Tax Administration REVIEW

Inter-American Center of Tax Administrations
CIAT

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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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Editorial

Dear Readers,

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

This edition presents ten (10) articles: Reporting to the Taxpayer: Implementing an evidence-based public policy; Challenges and opportunities to implement a “Single Federal Tax Registry” in Argentina; Incorporating data analytics in tax administration; Beneficial ownership transparency: Accomplishment and obstacles; Taxation in the digital economy. BEPS plan; Impact of the corruption phenomenon on voluntary compliance and on the closing of tax Gaps. Peruvian experience; The new course of corporate income taxation in Angola; Classification of electronic invoices using natural language processing; Tax policy management in the underground economy in Latin America and Incorporation of the conclusive agreements into the Argentine tax procedure.

We appreciate the great reception given to the call to submit contributions for this edition of the Tax Administration Review.

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

Márcio Ferreira Verdi
Director of the Review

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REPORTING TO THE TAXPAYER:

Implementing an Evidence-Based Public Policy

Pamela **Castellón**
Nicolás **Fernández**

SYNOPSIS

Improving transparency about the payment and use of taxes can help to increase confidence in the state by citizens. This paper presents the results of a pilot experience developed in the Chilean tax administration, in which different reporting alternatives were designed and an impact evaluation was carried out to measure the effect on the perception of transparency and trust by taxpayers, as well as on the payment of taxes. This document presents the lessons learned during its implementation and recommendations in case that other countries would wish to implement it.

Keywords: Impact evaluation, Tax compliance, Transparency, Trust.

CONTENT

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INTRODUCTION

Administrative data and evidence from rigorous evaluations, such as impact evaluations, are tools that can help decision makers monitor and improve the implementation of existing programs, identify programs that are more likely to achieve the desired results, and test new programs before expanding them.

Although there are still barriers to the use of data and evidence in decision-making in public policies, a significant number of governments around the world are working to identify sustainable processes to incorporate, in a more systematic way, monitoring data and results of impact evaluations in the design, implementation, evaluation and learning cycle of their programs (J-Pal, 2018).

In this process, the tax administrations have a privileged position since they have direct access to the sources of administrative data and have the information technologies and the capacities to exploit said data. Therefore, they have the potential to design and implement impact evaluations that allow generating evidence, either to evaluate their own internal programs and/or to evaluate other government programs or policies.

This report summarizes the experience of the Chilean Internal Revenue Service (SII) in working with the Ministry of Finance[1] and other organizations[2], in the design and implementation of a report to the taxpayer, which provides information about the use of taxes and the situation State prosecutor, with the aim of increasing the perception of transparency and trust in the State[3].

Because there is little evidence on which is the most effective mechanism to increase the perception of transparency and trust in the State by citizens, a pilot was carried out with a random sample of taxpayers, to whom they were presented different reporting alternatives, implementing an impact evaluation to generate rigorous evidence in relation to the best way to deliver the information to taxpayers.

Based on behavioral sciences and interviews with people, three reporting alternatives were generated: one with a statistical design, which included the distribution of spending by category of public spending, another on the use of resources with a public policy approach at the national level, and, finally, a report on the use of resources with a public policy approach at the regional level. The reports were randomly and equitably assigned among the eligible population. The final effective sample consisted of 97,625 taxpayers, 36,655 treated (who received some type of report), and 60,970 in the control group (who did not receive a report)[4].

The effects of the report on the perception of transparency and the trust of the people in the State were evaluated through an online survey, sent directly to the e-mail of the taxpayers in the sample. In this survey, there was a fourth treatment, in which the possibility of providing feedback regarding the use of taxes by the State was indicated. Additionally, the effect of the report on tax compliance and payment variables was evaluated through administrative data from the SII.

The results of the impact evaluation of the pilot allowed to quantify each one of the evaluated options, based on the objective variables, allowing to identify the best options. Thus, the most effective report, based on this evidence, was sent in a second stage to the entire universe of taxpayers.

In this paper, we present the steps that were followed to implement a massive policy, based on rigorous

1 The Ministry of Finance of Chile is the Ministry of State in charge of directing public finances.

2 Budget and Governmental Laboratory Directorate.

3 The Report to the Taxpayer was one of the first recommendations of the Public Expenditure Commission, convened by the Minister of Finance, formed in January 2020.

4 The composition of the sample is presented in section 3.

evidence of its effects: in section 1 the theoretical framework is presented; in section 2 the design and implementation of the Impact Assessment; section 3 presents the results of the impact evaluation; section 4 presents learnings from the implementation; section 5 presents the main conclusions.

1. THEORETICAL FRAMEWORK

1.1 Openness and trust

To summarize, different definitions found in the literature of the concept "transparency", in the context of public spending, this is understood as the act of providing timely and understandable information so that people know how and how well public resources are spent. It can include providing accountability and citizen monitoring mechanisms that promote better public spending with a focus on people (Grimmelikhuijsen, 2012).

Trust is a concept that has been approached from multiple disciplines and research areas. Rousseau, Sitkin, Burt, & Camerer (1998) synthesize it as a psychological state that includes the intention to accept the vulnerability of another, based on positive expectations of their intentions or their behavior.

Today we know that trust is the result of cognitive and affective processes. On the one hand, good quality information delivered on time builds trust. On the other hand, citizens not only cognitively judge the information but also use simple and affective clues, such as the general image of the Government (Etzioni, 2010). When there is mistrust of the messenger, people tend to cling to their existing beliefs (Gerber & Green, 1999, pp. 189-210). Furthermore, uncertainty and fear, which prevail in crisis situations, can exacerbate these trends (Jost et al., 2009, p. 244).

Transparency seeks to strengthen citizens' trust with public institutions. As such, transparency has been emphasized as a mechanism to build trust (OECD, 2017). However, it is not self-evident that it is sufficient to improve confidence. Research has shown that trust is explained by factors that may be equal to or more important than making knowledge available (Grimmelikhuijsen, 2012). Additionally, it has been shown that, in certain common circumstances, transparency may not have the desired positive effects (Bannister & Connolly, 2011).

Accountability and showing positive performance could have the potential to increase trust in countries with institutional crises (Manning & Wetzel, 2010). Experiments have shown an increase in trust when a good performance of the Government is evidenced versus a low performance (Alessando, Cardinale, Scartascini & Torrealday, 2019). The paradox is that, when accountable, institutions can reveal integrity, benevolence, and reliability, or the opposite. Transparency presupposes that the citizens will trust that accountability is honest and balanced (Bachmann, Gillespie & Priem, 2015).

On the other hand, there is evidence that suggests that when people feel that they have the option of giving their opinion regarding public decisions and being heard by the government, they tend to increase their trust in it. It has been empirically proven that opening a feedback channel and showing citizens how to act against public decisions increases trust and commitment to the State (Buell, Porter, & Norton, 2018). This is why an intervention was included to measure the impact of the possibility of feedback in the experiment.

1.2 Behavioral Sciences[5]

Behavioral science is the study of how people make decisions and act in a complex world. It combines ideas from economics, psychology, sociology, neurology, and anthropology, to create a more realistic model to understand how, in practice, individuals make decisions and how they tend to respond to different options. To have

5 This section is based on the author's working paper: A Guide to Improving Taxpayer Compliance: Behavioral Science-Based Strategies SII (2020).

designs that impact people's behavior, it is essential to understand why they behave in a certain way and how they react to different stimuli. The behavioral sciences achieve this objective, by focusing their research on the real behavior of the human being and not on the analysis of economic models that assume rational and logical behavior.

Some of the leading findings from the behavioral sciences indicate that people who are faced with more decisions and information than they can consciously process are easily distracted and have limited attention, behaving according to the law of the least effort. On the other hand, the context greatly influences our behavior, since our emotions and expectations affect our behavior, so the moment in which an action is taken matters.

Considering these and other behavioral biases, behavioral science recommends that communication designs must be simple, attractive, personalized, and timely[6]. For this, the report to the taxpayer includes the following guidelines:

- Use simple and understandable language.
- Minimize the information to be presented.
- Use a title that makes sense to the user.
- Use first and last names and clarify the purpose of the communication.
- Put key information first.
- Use boxes, colors and bold to highlight key information.
- Logically order the sections and give visual appeal to differentiate sections.
- Use colors that create feelings of confidence and security.
- Pictures and drawings help to understand and memorize the message.
- People generally focus on headings, charts, and images, while detailed text is often ignored.
- Make statistics simple and understandable.

1.3 Theory of change

The theory of change describes the causal logic behind the intervention. This explains the needs that give rise to the study, the required inputs, and how the intervention should affect the expected results, considering the products, intermediate results, and final result indicators. In this case, the intervention is sending the report to the taxpayer. The main inputs to generate this report were taxpayer information, public spending information, and the tax deficit. The report is expected to increase taxpayers' perception of transparency and trust in the State, as detailed below[7]:

1. **Needs -** Taxpayers do not know how their taxes are spent, nor the state's fiscal situation. In addition, they have low levels of perceived transparency and trust in the State.
2. **Inputs -** Man hours destined to the report and databases of the SII and other organizations to generate it.
3. **Products -** Report to the taxpayer, website with information on the report on the SII website and the possibility of providing feedback to the Government.

6 Based on the Model EAST of BIT https://www.bi.team/publications/east-espanol/

7 Based on: J-PAL (2019) "Measurements: Outcomes, Impacts, and Indicator".

4. **Intermediate results -** Taxpayers receive and read the report.

5. **Impact -** Taxpayers are more informed of their contribution to the State, how spending is distributed, and the State's fiscal situation. Increase in the perception of transparency and trust in the State and in the amount of taxes paid.

At the product level, the report to the taxpayer must address the existing level of credibility in the current context and the pre-existing attitudes of the taxpayers at the time the report is received. Therefore, to increase the probability that the report will activate positive attitudes, and the credibility of the intervention, the following elements were incorporated:

- *Use of clear language.* This is one of the strongest signals regarding placing the citizen at the center of this coordinated effort.

- *Delivery of local information.* The hypothesis is that people care more about local policies than spending figures at the national level since they are directly affected by them, and local identity is appealed to.

- *Request for feedback.* Involving citizens in the process and showing an open attitude to receive feedback is an element that could be decisive in generating trust.

- *Delivery of complete and objective information, but in a simple way.* In this way, the probability that the report is perceived as propaganda for political purposes, chosen on a discretionary basis, is reduced.

- *Issuance through a credible messenger.* The SII is the institution that has a direct relationship with taxpayers in the tax return. As such, it was the institution responsible for implementing and submitting the reports.

The outcome variables that guide the study are, on the one hand, perceptions and statements that citizens provide through a survey that collects the perception of transparency and trust in the State, considering the domains of reliability, honesty, competence, and pursuit of the common good by the State (Alessandro et al. 2019; Grimmelikhuijsen, 2012; Grimmelikhuijsen, et al. 2013), and on the other, observable tax behaviors, such as the declaration, date, and payment of taxes, which correspond to administrative data.

1.4 Impact evaluations[8]

In impact evaluations, the objective is to demonstrate a causal effect, seeking to measure the effect or impact of a program or a policy on some variable of interest. In our case, we seek to measure the effect of receiving a report on the payment and use of taxes on the perception of transparency and trust in the State.

Carrying out an impact evaluation prior to the massification of the report is very useful since it can help to:

- Generate information on an intervention for which there is little knowledge of its effects and impacts.

- Identify the operational aspects to improve before scaling it up.

- Identify unwanted effects.

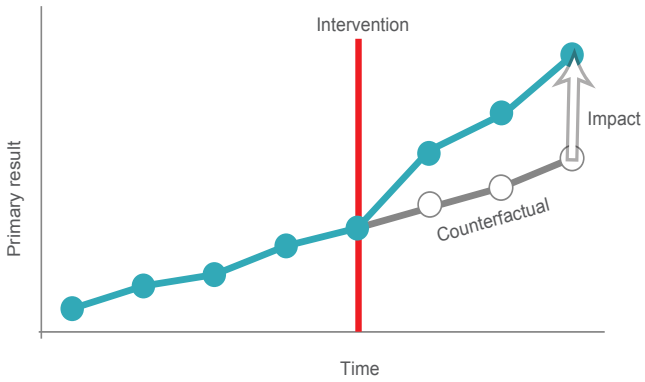
- Use more rationally the resources that are dedicated to the programs.

- Contribute to the development of policies with high quality evidence.

8 This section is based on the book: Impact Evaluation in Practice: Second Edition. Inter-American Development Bank. Gertler, P, et al. (2016).

The difficulty in measuring impact is that you can only observe what happened, not what would have happened without the intervention. We see the taxpayer's payment subsequent to the intervention, but we don't see if the same taxpayer would have made the same payment without the intervention. This imaginary situation is called the counterfactual. If we had a correct representation of the counterfactual, the impact estimate would be the difference between the result that we observed with the program and the result that would have occurred without the program, as shown in Figure 1.

Figure 1. Impact and counterfactual evaluation



Normally, the estimate of the counterfactual is constructed with a group called a control or comparison group. The control group is individuals who do not receive the program, while the treatment group is the group that does receive the program. An ideal evaluation would have a control group equal to the treatment group in all characteristics (observable and unobservable) except for one: their exposure to the program. In this case, all the differences after the application of the program can be attributed to it, since without it the two groups would be equal.

The method that builds a comparison group of the highest quality, *gold standard,* to make an impact evaluation are randomized evaluations[9]. Because **randomized evaluations** (or experimental evaluations) randomly assign subjects to the treatment and control group prior to the intervention. By the law of large numbers, when there are enough people in each group, a random assignment results in two groups that are alike in all observable characteristics (such as paying taxes) and unobservable (such as their motivations), that is, they are statistically identical. Therefore, any subsequent differences between them can be attributed to the program and not to other factors. For this reason, a random evaluation was designed to evaluate the effect of the report to the taxpayer.

2. DESIGN AND IMPLEMENTATION OF THE IMPACT EVALUATION

2.1 The intervention

The first step in the design of the intervention was to define the contents of the report, who would receive it, and the appropriate time. For this, it was determined that the report would be delivered during the *Income operation 2020* online declaration process[10] to a sample of individuals who present their annual income tax return, informing about the payment of taxes and their use, by the State, in the year 2019.

The report was structured as follows:

Section 1: How much the taxpayer paid in personal

9 There are different impact assessment methods, which differ in the assumptions used for the construction of the comparison group. For other methodologies, see Gertler, P, et al. (2016).

10 Process in which income taxes accrued in 2019 are declared.

income tax, and an estimate[11] of their payment of Value Added Tax (VAT), during the year 2019.

Section 2: How those taxes were spent in 2019.

Section 3: Total income and expenses, together with the fiscal deficit / surplus for the year 2019.

Based on the literature and qualitative fieldwork, three treatments were designed, consisting of variations of the report. The difference between them was in section 2, the other sections did not change between treatments[12].

Treatment 1: a bar chart showing proportional spending by public spending area. Hereinafter, this treatment will be referred to as T1 or Statistical.

Treatment 2: a summary of the most important expenditures made in the areas of education, health, pensions, housing, and infrastructure and connectivity, at the **national** level. Hereinafter, this treatment will be referred to as T2 or National.

Treatment 3: a summary of the most important expenditures made in the areas of education, health, pensions, housing, and infrastructure and connectivity, at the **regional** level. Hereinafter, this treatment will be referred to as T3 or Regional.

Additionally, a **fourth treatment (T4) was carried out in a transversal manner**, which consisted of asking taxpayers for feedback regarding public spending. This request was made at the beginning of the survey for the sample that received this treatment, through the following question: *"How do you think the State should use the public resources of the Chileans?*".

The different reports generated were tested with approximately 700 users throughout the country, which made possible to test the clarity of the language, the tone of the communication, the acceptability of receiving a report, and the perception of the people. This allowed the design to be adjusted and improved to its final version.

2.2 Sample

The experimental sample consisted of a representative subset of all taxpayers who had completed the 2019 Income tax return, and who had not yet filed their 2020 Income tax return until April 20, 2020.

Using the administrative data of the SII, the groups are generated through a stratified random assignment by type of taxpayer[13], risk of non-payment[14], and 2019 income quintile[15]. In this way, a group of 66,101 taxpayers belonging to the treated group and 109,478 taxpayers belonging to the control group was obtained.

However, to be part of the experimental groups effectively, people had to initiate the declaration of the 2020 period, since otherwise, they would not receive the report. Thus, of the taxpayers randomized to form part of the different treatment and control groups, those who actually did so are shown in the second row of Table 1.

11 Only Income Tax and VAT were selected because they are the most relevant taxes in Chilean tax legislation, both in terms of their impact on revenue collection and the number of taxpayers who have to pay them. In the case of VAT, it is not possible to determine the total tax paid by individuals, so it is necessary to make an estimate based on the income declared in the income operation and on the consumption estimated from the VII Household Budget Survey (Encuesta de Presupuestos Familiares, EPF year 2018).

12 See reports in Annex 1.

13 It depends on whether in the 2019 income tax return the taxpayer had to pay taxes, had taxes refunded, or if it was balanced.

14 Classification coming from the SII risk model in which there are four categories: high, key, medium or low.

15 Income quintile according to the 2019 income tax return. Quintile constructed based on the universe of taxpayers.

Table 1. Number of selected and effective taxpayers in each group

	T4=1 | With Feedback			T4=0 | No Feedback			All treated	Control Group	Sample Total
Treatment	T1	T2	T3	T1	T2	T3			
Number of randomized taxpayer	11.069	11.064	11.072	11.062	11.064	11.043	66.374	109.924	176.298
Effective number of taxpayers	6.090	6.069	6.151	6.064	6.103	6.178	36.655	60.970	97.625

Source: Own elaboration based on data from the Internal Revenue Service (SII).

We can see in Table 2 that the characteristics of the effective treatment and control sample are balanced. The average age of the individuals in the sample is 50 years, 58% correspond to men, the average monthly income is approximately $ 2,350.000, 78% is classified as low risk by the SII, the average amount returned for those who receive a refund is $ 724,841, and the average amount paid by those who have to pay is $ 3,364,729. It can be seen that the difference in the means of the variables between the treatment and control groups are small, and not significant in most cases. This means that the sample is balanced in its observable characteristics. Low and medium risk ratings are the only variables in which the differences are significant, although they remain small. This is not a problem since it is controlled for these variables in the estimates.

Table 2. Descriptive statistics for treatment and control groups

Variable	Mean	Est. Dev.	Difference	N
Age	50,22	15,12	-0,135	97.625
Gender	0,58	0,49	-0,005	97.625
Annual Income	28.227.669	58.686.177	-0,001	97.625
Risk: low	0,78	0,41	-0,007***	97.625
Risk: medium	0,08	0,27	0,004**	97.625
Risk: key	0,09	0,28	0,002	97.625
Risk: high	0,05	0,21	0,001	97.625
Refund amount	724.841	1.729.686	0,022	75.906
Payment amount	3.364.729	14.124.304	0,008	15.612

Note: Variables significant at 1%***, at 5% **, at 10%*. Income and amounts are in Chilean pesos.
Source: Own elaboration based on data from the Internal Revenue Service (SII).

Finally, the sample that answered the survey corresponds to 7% of the taxpayers of the effective sample (n = 6,947). The analysis shows that the groups that answered the survey are balanced with each other in all the stratification variables. (See balance tables for the sample in the Annexes).

2.3 Survey to measure impact

The data used to measure the impact correspond mainly to administrative data from the SII. These include the identification of taxpayers, their historical tax payment information, their categorization according to risk classification, type of taxpayer and income level, and variables related to the monitoring of the implementation of the evaluation, to which the aggregate the responses from the online survey sent by the SII to the taxpayers in the sample[16]. The survey was sent automatically at the beginning of the Income 2020 declaration process, both for the treatment group and for the control group.

16 Survey available in Annex 4.

Using as reference previous studies (Alessandro, Lagomarsino, Scartascini, & Torrealday, 2019; Grimmelikhuijsen, 2012; Grimmelikhuijsen, Porumbescu, Hong & Im, 2013), the survey considers different areas that are related to transparency and trust in the State. These include:

1. Perception of State transparency
2. State jurisdiction
3. Benevolence of the State
4. State honesty
5. State reliability

A Likert scale from 1 to 5 was used, where 1 strongly disagreed and 5 strongly agreed. In the following table you can see the questions and their corresponding domains.

Table 3. Questions included in the survey to measure transparency and trust, under the title: "How much do you agree that the State of Chile?"

Item Question	Domain
a. Provides you with clear information on public spending.	Transparency
b. Spend public resources properly.	Competence
c. Plan public expenditures, considering long-term objectives.	Competence
d. Consider the interest of citizens when executing public expenditures.	Benevolence
e. Does everything possible to help the most vulnerable.	Benevolence
f. Deliver on promises.	Honesty
g. It seeks to do the best for those who reside in the country.	Reliability

From these aspects, the results on transparency and trust were measured. In the case of transparency, item (a) was used. On the other hand, for trust in the State, a trust index was constructed based on an average of items (b) to (g). Finally, taxpayers who received a report were asked their general satisfaction with the report.

2.4 Empirical Method

The impact of the report to the taxpayer on the variables mentioned above is estimated through an experimental methodology. Therefore, the causal effect is identified by comparing the three treatment groups with the control group. As seen previously, the groups are balanced, except for some risk categories, which are included as a control in the estimates.

Table 1 denotes that the effective sample that was part of the evaluation is made up of 36,655 taxpayers randomly assigned to treatments 1, 2, and 3; and half of each treatment receives treatment 4 (feedback). The result is six groups of around 6,000 treated taxpayers, and a group of 60,970 taxpayers in the control group.

The impact on the outcome variables is measured by a simple linear regression from equations 1, 2 and 3[17].

Equation 1 is used to measure the impact of the report on (i) the perception of transparency and (ii) the trust index, in the absence of feedback.

$$Y_i = \beta_0 + \beta_1 T_i + I\alpha + P\gamma + R\delta + u_i \mid T_{4i} = 0 \qquad \textbf{(1)}$$

where $Y_i$corresponds to the outcome variable of individual i; T_i this corresponds to a dichotomous variable that identifies whether an individual i received any of the treatments. In this equation, β_1 represents the average impact of the report on the outcome variables.

I, P, and R, are vectors of dichotomous variables for each income quintile, type of taxpayer, and non-payment risk category, for individual α, γ, δ. They are the vectors of the estimated parameters associated with the income quintile, type of taxpayer, and non-payment risk category T_{4i}. They correspond to a dichotomous variable that identifies whether the individual i received the option to give feedback or not.

Equation 2 is used to measure the impact of the report on (i) the perception of transparency and (ii) the trust index, in the absence of feedback.

$$Y_i = \beta_0 + \beta_1 T_{1i} + \beta_2 T_{2i} + \beta_3 T_{3i} + I\alpha + P\gamma + R\delta + u_i \mid T_{4i} = 0 \qquad \textbf{(2)}$$

T_{1i} corresponds to a dichotomous variable that identifies whether individual i received treatment 1; T_{2i} corresponds to a dichotomous variable that identifies whether individual i received treatment 2; T_{3i} corresponds to a dichotomous variable that identifies whether individual i received treatment 3. In this equation, the estimated coefficients β_1, β_2 and $\beta_3$indicate the average impact of each of the treatments when there is no feedback (T_{4i}= 0).

Equations 1 and 2 are used to measure the impact of the report on (i) the amount paid / refunded in taxes and ii) filing time[18].

Finally, **Equation 3** is used to measure the impact of feedback on (i) the perception of transparency, (ii) confidence index, (iii) satisfaction with the report, (iv) amount paid / refunded of taxes, and (v) declaration time. In this equation, β_1 represents the average impact of receiving Treatment 4.

$$Y_i = \beta_0 + \beta_1 T_{4i} + I\alpha + P\gamma + R\delta + u_i \mid T_{1i} = 1, T_{2i} = 1, T_{3i} = 1 \qquad (3)$$

17 Due to the fact that the estimates consider the effective sample, the effect on the estimated outcome variables is ATT (average treatment effect on the treated).

18 It corresponds to the time elapsed between the moment you enter the website and log in to file the tax return and the day you finally finish and send the return.

3. RESULTS

The main objective of the report is to increase the perception of transparency and the trust of citizens in the State, which is measured through the survey mentioned in section 2 on the perception of transparency and trust, and the effects on tax variables with data administrative staff of the SII. This is why, for the former, the sample is restricted to those who answered the survey, while, for the latter, there are results for the entire effective sample.

3.1 Impact of receiving the report (regardless of the type of report)

Tables 4 and 5 show the estimated impact results according to equation 1[19]. In Table 5, column 1 measures the average impact of the report on the State's perception of transparency. The results indicate that there is a positive and significant effect of approximately 0.35 points on the perception of transparency. Column 2 shows that there is, on average, a positive and significant effect of 0.13 points on the perception of trust, measured through the trust index.

Table 4. Descriptive statistics for treatment groups in transparency and trust

	(1) Transparency		(2) Trust index	
Group	**Average**	**Standard deviation**	**Average**	**Standard deviation**
Control	3,25	1,517	2,82	1,201
T1, T2 o T3 / T4=0	3,61	1,457	2,96	1,201

Source: Own elaboration based on data from the SII.

Table 5. Average impact of treatment on transparency and trust

Variables	(1) Transparency	(2) Confidence index
T=1	0,349***	0,128***
	(0,047)	(0,038)
Controls	Yes	Yes
Observations	5975	5975

Note: Robust standard errors in parentheses, *** p<0.01, **p<0.05, *p<0.1. Controls: age, gender, risk, income quintile and type of taxpayer.

Source: Own elaboration based on data from the SII.

19 The balance of the sample used for Table 5 can be found in Annex 2. Age, gender, risk, income quintile and type of taxpayer are used as control variables.

In Table 6[20] columns 1, 2, and 3 show the impact of the reports on tax variables. Column 1 shows the average effect of the reports on the tax refund amount; Column 2 shows the average effect for the tax payment amount, and column 3 measures the average effect on the time to pay taxes. The results show that there are no significant effects on any of the three variables, the coefficients are negative, and close to zero.

Table 6. Average impact of treatment on tax results

	(1)	(2)	(3)
Variables	**Refund (a)**	**Payment (a)**	**Time to declare**
T=1	-0,01	-0,102	-0,02
	(0,032)	(0,089)	(0,019)
Controls	Yes	Yes	Yes
Constant	10,44***	1,631	1,393***
Observations	75906	15612	92316

Note: a) Values in logarithm. Estimate made only for taxpayers who had a tax refund or payment of taxes.
Source: Own elaboration based on data from the SII.

Additionally, it was estimated that receiving the report did not affect the probability of filing a tax return, i.e., both the control and treatment groups had the same probability of completing the tax return.

3.2 Impact by type of report received

Tables 7 and 8 present the results according to Equation 2. In Table 8, it can be seen that the report has positive and significant effects on perception of transparency under the three treatment alternatives. The effect is greatest for Treatment 1, which shows an average increase of 0.45 points, followed by Treatment 2, with an average increase of 0.34 points, and finally Treatment 3 with an average increase of 0.24 points. All treatments have a positive and significant effect on the Confidence Index, with Treatment 1 increasing the Confidence Index by 0.19 points on average, while Treatment 2 by 0.14 points on average, and Treatment 3 by 0.1 points on average.

20 The balance sheet for this sample and for the remaining estimates is available on request from the authors of the paper.

Table 7. **Descriptive statistics different treatments and control on transparency and confidence**

	(1) Transparency		(2) Confidence index	
Treatment group	**Average**	**Standard deviation**	**Average**	**Standard deviation**
Control	3,25	1,52	2,82	1,2
T1 / T4=0	3,71	1,45	3,01	1,22
T2 / T4=0	3,59	1,46	2,95	1,19
T3 / T4=0	3,53	1,46	2,94	1,2

Source: Own elaboration based on data from the SII

Table 8. **Impact T1, T2, y T3 on transparence and trust**

Variables	(1) Transparency	(2) Confidence index
T1: Statistics	0.45***	0.188***
	(0.078)	(0.063)
T2: National	0.335***	0.139**
	(0.07)	(0.057)
T3: Regional	0.236***	0.102*
	(0.075)	(0.061)
Controls	Yes	Yes
Observations	6947	6947

Note: Robust standard errors in parentheses, *** p<0.01, **p<0.05, *p<0.1

Source: Own elaboration based on data from the Internal Revenue Service (SII).

The results show that reporting has a positive and significant impact on the perception of transparency and taxpayers' trust in the State. On average, receiving a report format increases the perception of transparency by 16% and trust in the State by 8%. The results are greater for statistical reporting, which increases the perception of transparency by 20% and trust in the State by 10% considering the scale used.

It is possible to observe in **Annex 3** that Treatment 1 has a positive and significant effect on all the items that make up the Confidence Index; the same happens for Treatment 2, except for the reliability item, where the effect is not significant. However, Treatment 3, despite having positive coefficients on all items, only has a significant impact on competence and reliability.

3.3 Impact of treatment 4, feedback

Table 9 shows the descriptive statistics for the groups that did and did not receive Treatment 4. Table 10 shows the impact of Treatment 4 on the perception of Transparency (Column 1), Trust Index (Column 2), and Satisfaction with the Report (Column 3). For all three estimates, the impact of the feedback request is negative and significant. The results show that Treatment 4 reduces on average by approximately 0.28 points the perception of transparency; on average by approximately 0.22 points the trust index, and by 0.25 points the satisfaction with the report.

Table 9. Descriptive statistics group with and without feedback on transparency, trust, and satisfaction with reporting

	(1) Transparency		(2) Confidence index		(3) Satisfaction with report	
Group treatment	Average	Standard deviation	Average	Standard deviation	Average	Standard deviation
T4=0	3,61	1,457	2,96	1,201	4,1	1,785
T4=1	3,36	1,447	2,78	1,134	3,87	1,785

Source: Own elaboration based on data from the SII.

Table 10. T4 impact on transparency, trust, and satisfaction with reporting

Variables	(1) Transparency	(2) Confidence index	(3) Satisfation with report
T4	-0,282***	-0,215***	-0,253***
	(0,062)	(0,049)	(0,075)
Controls	Yes	Yes	Yes
Observations	2154	2154	2154

Note: Robust standard errors in parentheses, *** p<0.01, **p<0.05, *p<0.1

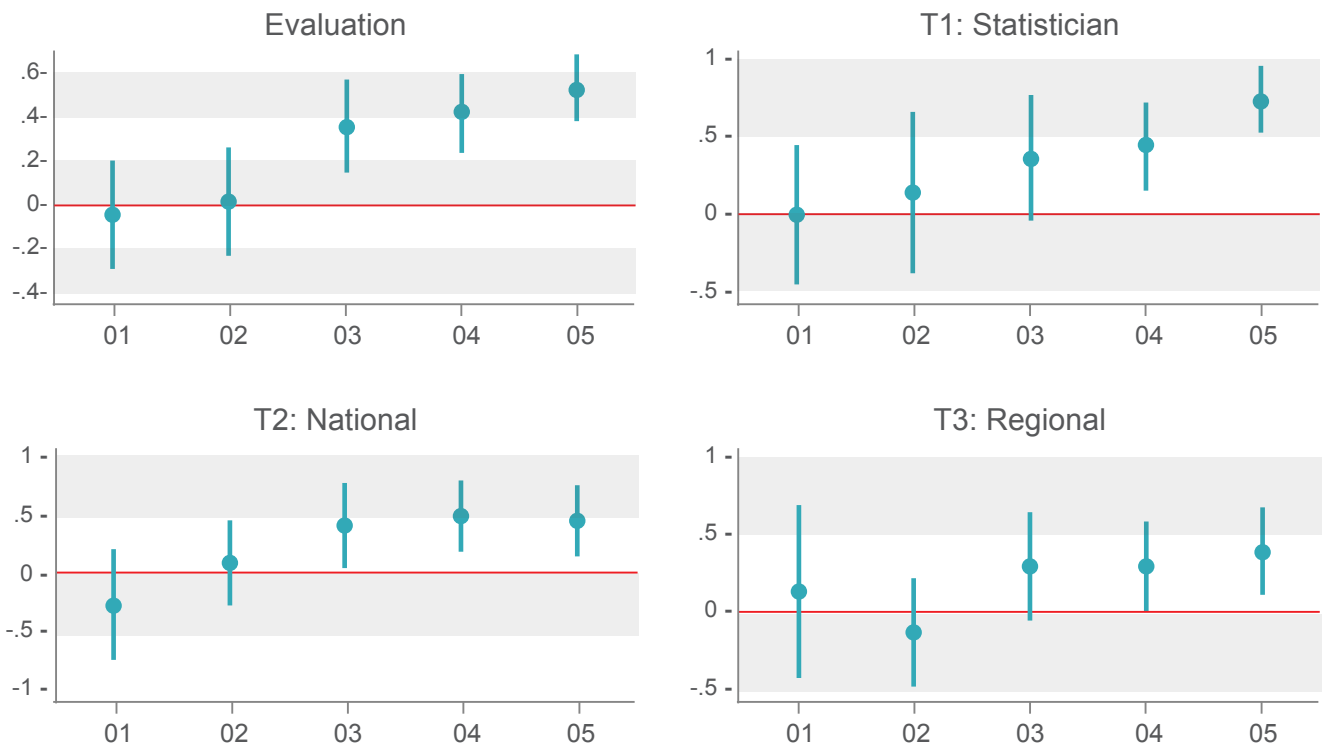
Source: Own elaboration based on data from the SII

The ability to provide feedback had a negative impact on taxpayers' perception of transparency and trust. This may be because the request for feedback was asked directly in the evaluation survey. Being the initial question in the survey, the rest of the questions may have been affected by the availability of negative information based on the writing of the feedback. In this case, the taxpayers answering the feedback question would have answered the subsequent questions commensurate with what they answered in that first question. Most of the responses showed a negative opinion about state spending and management of state resources, which would consequently cause the rest of the responses to be rated lower. Thus, T4 has a negative and significant impact on satisfaction with reporting equivalent to a 6% decrease in satisfaction relative to the groups treated without feedback.

3.4 Effects by income quintile

Figure 2 shows the impact of receiving one of the reports and the impact of each report on the perception of transparency by income quintile. The pattern observed is that the higher the income, the greater the positive impact of the report on the perception of transparency. In quintiles 1 and 2, the impact is never significant, and for the third quintile it is only in the case of Treatment 2.

Graph 2. Impact in transparency perception according to income quintile



Source: 95% confidence interval. Own elaboration based on SII data.

In relation to the Confidence Index, the results differ from the above since most of them are not significant. However, the effect of receiving any type of report is positive and significant from the third quintile onwards.

No heterogeneous effects by income quintile were found for any of the tax variables, with the exception of a significant reduction in the time to pay for the first and second quintile. We also found no heterogeneous effects on tax variables by taxpayer risk type.

4. LESSONS LEARNED FROM THE IMPLEMENTATION

Some of the policies and programs developed by tax administrations are not necessarily based on rigorous evidence, but rather on their own and/or other institutions' experience, on literature or simply on the belief that this is the best way to achieve an objective. Many times, we continue to carry out programs that once had an effect, but due to a new context or a change in the behavior of the taxpayers, they no longer have the same effect.

Information technology, staff skills and the principle of doing things as well as possible provide the opportunity to generate valuable information when testing modifications, measuring effectiveness and/or implementing something new. When these ideas come from management and permeate throughout the organization, the path becomes easier and more fruitful.

The following are some recommendations for countries that want to deliver a report to citizens as in the one presented in this document[21]:

- **Conduct an impact assessment:** We should never stop asking ourselves whether what we are thinking or doing is the best way to achieve the objective. The costs of piloting and implementing an impact assessment are far less than the medium- and long-term benefits of implementing a good policy. Those in charge of designing and conducting an impact assessment should explain to the areas with which they will interact why, how and for what purpose the assessment is being conducted. It should be considered that what has worked in other countries may not necessarily work in the same way in our own country. On the other hand, we will never stop learning about taxpayers' behavior, that is why we must evaluate, innovate and, as far as possible, re-evaluate.

- **Collaboration with other institutions:** Because the information to be delivered in the report includes information from other institutions, which manage information on spending and the fiscal situation, it is required to create a working table to coordinate all aspects of the report. Everyone's input is key for a correct design and implementation.

- **Expected sample size:** Evaluations should consider previous lessons learned in their design, particularly in determining the expected number of taxpayers to answer the survey. Previous studies conducted at the SII indicated that 7% of those contacted responded to the surveys sent by e-mail, a value that was used to select the size of the treatment and control groups, and thus be able to have statistically significant results.

- **Selecting the right message:** Although the sections of the report were clear, the way in which it is presented influences citizens' understanding. In this sense, it was very important to test the original versions to identify the words that were not understood and the best way to visualize the report, considering different types of graphics, sizes and colors.

- **Certainty of information:** Another very important aspect is that the information of the tax paid must be accurate, since taxpayers can check their tax paid in the tax returns and an error in the information may have the opposite effect to the one intended. Therefore, several tests must be

21 In general, these recommendations apply to any program or policy considered for implementation.

carried out to verify that the information provided is correct.

- **Choosing the right moment:** Given that the impact evaluation requires maximizing the visualization of the report and that taxpayers answer the survey in a short period of time to obtain statistically significant results, it is suggested that the delivery of the report be done at a time when there is a great interaction with individual taxpayers, e.g., when they file their tax returns.

- **Recording of information:** For evaluation purposes, it is necessary to keep a record and follow-up of those who viewed the report, received and answered the survey, which should be monitored to verify that the behavior is similar in each group of the study and subsequently measure the effects.

- **Providing more information:** Considering that this is an innovative initiative that was later massified to all taxpayers. It is recommended to provide more information on the report through different means, describing what it consists in, who receives it and the assumptions used, as well as a place to make inquiries, in case they wish to obtain more information (e.g., website, call center, email box, social networks, etc.).

- **Citizen feedback:** Evidence supports that providing an opportunity for feedback has the effect of increasing trust in the State, but our results, given the design of the feedback, show the opposite effect.

5. CONCLUSIONS

The impact evaluation of the taxpayer report, in which information was provided to taxpayers on the individual payment of the income tax and VAT and the use of these resources in the previous period, shows that it is an effective tool to increase the perception of transparency and trust of taxpayers in the State.

All three reports evaluated had positive impacts, but the most successful report was Treatment 1 or Statistical. Specifically, the results indicate that receiving any of the three reports significantly increases the perception of transparency, on average by 16%, and trust by 8% (compared to those who did not receive the report). And the statistical report achieves an average increase of 20% in the perception of transparency and 10% in the perception of trust. This demonstrates the interest of citizens in receiving information of this type and that the way in which this information is provided influences their perception, with the report containing more detailed information on expenditures being more highly valued.

The heterogeneous effects analysis showed that the impact found was largely due to the positive and significant effect found in the highest income quintiles. The reports had no impact on low-income quintiles, which highlights the need to find more effective ways to improve the perception of transparency and trust in these quintiles of the population, who tend to be more critical towards the State.

Given that the survey was sent at the same time that taxpayers filed their taxes, the effect identified is short term. However, sending the report is an initiative that is intended to be maintained over time, which could lead to a more permanent change in perceptions and attitudes towards the State[22].

In relation to the possibility of providing feedback, the results were significantly negative, both for the perception of transparency and for trust in the State. In other words, those taxpayers who had the possibility of writing a paragraph on their vision of how the State should spend public resources subsequently rated the State significantly worse in terms of transparency and trust. This poses the challenge of activating effective mechanisms of reciprocity between citizens and the State, through accountability, monitoring and perceived vulnerability.

In relation to the impact on tax variables, the results showed that in general the report does not affect the amount, payment or time to file.

22 Once the income operation was completed, each taxpayer was sent the report with the statistical design, which had a greater effect, and a calculator was made available on the SII web page so that the report could be generated based on the taxpayer's monthly net income level, in case the taxpayer had not received it, https://www.sii.cl/destacados/reportegt/index.html

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7. ANNEXES

Annex 1. Reports

1.1 Statistical report

Servicio de Impuestos Internos

¿Cómo se usaron mis impuestos el año 2019?

Estimado/a [Nombre Apellido],
El Estado de Chile agradece el aporte que usted realizó al desarrollo y funcionamiento del país mediante el pago de sus impuestos.

A continuación se detalla cuánto pagó usted en impuestos y de qué manera se utilizaron. Además, se informa el total de ingresos y gastos públicos del país durante el año 2019.

Este documento es un primer paso en el compromiso de aumentar la transparencia sobre el uso de los recursos públicos.

¿Cuánto aporté en impuestos?

$437.794 **Total impuestos pagados**
(Corresponde a los impuestos aportados en el 2018)

Suma de los impuestos personales que más aportan al país: Impuesto a la Renta e Impuesto al Valor Agregado (IVA).

Impuesto a la Renta
$51.494
Monto exacto de su última declaración de renta.

IVA
$386.300
Monto estimado, según sus ingresos, del 19% sobre el precio de las compras que realiza.

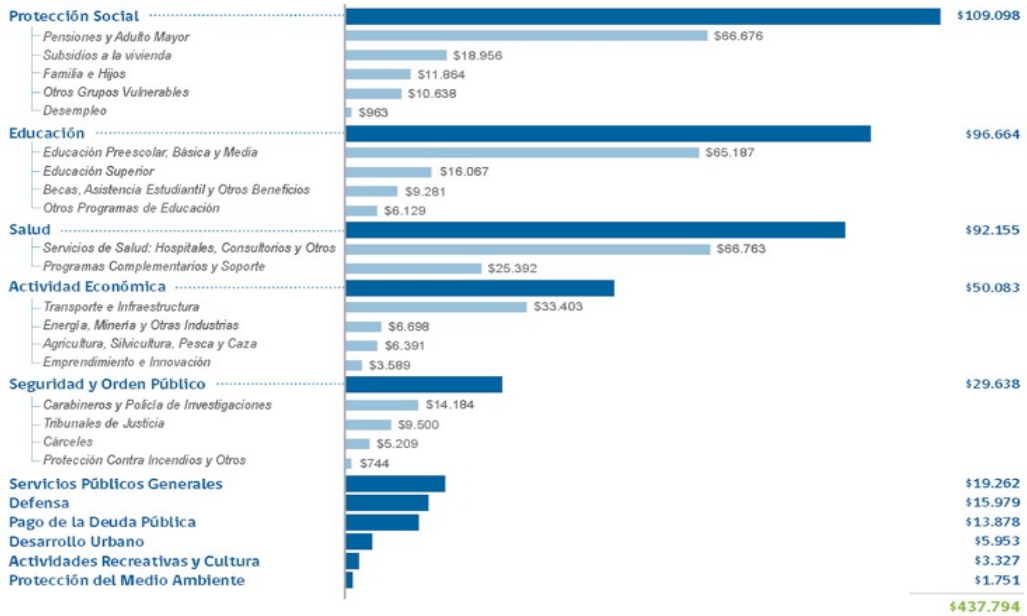
Fuente: Servicio de Impuestos Internos

¿Cómo se usaron los impuestos que aporté durante el año 2019?

Información por Tipo y Área del gasto público
Posibles diferencias en las sumas, se deben a redondeos por aplicación de los prorrateos.

Tipo de gasto público

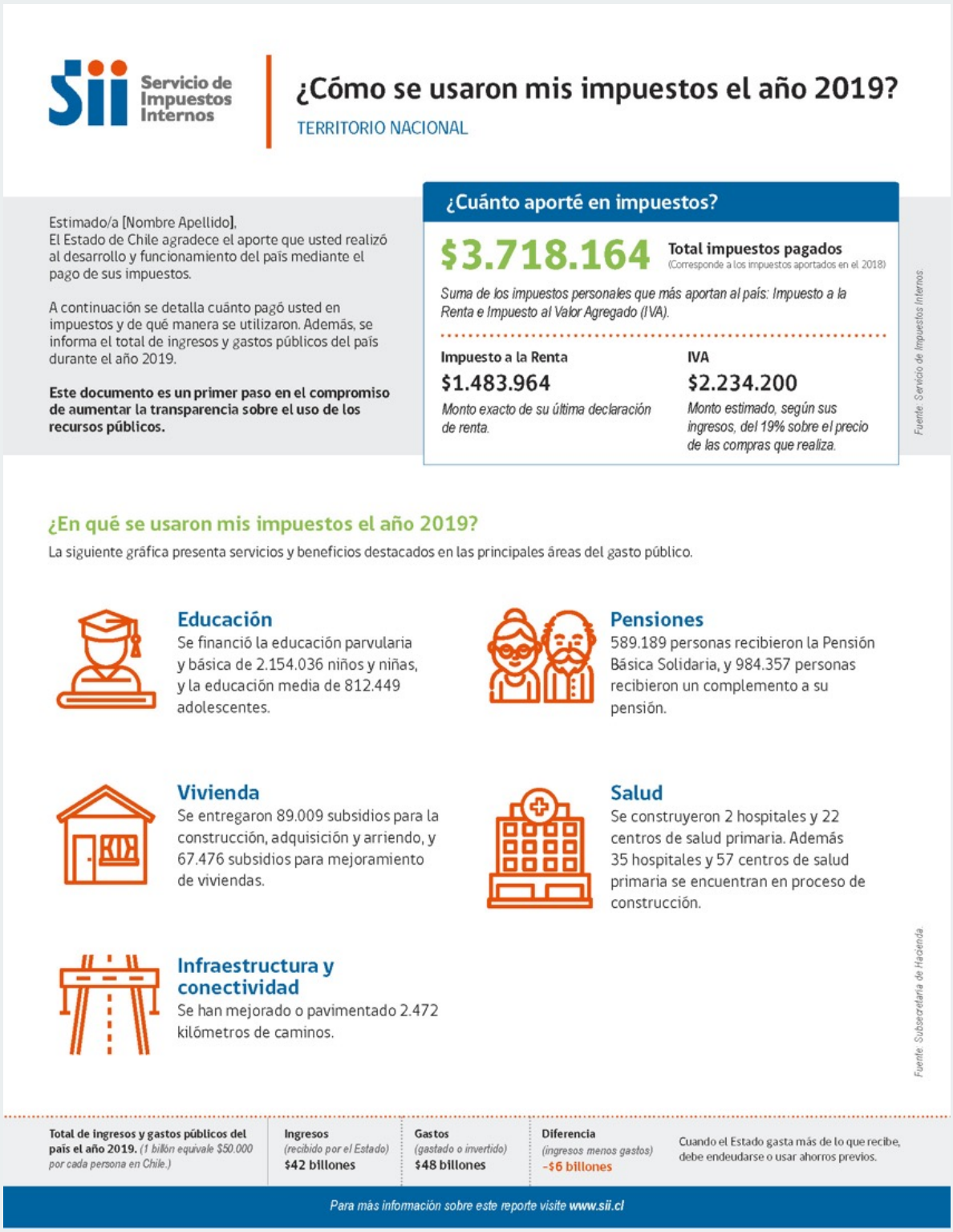
Área del gasto público



Fuente: Dirección de Presupuesto (basado en la clasificación económica y funcional del Fondo Monetario Internacional)

Total de ingresos y gastos públicos del país el año 2019. *(1 billón equivale $50.000 por cada persona en Chile.)*	Ingresos *(recibido por el Estado)*	Gastos *(gastado o invertido)*	Diferencia *(ingresos menos gastos)*	
	$42 billones	$48 billones	-$6 billones	Cuando el Estado gasta más de lo que recibe, debe endeudarse o usar ahorros previos.

Para más información sobre este reporte visite **www.sii.cl**



Servicio de Impuestos Internos

¿Cómo se usaron mis impuestos el año 2019?

TERRITORIO NACIONAL

Estimado/a [Nombre Apellido],
El Estado de Chile agradece el aporte que usted realizó al desarrollo y funcionamiento del país mediante el pago de sus impuestos.

A continuación se detalla cuánto pagó usted en impuestos y de qué manera se utilizaron. Además, se informa el total de ingresos y gastos públicos del país durante el año 2019.

Este documento es un primer paso en el compromiso de aumentar la transparencia sobre el uso de los recursos públicos.

¿Cuánto aporté en impuestos?

$3.718.164 **Total impuestos pagados**
(Corresponde a los impuestos aportados en el 2018)

Suma de los impuestos personales que más aportan al país: Impuesto a la Renta e Impuesto al Valor Agregado (IVA).

Impuesto a la Renta
$1.483.964
Monto exacto de su última declaración de renta.

IVA
$2.234.200
Monto estimado, según sus ingresos, del 19% sobre el precio de las compras que realiza.

Fuente: Servicio de Impuestos Internos

¿En qué se usaron mis impuestos el año 2019?

La siguiente gráfica presenta servicios y beneficios destacados en las principales áreas del gasto público.

Educación
Se financió la educación parvularia y básica de 2.154.036 niños y niñas, y la educación media de 812.449 adolescentes.

Pensiones
589.189 personas recibieron la Pensión Básica Solidaria, y 984.357 personas recibieron un complemento a su pensión.

Vivienda
Se entregaron 89.009 subsidios para la construcción, adquisición y arriendo, y 67.476 subsidios para mejoramiento de viviendas.

Salud
Se construyeron 2 hospitales y 22 centros de salud primaria. Además 35 hospitales y 57 centros de salud primaria se encuentran en proceso de construcción.

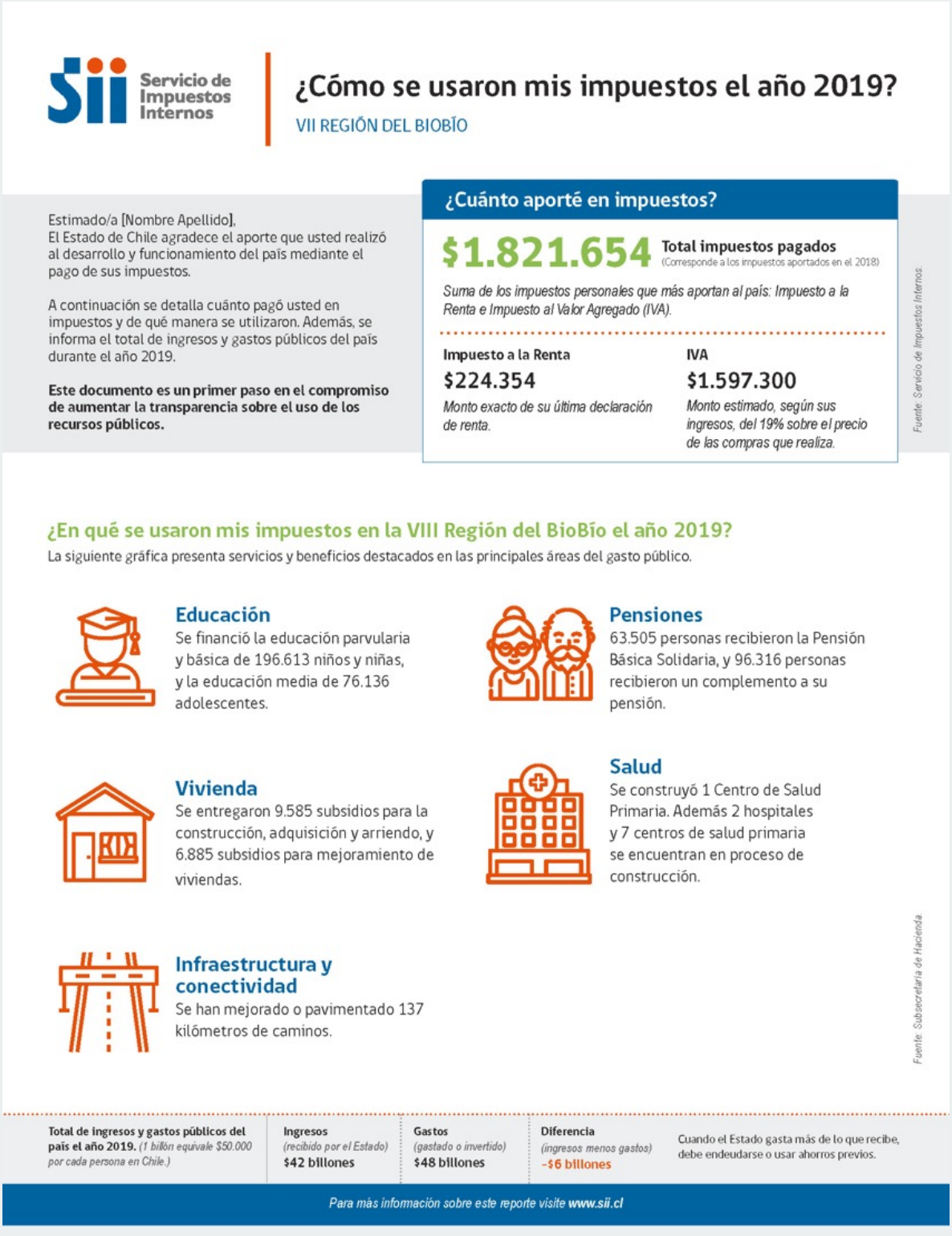
Infraestructura y conectividad
Se han mejorado o pavimentado 2.472 kilómetros de caminos.

Fuente: Subsecretaría de Hacienda.

Total de ingresos y gastos públicos del país el año 2019. *(1 billón equivale $50.000 por cada persona en Chile.)*	**Ingresos** *(recibido por el Estado)* **$42 billones**	**Gastos** *(gastado o invertido)* **$48 billones**	**Diferencia** *(ingresos menos gastos)* **-$6 billones**	Cuando el Estado gasta más de lo que recibe, debe endeudarse o usar ahorros previos.

Para más información sobre este reporte visite ***www.sii.cl***

1.3 Regional Report



Servicio de Impuestos Internos

¿Cómo se usaron mis impuestos el año 2019?

VII REGIÓN DEL BIOBÍO

Estimado/a [Nombre Apellido],
El Estado de Chile agradece el aporte que usted realizó al desarrollo y funcionamiento del país mediante el pago de sus impuestos.

A continuación se detalla cuánto pagó usted en impuestos y de qué manera se utilizaron. Además, se informa el total de ingresos y gastos públicos del país durante el año 2019.

Este documento es un primer paso en el compromiso de aumentar la transparencia sobre el uso de los recursos públicos.

¿Cuánto aporté en impuestos?

$1.821.654 **Total impuestos pagados**
(Corresponde a los impuestos aportados en el 2018)

Suma de los impuestos personales que más aportan al país: Impuesto a la Renta e Impuesto al Valor Agregado (IVA).

Impuesto a la Renta
$224.354
Monto exacto de su última declaración de renta.

IVA
$1.597.300
Monto estimado, según sus ingresos, del 19% sobre el precio de las compras que realiza.

Fuente: Servicio de Impuestos Internos.

¿En qué se usaron mis impuestos en la VIII Región del BioBío el año 2019?

La siguiente gráfica presenta servicios y beneficios destacados en las principales áreas del gasto público.

Educación
Se financió la educación parvularia y básica de 196.613 niños y niñas, y la educación media de 76.136 adolescentes.

Pensiones
63.505 personas recibieron la Pensión Básica Solidaria, y 96.316 personas recibieron un complemento a su pensión.

Vivienda
Se entregaron 9.585 subsidios para la construcción, adquisición y arriendo, y 6.885 subsidios para mejoramiento de viviendas.

Salud
Se construyó 1 Centro de Salud Primaria. Además 2 hospitales y 7 centros de salud primaria se encuentran en proceso de construcción.

Infraestructura y conectividad
Se han mejorado o pavimentado 137 kilómetros de caminos.

Fuente: Subsecretaría de Hacienda

Total de ingresos y gastos públicos del país el año 2019. *(1 billón equivale $50.000 por cada persona en Chile.)*	**Ingresos** *(recibido por el Estado)* **$42 billones**	**Gastos** *(gastado o invertido)* **$48 billones**	**Diferencia** *(ingresos menos gastos)* **-$6 billones**	Cuando el Estado gasta más de lo que recibe, debe endeudarse o usar ahorros previos.

Para más información sobre este reporte visite **www.sii.cl**

Annex 2. Balance sample survey, Treatment 1, 2 or 3 (T4=0)

Variables	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Income (log)	gender	age	risk1	risk2	risk3	risk4	risk5
T1, T2 o T3	0.00725	-0.0143	0.150	-0.00944	0.00286	0.00980	-0.00542	0.00219
	(0.0118)	(0.0154)	(0.442)	(0.0125)	(0.00866)	(0.00982)	(0.00654)	(0.00198)
Controls								
Age	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Gender	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Risk	Yes	Yes	Yes	No	No	No	No	No
Income quintile	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Taxpayer type	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Observations	5,975	5,935	5,956	5,975	5,975	5,975	5,975	5,975

Note: Robust standard errors in parentheses, *** p<0.01, **p<0.05, *p<0.1

Source: Own elaboration based on data from the Internal Revenue Service (SII).

Annex 3. Disaggregated Survey Results

Variables	(1)	(2)	(3)	(4)	(5)	(6)
	Transparency	Index of trust	Competency	Benevolence	Honesty	Reliability
T1: Statistics	0.45***	0.188***	0.215***	0.164**	0.151**	0.223***
	(0.078)	(0.063)	(0.064)	(0.068)	(0.071)	(0.072)
T2: National	0.335***	0.139**	0.177***	0.165***	0.129**	0.086
	(0.07)	(0.057)	(0.06)	(0.062)	(0.065)	(0.066)
T3: Regional	0.236***	0.102*	0.132**	0.061	0.099	0.114*
	(0.075)	(0.061)	(0.063)	(0.065)	(0.069)	(0.069)
Controls						
Age	Yes	Yes	Yes	Yes	Yes	Yes
Gender	Yes	Yes	Yes	Yes	Yes	Yes
Risk	Yes	Yes	Yes	Yes	Yes	Yes
Income quintile	Yes	Yes	Yes	Yes	Yes	Yes
Type of taxpayer	Yes	Yes	Yes	Yes	Yes	Yes
Constant	1.914***	1.552***	1.670***	1.549***	1.392***	1.598***
	(0.0862)	(0.0684)	(0.0693)	(0.0728)	(0.0758)	(0.0795)
Observations	6947	6947	6947	6947	6947	6947

Note: Robust standard errors in parentheses, *** p<0.01, **p<0.05, *p<0.1

Source: Own elaboration based on data from the Internal Revenue Service (SII).

Annex 4. Survey

We invite you to answer a (confidential) survey that will take no more than 3 minutes of your time. Thank you for your participation!

CITIZEN FEEDBACK *(FEEDBACK GROUP ONLY)*
The State of Chile is interested in knowing your opinion regarding the way in which public resources are used and should be used in the future. The information you provide will be analyzed by the Government and based on this information; concrete actions will be announced to take this information into account.
How do you think the State should use the public resources of Chileans? (Max: 1000 characters)

OPINION SURVEY *(COMPLETE SAMPLE)*	
Using a scale of 1 to 5, where 1 is strongly disagree and 5 is strongly agree, how much do you agree that the State of Chile:	
1. Makes clear information on public spending available to you.	
2. Spends public resources appropriately.	
3. Plans public expenditures, considering long-term objectives.	
4. Consider the interest of citizens when executing public expenditures.	
5. Does everything possible to help the most vulnerable.	
6. Deliver on promises.	
7. Seek to do the best, for those who reside in the country.	

REGARDING THE REPORT YOU RECEIVED *(TREATED GROUPS ONLY)*	
8. On what topic in the report you received would you be interested in learning more about?	
a) My taxes.	
b) Public spending.	
c) Total public revenues and expenditures and their difference.	
d) Other_____	
9. With a score from 1 to 7, where 1 is very dissatisfied and 7 is very satisfied, in overall terms, how satisfied are you with the public spending report that was sent to you?	

CHALLENGES AND OPORTUNITIES TO IMPLEMENT

a “Single Federal Tax Registry” in Argentina

Noelia Giselle **Dorin**

SYNOPSIS

In order to analyze the “Single Federal Tax Registry” in Argentina, the urgent need to adapt to the change in the current context arises, considering the cooperation, harmonization, and integration actions to be carried out between the National Tax Administration and subnational jurisdictions to fulfill their respective purposes as fundamental.

The “Registry”, as a strategic tool of tax management, should constitute the first step of a more complete organizational change of Tax Administrations, to simplify processes and facilitate interactions between the taxpayer and the different levels of jurisdiction within the Argentine federal system.

Keywords: Simplification of processes, Tax registry, Cooperation, Harmonization, Integration.

CONTENT

AUTHOR

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INTRODUCTION

The enormous advance of Information and Communication Technologies, and the vertiginous speed in which changes occur today converge in a context where the State has taken a leading role, proving to be the guarantor of more and more rights that are demanded by contemporary society. In this regard, the question arises as to *how to ensure that the Tax Administrations of modern States, with institutions created in the 15th and 16th centuries, adapt to the challenges of constant change posed by the 21st century?*

Undoubtedly, the collaboration and coordination relationships that Tax Administrations can establish through consensus mechanisms between jurisdictions will be fundamental to overcome and advance on the challenges and opportunities that this variable context offers and thus, achieve the main objective of any tax Administration, that is, maximize the voluntary compliance of taxpayers.

The present work aims to analyze the ***"Single Federal Tax Registry" in Argentina, considering it a strategic tool of tax management, driving collaborative relationships between jurisdictions to address the challenges and opportunities of the XXI century***.

To do this, we will first address the context in which this taxation tool emerges, analyzing similarities and differences between collaborative relationships, harmonization and fiscal integration. Next, the legal framework of the "Single Federal Tax Registry" ("Registry", hereinafter) will be examined, with special emphasis on the regulations related to its scope and implementation, thus discovering the challenges and opportunities presented by this tax management tool.

Each local jurisdiction is at a different stage with respect to the "Registry". The province of Cordoba, for example, already has regulated its implementation, and the provinces of Chaco, Chubut, La Rioja, Mendoza and Santa Fe, from 01 June 2020 have been forced to implement it too, while the provinces of Formosa, or San Luis, are not even listed in the detail of jurisdictions that could adhere to the implementation of the "Registry," in accordance with the regulations issued by the Arbitration Commission of the Multilateral Convention.

The Argentine federal tax system, enshrined in the Argentine National Constitution, grants tax powers to all three levels of government. Therefore, it is essential to implement collaborative relationships that tend to meet the objectives of each Tax Administration. In this sense, as an international standard, ISO 44001 on collaborative relationships provides a framework to deepen the path towards cooperation and harmonization actions among jurisdictions, a very necessary step in this era in which we have become aware that collaborative relationships provide more value than individual action and that data transformed into information allow improving crucial aspects of the Tax Administrations, which will be addressed in this paper.

1. CHALLENGES AND OPPORTUNITIES OF THE TWENTY-FIRST CENTURY

To begin the analysis on the "Single Federal Tax Registry", we must first look at the context in which this tax management tool is proposed. It is necessary that the Tax administrations that emerge from modern States, with institutions created in the fifteenth and sixteenth centuries, adapt to the challenges of constant change posed by the twenty-first century.

In Ancient Greece, Heraclitus reflected that *"the only permanent thing is change"* as well as *"no one can bathe twice in the same river, because the waters are continuously flowing"*. In this sense, today Zygmunt Bauman defines the concept of "Liquid modernity" and describes the process of our social circumstance today. As the liquid adapts to different molds and takes different forms, so all the structures and institutions that form our society have to adopt a flexible and versatile

identity, that is, to achieve a constant and continuous adaptation with respect to the new information age. It is therefore appropriate to mention the concept coined as "VUCA environment" formed by the terms Volatility, Uncertainty, Complexity and Ambiguity), in which we find ourselves today:

- V (Volatility), associated with the nature of the changes and the speed at which they happen. It means being prepared for an event that requires rapid and effective action.

- U (Uncertainty), lack of certainty, the challenge is unpredictable and unexpected. Therefore, it is important to invest in information, as this could reduce the level of uncertainty.

- C (Complexity), problems can have multiple solutions according to different perspectives. The volume of information is so high that it produces disinformation, so it is necessary to manage it correctly.

- A (Ambiguity), the lack of clarity generates several interpretations, the same conditions cause different consequences. There are no precedents to help us predict and the only option is to experiment and learn.

To know how to act in this context, we must identify the main challenges of the twenty-first century, which are aimed at compensating the characteristics of this scenario:

- To address the **volatility**, it is necessary to have a correct vision of the future.

- To face the **uncertainty**, knowledge, training and constant updating is required.

- Before the **complexity,** we need to provide clarity, and simplicity in the execution of tasks and actions within the organization.

- In the a**mbiguity**, it is necessary to act with agility, with a rapid capacity to react to the unforeseen events that occur and that undermine the strategic planning of the organization.

The role of the State has been transformed throughout history, depending on the context. At present, the State must guarantee more and more rights and tax administrations must use their capacity for innovation to solve them.

In this sense, a fundamental aspect for Tax administrations to adapt to this scenario will be to achieve a greater jurisdictional interrelation, which can be translated into cooperation and harmonization actions between jurisdictions at various levels, without resigning their own tax powers.

Indeed, when reflecting on issues related to cooperation, harmonisation and fiscal integration, it could be considered that, although each term refers to a different degree of relationship, they are all oriented towards the union of efforts to achieve an objective that can be shared or not, but all directed in the same direction.

Consulting in the Royal Spanish Academy a general definition, without taking them to the sphere of the taxation scope but taking the denotation more related to the proposed analysis, we will find that "*cooperation*", associated with the action and effect of cooperating, means to act together with another or others for the achievement of a common end; "*harmonization*" is the proportion and correspondence of some things with others in the whole that compose; and "*integration*", related to the action and effect of "integrating", means to unite, merge two or more concepts, currents, etc., divergent from each other, into a single one that synthesizes them.

If we could organize these three concepts according to the level of relationship between Tax Administrations, we can start with the cooperation that involves a uniform coordination in the same sense of tax

measures, provided for in different rules, for the search for common action. It is thus limited to a compromise between jurisdictions in a limited area.

The deepening of the current process of globalization, thanks to the enormous development of telecommunications, undoubtedly represents an opportunity for the expansion of productive capacities, and, at the same time, hinders effective taxation. Tax Administrations must join forces to achieve greater collaboration to achieve their tax objectives.

With a greater scope in the compromise between jurisdictions, we find the tax harmonization, which implies a conjunction of tax rules of each jurisdiction. Undoubtedly, the more ambitious goals are more achievable when working with consensus mechanisms.

To address tax integration, which is considered to be the highest level of commitment between jurisdictions, it should be remembered that economic integration is intended to benefit the parties involved through the progressive elimination of barriers to trade. As economic integration increases, barriers to trade between markets decrease. Due to the tax powers of each jurisdiction, fiscal integration can be considered in an international scenario, linked to economic integration, which can have different levels, in order to benefit each other through the progressive elimination of barriers to trade.

However, **if we consider the "Registry" in terms of cooperation, harmonization and integration, we could point out that it establishes relationships of cooperation between jurisdictions, it harmonizes procedures and generates an integration of databases**.

Considering the federal tax system enshrined in the Argentine National Constitution, complying with the different legal systems adopted by each level of government implies a significant administrative effort for both the taxpayer and the Tax Administrations. The Argentine tax system requires rationality and order, it is a challenge as strategic as it is complex.

At this point, it is necessary to remember that the enormous development of Information and Communication Technologies has shown in recent decades a great advance, precisely in these two fields: information and communication. In the "information society", relationships between people develop through networks and the Internet. Every new technology, tool, and implementation is built on the basis of previous technologies, tools, and implementations. Innovations originate in networks, where each innovation is based on the combination of previous ones and the speed of innovation increases due to the number of previous innovations, the efficiency of communications and the number of people connected.

Therefore, the "Registry" should be the beginning of the implementation of tools that allow the exchange of information between local and national jurisdictions, as well as agile and efficient communications with taxpayers. In this way, the implementation of this type of tax management tool will also generate an organizational change within each Tax Administration.

2. "SINGLE FEDERAL TAX REGISTRY"

It can then be said that the "Registry" constitutes a tax management tool that allows promoting collaborative relationships between jurisdictions to address the challenges of the twenty-first century, being an instrument of harmonization of the procedure at the national and local level.

For the taxpayer, it will mean the simplification of the registration, modification, and cancellation process, and their relationship with the Treasury could become more agile and efficient in order to facilitate compliance.

For the Tax Administration, it will mean having an essential database to correctly identify taxpayers in their jurisdiction, keep the database updated, expand registers and provide an individualized service to taxpayers, according to tax behavior.

This new tax tool is part of the Strategic Plan of the Federal Administration of Public Revenue 2019-2023, which aims to "Facilitate compliance through simplification and digital management", indicating that complexity will be reduced, and administrative procedures simplified in order to facilitate voluntary compliance by citizens. To do this, it is necessary to modernize the tasks inherent to the fulfillment of tax obligations and ensure a higher quality of information for all Argentine Tax Administrations.

2.1 Legal framework

Let us recall that in November 2018, the Framework Cooperation Agreement was signed between the Arbitration Commission of the Multilateral Agreement and the Federal Administration of Public Revenues to establish the "Single Tax Registry", as a tool for updating the federal Gross Income Tax taxpayers' registry in order to simplify processes, avoid the double burden of information and allow for greater orderliness with respect to collection systems.

The "Registry" was approved by the Arbitration Commission via the **General Resolution (CA) N°5/2019**, published in the Official Gazette of July 10, 2019. It should be noted that in Annex I to this General Resolution, which details the jurisdictions that joined, neither Formosa nor San Luis are mentioned, which in principle would not apply this new single register.

Through **AFIP General Resolution N°4.624 / 19**, published in the Official gazette on November 04, 2019, the procedure for the simplification and unification of the inscriptions and records of the taxpayers of the national tax order and of the local Tax Administrations, through the "Registry" was established.

It should be noted that citizens who at the date of entry into force of this Resolution are registered in the national, provincial, and/or municipal tax registries, the latter of the adhered jurisdictions, will be automatically incorporated in the "Registry" with the data already registered, based on the exchange of information provided for in the agreements in force or to be entered into.

For its part, the **General Resolution No. 9/19**, dictated by the Arbitration Commission, establishes the entry into force from December 5, 2019, of the "Registry" for taxpayers of the Gross Income Tax that are taxed by the regime of the Multilateral Agreement, with jurisdiction based in the provinces of Buenos Aires, Córdoba, Chaco, Chubut, La Rioja, Mendoza and Santa Fe.

In turn, by **General Resolution N°15/19** the entry into force of the "Registry" was extended to March 25, 2020.

As for the participating jurisdictions, the province of Córdoba, as a pioneer, regulated the implementation of the aforementioned "Registry" for taxpayers of the Income Tax of this jurisdiction, with effect from January 6, 2020.

This was done by means of Normative Resolutions 53/19 of the local DGR and 54/19 that establishes the implementation of the "Registry", available in the scope of the "Registry System" of the Federal Administration of Public Revenues, for taxpayers of the Income Tax of the Province of Córdoba. Through the **General Resolution N°3/2020**, the Arbitration Committee Multilateral Agreement on Gross Income extended again, this time to **June 01, 2020**, the entry into force of the "Registry" as a result of the measures taken by the National Government to the health emergency, in the framework of the declaration of the outbreak of coronavirus (COVID-19) as a pandemic by the World Health Organization. In this first stage, then, the "Registry" reached the taxpayers of the Gross Income Tax that fall under the regime of the Multilateral Agreement, in Córdoba, Chaco, Chubut, La Rioja, Mendoza and Santa Fe.

Currently, the "Registry" is in force for the taxpayers of the Gross Income Tax that are taxed by the regime of the Multilateral Agreement, with jurisdiction based in Catamarca, Chaco, Chubut, Córdoba, Corrientes, Entre Ríos, Jujuy, La Rioja, Mendoza, Misiones, Neuquén, Río Negro, Salta, San Juan, Santa Cruz, Santa Fe, Santiago del Estero and Tierra del Fuego, as well as the taxpayers of the Gross Income Tax that are taxed only in the province of Córdoba.

2.1.1 General Resolution A. F. I. P. N° 4.624 / 19

Next, we will analyze the articles of the main rule that specifically regulates the tax procedure of the "Single Tax Registry-Federal Register". In this regulation, it is determined that each jurisdiction must dictate its respective rules, conditions, forms and terms to incorporate it in the local taxpayers of the Gross Income Tax.

Article 1 establishes the implementation of the "Single Federal Tax Registry", stating that it will be administered by the Federal Administration of Public Revenue, the Arbitration Commission of the Multilateral Agreement, and the participating local jurisdictions, within the framework of their respective competencies. This is an extremely important point to consider that adherence to this Register does not imply a loss of autonomy of the taxing power of each jurisdiction, but each one of them should be able to manage its own tax base and share it with the existing database in the "Registry", which is composed of the information provided by the national jurisdiction and those that implement it.

In accordance with Article 2, the **scope of taxes**, include:

1. National taxes, which are collected and monitored by this Federal Administration.

2. Tax on gross income whose application is in charge of the provincial Tax Administrations adhered and the Arbitration Committee of the Multilateral Agreement.

3. Municipal taxes that affect the commercial, industrial and services activity of the adhered jurisdictions.

As it is oriented to the Gross Income Tax, the registry is limited to the application of this taxation. Thus, it will contain information on the regime in which it is registered (General, Simplified or Multilateral Agreement) and municipal taxes.

This tool should be the beginning of a "Single Federal Tax Registry", could the possibility for taxpayers to manage all their taxes, regardless of the federal, provincial or municipal level, be unified in the same platform? In addition to simplifying and streamlining the procedures for the taxpayer, it would allow the Tax Administrations of each jurisdiction to know the tax situation of the taxpayers of their own jurisdiction against the taxes of the national, provincial, and municipal Treasury.

Article 3 mentions the data of the taxpayers that the "Registry" will contain and article 4 specifies the **functionality**:

a. Consult and manage the registrations, cancellations, and modifications of the registry data contained therein.

b. Issue a unified record of registration with the scopes of the General Resolution 1.817, its amendments and annexes.

It also refers to the link: www.afip.gob.ar/registro-único-tributario[1] of the AFIP website for the detail of functionalities and specifications, where it is currently indicated that it is in force for taxpayers of the Gross Income Tax that are taxed by the regime of the Multilateral Agreement, with jurisdiction based in Catamarca, Chaco, Chubut, Córdoba, Corrientes, Entre Ríos, Jujuy, La Rioja, Mendoza, Misiones, Neuquén, Río Negro, Salta, San Juan, Santa Cruz, Santa Fe, Santiago del Estero and Tierra del Fuego.

1 Official website accessed on 14-04-2021.

From the AFIP website, functionalities are added, in addition to consulting and managing the registrations, cancellations, and modifications of the registry data contained therein, and issuing a unified registration certificate:

- Select in which tax regime the registration is made and their respective taxes.

- Enable a new point of sale and indicate the associated Invoicing mode.

As for the procedures that are carried out from the "Registry", it is mentioned:

- **Domiciles:** Registration, cancellation and modification of data for individuals and legal entities

- **Activities:** Registration, cancellation and modification of data for individuals and legal entities

- **Taxes:** Registration, cancellation, and modification of data for VAT, Profits of human and legal persons, Personal Property, Tax, Employers, provincial taxes, Fund for education and cooperative promotion (Law N° 23.427) and single tax (removal only)

- **Points of sale:** Registration for individuals and legal entities

Taxes and regimes not mentioned above (including Self-employed) continue to be processed normally by the Registry System service. Regarding the registration and modification of data for the single tax taxpayers, they must be done from the "Mono-tax" portal.

Could the unification of data on the platform be the basis for also agreeing with all jurisdictions that adhere to the possibility of unifying the platforms of all Electronic Tax Addresses to simplify and streamline the notification procedure, allowing the taxpayer to enter in a single site and be notified in all jurisdictions?

The following articles of the regulations under study are extremely relevant because they refer to the procedure by which the "shared" database between jurisdictions will be implemented. Thus, Articles 5 and 6 refer to the **initial inclusion and data consolidation** whereas article 7 establishes the **permanent automatic updating**.

Taxpayers who are in the national, provincial and/or municipal tax registries of the adhered jurisdictions will be incorporated ex officio in the "Registry" with the data already registered, based on the exchanges of information provided for in agreements concluded or to be concluded.

This universe of taxpayers must verify the data incorporated in the "Registry" and, if applicable, make a modification and/or enter through the "Registry System" service with their fiscal code. When entering the Registry, they must verify the data incorporated and, if applicable, modify it.

If inconsistencies are detected, they will be notified to the taxpayer at the electronic tax address.

This regulation must be articulated with the **General Resolution N°5/2019**, Annex III, issued by the Arbitration Committee of the Multilateral Agreement, which provides the following table to manage the inconsistencies of pre-existing taxpayers with respect to data of the person, activity / s, jurisdiction/s, domicile/s and tax / s, noting that the migration of the data of taxpayers registered in the tax prior to the validity of the system will be carried out based on the following guidelines:

DATA GROUPS	ACTIONS
Person	The identification data associated with each TIN will be replaced in stages by those existing in AFIP, since that body is in charge of granting the TIN. If the taxpayer finds errors, they must correct them through the AFIP Registry System.
Activities	If there are inconsistencies between NAES and AFIP codes, both activity codes will continue to be used. This inconsistency will be indicated so that it can be corrected voluntarily by the Taxpayer, and then a deadline will be implemented for it to do so in a mandatory manner. Inconsistency: different NAES activities (or with greater openness) than in AFIP nomenclature.
Jurisdiction	If there are inconsistencies between the jurisdictions listed as active with respect to the addresses stated in AFIP, the situation to be corrected voluntarily by the Taxpayer, and then a term is implemented to carry it out on a mandatory basis.
Domiciles	All registered addresses will be included along those available in AFIP, and will be marked as “Gross Income, Not Validated”. The taxpayer will be asked to “validate” each one (determining the equivalence with an AFIP address).
Taxes	If there is inconsistency, the taxpayer is notified. If registered as CM, that data is migrated. If the taxpayer is in more than one jurisdiction, data from all of them will be migrated, but paperwork will be blocked until the inconsistency is resolved. Inconsistency: Registered in CM and as a Local in an adhered jurisdiction. Registered as a Local in more than one jurisdiction.

As for the **permanent official update** article 7 of the General Resolution A. F. I. P. N° 4.624/19 indicates that the provincial Tax Administrations adhered and the Arbitration Commission of the Multilateral Agreement will inform the AFIP those registrations, cancellations, adjustments and / or changes in the tax framework of the taxpayers of their jurisdiction. The "Record" will be automatically updated based on the information received. The news will be notified to the taxpayer at the Electronic Tax Address.

As for the **access to the "Registry"**, according to Article 8, taxpayers must enter the "Registry System" service with a Fiscal Key with Security Level 3, at a minimum. The data reported will be in the nature of a tax return and will be subject to verification by this Federal Administration, the affiliated provincial tax administrations, and the Arbitration Commission of the Multilateral Agreement.

With this procedure, Article 9 determines that the provincial Tax Administrations and the Arbitration Committee of the Multilateral Agreement may consult on the universe of taxpayers in their jurisdiction, in the terms of the Agreement concluded with AFIP, where the principles of reciprocity and collaboration should be highlighted.

It is worth mentioning that this General Resolution entered into force on the day of its publication in the Official Gazette, on 04/11/2019, and its provisions were applicable from the date of implementation of the "Registration" by the Arbitration Commission of the Multilateral Agreement and at least one provincial Tax Administration.

3. IMPLEMENTATION OF THE "UNIFIED SINGLE FEDERAL TAX REGISTRY": IMPACT ON TAXPAYERS AND ON TAX ADMINISTRATIONS

The simplification of procedures and the unification of the census data, shared by the jurisdictions, will undoubtedly impact the taxpayer- TA relationship. Therefore, the situation of both parties will be analyzed below, that is, the benefits that the implementation of the "Registry" implies for the taxpayer, on the one hand; and the opportunities and challenges that they imply for Tax Administrations, on the other.

3.1 Benefits for the taxpayer

With the Single Tax Registry, there is a tendency towards a single tax data system aimed at simplifying processes and avoiding multiple registrations, with scope for both local taxpayers and Multilateral Agreements, using the TIN as the taxpayer identifier.

The benefits for taxpayers relate to allowing orderly treatment for changes of jurisdiction and for regime changes. In addition, this register would make it possible to better regulate the collection systems, not only for those coordinated by the Arbitration Commission, but also for those administered locally by the jurisdictions.

It could also facilitate compliance through the simplicity of taxpayers' operations, the simplification of procedures, and digital management, in addition to moving towards a single-window scheme.

Today, taxpayers expect more agile and personalized services, so it is vital to innovate to meet their demands. Thus, the "Registry" is a fundamental and valuable tool that allows providing effectiveness and efficiency in each interaction with the taxpayer.

3.2 Opportunities for the Tax Administrations

The "Registry" is the result of the application of technology to the process carried out by each jurisdiction separately, that is, maintaining and updating registers. By relating and sharing the information of each jurisdiction, the "Registry" becomes a support tool for tax management, which entails numerous opportunities, while allowing each jurisdiction to manage its own base.

By allowing data to be incorporated and modified by taxpayers and crossed with the information available in the database, the register becomes much more dynamic and accurate, and ensures a higher quality of information for Tax Administrations.

It also avoids errors in the data, since, in the event of inconsistencies between registers of different jurisdictions, the taxpayer is notified. In Annex III to General Resolution CA. N° 5/2019, the procedure before inconsistencies is determined.

It also allows the expansion of the register of other jurisdictions, by sharing information on the activities carried out by each taxpayer in each jurisdiction, it can crosses of information can be processed to detect not only inconsistencies, but also make registrations ex officio.

Therefore, information from local and federal jurisdictions is consolidated, allowing the application of the single data philosophy, which is based on the introduction of information in a single time and its reuse or feedback in multiple processes, without incurring possible errors or duplication of data. In this way, it is important that the "Registry" meets the following characteristics: that it is a single data (the capture and registration occur only once), integrated (can be updated), in real time, with wide functional coverage and adaptable to the needs of Tax Administrations.

Data are transformed into the information shared by jurisdictions, which can be analyzed and cross-referenced through new practices and booming tools such as big data, data mining, artificial intelligence and *machine learning* that favor efficient management.

3.3 Challenges for Tax Administrations

This scenario of digital transformation and simplification of processes calls for Tax administrations to achieve an adaptation to the current context. However, and especially for jurisdictions that have not yet implemented it, prior to the operation of the "Registry" in the Tax Administrations, it will be necessary to produce a reengineering of processes related to the management of their registers, which will undoubtedly impact various aspects within the organization. The implementation of the Single Tax Registry involves first the diagnosis and evaluation of the process, the design of the new process and the clear identification of procedures and tasks involved.

Next, issues related to organizational change management in the regulatory framework, internal tax management systems and technology, and human resources within the organization will be considered.

3.3.1 Normative framework

Data is becoming a very valuable asset in organizations that make it a necessary and critical component of the strategy and execution of the organization, and that will require new laws and government regulations in response to its increasing impact on our society. Adapting the tax regulations of each jurisdiction is fundamental, in accordance with the principle of legality and reasonableness that governs Tax Law.

Considering that the main objective of the "Registry" is to simplify processes for the taxpayer and to have a database shared among the jurisdictions, it is advisable to make a detailed review of Law 11.683 at the federal level and the Provincial Tax Codes on **tax secrecy regarding the information they can provide to other jurisdictions and the exceptions considered, to make possible the exchange of information between Tax Administrations**.

It is necessary to clarify that when referring to "tax secrecy" the texts refer to the tax returns, communications and reports that taxpayers, responsible or third parties submit to the Tax Administration. Considering that the

registration or the modifications that occur in the register have the character of a tax declaration, the provincial jurisdictions have been classified, in accordance with the regulations of the respective fiscal texts of each province. As for tax secrecy, each jurisdiction has its own specifications. Thus, categories can be noticed, considering whether they contemplate exceptions for the lifting of tax secrecy or not (1).

Among those that provide exceptions, some jurisdictions mention that information can be provided to national, provincial and municipal tax agencies[2] without conditions (2), and others do not; some refer to the condition of reciprocity, without clarifying its implementation (3), while others refer to reciprocity between jurisdictions through agreements, rules or conventions (4).

1. Jurisdictions that provide for tax secrecy, but do not provide for exceptions

In this section, the provinces of **Catamarca** (article 51, Current Tax Code), **Corrientes** (art. 94, Current Tax Code) and **San Luis** (art. 55, Current Tax Code)[3]. For the application of the Single Tax Registry, they must review their regulations and adapt them.

2. Jurisdictions that provide for tax secrecy and consider as an exception its lifting by requests for information from other tax agencies at the national, provincial and municipal levels, without raising conditions of reciprocity to provide information from their database.

The provinces of **Entre Ríos** (art. 129, Current Tax Code) and **La Pampas** (art. 156, Current Tax Code). For his part, **La Rioja** (art. 89, Tax Code) clarifies that the information must be directly linked to the application, collection and control of the levies of their respective jurisdictions.

3. Jurisdictions that provide for tax secrecy and consider as an exception its lifting by requests for information from other tax agencies at the national, provincial and municipal levels, on condition of reciprocity, without clarifying the implementation of this condition.

In this section, we will find the jurisdictions of **Autonomous City of Buenos Aires** (art. 102, Current Tax Code), **Cordoba** (art. 70 and 71, Current Tax Code), and **Santa Cruz** (art. 15, Current Tax Code).

In turn, **Formosa** (art. 8, Current Tax Code) also clarifies that the information must be directly linked to the application, collection and monitoring of the taxes of their respective jurisdictions.

4. Jurisdictions that provide for tax secrecy and consider as an exception its lifting by requests for information from other tax agencies at the national, provincial and municipal levels, mentioning the existence of agreements, rules or agreements of reciprocity.

In this section, most of the provincial jurisdictions are located: **Province of Buenos Aires** (art. 163, Current Tax Code), **Chaco** (art. 100, Current Tax Code), **Chubut** (art. 92, Current Tax Code), **Jujuy** (art. 141, Current Tax Code), **Misiones** (art. 127, Current Tax Code), **Mendoza** (art. 19, Current Tax Code), **Neuquen** (art. 146, Current Tax Code), **Rio Negro** (art. 136, Current Tax Code), **San Juan** (art. 108, Tax Code), **Santiago del Estero** (art. 163, Current Tax Code), **Salta** (article 112, Current Tax Code) and **Tierra del Fuego** (art. 86, Current Tax Code).

For its part, the province of **Santa Fe** (art. 150, Current Tax Code) establishes tax secrecy, considering as an exception *"the exchange of information with other bodies of the National, Provincial or Municipal Public Administration* ***in the exercise of their specific***

2 The focus of the analysis for the exchange of information is on the rules that mention taxing agencies of the three levels (national, provincial and municipal), but some jurisdictions extend the recipients of the information to the National government, Provincial or Municipal, that is to say, public Administration in general, without a fiscal nature. In such cases, they have been grouped under the category allowing exchange of information with "tax agencies".

3 According to article 52, Current Fiscal Code of Formosa, and article 56, Fiscal Code of San Luis, in judicial cases the duty of secrecy does not apply to answer the requests of national, provincial or municipal tax control with which there is reciprocity. The Executive Power, in duly justified cases, may authorize the General Revenue Administration to provide other public agencies with the information required, provided that they are not intended to verify compliance with obligations related to the economic activity exercised by the taxpayer, responsible or third party.

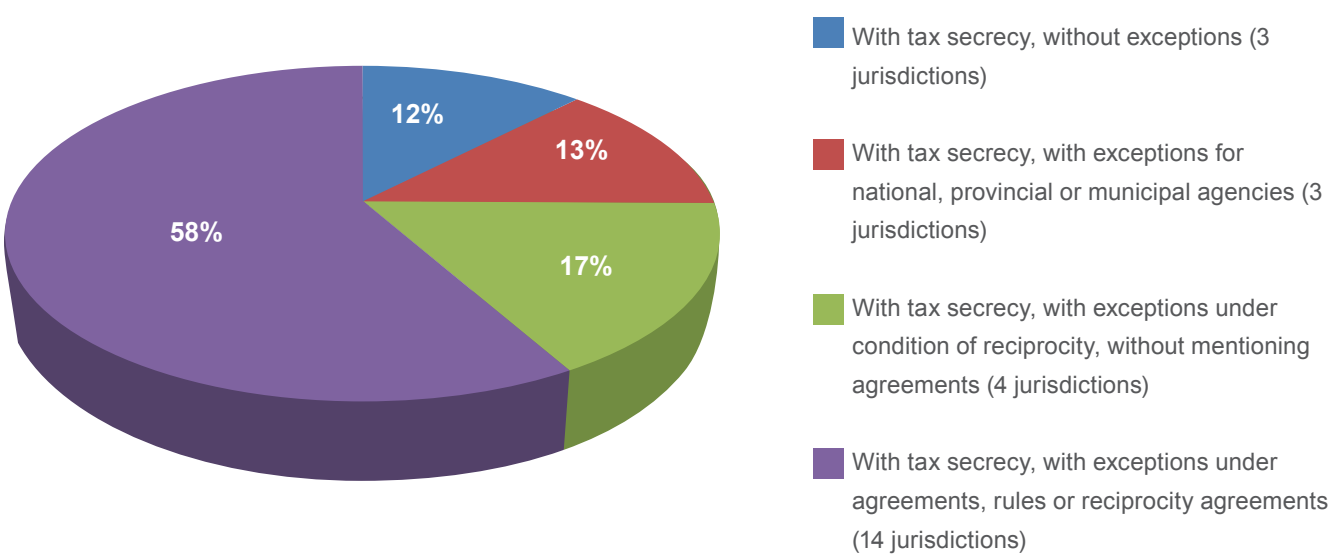
functions *and within the framework of* ***Cooperation, Collaboration and Information Exchange Agreements*** *held by the Provincial Tax Administration,* ***provided that the heads of these bodies commit themselves to***:

1. Treat the information provided as secret, on the same basis as information obtained on the basis of its domestic law.

2. Use the information provided only for the purposes indicated in the previous sections and may disclose this information in public hearings of the courts or in judicial presentations".

The province of **Tucumán** (art. 110, Tax Code) provides for tax secrecy, considering that it will not *"for national, provincial or municipal collection agencies in the event that they have subscribed* ***agreements for the exchange of information related to the application, collection and monitoring of the levies of their respective jurisdictions***".

Treatment of tax secrecy in regulations of each jurisdiction



Source: Current Tax code of each jurisdiction.

Remember that the Annex I of the Resolution implementing the Single Tax Registry does not include the provinces of Formosa or San Luis, so, in principle, it will not apply to these jurisdictions.

Having obtained a picture of the provincial jurisdictions through its tax regulations, it is necessary to consider that the spirit of the Argentine Federal tax system must prevail to adjust the tax-related texts in this sense, in order to protect the information of taxpayers on the one hand, but on the other, allow the exchange of information among TAs, without affecting the principle of legality that must be present always in the State of Law and, more precisely, in the field of Tax Law.

Once the regulations of each jurisdiction regarding tax secrecy are coordinated, it will be necessary to adhere to regulations relating to the Single Tax Registry, without leaving the following points to be considered.

3.3.2 Adaptation of internal tax management systems: standardization of databases

Each jurisdiction has developed its own tax management system with information that it has considered necessary for a correct registration. To begin to walk the path of implementing the "Registry" in Tax Administrations, it is necessary to have a complete and reliable database.

The "Single Taxpayer" to which the efforts of many jurisdictions tend, in some cases has not yet occurred, that is, when consulting the TIN Number that should be the core data that gathers all the taxpayer's registrations in each jurisdiction, it is not possible for the system to yield the final result of all the registrations that the taxpayer registers in all the taxes of the jurisdiction. This is a fundamental point, given that before sharing the database with another jurisdiction, internally, the Tax Administration must rely on unified information from its own data for a better management of the information already contained in its own database.

Some of the most common problems are data quality, privacy, or infrastructure compatibility. In this regard, in order to unify national and local databases, it will be necessary to achieve a standardization of the database in order to organize them according to a series of good practices and theoretical bases that lead to sound data structures. This normalization affects, fundamentally, the tables and relations that unite them, as well as restrictions and fields that form them, to protect the integrity of the information they store, among other advantages. This integrity also impacts on the unique data, identifying redundancies, inconsistencies, or unnecessary dependencies or, on the contrary, providing the necessary ones. In principle, the regulations for the implementation of the Single Tax Registry set out the procedure to be followed for the inconsistencies detected.

Standardization, helping to achieve the single data, tends to eliminate redundant information in databases that meet these standards. If we update a data, this new data will propagate and affect other tables only where necessary.

Often, if the process of standardization of a database has not been carried out since its creation, requires restructuring, creation of new tables, new relationships, etc. This is a considerable work since it affects both the levels of the databases and the application of management systems.

3.3.3 Organizational change management and human resources

Within organizations, changes are produced by the interaction of external and internal forces that generate the need for change. In this sense, as has been proposed at the beginning of this work, it is essential that Tax administrations adapt to the environment of new technologies that significantly optimize their objectives.

For true change management, it is necessary to internally promote the development of the people who make up the Tax Administrations, who demonstrate motivation and leadership, and involve them in processes of innovation and creativity, which will undoubtedly lead to organizational development. The reengineering of processes implied by the implementation of the

"Registry" implies having personnel prepared to identify and resolve any problems that may arise, as well as to be able to use the tools offered by new technologies and transform data into information, adding value to the processes of each Tax Authorities, for the fulfillment of their own purposes.

Internally, because of the need to adopt new processes, objectives, and methods, the organization is likely to require far-reaching organizational changes. An example of these necessary changes has been the implementation of technologies in organizations, which has come to represent new methods and processes in their operation.

Changes in organizations can be defined in degrees, as radical or progressive, and by opportunity, as reactive or anticipatory. Radical changes occur when organizations produce innovations in their methods of doing things, it is the rethinking of the organization. "Paused" or progressive change is a process of continuous evolution over time, where various adjustments are made to a lesser degree to the internal processes of the organization.

At the same time, there are two moments for the change to occur: reactive or proactive, with the latter being properly planned and executed gradually. It is essential to develop the capacity to respond efficiently to the different changes that organizations face.

For an effective planification of change, the processes to consider should include evaluating the environment, determining the performance gap (establishing the current state and where we want to be), diagnosing organizational problems, articulating and communicating a vision for the future, developing and implementing the action plan, anticipating resistance and taking actions to reduce it, and controlling change.

The model that enables organizations to improve their responsiveness to change processes, proposed by Kotter (1995), comprises eight phases, divided into three phases:

a) Creating a climate of change

1. Establish a sense of urgency, which involves examining the environment and identifying current crises and their potential opportunities.

2. Build a team with enough power to lead the change effort and can encourage teamwork.

3. Create a clear vision and develop strategies that help guide the process of change.

b) Engage and empower the entire organization

4. Communicate vision and strategy using every available medium.

5. Train to act according to the proposed vision, eliminating the obstacles of change and encouraging risk-taking.

6. Plan the results to be obtained in the short term to motivate the members of the organization.

c) Implement and maintain transformation

7. Consolidate the improvements and produce more changes, driving the development of staff who can implement the new vision and generate new projects, issues and agents of change.

8. Institutionalize the new approach by articulating the new behaviors with the change in the culture of the organization.

4. COLLABORATIVE RELATIONSHIPS BETWEEN JURISDICTIONS UNDER ISO 44001

If we think of process standardization, we can mention the ISO standards, which are international norms that specify requirements to be used in organizations to

guarantee that the products and/or services offered by these organizations meet their objective.

In March 2017, ISO 44001 became an international standard to help organizations, both in the public and private sectors, large and small, to build and develop effective collaborative relationships in order to increase their competitive advantage.

This international standard promotes the adoption of a process-based approach when developing, implementing and improving the effectiveness of a collaborative relationship management system. Understanding and managing interrelated processes as a system contributes to the effectiveness and efficiency of the organization in achieving the expected results. This approach allows the organization to control the interrelations and interdependencies between system processes, so that the overall performance of the organization can be improved. The process approach involves the systematic definition and management of processes, and their interactions, in order to achieve the expected results in accordance with the policy, objectives and strategic objectives.

The management of the processes and the system as a whole can be achieved, using the PDCA Cycle of Continuous Improvement (Plan, Do, Check, Act) with an overall focus on risk-based thinking aimed at seizing opportunities and preventing undesirable results. The application of the process approach in a collaborative relationship management system allows:

- The consideration of processes in terms of added value; for example, in terms of internal adaptation of the organization, so that the information to be shared at a federal and local level, each Tax Administration must analyze the processes involved and elaborate the process reengineering they consider necessary, in order to give value to the collaborative relationship between jurisdictions that the implementation of the Single Tax Registry will imply.

- The achievement of an effective performance of the process; each Tax Administration will have its own challenges, as detailed above, but to the extent that they focus on the processes linked to collaborative relationships between jurisdictions, an effective performance will be achieved.

- Improvement of processes based on the evaluation of data and information; once the "Registry" is in force in the jurisdictions, having this unified information of the registry will allow the Tax Administration to manage these data and transform them into information to maximize the voluntary compliance of the taxpayer.

4.1 Eight stages of a collaborative relationship

We propose to study hereunder the stages of a collaborative relationship that details the ISO 44001 standard, considering that the implementation of the Single Tax Registry is, without a doubt, a concrete example of the collaboration actions that Tax Administrations must undertake.

This standard proposes a cycle that is composed of eight phases aimed at the parties (in our case, the Tax Administrations that adhere to the Registry) to maintain sustainable relationships, which ensure visibility in operations and enhance operational awareness, knowledge creation of value, internal evaluation, the selection of partners, joint work and help define strategies to maintain this relationship and finalize it when the time comes.

Life cycle model in the framework of a collaborative relationship

Source: Norma ISO 44001

4.1.1 Stage 1: Operational Awareness

In this first stage, it will be critical to ensure that operational structures promote collaborative work and that leaders are empowered to explore the potential value of collaboration. It is crucial that the adoption of a collaborative approach is clearly aligned with the goals and objectives of the Tax Administration and the organizational change that may be necessary.

Adopting a collaborative approach should focus on robust analysis of a solution. A clear differentiation of the types of relationships allows organizations to focus resources more effectively. Perhaps the most important decision is how organizations differentiate their relationships and focus their resources effectively. The spectrum of relationships and specific needs and strategic requirements will be many and varied.

Promoting collaboration may be at odds with current thinking, it is an evolving process. The benefits may need to be articulated and understood. Planning for operational collaboration will also be required.

Specific collaborative developments will require planning on how such approaches will be integrated into operations. The skills and abilities to operate in a collaborative relationship will be important. It is essential to understand what skills, competencies, and behaviors available and what development may be

needed. An initial risk assessment will also be required. The collaborative relationship may also introduce new risk elements that need to be identified, including those associated with potential collaborative business relationships and the impact of breakdowns on those relationships. Creating a Relationship Management Plan will help capture the concepts and provide a platform for relationship development. It is critical that it evolve over time, reflecting different relationships at different levels of maturity.

4.1.2 Stage 2: Knowledge

Once the potential for collaboration is identified, the next step is to develop specific strategies and risk management that provide the required results. The challenge is to develop an effective strategy that integrates ideas into a practical approach to meet the goals and expectations of all stakeholders. Understanding the objectives and drivers for collaboration is essential: they must be compatible with the overall objectives of the organization, which must then undertake an initial value analysis to ensure that there is sufficient potential value to be gained through a collaborative approach that justifies investment and risk.

A key aspect of developing a strategic approach will be to consider the exit strategy as an essential component in advance. Understanding the problems that will arise from disconnection will highlight the aspects that will be addressed in development. As relationships may be limited in time and/or affected by changes in circumstances or the work environment, part of the strategy should include the implications of leaving the relationship at some point.

It is important to consider and identify key people, their roles and available resources to support a collaborative approach. It will be necessary to undertake a joint assessment of the competencies and skills of those responsible and, where appropriate, to agree on a joint development plan. **One of the significant benefits of collaboration is the ability to share knowledge**.

The evaluation of collaboration opportunities makes it possible to consider the risks and opportunities that arise from taking advantage of existing, or potential, relationships. These extended relationships can generate greater benefits and opportunities, while at the same time they can generate more risks. The organization needs to identify and assess risks using defined processes and ensure that they address the concerns of all parties. When a strategy has been established, the relationship management plan (RMP) will help capture the key principles. It should be reviewed at defined intervals and will provide the communication and information platform that will help raise awareness throughout the organization.

Most organizations are very good at defining what they want from others, but perhaps less aware of their own ability to meet collaborative demands. A collaborative relationship requires commitment, including the leadership, skills and motivation that will govern behaviors and approaches. When selecting teams from the environment for collaboration, it's important to focus on those people who will best respond to the challenges of collaboration. Recognizing gaps and building capacity building is important. The organization should consider to what extent current operational practice can support or restrict effective collaboration, then address these issues. These may include organizational structure, previous organizational collaboration experiences, individual experience and capabilities, and cultural and behavioral competencies.

4.1.3 Stage 3: Internal evaluation

The organization should assess the effectiveness of its operations in the context of collaborative relationships and conduct a review of the organization's collaborative profile. There are a variety of models that can be used to provide a platform on which to evaluate the organization. For collaboration to work effectively, all parties must work openly.

The key to successful collaboration comes from having the most effective leadership, with appropriate competencies to carry the strategy forward. The skills and behaviors needed in a collaborative environment can include openness, honesty, responsiveness, and influence. Leaders must be able to generate and maintain the spirit of collaboration by supporting and advising participants.

Organizations need to establish selection criteria for collaborative relationships. Once the collaboration has been validated as the strategic path forward, the organization must develop a specific Relationship Management Plan, including the responsibilities that will be assigned to it with specific dates, establishing who does what and when.

4.1.4 Stage 4: Selection of "partners"[4]

In the case of the "Registry", the selection is already established by the implementing normative. Collaborative relationships can be used in many different circumstances. A collaborative profile of partners should be assessed against the organization's internal assessment to identify organizational fit. Perhaps the most difficult aspect of creating a collaborative approach lies in developing the engagement and negotiation strategy for collaboration. The emphasis should be based on the strategy, objectives, principles intended to work together and **consider the long-term stability of relationships and not focus solely on the short-term timing**. A sustainable relationship requires consideration as to the steps taken to engage with potential partners, which will include encouraging the potential partner organizations to adopt the principles of collaborative work within their own organizations, a joint assessment of its objectives and requirements for a relationship of collaboration and to identify and assess risks and opportunities.

The organization must work with "partners" to understand their goals, as well as build a dialogue around common goals and outcomes, which must be evaluated for alignment and compatibility. Collaborative initiatives should focus on the premise of significant strategic benefits.

In considering the implications of a partnership commitment, the key aspects of withdrawal should be jointly assessed. Establishing potential triggers and rules for disconnection, possible transition and future development during the selection phase generates trust between the parties.

The way organizations expect to work together will help define the nature of the relationship, the style of integration, and the level of interfaces, which will have a significant impact on the development of risk management approaches. For the initiation of the Joint Relationship Management Plan, the "partners" should confirm the principles on which joint relationship management and formal agreements will be based.

4.1.5 Stage 5: Working together

Establishing the right platform to build a collaborative relationship is crucial. It is important to work together to establish the appropriate model that will support collaborative work. Effective and sustainable collaboration requires a strong approach to both organizational development and collaborative behaviors, which begins with a focus on individual and joint objectives of partners, offering the benefits of combining skills, resources and driving innovation.

"Partners" must ensure that there is mutual agreement to support the joint approach, with a clear definition of management systems, authorities, performance, expectations, desired outcomes, relationship objectives and principles that will govern the behaviours of those involved. The evaluation and appointment of competent leaders are crucial to achieve the required results, covering the individual capacities and interaction between individuals in each organization. The

4 The ISO standard refers to "partners". It was preferred to retain the original text, but it is necessary to clarify that for the scope of this work the term "partners" would refer to Tax Administrations that are part of the implementation of the "Registry".

establishment of a joint management team (JMT), along with a clearly defined profile of roles and responsibilities, ensures that all participants fully understand their contribution. To maintain a strong relationship between organizations and their stakeholders, it will be essential to ensure that there is an effective communications process, including the vision, the objectives behind the collaboration and how concerns will be addressed.

Effective collaboration is one in which the parties share the responsibility to the extent that it is practical to support the individual risk of the "partners". In addition, the JMT will review and evaluate the potential impact of the collaboration for the organizations involved. The evaluation will include, for example, priority areas for immediate actions to implement the collaborative approach, change management to enable collaborative work and management of continuous improvement processes.

It is important to ensure that there is a problem-solving process in place to identify and resolve problems as soon as possible. The process should include a mechanism to integrate the outcome with lessons learned.

It will also be important for the exit strategy to address the considerations and potential impact of all parties involved. Organizations should ensure that the joint exit strategy meets the requirements of the partnership agreement. The boundaries of the relationship must be clearly established, identifying potential areas of conflict.

Effective support is needed to address the implications for the staff working within the relationship. Organizations should establish whether the collaborative relationship should be covered by a formal or informal agreement[5]. Whatever instrumentation is used, it must be agreed and evaluated together with the relationship approach and be compatible with the principles, own objectives and joint objectives. All performance requirements and measurement methods should be mutually agreed to ensure clarity.

When a decision is made that one or more organizations work together, the Joint Relationship Management Plan (JRMP) becomes a joint plan that will outline how they will attempt to manage the relationship in the future. The JMT should prioritize all actions necessary to implement the collaboration process and to align with the joint objectives.

Experience suggests that relationships will tend to stagnate over time if they are not driven to maintain continuous improvement and value creation. Relationships that focus particularly on long-term benefit must remain relevant to the needs of the taxpayer. An important value of collaborative approaches comes from the ability to share ideas and leverage alternative perspectives, which helps generate better engagement among "partners".

Exploiting value creation means challenging traditional thinking. How organizations choose to foster innovation depends on a wide variety of factors. Establishing joint multifunctional teams to address specific challenges or ideas provides the added benefit that introducing a structured approach to value creation supports organizations and teams working together. Innovation is crucial, but there must also be a structured approach to its implementation.

4.1.6 Stage 6: Value creation

At this stage, it is necessary to establish a joint approach to innovation that ensures targeted support and also encourages new ideas. A structured approach will underpin sustainable engagement, provide a measure of integration and an ongoing focus on getting greater value from the relationship. One of the main challenges

5 Keep in mind the analyzed regulations on tax secrecy that establish the tax texts of each jurisdiction, which have been detailed in the section "Challenges for the Tax Administration".

in any relationship is defining what value means to those involved. This is the responsibility of the joint management team and executive sponsors. These long-term values may be common or complementary.

The JMT will ensure that identified problems, risks and opportunities and areas for improvement are supported by an implementation impact analysis. The key to optimizing co-creation is to ensure that identified issues are reviewed periodically and, where necessary, eliminated if they are not met, ensuring that resources are not wasted or diverted from primary objectives. In a collaborative environment, value creation is about delivering innovative solutions or unlocking value that cannot be generated by a single organization.

As organizations begin to collaborate more closely, it is equally important to capture lessons learned as key to creating value and setting the agenda for innovation. The Joint Relationship Management Plan (JRMP) should be updated to incorporate value creation initiatives that after evaluation and their development, as required, will be incorporated into operations.

4.1.7 Stage 7: Staying together

Collaborative relationships are likely to change over time, due to internal and external factors or pressures. This is an important reason to integrate collaborative practice into the operating model. To continuously achieve performance objectives, it is crucial to establish a program that works to maintain a sustainable relationship through continuous joint management.

The key to maintaining relationships is to ensure that there is effective co-management focused on the operational level, managing the day-to-day activities of the relationship and ensuring continued focus and support. Maintaining defined behavioral principles is equally important. It will also be necessary to implement a defined process for continuous monitoring of behavior and confidence indicators within the collaboration. Building trust in relationships and ensuring appropriate behaviors is a key aspect of joint management. There must be continuous support and monitoring of innovation and continuous improvement to ensure that teams are exploiting their joint knowledge. The JMT must challenge regularly to generate new ideas and revitalize the relationship.

It is important to understand and agree on how the performance of the relationship will be measured and to ensure that appropriate reviews are made. The results of monitoring, measurements and evaluations are reviewed at the most appropriate management level to take the necessary corrective actions or to facilitate the identified improvements. Inevitably, problems will arise, so it is important that there is a strong approach to identifying and managing them, implementing a problem-solving process to ensure that problems are addressed at the right level, with trained staff.

The JMT should periodically assess changes in the organization, external context, staff and performance to assess their impact on the relationship and update the joint exit strategy as necessary. The Joint Relationship Management Plan (JRMP) should be reviewed periodically to ensure that it remains applicable and updated where necessary.

4.1.8 Stage 8: Exit Strategy activation

Exit strategy is a key aspect that must be addressed as part of initial thinking and carried out throughout the life cycle. The strategy should focus on how parties plan to withdraw when necessary and ensure effective continuity and taxpayer support. A strong relationship will recognize the value of seeking to monitor changes and ensure that each partner's concerns and needs are properly addressed.

It could be considered that addressing an exit strategy at the beginning of a relationship leads to the acceptance that the relationship will fail, but this is not the case. Experience suggests that being open about all possibilities allows the "partners" to focus on all aspects of integration.

When the "partners" mutually agree that the current collaboration program has reached its natural conclusion, the JMT should implement the joint exit strategy, considering all the responsibilities, agreed objectives, and implications for the personnel involved. The basis of a strong relationship is that while it continues to add value, the implications of maintaining continuity for both "partners" and taxpayers must also be recognized.

Collaborative integration offers organizations the opportunity to expand their individual capabilities and their scope through combined operations. The "partners" will evaluate the relationship and lessons learned both internally and in the joint relationship, jointly considering future opportunities for collaboration based on their experience. Organizations should review and update their relationship management plan (RMP) with the lessons learned from the exit strategy.

5. FINAL CONSIDERATIONS

As described in this work and as we experience it day by day, the current context has become increasingly volatile, uncertain, complex and ambiguous. It is a time of transformation into a "liquid world". With this environment, collaboration and coordination actions between jurisdictions must be a fundamental pillar for Tax administrations to be able to adapt to the changes that are occurring with increasing speed.

New technologies open up a world of opportunities in terms of information and communication. Both the exchange of data that allows for accurate and precise cross-referencing of information, as well as real-time communication with taxpayers and other tax authorities, is essential to have the activities correctly registered in the corresponding jurisdictions and to provide better services to taxpayers, in an individualized manner depending on their tax behavior, in addition to reducing operating costs. Thus, the "Single Federal Tax Registry", through cooperation and harmonization, allows for administrative unification and coordination, which implies not only a benefit for taxpayers by simplifying the registration of their taxes, but also an increase in the efficiency of the work of the Tax Administrations involved. This strategic management tool should be part of a tax planning process aimed at improving processes related to information and communication.

With regard to the jurisdictions involved, it is to be hoped that provinces will continue to be added in order to extend the coverage of the "Registry". In this regard, it can be considered that collaborative relationships have stages, such as those detailed in ISO 44001, and to be sustainable over time, attention must be paid to all phases. It would be interesting if each jurisdiction could discover at what stage of the descriptions of the rule it is and be able to advance in achieving consensus, taking a perspective approach.

As for the considered taxes, it is also expected that this initiative as a "Single Registry" will contain a wide coverage of taxes including the taxes of each level of government. Even the platform could expand functionalities, which must be coordinated with new regulations.

The opportunities offered by this tax tool should prevail over the challenges faced by Tax administrations. Throughout the work, it has been indicated that the process reengineering needed to address the implementation of the "Registry" will surely encompass issues related to regulations, technologies, database standardization and organizational change management for human resources.

Let us remember that the implementation of a tax management tool such as the "Registry" allows optimizing administrative processes by providing shared data management and transform the data generated in the independent bases of each Tax Administration into shared information, which generates knowledge and improves decision making. In this sense, data-driven decisions will result in greater effectiveness and lower costs. Focusing on the management of these internal processes in an effective solution contributes, not only to the generation, but also to the analysis of vital information for the objectives of the Tax Administration. With the application of new technologies, it is possible to take advantage of the data and apply algorithms to process it. Having current, real, truthful and consolidated information, which allows the data of another jurisdiction to be related to the organization itself, avoids the "watertight compartments" that favor the appearance of isolated data. The existence of the single data is the foundation for the harmonization of information between the different Tax Administrations. The figure of the "single data" that the "Registry" raises can be considered as a fundamental value of the information

that is managed, as an asset capable of generating value in particular and, ultimately, in decision-making.

As we have seen, the scope of the "Registry" is still limited with respect to the jurisdictions involved, the taxes achieved and the functionalities envisaged, but it presents us with an encouraging picture. The consensus generated between jurisdictions should be the basis for a subsequent agreement.

In this sense, enhancing collaboration and coordination actions between jurisdictions, taking advantage of new technologies, will improve the management of processes that are clearly strategic for the fulfillment of the objectives of each Tax Administration.

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INCORPORATING DATA ANALYTICS

in tax administration

Njoroge Antony **Kiarie**

SYNOPSIS

Tax administration is becoming increasingly complex in the contemporary society due to the sheer volume of transactions, differences in tax administrations and the multiplicity of policies regarding taxation. In this article, we examine the utilization of data analytics in tax administration and aim at illuminating more on ways in which different countries may incorporate data analytics and the benefits that they would derive from the same.

Keywords: Data Analysis, Data Analytics, Tax Administration.

CONTENT

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INTRODUCTION

Tax administration has become increasingly complicated in the contemporary society as a result of the multiplicity of activities, increased volumes, as well as the ever-changing or dynamic nature of the world of taxes. Unfortunately, the increasing complexity has also heightened the potential for tax evasion, an element that can be immensely challenging to the governments that are facing increasing pressures to collect sufficient revenue to provide the public goods. Tax authorities across the globe have become increasingly dependent on digital techniques in the collection of taxpayer data and the administration of their tax systems. Indeed, the increasing demand for tax transparency by the governmental entities and supranational organizations has caused an increasing number of tax authorities to establish or incorporate complex data-gathering platforms that would allow for the sharing and matching of taxpayer data (Rahman, 2020). This is, essentially, aimed at matching the increasing complexity tax administration and volumes of taxes that are levied. This is complemented by the utilization of data analytics, which would collect the data and assist in enhancement or improvement of tax collection, the target compliance initiatives, as well as enhance the overall effectiveness of the tax authorities in the collection of tax. The basic implication is that business entities and governments would be having increased volumes of taxpayer data or information flowing through them. This article will examine the concept of data analytics and ways in which it is applied in varying areas of tax administration, as well as the ways in which it is supposed to enhance the effectiveness of the same.

1. METHODOLOGY

The main methodology used in examining the topic is literature review. Volumes of scholarly works have been written on the use of data analytics in different fields, and the way sin which it enhances service provision. In this case, a scoping review of the scholarly works is undertaken to obtain a more comprehensive overview of the content and the topic at hand. This allows for the comprehensive definition of data analytics and provision of information regarding the ways in which it has been used in different enterprises and tax administrations.

2. DEFINING DATA ANALYTICS

At its most basic, the concept of data analytics underlines the science of analyzing raw data to allow for the making of conclusions regarding that information. The raw data would be analyzed in order to determine the trends and answer questions. Data analytics would combine numerous components that would be combined thereby providing a clearer picture regarding the business entity, its history, as well as its current position. Perhaps most noteworthy is the fact that data analytics is not an entirely new practice rather its application may be traced as far back as the 1950s (Rahman, 2020). Since then, data analytics has been increasingly applied, with the supporting tools becoming more sophisticated and complex. It is not surprising that certain industries or sectors have taken up data analytics more rapidly compared to others. This is the case for sectors such as scientific sectors, finance and logistics, whose increased adoption of data analytics has been predicated on the fact that individuals working in the sectors have the necessary capability and analytical mindset to handle large volumes of varying data sets (Rahman, 2020). Of particular note is the fact that the incorporation of data analytics as a fundamental component of daily tax advisory work is considerably new having started less than a decade ago, with the straightforward analysis for checking VAT return filings and ensure completeness. In most tax authorities, there is still significant use of MS. Excel with analytical character. The increased incorporation of data analytics in tax administration has been predicated on the heightened collaboration between individuals with analytical background and tax individuals. This combination has been found to be fundamental in effective application of data analytics in tax administration.

3. TAX ADMINISTRATION AND THE ROLE OF DATA ANALYTICS

Tax administration necessitates gathering data from varying systems and sources across the entity or even across the globe and the utilization of the same in solving problems and getting answers. The information would then be delivered in form of presentations, reports and return filings (Organization for Economic Co-operation and Development, 2016). The basic implication is that data analytics is effectively modifying the role of tax administration through imbuing the capacity to explain and explore data in entirely new ways. Indeed, it could assist in providing answers that previously could not be cracked. A case in point is the fact that data analytics, for instance, may illuminate on the effects that internal and external modifications in the business environment would have on the tax rates or even be used in examining contracts to decipher any language that could result in different-than-expected tax implications. There are varying ways in which data analytics would assist or enhance tax administration.

Visualization

Data analytics allows for visualization of data, which is fundamental in enhancing the capacity of users to quickly understand the implications of particular data output and make fundamental decisions on the same. Visualization-oriented tools and visualization capabilities incorporated in business intelligence and statistical tools could come in handy in equipping tax specialists with tools for exploration and explaining of data in entirely new ways, while also allowing users to comprehend data much better through examination of the same in context. Data analytics and the visualization would assist users in gaining insights in a speedier manner through more readily presentation of the insights and factors (Rahman, 2020). The visualization may be fundamental in the exploration of the interplay of varying scenarios within the global tax footprint, thereby offering the capacity for modification of the assumptions pertaining to one scenario and seeing the effects of the same across other scenarios (Organization for Economic Co-operation and Development, 2016). Even more noteworthy is the capacity of visualization to illuminate on any anomalies or inaccuracies particularly with regard to large sets of transactional data, which improves the capacity to undertake exploration or investigation of discrepancies.

Enhanced Efficiency in Data Management

Modern day tax authorities often have large volumes of data involved in tax administration. Effective and efficient data management is fundamental to effective utilization of tax analytics. Apart from the large and disparate volumes of data that are involved, there are tax calculations that are routinely created in the numerous cases when spreadsheet programs are used and incorporated in distinct systems. More often than not, the data that is thus obtained would not be fed back to the systems (Rahman, 2020). This is worsened by the fact that crucial data from varying sectors of the economy or the enterprise may be incomplete, inaccurate or inconsistent, which increases the difficulty of extracting, analyzing, as well as managing data. Data analytics programs allow or more consistency in data management and ensures that the information held in different parts would be the same (Rahman, 2020). This makes it easier to make decisions or to determine the effects of a particular tax policy in the long-term and the short-term.

Using Data Analytics to Monitor VAT

Tax authorities and other stakeholders and significantly concentrating on tax risks and taxation while expecting entities to control the main tax risks. An entity would only have effective control of the main risks in cases where it is sufficiently cognizant of the main risks that it runs. This underlines the importance of data analytics particularly with regard to Tax-Control Framework (TCF), which is a mechanism for fiscal risk and controls monitoring. The TCF incorporates guidelines and policies, as well as a comprehensive overview of the tax accountabilities and responsibilities alongside internal tax procedures, processes and controls (Zegers et al., 2015). Effective implementation of TCF in entities within their daily tax processing systems would come in handy

in reducing fiscal errors, spotting fiscal opportunities at the right time, as well as enhance the efficacy and quality of the appropriate fiscal returns.

One of the most fundamental elements of the incorporation of fiscal risk-and-controls monitoring mechanisms like TCF is the fact that it incorporates periodic evaluation of the monitoring mechanism's effectiveness (Rahman, 2020). In the past, assessments have had to be undertaken manually and were often dependent on subjective opinions of fiscal experts who usually concentrate on the existence of documentation and processes and testing the manual controls. Currently, external and internal stakeholder assessment focus has been changing and increasingly adopting automated approach that involves testing of the IT-reliant or IT-Application controls, as well as significant data testing via the use of advanced tax data analytics (Zegers et al., 2015). It is acknowledged that the change is primarily as a result of the increasingly sophisticated and complex tax supply chains and heightened dependence on ERP-sourced information for tax processing.

The efficacy pertaining to authorization and application controls (alongside effective IT General Controls) only offers partial assurance pertaining to the completeness and correctness of input-output VAT activity pertaining to transactional data. The utilization of complex VAT data analytics can come in handy in achieving this goal (Organization for Economic Co-operation and Development, 2016). The targeted analytics test transactional data against the legal or VAT requirements, in which case they may also be utilized in the assessment of the transactional data incorporated in the risk areas, opportunity areas, as well as VAT working capital benefits. Once VAT data analytics is optimized for purpose, it may be perceived as an effective and efficient assessment instrument.

Of course, tax managers or administrators have to grapple with the challenge pertaining to defining the appropriate combination of manual controls, VAT data analytics and VAT application controls (Rahman, 2020). There are varying factors that could enhance or enforce the entity's need for VAT-monitoring mechanism all of which Kenya is facing. These include reporting requirements and heightened control from the tax authorities, heightened complexity, as well as globalized supply chains not to mention the increasing dependence on Information Technology.

Data Analytics in Tax Processing (Using ERP End-to-End process)

VAT, like any other typical transaction-driven tax, could be applicable in each outgoing and incoming invoice, journals, and accruals alongside other forms of financial postings that could be relevant in regard to indirect taxes. It is noteworthy that the modern-day ERP systems provide the necessary support to global and local businesses in administration of the financial, logistic and production processes, as well as ensuring that the processes are mutually linked, thereby facilitating end-to-end business processes (Amare et al., 2020).

More often than not, ERP system processes would simply involve running standard reports that would summarize the totals per configured and used tax code. It is noteworthy that running standard VAT returns reports within the ERP system would be based on the tax code. Apart from the tax code, further information providing more details on the predisposing transactions that triggered that invoice may be limited (Rahman, 2020). The evaluation of the accuracy pertaining to the accounted tax code necessitates more information from varying process angles to allow for comprehensive analysis. In essence, VAT reporting activity would not be incorporated in areas where sophisticated detective checks (data analysis) may be undertaken.

The comprehension of the importance and application of data analytics in Account Receivable and Account Payable aspects necessitates an explanation of the varying forms of tax code determination that would be done between the two areas.

In the Accounts Payable area, there are no automated tax code determinations that are in place as a component of the out-of-the-box ERP implementations.

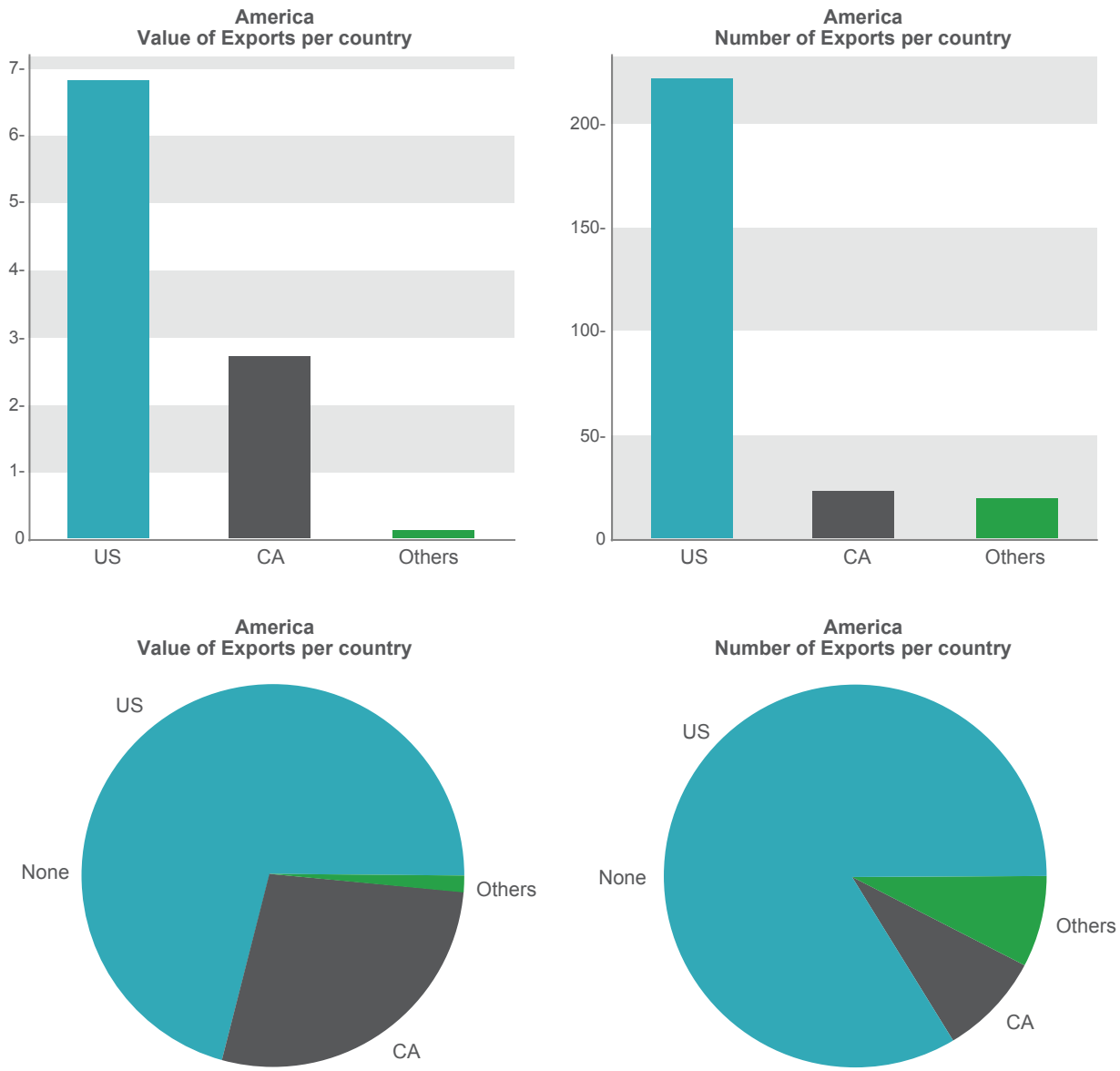
This means that suppliers-issued invoices would be manually processed in the accounts payable department with clerks being forced to read the mentioned tax consequences on the invoice and picking out the right tax code that is matching the tax application incorporated at the actual tax invoice (Amare et al., 2020). Perhaps most noteworthy is the fact that the entire process would necessitate rudimentary knowledge pertaining to the varying country-specific VAT systems, as well as the jurisdictions so as to identify the appropriate tax code (Zegers et al., 2015). On the same note, it is acknowledged that VAT rules and percentages are dynamic in which case they are bound to be changed from time to time (Organization for Economic Co-operation and Development, 2016). The basic implication is that the accounts payable clerks would have to be offered persistent training pertaining to the latest VAT derivation rules.

One of the noticeable elements within the market as regarding the manual processes would be the fact that the VAT departments often create VAT derivation manuals that also incorporate VAT decision trees. The decision trees, eventually, cause tax codes that accounts payable clerks would have to choose from the overall list of the available tax codes. These activities are error sensitive given the multiplicity of the tax codes from which the clerk would have to select (Zegers et al., 2015). Given that the tasks are usually repetitive in nature, it is easy for the wrong code to be picked. These elements underline the importance of data analytics as they incorporate detective VAT quality controls that would ensure that there is consistency and congruence in all the data that is incorporated in a particular report or system.

4. DIRECT AND INDIRECT TAX

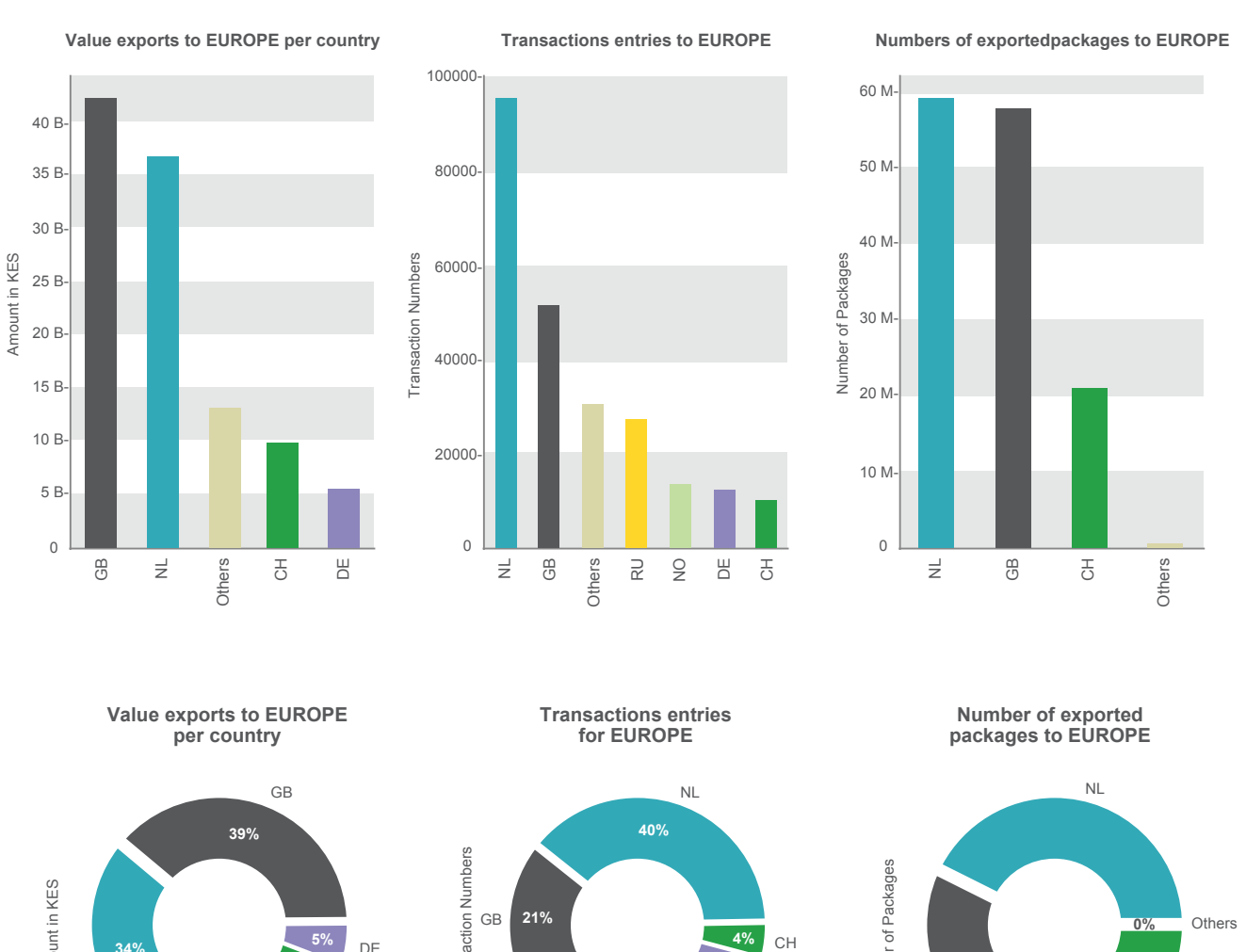
Data analytics is immensely important in enhancing the efficiency of direct taxes administration. Given the visualization capabilities, income tax information may be displayed or portrayed in significantly informative and dynamic manner rather than examining lines on spreadsheet and work papers. Users may interact with the data, working their way through the supporting details and modifying the views in a few clicks (Amare et al., 2020). For instance, in the figure below, it is easy to manipulate the visual details of the data to obtain value of the exports per country and their number with one click.

Figure 1



Indirect tax provides significant chances for leveraging analytics. The management and compliance of indirect taxes would be handled by the functional business units in a large number of entities, where each transaction that an entity undertakes necessitates the making of an indirect tax decision even in cases where the transaction has been exempted from the same (Amare et al., 2020). In essence, the volume of information surrounding the ultimate indirect tax outcomes may be significant. Given the immense volume of data coupled with the velocity of transactions, tax functions are often left handling summarized data or data samples, or even problems that the taxing authority would highlight after the fact. Data analytics would come in handy in monitoring the indirect taxes thereby avoiding overpayments and reducing risks. As indicated in the figure 2, the filters in the graphic may be used to concentrate on particular jurisdictions and time periods, thereby allowing tax administrators to examine different areas and comprehend the predisposing transactions.

Figure 2



In conclusion, data analytics has gained immense attention in the recent times as different entities have sought enhanced ways of easily and quickly comprehending data. It is noteworthy that tax administration in different parts of the world have become increasingly complex due to the multiplicity of tax administrations, as well as the volumes of transactions. This article has demonstrated ways in which data analytics may be used to enhance tax administration, reduce errors and allow for enhanced congruence or consistency between data in different entities including the businesses, their suppliers, as well as the tax administrators themselves.

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BENEFICIAL OWNERSHIP TRANSPARENCY:
accomplishment and obstacles

Antonio **Lopo Martínez**

SYNOPSIS

The study aims to review beneficial ownership transparency and its importance in combating corruption and tax abuses. The concept of beneficial ownership and the risk of opacity are discussed. Normative achievements regarding BO are exposed in international agreements. The main challenges are identified, namely: *i*) the establishment of open central registers, *ii*) the implementation of automatic mechanisms for the exchange of information, *iii*) the requirement of standardization and verification of information, and *iv*) the commitment of the governments for the dissemination and access of this information to potential interested in combating the offenses perpetrated using anonymous companies.

Keywords: Beneficial ownership, Central registry, Corruption, Tax abuse, transparency.

CONTENT

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INTRODUCTION

A brief look at major international issues today will highlight the use of anonymous corporate vehicles to conceal the proceeds of corruption and tax evasion, and other crimes in a global environment. With the globalization of corruption[1] and tax abuse practices[2], identifying and exchanging *beneficial ownership* information are imperative for crime prevention, asset recovery, and criminal liability. Added to this is that corruption and tax fraud are complex crimes that spread internationally, directly impacting the violation of human rights and perpetuating inequality.

The devastating effects of the use of *shell companies* and other corporate vehicles as mechanisms to conceal wealth and make it challenging to identify the beneficial owners have come to the center of the international agenda. According to the World Bank, some of the world's most destructive and threatening activities are carried out through *shell companies* and other anonymous legal arrangements. Nameless corporations have caused billions in damage to nations, demonstrating the crack of a lack of financial transparency and noncompliance with international financial disclosure standards (Baradaran et al., 2013)[3].

The beneficial owner is the person who legally, contractually, or factually has some power to use or enjoy the income from a particular legal arrangement. In simpler terms, the BO is the natural person who is entitled to the benefits arising from the enjoyment of securities and the power to exercise control and influence in respect of voting rights attached to an entity's shares.

Ultimately, a global registry of *beneficial ownership* is advocated, indicating responsible for controlling and benefiting from legal entities. Initiatives in favor of registries are spreading through various organizations seeking transparency and fighting corruption and tax abuses. These institutions aim to enable governments to crack down on these practices and empower civil society to investigate possible situations involving acts of injustice, corruption, or tax abuse.

That said, this article's central issue will be to discuss the achievements and challenges in confronting the problem of the opacity of beneficial ownership (BO). Government institutions and NGO's have promoted initiatives aimed at minimizing the misuse of corporate vehicles, such as *shell companies* or *trusts*, to conceal the illicit origin of financial flows and the use of funds obtained through tax evasion and other crimes.

Greater transparency in the ownership or control structure of companies, *trusts*, foundations, and other corporate vehicles is presumed to be beneficial in providing authorities, other companies, and the public a complete identification of who is behind these entities, preventing their use of corruption and other spurious purposes. Tax fraud and corruption undermine and contradict all democratic elements. Corruption, for example, is an unfair and immoral benefit derived from positions of public trust and responsibility used for inappropriate and unseemly actions (Webster,

1 According to the Former United Nations Secretary-General Kofi Annan, in his introductory remarks on the 2004 United Nations World Convention Against Corruption: *Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.... Corruption is a key element in economic under-performance and a major obstacle to poverty alleviation and development*. As your reflection makes clear, there is a direct impact on human rights caused by corruption.

2 In line with Vatican Economics paper discussing tax fraud and abuse: "*Today more than half of the world's trade is carried out by large corporations that reduce the tax burden by shifting profits from one headquarters to another at their convenience, transferring the gains to tax havens and the costs to high-tax countries. It seems clear that all this has subtracted decisive resources for the real economy and contributed to generate economic systems based on inequality. Moreover, it cannot be ignored that those offshore headquarters have on many occasions become the usual places for money laundering, i.e., the results of illicit revenues (thefts, fraud, corruption, associations to commit crimes, mafia, war looting...) See*: BOLLETTINO. SANTA STAMPA DELLA SANTA SEDE, «Oeconomicae et pecuniariae quaestiones'. Considerazioni per un discernimento etico circa alcuni aspetti dell'attuale sistema economico-finanziario" della Congregazione per la Dottrina della Fede e del Dicastero per il Servizio dello Sviluppo Umano Integrale» URL: http://press.vatican.va/content/salastampa/it/bollettino/pubblico/ 2018/05/17/0360.html.

3 The *shell* companies, besides being widely used in cases of grand corruption and tax fraud, have been traced to dishonest activities by Muammar Gaddafi in Libya, the secret nuclear program in Iran, Russian arms trafficking, North Korean arms storage, and Al-Qaeda terrorist activities.

2008). Today, major tax abuses and corruption are international problems that must be combated through a global, networked solution.

By ensuring transparency and *disclosure* of beneficial ownership data in central registries that allow for exchanging this information between countries, a clear and consistent mechanism for querying data is guaranteed, providing an additional corruption prevention tool. Therefore, through transparency, the predisposition to corruption and tax fraud is minimized, given the more incredible difficulty in establishing the *quid pro quo* or hidden transfers, thanks to the ease of tracking illicit operations.

It is the obligation and duty of all societies to fight corruption and tax fraud. This is theoretically justified by the *principle of anti-corruption*, whose dogmatic conceptualization is established in Zephryr Teachout's work, framing it as a constitutional and international principle structuring democratic societies that ensure the rule of law (Teachout, 2009).

In line with the relevance of the *principle of anti-corruption*, it should be noted that the fight against corruption should be at the core of constitutional, administrative, and international law. Constitutions and human rights conventions must be interpreted as anti-corruption instruments, and political, administrative, and judicial institutions must be structured to combat corruption and fiscal abuses effectively.

It is also worth noting that there is an intuitive relationship between corruption and tax fraud on the one hand and human rights on the other. To illustrate this relationship, the correlation between poverty and these practices is highlighted, where the former would cause violation of human rights.

The connection between the human rights issue and fiscal corruption and abuse is unquestionable. Human rights framing attracts more institutional and popular support for anticorruption and anti-abuse measures because it draws attention to the suffering of these practices' victims. Add that framing corruption and tax abuse as a human rights violation can empower human rights monitoring bodies, including national human rights institutions, further strengthening the fight against corruption and tax abuse. Finally, human rights monitoring could usefully complement corruption monitoring, which experts currently consider to be overly subjective, imprecise, and insufficiently action-oriented.

Returning to the theme, after the BO have been identified, and duly cataloged in Central Registries in each country, governments need to promote the sharing of information, the maintenance of reliable records. The scrutiny of registered details is crucial to ensure that its use is effective. To effectively combat corruption and tax abuse, it will be necessary to go further, including transparency about beneficial ownership immediately applicable in transactions between cross-border entities.

Countries have an obligation of international cooperation and technical assistance to support human rights. This is to be understood as international cooperation in the field of international law. In particular, countries that contribute to greater transparency and effective exchange of information - including developing countries - look after human rights. On the other hand, those who cling to the last vestiges of secrecy and prevent the emergence of effective exchange of information contribute to further human rights violations.

In the remainder of this paper, the topic will be exposed according to the script described below. First, the concept of a beneficial owner will be discussed in more detail and the risks of the BO opacity and the issue of transparency and confidentiality will be appreciated. Next, the genealogy of the normative instruments will be investigated with regard to the BO's point. Still, in this section, international regulations on the matter will be analyzed, including the community regulation, in these specific topics. As the last item, a reflection will be made on the main challenges to ensure the beneficial owner's transparency. At the end of the study, we will list some of the main conclusions in disclosing the beneficial owner in favor of combating corruption and tax abuse.

1. TRANSPARENCY OF THE BENEFICIAL OWNERSHIP

Defining beneficial ownership may be simple, in legal terms or international conventions; in practice, however, it is tough to identify who the beneficial owner is. It should be clear that those who commit acts of corruption and tax abuse have a vested interest in maintaining their anonymity and will promote all actions to ensure this goal. To address the topic in this part, we will start by conceptualizing the beneficial owner and identifying opacity risks in BO. We will conclude by analyzing the trade-off's complex issue between transparency and confidentiality of BO and possible implications for the fight against corruption.

1.1 Concept of beneficial ownership

Beneficial owner has been identified as the natural person who ultimately has effective control over a legal person with whom a transaction is being made; these persons ultimately control the legal person and the arrangement. (Siclari, 2016) The concept of *beneficial ownership* originated in the UK during the development of *trust law*. At *common law* there is a distinction between *legal ownership* and *beneficial ownership* (Abdelaal, 2016).

In the creation of a *trust*, total ownership was divided into two constituent elements, which became vested in different people: the *legal ownership* in the trustee and what has been called *beneficial ownership*, which constitutes the beneficiary. Although today the term beneficial owner is applied in a wide variety of situations not involving trusts, the essence of the concept - as referring to the person who ultimately controls an asset and can benefit from it - remains the same.

Indeed, the typical answer to the question of how to find the beneficial owner is the simple answer heard in investigations: "find out who benefits." The image of someone temporarily absent, but able to take back his property at any time, provides a useful illustration of the idea of the beneficial owner, because it reveals that he is not only the one who benefits, but also the one who exercises control in the end - and not directly and openly, but indirectly and secretly, invisible to the outside world. The actual beneficiary may not be on the scene, and the corporate vehicles may belong to someone else. However, in the final analysis, they are his.

The beneficial owner can be identified in a two-pronged approach: i) from the ownership perspective and from the control perspective. From the ownership perspective, a beneficial owner of a legal entity is each individual (if any) who, directly or indirectly, through any contract, understanding, relationship or otherwise, holds interests in the legal entity. From a control perspective, a beneficial owner is a single individual with responsibility for controlling, managing, or directing a client legal entity, including a senior executive or manager.

Common ways to control a company: It can be through ownership arrangements, such as: *a*) ownership of shares, and X% of the shares; *b*) ownership of voting rights, p. X% of the voting rights; *c*) other ownership arrangements; *d*) joint ownership arrangements, etc. But it can also be by other means, such as: *a*) the right to appoint / remove a majority of the directors in the company (or equivalent management body); *b*) personal connections or contractual associations with persons in management or administrative positions; *c*) the right to exercise significant influence over the company's activities, p. decision rights, veto rights, right to profit.

In the case of *trusts, the following* can also, according to contractual definitions, assume the position of beneficial owner (*i*) *the settlor*; (*ii*) the trustee or *trustees of trusts*; (*iii*) the trustee, if applicable; (*iv*) the beneficiaries or, if the persons benefiting from the legal arrangement or legal person have not yet been determined, the category of persons in whose main interest the legal arrangement or legal person was set up or carries on its business; and (*v*) any other natural person who has ultimate control of the trust through direct or indirect participation or through other means.

When an individual attempts to incorporate or legally control a company, international standards require that the corporate *service provider* - an entity that specializes in creating legal entities for third parties - obtain identifying information. International law requires that such companies obtain a certified copy of the individual's identification and proof of address, such as a utility bill. Failure to comply allows the formation of anonymous corporations that cannot be traced back to the real person or persons in control, facilitating corruption, tax abuses, organized crime, money laundering, and terrorism.

In short, the concept of beneficial owner is relatively self-evident in theory but, regrettably, difficult to apply in practice. Fundamentally, one wants to identify the natural person who ultimately controls a corporate vehicle. Legal definitions fail to portray the complexity of beneficial ownership possibilities and are inevitably reductive and one-sided.

1.2 Beneficial ownership opacity risk

In 2011, the World Bank conducted a study of 213 cases of grand corruption and it was determined that over 70% involved the use of *shell companies*[4]. *Shell companies* are corporate entities that do not perform any business or own any assets, but are used as a vehicle for other people's operations. But in addition to companies there are other types of *legal arrangements* that are common in *common law* such as *trusts*, but that can easily be applied in other legislation. It is relatively trivial to promote a transfer of power and control of assets on a fiduciary basis in order to satisfy the interests of the transferor, making it difficult to identify who actually has control of the *trust* or its "holder".

Secrecy reduces transaction costs for criminals engaged in *offshore* activities. In practical terms, secrecy reduces the risk faced by corrupt and other criminals. The cost perspective can help understand the problems and incentives of information. *Kleptocorrupt* elites in non-democratic and or quasi-democratic countries use vehicle companies to invest money in stable economies. These stable countries benefit from trillions of dollars of inward investment, something that would not occur without the practice of secrecy. In this environment a moral hazard is created for countries receiving investment, as they benefit at the expense of capital-exporting countries.

Among the harmful consequences of opacity would be: *i*) revenue losses to governments as undisclosed income, and assets secreted offshore; *ii*) organized crime, including corruption and tax abuse, laundering trillions of dollars of revenue from illicit activities worldwide each year; *iii*) corrupt public officials who steal from their countries by hiding and investing in offshore; *iv*) democratic reforms inhibited, as secrecy and anonymity allows corrupt elites to remain in power; *v*) rich countries benefit from trillions of dollars of investment, in part thanks to secrecy secured (Cockfield, 2016).

In an economic view, corruption, including bribery, represents a "hidden" tariff that distorts economic allocations of resources and creates inefficiencies - corruption refers to the use of public office for private gain. In such cases, an official *agent* entrusted with a task by the public (*principal*) engages in prevarication for private enrichment, creating an *agency problem*.

With the improvement of *transparency*, the probability of discovering acts of corruption by public agents and fiscal abuses by the elites increases. Therefore, by promoting "transparency", mechanisms are created to strengthen the control and prevention of corruption and tax evasion, providing services in the fight against this evil. Of course, one must take into account that

4 «Anonymous Company Owners, Global Witness», URL: https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/.

transparency is not a panacea[5]. It is also undeniable that countries that maintain the secrecy of the beneficial owners are preferred by corrupt and tax evaders.

An anonymous multi-jurisdictional entity structure aims to make it more difficult to identify the beneficial owner, most often for illicit purposes. There are several reasons to ensure free access to beneficial ownership information, in addition to the anticorruption principle. Moreover, it is essential in any business to identify with whom transactions are being made in order to reduce risks and positively increase transparent competition[6].

1.3 In defense of beneficial ownership transparency

The connection between corruption and fiscal abuses with the suppression of human rights has been recognized by human rights scholars and the United Nations itself, as well as various governmental bodies and NGOS. Scrutiny of government corruption has been a primary focus, relative to barrier or human rights violations. Individual values have often been set aside in favor of protecting a more relevant collective value.

With a greater orientation towards the human being, in the last two decades there has been a paradigm shift in the view of politicians and legislators on the appropriate limits to what is valid in terms of privacy and confidentiality of a person's financial affairs. There is no doubt that the right to confidentiality cannot be used to cover up criminal acts. Everyone has a right to privacy, but no one has the right to invoke it to refrain from complying with the law or to evade its reach.

The noted American jurist Louis Brandeis, writing in 1914, commented on advertising thus: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman". In view of the above, "transparency" can be seen as the exaltation of "*sunlight*", which makes everything clear, reducing opacity, or even as a "remedy" that cures evils or, at the limit, as a "disinfectant" that purifies what is contaminated by uncertainty and doubt.

Transparency is pointed out as a resource to reduce immoral and illegal conduct. In fact, the literature indicates that collecting and analyzing information is one of the main weapons used to fight corruption. By placing confidence in its accurate and purposeful implementation, while ensuring the legitimate and legal interests of all parties involved, transparency is indeed a solid foundation for both private individuals and governments to reorient themselves (Jaeger, 2016).

Regarding the transparency of the beneficial owner, the disclosure of ownership information means that corrupt and tax evaders can no longer move, whitewash and hide illicit resources, which ensures greater *accountability*. Confidentiality about beneficial ownership only interests criminals, or those who benefit from them.

There are those who demand secrecy and anonymity, and those who offer this service. The demander is interested in paying lavishly for the insurance that anonymity offers. On the other hand, the provider does not want to give up a promising income. Only with the cooperation of governments is it possible to dismantle this perverse market, which only serves the corrupt and other criminals and those who serve them (Vishneskiy, 2015).

5 Tax Justice Network (TJN), a global coalition of researchers and civil society organizations involved in the fight against financial secrecy and harmful tax practices, has compiled an index of secrecy jurisdictions based on a detailed assessment of three factors: transparency of effective beneficiary information; transparency of corporate activity; and involvement in international judicial cooperation to combat harmful practices. The index aims to highlight how market opacity encourages corrupt activities. TAX JUSTICE NETWORK, «Financial Secrecy Index», URL: http://www.financialsecrecyindex.com/.

6 "Eight reasons why everybody needs to be able to see company ownership information (not just the police)», Global Witness, URL : https://www.globalwitness.org/en/blog/eight-reasons-why-we-all-need-be-able-see-beneficial-ownership-information-rather-just-police/.

2. REGULATION OF THE BENEFICIAL OWNERSHIP

On December 9 of each year, the world celebrates the international day against corruption (and immediately, on December 10, the day of human rights). The symbolic fact that such a day exists reflects the international community's interest in adopting measures to prevent corruption.

The effort to fight corruption over the years has already materialized in significant international regulatory achievements, and the theme has never been more current. The recent evolution has been in the sense of transposing these concerns and instruments to the countries' internal law. With the global crisis and the compromising of public revenues, it has also become intolerable to live with fiscal abuses committed through tax evasion and elusive practices.

This section will discuss the genealogy of the regulations concerning beneficial owners to prevent corruption and other crimes. Next, the propagation of these instruments in the international order will be addressed, commenting on the community guidelines.

2.1 Genealogy of anti-corruption regulations and beneficial ownership

Although corruption is an ancient phenomenon, it has only been combated with effective instruments in recent years, particularly after the Cold War. Current anti-corruption instruments are multifaceted and involve a combination of regulation, self-regulation, and *multi-stakeholder* initiatives. International legal instruments are a significant source in the anti-corruption legislative framework. There are at least nine regional, sub-regional and international anti-corruption conventions[7].

In 1977, the U.S. Congress played a pioneering role by adopting the *Foreign Corrupt Practices Act* (FCPA), the first law prohibiting transnational bribery. The scope of the FCPA was limited to corrupt practices related to international transactions; it did not cover corrupt practices promoted outside the commercial sphere. Later, in 1997, further progress was made in the fight against corruption by adopting the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Like the FCPA, the OECD CONVENTION only covered bribery in connection with international commercial transactions, and always from an operational perspective, i.e., in the promise to offer and pay bribes.

The concern up to that point was centered on an economic lens and the possible market-distorting effects of corruption - very much focused, therefore, on the interest of Western multinational corporations. The regulations focused very much on active corruption, characterized by promising, offering, and bribing (Wouters et al., 2013, pp. 208–209).

The leading international instrument on corruption came to be the *United Nations Convention against Corruption* (UNCAC), adopted in 2003 by the UN General Assembly. The convention became the first anticorruption legal instrument to establish binding rules for signatory countries. The scope of the agreements now includes passive corruption, in particular corrupted persons, and applies to practices beyond those that occur in international business transactions. The content of the UNCAC was on prevention, criminalization, and international cooperation in combating corruption.

7 Examples of regional conventions are: (1) Organization of American States Inter-American Convention against Corruption 1996 (OAS Convention). It entered into force on March 6, 1997. (2) Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the Communities of the European Union or officials of the Member States of the European Union 1999 (EU Convention), which is still in the process of receiving ratifications. See also Council Framework Decision 2003.568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.07.2003). According to Article 249 of the EC Treaty as amended by the Treaty of Amsterdam, a decision shall be binding in its entirety upon those to whom it is addressed. (3) Council of Europe Criminal Law Convention on Corruption 1999 (COE Convention). It entered into force on July 1, 2002. There is also a 1999 Civil Convention on Corruption. (4) Southern African Development Community Protocol on Corruption 2000 (SADC Protocol). (5) Economic Community of West African States Protocol on the Fight against Corruption 2001 (ECOWAS Convention). (6) African Union Convention on Preventing and Combating Corruption 2003 (AU Convention). In force on August 5, 2006.

Among the Articles for the prevention and detection of the transfer of the proceeds of crime, Article 52 of the UNCITRAL IS relevant to the issue of beneficial ownership, which prescribes:

> "each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, to require financial institutions operating in its territory to verify the identity of customers, to take reasonable steps to determine the identity of the *ultimate beneficiaries* of funds deposited in large accounts, and to intensify their scrutiny of any account applied for or maintained in or on behalf of *persons who hold or have held eminent public functions and their family members and close associates*".

One can notice; therefore, the concern with the identification of the final beneficiary in the transfer of funds, especially those who are considered politically exposed persons (PEPS), as well as the clear orientation, to know your client, as can also be seen in the transcription of paragraph 1 of Article 52 of the UNCITRAL, highlighted below:

> "Such heightened scrutiny shall be reasonably structured so as to uncover *suspicious transactions* for the purpose of reporting to the competent authorities and shall not be designed in such a way as to disrupt or impede the normal course of the financial institutions' business with their *legitimate customers*".

Article 53 of the UNCAC recognizes the right of a State to take such measures as may be necessary to enable other States to bring a civil action before its courts for the purpose of *establishing ownership or possession of assets acquired* (beneficial owner) through the commission of corruption. In short, a legitimate owner of an asset should be able to exercise his or her full rights over that asset, regardless of who has possession of it (Willebois, 2013).

2.2 International regulation in beneficial ownership

Regarding international regulation on the subject of beneficial ownership, the action of the Financial Action Task Force on Money Laundering and the Financing of Terrorism (FATF) IS particularly noteworthy. The FATF is an intergovernmental organization whose purpose is to develop and promote national and international policies to combat money laundering and the financing of terrorism. To fulfill this objective, FATF published its Recommendations on Combating Money Laundering/ Combating the Financing of Terrorism in 2012.

International standards, the 49 FATF Recommendations, deal respectively with anti-money laundering (forty recommendations) and combating the financing of terrorism (nine recommendations). Of particular note are Recommendations 24 and 25, which require countries to ensure that adequate, accurate, and timely beneficial ownership information is available and accessible to the authorities and facilitates access to the beneficial owner for control purposes[8].

FATF, the organization for economic cooperation and development (OECD), and the *Global Forum on Transparency and exchange of information* for tax purposes are invited to develop initial proposals on ways to improve the application of international standards on transparency, including the availability of beneficial ownership information and its international exchange.

8 According to the interpretive note to Recommendation No. 24, in order to ensure adequate transparency with respect to legal entities, countries should have mechanisms in place that: i) identify the different types of legal entities, describe the basic forms and characteristics of legal entities in the country; ii) identify and describe iii) the creation of legal entities; and iv) obtain basic and beneficial ownership information from the registry. In turn, the interpretative note to Recommendation No. 25, prescribes that countries should ensure that there is adequate, accurate and timely information regarding *trusts,* including information on the settlor, trustee and *beneficial owner*, as well as the competent authorities to obtain timely access. "The FATF Recommendations», URL : http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html.

For its part, the G20 has reiterated the high priority it attaches to international financial transparency: in April 2016, it invited the OECD and FATF TO propose a new global transparency standard for beneficial ownership. The G20 High Level Principles on Transparency in Beneficial Ownership and the EU - specific requirements are present in the adopted text of the Fourth Anti-Money Laundering Directive (4DABC)[9], agreed in 2015, imposing an obligation on EU member states to implement it.

To expose corruption, embodied in the misuse of joint-stock companies, other legal entities, and legal arrangements, including participating *trusts, commit* to enhancing transparency about beneficial ownership, identifying and controlling them, exposing injustice, and stopping illicit financial flows. The participants declare that they need to take firm collective action towards greater transparency on *beneficial ownership*. The communiqué announces FATF's recommendations in *Transparency and Beneficial Ownership of Legal Persons and Arrangements* for gathering information[10].

The G8 leaders stated through the Declaration that "companies should know who owns them, and tax authorities and law enforcement should be able to obtain this information easily". The UK, France, and the US have published action plans to improve company ownership and control transparency.

The *US Financial Crimes Enforcement Network* (FinCen) has recommended, based on anti-money laundering standards developed by FATF, new regulations for financial institutions because of the need to identify who the beneficial owners are. According to FinCEN, there are four critical elements to *client due diligence* (CDD) in the context of ABC. Requirements: 1. identifying and verifying the customer; 2. identifying and verifying the beneficial owners; 3. understanding the nature and purpose of customer relationships for customer risk profiling; and 4. continuously monitoring and reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.

If countries fail to register BO information at the time of establishment and ownership change, they will be subject to sanctions and retaliation. In this case, the particular concern is with the tax havens known to the international community.

The general understanding is that tax havens do enormous damage, primarily because they prevent governments from fulfilling their human rights obligations. When public elites and powerful corrupt corporations use *offshore* tax havens, they deprive states of revenues that would be needed to fulfill their commitments, such as providing education, health care, justice, and security. Tax havens and other states that support secrecy and secrecy feed this vicious circle with a lack of transparency that has damaging consequences for the global economy and society.

Many of these *shell companies*, trusts and bank accounts are, not coincidentally, based in jurisdictions that protect the identity of the owners, thus attracting those who want to hide profits from illicit activities and encouraging those who simply seek "tax efficiency" to hide their assets from national tax authorities.

9 Directive (EU) 2015/849 is an initiative triggered by the 2012 FATF recommendations on improving EU anti-money laundering (AML) and counter-terrorist financing (CTF) laws. The Directive applies to entities such as credit institutions, financial institutions and natural or legal persons acting in the course of their professional activities (the "obliged entities"), pursuant to Article 2(1) of the Directive. The Fourth Anti-Money Laundering Directive (4DABC), European Commission is available at http://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX:32015L0849

10 Among the G20 principles are: 1) Participants ensure that they will provide accurate and timely beneficial ownership information (including legal ownership information). Emphasizing that this information will be available and fully accessible to those with a legitimate need, including to help prevent abuse. This requires mechanisms to ensure law enforcement and other competent authorities, including establishing central public registries. 2) Participants commit to work to ensure that beneficial ownership information can be used effectively to detect and combat corruption, including working with business, civil society, and law enforcement agencies. 3) The participants commit to supporting developing countries collect beneficial ownership information and use it in public procurement and other sectors. 4) Participants will work to ensure the effective exchange of beneficial ownership information in compliance with applicable data protection laws and rules, both nationally and internationally and among authorities, including tax authorities, asset recovery offices, and anti-corruption agencies. See: "G20 High-Level Principles on Beneficial Ownership Transparency | G20 2014», URL: http://www.g20australia.org/official_resources/g20_high_level_principles_beneficial_ownership_transparency.html.

Furthermore, it has been shown that many of these offshore entities function like Russian dolls, one owns another, which owns another, and another, and another, making the traceability of the true owner, i.e. the beneficial owner much more difficult, if not impossible (Clarke, 2017).

On May 11, 2016, the Treasury Financial Oversight Office Network (FinCEN) published the final version of *Anti-Money Laundering* (AML), which requires certain financial institutions to identify the "actual benefit" of each" customer of a legal entity, and the verification of the identity of such owners. The new regulations, initially proposed in 2014, took effect on July 11, 2016; however, financial institutions were covered until May 11, 2018 to implement the required procedures. After their enactment, the financial industry's response was muted, compared to the emotional response to the proposed rule in 2014 (Mortlock et al., 2016).

The next steps in the evolution of international rules involve the revision of the OECD Model Treaty for automatic exchanges of information and increasing pressure for countries with the standards set out in the G8 Principles to adopt an automatic exchange system - arguably something far more effective in preventing abuse of anonymous corporate vehicles.

3. CHALLENGES REGARDING ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Notwithstanding the consolidated normative achievements in preventing shell companies' use, if a corrupt or tax fraudster wishes to move large sums of dirty money internationally, there is still no better device today than *shell companies, trusts* or other legal arrangements, given the still existing difficulty of tracing. The rules that are beginning to take shape at the international level and reflected in some countries' domestic law do not yet face significant challenges that would make them an effective remedy to minimize and prevent corruption and tax abuse.

In the exciting work *Global Shell Games*, Micheal Findley, Daniel Nielson, and Jason Sharman report the results of an experiment in which they simulated, by sending e-mails to *corporate service providers*, interest in forming anonymous corporations. They conclude that in general the international rules governing the formation of shell companies are ineffective. Almost half (48 percent) of all responses received did not ask for proper identification, and 22 percent did not ask for any identity documents to form a company[11].

Tracking the beneficial ownership of *shell companies* and trusts can be very difficult, especially if they arise in jurisdictions that maintain the beneficial owners and controllers' secrecy and secrecy. While it is possible to create elaborate and detailed systems to exchange information across borders, these systems become compromised or even unusable if the underlying beneficial owners cannot be identified.

Two TJN reports on beneficial ownership indicate flaws in anti-money laundering rules at the global and EU level (May 2016); and in *trusts* (June 2016). In *trusts*, foundations, and similar arrangements, it is even more challenging to identify the beneficial owner because they manipulate the very concept of ownership. Even if there is significantly increased transparency, it would not be clear who has actual control of the assets held in a *trust*. In *shell companies*, too, lawyers, accountants, or other companies acting as the legal owner of assets are often named owners but are in reality just "front men" hiding the actual beneficial owners[12].

11 «Global Shell Games», URL: http://www.globalshellgames.com/.

12 http://www.taxjustice.net/2016/05/20/new-report-exposes-flaws-in-global-and-eu-anti-money-laundering-rules-and-explains-how-they-can-be-fixed/ e http://www.taxjustice.net/2016/06/28/europe-trust-trusts/

The following are some points that are identified as the main challenges to the effective transparency of the beneficial owners. More than just being available, the information must arrive in an understandable and friendly format to the person responsible for investigating, investigating, and following up on acts of corruption.

3.1 Creating an open and globally accessible central registry

The establishment of Central Beneficial Ownership Registries (CBOR) is indispensable for a global beneficial ownership transparency program's full success. Central registries - which complement the automatic exchange of information - are the best way to obtain beneficial ownership information from all types of entities and arrangements, such as *trusts*. Important details to note: *i*) these registries must be created under the laws of a country; or *ii*) operate in that country, and may be operated by a public or private entity, provided it is properly regulated to avoid noncompliance.

These records - which should be public and open - are the best way to ensure access to authorities that need information and regulated entities (such as banks) that use this information for their due diligence (to ensure that money laundering does not occur). And finally, by society in general (NGO, journalists). The open option is the best option to facilitate access, but it is also the cheapest option, and ensures government accountability. Otherwise, the authorities will need more budgets to run the processes and verify the information that might otherwise burden the whole society[13].

An open and comprehensive registry will speed up access to beneficial ownership data and provide a good platform for companies to disclose this crucial information. When it comes to corruption and tax abuse, it will certainly help prevent and deter such acts. Corrupt and tax evaders in an open registry environment can be identified and reported, and assets arising from their wrongdoing can be recovered more readily. In discussions about open and public CBOR, some myths about the risks they would pose. It is worth highlighting a few: *i*) making the information public would undermine data protection and privacy rights principles; *ii*) creating public registries would cost too much; *iii*) collecting and maintaining up-to-date information would be an onerous burden on legitimate new businesses; *iv*) the information in a public registry will be of poor quality and impossible to verify. In reality, all of the arguments are fallacious and do not hold up and are promoted mainly by those who wish to maintain their interests.

The values that are intended to be preserved in the fight against corruption and tax fraud already justify by themselves any effort and sacrifice, especially when it comes to confronting the demands and general needs of the majority with those of individuals. The CBOR with open data allows for greater transparency, reducing the risk of corruption and misallocation of public resources, providing a more transparent and accountable process of *accountability* between government and citizens.

3.2 International standardization and information verification

Successful transparency of the beneficial owner requires creating a standard for identification, classification, and collection of data, providing a coherent and consistent way to systematize such information. This standard ensures that the data are published economically (reducing cost) and rational, minimizing the effort to use them.

Standardization will also help governments understand the technical aspects of beneficial ownership data, ensuring adoption of best practices (*benchmarking*), avoiding duplication of work, and unnecessary variation

13 The idea of an open registry involves setting up a free, easy-to-use website that allows search for businesses and their owners worldwide. It would be a cloud solution. Founded on open legal entity data, using individual, non-proprietary identifiers. Clearly operating for the benefit of the public, allowing sometimes managing conflicting demands (public interest in publication vs. privacy) to be balanced.

in approach. It will also remove technical barriers to collecting beneficial ownership information, enabling the registration of BO in the 'cloud', usable by government agencies of all types and from all jurisdictions, and reducing the workload arising from multiple requests for information.

Another crucial point is "data verification," often referred to as an indispensable step to ensure high quality of BO information. Verification is intended to: *i*) ensure that the person making a beneficial ownership claim is indeed the one they say they are, and those entitled to make a claim (authentication and authorization); *ii*) ensure that the data submitted is legitimate (validation); and *iii*) verify that the claim made is valid (verification).

When dealing with the possibility of corruption and other crimes, professional skepticism leads one to expect that the people who commit illicit acts will undoubtedly lie about the beneficial ownership. Either directly at a registration center open to the public or to a corporate service provider with a duty to report suspicious activity. Documentation must be required to verify the information and that provision be made for cross-checking mechanisms to minimize noncompliance.

How would this work? When the beneficial ownership data is published, and a standard exists, it will be easily comparable across jurisdictions, as well as with other key datasets (e.g. registrations and license records). Any inconsistencies between datasets - slightly different addresses, missing information - would raise a *red flag* for further investigation. Some *red flags* may turn out to be errors by the data provider, and others may represent knowingly false information.

However, it is not just by comparing data that a *red flag* is raised; those responsible for feeding the database must do *due diligence*. Local users often know more about local languages or geography than the remote expert team and lend themselves to identifying addresses or false aliases. Regarding corruption, a list of Politically Exposed Persons (PEPS)[14] should be created and more attention focused on them, due to the higher risk of corruption, thus requiring more scrutiny (*due deligence*) (Siclari, 2016).

3.3 Automatic exchange of information between countries

When information is not readily available to investigative authorities, domestic and foreign, corrupt officials can more easily hide their crime, which creates risk for all jurisdictions in a globalized economy. Accordingly, efforts should be made to implement the FATF recommendations by ensuring that legal owners, beneficial owners, *trusts*, foundations, and other entities are identified and accessible to investigative law enforcement and tax authorities.

In this regard, governments should make a political commitment to support developing a new global system for the systematic exchange of beneficial ownership information on a reciprocal basis that is secure and respects confidentiality. This database should be in a searchable format, minimizing additional burdens and establishing a level playing field for access. This increased international accessibility will provide law enforcement with a powerful tool to track and capture cross-border criminal activity and uncover the complex trails used by criminals. Noteworthy is the work of FATF, the OECD, and the Global Forum to improve the availability of national and international access to beneficial ownership information (Zagaris, 2016).

In addition to the importance of the data being public, open data that can be used by anticorruption researchers, investigative journalists, other governments, and of course companies, for whom the lack of this information increases the risk. Additionally, for this data to achieve

14 As for the definition of "Politically Exposed Persons" (PEPs), while the 3DABC limited itself to listing them, in a generic way, as "natural persons who are or have been entrusted with prominent public functions, as well as their close family members or persons known to be closely associated with them", the 4DABC goes further, and specifies exactly who these persons are and requiring obliged entities to adopt enhanced due diligence measures when in operations or business relationships PEPs intervene.

its real potential and create a hostile environment for corruption, it needs to be interoperable with other data of this nature (e.g., from other jurisdictions) and easily combinable with other datasets (e.g., PEP lists).

There are two possible solutions. The first is through the *Common Reporting Standard* (CRS), which is currently concerned with the exchange of data between tax authorities. Another option would be to use the information exchange system provided for in Article 26 of the MC OECD. Since the beneficial ownership registries provide for access to authorities and the general public, it will be crucial to separate tax and financial information from that exclusively linked to the beneficial owners.

The definitions used are comprehensive, which has created difficulty in the face of strict data protection standards in domestic law in some countries. The fact is, unlike the CBOR and BO information exchange, CRS is already a reality, having come into force in the EU in January 2017. Global transparency has made great strides in recent years, where CRS and tax information exchange stand out, also as a result of the BEPS guidelines.

Another possible solution would be *Blockchain* technologies, which are based on shared or decentralized records and allow direct peer-to-peer transactions. This revolutionary technology is used in the *cryptocurrency* market to distribute information to multiple participants in a shared network. Full or permitted access is granted to databases in the form of information records for each participant in the *Blockchain*. *Blockchain* networks can be public (without permission), private (with permission), or a hybrid model (Jong et al., 2017).

In short, the challenge now is to identify mechanisms that ensure the exchange of beneficial ownership information between countries, overcoming operational difficulties and enabling an effective fight against corruption and tax abuse.

3.4 Raising awareness of beneficial ownership transparency

States must ensure coordination between administrative laws and policies and guarantee human rights, both nationally and internationally. This includes the obligation to avoid situations that have a detrimental impact on human rights, as is the case with corruption. This obligation must be extended to assess the domestic and international implications of their policies and practices on human rights.

It is not possible to pretend that the problem of corruption and fiscal abuses in third world countries are challenges for distant countries, which must be solved within the framework of their own legislative, administrative and judicial institutions. Today, more than ever, the consequences of the failure of states in Africa and the Middle East are now painfully perceived in Europe, given the refugee issue. Therefore, it is central that all nations make a solid commitment to reformulation to prevent and curb corruption and tax fraud (Russell & Graham, 2016).

Indeed, the public interest of minimizing corruption demands proactive governance practices, including opening up information on beneficial ownership. Governments are under pressure to simplify public access to BO information by creating open CBOR and producing simple, standardized information for international actors.

Despite the trend toward *disclosure*, there are still countries that refuse to collaborate, in part because they support a profitable, if dirty, business model that is based on secrecy and confidentiality. The abandonment of a promising business model creates inevitable

conflicts, and there will be losers. But when it comes to fighting corruption, the winners are society at large and a greater guarantee of human rights.

Since 2000, FATF has periodically published a *black list* indicating Non-Cooperative Countries and Territories for not conforming to best transparency practices. The purpose of *blacklisting countries* (BLC) is to expose them to intense international pressure by employing the "name and shame" approach to produce a so-called stigma effect.

Most countries that interact with a BLC start to evaluate their financial transactions as suspicious. This occurrence leads to rigorous and costly monitoring procedures. Along with monitoring costs, financial transactions with a BLC can entail reputational costs. Suspicious transactions attract the attention of supranational organizations, regulators, and the international *media*, increasing reputational risks.

Due to the stigma effect, international banks have a strong incentive to avoid doing business with countries in the BLC. Similarly, the stigma effect can be portrayed as a harmful consequence of the "name and shame" approach. Although discriminatory, the use of BLC may be a viable alternative for forcibly sensitizing countries to adopt transparency practices (Balakina et al., 2017).

4. CONCLUSIONS

This study sought to reflect on the importance of beneficial owner transparency in combating corruption and tax abuse. Throughout the research, arguments were reviewed and positions were taken, which progressively firmed the conclusions. Thus, the final findings will be concise and to the point.

Corruption and tax abuses undermine and contradict all democratic elements. They are unfair and immoral benefits derived from positions of public trust and responsibility used for inappropriate actions or the product of illicit activities of not paying taxes according to one's ability to pay, primarily harming human rights. In our days, Grand corruption and tax abuses are transnational problems that, to be effectively fought, demand networked and global solutions.

Shell companies, trusts, and other anonymous legal arrangements constitute the most destructive and threatening activities in the world. Indeed, nameless corporations have caused billions in damage to nations, demonstrating the crack of a lack of financial transparency. Corrupt and tax evaders and other criminals find fertile ground in secrecy and secretive entities.

The concept of beneficial ownership is relatively straightforward in theory but is, unfortunately challenging to apply in practice. Fundamentally, you want to identify the natural person who ultimately controls a corporate vehicle, directly or indirectly. The right to confidentiality cannot be used to cover up illegalities. Everyone has the right to privacy, but no one has the right to invoke it to refrain from complying with the law or to evade its reach. Therefore, confidentiality was not instituted so that corrupt and fraudsters can commit crimes with impunity.

The scope of the UNCAC was prevention, criminalization, and international cooperation in the fight against corruption. In particular, for beneficial ownership, it is worth mentioning Article 52, which deals with the prevention and detection of the transfer of the proceeds of crime, requiring identification of the beneficial ownership. The FATF Recommendations no. 24 and 25 are the primary international normative references in terms of beneficial ownership transparency, seeking to ensure that adequate, accurate, and timely information concerning a legal person or arrangement is accessible to the authorities. The G20 principles and the 4DABC follow the standards set by FATF.

Countries have an obligation of international cooperation and technical assistance regarding Beneficiaries. States that contribute to the momentum for greater transparency and effective information exchange with developing countries are States that support human rights. Among the main challenges for the adequate transparency of beneficial ownership information, the following should be highlighted: *i*) CBOR should open and public; *ii*) BO information needs to be standardized and subject to verification routines; *iii*) the promotion of automatic exchange of information on BO, especially in PEP; and *iv*) the need to raise awareness among the nations of the world in favor of information exchange.

The challenges are significant, but we have no alternative but to persevere in the fight against the plague of corruption and tax abuses.

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TAXATION IN THE DIGITAL ECONOMY.

BEPS Plan

Marlon **Manya Orellana**

SYNOPSIS

This article aims to analyze taxation in the digital economy, specifically on how Value Added Tax (VAT) is being applied to transactions involving digital services, taking as a reference Action 1 of the BEPS Plan proposed by the OECD, which aims to address the tax challenges arising from the digital economy.

In addition, the tax treatment of VAT in digital services in Ecuador will be analyzed, and a comparative analysis with other countries is presented, to mitigate possible errors that may arise from tax gaps in the Ecuadorian normative.

Keywords: BEPS Plan, Digital Economy, Digital services, VAT.

CONTENT

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INTRODUCTION

The advances in the digital economy, significantly accelerated by the COVID-19 pandemic, have allowed developing new business models that include e-commerce and imports of digital services, which have benefited their users, but in turn have generated new issues of interest and challenges for the tax administrations.

According to the European Commission (2019), the role of data, economies of scale, network effects, and gigantic economies of scope, responsible for the growth and emergence of the digital ecosystems, are the main characteristics of the digital economy. In this sense, one of the challenges to face has to do with the way in which tax systems should adapt to current business models. This is applicable to indirect taxes such as the Value Added Tax (VAT) specifically in operations that are related to digital services (ECLAC: 2019).

The difficulty arises when taxing the VAT of such transactions in the place where the services received are consumed, since the provider of the service resides in another jurisdiction that adopts different tax principles (residence and/or source), and similarly, there is complexity when the operations are carried out with final consumers.

The evolution of operations of this nature produces a large number of economic benefits both for the companies that provide them, and for consumers who can obtain goods and services from anywhere, but this represents taxation challenges for the different countries experiencing it. The main drawbacks that the digital economy includes refer to the tax gaps that present tax regulations in many countries. This facilitates the tax base erosion since these gaps make possible a zero taxation (ECLAC: 2019).

The Organization for Economic Cooperation and Development (OECD), in order to promote the economic growth of countries, has created the Action Plan against the Tax Base Erosion and the Shifting of Profits, known as the BEPS Plan, which defines 15 actions that aim to avoid double taxation and prevent tax evasion. The taxation of the digital economy is the issue addressed by action 1 of the BEPS Plan, focused on overcoming the tax challenges generated by the current boom in digital commerce, one of its pillars being the tax treatment of the digital VAT (OECD: 2015).

In this line, the OECD has identified the following models of electronic commerce: (OECD: 2016).

Table 1. E-commerce models

Model	Type	Description
From company to company	B2B	It refers to the common way of operating electronic commerce, in which one company is engaged in selling goods or services to another company. These transactions are made on the internet and mostly consist of purchases of products online, or purchases of transportation and distribution services, among others.
From business to consumer	B2C	Companies that follow this model of e-commerce sell a good or service directly to the final consumer. Among the goods or services that can be transferred in this type of trade are tangible or those that can be in electronic format.
From consumer to consumer	C2C	Consumer-to-consumer transactions are becoming more and more common, which requires the presence of a company that will play the role of intermediary between consumers, allowing one of them to sell the goods or services it offers through web pages.

Source: Own elaboration

1. VAT IN THE DIGITAL ECONOMY

As part of the guidelines raised by the OECD related to the VAT tax treatment in the digital economy are: (OECD: 2016).

Table 2. OECD Guidelines on VAT in the digital economy

Guideline	Description
Guideline 3.1	Although VAT is a tax that is levied following the origin principle because it is levied on consumption, the OECD in Guideline 3.1 states that, in order to maintain the neutrality of the tax, it is appropriate to apply the destination principle for the taxation of VAT on cross-border transactions of digital services, for which mechanisms must be established to verify the jurisdiction in which the service is being consumed.
	In order to apply the destination principle to digital services operations, there must be different mechanisms to determine the country in which the service is to be consumed, so VAT systems need to be regulated to make it possible to apply the principle to both business-to-consumer (B2C) and business-to-business (B2B) supplies, even though these supplies do not include final consumption.

Guideline	Description
Guideline 3.2	For business-to-business supplies, the country or jurisdiction in which the customer is located has the right to tax VAT on services or intangibles in international trade operations.
Guideline 3.4	In the event that the customer has branches in more than one country, tax rights accrue in the jurisdiction where the establishments using the service or intangible are located.
Guideline 3.5	This guideline is in favour of VAT related to digital services being applied in the country in which the services are received, which is usually the place where the final consumer resides. An important rule is established in the relationship between the companies that provide digital services and the final consumers, to identify in which jurisdiction the application of VAT will be carried out in the transactions they perform, and this is summarized in that for any type of service related to supplies of a physical nature carried out in a certain place and, in addition, such consumption takes place at the same time between the actors involved in the transfer of the service, as established in this guideline, the VAT must be performed or considered where the consumption is being carried out.
Guideline 3.6	This guideline presents as the main idea within the business conducted between a business and an end consumer, that the application of VAT to most of the digital services, such as mobile applications, must take place in the country where the final consumer of the service has his residence since it is assumed that the good or service is actually used in that jurisdiction.

Source: Own elaboration

Likewise, the difficulties raised in the control of VAT on digital services are detailed as follows: The transactions of digital services between foreign companies and final consumers, or companies exempt from the tax, or companies with branches, causing problems of tax avoidance. The problem and solution proposed by the OECD are identified below:

Table 3. Problems and proposed solution of the OECD

Scheme	Analysis of the issue	Solution
Digital services between foreign companies and end consumers	Transactions between a foreign company and a final consumer since final consumers are more likely to fail to comply with the declaration and payment of the tax, so in this case, the method of change of subject used in transactions between companies, in which the buying company has to comply with tax obligations, could not be applied.	Encourage service providers to register with the Tax Administration as a VAT taxpayer and for this, it is necessary that the TA provides all the relevant facilities for registration through a simplified regime.
Digital services between foreign companies and exempt companies	As happens in transactions with final consumers, in the sales of exempt entities VAT is not taxed, while when they make purchases they must pay the tax, that is why these companies can not recover the value paid by VAT and therefore charge it at the normal price of the products they offer. In addition, foreign suppliers will have a competitive advantage over local suppliers as these have an obligation to pay the tax when transacting with exempt local companies.	OECD guideline 3.2 establishes the main solution for the problem that appears in digital services between foreign companies and exempt companies. This regulation specifies that the country or jurisdiction in which the client is located has the right to tax with VAT, this together with a change of subject in which finally it will be the one that provides the service that must be in charge of the withholding and payment of the tax.
Digital services between foreign companies and companies with branches	In transactions between foreign companies and companies with subsidiaries that conduct activities exempt from VAT, there is the risk of failing to comply with a VAT, because companies with multiple locations can use one of them, especially if located in a country that does not tax VAT or taxes it with a low rate, performing operations of purchase of digital services and subsequently invoices them and distribute them to the other branches, leaving these transactions exempt from VAT, since they constitute transactions between companies belonging to the same legal entity.	For this case, guideline 3.4 of the OECD specifies that in the event that the client has branches in more than one jurisdiction, the tax rights accumulate in the jurisdiction where the establishments that use the service are located. It also specifies that as in the preceding problem we should use a change of subject, in which the final importing customer is going to pay the VAT on these transactions.

Source: Own elaboration

2. VAT ON DIGITAL SERVICES IN ECUADOR

The Organic Law on Tax Simplification and Progressivity published in the Official Registry Supplement No. 111 of December 31, 2019, incorporates in the Law of Internal Tax Regime that digital services are taxed with a VAT of 12% (SRI: 2020).

The Regulation to the Organic Law of Simplification and Tax Progressivity, published in the Official Registry No. 260 of August 4, 2020, modifies the Regulations for the application of the Law of Internal Tax Regime, and its article 140.1 details the scope of these:

Art. 140.1.- Digital services - Digital services are those provided and/or contracted through the Internet, or any adaptation or application of the protocols, platforms or technology used by the Internet, or any other network through which similar services are provided, which, by their nature, are basically automated and require minimal human intervention, regardless of the device used for downloading, viewing or use, including, among others, the following:

1. The supply and hosting of computer sites and web pages, as well as any other service consisting in offering or facilitating the presence of companies or individuals in an electronic network.

2. The supply of digital products in general, including, among others, the software, modifications, and updates, as well as the access and/or download digital book, access and/or download of designs, components, patterns, and similar, reports, financial analysis, data and/or market.

3. Remote preventive or corrective maintenance, in an automated way, of programs and equipment.

4. Remote system administration and online technical support.

5. Web services, including, but not limited to, remotely or online accessible data storage, memory services and online advertising.

6. Software services, including but not limited to those provided on the internet ("Software as a Service" or SCUs) through cloud-based downloads.

7. Accessing and / or downloading images, text, information, video, sporting or other events, music, games-including gambling-. This section includes, among other services, the downloading of movies and other audiovisual content to devices connected to the internet; the online download of games -including those with multiple players connected remotely-; the dissemination of music, movies, gambling or any digital content -even if it is done through streaming technology (digital distribution of media content across a network of computers, so that the user uses the product at the time you download. It refers to a continuous stream that flows without interruption and is usually related to the dissemination of audio or video) without the need of downloading it to a storage device; the obtaining of ads musical, tones and mobile music; the display of online news, information on traffic and weather forecasts -even through performance satellite; weblogs (digital publication whose contents are presented chronologically), and web site statistics.

8. The provision of databases and any service automatically generated from a computer, via the internet or an electronic network, in response to a specific data entry made by the customer. This includes added or "premium" services that are provided for a fee, as an additional option to a free service, including such general or thematic social media services.

9. The services of online clubs or dating websites.

10. The service provided by blogs, magazines or online newspapers.

11. The provision of internet services.

12. Distance learning or testing or exercises, performed or corrected in an automated manner.

13. Online auction services, labor supply/demand, transportation, accommodation, ordering and delivery of movable goods of a bodily nature, or other services contracted through on a website that functions as an online marketplace.

14. The manipulation and calculation of data via the internet or other electronic networks.

15. Others defined by the Internal Revenue Service by resolution of a general nature.

Similarly, with regard to the importation of services, Article 140 of the Regulations for the application of the Internal Tax Regime Act, paragraph 4, considers the following:

"In the importation of digital services, the tax is levied on those provided and/or contracted through the Internet, or any adaptation or application of the protocols, platforms or technology used by the Internet, or other networks, through which similar services are provided that, by their nature, are basically automated and require minimal human intervention, regardless of the device used for downloading, viewing or use, including, among others, those defined in Article 140.1 of these regulations".

Within the digital services, the VAT generating event will be verified at the following moments, according to the Law of Internal Tax Regime, through the modification of Article 61 paragraphs 7 and 8:

"7. In the import of digital services, the generating event will be verified at the time of payment by the resident or a permanent establishment of a non-resident in Ecuador, in favor of the non-resident subject provider of the digital services.

The tax will be caused whenever the use or consumption of the service is made by a resident or by a permanent establishment of a non-resident located in Ecuador, condition that will be verified only with the payment by the resident or the permanent establishment of a non-resident in Ecuador, in favor of the non-resident subject provider of the digital service. The regulations to this law shall establish the conditions and terms referred to in this paragraph.

8. Payments for digital services that correspond to services delivery and shipping of goods of bodily nature, the Value Added Tax will be applied on the commission paid additional to the value sent by persons resident or permanent establishment of a non-resident in Ecuador in favor of non-residents. The regulations shall establish the conditions and terms referred to in this paragraph".

Another change is shown in Article 63 of the Law on Internal Tax Regime, which determines the characteristics that taxpayers must meet to act as

collection and withholding agents in digital services operations:

- As collection agents, the non-residents in Ecuador who provide digital services, as long as they register in the manner established by the SRI.

- As withholding agents, the credit card issuing companies in payments made in the acquisition of digital services, when the service provider is not registered.

The VAT on digital services in Ecuador is applicable from September 2020, in addition, some specific services are taxed at a rate of 0% VAT, such as the services of supply of web pages domains, servers hosting, and cloud computing (cloud computing), such as relating to Article 56 of the Law on Tax Procedure.

The SRI publishes on its web portal a cadastre of the digital service providers to which the VAT withholding must be applied, information that will be updated periodically. In this list the providers that are not registered and those domiciled in the country are differentiated, to which the withholding must be applied through the credit or debit card issuing entities.

In the operations of digital services whose suppliers are non-residents in Ecuador, two alternatives have been established to carry out the withholding and payment of the tax:

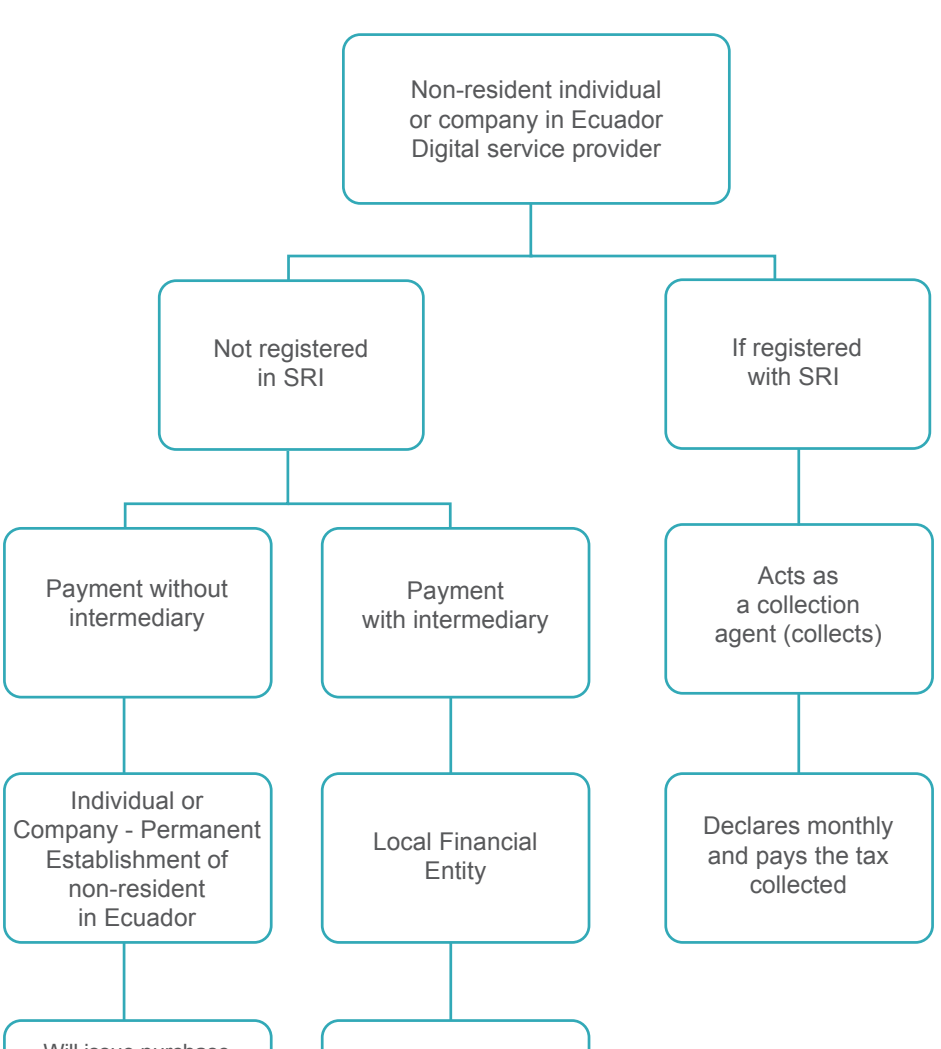
1. If the non-resident supplier registers through the simplified method before the SRI, he himself will be in charge of collecting the VAT, declaring it and paying it before the Tax Administration, according to art. 147.2 of the tax regulations

2. If the non-resident provider does not register with the SRI:

   a. The obligation to withhold falls on intermediaries, i.e., credit or debit card issuers, when these means are used to cancel the import of the service, according to Article 147.1 of the tax regulations.

   b. If payment methods other than those mentioned in the previous subparagraph are used, the withholding will take place through the importer of the service, according to Article 146.1 of the tax regulations.

Figure 1. VAT on digital services in Ecuador



Source: Own elaboration

3. COMPARATIVE ANALYSIS OF VAT ON DIGITAL SERVICE BY COUNTRY

Argentina

During 2017 it was proposed to reform the tax rule with respect to the taxation of digital services, but it was not until December that it was approved. These digital services must be taxed when they are consumed within the Argentine territory. When the person responsible for providing the digital services is a taxpayer subject to VAT, it is understood that the use of the service is made in the jurisdiction in which the following is verified:

1. In the case of services received through the use of mobile phones: in the country identified by the mobile phone code of the SIM card. 2. In the case of services

received through other devices: in the country of the IP address of the electronic devices of the recipient of the service.

Similarly, in the event that the provider of the digital service is a user or final consumer of the product, or likewise a non-VAT taxpayer, it is understood that the use of the service is made in the jurisdiction, in which we can verify that the following is present in Argentine territory:

1. The IP address of the device used or SIM card country code.

2. The customer's billing address.

3. The bank account used for the payment, the customer's billing address available to the bank or financial institution issuing the credit or debit card with which the payment is made.

In addition, the tax rule indicates that the provider of the digital service becomes the taxable person of VAT and, therefore, will be responsible for settling the tax. It was also decided to include as intermediaries the entities that are part of the transactions of payments abroad, which are responsible for settling and paying the tax, provided that the borrowers are not VAT-contributing companies. (AFIP: 2020).

Colombia

In December 2016, a reform to the tax regulations regarding VAT on digital services was approved, which complied with all OECD guidelines. It was established that in B2B operations, if a VAT taxpayer company provides VAT-taxed services to a foreign company, the first will be responsible for carrying out the withholding and payment of the tax.

As of July 2018, the obligation began to apply that when the recipient of the service is not a VAT taxpayer, in B2C and B2B operations, the provider who is a non-resident will be in charge of carrying out the withholding, as well as paying the tax, so they must comply with the registration offered by the DIAN and declare the tax every two months.

In addition, the companies that are issuers of means of payment are bound to affect the withholding of VAT, when providers to voluntarily enroll in this system, for which the Tax Administration will be in charge of issuing and regularly updating the list of service providers that will be subject to said withholding.

In the same way, it is mandatory for non-resident companies to make VAT returns and payment, so they must register in the Single Tax Registry TIN, however, if they do not wish to make such registration, companies can choose to make the withholding through the companies issuing means of payment. (DIAN: 2019).

Uruguay

The tax legislation in Uruguay was raised by changes in 2017 to expand the tax base of the VAT, in which added services related to the transmission of audiovisual content and the referral to the mediation of the different platforms multilateral if they are received in a country on the outside, with this as it is affecting multinational enterprises, on the services offered at a rate of 22% VAT applicable in that country.

With regard to the VAT applied to digital services, it is the non-resident suppliers in the country who have the responsibility to collect, to finally make the payment of the tax, not including the companies issuing the cards issuing the means of payment.

To provide convenience to these non-resident providers, the simplified registration system eliminates the need for them to establish representative offices in the country, and a single payment can be made on an annual basis, as well as payment in dollars. (DGI: 2017).

Costa Rica

As of 2018, all services received from suppliers abroad and consumed within Costa Rican territory are taxed with VAT. As the main measure to make possible the collection of the tax in the operations carried out by final consumers, the Tax Administration designates the intermediaries; that is, companies that offer credit cards or in their absence debit cards and of an international character as those responsible for withholding VAT on the consumption of services in digital media.

It is also established that through non-resident suppliers of digital services or intermediaries, VAT may be charged on transactions in which the importer of the services is a final consumer. In addition, the entities that issue credit or debit cards, which are used internationally, are collection agents when the owners of these cards use them to make any type of purchase on the internet (Ministry of Finance: 2018).

Chile

In B2B and B2C operations of digital services provided abroad and taxed with VAT, those responsible for making the VAT declaration and payment will be the beneficiaries, that is, the importers of the service. However, in the event that payments to a foreign provider for digital services are subject to income tax, the law requires that these services will not tax VAT. (Jorratt: 2019).

In 2018 there was a tax reform in which it is specified that the digital services provided by providers who are non-resident individuals, provided they are used in the Chilean territory, are encumbered by a tax which replaced the VAT and the income tax, whose rate is 10% of the total amount of the service, and this is considered a low rate and efficient, it also provides that persons or non-resident entities that provide digital services shall be subject to this tax.

In order to prove that the service was effectively consumed in Chile, it is evidenced through the issuing entities of the means of payment, verifying that they are domiciled or resident in Chile.

For their part, the issuers of electronic payment methods will be responsible for performing the withholding and payment of the tax, taking as a date the time when the users make payments with these forms; while, when consumers realize the payment with cash, those in charge of withholding and pay such a tax will be non-resident suppliers.

European Union

In the European Union, the VAT law on digital services was in force in 2015, unlike other countries, the European Union has not set a maximum limit on which foreign companies must apply VAT on their sales.

Those who provide the digital services will be required to identify the location of the consumer and thus disclose where the final service will be consumed, this is important mainly because the rate of VAT is charged according to the place where the customer is located. To do this, at least two of the following mechanisms of localization must be used: The address of the invoicing subject, the respective IP address, the location in which the bank through which payment was made, the country of the SIM card, as well as the location of the fixed the line with respect to the location of the purchase of other data that are commercial and relevant (for example, a purchase card).

In the case of B2B transactions, that is, between a foreign company and a company resident in the European Union, the company acquiring the service has the obligation to withhold and pay the VAT, while in B2C transactions, the final consumer being the resident, the responsibility falls on the supplier.

In operations in which there are digital service providers and if these are made with a certain consumer who resides in a member country of the European Union, they will have the facility to register in the (MOSS regime) which is a mini one-stop shop, or is also considered as a system that provides assistance to settle VAT quarterly, but mainly it provides the supplier with the facility to register in the country where he resides, as long as it is a country that is part of the European Union, otherwise he can choose one of those countries to comply with his registration, thus avoiding that suppliers have to register as a VAT taxpayer in each jurisdiction.

Here is a comparative table on the tax treatment of VAT in digital services applied in other countries: (Jorratt: 2019).

Table 4. Comparative VAT on digital services

	ARGENTINA	CHILE	COLOMBIA	COSTA RICA	URUGUAY	EUROPEAN UNION
START	2018	2020	2018	2020	2018	2015
RATE	21%	19%	19%	13%	22%	Depends on the country
TAXABLE PERSON	Buyer	B2B: The buyer B2C: The supplier	B2B: The buyer B2C: The supplier	The provider when applying to enroll	The supplier	B2B: The buyer B2C: The supplier
METHOD	Withholding in means of payment	Registration of suppliers and in case of non-registration, withholding in means of payment	Suppliers registration, but gives suppliers the option to choose withholding on means of payment	Registration of suppliers and in case of non-registration, withholding in means of payment	Supplier registration	Supplier registration
PAYMENT PERIOD	Bimonthly	Monthly or quarterly	Bimonthly	Monthly	Annual	Quarterly
MEANS OF VERIFICATION	IP address, SIM card country code, billing address	IP address, card, bank account issued in Chile	Place of issue of credit or debit card, bank account, IP address, SIM card country code	Text message to customer, country of issue of credit or debit card, auto declared customer information	IP address, billing address	Billing address, IP address, bank details, SIM card
OTHER MEASURES	Publication of two listings: 1.Companies that only provide digital services 2.Companies that provide services and sell products. Payment of VAT in national currency	It can be paid in euros or dollars. Foreign taxpayers can request monthly or quarterly payment	Online registration Payment by transfer and national currency Purchase and sales registration	Non-resident supplier requests registration with the Tax Administration	The Tax Administration seeks to contact non-resident providers to ensure their registration	Online registration Suppliers from non-EU countries can choose an EU country to register

Source: Own elaboration

4. CONCLUSIONS

- The option for non-resident suppliers to register with the Tax Administration through a simplified procedure that provides all the necessary facilities has not been implemented in Ecuador, since the tax system does not yet generate the incentive for non-resident entities to register in the Single Taxpayer Registry.

- The collection of VAT through intermediaries such as credit or debit cards presents difficulties in its execution since the issuing entities of credit or debit cards have no way to know if the payment really corresponds to a digital service taxed with 12% VAT, there may be confusion to know the exact value to be withheld by the non-differentiation between goods and services.

- It is necessary to adopt the best practices of the OECD that have been implemented by other countries, in terms of providing facilities in the declaration and payment of the tax by non-resident suppliers, allowing the payments for the collection of VAT digital to be done quarterly, semi-annually or even annually.

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IMPACT OF THE CORRUPTION PHENOMENON

on the voluntary compliance and on the closing of tax gaps. Peruvian experience.

Sonia Jackeline **Miranda Avalos**

SYNOPSIS

In this article we will show the relationship between corruption in a country and its impact on voluntary compliance and the closing of tax gaps, we will note that there is an inverse relationship and in these times of pandemic this negative phenomenon of a country has also been present, showing the great weaknesses of the country, so the tax administrations have the great challenge of seeking voluntary compliance and close the tax gaps due to the high tax informality, in Peru more than 70%, so is it worth paying taxes? This article will answer these questions.

Keywords: Corruption, Tax gaps, Voluntary compliance, Expansion of the tax base, Truthfulness.

CONTENT

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INTRODUCTION

The great negative phenomenon of a country is corruption, which undermines the correct distribution of the income of the General Budget of the Republic. This scourge prioritizes individual and/or collective selfishness through the violation of laws, that which is latently present in the Public Sector, although paradoxically there is in each Public Institution a body of Institutional Control and fight against corruption. However, in the XXI century, we can point out that most of them are not effective, nor are the laws, because there is a total lack of commitment of a public official with his Nation, although there is a code of ethics of the public official. However, the level of corruption is not only found in public entities but also in the actions of State bodies with private entities, that is, companies in the form of legal entities, among them the famous bribes to acquire the goodwill of an investment, the public tender contracts, and the famous tithe behind. The corruption of the Brazilian company Odebrecht in Latin America and the bribes[1] paid by the Peruvian company Grana y Montero[2] are some of the most representative examples of the latent acts of corruption. As a result of such nefarious acts, voluntary tax compliance has become an ever-greater challenge for the Tax Administrations.

It is therefore relevant what García Cobián indicates about the existence of an *emerging right to live in a society free of corruption* -especially arising from International Human Rights Law- which should be evidenced, with the aim of providing solutions, *"for example, in the legal standing of civil society organizations to act as a civil party on behalf of the society affected by crimes against public administration committed by public officials"*. Finally, it indicates that such a right is related to accepting *"that living free of corruption constitutes a situation or state of affairs that is indispensable for respect for the dignity of the person, equality and an extensive set of derived rights"* (Ruiz, 2020).

1. BACKGROUND, DEFINITION, CAUSES, EFECTS, CONSEQUENCES AND CLASSIFICATION OF CORRUPTION

1.1 Background

Some historians date back to the reign of Ramses IX, 1100 BC, in Egypt. A certain Peser, a former official of the pharaoh, denounced in a document the dirty business of another official who had associated with a band of tomb robbers. The Greeks did not have exemplary behaviors either. In 324 BC, Demosthenes, accused of having seized the sums deposited on the Acropolis by Alexander's treasurer, was condemned and forced to flee. And Pericles, known as the Incorruptible, was accused of having speculated on the construction work of the Parthenon (Piergiorgio, 2012).

In Peru, the pioneer in the study of corruption throughout history was Alfonso Quiroz in his book "History of Corruption in Peru" where his main argument was that the corrupt management of Peruvian finances and economy had left a deep footprint that affected strategic sectors and delayed development. He carried out a meticulous revision that began in the aftermath of the viceroyalty, passing through smuggling and corruption that magnified the problems of colonial

1 Bribery, in the field of law, is a crime that consists of bribing an authority or public official by requesting a gift in exchange for performing or omitting to perform an act inherent to his or her position.

2 Everything has its price. The construction company Grana y Montero admitted that it paid the reimbursement of a bribe of 12.5 million soles to obtain, together with its consortiums ICCGSA and EIVI, the award of a work for 476.7 million soles, tendered by the agency Provias Nacional, belonging to the Ministry of Transport and Communications. According to sources related to the investigation of the case, Grana y Montero provided abundant documentation to the prosecutor Germán Juárez Atoche that proves that the construction company, within the scheme known as 'Construction Club', agreed to pay 2.69% of the total amount of the project for the rehabilitation and improvement of the Quinua-San Francisco highway, section 2, in Ayacucho. As Consortium Vial Quinua, the three companies agreed to pay the equivalent of 37.5 million soles, allegedly divided between Grana y Montero, ICCGSA and EIVI. In exchange for the disbursement of the money, officials of the Ministry of Transport and Communications (MTC) and Provias Nacional simulated a bidding process and directed the granting of the contract to the aforementioned group of construction companies, in 2011, in the government of Ollanta Humala. (La República, 2019)

mining and left a difficult inheritance to the young republic. In the guano period, referred to by Basadre as "the fallacious prosperity," officials burdened by state debts and ambitious to make a quick personal fortune created a system of bribes to foreign contractors and businessmen that largely explains the loss of a historic opportunity for the country to develop.

Quiroz pointed out that Peru's lack of growth is due to corruption, and he exhorts us to question the mistaken popular perception that if a politician "makes public works" his robberies would be forgiven.

Despite the growing theoretical advances and empirical evidence, some key questions remained unanswered. Specifically, how has corruption affected the historical, political, and economic evolution of less developed societies?; What were their true costs?; Does corruption matter as a historical factor that slows or stops development?; for what reason is it that some countries have it under control, while others seem to be inundated with rampant and persistent corruption?; How to explain the reluctance to carry out exhaustive and specialized studies of the historical impact of corruption in Peru (or, for that matter, in Mexico, Cuba or other developing countries), despite its alleged importance? (Quiroz, 2013, págs. 15-29).

This is where the investigation of this phenomenon called corruption is left open.

1.2 Definition

Etymologically the word corruption comes from the Latin corruptio (action and effect of destroying or altering globally by putrefaction, also the action of damaging, bribing or perverting someone) "Anonymous". In general terms, a corrupt practice can be understood as that activity from which some public and private officials and contractors obtain a benefit derived from their condition, beyond what is stipulated by law. (…) (Patiño, 2013, p.9). In this practice, human ambition and the lack of commitment and honesty for the development of activities are evident (Avedaño, 2015).

Corruption is defined according to the Royal Spanish Academy "as the practice consisting in the use of the functions and means of organizations, especially public ones, for the benefit, economic or otherwise, of their managers". If we refer to the corruption of officials, we can say that it is, "a variety of bribery crime[3], incurred by those who, through gifts, offers or promises, corrupt or attempt to corrupt a public official or accept their requests".

Corruption is a phenomenon that has affected the conscience of the people at a social and economic level, it has an immoral impact on the obligations that our leaders have towards us. The causes that give rise to corruption appear at the social, economic and political levels. In the social sphere, it is given by the lack of a professional service that supervises the acts of the rulers, with minimal citizen participation in acts of supervision and evaluation of public management. Economically, insufficient payment to public workers generates discontent and makes it possible for corruption to have a place in public actions; likewise, the lack of interest in knowing what the authorities do with our resources, which leads them to manage public resources without any inspection. In underdeveloped countries, corruption can be the "lubricant" to activate certain mechanisms of progress, in other words, the citizen, not being satisfied with the public services offered, incurs into bribery to encourage the official to perform acts that exceed the rule.

The effects of corruption such as embezzlement[4], nepotism[5], among others will bring an economic, political, and social delay, especially the latter that will affect the state and citizens since new generations will be born in a world where they will learn to be corrupt . It will also affect relations with other countries, leading to

3 Also known as bribery, coima or biting, in the field of law, it is a crime that consists of bribing an authority or public official by offering a gift in exchange for performing or omitting to perform an act inherent to his or her position.

4 In law, embezzlement or embezzlement of public funds is a crime consisting of the misappropriation of money belonging to the State by the persons in charge of its control and custody. It is also known as diversion of resources.

5 Favorable treatment of relatives or friends, who are granted public positions or jobs for the mere fact of being so, without considering other merits.

the breakdown of relations. Corruption is systematized in such a way that when one individually tries to confront it, he is trapped by the system. The fight against corruption is not an individual fight, but rather a corporate fight on the part of all civil society and all the people, who, even invoking solutions to the problem, are the first involved in this. Likewise, among other causes is the lack of discipline that comes from the formation of the person, since the Peruvian is used to having everything easy, the merit with which a person achieves something is not recognized, but the cronyism, the bribery, etc.

Corruption is one of the phenomena that most affects society, generating great losses within the state apparatus, considering our issue it greatly affects tax collection. Therefore, for this, education and leadership must be reaffirmed, emphasizing the moral aspect that will encourage public awareness, through citizen education and leadership training, as well as a participatory democracy. Our citizenship education and leadership training aim to enhance a series of customs, apparently insignificant, so to speak, such as honesty, altruism, kindness, solidarity, justice, transparency, etc. (Solórzano, 2011).

Therefore, the phenomenon of corruption directly affects the opportunity and motivation that the taxpayer and potential taxpayer may have when wanting to pay their taxes, it is evident that, the more corruption, the greater the evasion, the greater the avoidance, the greater the tax informality, which considerably limits voluntary compliance and the closing of tax gaps below we present the causes of this phenomenon that do so much damage to society.

1.2.1 Causas de la corrupción

- The absence of values in society, which explains the lack of clarity in determining what is correct from what is incorrect in the exercise of public functions.

- The political distribution of power in the public administration in an intolerably concentrated, discretionary manner and without the transparent exercise of it. As an illustration, we can cite the innumerable secret supreme decrees issued by the government of former President Fujimori, by means of which it was arranged to transfer funds from the Defense and Interior ministries to the National Intelligence Service. Precisely, a large part of these funds served to "bribe" multiple public officials (defected congressmen, judicial and prosecutors magistrates, and military officials) and businessmen (publicists and media owners) to keep them adhering to the current regime, abdicating their essential duties of independence in the exercise of their functions.

- Social and political factors of historical roots (essentially since the Viceroyalty) in Peru that have determined that public officials perceive the State as loot to be conquered and profitable, regardless of the established norms and rules (Móntoya, s/a).

1.2.2 Effects of corruption

The generality and extent of corruption, as well as the new characteristics that it has been acquiring in recent times, have extremely serious effects on the political, economic, and social life of a country:

i. In the political sphere, indeed, corruption influences the political instability of the States. Regime changes, to a greater or lesser extent, can be explained from the verification of previous corruption factors. And it is that this phenomenon brutally undermines the confidence of citizens in the regular functioning of political institutions. This mistrust precisely stops the development of these institutions and incurs situations that can determine an explosive environment of social dissatisfaction.

   Corruption also reproduces and consolidates social inequality, consolidates political patronage and perpetuates the ineffectiveness of the bureaucracy, and, therefore, prevents an efficient public administration at the service of satisfying the rights of Peruvians.

ii. Economically, specialists point to corruption as a factor of inefficiency and waste in the use of resources and in the implementation of public policies. Indeed, when bribery becomes common practice, government contracts, concessions, tenders, privatizations are not awarded to the most efficient and professional bidders, but to those with the best contacts and lack of scruples. This, obviously, harms the interests of the State and therefore the interests of all citizens. Some econometric studies indicate that there is a "negative correlation between growth and high levels of corruption", which means that the higher the levels of corruption, the lower the economic growth rates of a country will be.

The most serious effect, and in this we share the ideas of Pásara cited by Montoya, is that corruption threatens one of the necessary conditions of life in society: reciprocal trust between citizens and in the community, due to the unpredictability of the behavior between one another. This feeling of distrust in the institutions and among fellow citizens themselves breaks the foundations of the social contract, leading us to a climate of anomie[6] and social disruption. As Díez Picazo, quoted by Montoya, rightly points out, "it is true that the rulers do not embody the State as a whole and it is also true that specific cases of governmental criminality do not turn the State into a criminal organization, but it is unquestionably true that the rulers are organs of the State, and above all that they represent the visible image of the State". "The conclusion is clear: government criminality tends to blur the equation between the State and legality and, consequently, it tends to delegitimize the State before the citizens" (Móntoya, s/a).

1.2.3 Consequences of corruption

i. Corruption deteriorates the moral values of society considering that corruption is in a nutshell a bribe that causes a loss of benefits from one member to the other by deteriorating his profit.

ii. In most cases, the State neglects its main purpose, which is to serve the people and let prevail the public good over the private by favoring specific groups of individuals, neglecting the basic needs of the population, and in some cases putting life at risk.

iii. It affects the whole of society; undermines the rule of law; it causes people to lose confidence in their governments and institutions.

iv. It diverts public funds to the detriment of the well-being of citizens.

v. Corruption discourages public trust in institutions, which generates the formation of organized crime and fosters disorder (Móntoya, s/a).

1.3 Classification of Corruption

Corruption can be classified according to the nature of the acts carried out, as pointed out by Begovic (2005) cited by Avedaño in the following:

- Corruption to achieve or accelerate the materialization of a specific right of the citizen or legal entity - corruption without theft: Most people consider that for corruption to exist, embezzlement of money or some physical asset must materialize, this vision is very frequent in underdeveloped countries with little awareness of the public good, it is necessary to be clear that "Corruption is the intentional breach of the principle of impartiality with the purpose of deriving from such behavior a personal benefit or for related persons". Unquestionably, the fact that generates this kind of corruption stems from the need of an individual to speed up or skip a procedure and although a legal and daily process is being carried out in an entity in perspective, it needs handouts to be executed in a timely manner, this evidences the negligence of the institutions to carry out the tasks entrusted

6 State of social disorganization or isolation of the individual as a consequence of the lack or inconsistency of social norms.

in a timely manner and leads to an environment conducive to carrying out these kinds of crimes.

- The second class of corruption is the one that violates the legal rules or the partial application of these (Administrative corruption): This is the most common kind of corruption in the entities when the officials violate the rules influenced by higher-ranking bureaucrats, with economic factors are involved. "The most important direct consequence of this kind of corruption is that legislation and public policies are simply not enforced".

- The third class is called "State Capture": unlike the second in which the rules are violated, this one seeks to directly change the rules in order to turn an illegal position into something legal through modifications to the laws and in this way, favor the interests of those involved in such a way that in the future they are not engaged in illicit practices. This last position is one of the most used by people who hold both economic and political power and is consequently the one that most affects the sustainable development of countries because decisions are in the hands of a privileged group of individuals who use laws to favor private interests, leaving aside the essential purposes of the state, "serving the community, promoting general prosperity and guaranteeing the effectiveness of the principles, rights, and duties enshrined in the Constitution; facilitate the participation of all in the decisions that affect them and in the economic, political, administrative and cultural life of the Nation; defend national independence, maintain territorial integrity and ensure the peaceful coexistence and the enforcement of a just order" (Avedaño, 2015).

2. CORRUPTION AND DEMOCRACY

The relevance of the issue of corruption in political analysis lies in the fact that, since there is both public and private corruption, a political system is classified as corrupt. Public corruption, that is, the use of a public office for one's own benefit or that of third parties and against the interests of an institution or community, minimizes the meaning of democracy. According to David Held cited by Catarina, democracy, in general terms, is a form of government in which the people preside, govern, administer and command (Held, 1996: 18) but that can be obstructed or minimized by corruption where political actors act by giving preference to their personal interest or group interests (Catarina.udlap, s/a).

It is important to specify that taxation is closely related to the political, economic, and social environment of a country since within the empire of a Sovereign State it can create, repeal or modify taxes, therefore the progress of a country depends on the correct decision-making of the different public institutions and above all of the Legislative and Executive Power; If we do not find correct and adequate decision-making from the economic and fiscal policies, let us not pretend that there is voluntary compliance by the citizens of a country in the payment of their taxes, as evidenced by the Nation of a State, it needs to see the basic needs of a country in quality conditions that are finally the aim of the virtuous circle of taxation indicated by Vito Tanzi.

Next, we will go on to explain academically the meaning of voluntary compliance and the gaps in the tax field.

3. VOLUNTARY COMPLIANCE AND CLOSING THE TAX GAPS

3.1 An Approach to the Basics of Voluntary Compliance

Significantly, in modern tax legislation, there is an interest in promoting voluntary compliance with tax obligations, although the meaning and scope of the expression are not specified. When separating for the analysis the terms that make up the expression, it is found within the variety of opinions, that many of the acts performed by the subject are voluntary, that is, without external factors that compel it. In this regard, Ferrater (1988), cited by Garcia, points out that historically the will has been interpreted from four points of view: The psychological or the anthropological: the will corresponds to a certain human faculty, as an expression of certain types of acts. The moral: the will

is related to the problems of intention and to the aspects required for the common good. The theological: it has been used to characterize the fundamental aspect of reality or divine personality. The metaphysical: it has been considered as a principle of realities and as the engine of all change. For this author, opinions regarding the will have been abundant, but in relation to the four points of view indicated, most of them have been based on psychological considerations. Among the many interpretations of the will, there are those that conceive it as a determined human will; Others interpret it as an abbreviation for certain acts: voluntary acts or volitions; In this interpretation, explains Ferrater (1988), the use of the word will present doubts since it can lead to reify[7] the acts mentioned in a kind of entity. It supposes that the interest to avoid such reification has made the use of the word "will" less frequent, or it is used only as a more or less comfortable abbreviation, in philosophical and psychological texts. This author considers that there are other opinions that have insisted on the irreducible or relatively irreducible nature of the will or even voluntary acts, distinguishing them from desire and reason; Within this current, there has been a certain tendency to consider it in a certain way as irrational. In his opinion, however, other classical thinkers such as Rene Descartes (1596-1650) and Gottfried Leibniz (1646-1716) believed that the will has always been closely related to other faculties or to other types of acts; Under this approach, acts of will are related to the reasons that are present or alleged to exercise the will, that is, to want something. It is thus considered that the will is directed by reasons or in any case by preferences, which may be the object of deliberation. In this order, it is affirmed that the will is an element in a kind of "continuum" of acts, ranging from impulses, or from instincts (sometimes conceived as mechanized and organically institutionalized impulses), to acts of execution, the evaluation, deliberation, preference, and resolution (Ferrater, 1988). Some classical philosophers had already tried to stage the will in some social actors. Rousseau (1916), for example, explains the functioning of society in his work The Social Contract, which symbolized the State as the general will. The State is the absolute owner of the property and private goods, whose owners are no more than simple depositaries of the public good. In its activity, the State develops civil and political laws. The general will as a State is always upright and dedicated to public utility, to the common interest.

While the particular will interprets the people. The people, on the other hand, do not always present the same rectitude, they want their good, but they do not understand it, their will is the sum of particular wills and attends to the particular interest. This situation allows differences to appear between the particular will and the general will. The significance of such wills in the work of Rousseau (1916) comes into play to establish the dynamics of a country. This author refers to the State as a consumer and not a producer, which obtains the substance for its consumption from the work of its members. Individuals contribute to the State with that part of their work that exceeds their needs. Depending on the existence of the State, the production surplus of individuals is a function of the needs of that State and such surplus is determined by the fertility of the climate, the kind of work that the land requires, and the nature of its productions, of the strength of its inhabitants, of the greater or lesser consumption, of the nature of the governments and of many other similar relationships. The nature of governments is essential for the contribution of individuals, there may be more or less voracious governments, the differences being based on the principle that, the further away the contributions are from their origin, the more onerous they are. For Rousseau (1916: 266), "The measure of the taxpayers should not be made by the amount, but by the path, they have to travel to return to the hands from where they came". When this circulation is prompt and well established, little or much that the people pay, it is always accepted, and finances go well. When, on the contrary, no matter how little the people give, this little

7 Reification is to consider a conscious and free human being or living being as if it were an object or thing that is neither conscious nor free; it also refers to the reification or reification of human and social relations, which would be transformed by reification into mere consumer relations of some people with respect to others.

does not return to their hands, the continuous donation does not last and soon is ruined. Then, "The State is never rich, and the people are always poor". In this relationship, the distance between the people and the government decides how onerous the taxes are. The taxes are more onerous as that distance is greater. In the case of democratic governments, the people have a lower burden of contributions, in the aristocracy, the contributions are higher, in monarchical governments they are maximum. In the work of Rousseau (1916), the idea of taxation as the end of distribution in society prevails. And it is in that distribution in a society where the way of measuring the will in compliance, the wealth of the State and the people, and the qualification of the tax as onerous and unfair is found. In the context of the tax administration, the word "will" is associated with the words "taxpayer compliance" as a way of indicating the tendency of said administration to achieve the budgeted collection. This condition requires expressing itself in a model that includes a conception of the will of the taxpayer and allows their participation in an institutional framework that considers their values and interests, to motivate them to comply.

In the informal aspect, the structuring of that State-taxpayer coexistence implies the promotion of attitudes and behaviors based on ideas and motivations of culture towards taxation. Such motivations, although they are not written norms determined by the Laws, are activated by the incentive system used by the tax administration in the interaction with the taxpayers, and to a large extent, they determine their form of cooperation, support, and participation, and therefore, define voluntary compliance with tax obligations. (Garcia, 2007).

We must not forget that, as Rousseau points out, the taxation is intended to be distributed in society. We should really ask ourselves if the tax collection fulfills its longed-for social purpose, responses that have been reflected in the realities given by the Covid-19 pandemic.

4. VOLUNTARY COMPLIANCE AS AN INSTITUTION OF TAX MODERNIZATION

Voluntary compliance is a category that has acquired relevance in the development of a tax reform. The rise in the use of this notion seems to indicate a new way of doing taxation to achieve higher tax collection and a decrease in evasion. It probably also means a more cooperative form of taxation, focused, as pointed out by the IDB (1997: 136), "on fewer coercive rules to restrict the misuse of state power that creates serious credibility problems". That is, rules should favor and encourage the exchange of subjects instead of focusing on punishing the taxpayer. This condition acquires fundamental importance in countries where the citizen-tax system exchange occurs in conditions of uncertainty due to factors such as misinformation, corruption, and disappointment in the purpose of the tax. In this sense, the approach outlined by Jorrat (1998: 3) presents some factors that must be included in the design of a system to induce voluntary compliance with tax obligations. Among the assumptions of the analysis, the need for sufficiency of the system stands out at the base of the tax system, which depends on the collection capacity, understood as "the collection that is possible to achieve in a given tax system and with an optimal auditing effort".

This concept is distinguished from the concept of actual collection and potential collection. The effective collection corresponds to the amount of tax income obtained, under evasion conditions. The potential collection is that which "would be obtained if there were 100% voluntary compliance and is greater than the effective collection and the collection capacity" (Jorrat, 1998: 3). From this, it follows that voluntary compliance is expressed in the potential collection, which is a consequence of tax policy factors, the audit function of the tax administration, and environmental factors. The manifestations of the tax policy are in the level of rates, the breadth of the tax bases, the level of sanctions. The manifestations of the audit function correspond to the efficiency of the tax administration to reduce evasion. Environmental factors constituted, for example, by the acceptance of taxes and taxpayer ethics, which affect the difficulty and willingness of taxpayers to evade or

avoid taxes. In this explanation, Jorrat (1998) highlights a group of variables, which must be addressed within the framework of voluntary compliance, such as the following:

a) The legal rate: in general, it is ambiguous to measure the impact caused by the increase in the legal rate on collection. In such a way that rate increases must be carefully studied and explained so that they can produce increases in the collection. In general, if rates are high, a further increase could lower revenue and increase the loss of welfare. In the case of income tax, progressive rates on personal income discriminate against saving; reducing profitability penalizes additional effort and encourages tax evasion or avoidance due to the high marginal rate. In these cases, Mizrachi (2001), considers that the tax has its limitations in the behavior of the taxpayer, who reacts for psychological reasons to the tax, and that limit becomes a factor to consider when choosing the types of taxation, the design of tax policy and payment facilities. In the case of VAT[8], the differentiated rates increase the administrative costs of taxpayers and the tax administration, due to the difficulty of auditing and the availability of information. There are also spaces for evasion, declaring sales affected with high rates as if they were sales affected with lower rates. It distorts the redistribution of the tax since low rates for certain products benefit people regardless of income level.

b) Amplitude of the tax base: the limitation of the tax base through exemptions[9], deductions, and special treatments produces a decrease in the collection. However, exemptions, although they sacrifice collection, are sometimes decreed to reduce the regressivity of the tax, encourage the consumption of goods or services, and due to difficulty in taxing certain products. In the case of VAT, an increase in the collection may be due to the elimination of exemptions, but this decision must consider the impact on the administration of the tax, on consumers, on tax collection, and on tax evasion.

c) Tax administration: the tax administration incurs cost increases, due to the control of exemptions and the definition of the limits of the exemptions. The taxpayer also increases the costs of tax compliance due to the fact that he must keep the relationship of non-exempt sales separately and perform the calculations in proportion to the taxed sales. Among consumers, it is necessary to determine if the tax exemption produces a significant variation in the price paid by the consumer, since the exemption acts on the added value of the exempt stage, often causing regressive effects on consumers.

Regarding the impact of VAT exemptions on tax collection, sometimes the elimination of the exemption, rather than benefiting the collection, can cause a loss of tax revenue when it affects the intermediate stages since the value of the good or service acquired for the product becomes part of its added value. In tax evasion, the tax exemption for certain goods or services may produce an increase in tax evasion, when using this resource in the purchase with an invoice on behalf of a VAT payer, also when there are inputs of common use in exempt and taxed products. The ease and willingness of taxpayers to evade and evade taxes are in tax legislation that does not contemplate a system of sanctions that effectively inhibits evasion and in a complex tax structure, represented by multiple rates, exemptions, special treatments, and deductions, factors that as a whole reduce the collection capacity.

d) Efficacy of the auditing action: related to the probability of detecting tax non-compliance. To the extent that the administration has a greater probability of exercising the supervisory action, the greater its effectiveness. This probability produces effects on taxpayers who perceive the auditing action, producing a sense of control and inducing them to comply with the tax. Among the lines of action that the tax administration can use to increase the probability of detection are: increase the availability of information regarding the magnitude of the tax obligations: the idea is to make taxpayers' taxes visible, through information received

8 IGV in the case of Peru.

9 In tax law, the tax exemption includes, in a broad sense, those cases in which an activity or a person does not really bear the economic burden that, by strict application of the tax rules, should correspond to him/her.

by third parties with administrative measures to request information about the amount and destination of fees paid, dividends paid by corporations, interest paid by banks, sales made with a credit card, purchases with invoices in supermarkets and large stores. Jorrat (1998) points out the impact that this resource can have through the Chilean example when in 1995 a law was approved to request information from banks on the interest paid to each taxpayer. But, although the banks did not send the information, the mere fact that it was approved produced an effect on taxpayers, reducing evasion from 50% to 35%. This situation reveals the consequences of the increase in the probability of effectiveness of the audit in the administration as perceived by taxpayers, as a resource to reduce evasion.

e) Simplification of the tax structure: this is explained through the identification of four aspects that must be considered to avoid the complexity of the tax structure as a cause of non-compliance: certainty, inspection capacity, difficulty, and manipulability. Certainty refers to the fact that tax laws clearly define tax obligations, which prevents the tax administration from diverting resources and having difficulty in proving crimes, given the errors of the taxpayer, due to a misinterpretation of the law. In the case of inspection capacity, a complex tax structure translates into higher costs for the administration and a lower probability of detecting evasion. The resources and the time used in a complex audit reduce the audit capacity, thus, for example, in the case of an income tax return with abundant credits, deductions, and special treatments, an audit requires more time than the audit performed to a VAT declaration without exemption and of a single fee. The complexity of the tax structure creates difficulty for the taxpayer to comply with tax obligations, due to the costs that arise, consisting of the money spent on consultancies, time spent understanding the laws and instructions, compiling the required documents. The manipulation has favorable conditions when in the tax laws there is a multiplicity of taxes and fees; the heterogeneity in the determination of the tax base makes it easier for the taxpayer to minimize, evade and avoid paying the tax.

f) The level of sanctions: the increase in sanctions does not necessarily lead directly to greater tax compliance. Sometimes the sanctions become inapplicable in cases of the uncertainty of the tax legislation; Excessive punishments, high sanctions can induce corruption, since it becomes more profitable to negotiate with taxpayers and auditors, without considering that the long time that elapses between the crime and the application of the punishment, makes the sanction lose its deterrent effect .

g) Acceptance of the tax system: it is in relation to the justice of the tax system perceived by the taxpayer. Acceptance depends on factors such as the moderation of the tax burden, the fairness of the tax system, the destination of the taxes, the relationship between the administration and the taxpayers. If the tax burden is excessive and there is no moderation of the tax burden, this may be perceived by the taxpayer as unfair or as an expropriation. Similarly, when the taxpayer perceives that the destination of taxes is adequate spending on public goods and services, they are financed in sufficient quantity, social programs are complied with, and there is no excessive bureaucratic waste, there are incentives to comply with the payment of taxes.

Jorrat (1998) considers that the treatment of these factors can be a task of the tax administration, informing citizens about how taxes are used, using advertising campaigns to understand the importance and destination of taxes. In the relationship of the tax entity with the taxpayers, it must be ensured that the latter receive fair and dignified treatment, the procedures are fast, and the waiting and attention times are reduced.

Because the tax is a subtraction of the taxpayer's income, it requires for its payment information related to the need for public spending and investment of resources, as a measure aimed at avoiding resistance to tax extraction, a different approach than the sanctioning measures of the conduct, especially those of the breach of formal duties, which has resulted in an increase in corruption and the costs of the administration of the tax. This is

based on the taxpayer receiving their own benefit from paying the tax, thus preventing them from engaging in evasion or avoidance behaviors (Garcia, 2007).

In order for voluntary compliance to take place, it is necessary the commitment and action of the Tax Administration, the legal bodies in charge of the enactment and modification of tax laws as well as the tax revenue administration bodies, highlighted in a group of variables pointed out by Jorrat, from an adequate legal tax rate, a broad tax base, a correct tax administration, and efficient tax audit, simplicity of the tax structure, restructuring of the level of penalties if necessary, and finally, the acceptance of the tax system, reflecting in the satisfaction of the basic needs of a citizen who complies with the payment of his taxes voluntarily.

In the next section, we will present the complement or consequence that would be generated with voluntary compliance .

5. TO CLOSE THE TAX GAPS

5.1 Tax Gap

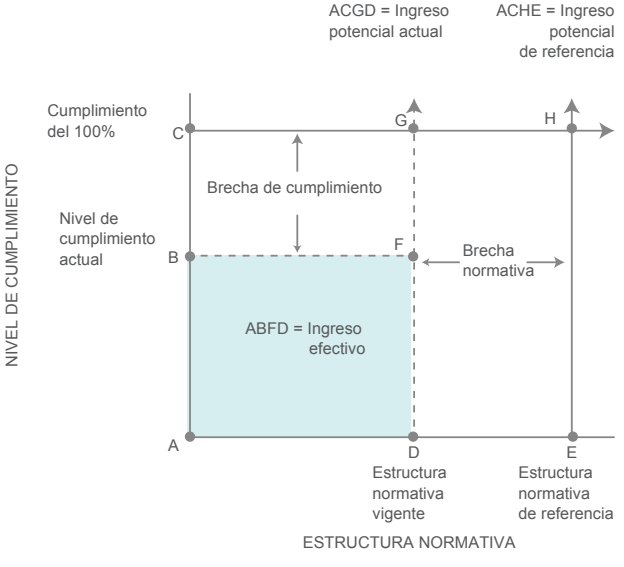
While modern tax systems rely on voluntary compliance, there are often tools available to measure and monitor tax compliance. The tax gap analysis provides the tax administration and policymakers, and relevant stakeholders, an indicator of the amount of tax revenue lost to non-compliance, avoidance, and the impact of policy options. The tax gap of any tax, as defined by the IMF[10], is the difference between the potential income of the underlying economic tax base and the actual collection. According to this general definition, the tax gap can be broken down into two main components: the impact of non-compliance (compliance gap) and the impact of regulatory options (regulatory gap). Defining the tax gap in this way enables the relative magnitudes of the compliance gap and the regulatory gap to be compared, providing insight into the relative amount of contributions of both factors to the tax gap. This, in turn, allows tax administrators and policymakers to assess possible means to improve income performance by targeting one of the two components of the tax gap (Hutton, 2017).

In order to understand how a tax gap is determined, we will take the example of Hutton in reference to VAT or IGV in our country.

It shows us the application of the RA-GAP methodolog[11], which involves estimating the size of the compliance gap in a descending manner, comparing the potential VAT collection with the effective one. The first is estimated from economic statistics that cover the entire VAT tax base, and the second is estimated from VAT returns and related records. The main advantages of this method are that a) it would cover all losses due to default, even if they have not been identified separately; and that b) the results can be compared with the fiscal costs of the tax expenditures and other reliefs as barriers to revenue mobilization.

Illustration of the components of the tax gap.

Graph N° 1



Source: Eric Hutton

10 International Monetary Fund

11 The RA-GAP methodology uses statistical data to estimate the value of the potential income of reference and tax administration data to determine the value of actual income, and then analyzes the difference between the two.

The RA-GAP methodology uses statistical data to estimate the value of the estimated potential income and data from the tax administration to determine the value of the effective income and then analyzes the difference between the two. The process can be summarized as follows: Step 1: Estimate the baseline potential income, RPR (box ACHE in figure 1). Step 2: Determine actual income, AR (box ABFD). Step 3: The tax gap = RPR-AR.

A key component of estimating potential income is the definition of a normative frame of reference. In the case of a VAT, the reference normative structure used in the RA-GAP is the current single rate applied to all final consumption. The compliance gap is estimated with the same general procedure, with the exception that the potential income against which the effective income is compared is constructed using the current regulatory framework, rather than a reference framework. The process is similar to that of the general tax gap. Step 1: Estimate the potential income in the context of the current regulatory configuration, CPR (box ACGD). Step 2: Determine actual income, AR (box ABFD). Step 3: The compliance gap = CPR-AR. Once the compliance gap is defined, the regulatory gap is the difference between the estimated baseline potential income (RPR) and the actual potential income (CPR). Alternatively, it can be expressed as the difference between the tax gap and the compliance gap. It should be noted that, as in the case of current income, there is a difference between the potential income that exists within the normative gap and the income return that would be achieved against that potential; In other words, closing the regulatory gap would result in loss of compliance. While it would be possible to indicate such a situation by extending the BF line to the EH line, this could be misleading, as the compliance rate associated with the elimination of all tax expense items might not equal the current average compliance rate (Hutton, 2017).

6. DIMENSIONS OF THE TAX GAPS

In report No. 012-2018-SUNAT / 7.A0000, the Peruvian tax administration SUNAT, presents its work plan to the Vice Ministry of Finance of the Ministry of Economy and Finance, indicating as a purpose in the field of internal taxes the permanent control of tax gaps, grouping them into five dimensions which are:

i. Registration
ii. Documentation and record of operations
iii. Declarations
iv. Payment
v. Truthfulness

In this sense, if a taxpayer fails to comply with any of his obligations, a tax gap arises that must be addressed through different actions since it will have an impact on the State's tax revenues.

For this, the actions of the Tax Administration are focused on closing these gaps, based on risk management that allows directing SUNAT's actions towards more efficient procedures not only aimed at detecting tax non-compliance but also at change positive behavior of taxpayers, thus developing two fundamental lines of action and of the same Importance, which we detail:

• Facilities to those who want to comply.

• Prevention and correction of fraud by tax defaulters.

The main measures that will be implemented to Increase collection, within the framework of the Institutional Strategic Plan 2018-2020, are described below:

1. **Registration gap:** Applicable measures;

• Implementation of a new Registry model

Redefinition of the registration model in the Single Taxpayers Registry, in order to incorporate that information that generates value in the actions of facilitation and control of compliance with tax obligations, so that it allows SUNAT to identify in a timely manner potential tax non-compliance in certain

groups of taxpayers, thus allowing implementing effective treatments to correct illegal behaviors, as well as facilitation measures in the group with the highest tax compliance.

It is intended that the new Single Registry of Taxpayers is composed of the information declared by taxpayers, the result of the actions of the Tax Administration, and that obtained through third parties.

• Campaigns for registration and updating of the TIN Register[12]

In these campaigns, Information will be provided to the informal segments of the economy, also transferring the services provided by the Tax Administration to the places where economic activities are carried out, in order to facilitate compliance with taxpayers' tax obligations, related to TIN registration and updating the data of the Single Taxpayers Registry. For this, the participation of other public institutions involved in the formalization will also be called.

The actions will focus on the economic activities of the products and services with the highest added value, in addition to those that require sectoral authorizations for their operations, thus expanding the tax base of greater fiscal interest.

• Promoting the use of a unique identifier

Develop a cooperation and information exchange mechanism that will allow public institutions to require a single identifier of the taxpayers (individuals or legal entities) generating tax obligations, in the various procedures related to potential business activities, thus expanding the possibility of simplifying the services provided to citizens and enhance the traceability of operations of inter-institutional interest.

• Establish actions on high-risk registrants

Identification mechanisms of the simulation of operations will be incorporated to achieve the Registration in the TIN, which allows the group of taxpayers to transfer credit or non-real tax expenditure and/or the incorrect acceptance of the tax regimes of lower imposition, which will allow establishing treatments that ensure the correct registration to the RUC of the taxpayers or their cancellation in that registry.

In addition, control measures will be adopted to enable registration for those taxpayers with a high-risk profile, complemented by actions aimed at establishing whether they have the capacity to carry out the declared economic activity.

2. Documentation gap and operations registry: Applicable measures;

• Incentives for the correct issuance and request of payment vouchers

Promote the massive participation in the raffles referred to the request of proof of payment by the purchaser, and massify the additional deductions in the determination of the Income Tax of Individuals, referred to in Legislative Decree No. 1258[13], prioritizing the sectors of greater tax non-compliance.

Additionally, massive control actions will be carried out on the issuance and delivery of payment vouchers in those segments with the highest generation of added value and a high evasion rate, even from the monitoring of the transfer of goods, with the application of the sanctions corresponding to that specific breach; In addition, continuous cross-checking of information will be carried out in order to identify and eliminate the incorrect issuance of invoices in non-deductible operations to determine the net income, such as those not necessary to produce and maintain the source.

12 Single Taxpayers Registry

13 Corresponds to the additional deduction of 3 Tax units for individuals; corresponding to certain type of consumption expenses, housing rental and services where electronic fee receipts are requested.

In addition, risk criteria will be incorporated into the taxpayers' segments, in order to determine the total, partial or inappropriate origin in the authorization of payment vouchers, to restrict the possibility of transferring credit and/or tax expenditure by non-real trading providers.

- ***Massification of electronic payment vouchers (CPE)***

The characteristics of the electronic payment vouchers not only reduce the costs of compliance with tax obligations for the taxpayer but also allow the Tax Administration to improve its control capacity over the operations that will support the determination of taxes; In this sense, the universe of those obliged to issue such vouchers will be expanded, incorporating all third category income generators, in addition to monitoring this obligation in those segments of taxpayers that present risk characteristics, which will even involve the implementation of authorization rules for their issuance based on their background.

- ***Massification of electronic books***

Given that electronic books also play an important role in simplifying tax obligations and are constituted as a mechanism to improve tax compliance, closing the breach of non-compliance with their presentation constitutes one of the activities that will be prioritized, incorporating in the follow-up the evaluation of the consistency that must exist between the registered information and that corresponding to the issuance of payment vouchers, as well as with respect to that recorded in the determinative declarations presented by the obligated parties.

3. **Declaration gap:** Applicable measures;

- ***Balance control through the recording of debits and credits***

To continue with the development of the Single Account Project, which seeks to facilitate the declaration and payment through a new Income platform, as well as to manage and make the debit and credit balances more transparent to the taxpayer, making a Single Account available to them, thereby simplifying the tax obligations and improving the control of debtor balances, which will significantly impact the recovery of tax debt, making it timelier and more efficient.

- ***Management of omissions of declarations***

As a stage prior to the implementation of the Single Account, a permanent control will be carried out of the obligation to present the determinative declarations to which the taxpayers of the Special Income Regime, MYPE Tax Regime and General Regime are obliged, based on the intensive use of Information from, among others, electronic payment vouchers, electronic books, payment systems and financial transaction tax, which will ensure the expansion of the base of declaring taxpayers.

4. **Payment gap:** Applicable measures;

- ***Optimization of the procedures that affect the enforceability of the debt***

Through the automation of the main procedures that suspend the possibility of managing the tax debt, which will also result in shorter service times, it will seek to increase the opportunity for its recovery, for which it will be incorporated into the automatic evaluation to carry out, among others, the risk profile of taxpayers, thus allowing the Tax Administration to efficiently adopt debt collection measures and increase the effectiveness of its actions.

- ***Management of payment systems (deductions, receipts, and withholdings)***

There will be constant monitoring of amounts deducted, received, and withheld, in addition to the level of tax compliance of taxpayers subject to payment systems, in order to timely identify omissions related to the determination of tax obligations, which will be communicated through control actions that are programmed.

Together with the evaluation described above, the study of the behavior by segments of the economy will allow SUNAT to update the aforementioned systems, among others, in the group of obligated taxpayers, in the applicable rates, and in the list of assets involved, as appropriate.

- ***Positioning of non-face-to-face transactions***

With the implementation of a greater number of computer tools, it will be sought to increase the options of non-face-to-face transactions related to the extinction of tax obligations, among others, by expanding the existing means of payment, which will allow taxpayers greater simplicity and lower cost, a situation that will promote the voluntary payment of the determined tax obligations.

As a complement to what is described in the preceding paragraph, new inductive management schemes will also be developed, based on relationship tools that recognize the behavior of taxpayers, through multiple contact channels.

5. Veracity gap: Applicable measures;

- ***Redesigning the inspection and refund processes***

In order to optimize the auditing and refund processes, modifications will be made to the current auditing procedure, so that it incorporates the prior analysis of an important set of information sources and the opinion of multidisciplinary teams, in order to increase the results of detection of evasive and/or elusive modalities, which generate a massive change of behavior in the universe of taxpayers.

On the other hand, in the attention of refund requests, prior verification mechanisms will be developed referring to the reliability of the operations that support the generation of added value, also incorporating risk management in the procedure, considering the antecedents of the applicants and of those who have operated in the transactions that generated the balance to be refunded.

- ***Development of selective and massive control programs***

High-impact inspection actions will be selected and executed in the global determination of tax obligations, mainly Income Tax, considering, among others, the sectoral grouping, the productive chain, the business relationship and the type of operations carried out by taxpayers, so that in the analysis of tax compliance the different conditions for the generation of the taxable event are incorporated, which will be the subject of determination by the Tax Administration.

Additionally, control actions will be programmed for those individuals who do not justify their income, declared and/or imputed, the amounts of money credited or disbursed in the financial system, as well as the expenses, prioritizing those who have accumulated large existing assets at home or abroad.

In relation to massive actions, these will be of different levels of depth, from early alerts to partial electronic audits, which will focus on Taxes on Production and Consumption, as well as on the consistency of the information that serves as the basis for the determination of the Third Category Income Tax, based on the historical evaluation of the tax, economic and financial characteristics of the taxpayer and its related parties, incorporating analytical models of data and behavior for this purpose.

The control of the tax credit will be perfected through the intensive use of information and the formulation of behavior patterns of those previously identified as issuers of non-real operations and/or receivers of credits supported by non-deductible expenses, for which in the realization of Selective inspection procedures will prioritize those sectors with the highest risk, including the intervention of both the issuer and the receiver of the payment vouchers that are intended to unduly support tax credit, expense or cost.

- ***Programs to control evasive and elusive modalities related to international taxation***

In the control procedures of international operations, the evaluation of the trustworthiness of the operations will be incorporated, in addition to the determination of their price, which will open a new space for the identification and treatment of evasion and avoidance modalities carried out by taxpayers, on which regulatory, operational and IT changes will help to reduce their use.

- ***Implement OECD compliance[14]***

In order to reduce the level of non-compliance in income tax, measures will be implemented to combat elusive schemes or practices, especially those associated with international operations, the minimum standards associated with BEPS measures and in relation to international tax transparency and information exchange; it is also expected to complete the updating of domestic regulations to the required standards and the expansion of the network of agreements, which will increase the possibility of exchanging information and timely detection of modalities that erode tax revenues. (SUNAT, 2018).

Closing tax gaps is a great challenge for the Tax Administrations, as we have pointed out there are 5 tax gaps. The registration gap is one of the most important gaps due to the fact that the aim is that informal taxpayers become formal and thus expand the tax base. The gap of documentation and registration of transactions seeks that the taxpayers who complied with the registration in the first stage can grant in all their transactions their payment vouchers. For this purpose, the massification of the use of electronic payment vouchers and massification in the use of electronic books is sought. The declaration gap corresponds to the materialization in the fulfillment of tax obligations through determinative and informative declarations. For this, Tax Administrations have to watch over and use all their information crossings to ensure that taxpayers do not try to evade or avoid taxes. Finally, the payment and truthfulness gap seek the effectiveness of tax compliance in nominal terms, it is important to point out that the truthfulness gap is a posteriori where the correct compliance of tax obligations by the tax debtor is sought, through selective and massive control programs, as well as the identification and control of evasive and elusive modalities referred to international taxation. Up to this point, we have tried to summarize the importance of the tax gaps, with special relevance in these times of pandemic of registration gaps, highlighting the goal of converting the informal sector, which is about 70% in Peru, to the formal economy, as well as the importance of expanding the fiscal space. We would have to ask ourselves, is it worthwhile to create new taxes in these times of pandemic that has brought as a consequence, economic recession, and unemployment? Or is it the task of Tax Administrations today more than ever to attack through tax intelligence the tax phenomena that afflict us so much, informality, tax evasion, and tax avoidance, great tax evils that have as their head the corruption of the State, since no potential taxpayer or taxpayer wants to voluntarily pay taxes due to the level of corruption in Peru, which even in times of pandemic have made a profit with the suffering of many of our compatriots, tell me, would you pay your taxes voluntarily? That is the importance of this article.

14 Organisation for Economic Co-operation and Development

7. CONCLUSIONS

- Strengthening the voluntary compliance by the Tax Administrations is an intelligent strategy to close tax gaps in order to increase tax collection without the need to use coercion.

- The tax gap is understood as the difference between the effective collection and the maximum potential collection, that is, the comparison of the amount that was collected and the maximum that could be collected, expressed as a percentage, which indicates the overall level of compliance or effectiveness achieved by the tax administration.

- The main function of the countries is to provide the nation with a stable and transparent tax system that tends to improve the voluntary compliance of taxpayers, reduce the cost of compliance and reduce opportunities for corruption.

- The identification, measurement, and reduction of tax gaps is an instrument that provides information on the performance of the tax administration and, consequently, helps to make the administration accountable before society in general.

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9. ANNEXES

Annex 1

Impact of COVID-19: Latin America and the Caribbean is the epicenter of the health crisis and the economic crisis, with a 9.4% decrease in GDP according to the IMF as of June 2020 at the regional level. What do we do with tax collection? hence the importance of reducing corruption and using fiscal intelligence so that the Tax Administrations can reduce tax evasion, tax avoidance and the reduction of tax informality.

Contracción del PIB por región – Proyecciones de junio 2020				Diferencia con proyecciones FMI Abril 2020	
	Crecimiento 2019	Proyección 2020	Proyección 2021	Proyección 2020	Proyección 2021
Asia, economías emergentes y en desarrollo	5,5	-0,8	7,4	1	8.5
África Subsahariana	3,1	-3,2	3,4	-1.6	4.1
Estados Unidos	2,3	-8.0	4.5	-5.9	4.7
Zona Euro	1.3	-10,2	6.0	-7.5	4.7
América Latina y el Caribe	**0,1**	**-9.4**	**3,7**	**-4,2**	**0,5**
Argentina	-2.2	-9.9	3,9	-4,2	-0,5
Brasil	1.1	-9.1	3,6	-3,8	-0,7
Colombia	3.3	-7.8	4.0	-5.4	0.3
Perú	2.2	-13.9	6.5	-9.4	1.3

Source: FMI y OXFAM

Graphics showing the abrupt fall of tax revenues in the region

Average monthly tax collection Table

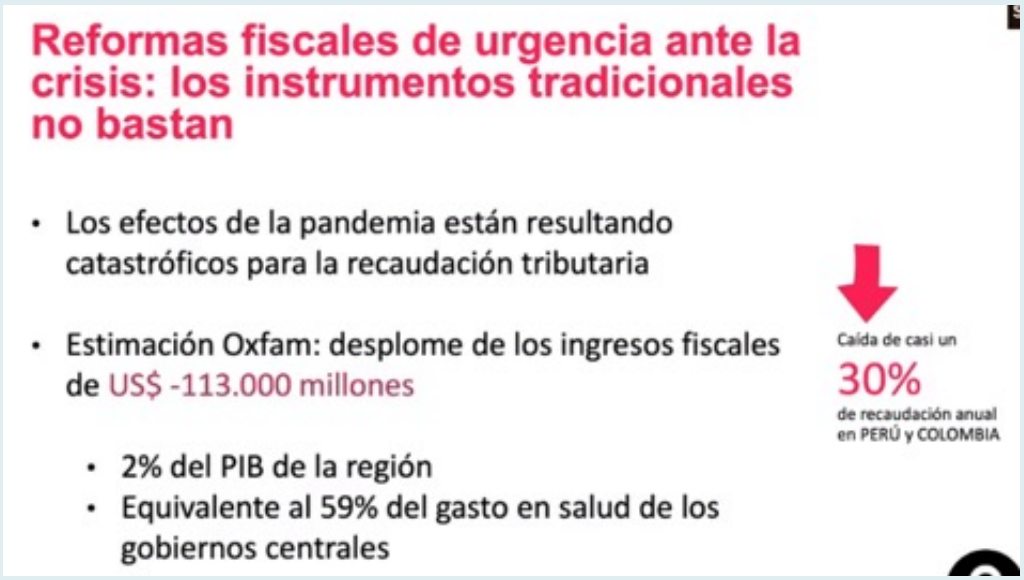
Monthly Average Collection Variation Table

Países	Ene 20/19	Feb 20/19	Mar 20/19	Abr 20/19	May 20/19
Argentina	-5.48	-5.02	-8.16	-23.39	-20.15
Brasil	4.69	-4.55	-3.67	-28.79	
Colombia	9.38	4.38	-5.04	-31.87	
Costa Rica	-4.26	14.04	2.65	-24.12	
Ecuador	5.24	-7.60	6.15	-35.59	-35.33
El Salvador	4.07	5.69	0.49	-30.48	
España	7.92	3.46	15.91	-31.46	-26.96
EEUU	6.85	9.80	1.91	-54.99	-25.17
Guatemala	8.06	7.41	-29.48	9.56	-25.68
Italia	3.57	8.86	-4.51		
Marruecos	7.08	12.32	11.95	-21.21	
México	10.88	-1.89	30.08	-15.27	
Panamá*	4.48	10.32	-41.93	-53.80	
Perú	4.02	-0.42	-15.86	-36.56	-21.01
Rep. Dom.	3.96	3.31	-15.61		
Uruguay	1.28	-3.36	2.91	-9.88	-19.24
Promedios	**4.48**	**3.55**	**-3.26**	**-27.70**	**-24.79**

Source: CIAT. Revenue Report COVID-19 (July 2020)- Graph 0.0. https://www.ciat.org/Biblioteca/Estudios/2020_Revenue_Report_Covid-19_CIAT.pdf

Annex 2

The region's tax revenues have plummeted as a result of the pandemic. Therefore, it is time to consider a new normality in taxation as well.



Source: OXFAM

Not everything is crisis in the corporate world because, due to the pandemic there are other sectors that have benefited. This is where attention should turn, in the control actions, as well as the need to tax digital services, such as streaming services that are not regulated in Peru in reference to direct and indirect taxation via direct e-commerce business to consumer (B2C).

Here are the sectors that have seen their profits increase in times of pandemic.

E-*commerce sector*: +22%

Technology sector: +36%

Pharmaceutical sector: +8%

Source: OXFAM

Annex 3

A comprehensive tax reform is timely in reference to tax exemptions for sectors benefiting in times of pandemic such as the pharmaceutical sector.

Source: OXFAM

Annex 4

In this graph we present the decrease in tax collection, given the current situation of pandemic times.

Source: SUNAT

Annex 5

The first actions taken by the Peruvian tax authority in relation to sectors that have benefited in times of pandemic, in order to reduce the registration tax gap and thus broaden the Peruvian tax base.

Source: SUNAT

THE NEW COURSE
of corporate income taxation in Angola

Milcon Lourenço **Ngunza**

SYNOPSIS

The text presents an analysis that we consider as innovative about the new tax framework of companies in Angola. At its origin is the recent wave of tax reform, which consisted of changes to a considerable part of the tax legislation, including the reformulation of the main axes of the tax system.

The subsequent considerations governing the analysis of this article present a synopsis of the main axes of the current corporate tax framework, from the original version of the Industrial Tax Code to its most recent reform.

Keywords: Angola, tax reform, Companies, Income, Industrial Tax.

CONTENT

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INTRODUCTION

Private companies in Angola currently constitute the bulk of the Angolan business fabric, with fewer and fewer public sector companies remaining active. According to the latest figures released by INE[1], among the companies in business in 2017, 0.3% were state-owned enterprises, 0.3% associations and foundations, 2.5% 2.5% public limited companies, 50.0% sole proprietorships, and 47.0% private limited companies. The Angolan business fabric observed an ever-increasing trend throughout the period 2016 to 2019. By the end of the reporting period, 202,496 companies were analyzed in the business Statistics Unit file. Of this universe, 55, 957 were active in 2019, compared to the previous year that had the universe of 52, 689 active companies.

Without neglecting the mutations imposed by the economic, financial, and exchange constraints of our country to the national business, now added to those resulting from the Covid-19 pandemic, the analysis of the above data is important for those who are interested in understanding the Constitution of our business fabric, in which private limited societies predominate. This type of company presents itself as the preferred for the formation of smaller businesses, when compared to the type of public limited company, presenting a less demanding structure, for example, the non-mandatory minimum share capital and the exemption from a supervisory authority.

In a second line, there are the sole entrepreneurs, who do their business without a corporate vehicle, which has the great disadvantage of not having their liability limited to the assets attached to their business. Private limited companies and sole proprietorships, which together represent 97% of our business fabric, are, at first glance, the face of Angolan entrepreneurship.

The subsequent considerations that preside over the analysis of this article present a synopsis of the main axes of the current corporate taxation framework, from the original version of the Industrial Tax Code to its most recent amendment by Law No. 26/20, of July 20.

1. THE GENERAL INDUSTRIAL TAX RATE

The most recent change in the law to tax the corporate income tax, which had culminated in the adoption of the Law on amending the Industrial Tax Code, picks up significantly with the objective of stimulating the productivity of the Industrial Tax on the GDP, as well as to increase the competitiveness of the international tax system, providing, thus, an increased contribution to the attraction of foreign direct investment, as well as improving the business environment, and a rigorous attention to the calculation of the expense and the para-fiscality[2].

This change made it possible to carry out a profound reformulation of the applicable rates on companies, with (i) the reduction of nominal tax rates; (ii) the increase in the rate of withholding tax on occasional services, (iii) the increase in the rate of companies in the banking sector, insurance, telecommunications operators and national oil companies, in the terms defined by Presidential Decree No. 3/12 of 16 March, and (iv) the allocation, management and control of tax exemptions. In view of the proclaimed aim of building an investment-friendly corporate taxation, provided for in the executive guidelines for tax reform[3], the restructuring of the

1 Instituto Nacional de Estatística, Anuário De Estatística das Empresas 2016-2019. https://www.ine.gov.ao/images/Anuario_Estatistica_das_Empresas_DID_SC.pdf

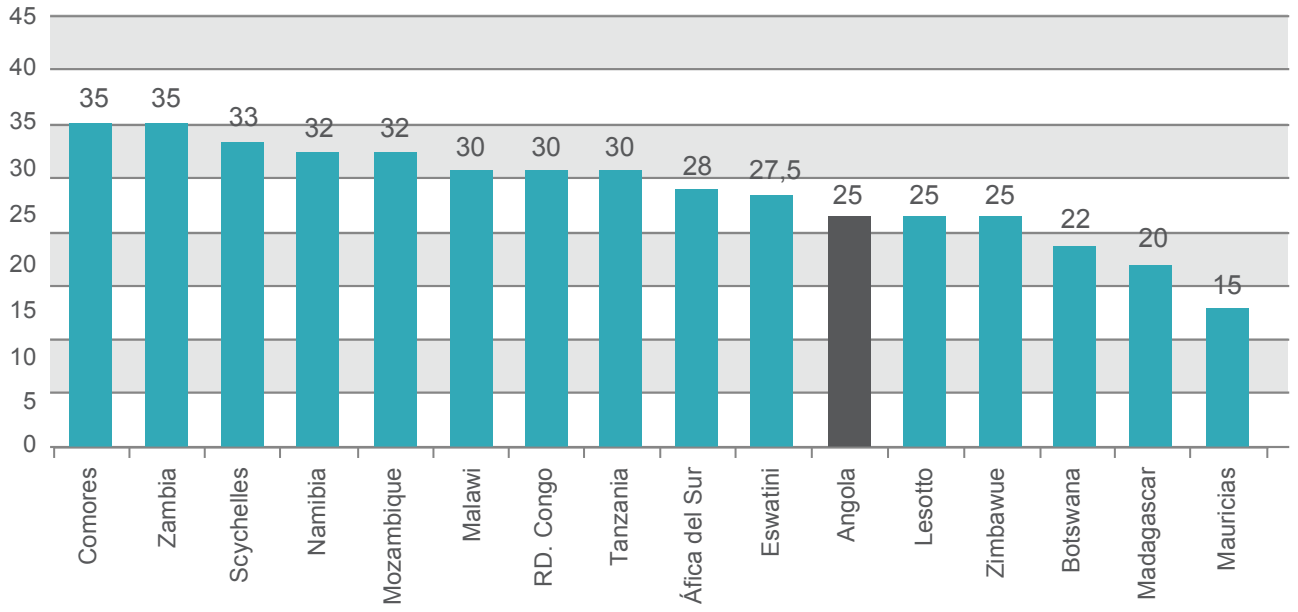
2 Preamble to Law No. 26/20, of July 20-law amending the Industrial Tax Code.

3 Approved by Presidential Decree No. 50/11 of 15 March.

corporate taxation framework showed a progressive transfer of the tax burden from income to consumption. Thus, it was also privileged to introduce new rules and eliminate others, both in the seat of the industrial tax and in the general tax code itself[4] to simplify the fulfillment of tax obligations, internationalization and competitiveness of Angolan companies, as well as the revision of some fundamental regimes to stimulate domestic and foreign private investment.

The reduction of the general rate of Industrial Tax by 5 percentage points, i.e., from 30 to 25%, puts Angola within the international average rate, at the same time allowing the country to leave the range of SADC members with higher rates on corporate profits, to become one of those with the lowest rate, as can be seen in the graphs below.

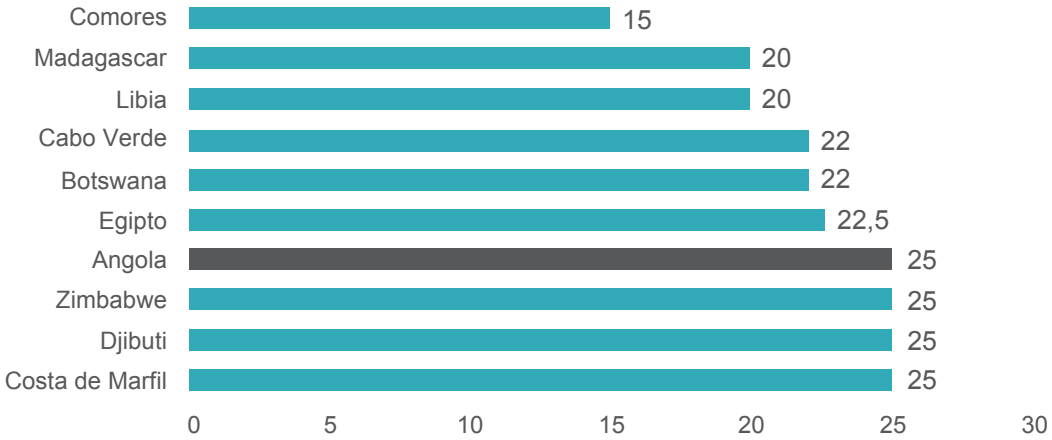
Graph 1. Corporate income tax rates (%)



Angola is now among the countries in Africa, and not just SADC, with the lowest corporate income tax rate.

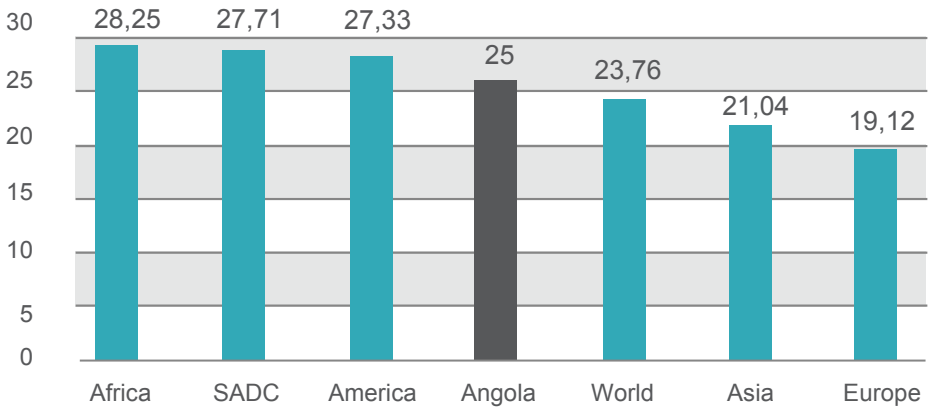
4 The amendments to the general tax code, implemented by Law No. 21/20, of July 9, bring together a set of legislative measures that allow the taxpayer to legitimately obtain tax advantages. With regard, for example, to the fine applicable for the non-payment of any benefit or the entire tax within the legal deadline, the legislator changed its percentage by minus 10 p.p. i.e., from 35 to 25%.
The merit of this measure lies in the fact that it harmonizes the public interest to deter non-payment of tax within the legal deadline and the non-excessive burden on the taxpayer.

Graph 2. Africa's lowest corporate Income Tax rates (%)



A final chart locates the Industrial tax rate below the average of SADC, Africa, and America which represents an excellent step towards improving the competitiveness of companies.

Graph 3. Averages by Zone vs Angola (%)



Source: Coordination of technical opinions and International Treaties of the Center for tax studies of AGT

However, this is a tax policy option about which the specialized literature has shown experiences letting us to believe that decreases in tax rates accompanied by the simultaneous expansion of the respective base are not necessarily incompatible with an increase in the revenue collected, because they discourage tax fraud and evasion.

The international practice has shown that it is possible to design tax changes, aimed at simplifying the system and lowering relatively neutral tax rates in budgetary terms and with significant positive results for boosting the economy and creating jobs in the medium and long term[5].

6 See Commission for the reform of the IRC- 2013, Final Report - a reform of the IRC aimed at competitiveness, growth and employment, June 2013, p. 46. https://www.occ.pt/fotos/editor2/relatorioirc.pdf

On the other hand, with regard to income from activities exclusively of agriculture, aquaculture, beekeeping, poultry, livestock, fishing, and forestry, a tax rate substantially lower than the previous reality has been set, shifting from 15 to 10%.

In fact, since the state could not, in the current circumstances, dispense with tax revenues, it was not possible to drive the taxation relief of corporate profits as far as desirable, however, it should be remembered that in the posting of the new rates a criterion of moderation prevailed, considering in particular the desired degree of openness of the Angolan economy abroad. This has eliminated several restrictions on foreign investment, namely the minimum share capital requirement, as well as the elimination of 'mandatory partnerships' with Angolan capital. Therefore, the need was felt to bring the tariffs to a level that matches those in force in countries with a similar level of development to ours or with which we maintain economic relations.

2. THE WITHHOLDING TAX RATE ON OCCASIONAL SERVICES

There was an increase of 8,5 p.p. in the rate of withholding release on occasional services provided for in articles 71 and following of the Industrial Tax Code. All entities that, without any type of representation in Angola, provide services in national territory in favor of individuals or legal entities with a registered office, effective management or permanent establishment in Angola, regardless of the place of their provision, are subject to taxation under this system of tax withholding. The beneficiary entity of the service is obliged to withhold at source, on the overall value of the service provided, at the rate of 15%, different from the rate of 6,5% payable under the old version of the Industrial Tax Code.

In fact, this tax policy measure was largely justified by the need for effective protection of local content, resulting from the reduction of the general tax rate from 30% to 25%, and ultimately, it seeks to induce foreign economic operators who regularly provide services in national territory, without, however, adding real value to the economy, due to the absence of any type of structure in Angola, to have a permanent establishment here.

The need to combat the erosion of the tax base and illicit transfer, especially in the extractive industry, was also a major reason for the increase in the rate in the terms in which it occurred. Although it is well known that withholding tax is a way of defending the tax base against the use of transfer prices, it is insufficient when the rate is substantially lower than the rates that apply to the Industrial tax, as is the case in Angola, where the general tax rate has increased to 25%, as mentioned above.

In this sense, it is recommended to adopt robust legal mechanisms, capable of mitigating the use of tax avoidance and evasion, which is justified by the accession of our country to the panel on illicit capital flows of the Economic Commission of the African Union and The Economic Commission for Africa of the United Nations. According to this international body from 2005 to 2015, about 60 billion USD (approximately 2 billion USD/year) was illegally withdrawn from Africa, via external contracts or between the parent company and the subsidiary, as a result of the legislative weaknesses of the less developed countries.

Seen as a protective mechanism of revenue, without prejudice to the need to contract services abroad, in view of the internal shortage of many essential services, it should be noted that the systematic and, in some cases, unjustified contracting of services abroad reduces the resources in foreign currency of the state, in this context, the mechanism of withholding collection at source, is an efficient instrument for:

i.) Fighting the transfer pricing vehicles in companies with international representation, where building the proof of facts is quite difficult.

ii.) encouraging the internal contraction of services with internal supply, especially the administration services, but by option of the international representative entity, such services are contracted to the parent company and /or affiliates, a process also experienced in the oil sector.

iii.) encourage external contracting with countries that have concluded and/or are in the process of avoiding double taxation with Angola (Portugal, UAE).

In addition, in the context of the comparative law, it was found that the rate of 6.5% is well below the African average. For comparable countries, the rate applicable in South Africa was 15%, Namibia 10 and 15%, Nigeria 10%, Kenya 20%, R. D. Congo 14%, Zambia 20%, Cape Verde the rate ranges from 1 to 20%, just to name a few examples[6].

Finally, it is an amendment that highlights the extra fiscal function of the tax[7], as a way intentionally used to induce economic operators to certain conduct of relevant public interest, in this particular case, it is intended that economic operators hire national companies or foreign companies located in the national territory, although, in one and another situation, instead of 15%, the applicable rate becomes that provided for in Article 67.º of the Industrial Tax Code. Moreover, this is a concern that is not exhausted in fiscal policy, since some sectors adopt legal mechanisms oriented to the same purpose. This is what happens with the approval of Presidential Decree No. 27/20, of 20 October, which establishes the legal regime for the promotion of local content in the oil sector.

3. THE RATE APPLICABLE TO THE BANKING AND INSURANCE SECTOR, TELECOMMUNICATIONS OPERATORS, AND ANGOLAN OIL COMPANIES

Taxation on financial institutions and the telecommunications sector has, over the past 10 years, attracted widespread interest and is of great importance among the member states. These sectors, in addition to their contributions to society, in particular through financing the economy, the promotion of financial products, the creation of jobs and access to new technologies, the result of the various products and services they have at their disposal, also, as a rule, generate considerable revenues year after year.

Thus, in view of the global financial crisis of 2007-2008, the International Monetary Fund (IMF) proposed, in 2010, to the G-20 countries[8] the creation of global taxes on these institutions, aimed at financing financial rescue packages. The proposal presented concerned the creation of a fixed rate and another on profits and payments. However, despite the fact that this suggestion of the IMF has obtained *general consensus* on the part of the G20, the truth is that few implement it since the banks offered great resistance.

"The financial services sector is perhaps the most significant economic sector in modern societies. In more advanced service economies, such as the United States of America (USA), the financial sector employs more people than the clothing, automobile, computer, pharmaceutical and steel industries combined. 5.4 million people are employed by financial services companies in the US. Financial Services account for almost 5% of gross domestic product in the US, about 5.5% in Germany, 3.5% in Italy, and similar statistics are found for other sectors of the European Union. The Japanese financial sector accounted for almost 9% of GDP until 1993 (it recently suffered a severe decline), and in Singapore, it accounts for 6.5% of GDP... in smaller economies, especially those that aspire to a significant presence in the international market through overseas banking activities, the financial services sector may even be more significant. The Swiss financial sector accounts for more than 9% of the country's GDP. Cyprus, a small Mediterranean economy that provides offshore banking services to former Soviet Union states

6 Information accessed 26 October 2020

7 For further development on this subject, Maria de Fatima Ribeiro, Tributos: Extrafiscalidad, in Estudos Fiscais, Org. Eduardo Sabbag, Editora Saraiva, São Paulo, P. 121 et seq.

8 Financial Sector Taxation the IMF's report to the G-20 and background material, International Monetary Fund, September 2010.
The eight richest and most influential countries in the world are part of the G20, including Germany, Canada, France, Italy, Japan, the United Kingdom and Russia, and 11 emerging countries (South Africa, Saudi Arabia, Argentina, Australia, Brazil, China, South Korea, India, Indonesia, Mexico, and Turkey).

and Eastern European countries, has more than 18% of its GDP coming from financial and business services, and these sectors employ almost 10% of the population. 18% of Israel's GDP is due to the combined financial services and business sectors, which employ 10% of the population"[9].

It is true that the data referred to above in the excerpt relate only to more developed societies, but we must also consider that, for example, according to data from the newspaper expansion, the five largest banks operating in Angola profited, in 2018, more than one billion US dollars (USD), representing an increase of 60% compared to 2017[10].

The latest data from the 2020 assessment of the banking sector indicate that *"as mentioned above, the conduct of the asset quality assessment provided encouraging signs, concluding that the banking sector was generally robust, with the exception of BPC and BE, for which relevant recapitalisation needs were identified"*.

In Angola, like other countries, banking is a very dynamic sector that adapts quickly to adversity, as we can see, for example (I) by the number of bank branches that the country had in 2010 (1002) compared to 2016 (1966), (ii) by the number of active and valid cards and (iii) number of ATMs (ATM) and automatic payment terminals (TPA), where, when compared to 2016, there was in 2017 an overall growth of 24%, with ATM transactions growing by 21% and TPA transactions growing by approximately 35%[11].

Given these and other indicators, in light of modern demands for fairness, it was deemed advisable to increase the tax rate applicable to the banking sector by 5%, from 30 to 35%.

From our point of view, this increase is aligned with the perspective of ensuring a better and correct distribution of the tax burden, according to a rational scheme of progressivity, in line with the contributory capacity manifested.

This scheme of progressivity is largely justified by the need to correct, through the tax system, the distribution of the tax burden on the productive sector, so as to operate a redistribution that contributes to the definition of a distribution pattern considered as socially and politically more acceptable.

In this order of ideas, it is understood that, as income rises, a criterion of adjustment of the tax burden to the contributory capacity is evident and widely accepted.

We also understand that this increase in the terms in which it is presented, serves at the same time as a compensating factor for aspects of regressivity contained in the exoneration of the general rate of industrial tax and in other areas in our tax system. In fact, despite the notable differences, regimes of this nature exist in other legal systems, adopting designations such as *additional solidarity tax on the banking sector*[12].

However, the same rationale, with the necessary adjustments, was extended to companies in the insurance sector, telecommunications operators, and Angolan oil companies, whose rate saw, in the same terms, an increase of 5 p.p., so it went from 30% to 35%.

Finally, we open here a small note to highlight that in the concept of Angolan private oil companies, in the terms defined by Presidential Legislative Decree No. 3/12, of March 16, only companies whose share capital is entirely constituted by individuals of Angolan nationality. Thus, on the contrary, companies that have

9 The excerpt taken from the publication of Cambridge University Press, "*Performance of Financial Institutions-Efficiency, Innovation, Regulation*", Patrick Harker and Zénios Stavaros, demonstrate the importance that the financial sector and the companies that represent it have for a country.

10 See: http://expansao.co.ao/artigo/110304/resultados-dos-big-five-superam-os-mil-milhoes-usd-em-018?seccao=exp_tec

11 Governance of Angolan banking, study by Delloitte 2018, P. 69-71.

12 This is an additional tax, which is in force in Portugal, the regime of which was approved by Article 18.º of Law n. º 27-A / 2020 of July 24.

in their capital the partial or total participation of entities of a corporate nature are excluded from the favorable tax treatment provided for in this law, even if they are totally constituted by Angolan capital, an aspect that is completely incomprehensible, although the purpose of *"guarantee, promote and encourage the participation in the oil sector of companies entitled by Angolan citizens"*, referred to in the preamble of said diploma, in the latter case, would be equally affected.

Lastly, to highlight that the favorable tax treatment established in Presidential Legislative Decree No. 3/12, of March 16, the reduction of the tax rate on oil income reflects the industrial tax rate in force. However, in the context in which this measure was approved, the industrial tax rate in force corresponded to 35%, then, from 2014, the rate stood at 30%. Today, as a result of these amendments, the rate of oil income tax on these companies is 35%.

4. OTHER REGIMES: DEPRECIATIONS, PROVISIONS, MERGERS, AND SPLITS OF COMPANIES

The Industrial Tax Code continues to define in a very complete way the essential elements to the depreciation and provisions regimes, whose application to concrete situations is made in accordance with the sound accounting principles arising from the General Accounting plan[13], which defines, inter alia, the amortizable and provisional elements and their calculation basis for, consequently, determining the methods accepted for tax purposes.

The structure and its essential elements remain intact, in the context of the changes made to the Industrial Tax Code, however, it was considered appropriate to make some slight adjustments regarding depreciation and provisions.

Thus, in the case of depreciation, compared to the previous version, there was an increase of AOA 13 000 000,00 to the tax accepted limit on light passenger or mixed vehicles, which now stands at AOA 20 000 000,00, according to the al. Article 40 (e).º of Law N.º26/20, of 20 July. This is an amendment whose essendi ratio it is to compensate for the negative effect of the foreign exchange devaluation of the national currency on this type of tangible fixed assets.

With regard to provisions, a new paragraph has been added to Article 45 of the code, under the terms of which *"those constituted on secured credits shall not be accepted, except in the part not covered"*.

This is an anti-abuse measure that aims to inhibit the practice of abusive tax planning by taxpayers since it is an unjustifiable double benefit to allow credits with guarantees to be tax-deductible by setting specific provisions. However, under this new framework, provisions will be used only for unsecured claims, or in cases where the security provided does not cover the entire claim[14].

On the other hand, the new taxation model introduces some surgical amendments to Article 65.º of the industrial tax code, adopting a stance of neutrality in relation to mergers and divisions of companies, dealing with very common operations in this context truly difficult to the National Business.

The legislator's intervention in this area was based on the idea that the reorganisation and strengthening of the business fabric should not be hindered and, in general terms, conditions have been created so that these operations do not encounter fiscal obstacles to their implementation, provided that, by the way they are carried out, it is ensured that they are only aimed at an adequate resizing of the economic units.

13 Decree No. 82/01 of 16 November.

14 In the context of the technical work that preceded the amendments to the Industrial Tax Code of 2020, this point was raised about some concrete findings that had been reported by Dra. Carla Nogueira, at the time, as head of the Tax Division of Large Taxpayers.

5. TAXATION OF INDIVIDUAL ENTERPRISES

On the other hand, as we have said, in our system, the distribution of companies by the IT and industrial tax regimes, i.e. by the individual business scheme and by the collective enterprise scheme, depends entirely on the legal form given to the organisation of the economic activity, depending on the actions of the trader on behalf of the individual or *self-employed,* using the expression of the IT code, or have for support a legal entity who, as a rule, will be a society. A vision of things that, in addition to causing a division of companies that does not cease to be *somehow artificial*, it does not lead to a unitary corporate taxation regime, nor does it entail a wide margin of freedom of choice on the part of business organisations.

So what about the character *somehow artificial* of the division of enterprises between CIT and Industrial Tax, we can say that the same reveals in three aspects: not all collective enterprises are taxed in industrial tax; on the other hand, the industrial tax does not tax only business entities[15]; finally, the industrial tax also taxes entities that do not present themselves as legal entities, since several entities are subject to this tax to which legal personality is not recognized, in accordance with the al. (B) Article 5 (1).º of the industrial tax code.

Therefore, not all collective companies are taxed under the industrial tax, as happens with entities, national or foreign, that carry out oil operations in national territory that are only subject to the regime of taxation of oil activities, in accordance with law no.13/04, December 24. The same applies to entities that carry out activities of prospection, research, prospecting and exploitation of minerals, which are exclusively subject to the tax regime provided for in articles 238.º and ss. of Law No. 31/11, of September 23, which approves the mining code.

On the other hand, even in a situation of budgetary dependence on tax revenues derived from oil resources, the taxation of individuals has taken on strong importance, being a signal from the legislator to the general population about the *idea of the tax State*[16] which we intend to implement.

The 2020 tax reform brought the tax framework applicable to corporate companies closer to the regime applicable to individual traders, which are part of the so-called individual enterprises.

Some criticisms are made of the model of taxation of individual companies adopted in the original version of the IT code. The main concerns put at the center of the approach are the different tax treatment of the self-employed distributed between groups B and C of the Code.

In this regard, Saldanha Sanchez and João Taborda da Gama have already stated that: *"in Angola, self-employed workers are subject to a tax regime distinct from individual entrepreneurs. The international trend goes in the opposite direction, that is, to subject both categories of taxpayers to uniform rules. The Angolan legislator's option also has the inconvenient that the tax burden is not uniform"*[17].

Objectively, the criticism lies in the traditional separation of the taxation of the incomes of individual entrepreneurs, classified in Group C, and liberal professionals, classified in Group B. See that these taxpayers were taxed, as a rule, at a rate of 15%, applicable to taxable income corresponding to 70%, for income paid by entities with accounts, while group C taxpayers, as a rule, were taxed at the rate set forth in the Table of Minimum Profits, whose base is fixed according to the administrative district where the activity is carried out, to which, for the calculation of the tax payable, a rate of 30% was applied.

15 The incidence rule of the industrial tax covers associations and foundations, just to cite two emblematic examples, although effective taxation only occurs, as a rule, when these perform a profitable activity.

16 For more development, see, Hermenegildo Fm Kosi, *"La Constitución Fiscal y la Evolución del Modelo de Litigio Fiscal Angoleño"*, 1.ª edition, WA Editora, Luanda, November 2018, P. 30 et seq.

17 Saldanha Sanches and João Taborda Da Gama, *"Manual de Derecho Tributario Angoleño"*, 1.ª Edition, Editor Wolters Kluwer, Coimbra Editora, July 2010, p. 242.

However, in the light of the recent restructuring of corporate taxation, this differentiated treatment deserved particular attention of the legislator, having found a taxation framework that favors an equitable framework of the two categories of taxpayers and with a relative approximation with the taxation of legal entities. In fact, it was a distinction that no longer made sense, to the extent that it turned the presumed taxation into the rule, thus contradicting the logic of direct taxation of income adopted in our system, on the one hand. On the other hand, the activity of liberal professionals is increasingly similar to an entrepreneurial activity.

In effect, under the terms of Law 26/20 of July 20, which amends the CIT Code, self-employed workers, classified in groups B and C, are taxed under substantially similar terms, namely, with regard to the applicable rate, which is now 25%, and in determining the taxable income in the event that the taxpayer has accounting, a simplified accounting model or purchase and sales ledger, and services provided, aspects that are also present in the simplified industrial tax regime, as we shall see below.

It should be noted that, within the framework of the changes made, there was also the import into the IT of several legal regimes hitherto limited to collective undertakings, such as the cases of the self-invoicing regime[18], the withholding tax at the rate of 6,5% on the services provided, the regime of liberating withholding tax on accidental services, in accordance with the combined provisions of Articles 8.º, paragraph 8, Article 9.º, paragraph 4 and Article 16.º, n. º 4, of Law n.º 28/20, of July 22.

Since taxation focuses on the economic reality constituted by the profit of individual and collective companies, the new law ensures that accounting is the instrument of measurement and information of this reality and plays an essential role as a support for the determination of taxable profit.

In the case of taxpayers included in Group C of the IT, it is worth noting that the legislator maintains Article 9 (1) and (2) in force of the code, which leads us to the understanding that, except in cases where the tax base is determined on the basis of accounting in compliance with the rules of the General regime of Industrial Tax, it is the table of minimum profits that fixes the tax base of this group. Thus, the existence, or not, of the simplified accounting model or the book of records of purchase and sale and services provided become a form of reporting of costs of these taxpayers, this being the condition sine qua non for the assignment of the subjective right of deduction of up to 30% of the costs incurred and validly proven.

The same does not occur in the case of group B taxpayers, in which the simplified accounting model or the book of sale and purchase records and services rendered are mechanisms used to determine the taxable income itself, when this occurs on the taxpayer's own account, as stated in article 8.1 (b) of the Law amending the IT code.

Note that, with the introduction of accounting in groups B and C of the IT, the determination of the taxable income by indicative methods in individual companies and legal companies is limited to the cases expressly provided for in the law, now reduced to the minimum possible, only occurring in situations of accounting anomalies and inaccuracies, if it is not at all possible to make this calculation based on the accounting[19].

On the other hand, in a logic of subsidiarity[20], the technical criteria that the Tax Administration must, in principle, follow in order to determine the taxable income

18 The legal Regime of self-invoicing in force is contained in Presidential Decree No. 194/20, of July 24, which repealed the self-invoicing provided for in the legal Regime of invoices and equivalent documents. For some details on this regime, see Nuno Chaves, *"Autofacturação – a bem das empresas, da economia e da justa tributação"*, article published in Expansão Newspaper, September 25, 2020. https://agt.minfin.gov.ao/PortalAGT/#!/sala-de-imprensa/noticias/8215/autofacturacao-a-bem-das-empresas-da-economia-e-da-justa-tributacao

19 Contrary to what the general public is led to think, the obligation imposed on taxpayers under the general industrial tax regime to have the accounts does not preclude the application of the rule contained in Article 12 (2). º of the Industrial Tax Code, whenever one of the situations described in this normative occurs.

20 See Article 59.º of the Industrial Tax Code.

are defined, by evidentiary methods, guaranteeing taxpayers adequate means of defense[21].

6. THE NEW TAX PERSPECTIVE ON MICRO-ENTERPRISES

Without prejudice to the provisions contained in specific legislation, namely in Law 30/11 of September 13 and in Presidential Decree 43/12 of March 13, on undertaking a general reformulation of corporate income taxation in a particularly sensitive area, within the framework of the alterations made, the legislator places the differentiated tax treatment of companies at the centre of its concerns, based on their turnover, by replacing the traditional tax groups with a general regime and a simplified regime.

From the point of view of simplifying corporate taxation, it should be noted that, alongside the general regime based on the determination of actual income, an optional simplified taxation regime is presented, which refers to simplified formulas for the calculation of taxable income, including making it unnecessary for the covered taxpayer to present financial statements.

In view of the forms on which the simplified taxation regime is based, it is evident that the legislator, as has been the case in many other sectors of law, assigns a different tax treatment because of the size of the company, revealed by its turnover, allowing it to obtain legitimate tax advantages.

In fact, this is a legislative option whose justification is not difficult to find, it is enough to remember that the General Tax Code, in force for more than five years, in its article 14, provides the assumptions on which the simplified taxation systems are based, in a clear reference to principles with constitutional dignity, namely the ability to pay and the principle of prohibition of excess.

Thus, in the light of this new reform to the Industrial Tax, micro-enterprises are exempted, as far as possible, from any business or tax bureaucracy, by basing their taxation on the simplest possible mechanisms, by presenting a simplified accounting model or book of record of purchase and sale and services provided and thus disposing of most of the requirements involved in the accounting itself. That is, in such a way that the tax is a result determined in terms as automatic as it is feasible from the point of view of its practicability.

However, this new tax framework applicable to micro-enterprises, considering as such, the enterprises subject to the VAT-exempted regime, has the merit of allowing the reduction of the costs of compliance with the tax rules not only for taxpayers but also for the Tax Administration itself.

The simplified taxation system thus constitutes, as it stands, an exception to the constitutional principle of taxation of real income: taxation is not carried out on the basis of the actual tax matter but on the basis of technical-scientifically based objective indicators.

The constitutional conformation of this regime results from its optional or voluntary nature, since the legislator allows the waiver of the simplified regime to the taxpayer who has an interest in it, provided that it has conditions to be taxed on the normative basis, that is, on the basis of the profit obtained by the accounting and electronic submission of his tax declarations.

The simplified regime always presupposes an action by the taxpayer who renounces his subjective right to be taxed on the basis of accounting. And that, proceeding to an estimate of the costs that he will bear and declare, he opts for the framework in this taxation regime.

21 For further development on this subject, see, Cláudio Paulino Dos Santos, *"Garantia dos Contribuintes no Percurso do Procedimento Tributário"*, WA Editora, Luanda, agosto de 2018.

With regard to the technical work leading up to these amendments, in particular, the focus of the debate has always been on the truly optional nature (opt-in) of the simplified regime. This framework significantly eliminates administrative and judicial litigation, logically welcoming the constitutional imposition of real income taxation as regime in force.

This is a type of taxation that we can easily find outside, with expression, for example, in the Spanish “objective estimation”, in the French “évaluation forfaitaire “or in the German “Pauschalbesteuerung”, forms that, despite the differences between them, obey the same common denominator, based on a logic of simplifying and keep simplifying.

As regards the larger companies, the situation is very different and they are now part of the general Industrial tax system, whose tax assumptions are tighter, and taxation should also be based exclusively on real income, on the profit revealed by regularly organized accounting.

Indeed, the requirements for compulsory accounting and its preparation in accordance with sound accounting principles are no longer disproportionate to these requirements. Regarding the contribution of large companies to the Public Finances, their tax contribution stands out more clearly, while it is often involved in sophisticated and complex tax planning schemes on an international scale that are not at all within the reach of micro or small companies in general.

7. CONCLUSIONS

Given the number of amendments introduced, the small steps taken by the legislator to create conditions for a tax environment that allows companies to legitimately obtain tax advantages are evident. We are aware, however, that the success of the reform will be judged based on the daily testing of the application of the new rules to concrete situations. This will depend, above all, on how the tax administration and the taxpayers fit into the spirit that underlies it and that, if the TA requires an ever more effective functioning, it also needs frank and loyal cooperation from the taxpayers.

However, the continuous reform of the tax system is one of the necessary steps, not only because of its ambitious nature, as far as business competitiveness is concerned, but also because it brings a great reinforcement of the modernization of the General Tax Administration and its ICT system, the SIGT, whose remarkable deliberate commitment of all its stakeholders allows reaching progressively the desired level

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CLASSIFICATION OF ELECTRONIC INVOICES

using natural language processing

Jaime Humberto **Niño Peña**
Emilio **Berdugo Camacho**

SYNOPSIS

Electronic invoicing has emerged in Latin America as a tool that facilitates control tasks exercised by the tax administration over the tax generating activity, particularly VAT. Thanks to the development of machine learning techniques, the data volume of electronic invoicing, and the need of tax authorities to detect anomalous behavior, it is possible to model and solve problems in a better way. This work presents the baseline for the construction of the input-product matrix from income distribution of the electronic invoices according to a classification model that uses descriptions of the goods and/or services reported in them. The data representation used allows us obtaining classifications with accuracies above 90% for the different divisions of the IICU4.

Keywords: Electronic invoicing, Machine learning, Tax control, Input-output matrix.

CONTENT

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INTRODUCTION

Electronic Invoicing mass adoption creates a new reality in several Latin American countries, where Colombia is no exception. In fact, the process carried out by Colombia has allowed the adoption of this instrument in record time, starting with the implementation of the electronic invoicing ecosystem with prior validation in July 2019. To date, Colombia has more than 500,000 electronic invoices issuers, which generate approximately five million documents on a daily basis. Similar to the processes developed by other tax authorities in the region (Hernandez, 2018), (Barreix, 2018), the challenge of using electronic invoice information for tax control purposes to improve collection and reduce tax evasion and/or avoidance rates is beginning. In this sense, the uses of electronic invoice information can be diverse, including quadrature topics, discovery of evasion structures among others. With recent advances in machine learning techniques, their applications to e-invoice information have begun to capture the attention of researchers and tax officials. Some works (Bardelli, Rondinelli, Vecchio, & Figini, 2020), (Hong, Yeo, Cho, & Ahn, 2018), (Ebberth, Ladeira, Carvalho, & Marzagao, 2016), (Peng, et al., 2020) include buyer segmentation, anomalies in trade operations and their accounting. Our work proposes the use of natural language processing (NLP) techniques to classify the economic activities of the electronic invoice issuer using descriptions of the items that are part of it. This application, oriented to tax control, allows to verify that the economic activities declared by taxpayers in their tax registry correspond to the real commercial / business activity they are carrying out.

The document's organization is as follows: chapter two presents a brief overview of the electronic invoice and its uses as an element of tax control, chapter three offers an overview of machine learning, in particular, the techniques for representation of text, the chapter four the results of the experiment, chapter five displays conclusions and possibilities of the use of this work. In addition, an annex is included that describes the technical details of the modeling that was carried out.

1. USES OF ELECTRONIC INVOICING

The sales invoice is a tax and commercial document that reflects the value when seller and buyer exchange goods and /or services. This document, when becoming electronic, allows standardization of reported information. In the Latin American context, the electronic sales invoice has emerged and developed as an element for tax administrations with the aim of combating tax evasion and avoidance, particularly the Value Added Tax (VAT). Studies such as (Hernandez, 2018), lead us to affirm that the electronic invoice has had a positive effect in a higher tax collection. Indeed, the use of electronic invoice information has made it easier for tax administrations to become more proactive when it comes to advancing their management, given that granular information on each commercial operation allows for controls and the design of programs that anticipate taxpayers' returns.

The uses of the electronic invoice information are varied and depending on the fields that capture the information, from the point of view of tax control it could be categorized as stated in Table 1.

Table 1. **Categories for use of electronic invoice information for tax control purposes**

Category	Examples
Quadratures	Contrasts between what is invoiced and what is declared
	Prefilled lines in declarations
	Suggested statements
	Indirect control of taxes derived from invoicing operations
Complex structures	Apocryphal invoicing
	Underbilling
Behavior	Input – output matrix

Source: Own elaboration

This work can be understood as a first link in the construction of the input-product matrix, first described by Francois Quesnay and later refined and improved by Leontief (KSU.edu, 2021). It is defined as the characterization of demand and supply among the sectors that make up the economy.

In this order of ideas, there is a project to construct a matrix where each of the rows corresponds to an electronic issuer (E) and each column to the economic divisions (D) according to the international classification IICU4. The values of the cells correspond to the probability (p) that the issuer's invoicing (Ej) belongs to a division (Di). Chance (p) is determined by the text classification model for each of the invoices, which is technically explained in Annex 1.

As can be seen, the construction of this matrix allows to verify if the economic activities declared with each of the electronic invoicers (Ej), really belong to the economic divisions (Di) identified by the machine learning model. From there you can build and/or design another series of more elaborate controls and adjusted to the economic theory derived from the Leontief model (KSU.edu, 2021).

2. NATURAL LANGUAGE PROCESSING (NLP)

Classification is the process by which the class where an element belongs is determined. Several of the machine learning techniques are suitable for solving such a problem. In this sense, a machine learning classifier learns from the training data the classification criterion or criteria. In the modeling process, classifiers are tested with test data, and once adjusted they allow classifying data that do not have previous labels. Formally it can be explained as follows: (C. D. Manning, 2009).

1. You have a representation r for each text (*t*) of invoices (*F*), where (*F*) is the space of all invoices that will be used for training.

2. You have a fixed set of classes *D*, where *D* it is the set of divisions IICU4.

3. You have a training data set *C*, properly labelled (*c, d*) within space *F x D*.

Classifier learns a function (y) that maps each document to its respective class:

$$y: F -> D$$

There are different types of classifiers, as explained in Annex 1. Note that text classification is associated with the domain of NLP Natural Language Processing. This domain includes diverse techniques to represent the texts (Aditya, Gandhar, & Vraj, 2018), including Term Document Frequency – Inverse Document Frequency (TDF-IDF), NGrams, Sequence to Sequence, Word Embedding, User Preference Graph, Name Entity Recognition Model, among others. Representation techniques have evolved along with machine learning techniques, including those related to deep learning. Considering that the literature review did not find similar works in the domain of electronic invoices and considering that the descriptions of the goods or services reported in the electronic invoice are short, it was decided that the representation to be used is the TDF-IDF, where basically a matrix is created based on counts of the words (tokens) found in a document. This representation basically seeks to evaluate the relevance of a word to a document, within a collection of documents. The details of preprocessing and cleaning are explained in Annex 1.

Since the texts are short, the use of this type of representation allows capturing the relevance of the words without giving much emphasis to the semantic context of the text. For this particular case, the semantic context is not very relevant, since generally what is reported in electronic invoicing does not have a good semantic structure and often it is a small set of words that express the content of the good and/or service in a succinct and clear way. Additionally, the use of this representation facilitates the implementation of simple machine learning techniques, which allows to build a suitable baseline for future research.

3. RESULTS

The baseline was the electronic invoicing system documents generated between January 1, 2020, and June 16, 2020, which total a total of 236,649,535 invoices, distributed among 94,239 electronic issuers; these have a nominal label (which is assumed to be true) in one of the 22 categories according to the international classification IICU4, according to table 2.

Table 2. Economic divisions according to the international classification CIIU4

Code	Industry description
A	Agriculture, hunting, forestry and fishing
B	Mining and quarrying
C	Manufacturing
D	Electricity, gas, steam and air conditioning supply
E	Water distribution; wastewater disposal and treatment, management waste management and environmental sanitation activities
F	Construction
G	Wholesale and retail trade; repair of motor vehicles and motorcycles
H	Transport and storage
I	Accommodation and food services
J	Information and communications
K	Financial and insurance activities
L	Real estate activities
M	Professional, scientific and technical activities
N	Administrative and support services activities
O	Public administration and defence; social security regimes of compulsory membership
P	Education

Code	Industry description
Q	Human health and social assistance activities
R	Arts, entertainment and recreation
S	Other service activities
T	Activities of individual households as employers. Undifferentiated activities of individual households as producers
U	Activities of extraterritorial organizations and entities
Z	Not registered

Source: DANE (2020)

Exploration and representation of texts

It should be clarified that the texts of each invoice are subdivided into lines that contain the description of each item along with monetary and tax information among others. In the exploratory phase, a cleaning procedure was performed (described in Annex 1) that eliminates special and numeric characters, among others, leaving some lines completely empty, which were excluded (1.36% is the rate of lines removed).

The resulting document universe was divided by sampling *random simple stratified* (taking months as natural strata) in two excluding sets: **training** and **test**, with a ratio of 80% - 20% respectively. The training set was successively divided into 10 roughly equal parts to apply the cross-validation (Raschka & Mirjalili, 2017) of the selected models.

With the remaining lines of text, a document was formed for each invoice and the training set described above was taken as a corpus to represent all the words (or tokens) of it depending on how frequent they are within each document and within the corpus (see annex 2). This is the well-known representation **TDF-IDF**, which allows generating numerical attributes that describe the words, from their frequency of appearance.

To increase the accuracy of the model it is necessary to consider combinations of words that could appear together and in a particular order within each document. Such combinations are known as **n-grams** (see Annex 2), with n being the number of words to be combined. Specific cases are the 1-grams (one word), 2-grams (two words), and 3 – grams (three words). For this particular study, there were models by industry, that needed 2-grams and other 3-grams (for more details see Annex 3).

Selection of the modeling strategy

The problem of interest requires a *multiclass model* because each invoice has 20[1] possible classification categories, but it is possible to assign only one. In the literature, there are various approaches to address this problem, including:

- The **multinomial** approach (Faraway, 2014), which proposes a joint probabilistic model. This approach has the disadvantage of being sensitive to deviations from the multinomial distribution and losing efficiency there are many categories.

- Approach **one on one** (Raschka & Mirjalili, 2017) that proposes to adjust binary classifiers for each possible pair of categories and then combine them by some assembly method. This approach has the disadvantage of requiring around 230 binary classifiers, which would require a lot of training and optimization time.

- Approach **one against all** (Raschka & Mirjalili, 2017) that proposes to adjust as many binary classifiers as there are categories, taking as *positive class* a particular category and as *negative class* grouping the remaining categories, then combining them using some assembly method. This approach was chosen because it only requires the training of 20 binary classifiers.

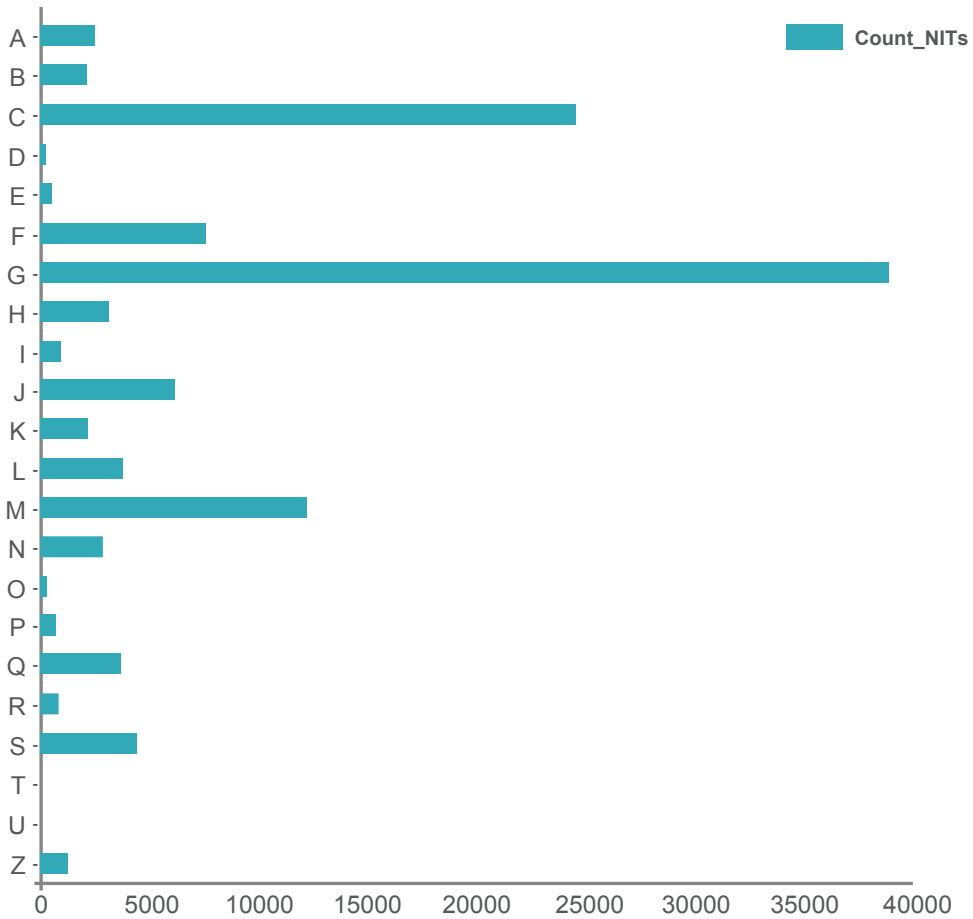
1 Of the 22 industries in the ISIC 4 international classification, those labeled T and U did not have sufficient data; therefore, only 20 industries were trained.

It should be noted that each of these 20 binary sorters can be different for each industry, and we can choose from a variety of alternatives such as **logistic regressions, decision trees, random forests, neural networks** among others.

The data presented strong imbalance problems, due to the fact that the turnover for each industry is recharged towards three industries, in descending order G, C and M. Figure 1 shows the distribution in the number of invoices for a particular day (June 7, 2020).

This relative distribution changes very little from day to day.

Figure 1. Distribution of the number of invoices by industry on a particular day



Source: Own elaboration

To mitigate the impact of *unbalance* of classes in the performance of the classifiers, the **ascending sample of the minority class** (Raschka & Mirjalili, 2017, chapter 7), which consists in sampling with substitution elements of the class with less frequency until obtaining a number of records that equals those of the majority class.

Training and assembly

The training process for binary classifiers was carried out using the computer language **Python** (version 3.7.7), especially libraries **sckit-learn** and **nltk**. Annex 3 shows the "best model" for each industry, which was selected considering the F1 metric (Raschka & Mirjalili, 2017), which uses a harmonic mean between the *accuracy* and the *sensitivity* of each model compared.

Table 3 shows a summary, with 3 of the main evaluation metrics for the 20 binary classification models. It is noted that none of them has an accuracy below 90%. It is worth noting the relatively high rate of false negatives for industries D and Z (12% and 10.5% respectively), which presented the lowest accuracy. Coincidentally, these two industries are among those that have the least number of invoices issued within the training data.

The purpose of the study is to build a robust multiclass classifier based on the 20 binary classifiers already optimized for each industry. The method chosen for this purpose is known in the literature as **weighted majority vote classifier** (Raschka & Mirjalili, 2017, chap. 7), which consists of passing a text through each of the 20 binary classifiers and choosing as a prediction the one with the highest weighted probability. The weighting method must reflect the "confidence" in the performance of each classifier. The simplest way to weigh the probability of class membership is by the average accuracy of the classifier, but in this study, it is proposed to use the following weighting criterion for the i-th industry:

$$w_i = \frac{Exactitud_i}{(1+ FP_i)(1+ FN_i)}$$

This criterion penalizes models that have high rates of false positives or negatives, in addition to considering accuracy in the classification.

Monetary distribution matrix by industries

Another purpose of this study is the construction of a matrix that takes advantage of the probabilities of belonging to other industries generated by each binary classifier. This is for the purpose of detecting when an issuer is offering goods or services with a majority presence in industries other than their nominal classification.

The procedure proposed in the present study is to "normalize" the odds-weighted industries that were associated with each invoice (beyond that to each bill is assigned to a single industry as predicted) and distribute the total value of the invoice, proportional to this probability.

This procedure can be done from the most granular level of invoices, through issuers and finally by industries, providing a distribution of revenue by nominal industry associated with other industries. At the issuer level, this procedure would allow locating invoicers with high percentages of revenues associated with industries other than the declared one.

Table 3. Some performance metrics for the binary classifiers

Industry	Accuracy	False negatives	False positives
A	98.6%	1.9%	0.9%
B	95.8%	5.9%	2.7%
C	96.5%	3.5%	3.4%
D	93.9%	12.0%	0.6%
E	95.9%	5.3%	2.8%
F	95.2%	5.5%	3.9%
G	96.0%	4.3%	3.7%
H	99.2%	1.2%	0.4%
I	95.8%	6.6%	2.1%
J	99.2%	1.1%	0.5%
K	98.5%	1.2%	0.9%
L	99.0%	1.3%	0.8%
M	96.0%	5.1%	2.9%
N	97.4%	3.4%	1.7%
O	98.2%	2.4%	1.1%
P	97.6%	4.0%	0.9%
Q	98.9%	1.5%	0.7%
R	98.7%	2.0%	0.7%
S	98.6%	2.1%	0.7%
Z	92.1%	10.5%	5.2%

Source: Own elaboration

As an example of the above, Table 4 presents the example of 5 invoices distributed between two anonymized issuers. For invoice 1 from issuer 1, you can see how the total value of the invoice is distributed among three industries (A, C and G); while for invoice 1 from issuer 2, the total value of the invoice is attributed to a single industry (G).

If you consolidate and add up the values of the invoices issued by each issuer in a fixed time period (monthly, for example), it is possible to quantify a percentage of their income are associated with their nominal industry and other industries; and you are thus able to build up a system of alerts that check to issuers with atypical behavior.

Table 4. Revenue distribution by industry for two anonymized issuers

Emitter ID	ID_Facture	Income distribution	Total Invoice
1	1	{'A': 89238.75, 'C': 80069.92, 'E': 69391.33}	$ 238.700,00
1	2	{'A': 70583.48, 'C': 63331.38, 'E': 54885.14}	$ 188.800,00
1	3	{'C': 114029.24, 'E': 118625.76}	$ 232.655,00
2	1	{'G': 32380.0}	$ 32.380,00
2	2	{'A': 73763.76, 'C': 68138.24}	$ 141.902,00

4. CONCLUSIONS AND FUTURE WORK

The use of machine learning techniques has permeated different industries and business domains, with the aim of modeling and solving problems in an alternative way. Electronic invoicing is no stranger to this phenomenon, especially when the daily volume of transactions in any given country is in the order of millions. In this sense, the use of natural language processing techniques was proposed for the classification of electronic invoices based on the descriptions of goods and services reported in them.

Considering that the texts reported are short and lack the syntactic and semantic richness of more elaborate texts, TDF-IDF representations were used for the use of basic machine learning techniques, in ensemble mode.

The results obtained to classify invoices according to the CIIU4 divisions were quite acceptable and exceed 90% accuracy for most industries. These results allow the construction of a matrix that distributes invoices by ISIC4 division for each electronic invoicer.

This matrix can be seen as an input for a more detailed analysis of the behavior of electronic billers, including the construction of Leontief's input-product matrix, which can serve as an element of tax control in various aspects.

The baseline presented can be used for the construction of future tax and national economic policy applications, for example, when the analysis is expanded to include variables such as geographical layout, goods and/or services categorized, tax rates, and other aspects included in electronic invoicing.

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6. ANNEXES

Annex 1: Description of the text cleaning procedure

The raw texts of the invoice lines were subjected to a cleaning procedure where numeric characters, punctuation marks words of less than 4 characters were removed with some exceptions (2 and 3 characters) that represented acronyms with special meaning and frequent use within certain industries.

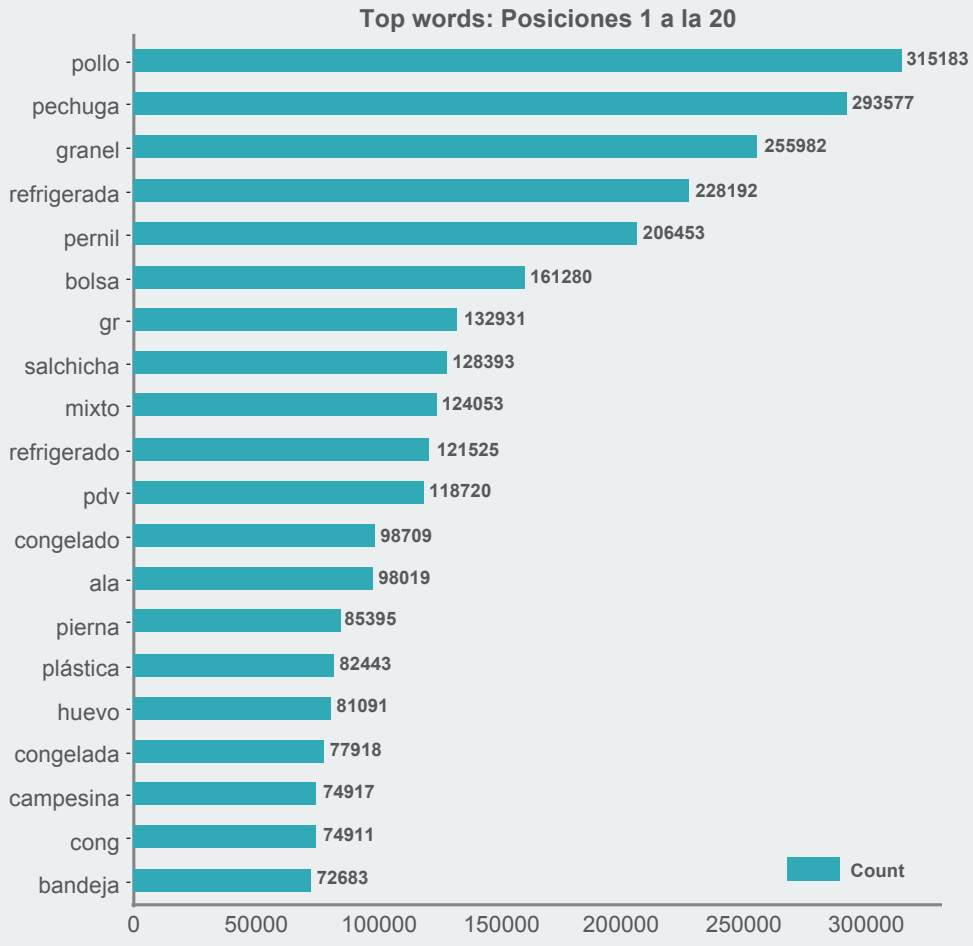
After cleaning, the empty invoice lines were removed, and word clouds were built with the remaining ones as shown in Figure 2.

Figure 2. Word Cloud for industry A (agriculture, livestock, hunting, forestry and fishing)

Source: Own elaboration

This same cloud put in bar format, allowed to obtain the most frequent word ranking for each industry, as seen for the same industry A in figure 3:

Figure 3. Top 20 most frequent words on industry invoices A



Annex 2: TF – IDF Representation

Is given by the expression:

$$TF - IDF(i,j) = tf_{i,j} log\left(\frac{N}{1+df_i}\right)$$

Where i is the token of interest, j the revised document, df_i is the number of times document j appears, df_{ij} is the frequency with which term i appears within document j and N is the total number of documents in the corpus.

Annex 3: Binary classification models used for each industry

Tabla 5. Characterization of binary classifiers by industry

Industry	Model	Representation
A	Logistic model	2-grams
B	Random forest	2-grams
C	Logistic model	2-grams
D	Logistic model	2-grams
E	Random forest	3-grams
F	Random forest	2-grams
G	Logistic model	3-grams
H	Logistic model	2-grams
I	Random forest	2-grams
J	Logistic model	3-grams
K	Logistic model	2-grams
L	Logistic model	2-grams
M	Logistic model	2-grams
N	Logistic model	3-grams
O	Logistic model	2-grams
P	Random forest	2-grams
Q	Logistic model	3-grams
R	Logistic model	2-grams
S	Logistic model	2-grams
Z	Random forest	2-grams

TAX POLICY MANAGEMENT

in the underground economy in Latin America

Rosa Elena **Orna Salazar**

SYNOPSIS

The present work consists of a review of literature, as well as the theoretical framework on the importance of public management in the establishment of tax policies that reduce the cost of management in an environment of the underground economy growth, even more so with the health, social and cultural crisis events related to COVID-19. It is important to make changes in the tax policy that can reduce tax evasion and avoidance, better control fiscal expenditure to generate greater revenue to the State, and that with the appropriate control is able to fulfill the expected functions.

Keywords: Public expenditure and revenue, Tax policy, Crisis, Shadow economy.

CONTENT

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INTRODUCTION

This literature review and analysis focuses on the cost involved in the role of the State in the management of policies, mainly those related to the tax issue, considering the environment. Mazzucato points to the state as an "active, enterprising and risk-taking agent", thus raising the need to abandon the caricature idea of a "boring" state that only generates regulatory frameworks for private action; on the contrary, it leads us to "rethink the process of wealth creation" in the world, under the concept that "all actors are responsible for creating value". (Mazzucato, 2014). For its part, the State, to fulfill its purposes must maintain a balance between income and expenditure; the taxes are one of the sources of income with the greatest relationship to the Gross Domestic Product (GDP), so it is essential to have an adequate fiscal policy (Curcio, et al 2018), to manage, as well as to assess both the costs as well as benefits.

The COVID-19 pandemic and associated confinement have generated unprecedented tax measures worth USD 11.7 trillion, or close to 12% of GDP (IMF, 2020). This strong government response has saved lives, supported vulnerable individuals and businesses and mitigated the impact on economic activity. However, the consequences of the crisis on public finances, added to the loss of income due to the contraction of production, have been enormous; for example, the social impact of the pandemic will be profound due to the high informality in the region, as indicated by the International Monetary Fund (IMF), since it estimates that 50% of total jobs are within a *informal economy* (FMI, 2020); which is defined as "that remunerated activity that, being legal in terms of its nature, is not declared to the tax authorities or to the Social Security" (CE, 2007).

An interesting fact to observe is that for 2017, the average percentage of underground economy with respect to Gross Domestic Product (GDP) the total of the 28 European countries stood at around 17.3% (Left, 2020), with the pandemic of the corona-virus (COVID-19), according to the report of the Institute of Economic Studies (IEE, 2020) the underground economy results in an overload tax for those taxpayers that do comply with the tax regulations, distorting the value of GDP, which is considered as a ratio or indicator of the tax burden. In Spain, for example, the challenge is to reduce the underground economy to increase the collection, which passes through both, by improving the efficiency in the fight against tax fraud, as well as betting on tax systems more affordable for the taxpayers that may increase the opportunity cost of operating in this environment of underground economy, which for the case of Spain surpasses that of the whole of the European Union (22% vs 13%, respectively, according to the International Monetary Fund (IMF) (IEE, 2020).

In the case of Latin America, where it will focus the analysis, according to reports from the Economic Commission for Latin America and the Caribbean (ECLAC) estimates a fall in the growth rate of 9.1%, which will also be accompanied by significant increases in the poverty rate, which will reach a 37.3 per cent; increase in addition of the unemployment rate at around 13.5 per cent and in turn significantly increase the inequality in the region (ECLAC, 2020). That is why the dimension of the health, economic and social crisis of COVID-19 has dealt a severe blow to economies that were already in a delicate situation. While Brazil and Mexico have adopted a laxer strategy against the coronavirus, most other countries have put in place strict and longer confinement than in Europe or Asia. According to the inter-American Development Bank (IDB, 2020), suggest that the region is in an unusual position because it has had to deal with three situations that have had economic impact: "the activity and the mobility of foreign investment and the sharp fall in remittances." Thus, this situation of COVID-19 has increased activities that have generated income, but which have not been declared; similarly, when individuals encounter obstacles in exchange within the legal economy, a transfer to the underground or hidden economy occurs. These obstacles are mainly the high tax burden, as well as the high complexity of tax, administrative, and labor obligations (Floridi, A., et al., 2020).

As initially mentioned, the focus of this analysis is based on the costs incurred in managing the tax policy, for which the identification of the main interest groups involved in this process is necessary; because the legitimacy of policies must also be assessed in terms of the ideas, needs and interests of a wide range of policy

stakeholders such as lobbyists, target groups, and informal political actors (Park et al. 2015; Wallner 2008 cited by Park & Lee, 2020). Also, the existing literature on the legitimacy of policies emphasizes not so much the role and interpretation of society's stakeholders, such as civic associations, policy experts, lobbyists and recipients, and citizens, but is focused on political elites and central decision-makers. Therefore, it is necessary to meet the needs of the various social actors to achieve the legitimacy of policies (Park & Lee, 2020). Likewise, the influence of a public administration is framed by its fiscal policy in this way for (Castillo, 2010), the fiscal policy then is the generator of legal instruments, which allow an effective tax collection, which is reflected in the fulfillment of the objectives and at the same time allows configuring through tax collections the state budget, which is intended to ensure the economic stability of the country and then will improve the growth of productive resources of society. It is necessary to specify that the two main instruments of fiscal policy are public expenditures on the one hand and taxes on the other (Gamboa, et al., 2016).

The objective of this preliminary analysis, which will later conclude in research for the project to obtain a Ph.D. degree, is to analyze the costs incurred in the management of fiscal policy in Latin America, taking panel data, as well as considering all the agents involved in an environment of growth in the informal economy, even more so due to the repercussion of the COVID-19 pandemic; taking as a starting point the review of the existing literature as well as leading to the reflection of the application of a strategy that allows the decrease of informality considering different models in the application of the management of fiscal policies, focused on direct taxes such as the Income Tax.

1. LITERATURE REVIEW

For the present work, the related topics are focused on the costs of managing the fiscal policy in the environment of the underground economy, considering in turn the current COVID-19 pandemic.

Of the review conducted, it should be noted that, although the research has provided an important contribution on the understanding of the informal economy, this does not satisfy necessarily the needs of tax administrations (OECD, 2017), and at the same time there is the need to consider all the actors involved in the process of implementation of fiscal policies so that they can take effect.

Therefore, the review has been grouped into five groups, which can be found in the attached file. First, Park's work (2020) focuses on Habermas' Theory of communicative rationality, which allows us to point out that for the application of public policies, the participation of all actors is necessary; that is, not only the formators of these policies. This is really necessary for its proper application, so this is the point of coincidence with the research. However, they do not consider the pandemic environment or the shadow economy; just as they are not specific in the proposal of tax models on income tax.

There is a second group of studies related to public management as well as fiscal policy in which three research papers related to innovations in public policies for the reduction of the shadow economy have been identified (Williams et al, 2013); another work on the estimation of hybrid models suggested by Chan and Eisentat (2018a) to identify and quantify the impact on the growth of Gross Domestic Product (García & Collantes, 2017); as well as research on the relationship between corruption and public debt, related to the management of the State (Apergis & Apergis, 2019). From these studies, the variables we are interested in developing are fiscal policy, gross domestic product (GDP) and public debt.

In a third group, four research papers related to the underground economy and its effects on fiscal policy have been found, with different methodologies that allow us to approach the issue in different ways. From the literature, talking about the informal economy is also related to the informal economy, which cannot be completely eradicated from society. So, it is a fact well known by all researchers of this phenomenon, as well as the coexistence of both formal and informal sectors (Mishchuk, et al., 2020). Considering the study of Schneider, F. (2005) (cited by Mishchuk, et al., 2020), on the impact of the informal economy on macroeconomic

growth and stability that varies significantly in countries with different levels of development, economists often confirm the positive externality of the informal sector to the formal sector (Saunoris, 2018; Bilan et al., 2019b, cited by Mishchuk, et al., 2020). The influence of such a mechanism is manifested in the creation of a kind of "Welfare regime" in emerging economies (Barrientos, 2009, cited by Mishchuk, et al., 2020).

On the other hand, for several years various quantitative research has been carried out to estimate the size of the underground economy, using different methods, applied to countries, regions and, in general, to the whole world, in a certain time interval. Several sources point out that in 1977 Gutmann (1977), carried out the first work that measured the size of the underground economy, using the money demand method, in the North American economy, in the time series that goes from 1939 to 1978; and indicates that the underground economy for this period stands at 9.4% of GDP.

Later, researchers such as Feige (1979, 1981), carried out two studies, one for the United States economy and another for the United Kingdom, using the monetary method. In 1982, Frey and Weck decided to measure the underground economy using another method, which is the Model of Multiple Indicators and Multiple Causes (MIMIC), in order to include a greater number of causes that did not have to be purely monetary. They focused on a group analysis, examining the developed countries of the period from 1960 to 1978. And they found that the average informal economy for those countries was 8.3% of GDP (Frey and Weck, 1982).

Knowing the size of the underground economy is important to evaluate its impact, and as has been pointed out, one way of measuring it is the MIMIC model, which has been a little forgotten by researchers from the 80s to 2000, because it is not a statistical technique originating in the branch of the economy. Thus, Tanzi (1983) and Matthews (1985) continued Feige's studies in the United States and the United Kingdom. Where Tanzi studied the American economy for the period from 1930 to 1980 and found that in the 1930s the black economy was 7.6% of GDP; in the 1960s, it was 4.5%; and in the 1980s, it stood at 6.7% of GDP. On the other hand, Matthews, analyzing the British economy between the years of 1961 and 1983, found that informality was 11.94%, very close to what was found in Feige's studies. In 1997, Schneider (1997) decided to find the size of the shadow economy in Western Europe, in the periods of 1989-1990 and 1990-1993, for the first period indicates that the shadow economy for the region was 6.7% of GDP, while the second recorded an informality of 8.2%. In addition, Johnson, Simon, Daniel, and Andrei Shleifer (1997), studied the countries of Eastern Europe, from 1989 to 1993, and found that the underground economy was 10.5% of GDP.

Schneider (1998), continuing his work on the monetary method, but now based on the OECD countries from 1994 to 1997, found an estimate of the size of the underground economy of 8.8% of GDP. On the other hand, the OECD (2000) in corroboration of Schneider's estimates proceeded to make the estimate autonomously in the year 1998 and obtained that the member countries had on average a degree of informality of 18.25% with respect to the Gross Domestic Product.

In the grouping considered we found work on the effects of fiscal policy on the shadow economy, based on two tools: taxation and public expenditure (Huynh & Nguyen, 2020), but it does not consider for example the intervention of the agents involved or the management of the fiscal policy implementation. Also interesting is the work on the underground economy considered as a methodological tool for the evaluation of consumer needs, as well as the real potential of a national economy and business as a tool for the exposure of laws, in this research (Kuznetsova & Kuznetsova, 2015) consider the Peruvian experience through the work of Hernando de Soto. Another work is related to the impact of subjectively perceived deterrence on undeclared work in Germany (Feld & Larsen, 2012), in which they assess the costs and benefits of individual taxpayers, which influence the amounts of fines, as well as the tax advantages that are given. Finally, in this group we have selected research on sustainability levels in micro and macroeconomics, as well as their relationship with tax effects and the underground economy (Popescu et al, 2018). These investigations allow us to evaluate the approach, as well as the possibility of measuring the

size of the underground economy related to variables such as income rates, taxes, rules, governance.

Then we found a work related to the black economy and its effects on the economy. In this case, it was determined that tax losses from the budget and social insurance funds are accompanied by a significant increase in primary income as a result of tax evasion. Finally, we found a study related to the reduction of the underground economy, which considers that both governments and policymakers promote formalization through various interventions ranging from simplifying registration procedures to achieving an increase in law enforcement (Floridi et al, 2020).

The review shows that, although there are research papers related to the black economy and fiscal policy, most of them use only one method for the measurement of the black economy, do not apply a mixed methodology, in most cases use quantitative methods and focus on certain variables. The research proposal will be focused on the evaluation of the costs of fiscal policy management, an issue that is not developed in depth in the reviewed studies. Similarly, we do not consider the underground economy as a dependent variable but as a latent variable, also considering the evolution of fiscal policies on income or income tax until the 2020 period around the crisis of the COVID-19 pandemic, and also considering all the agents involved in the process of managing policies specifically in the tax environment. In addition, the proposed study period and the Latin American countries to be analyzed will allow projecting recommendations to propose a paradigm shift in the application of fiscal management models that have fundamental principles to ensure voluntary compliance, as well as improve collection and reduce the underground economy.

2. THEORETICAL FRAMEWORK

Theory of communicative rationality of Habermas

Habermas' critical theory is based on a normative standard that is inherent in the structure of society: action and language. His early critiques of positivist analysis and his theory of communicative action have been a crucial springboard for bridging the gap between the philosophy of language and public policy analysis (Park & Lee, 2020).

Habermas addresses the theoretical problems of morality, language and society together in the framework of an integral theory of communicative rationality. For this purpose, he takes up different theories of the present, such as Karl-Otto Appel's discourse theory; Austin and Searles' analytic philosophy of language; Luhmann's theory of systems or Gadamer's philosophy of hermeneutics, to name but a few. Considering the multitude of heterogeneous theories that inspire Habermas' theory of discourse, we will try to address the question of the foundation of moral norms and judgments (Rojas, 2012).

This theory allows to evaluate the normative application in a hermeneutic way, considering at the same time all the agents involved in the process of fiscal policy management.

Schools of thought regarding taxation

In this case, we find Tanzi (1998), who argues that those who evade taxes are considered part of the black economy; on the other hand, there is another approach that points out that the absence of solid institutions in the economy allows the existence of corruption in a black economy (Dreher et al, 2009). They also point out, in a different way to Friedman et al. (2000) point out (2000) that corruption and the shadow economy need not act as substitutes but should act as complements since weak institutions and corruption push people and businesses underground. Thus, these arguments have found empirical support in the literature (Schneider and Enste, 2000; Dreher and Schneider, 2010; Kaufmann, 2010). However, only a more limited literature examines the question of how corruption impacts public debt. Johnson et al. (1997) and Friedman et al. (2000) provide evidence to the question about the fact that tax evasion undermines the ability to provide public goods, making them resort to more intensive borrowing (Apergis & Apergis, 2019).

Fiscal policy management

The management of fiscal policies is related to the action of the State and its implementation with the Tax Administrations. In other words, we must consider both political and technical aspects.

According to Howlett & Ramesh (1995), quoted by Mujtahir, Suwitri, Darm (Conference, 2018), policy objectives, as well as the meaning of varying degrees of abstraction and policy application, show how to design policies to achieve goals, employing appropriate instruments. Thus, successful policy design requires that public goals and objectives are coherent.

The preferred implementation, in the policy tool and calibration tools, should be equally consistent.

The policy and implementation objectives, together with the above, need to be coherent and convergent. Therefore, it is important to choose policy instruments so that the results can be reflected within the government framework established in a logical way according to the policy regime.

It is important to underscore the coherence that should exist in this process, which should be observable in every public policy and in every policy space that is applied (Cejudo, G; Michel, C, (2016)). Therefore, in many cases, monitoring instruments have been used based on the logical framework methodology (LFM), which seeks that each program has clearly defined its objective, the activities that will be carried out to achieve it, the officials in charge, and the indicators that will be used to monitor and evaluate the results objectively.

It is important to cite the article by Rubio J. (2019) where he mentions that according to Lascoumes and Le Galès (2007), although instruments are a central theme of public policy, academic studies on them are relatively scarce. So, a public policy instrument is for them:

A device that is both technical and social, which organizes specific social relations between the State and those with which it relates, according to the representations and meanings that it entails. It is a particular type of institution, a technical device with a general purpose of carrying out a concrete concept of the relationship between politics and society, supported by a concept of regulation (Lascoumes and Le Galès, 2007, p.6). Thus, the approach of Lascoumes and Le Galès (2007) is institutional. For them, instruments are institutions that determine the way in which different actors behave and privilege some actors over others (e.g., 9).

Rubio J. (2019) mentions that authors such as van der Doelen (1989) (cited in De Brujin and Hufen, 1998), as well as Majone (2005) and Moore (2007), have proposed different typologies of policy instruments, the same ones that Rubio consolidates in the following table.

Table 1. Public policy instruments

Type		Characteristics	Examples
HARD	Normative, legal or regulatory	They are intended to modify a desirable or undesirable behavior in a mandatory or coercive manner and are applicable to general or specific groups of the population.	Laws, regulations, prohibitions, licenses and permits.
	Organizational and administrative	They hope to contribute to the resolution of a problem by modifying organizational structures and providing human, material and budgetary resources to the actors in charge of implementation.	Modifications in secretariats, addresses, human resources, materials and budgets.
	Economical	They aim to generate incentives to modify desirable or undesirable behaviour. They are not coercive, but those who want to carry out an action must pay for it and thus internalize the costs of their action.	Fines, special taxes, subsidies and payment of duties.
	Technical-scientific	They hope to modify the impact of certain activities through the use of technical and scientific advances.	Permitted or prohibited technologies, new technologies used and official standards.
SOFT	Educational	They contribute to capacity building.	Education, training, advisory and technical assistance.
	Communicational or informative	They seek to modify desirable or undesirable behaviour by providing information to the population on the effects of certain actions.	Advertising campaigns, communication of evaluations, management of public opinion.

Source: Elaboration by Rubio J. (2019) based on van der Doelen (1989) (cited in De Brujin and Hufen, 1998), Majone (2005) and Moore (2007).

In the present investigation of the public policy instruments that have been shown, we will focus mainly on the hard methods regarding the normative, legal or regulatory aspects, as well as the economic and technical-scientific ones. On the other hand, as for soft methods, the research will focus on the communicational aspects.

Tax pressure

The tax pressure is defined as the percentage of the income of individuals and companies that goes to the public coffers as taxes and Social Security contributions and is expressed in relation to the gross domestic product (GDP) of a country (Soto, 2019).

Informal Economy

To contextualize the objective of this research it is necessary to delimit the concept of the underground economy. Thus, in the case of the European Commission, it is defined as "any remunerated activity that, being legal in terms of its nature, is not declared to the tax authorities or to the Social Security" (EC, 2007). In the case of the Organization for Economic Cooperation and Development (OECD), the shadow economy is the set of "those activities that are produced in an economic sense, and relatively legal (depending on local standards and regulations) but are deliberately hidden from the authorities" (OECD, 2017). Another more general definition of the informal economy indicates that it can be defined as "all those unregistered economic activities that in some way contribute to the Gross Domestic Product (GDP)" (Frey and Weck-Hanneman, 1984).

In this way, you can find different definitions about this concept, as well as synonyms, such as black economy, underground economy, or informal economy. On the other hand, Feige (1979, 1996) argues that the informal economy includes economic activities that avoid costs and are excluded from the benefits and rights incorporated in the laws and administrative rules covering property, commercial licensing, labor contracts, financial credit, social systems, among others (Floridi, A., et al., 2020).

In practice, when individuals encounter obstacles in exchange within the legal economy, there is a shift to the underground or hidden economy. These obstacles are mainly the high tax burden, as well as the high complexity of tax, administrative, and labor obligations (Floridi, A., et al., 2020).

Now, fiscal policy management is the government's policy regarding the level of its purchases and transfers and its tax structure. (Rudiger, 2008 cited by Gamboa, et al., 2016). Likewise, the influence of a public administration is framed by its fiscal policy in this way for (Castillo, 2010), the fiscal policy then is the generator of legal instruments, which allow an effective tax collection, which is reflected in the fulfillment of the objectives and at the same time allows configuring through tax collections the state budget, which is intended to ensure the economic stability of the country and then will improve the growth of productive resources of society. It is necessary to specify that the two main instruments of fiscal policy are public expenditures on the one hand and taxes on the other (Gamboa, et al., 2016).

In an underground economy, expenses must exceed income, since, as mentioned, there is no data on income from illegal activities.

Types of shadow economy

Within the shadow economy, we can distinguish the following types:

Illegal economy

This includes all those economic activities that are prohibited. For example, trafficking in arms or drugs sold on the black market.

Informal economy

This type of economy refers to economic activities that are not prohibited but not declared. The crime in that case is in the non-filing of taxes.

An example can be seen in the hours of contribution of a worker. If you work and charge 8 hours, but only quote 6, he is charging two hours in black.

To conclude, we emphasize again that the objective of this paper is to examine the costs of fiscal policy management considering all the actors involved in the process as well as the current environment of both a growing underground economy and the COVID-19 pandemic, for which two tools must be considered: on the one hand, indirect taxes (General Sales Tax) and direct taxes (Income Tax), and on the other hand, the use of public expenditure.

3. METHODOLOGY

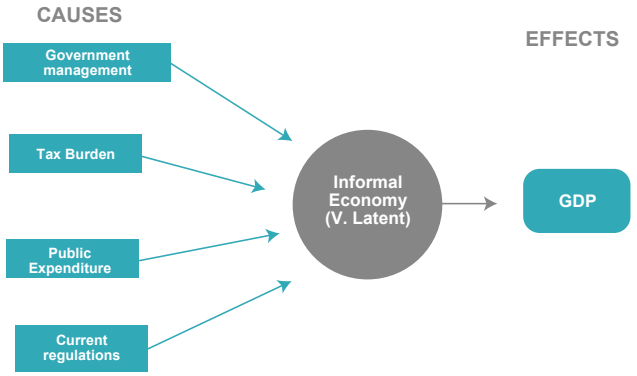
For this research work, a panel study will be used in the countries of Latin America for the periods from 2005 to 2020, a time in which the region has gone through various crises not only in economic but also political and health issues. Secondary sources such as comparative research papers will be used for this purpose. Similarly, in order to evaluate all the actors involved, it is proposed to conduct in-depth interviews with officials of the executive branch of the countries of Latin America, as well as professionals working in the Tax Administration. Similarly, we plan to conduct surveys of members of the various observatories in Latin America on the control of public expenditures, also considering members of trade unions or power groups.

The methodology to be applied shall be quantitative using at least two methods. We will work with linear regression, in addition we will use the Multiple indicators and multiple causes model (MIMIC), which allows us to measure the direct and indirect effects of the underground economy, through a joint analysis that includes regressions, econometric analysis and factor analysis. MIMIC is a model that is divided into two parts, one in structural equations and the other in quantification equations. Quantification equations relate unobservable variables to indicators, and structural equations establish the relationships of unobservable variables to their specific causes. In the MIMIC model, the structural equation is set as follows:

$$\eta = \gamma' xi + \zeta \ (1)$$

Where **η** is the latent variable which in this case is the shadow economy, the values **γ´** are scalar, **xi** are the vectors of the observed causal variables, and **ζ** is the vector residue.

Model



Hypothesis statement

Hypothesis 1: The greater the tax burden), the greater the shadow economy, which is increased by external shocks, all other things being equal, and affects Gross Domestic Product. Tax and care burden (Chen, H., Schneider, F., & Sun, Q., 2020).

For this purpose, it is necessary to evaluate the type of economic model applied by each country. According to various studies reviewed, it has been determined that if the executive branch decides to increase the value of tax rates or rates, then due to the existing pressure, taxpayers do not declare their real income, even more so if there are environmental conditions that facilitate this practice, such as political, health and/or economic crises. Statistical information on changes in Gross Domestic Product is available.

Hypothesis 2: Cuanto The greater the intensity of government regulation, the greater the underground economy, ceteris paribus. Intensity of state normativity (Chen, H., Schneider, F., & Sun, Q., 2020).

In this case it is related to government management, regulatory enforcement, as well as the importance of considering the stakeholders' objectives in the enforcement of these regulations.

Hypothesis 3: The higher the public expenditure without there being transparency in the use of resources by the government, the higher the management costs affecting the Gross Domestic Product (GDP).

There is a need for the control of public expenditures by the State and for the executive's accountability to be objective, reflecting the use of the proceeds as a source of income in relation to the detail of expenditures that should be reflected in works and services for the population.

4. CONCLUSIONS

- The control of public expenditure would improve the costs in the management of the policy, which has an impact on the Gross Domestic Product (GDP), so the mechanisms should commit all the groups involved.

- Crises generated such as COVID-19 have increased the informal economy (informality), hiding income, so it is important that tax administrations develop fiscal policies that reduce both the evasion and the existing avoidance.

- The management of the tax policy must take place with the participation of governments and the tax administrators to develop fundamental pillars that evaluate the environment and build a real tax culture in each Latin American country.

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INCORPORATION OF THE CONCLUSIVE AGREEMENTS

into the Argentine tax procedure

Eugenio **Sideris**

SYNOPSIS

The concept of the voluntary conclusive agreement is incorporated into the procedure for the tax assessment at national level, which gives the taxpayer the opportunity to participate actively in the verification of the de facto assumptions established in the law, thus obtaining the fair determination of the tax.

Its application is reserved exclusively for cases where there is an uncertain relationship regarding any of the elements of the taxable event in order to guarantee the principle of legality by limiting to those cases where there is a lack of definition or imperfection of the legal system, its quantification or lack of evidentiary elements.

Keywords: Tax determination, Voluntary conclusive agreement, Collegiate conciliation body.

CONTENT

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INTRODUCTION

This paper intends to study the tax conclusive agreement, incorporated into the national tax procedure[1].

As a general rule, the tax procedure provides that it will be the taxpayer or responsible that need to declare the configuration of the taxable event giving rise to the tax liability and its amount by the submission of the tax declaration, which shall be subject to tax audit and in case of its absence or challenge, as a subsidiary, and eventually, the state will proceed to determine ex officio the taxable amount.

So far, the traditional procedure now includes the option, at the request of the treasury, of seeking the voluntary conclusive agreement, which the State as a whole has, to ensure the principle of legitimacy of its externalized acts, which is materialized with a more certain determination.

1. INCLUSION IN THE TAX ASSESSMENT PROCEDURE

The purpose of its incorporation is to reflect the Administration's tendency to give more room for taxpayers' participation in the formation of acts that have traditionally been characterized by their administrative unilateralism, i.e., in this way, taxpayers are brought closer to the administration, in view of the existence of cases of uncertainty, which will allow perfecting the elements of the taxable event and its quantification in order to determine the tax credit in a more accurate manner.

The current system of tax assessment means that the application of the rules leading to the determination of the tax debt, either when the taxpayer must comply with its obligation to self-assess or when the Administration verifies such action or settles in the absence of such action, often gives rise to uncertainty, the cause of which can be found in the complexity and frenetic evolution of the tax phenomenon, giving rise to a dispersed and fragmented experience and reality[2]. That does not go well with the principles of legality and legal certainty[3].

To this must be added, as in all branches of law, the existence of indeterminate legal concepts that have a vague character requiring for their concretion, assessments and technical knowledge that judges and experts often do not have. These terms produce a lack of fullness in the law, a consequence of the limitation of the language to apprehend reality, which means that the terms used by the legislator can be filled with different contents, which generates abundant discrepancies that must be given to these concepts, on which an administrative conciliatory solution seems more efficient than reaching a judicial instance to impose its criterion on that of the Administration.

Other assumptions occur when the administration finds itself with a lack of elements or the elements are very complex or their dimension is difficult to establish in order to determine the tax liability, in this case, we are faced with a necessary component for the application of the system, which is given by the inability of the administration to determine the tax liability[4].

1 Article 183 TITLE VII-Tax Procedure, Law 27430 sanctioned on 27/12/2017, promulgated by Decree 1112/2017 of 28/12/2017 and published in the Official Gazette of the Argentine Republic on 29/12/2017, effective as of 30/12/2017

2 Krebs. W. "Contratos y convenios entre la Administración Española" en Documentación Administrativa N° 235-236 1993 p. 59, citado por Zornoza Pérez Juan, ¿Qué podemos aprender de las experiencias comparadas? Admisibilidad de los convenios, acuerdos y otras técnicas transaccionales en el Derecho tributario español, p. 126".

3 Martinoli Carol. Alternative formulas for the resolution of tax disputes. Comparative Law Analysis. AEAT/ IEF/ CIAT Monographs Contest, 2017 Winning Work. p. 15.

4 Damarco Jorge H. The conclusive agreement regulated by Law 27.430 (first part) IMP-Practice Professional 2019-L, 86 item III.

The acceptance of the figures of the agreements, in cases of uncertainty in the determination of the elements of the taxable event, tending to the determination of the tax obligation with a certain participation of the taxpayers in the formation of the acts requires a waiver by the tax agency to assert its powers imperatively and unilaterally[5].

The rule allows the administration to choose between using the traditional unilateral form or seeking tax consensus with the taxpayer of the essential points that present a degree of hesitation as expressed by Zornoza Pérez[6] "...nothing prevents the law itself from establishing the framework within which agreements between tax creditor and debtor can be given relevance" achieving greater proximity to the true birth and quantification of the tax obligation[7].

Bertazza[8] says "As from this reform, our tax system incorporates the global trend towards the search for consensual solutions to conflicts, in line with the recommendations of international organizations with competence in this regard... it aims at achieving greater efficiency in tax administration... the value evidenced by the conclusive agreements is not necessarily linked to a greater volume of collection, but to an improvement in the quality of the Tax Authority-taxpayer relationship, provided by more egalitarian positions at both ends, and with the ultimate purpose of providing in a better way to the general interest committed to achieving a tax collection adequate to the constitutional principles that legitimize it."

The Tax Administration does not relate directly with the taxpayer as the holder of a tax interest that consists of obtaining taxes in the form of a credit right but develops a tax assessment function entrusted by the law to ensure compliance with the law so that in taxation topics, both the legal position of the taxpayer and that of the Tax Administration are defined by law and inspired by the protection of general interest of generating certainty, and on the other hand, mitigates litigiousness[9].

Therefore, the presence of uncertainty makes us think of the convenience of implementing solutions that can reconcile the interests of the Administration and the taxpayer, in this situation, both parties are interested in their disposal in order to overcome the inaccuracy of the rules for determining the taxable event.

2. ASSUMPTION FOR IMPLEMENTATION. UNCERTAINTY

For the application of the agreement, the existence of a doubt related to the birth of the tax obligation is required, both from the factual circumstances and from the legal regulation, comments Zornoza Pérez[10] "... the proper configuration of these agreements on the facts will require the establishment of limits for their admissibility, since by their nature they are figures that only make sense where there is a certain uncertainty about the facts with tax significance..."

One of the central issues to be considered is delimited when the Administration is entitled to enter into these agreements, i.e., we must establish what kind of uncertainty of the elements of the taxable event enables the use of the agreement, since the principle of legality limits the actions of the tax agency, as Ferreiro Lapatza

5 Arrieta Martínez de Pisón. The records of the Inspection of taxes p.398.

6 Zornoza Pérez Juan ob. cit. p. 127 and footnote 28.

7 Mrs. Gonzalez-Cuéllar Serrano M. Luisa. Los Procedimientos Tributarios: Su terminación transaccional, p. 33.

8 Bertazza Humberto J. Ley 11.683 de Procedimiento Tributario Comentada.

9 Commentary to article 133. The Conclusive Agreement of the Model Tax Code of CIAT (2015) expresses that "These mechanisms seek to establish a relationship of greater equality between the tax administration and the taxpayer, (powers-guarantees of the taxpayer), promote administrative impartiality, reduce litigation and improve legal security."

10 Zornoza Pérez Juan Zornoza Pérez Juan ob. cit. p. 130.

says “if the legislator has reached, after a meticulous examination, an acceptable degree of certainty on the taxable events carried out, he has nothing to “propose” to the taxpayer (...) But the legislator knows that the inspection performance makes impossible the meticulous and detailed analysis of each of these assumptions; in these cases -explains this author- the legal system allows him to compromise[11]”.

Therefore, we must know if the budget of the agreement is given before the existence of uncertainty that generates controversy or litigation to which the parties need to eliminate it to guarantee legal peace or if this procedure can also be used before the existence of certainty of the tax legal position, where there is doubt about the possible judicial option. In addition, it is important to set the investigation limit required of the tax agency to eliminate the uncertainty prior to the use of the agreement.

For this, following González-Cuellar Serrano[12] we can distinguish doubt objectively and subjectively by reserving only the first one to the agreement between the treasury and the taxpayers.

To consider the aforementioned characterization, we must verify that the uncertainty arises as a result of the application of the tax assumptions established in the legal norm as its quantification put at the service of a public interest and not in function of the particular position and subjective interests of the parties affected.

Objectivity, then, we will find it in cases where the issues of fact are maintained even by means of an audit, or on legal issues that are not established in the legal tax rules, in short as González-Cuellar Serrano expresses[13]“...it translates into the requirement that such a discrepancy has a rationally founded cause so that any objective observer who has the knowledge required of the parties in each case, could not reach a certain and unequivocal knowledge.”

Therefore, this objective doubt will have its reason in the face of the imperfection of the legal system, without affecting the principle of legality or clarifying the factual assumptions in the face of the impossibility of its knowledge arising from a reasonable investigation, which leaves the administration without elements of proof[14] for which the tax agency must demonstrate that all reasonable instances of its search have been exhausted to induce that this uncertainty is objective, which will allow it to enable the conclusive agreement[15].

On the other hand, subjective uncertainty, which are situations where the agreement should not be used, is found in cases where the parties are not aware of the tax law rules and the legal system in general, also when there is certainty of the legal tax position but there is no conviction of the triumph of such position in an eventual judicial claim or in the factual situations before the lack of investigation that allows dispelling the doubt on the concrete case, establishing a guideline up to where the action of inspection of the administration arrives to investigate a fact in a reasonable way to then before the continuity of the doubt allow, in the concrete case, the use of the agreement[16].

11 Mrs. Gonzalez-Cuéllar Serrano M. Luisa ob. cit. p. 127 Note 288.

12 Mrs. Gonzalez-Cuéllar Serrano M. Luisa ob. cit. pp. 125-130

13 Mrs. Gonzalez-Cuéllar Serrano M. Luisa ob. cit. page 126

14 Damarco Jorge H ob. cit.

15 Mrs. Gonzalez-Cuéllar Serrano M. Luisa ob. cit. p. 127 says: “With regard to the Public Treasury, it is claimed that it has exhausted all possibilities of investigation in order to obtain knowledge of the factual or legal situation required in each case. However, the duty of the tax authority to know the factual and legal issues is not unlimited, but must be related to the principle of proportionality, in each case to determine if the continuity of the activity unilaterally in order to clarify the uncertainty causes or not a disproportion between the employment of time and labour, and the chances of success. In no case is an expert study required that exceeds the knowledge that is required in each specific case. Objectivity on the part of the Administration is concretized in the impossibility of leaving the uncertainty by using its own means; that is, it is not required to consult an expert to solve the doubt.”

16 Martinoli Carol. Alternative dispute resolution mechanisms in tax issues, p. 27.

It is necessary to limit the fiscal action to situations where there is an objective doubt that allows guaranteeing the principle of legality, such as cases in which there is legal uncertainty, as well as those that have exhausted all the possibilities of investigation, in the rest of the events the fiscal Administration must defend its legal interpretation and obtain the proof in the factual questions[17].

Therefore, in the tax authority-taxpayer relationship for the application of the agreement, there must be an objective factual or legal uncertainty that makes it difficult to determine both the perfection of the taxable event and its true extent and the interpretation of the rule to be applied, which allows the material truth to have the possibility of prevailing over the formal truth, in order to carry out a more effective and fairer action.

3. OBJECT

The new rule incorporates the conclusive agreement for both issues of pure law and factual issues, i.e., to say that the agreement can be used in everything referring to the determinative activity that consists both in the verification of the existence and dimension of the factual and legal issues to apply to the specific case.

a. Factual issues

Among the functions and powers granted to the Administration is the tax audit[18] by which the tax authorities verify whether the fact produced by the taxpayer[19] is subsumed in the one described by the regulation, which in case of not coinciding with the tax return filed by the taxpayer[19] or in the absence thereof[20] and if not rectified by the taxpayer at the request of the acting inspection[21], the same will be challenged and the Administration will proceed to determine the payable tax.

This function of investigating the reality of the fact does not disappear, in principle, in the absence of collaboration on the part of the tax responsible, and the administration must obtain it with the available means in order to establish the material truth. It should be clarified that it is not appropriate to consider the existence of an objective uncertainty when a taxpayer or responsible party opposes or obstructs the exercise of the tax authority's audit powers or does not provide the documentation that would allow determining the facts since he had the burden of proof and we can reasonably presume that he knows the reality of the facts; in this case, the agency is authorized to assess on a presumptive basis[22].

On the other hand, when the administration with the rational available elements to carry out the investigation cannot fully establish the true facts, we can say that we are faced with an objective uncertainty that can be subjected to an agreement[23] enabling the tax administration, in the specific case, to enable the agreement procedure to eradicate the doubt about the assessment of the existence of the elements or dimension of the taxable event.

17 Mrs. Gonzalez-Cuéllar Serrano M. Luisa ob. cit. page 129

18 Article 3 Decree 618/97

19 Article 13 Law 11.683

20 Article 35 Law 11.683

21 Next article: Article 36 5th paragraph Law 11.683

22 1° Article: Article 18 Law 11.683

23 Mrs. Gonzalez-Cuéllar Serrano M. Luisa ob. cit. pp. 152-153 "...If the uncertainty is not objective, since it can be resolved by the use of the means of proof through an investigation procedure proportional to the result sought in the judgment of any subject with the knowledge required of the administration, the cause of the transaction will not occur nor, therefore, the justification of the search for the agreed establishment of the situation. If there is no uncertainty, the lawfulness of the services provided will be examined in the light of the principle of investigation. "

b. Purely legal issues

The law allows the agreement to be applied to resolve "the correct application of the rule to the specific case" and this interpretation of the legal rules will set a precedent for other taxpayers so in practice it becomes a general interpretation made by the agency[24], generating another alternative to interpret the legal norms, from agreements to the parameters established in articles 1 and 2 of law 11683, to those already existing[25].

Damarco is against the conclusive agreements in purely legal issues[26] and maintains that "The legal claim does not seem to me to be compatible with the rule of law...it does not correspond that the interpretation of the tax authorities (agreed with a taxpayer) be imposed by law in a mandatory manner in the particular cases of the conclusive agreement, depriving the taxpayer of recourse to the jurisdictional bodies. On this point, the agreement cannot be conclusive in the sense of definitively closing the legal question requires that, in all cases, the possibility of its judicial questioning is always guaranteed ..."

González-Cuellar Serrano[27] opines that "The agreements are made once the TA has exhausted the possibilities of clarifying the uncertainty about the will reflected by the rule in the legal consequences and reaches the conclusion of the impossibility of eliminating the doubt. That is to say, the solution desired by the legislator is objectively impossible to clarify, so the unilateral determination by the tax authority of an uncertain interpretation does not reflect the will of the legal system either, since this is unknown".

In summary, to the extent that the instance is enabled by the existence of uncertainty for issues of law, not set out in tax laws, with divergent or non-jurisprudential interpretations, applicable to the specific case that causes objective insecurity it has no limits in terms of its theme and on the other hand, it seems logical that they are published in order to have the possibility of being applied as precedents.

c. Difficulties in accurately identifying factual and legal issues

The determination of the facts relevant to the application of taxes is not a linear process in which address only issues of fact, but that involves a number of legal qualifications, and their differentiation is very difficult in the tax law given which is required to adjust the "real fact" to the "normative fact" at the time of determining the taxable events which require handling the fact that in each case give the reality qualification of the supposed facts with the application of the tax normative[28].

González-Cuellar Serrano[29] states "On the one hand, it is argued that it is impossible to separate both areas since an uncertainty about the facts necessarily implies a "secondary" uncertainty regarding legal issues and, likewise, the transaction about the factual circumstances will necessarily influence the application of the Law... they qualify, therefore, that the difference between the factual and legal estimation of the facts. Enunciating in a simplistic way the complex problem can be maintained that to the factual questions belongs every decision that answers the question "What happened?", while questions of law relating to the question "What does the legal system establish in this regard?"

24 Damarco Jorge H ob. cit. item IV. He criticizes in saying" ... the interpretative resolution is the official interpretation of the State and although it may be replaced by a subsequent interpretation, it is always subject to judicial review since the Judiciary has the power to interpret laws definitively"."

25 The general interpretation by the Federal Administrator (Article 8 Decree 618/97), another when the act of determination is issued ex officio (Article 17 Law 11683) and the binding consultation (Article a cont. Art 4 Law 11683).

26 Damarco Jorge H ob. cit. item IV.

27 Mrs. Gonzalez-Cuéllar Serrano M. Luisa ob. cit. Page 129.

28 Mrs. Gonzalez-Cuéllar Serrano M. Luisa ob. cit. Page 122 Note 273. Mrs. J. M. S. C. De facto problems in the application of taxes.

29 Mrs. Gonzalez-Cuéllar Serrano M. Luisa ob. cit. pages s. 124-125

For the purposes of the rule of the agreement, it is of great importance to be able to establish a factual or legal question when we first meet, because the agreement for the purely legal issues will serve as a precedent for other taxpayers.

d. Situations that by their nature, novelty, complexity, or transcendence require a conciliatory solution

Folco[30] clarifies that "In the first two cases the text of the fiscal law reproduces mutatis mutandis the formula proposed by the CIAT Model (2015) and then annexes the situations that, due to their nature, novelty, complexity or transcendence, require this type of conventional solution".

This last paragraph means that the object of the agreement can be extended to other special cases and must be regulated in order to establish the specific cases to be applied.

4. EXCEPTION TO THE APPLICATION OF THE AGREEMENT. CRIMINAL COMPLAINT

It should be reminded that the law excludes from the agreement proceedings on which it is appropriate to make a complaint under the terms of the Criminal Tax Regime we believe that the rule should have taken for its exception the mere existence of tax fraud established in the tax law[31], which subjectively requires the deliberate intention not to pay the tax and objectively the performance of maneuvers capable of achieving this result without being warned, regardless of the amount of the fraud.

5. TIMELINESS OF ITS APPLICATION

The time limit established for the application of the agreement is given by the issuance of the act determining the tax credit and not with its notification, i.e. it does not require its efficiency[32] but only its existence, consequently, it is configured prior to the stability[33] of the act that requires finality[34].

The issue not explicitly stated in the law is at what moment it is possible to use the referred option, there is a doctrine that considers that it would be enabled within the verification and control stages[35] and on the other hand there are other authors[36] that foresee the possibility of the option once the instruction of the ex officio determination procedure has been decided, which is when the dispute with the taxpayer or responsible party arise.

In our opinion, it is correct to make the administrative judge responsible for the determination of the debt the decision to submit the case to the consideration of the conciliation body[37], since the article in crisis is located in Chapter III, which groups the determination of the tax debt, so it can be interpreted that the legislator wanted to start the operation of the agreement in the period following the rejection by the taxpayer of the possibility to rectify the tax declarations timely filed according to the charges and/or credits that arise at the request of the

30 Folco Carlos M. Brief analysis of voluntary concluding agreements p.729.

31 Article 46 Law 11.683

32 Article 11 Law 19.549.

33 Giuliani Fonrouge Carlos María. Financial Law ob. cit. p. 536.

34 In principle, the ex officio determination cannot be reviewed at a later date because, like any administrative act, it cannot be revoked after notification to the person concerned, since this gives rise to a subjective right in his favour; moreover, this is provided for in Article 18 (1)http://onl.abeledoperrot.com/NXT/onl.dll?f=id$id=L_NAC_LY_19549.HTM$t=document-frame.htm3.0p= - Art_1 law 19549.

35 Bertazza Humberto J ob. cit.

36 Damarco Jorge H ob. cit. point IX

37 Next article: Article 16 2nd paragraph Law 11.683

acting inspection[38], i.e. in the process of determination in order to be the administrative judge in charge of the analysis to establish whether or not to submit the case to the consideration of the conciliation body.

6. STAGES OF THE AGREEMENT PROCEDURE

There are four stages of the settlement procedure.

The first will be reserved exclusively to the administration, through the administrative judge, which consists in the authorization of the agreement through submitting the case to the consideration of the collegiate conciliation body.

The second stage is of central importance since the law creates a conciliation body which issues the report recommending a conciliation solution or its rejection.

Subsequently, we will have the only intervention of the taxpayer that will consist in the adherence, or not, to the conciliatory solution proposed by the agency.

Finally, we will have the stage of the participation of the Federal Administrator that to approve of the elevated proposal, changing it into in Conclusive Agreement.

7. ENABLING THE INSTANCE OF THE AGREEMENT

a. Unilateral decision of the administration

The law gives the tax administration discretion[39] to decide to exercise its tax administrative function y means of the ex officio assessment procedure in the event of the taxpayer's failure to file a tax return or to challenge the tax return or to try to carry it out by means of a consensual procedure in the existence of an objective doubt when it considers that the agreement satisfies the general interest that governs the legal system, which is determined in accordance with the legality and tax capacity of each taxpayer.

The existence of a certain degree of discretion given to the tax administration must be admitted by the courts because this is an issue in principle alien to the judiciary and reserved for the administration, so that the role of the judiciary is to be limited to control that discretion has been exercised reasonably, not arbitrarily, and in accordance with the applicable rules and principles, the optimum would be to try to exercise this discretion, taking into consideration the point of view of the taxpayer and coming to a reasonable agreement.

b. Request by the taxpayer

In our opinion, there is no impediment for the taxpayer to request the opening of the agreement procedure within the framework of the ex officio determination procedure, being the power of the administrative judge to grant it or not, considering that in case of refusal the answer should be motivated.

Folco[40] says "...notwithstanding the lack of legal provisions, individuals could validly exercise their constitutional right to petition the authorities (art. 14 CN), requesting the aforementioned agreement, even if it is optional for the Administration to authorize such an instance".

38 Next article: Article 36 5th paragraph Law 11.683

39 AFIP - CPACF Dialogue space Acta N 5 16/5/18 3. A Voluntary Conclusive Agreement is consulted whether the taxpayer has the power to request a voluntary conclusive agreement or is the exclusive and exclusive power of the agency. Answer of AFIP will correspond to implement the norm that is dictated. The literal wording of the rule would result in a power of the Agency.

40 Folco Carlos M. ob. cit. p. 729.

41 Gordillo Agustín. Introduction to Administrative Law VI-2 Perrot Buenos Aires 1962 "...administrative activity is regulated: the legal order provides that in this or that factual situation this or that decision must be taken; the administrator has no possible choice: his conduct is dictated in advance by the rule of law. (In discretionary activities), the act allows the administrator to appreciate the opportunity or convenience of the act...The administrative body has a choice, in such a case, either of the circumstances before which the act will be issued or of the act that will be issued under a circumstance."

However, we believe that a refusal is not subject to appeal since the treasury has the discretionary choice[41] on whether or not to apply the agreement in the determination since the law has decided to leave the appropriateness of the measure to the discretion of the administration[42].

c. Suspension of the statute of limitations as a result of the initiation of the settlement agreement

Another effect of enabling the agreement and submitting it to the consideration of the collegiate conciliation body will be that the prescription is suspended for the term of 1 (one) year, counted from the act of the administrative judge who submits the proceedings to the Administrative Conciliation Instance[43].

The disadvantage of limiting the suspension of the statute of limitations for a period of one year is that the conciliation body will be limited in its actions and the evidentiary elements to be produced, in our opinion it should have established the extension of the suspension until the end of the conciliation, either by its approval or rejection.

d. What type of act is the one issued by the administrative judge?

Under the law *"The case to be reconciled shall be submitted to a collegiate conciliation body for consideration"*, then it is a unilateral decision by the treasury, in the head of the competent administrative judge to submit to the collegiate body for consideration a case to be reconciled in the face of an objective doubt on a question of fact or law that in his opinion the collegiate body can resolve.

Therefore, it is important to know what type of act is issued by the administrative judge by which he submits the case to be conciliated to a collegiate conciliation body for consideration.

Gordillo[44] states that "only a decision that is formally externalized as such and not through its direct execution will be called an act" and classifies as non-legal acts, differentiating them from legal or administrative acts[45], "decisions, declarations or statements made in the exercise of the administrative functions that do not produce direct legal effects with respect to a legal subject".

Our opinion is that the act issued by the administrative judge by which he submits the case to conciliation for the consideration of the organ is not an administrative act but only a preparatory measure[46] for the final act and therefore cannot be discussed by the taxpayer[47].

8. COLLEGIATE CONCILIATION BODY

The law incorporates a new[48] collegiate body which it calls a conciliation body characterized as a consultative

42 Chacra Andrés. New dispute resolution mechanisms in the Tax Reform Project ADLA 2018-1, 3"

43 Article 65 (d) Act No. 11,683

44 Gordillo Agustín. Tratado de derecho Administrativo, Tomo I Cap.X4. page X3 5°

45 Gordillo Agustín ob. cit. Volume 1 Chapter X page X-6.

46 Article 80 Decree 1759/72 says Gordillo " the reason that they are not actionable or contestable is precisely that they do not produce direct legal effect with respect to the individual and therefore are not likely to cause direct injury or encumbrance".

47 Damarco Jorge H ob. cit. point IX on the contrary, he opines that " The administrative judge, when adopting the decision, must necessarily produce an administrative act..."

48 PTN Volume 241 Page. 184

49 Bielsa Rafael. Derecho Administrativo Tomo I7ª

50 Cassagne Juan Carlos. Derecho Administrativo, Tomo I 2da edición. Abeledo-Perrot, Buenos Aires, 1986, p. 208. it says, " advisory bodies ... that lack decision-making powers, expressing themselves through reports, opinions, that, as a point of principle, do not have binding force." Muratorio Jorge I The Public Administration as a subject of administrative procedure: the competence of the agency in Administrative Procedure and Process p.111.

51 PTN Volume 246 Page 500.

body[49] [50] with permanent and definitive competence[51], which represents a form of administrative organization, and its essential function[52] will be to provide a formal response in cases where there is uncertainty as to any of the elements of the taxable event, by issuing a detailed report, in which it will recommend a conciliatory solution or its rejection.

The denial, in case of rejection by the conciliating body, causes the delegated competence to be renewed and the ex officio determination procedure established in article 17 of Law 11.683 will continue.

In the case of the substitute administrative judge[53] the Federal Administrator can always and at any time resume the competence that he has conferred on the lower body and "advocate through the superintendency, the knowledge and decision of the questions raised", but once the case to be reconciled is submitted to the consideration of the body there will be a modification of the competence[54] that will now fall on said body, which intervenes in legal capacity, given that its empowerment is established in the tax procedure law, which consists of the non-extendable obligation of issuing the report recommending a conciliatory solution or its rejection.

The ancient principle of administrative law that competence is the exception and incompetence is the rule[55] and that, therefore, all jurisdictions must be conferred by rule or by extension to what is reasonably implicit in the express, demonstrates actual validity[56].

Therefore, the possibility of the Federal Administrator's transfer does not apply since the case is under consideration by the agency, since it exercises both exclusive competence, due to the technical specialization of the agency, and deconcentration because there is a legislative rule that assigns its competence, and it is reasonable to understand that the legislator's intention was that this attribution would be exercised by the lower authority, which is the conciliation agency.

The collective form of the collegiate body makes it necessary to establish its organization and functioning, which must be regulated in a timely manner.

Its composition will be made up exclusively of officials[57] belonging to the AFIP, neither the taxpayers nor any other entity participating.

One of the first guidelines established by the law is its interdisciplinary integration when it expresses "officials intervening in the process that motivates the controversy, by officials belonging to the highest legal technical level..." on the subject Gadea-Marmillon-Pontiglia[58] illustrate us when they study the interdisciplinary integration of the Tax Court of the Nation, in our opinion totally applicable to this body, they express ".... is justified by the concurrence of technical-accounting elements, among others, included within the legal-tax phenomenon, that is to say, with has a complex, varied and multifaceted nature whose interdisciplinary analysis has been extremely enriching in our field" In factual issues, despite being applicable to a specific case, this collegiate body will surely have a technical staff that will allow it to resolve cases of greater complexity.

52 Comadira Julio Rodolfo Escola Héctor Jorge. Administrative Law Course.

53 Article 3 Decree 618/97

54 PTN Volume 234 Page 486

55 Article 3, Law 19.549 Hutchinson Tomás. Administrative Procedures Regime Law 19.549, p.68, the transfer will be inadmissible a) when the competence of the inferior has been assigned on the basis of a specific suitability ...c) when there has been deconcentration"..

56 PTN Volume 236 Page 91.

57 Gordillo Agustín. Tratado de derecho Administrativo, Vol. 1, ob. cit. Cap XIII-6 "Argentine positive law...does no differentiate between "officials" and " employees"

58 Gadea Marmillon Pontiggia. Tribunal Fiscal de la Nación, Errepar, pp. 15-16

Likewise, the members of the conciliation body may be excused and challenged[59], in order to ensure their impartiality with regard to the issuance of the report. The challenge should be to the person of each member and not to the organ as a whole, as stated by the Public Office of the administration[60].

The report issued by the Conciliation body is an internal act of the administration[61] and governed by its discretionary powers; it is not susceptible of appeal by the taxpayer since it does not produce legal effects between the parties, being in some way a preparatory act of the final administrative act by the administrative judge that will determine the tax and its quantification.

The causes that fall on a legal issue and that lead to a specific interpretative ruling for the body will allow, on the one hand, to standardize the criteria of the administrative judges to resolve similar cases, a kind of doctrine unification, given that not all agents have the same criteria of interpretation and application of the same rules, and also, as set by the standard, "the decision will serve as a precedent for other taxpayers".

It is also authorized to request sufficient guarantees to safeguard the debt at issue in the controversy, the idea of which is to protect the tax credit[62] during the development of the agreement in the cases that the Administration considers necessary, given its optional nature[63], and this is absolutely reasonable[64].

9. ACCEPTANCE OR REJECTION BY THE TAXPAYER

The acceptance by the taxpayer of the favorable position regarding the agreement issued by the conciliation body will result in the elevation of the actions to the consideration of the Federal Administrator. In the whole process under analysis, this will be the only intervention of which the taxpayer will participate, consisting of accepting or rejecting the solution offered by the tax agency.

The rejection, by the taxpayer, will have as a consequence that the procedure of determination ex officio will continue, under the actions and the competence of the original administrative judge.

10. ACTION BY THE FEDERAL ADMINISTRATOR

The administrator must approve the proposed conciliation solution, which has already obtained the favorable recommendation of the conciliation body and the acceptance of the taxpayer so that it is transformed into a Conclusive Agreement by means of an administrative act that will give content to the agreement[65]. Its disapproval will cause the file to continue with the ex officio determination procedure.

We consider that this is the correct interpretation of the rule of retaining the final ratification to the Federal Administrator for cases in which both the conciliation

59 Article 6 Law 19.549

60 PTN Volume 222 Page 33

61 Diez Manuel. Manual de Derecho Administrativo, Tomo II, 2° edición, p.503.

62 Yedro Diuvigildo. El novedoso acuerdo conclusivo voluntario.

63 Obligatoria la garantía Modelo de Código Tributario CIAT (2015), Art 133, pto 7.

64 Álvarez Germán Norlindo Policastro, Carlos Eduardo. The so-called instance of voluntary conclusive agreement, incorporated in the tax reform of Law No. 27,430, arises "if the impossibility of satisfying the requested guarantee results in a resolutive condition of the instance".

65 Amaro Gomez Ricard L. Voluntary Conclusive Agreement-Tax Conciliation

body and the taxpayer have given their opinion in favor of an agreement. This not only makes the procedure more efficient but also reserves the final control of the procedure to the highest authority of the administration, which has the supervisory powers inherent to the hierarchical power it exercises over the lower bodies, allowing it to carry out a broad verification that will include not only the legality of the conciliatory solution in relation to the tax legal system but also the opportunity or convenience of using this figure in replacement of the ex officio assessment procedure.

The position of the final intervention of the Administrator is strengthened by the fact that otherwise the administrative act issued by the administrator, by means of which the tax credit arising from the exact application of the tax law and its quantification, if not accepted by the taxpayer, will remain valid on the determination of such credit but it will not be efficient due to lack of adhesion. A line of reasoning contrary to the present one, which considers it as an intermediate act, would leave us with the existence of a valid administrative act that in case of not being accepted by the taxpayer would oblige, by application of the law, to refer the procedure to the ex officio assessment procedure that must conclude with another administrative act, which would take away reason from the agreement procedure.

In short, in order to make a harmonious interpretation of the law, we consider that the administrative act of acceptance of the agreement by the federal administrator must be issued after the taxpayer has adhered to the favorable report of the conciliation body.

Finally, the Federal Administrator has only the possibility of accepting or rejecting since he is not allowed to modify the agreement proposal submitted to its examination, without prejudice to this, we understand that it is possible to rectify material errors[66] or indeed and arithmetic[67] provided that the amendment does not alter the substance of the act or decision[68] and its application should have a a restrictive interpretation.

11. EFFECTS OF THE AGREEMENT

a. Fiscal stability for the taxpayer

In our tax procedure system, the tax determination is in the final stage of the entire process of verification and supervision of the tax obligation that begins with an Intervention order[69] and eventually ends with the reasoned decision issued by the administrative judge that determines the tax and intimate payment[70] and in case the taxpayers accept the proposed adjustments during the audit stage, this does not bind the tax agency[71], only the administrative judges are competent to issue the decisions referred to in article 19 of the tax procedure act[72].

By introducing the new figure, the regulation gave a hierarchy to the agreements within the framework of the

66 Hutchinson Tomas. Law 19.549, p. 371 States " The material correction or rectification of the administrative act occurs when it contains only errors of writing, numerical expression, etc. If the error, being numerical, is in the calculations or reports that precede the act and it is dictated in its consequence, the material correction does not proceed..."

67 Opinion No 23/93 Directorate of Legal Advice Directorate General Tax

68 Article 101 of Decree 1759/72 t.o. 2017

69 Next article: Article 36 Law 11.683

70 Article 17 Law 11.683

71 "...the acts, liquidations and actions carried out by the inspectors and other employees of the tax administration, do not constitute an ex officio determination nor do they oblige the administrative judge, who is the one who ultimately decides the criterion to be followed to determine the tax. (Casado, Abel y Casado, María Teresa, Soc. de Hecho" - CNCAF- Sala I - 7/5/1993 - DTE - T. XIV-p. 54)

72 Jarach says " A kind of fiscal concordat also exists in our law 11,683, because it says that it can be dispensed with the ex officio determination, if the taxpayer subscribes to the liquidation made by the inspector. In this case, liquidation, which is not an ex officio determination, acquires the same efficiency as a tax return The Italian doctrine equates the concordat to an administrative determination; among us, however, this concordat has the effectiveness of a tax return, that is, that it allows the treasury to rectify it."

assessment procedure by attributing it, as Folco says[73] "...with the same effects as a final ex officio assessment, i.e., non-appealable, unchangeable, and enforceable", i.e., granting it tax stability.

b. Effects on other conciliation proceedings

The article under analysis in its 9th paragraph admits that the agreement can serve as a precedent when dealing with purely legal issues for other taxpayers provided that these *"agree to the conciliation procedure and the payment of the reconciled under the same conditions as those decided in the precedent in question"*.

c. Enforcement title

The proposal approved by the federal administrator will be transformed into a conclusive agreement, in which the taxable base and its quantification will be determined, therefore, the ex officio determination is no longer necessary, and its *"... content... shall be understood as fully accepted by the parties and shall constitute an enforceable title in the event that a tax credit arises from it, enabling the procedure of article 92 of this law", granting tax stability"*[74].

12. REVOCATION OF THE AGREEMENT

The 8th paragraph of the incorporated text reads *"The Federal Administration of Public Revenue will not be able to ignore the facts that founded the agreement" and admits nullity when we find ourselves faced with the vice of false facts".* which forces us to investigate how the application of the stability of the administrative[75] taxation act is affected when the determination was made by agreement.

In order to grant tax stability to the assessment act, the law requires that it be determined by an administrative judge in a proper form and that it be final, requirements that are met by the agreement, since it is signed by the Federal Administrator[76], who has the necessary elements to know, directly and with certainty, both the existence of the tax obligation and its magnitude, giving it a certain basis and finality, since it cannot be attacked in an appeal process[77].

a. Partial character

This stability reaches the audited part, in case it will be agreed, as Jarach states "it is not a true cause of modification of the previous determination, but simply a circumstance that enables a new determination on different points", admitting its possible review in the unexamined part, for which it requires that the administrative act describes "the aspects that have been subject to the audit" so that the resolution must express its partial nature, otherwise, the act would be unchangeable[78].

b. New elements

The law[79] allows administrative review of determination when new elements arise[80] and we must see if that situation also applies to agreements as clarifies

73 Folco Carlos M. ob. cit. page 731

74 Next article: Article 16 7th paragraph Law 11.683

75 Article 19 Law 11.683

76 Article 4 Decree 618/97

77 In the opposite sense Damarco "If the nullity of the conclusive agreement approved by the Federal Administrator of Public Revenues is raised, it seems clear that this must be articulated before the judicial courts by means of an action for annulment" Same criterion Yedro Diuvigildo ob. cit. page 112

78 Giuliani Fonrouge Navarrine. Tax Procedure and Online Social Security

79 Article 19 (2) (a) b Law 11.683

80 Jarach Dino. Superior Course of Tax Law p. 430 says " ... new facts, of course already existing at the time of the taxable event but ignored, as well as the case of evidence that had not previously been found and that corroborate factual circumstances not properly before the determination"

Zornoza Perez[81] "...the biggest problems of legal regulation that seeks to delimit the legal framework of these conventional administrative actions will be those related to the determination of their binding character, which in no compared order is absolute so that, for example, tends to cease in the event that the taxpayers have concealed relevant facts or if the auditors may have breached their duties of investigation, as the agreement shall in no way waive the exercise of their powers of verifying and investigating".

If the agreement between the taxpayer and the treasury to determine the tax and its amount to be effective, Sainz de Bujanda[82] says it must comply with, "...on condition: 1) to ensure, in any case, the empire of the substantive rules governing the essential elements of the obligation (a taxable event, base, or parameter, type of tax, fees), and 2) that, as a result of the foregoing, the material truth has more possibilities to prevail, in practice, on the formal truth as agreed in the evaluated agreements", therefore, in the event that new facts arise, they must be taken into account in order to let prevail the material truth of the tax obligation determination.

Therefore, when relevant elements emerge that distort those examined by the agreement, the administrative act that accepted can be revoked, since facts that demonstrate that some facts considered were false or non-existent thus, the process of the agreement was based on facts that were not the real ones, given that if they had been known, this agreement would not have been reached, with the gravity of contradicting the determinative nature of the tax obligation that must always respect the substantive rules that establish the taxable event.

It should not be forgotten that the tax administration must follow the principle of legality that determines that the procedure is fair, that is, that it must tend to the defense of the objective legal norm in order to maintain the rule of legality and justice as expressed by the Procurement of the Treasury of the Nation[83] "The State through administrative procedure pursues the knowledge ... of real truth, that is, the ultimate object is to discover objective truth or material truth. The principle of objective juridical truth, according to which it must develop in the search for reality as it is and its circumstances, is the guiding principle of the administrative procedure (v. Opinions 265:232)". Therefore, the Administration must clarify the facts, circumstances, and conditions, trying by all admissible means to specify them in their real configuration, in order to then be able to base an effective decision on them, since the material truth must prevail to the exclusion of any other consideration (Rulings, 204:61)[8], which is why the act must be modified tending to the greater reality of the tax obligation.

The revocation of the irregular act is an obligation based both on the principle of objective legality and on the principle of material truth " The administrative act affected by absolute nullity would oblige the Administration to revoke it because the power contained in article 17 of Law 19,549 it is not an exceptional prerogative, but the expression of a principle by virtue of which it is bound, in the presence of irregular acts, to order or execute revocation (conf. Dict. 183:275)[85]".

If the objective of the incorporation of the legal figure of the agreement is based on the participation of the taxpayer before the existence of cases of uncertainty

81 Zornoza Pérez Juan ob. cit. p. 130.

82 Sainz de Bujanda Fernando. El nacimiento de la obligación tributaria p.199.

83 PTN, Expert opinions, 301:101

84 PTN, Expert opinions, 303: 448

85 PTN, Views 215: 189, 203/1995 221: 124 70/1997

allowing a more perfect determination in the analysis of the elements of the taxable event and its quantification, it loses reason that before the appearance of new elements a new determination is not allowed when it is allowed in the framework of an ex officio determination.

In conclusion, the appearance of new elements that undermine the agreement of a severe form gives the possibility of leaving without effect not only by the provisions of article 19 of the law but by the same rule of agreement that in paragraph 8 allows the fiscal body to be unaware of the agreement to the presence of untrue facts, and thus defeat the material truth of the tax liability with the aim that the act issued must be legal and fair.

c. Causes of invalidity of termination of the agreement

The other assumption of revocation[86] of the administrative act is configured when it is proven that the external declaration of the administration has been vitiated by error[87], omission, or fraud[88] in the exhibition or consideration of the elements that served as the basis for the determination.

It should be recalled that the tax procedure law does not provide for a system of nullities for the tax administrative act, so the administrative procedure law[90] is applied and if a serious defect is verified[91], it will lead to the invalidity of the act being null of absolute nullity[92] in the words of Article 14 of Law 19.549.

This standard[93] considers that the act is null when *"false facts or nonexistent or false antecedents are present"*, on this point says Gordillo[94] "...it is correct, on the basis of all evidence, to nullify the vitiated act of fraud by stating as certain facts that they are false since fraud is the antithesis of the principle of good faith and as it is protected, it must be punished".

Also, in cases where the will of the administration is excluded by essential error in the display or consideration of the elements that served as the basis for the determination that if known would not have dictated the act or would have dictated it with an essentially different content because there is a difference between the real will of the administration and the administrative act dictated[95].

86 Artículo 19 inc. b Law 11.683

87 By "error" is understood the false knowledge of the reality of things. Hutchison it says " the error ... a vice in the declaration and that consists in indicating a good instead of another, or in designating a person instead ..."

88 Ley 26.994 Anexo I Libro Primero Parte General Titulo IV Hechos y Actos Jurídicos Capitulo 3. Article 271-Wilful act and omission. Malicious action is any assertion of what is false or dissimulation of what is true, any artifice, cunning or machination used for the celebration of the act. Wilful omission causes the same effects as malicious action when the act would not have been performed without reticence or concealment.

89 Gordillo Agustín Tratado de derecho Administrativo Tomo 3 El acto Administrativo 4° edición Fundación de Derecho Administrativo page XI-2 …

90 Callello Carolina. Nulidades en materia tributaria Centro de Investigaciones en Tributación Facultad de Ciencias Económicas UBA Edicon 2012 p.15

91 CSJN Fallos: 293:133 Pustelnik cons. 4. The manifest invalidity of acts whose illegitimacy or irregularity is evident without necessity to investigate any hidden defect, constitutes a general concept of the legal order, which only requires a judicial or administrative declaration in respect of it, unlike the hidden invalidity, which requires prior investigation for it to become visible.

92 Comadira Julio R. Derecho Administrativo 2da edición Abeledo Perrot Buenos Aires 2003 p.59.

93 Article 14 (a) Act No. 19549

94 Gordillo Agustín Tratado de derecho Administrativo Tomo 3 El acto Administrativo ob. cit. page XI-52

95 Corti Blanco Buitrago Calvo Tesón. Fiscal Procedure p. 109 " ... error, omission or fraud, should have been motivated by causes beyond the administration" In the same sense Diaz Sieiro Veljanovich Bergroth p. 224

In the case of the voluntary conclusive agreement the legal text[96] requires that the case of untrue facts, therefore if the administrative act of determining tax by which it accepted the agreement was in fact made either non-existent or false may be unknown by the administration as it will also be possible revocation when you set up the existence of error, omission or wilful misconduct on the display or the consideration of the elements that formed the basis of the agreement, without requiring only that it is the fault of the individual that their behavior is malicious or negligent, resulting in the erroneous assessment of the facts if the act is serious and manifest, it shall be null and void.

An additional issue that reinforces the possibility of modification of the act by the administration itself, that is to say, that the act is not given stability, and not requiring the action for fraud[97] of the judicial instance, is given by the fact that in the prescription it is suspended only for 1 year as a consequence of the processing of the agreement, a meager term to make possible the judicial resolution and its subsequent appeal.

Consequently, if the issuance of the act that was based on the report that incurred serious errors or false facts, coming from any of the parties when new elements are proven that seriously distorts what was acted give the possibility to the tax authority to disregard the agreement by revoking the final determination[98].

96 Article added after the Article 16, paragraph 8° law 11683

97 Comadira Julio Rodolfo. The ex officio annulment of the administrative act p. 89 says “the injurious process may be categorized as the” special administrative process whose object is the claim deduced by a public entity in relation to an act that it cannot revoke per se, and which consists, fundamentally “in “ legitimizing as an active subject of the Administration, to demand the annulment of acts injurious to the legal system that were irrevocable in administrative sphere”

98 Yedro Diuvigildo ob. cit. p.112 states “...agreement...its absolute and irrevocable nullity, as provided for in Article 14 of Law 19549, shall not be enforceable against it”.

13. CONCLUSIONS

The tax assessment is the mechanism through which the payment obligation defined in abstract by the legislator is quantified or specified, and that such procedure must be carried out by the tax authority in those exceptional cases in which the taxpayer has failed to comply with its duty to make the respective tax assessment or if it is incorrect. The novel figure of the voluntary conclusive agreement is incorporated to the procedure of tax determination, by means of which the taxpayer is given the opportunity to actively participate in verifying the factual assumptions established in the law and their quantification, thus obtaining the fair determination of the tax.

Therefore, in the tax authority-taxpayer relationship for the application of the agreement, there must be an objective factual or legal uncertainty that makes it difficult to determine both the perfection of the taxable event and its true extent and the interpretation of the rule to be applied, which allows the material truth to have the possibility of prevailing over the formal truth, in order to carry out a more effective and fairer action.

The application of the agreement will have three elements to be considered i) of an objective nature, which will be given by the existence of uncertainty in the facts or in the application of rule ii) of a formal nature, consisting in the fact that the cases to be agreed upon cannot be susceptible to a criminal complaint and finally iii) of a temporary nature, in the sense that the application of the agreement is prior to the issuance of the ex officio determination resolution.

This new form of determination is characterized by being i) exceptional and with a specific purpose, since it is reserved exclusively for cases of the uncertainty of any of the elements that make up the taxable event, ii) anticipatory, since its application is possible until the determination is issued, iii) optional, since the law grants the tax administration the power to decide its use, iv) alternative, since it replaces the resolution determined ex officio and v) non-appealable, since the act of approval of the agreement by the Federal Administrator is not subject to appeal.

In short, we are aware that the legal agreement can be useful when the discussion is focused on the lack of definition of the factual background, failure of the elements to its valuation or the law to be applied is uncertain or vague, and the existence and amount of the obligation fail to be correct according to the application of the rules to run the risk of a determination of increased or reduced.

We cannot conclude this work without saying that the next step will be to put into effect the operation of the new Conciliation body and regulate the necessary points to give life to this new form of determination of the tax obligation, which is the Voluntary Conclusive Agreement.

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