



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.

CONTENTS

1. Legal action framework of the Peruvian Tax Administration
2. Control developed by SUNAT
3. Treatment of large business risks through control actions
4. Conclusions
5. Bibliography
6. Annex

AUTHOR

Public Accountant with a Master's degree in Accounting and mention in Finances from Universidad Nacional de Trujillo. Master's degree in Tax Law from Universidad de Barcelona. Ph.D. in Accounting and Finances from Universidad de San Martín de Porres.. Professor at the School of Business of Universidad de Lima, Universidad Nacional Mayor de San Marcos and Universidad del Pacífico.

INTRODUCTION

In recent years, Peru's economic growth generated an improvement of the labor market¹, 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 workers³.

Labor informality is not only an issue in Peru. The International Labor Organization⁴ (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 rights⁵. 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 earning 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 SUNAFIL⁷ and MTyPE⁸, 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 INEI⁹, 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 risks¹⁰.

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-Register¹¹, 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 ONP¹² nontax obligations, as provided in the corresponding interinstitutional agreements¹³.

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 N° 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 N° 004-2006-TR (06/04/2006) Issues Provisions regarding the Attendance and Departure Control Registry in the Private Activity Labor System; Supreme Decree N° 011-2006-TR, (06/06/2006) Amends S.D. N° 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 N° 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 Administration¹⁴.

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 SBR¹⁵ 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; Obligated 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-Register¹⁷) and the Monthly Payment Payroll (PLAME¹⁸). 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 SENATI¹⁹, 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 payroll²⁰ 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 N° 26272, amended through Law N° 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 risk²¹ 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 companies²², 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 information²³ 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 Business²⁴ 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 expenses²⁵ 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 Gasoline²⁶, 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 latter²⁷. 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 treatment²⁸ 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 lease²⁹, 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 remuneration³¹.

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 business³².

- **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 worker³³. 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_public/con_nor_co/vigentes/nic/19_NIC.pdf y https://www.mef.gob.pe/contenidos/conta_public/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 establishing³⁴ 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 matter, 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.

BIBLIOGRAPHY

- Alink, M. H. J. & Van Kommer, V. (2011).** Manual de administración tributaria. IBFD.
- Auqui, J. F. B. (2015).** Evasión tributaria de la economía subterránea: causas, consecuencias, formalización desde la perspectiva del trabajo decente y participación en el PIB del Perú. Lima, 2015. *Revista de Investigación Valor Contable*, 2(1).
- Calderón, J. M. & EY, C. A. (2015).** El nuevo modelo de Control del Cumplimiento Tributario de los Grandes Contribuyentes: las últimas medidas propuestas por la HMRC y su potencial impacto en España.
- Chacaltana, J. (2016).** Perú, 2002-2012: crecimiento, cambio estructural y formalización. *Revista CEPAL*.
- Gómez Sabaini, J. C., Cetrángolo, O. & Morán, D. (2014).** La evasión contributiva en la protección social de salud y pensiones: un análisis para la Argentina, Colombia y el Perú.
- Jaramillo-Baanante, M., & Sparrow, B. (2014).** *Crecimiento y segmentación del empleo en el Perú, 2001-2011* (No. dt72). Grupo de Análisis para el Desarrollo (GRADE).
- Jiménez, M. (2013).** La informalidad laboral en el sector formal. Un análisis preliminar. *Documento de trabajo*, (10). Lavigne, M. (2013). Sistemas de protección social en América Latina y el Caribe: Perú.
- Machado, R. (2014).** La economía informal en el Perú: magnitud y determinantes (1980-2011). *Apuntes: Revista de Ciencias Sociales*, 41(74), 197-233.
- Miyagusuku, J. T. (2013).** Tributos y aportes del contrato de trabajo: la tributación laboral. *THEMIS: Revista de Derecho*, (64), 197-216.
- Punchin, E. H. R., & Aragón, O. R. C. (2015).** Implicancias Laborales y Tributarias en la Contratación de Trabajadores Extranjeros y las Peculiaridades de los Países Miembros de la Comunidad Andina de naciones. *Derecho & Sociedad*, (43), 481-489.
- Rentería, J. M. (2015).** *Brechas de ingresos laborales en el Perú urbano: una exploración de la economía informal*. Lima.
- Rodríguez, J. S. (2013).** Diferencias de los ingresos laborales entre los puestos de trabajo asalariado y los puestos de trabajo autogenerados en el Perú, 2007-2011 Labor Income Gaps Between Wage-Earner and Self-Employed Jobs in Peru, 2007-2011.
- Toyama Miyagusuku, J. (2013).** Tributos y aportes del contrato de trabajo: la tributación laboral.
- Ugáz, M., & Prentice, A. A. (2014).** Los gastos de personal desde la perspectiva del Derecho Laboral Tributario. *THEMIS: Revista de Derecho*, (65), 243-258.

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 with Es 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 of voucher, 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	