliary	Will take place in 2016. Permanent civil servants could improve their ranking, officers under annually renewable contract will be able, at most, to keep their ranking by becoming permanent.

6. IMPLEMENTATIONS TO DATE. CAREER PROCESSES DEVELOPED IN 2016

From the legal tools provided by the law strengthening the SII and the subsequent DFL 1, in 2016 the contests have been gradually implemented, helping to modernize the career development of the various levels of civil servants.

1. Contest for streamlining the inspection personnel

On 12 September began the implementation of the internal contest (Permanent appointment), corresponding to the first phase of the inspection staff. On October 21 the outcome of this contest was published. 1,990 candidates participated, of which 84.6% met the requirements defined in the contest bases. Thus, 1,335 Auditors (tax auditors and inspectors), improved their ranking and 272 civil servants under contract entered the permanent staff in the same rank or higher rank.

As defined in the Law of strengthening and the corresponding DFL 1 of 2016 on the new law of permanent appointment at SII, during 2017 the second contest of permanent appointment is planned, for the inspection staff, and the third will take place during 2018.

2. Mobility Contest for professional personnel under annually renewable contract

The contest for professional under contract also began in September. It grants the professional civil servants a significant opportunity to develop their career, and can increase their current ranking in the staff under contract, in accordance with the requirements and application procedure, which aims to structure the professional status in four functional areas, and thus prepare them for the career planning process towards permanent contract in the following year.

The functional areas were defined based on the tasks associated with the performance areas of SII professionals:

- Legal, regulatory and normative division: is integrated by professionals whose performance is directed to the development of functions providing normative and legal support to the institution in the tax field.

- Audit, evaluations and assistance Area: is integrated by professionals whose performance is associated with the design, coordination and implementation of central processes of the institution in the areas of auditing, evaluations and tax assistance.

- Management Area: is integrated by professionals (including lawyers belonging to the areas mentioned in this point, unless otherwise stated expressly) whose performance is aimed at the development of functions of institutional management, coordination and overall supervision of persons, support for institutional, administrative processes, and corporate communications.

- Computer area: is composed of agents whose performance is directed to the development and operation of support information technology or institutional operation systems.

It should be noted that it was the first time a massive mobility process took place, aimed at the full professional workforce and differentiated according to the areas. In total, 687 applications were received, of which 85% met the requirements defined in the call. As a result of this process, 468 civil servants saw increased remuneration and increase in ranking.

3. Career planning contest for auxiliary, administrative and technical areas

At the end of October and November 2016, contests were called for the permanent position of Auxiliary, Administrative and Technical areas, in order to provide the resulting vacant charges of the new permanent contracts as provided in DFL N ° 1 2016, and also for the vacancies opened in this same process.

It is expected that during the month of December 2016, the permanent staffing process will be completed for auxiliary and administrative areas while it will take place in January 2017 for the technical area.

7. LAW FOR STRENGTHENING THE SII: CHALLENGES AND TASKS FOR ITS IMPLEMENTATION

As mentioned at the beginning of this article, the Institutional Strengthening Law of SII was developed in a context of new challenges for the institution, based on the country needs that the tax reform address, such as collecting more revenue for the financing of social policies.

At the same time, a tool to address the institutional challenges appears as a mean, through the gradual increase of the permanent staff, career development with a recognition of the skills and competences, and the creation of more specialized work fields, among other aspects related to the management and integral development of persons.

In this way, the implementation of the law on strengthening the SII involved different challenges which are detailed below:

1. Incorporation of Personnel development in the Strategic Plan of the SII

To interact with the orientations of the National Directorate of the Civil Service in the field of human resources management and the Presidential Instructions on Good Labor Practices regarding the Personnel Development in the State, the Institutional Strengthening Law of the SII gives rise to an internal process which led to the design of a 2015-2020 institutional Strategic Plan, which includes as one of its four areas the development of persons, defined as “Implementing good labor practices within the institution, in order to contribute to the ongoing development of civil servants, assessing their daily work, recognizing their contribution and commitment to the organization”.

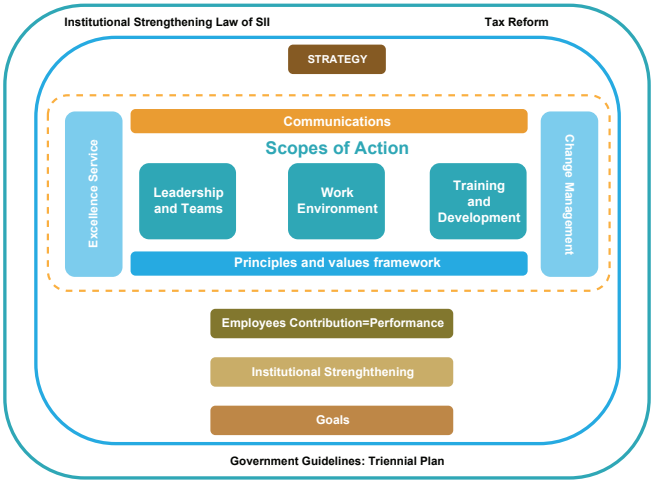
2. Creation of a Model for Personnel development

As well as including the personal development in the Strategic Plan of the SII, the provisions contained in the Institutional Strengthening Law led to the creation of a management model of Personnel development, consistent with the implementation of best legal practices and focused on continuously improving the

people management processes, the inclusion of best practices and individual and group performances aiming at complying with the institutional objectives.

Specifically, one of the three axes of the model, as shown in the following figure, relates career and training, which focuses on the growth of persons throughout their working cycle, via career promotion and participation to contests, and the opportunity to be trained and promoted.

Personnel Development Management Model



It should be noted that, at the same time, priority guidelines for the implementation of the model are issued, such as the excellent service, pointing to the satisfaction of the needs of internal clients; the management of change, promoting them and highlighting the strategic direction within SII, organized by the Sub-Directorate of Personnel Development.

The cross-cutting guidelines also provide for the management of communications, to accompany changes, the work coordination and promotion of initiatives that involve the different members of the institution; and, finally, the guiding principles and values that distinguish the work of the Sub-directorate of Personnel Development, such as trust, collaboration, innovation and being goal-oriented.

3. Working with the Civil Servants' Associations

One of the conditions laid down in the January 2015 Memorandum of Understanding, which became an important input for the Institutional Strengthening Law of SII and its implementation, was that all matters enumerated and requiring processing, either internally, such as career regulations, or the structure of the new permanent staff, would be worked in conjunction with the associations of public civil servants, always within the framework defined in the Protocol.

4. Restructuring the SII's National Directorate

When the law started to be implemented, the solution of some aspects was deemed necessary, regarding the structure of the National Directorate, in order to deal more efficiently with the challenges of the tax reform and, consequently, those that derived from the institutional Strategic Plan.

Specifically, when reviewing the structure of the National Directorate, there were homogeneous criteria for ordering, set by the previous permanent staff regulation, only up to the levels of Departments Heads, which corresponds to the third hierarchical level.

Under the dependence of these, there were organizational units created with dissimilar criteria, with the provision of leadership positions from direct appointment to internal selection processes and without financial incentive for the exercise of the supervisory tasks. In some cases, due to management requirements, there were structures equivalent to a Fifth Hierarchical Level, with different dependencies and confusing names for structures of the same level.

Although this structure, with so-called informal hierarchy, was born in view of a better work organization and institutional management needs, it did not meet the criteria of the modernization process that began to take shape with the implementation of the Institutional Strengthening Law.

This Legal body and the Memorandum of Understanding asked SII to define a Fourth Hierarchical Level, delivering permanent allocation of supervision resources. To access this, these hierarchies had to meet previously at least the following requirements: formal structure, hierarchy provided by internal contest and a minimum number of civil servants.

Thus, prior to implementing the Fourth Hierarchical Level, SII made a complete overhaul of the National Directorate structure and instructed to make the necessary changes, not only in terms of structure, but also adjusting the objectives of each sub-directorate and the scopes of responsibilities and functions. This process involved a fruitful discussion within the management teams, which resulted in the delimitation of functions and the creation of a more efficient structure, adapted to the new institutional challenges.

In the first half of the 2016 changes were generated in the eleven divisions of the National Directorate. Once completed, the processes for implementing the new structure could be initiated, such as the provision of positions and access to eligibility for supervision in the Fourth Hierarchical Level of the National Directorate.

5. Creation and access to the contest for the 4th Hierarchical Level in the National Directorate and the Regional Directorates

The adjustment of the structure in the national Directorate, as commented, generated the formal creation of the Fourth Hierarchical Level. These positions were also called *"areas",* with supervision and allocation of functions, dependent on the hierarchical positions of the third level.

In total, 104 areas were created in the National Directorate, whose heads offices would have to be provided through internal contests, as a first requirement, to perceive the allocation of supervision. The goal is to enter 100% of the positions defined during the year 2016.

This new structure and, more specifically, enabling the areas head offices with executive powers, involves a relevant change in the burden of work in the field of the upper level supervision, which corresponds to the department heads or office heads, who before this change had within their supervision radius the complete workforce of the areas.

6. Contests for leadership positions in the Third Hierarchical Level

In the process of negotiating the Institutional Strengthening Law and its subsequent implementation, the SII organizational structure added 55 position of Third Hierarchical Level, which are governed by special provision rules for the permanence and exit of position, joining the main career plan. They should be provided through a closed contest for public civil servants, upon due compliance with requirements.

It only opens for all citizens when it has been declared desert due to a lack of suitable applicants. The exercise lasts three years, as the civil servant is maintained on the first priority listing. After this, by a decision of the authority of the service concerned, the appointment may be extended only once for three additional years. At the end of that period, these charges must be available again for contest.

With the mentioned increase in the executive organizational structure, the heads of unit are incorporated, corresponding to the SII offices jurisdictionally based in the regional directorates, allowing at the same time to broaden their career development

Indeed, all units in the country have been submitted progressively to public contest, offering candidates a more demanding selection and, at the same time, a more attractive model. This resulted in an increase in the number of applicants and improved the selection process.

On December 2016, 100% of the contests have been opened to provide the positions of unit heads.

7. Career development and elaboration of regulations

From the changes introduced by the law of institutional strengthening and the publication of the new SII Permanent Contract Law, it was necessary to reformulate policies and career development procedures.

The change in the process for entering the public service of the SII was the greatest innovation in the career development in the Chilean public administration, since the provision of permanent positions was legally defined and opened strictly to applicants originally entered through open contests. This led the SII administration to define a series of Career Development Regulations, according to each tier.

This is how was published the resolution that defines the **Career Development Regulation for the Control, Technical and Auxiliary levels.**

This way, the specific nature of recruitment by contract, then to permanent position and career growth were defined according to the area. Thus, in the Auxiliary and Administrative areas, it is by means of automatic promotions according to vacancies of the charges, while in the Inspection and Technician areas, it is through contests of promotion. In addition, the transfer from one area to another was defined, with clear internal rules.

In the same way, in all areas were defined test selection in technical subjects, skills, psychological and face-to-face interviews. In the Inspection and Technical areas the approval of a technical internal contest was added as part of the selection process.

The **Professional area** was provided with a second special regulation of career development, according to the functions performed or functional areas: Audit and Compliance, Assistance and Real State Valuation; Information Technology; Management; and Legal Regulatory. The particularity of this regulation is that in order to obtain mobility within the annually renewable contract, processes for applying to the various vacant positions are performed, where the permanent contractual civil servants compete for these positions with those who are with a lower ranking.

In addition, since the Institutional Strengthening Law of the SII defined the bases for the creation of a Fourth Hierarchical Level, which corresponds to Heads of Groups and Areas, it was necessary to regulate the career path in the access, permanence and exit from such positions. This way, a third regulation was drafted for this level: **Regulation of Directorates and Office Heads of the Fourth Hierarchical Level.**

8. INSTITUTIONAL STRENGTHENING LAW OF SII: A MEAN TO ACHIEVE THE INSTITUTIONAL GOALS

In this article we have reviewed the main contextual, normative and functional aspects, among others, touching the implementation of the SII Institutional Strengthening Law

Without reproducing the already exposed, we can say that this law has provided tools to generate changes in the institutional structure and the model of personnel management. For this reason, different views and interests have been considered in its design and implementation, taking as a reference the interest of the institution and compliance with its objectives.

Therefore, it is a means rather than an end in itself. A means to strengthen the SII in its mission to deliver a service of excellence in tax processes that it manages as a collector of revenue, either in relation to taxpayer, as well as responding to the mandate that arises from a Government program, and beyond, serving the needs of the country, as evidenced with the Tax Reform.

Strengthening a body such as the SII is to strengthen the persons who are part of it, engage them and align them with the institutional objectives.

Hence the importance of having more and better skilled civil servants, with transparent and strict selection processes, with a merit-based promotion and recognition, constant training and a career development allowing to deploy all the individual and collective talents The Institutional Strengthening Law of the SII means also to modernize its structure, improve equipment, environments, the sense of identity, which also motivate best performances and results.

A more robust Internal Revenue Service is also a more autonomous organization in its decisions and essential functions, because it protects its main capital, the persons who operate it and lead it on a road shaped by the needs of the country.

CONCLUSIONS

From a global perspective, we can affirm that the strengthening of the institutions that make up the central government of the State emerges as a necessity to develop a modern State, at the service of the citizenry and able to face their challenges.

The development of public policies in response to growing and increasingly complex social needs, therefore, calls for an appropriate institutional framework.

As a logical consequence, institutions, in turn, must count on people and a structure adapted to what is demanded from them. This chain ensures the success of implementation.

In the case of Chile, a strong emphasis on social investment made necessary to generate a reform to finance it, which in turn required better tools and to generate an adapted structure for the collection organization.

To obtain resources more efficiently and effectively to finance policies aimed at the well-being of the citizenry, the progress and development of the country, while at the same time reducing the existing social breaches among the different socio-economic segments of the population through the redistribution of the wealth requires specialized work.

Thus, the institutional strengthening of the Internal Tax Service is not an end in itself, nor is it due to an arbitrary decision, but is the consequence of a technical requirement, aimed at having a tax administration competent and achieving its objectives, with civil servants who act logically with a greater degrees of autonomy, based on knowledge and experience, backed by a formal career system and a design of positions that allows materializing it.

In this way, expanding a competent staff with skills and competencies that denote the technical nature of their functions, improve the conditions of selection and income, offer a career development and appropriate incentives to stimulate the permanence of knowledge and experience in the institution, adopt training plans, are some aspects of the policy of Personnel development promoted by Institutional Strengthening Law of the SII, part of a policy of personnel development that constitute a benchmark in public administration, which is not limited to its own objectives, but is related to the development of a service of excellence, facing the needs of the country and the taxpayers, inserted in a modern and transparent state, and with high levels of specialization.

GLOSSARY

Promotion: (public admin.) "Right of a civil servant to access a vacant position of superior rank in the hierarchical line of the respective permanent contract, strictly within the career ladder." (Art. 49, Administrative Statute).

Legal status: (public admin.) Legal nature which is awarded to persons who carry out certain functions in the public administration. According to art. 4° of the Administrative Statute, persons who perform permanent functions will have the quality of holders, alternates or substitutes.

Position: (Adm.) Set of tasks, duties and responsibilities assigned to a holder, the compliance of which requires a certain degree of authority, knowledge, expertise, experience, natural conditions and personality.

Civil Servant Carrer: (public admin.)"System of regulation of public employment public, applicable to incumbent plant personnel, hierarchical, professional and technical principles ensuring equal opportunities for income, the dignity of public service, training and promotion, stability in employment, and objectivity in ratings based on merit and seniority-based." (Art. 30, Administrative Statute).

Decree with Force of Law (D.F.L): (r) Regulatory body of legal character issued by the President of the Republic to regulate matters of law, by virtue of a delegation of legislative authority that Congress makes in his favor through a delegating Law.

Annually Renewable Contract: (public admin.)"Position of transitory character which is consulted in the staffing of an institution." (Art. 30, Administrative Statute) contractual jobs last, maximum, up to 31 December of each year and the employees' functions expire on that date, by the sole effect of law, except if an extension has been proposed, at least thirty days in advance.

Administrative Statute: (r) Body of law which regulates the legal link between public servants with the State. Relations between the State and the staff of ministries, municipalities, governorships and centralized and decentralized public services created for compliance with the administrative function are regulated by this Statute. The administrative statute currently in force in Chile was approved on September 23, 1989 through Law Nº 18. 834,

Permanent Personnel: (public admin.) "It's the set of permanent charges assigned to each institution by law." (Art N°3, Administrative Statute).

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OVERVIEW

Challenges and first developments of the BEPS project in Latin America

Cesar
GARCIA NOVOA

It is a pleasure to present this brief overview about the work, *challenges and first developments of the BEPS project in Latin America*, which, under the coordination of Professor Gemma Patón Garcia, has just been published by Thomson Reuters Editions from Lima to all Latin America.

The Coordinator of the publication in Spain benefits from an extensive teaching and research experience from her condition of Associate Professor of Financial and Tax Law at the University of Castilla - La Mancha. But she has also developed an abundant activity in Latin America. Thus, for example, she has been a visiting professor at the Catholic Pontifical University of Peru, and has taught in Mexico, Honduras, Costa Rica, Bolivia, Ecuador and Argentina, as well as in institutions such as Sunat (Peru), Internal Revenue Service (Ecuador), the Finance Secretariat and Revenue Service (Honduras) and the Ministry of Finance of Costa Rica.

Professor Paton goes one step further in her bright *cursus honorum*, with the coordination of this work, one of the first dealing with the phenomenon of the implantation of the BEPS Plan in the different public orders of Latin America. We must thank her for this decisive impulse to address one of the most important issues of the current taxation and doing so with the participation of tax specialists from eight Latin American countries. Without a doubt, we are before one of the best contributions of comparative tax law relative to Latin America in recent years.

As it is known, the OECD report on *Base Erosion and Profit Shifting (BEPS)* with its corresponding Action Plan and its 15 specific actions, was approved on July 19, 2013. The Plan, as stated in its introduction, “marks a turning point in the history of international cooperation in the taxation field”. Its remote origin lies in social pressure and media around the so-called reduced taxation of certain multinationals (Starbucks, Google, Microsoft, Facebook, Amazon...), related to operations known as the *double Irish* or the *Dutch sandwich*. And the precedent was the term *aggressive tax planning,* coined by the report of the third OECD Forum held in Seoul in 2006.

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This was an excellent breeding ground for a change in the overall strategy against tax avoidance. In fact, the emergence of BEPS marked that strategic change. Its approval was an agreement on several realities. First of all, the failure of the OECD policy against tax havens, which begins with the report on *Harmful Tax Competition* of 1998. Secondly, the influence of actors with strong media presence, such as associations and non-profit entities that accuse certain multinational group of not paying *enough taxes*, especially in Europe. This add to a chronic erosion of bases of the American multinationals, caused by their relocation strategies (transfer of finances, patent box, tax investment...). In addition, to an increasing role in the international tax panorama of certain BRICS (notably Brazil, China and India), which do not apply the OECD rules and tend to tax revenue where it is generated.

Much debates have taken place about the philosophy of the BEPS Plan and whether it implies (as for example, said Malherbe) *a fiscal revolution*. Perhaps, in the words of Calderón and Martín Jiménez, BEPS is rather the *end of the beginning* rather *than the beginning of the end* of the international tax power distribution's current paradigm. The truth is that BEPS is a significant advance in proposing solutions to international taxation, but it does not constitute, nor much less, a *fiscal earthquake*. Although the implementation of the principle of creation of value *or value creation* implies an approach to assumptions favorable to the country of source and to criteria more territorial. And these are closer to the positions of the United Nations or the Andean Community of Nations than to those of OECD.

But the big question of the BEPS Plan and, without entering the criticisms that the fifteen actions may justify, lies, on the one hand, on the legitimacy of the OECD as generator of international tax rules. And, on the other hand, in linking the BEPS actions and the convenience or not, for the countries of Latin America to incorporate them in a general way in their respective legal systems.

One of the most collected topics in international taxation is that that "the OECD is the club of rich countries". As all topics summarized in a slogan, the phrase has a point of falsehood. But conscious of the stigma, the OECD aims to give a greater role in the implementation of the BEPS to developing economies, through the *principle of* inclusion, which aims to promote the participation of countries which are not part of the organization. So, several countries not members of OECD have been invited as partners, as it is the case of Argentina, Brazil and Colombia. OECD has also convened regional consultations in the area of Latin America and the Caribbean, such as those held in Bogotá on 27-28 February 2014 and in Lima on 26 and 27 February 2015. Despite this, BEPS continues to face the ignominy of containing solutions based on a mentality and a legal culture foreign to those of many Latin American countries.

And in relation to this topic surge the second issue, which is the transposition of the BEPS recommendations in the Latin American internal jurisdictions. As it is well known, only two countries in Latin America are currently part of OECD: Mexico and Chile. But as reported by the organization on its web page, "The OECD is closer than ever from Latin America and the Caribbean", Colombia and Costa Rica are in the process of accession; the organization is carrying out a programme country with Peru and a programme of cooperation with Brazil and Argentina, and all of these countries, as well as the Dominican Republic, Panama and Uruguay, are members of the OECD Development Centre. Despite this, BEPS, as intellectual creation of the OECD still being seen as something alien to the Latin American tax culture. And it will not be for the efforts of the recent tax reforms in Mexico, Chile, Costa Rica and, above all, Colombia, to incorporate into their juridical systems the legal solutions based directly on BEPS proposals.

However, the automatic translation of certain measures proposed by BEPS to Latin America Area keeps raising doubts.

Thus, and without being exhaustive, the Action 1, *addressing the challenges of the digital economy for taxation*, deliberately ignores the problems and grievances that the balance of power in international taxation involves at present for the technology-importing countries, in the field of assessing the income derived from technological products. These problems are not resolved with a mere proposal of taxation at source on the net revenue yield. In relation to action 5, *fighting harmful tax practices, taking into account the transparency and the substance*, reference is made (Public Consultation, November 12 and 13, 2013) to the instruments to *re-qualify those operations that do not correspond to*

real economic criteria. These are proposals which are not free from criticism. Anti-abuse clauses are an expression of the legal tradition of each country and, for example, in States such as in Latin America, where the anti-avoidance policy has been built around concepts of continental civil law (fraud of law, simulation, abuse of right...) the implementation of measures that support instruments based on the economic substance may pose practical applicability problems.

In Actions 8, 9 and 10 relative to transfer pricing, there is not any hint of international transfer pricing regime adapted to the reality of the states of Latin America, where the export of raw materials is of crucial importance. The peculiarities of transfer pricing in Latin America raise many questions (for example, those relating to intra-group paid services from the local company in Latin America to the main matrix), but highlights the uniqueness of the so-called sixth method *for commodities*, which, since its inception, responds to an anti-avoidance purpose rather than to a criterion of allocation of taxable bases of multinational companies.

There are many questions raised by the sixth method, starting with the very question of whether it is a real method, since it is not systematized and standardized, nor is it uniform. It is not clear when it should be applied, and many doubts about it are not answered. It is not even possible to point out clearly what is meant by *commodities* for the purpose of the method nor which markets of reference can be taken to fix the price. Or if there is the possibility of avoiding the method application when there is a price in a contract registered or delivered to the Administration, involving a certain date. It is also a method that may suffer from arbitrariness, since it ignores the use of futures in the transfer of risk (transfer of income from the country which assumes the risk to which the sixth method apply) and there is no clarity about the date which is taken into consideration to assess the value of the goods from international markets. But, however, the observations of Latin American countries regarding the consideration of this method should have been taken into account in the final reports of the conferences of Bogota and Lima.

Finally; without extending, the action 15 relating to the multilateral instrument will raise issues, as highlighted by important Latin American authors (Tron, Bilardi, Montaño Galarza...) in the absence of a version in Spanish, and specific issues of conflict with Decision 578 of the Andean Community of Nations.

Therefore, we understand that it is not reckless to say that the BEPS philosophy does not fit to the economic and social reality of countries in an economic area that is different from those that inspire the OECD solutions. We may quote here Manuel Tron, ex-President of the IFA, in the case of Mexico, although these thoughts are extendable to all the countries of Latin America. For this author “the actions of the OECD plan rely on the application of advanced technical criteria and principles which in many cases are unknown to our law and even alien to our legal constitutional tradition. Before this reality, the governments of the Latin American countries are faced with the choice to continue applying their tax provisions (of lesser complexity and sophistication), or to try joining this wave of tax modernity that BEPS represent”.

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