Tax Administration REVIEW

Inter-American Center of Tax Administrations
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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 Reader,

We are pleased to present a new edition of the *Tax Administration Review*, aimed at all officials of the tax administrations of the members and associate countries of our organization, as well as the international tax community at large.

This publication is produced within the framework of the Technical Cooperation Agreement between CIAT, the Spanish Secretariat of State for Finance, the Institute for Fiscal Studies (IEF), and the State Agency for Tax Administration (AEAT) of Spain.

This edition, No. 52, includes fourteen (14) articles: Rights and Guarantees of the Taxpayer in Chile and Uruguay. Some Considerations of its Regulation and Challenges; The Challenge of Value Added Tax (VAT) Refunds in Angola; VAT Harmonization in the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC); Analysis of Progressivity and Redistribution in the Main Tax Benefits in Spain; Disclosure of Tax Information in Colombia: what are the Current Limits of the Fiscal Reserve of the Information Managed by the DIAN; Artificial Intelligence in the Primary Education Tax: Innovation for Tax Justice; Logit Model: Characterization and Prediction of defaults in Income and/or Value-Added Returns; The Influence of Culture on Tax Administration: A Comparative Analysis of the Tax Administrations of the Inter-American Centre of Tax Administrations Based on Hofstede's Dimensional Model; Democratizing Tax Law with AI: Enhancing Accessibility for Citizens and Efficiency for Tax Administrations; Cooperative Tax Compliance: a Comparative Approach; International Comparison of the Tax Regime for Controlled Foreign Companies (CFCs); Cooperative Compliance and Tax Compliance as a New Voluntary Tax Compliance Regime with a Peruvian Approach and Analyzing the Impact of COVID-19 on the Tax Burden: An Exercise for the LATAM Countries that are Part of the OECD and those that are in Accession.

We sincerely appreciate the excellent response to the call for contributions and reaffirm our commitment to disseminating valuable information that fosters learning and promotes the transfer of knowledge within the international tax community.

Márcio Ferreira Verdi
Director of the Review

Rights and Guarantees of the Taxpayer in Chile and Uruguay. Some Considerations of its Regulation and Challenges

Octavio Aguayo
Johana Bentancour
María Elena Torres*

SYNOPSIS

The article analyzes the rights and guarantees of taxpayers in the context of the growing modernization of Latin American tax administrations, with emphasis on Chile and Uruguay. Its objective is to examine the regulations, technological advances and challenges associated with digitalization and the formation of risk matrices in the auditing processes. Finally, a comparative analysis shows the importance of moving towards a balance between the tax collection powers of the Tax Administration and the protection of taxpayers' rights.

KEYWORDS: Rights and guarantees of taxpayers, Tax authority and control faculties, Tax audit by technological means, Taxpayer advocate, Comparative law.

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* The opinions expressed in this article are those of the authors, in their personal capacity, and do not reflect the position of the respective institutions where they work.

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INTRODUCTION

One of the transversal themes in the management of the various tax administrations is the relationship between the rights and guarantees of taxpayers and the increasing modernization and digitalization of the means of control.

In this sense, the increasing modernization of the State administration bodies, as far as we are concerned in tax matters, has brought about a paradigm shift in the relationship between tax administrations and taxpayers. Therefore, as Pita points out, "(...) *rather than as a repressive body of the tax administration must act as a promoter of this compliance, especially by improving its image in front of taxpayers through respect for their rights and facilitating compliance with their obligations."*[1].

In this sense, it is necessary to bear in mind the way in which the different regulatory bodies of the different countries define the relations between tax administrations and taxpayers in a context of an increasingly intensive use of information technologies and greater access to technologies, all this, in view of the compliance with the main tax obligation.

In this regard, De La Herrán has pointed out that *"(...) the balance between achieving the satisfaction of the tax credit and respecting limits that avoid abuses of all the rights of taxpayers, in certain constitutionally protected cases, should always take into account that the legal protection of the taxpayer should not become an obstacle but should be seen as a necessary opportunity to improve the levels of collaboration and cooperation in the tax field"*[2].

In this line, a relevant source in this matter are the rules governing the rights and duties of taxpayers contained in the CIAT Model Tax Code, in article 26.1 of which a taxpayer is defined as "(...) *a taxable person designated by the tax law because the event giving rise to the tax obligation has been verified with respect to him or her."*

Articles 75 and 76 of the Module, sixth section of Title II, establish the rights of taxpayers. In the first case, rights of treatment and reservation are established; assistance or collaboration; economic, information and defense rights.

Following the comments of article 75, given the didactic function of the Model, it was deemed appropriate to consider an open list of the rights and guarantees of the taxpayers, which account for the limit to the exercise of the tax power, enshrined both in this Model and in the local legislations themselves.

Therefore, it was concluded that: *"it must be recognized that although the non-inclusion in the Model of the list of rights would not have affected its effectiveness, it has been considered better to mention them expressly as a guarantee to taxpayers regarding the balance that must exist between the power of the Tax Agency and their rights"* (Comment 2 to article 75 of the Model).

Then, in article 76 of the Model, the figure of the Defender of the Taxpayer is included, as an independent public entity to safeguard due independence from the Tax Administrations, whose main function, according to Comment 3 of said article, *"will be to ensure the effectiveness of the rights of the taxpayers in the actions they conduct before the Tax Administrations".*

1 Pita, C. (1999). The rights and duties of taxpayers (in the CIAT Model Tax Code). Retrieved from: https://www.ciat.org/biblioteca/asambleasgenerales/1999/espanol/salvador33_1999_tema1.1_pita_ciat.pdf

2 De Herrán, A (2022). Taxpayers' rights and guarantees in the tax field: special reference to their application in the exchange of international information for tax purposes (In Spanish). Work presented at the XXI High Specialization Course in International Taxation, held at the School of Public Finance of the Institute of Fiscal Studies in 2022.

1. GENERAL ASPECTS OF THE REGULATION OF TAXPAYERS' RIGHTS AND GUARANTEES IN CHILE

In tax matters, fundamental rights and guarantees are guaranteed at both the constitutional and legal levels.

The current text of our Constitution provides, in its article 19, a series of general guarantees, of which, in tax matters, we can highlight those of equality before the law, due process, the right to petition, to the protection of private life and those indicated in numerals 20 of article 19, which, succinctly, account for the principle of legality in tax matters, equality in public charges, non-confiscation and non-affectation.

On the other hand, at the legal level, we must take into consideration both the general regulations, which are related to Law 18.575, Constitutional Organic Law of General Bases of the State Administration and Law 19.880, which establishes the Bases of the Administrative Procedures that govern the acts of the State Administration Bodies, so that the various institutions related to tax matters, i.e., the Internal Revenue Service, the National Customs Service and the General Treasury of the Republic, must strictly comply with the principles and provisions contained therein in their respective actions.

Specifically, in the last twenty years, important advances have been made in the field of the Tax Code, which, according to its first article, corresponds to the provisions that are applied in the field of internal taxation that, according to the law, fall within the competence of the Internal Revenue Service.

This path, at the legislative discussion level, began on April 13, 2005, with the entry of the parliamentary motion of Don Baldo Prokurica, who entered a draft amendment to the Tax Code whose main objective was to register the taxpayer's rights[3].

Then, in relation to the aforementioned, in exercise of the powers to set administrative instructions and interpretations in tax matters, provided for this purpose in Article 6, letter A, of the Tax Code, the then Director of the Internal Revenue Service, Mr. Ricardo Escobar, issued Circular 41, of July 26, 2006, by which the Chilean tax administration established the following:

> *"(...) this National Directorate considers it convenient to systematize in this Circular those essential rights that taxpayers have in their relations and procedures before the Internal Revenue Service. These rights are relevant in the application of the concept "quality of service", a fundamental pillar of the institution's operational strategy.*
>
> *1) To be treated in an attentive and restrained manner, with due respect by the staff at the service of the Tax Administration. (Article 17 letter e) Law 19.880; Article 61 letter c) Law 18.834).*
>
> *2) To be informed at the beginning of any inspection act about the nature and matter to be reviewed and to know at any time the status of processing of the procedures. (Article 17 letter a) Law 19.880; Article 13 paragraph 2° of Law 18.575).*
>
> *3) To facilitate the exercise of their rights, the fulfillment of their tax obligations and obtain information on the requirements that the legal system imposes on the actions or requests of the taxpayer. Article 17 (e) and (h) of Law 19.880).*

3 For more details, see Casas, P. (2021). Amendments to Article 8 bis of the Tax Code as of the tax modernization of Law No. 21.210: a new relationship between taxpayers and the Internal Revenue Service? Anuario de Derecho Tributario, Universidad Diego Portales, Volumen 6.

4) *To be informed about the Tax Administration authorities whose responsibility the processes in which they have the status of interested party are processed. (Article 17 letter b) Law 19.880).*

5) *Obtain copies, at their own expense, or certification of the proceedings or documents in the terms provided for by law. Request and obtain the return of the original documents provided once the procedure has been completed and as long as this is not in opposition to any legal norm. (Article 17 letter d) Law 19.880; Article 14 final paragraph of Law 18.575).*

6) *To exempt themselves from providing documents that do not correspond to the procedure, request or that state the fact of being already accompanied. (Article 17 letter c) Law 19.880).*

7) *That their tax returns have a reserved nature and can only be used for the effective application of taxes whose supervision is entrusted to the Internal Revenue Service, without being transferred or communicated to third parties, except in the cases provided for by law. (Article 8 of the Political Constitution of the Republic, in relation to article 35 of the Tax Code).*

8) *That the actions of the Internal Revenue Service are conducted within reasonable periods, without unnecessary delays, requirements or waits for the taxpayer. (Article 17 letter e) Law 19.880. Article 8 of Law 18.575).*

9) *To formulate allegations and present antecedents while the legal deadlines for this are in force and that such antecedents are duly analyzed and evaluated by a competent official. (Article 17 letter f) Law 19.880).*

10) *To raise suggestions and complaints in a respectful and convenient way. (Article 19 N° 14 of the Political Constitution of the Republic; Article 11 Law 18.575".*

At the administrative level, as stated in Circular 12 of 2021 of the Internal Revenue Service "(...) *since the issuance of Circular No. 41 of July 26, 2006, the rights of taxpayers have been steadily incorporated as a central element in its institutional work, which has been endorsed by successive reforms, both at the level of instructions and in the Tax Code."*

Then, another significant advance, related to the protection of taxpayers' rights and guarantees, was the entry into force of Law 20,322, published in the Official Gazette on January 27, 2009, which strengthens and perfects the tax and customs jurisdiction, which also gives rise to the Tax and Customs Courts[4].

The following year, on February 19, 2010, Law 20,420 was published, which modifies the Tax Code to make explicit Taxpayers' Rights, an initiative that originates, although with some modifications, from the aforementioned parliamentary motion by Senator Prokurica.

Consequently, a new article 8° bis called "Taxpayers' Rights" was incorporated in the preliminary title, after article 8° of the Tax Code, on definitions, with 10 numerals, also establishing that claims against acts or omissions of the Service that violate any of these rights will be known by the respective Tax and Customs Courts through the procedure of Violation of Rights.

Due to the above, the Internal Revenue Service repealed the aforementioned Circular No. 41 of 2006, through Circular No. 19 of 2011, which established that:

4 In addition, the first article of said regulations establishes that special and independent legal courts are exercising their ministry, whose functions, succinctly, are to resolve the complaints filed by taxpayers regarding the provisions of the Third Book of the Tax Code, the complaints and / or drafts of articles 161 and 165, number three, of the Tax Code, by virtue of the Customs Ordinance (Title VI of Book II and articles 186 and 187), to provide in their rulings for the refund and payment of sums improperly settled or in excess by way of taxes, readjustments, interest, penalties, costs or other levies and to know the procedure for violation of rights established both at the level of the Tax Code and the Customs Ordinance.

"The fundamental rights guaranteed by the Constitution and the laws must necessarily be reflected in the tax field. Although the rights of taxpayers were explicitly contained in our legal system, they were disaggregated in different norms such as, Law N° 19.880, N° 18.834, N° 18.575, N° 19.285, the D.L. N° 830 containing the Tax Code and the Political Constitution of the Republic.

However, this lack of systematization conspires against their adequate knowledge and exercise, which makes it necessary to implement them more organically.

This is precisely stated in the parliamentary motion that initiated the legislative process of Law No. 20,420, according to which: "The fundamental rights guaranteed by the Constitution must necessarily be reflected in the tax field. Although the Basic Charter does not explicitly contain a statement or catalog of what could be called "taxpayers' rights", this does not mean that they do not exist, because they are an expression of the rights of all people, so they must be respected, protected and promoted by the State. For the same reason, its exercise can be guaranteed by the legislator, as a complement and development of constitutional norms, systematically enunciating them through a special law, as is happening in various countries of Europe and America."

Finally, almost 10 years after this important regulation, by the Law N°21.210 that Modernizes the Tax Legislation, a series of important modifications were made:

a) It extended the protection of the taxpayer's rights, on the one hand, by extending the catalog object of their protection with emphasis on access to information on the meaning and scope of the actions conducted; the exercise of such rights; the facilitation of compliance with tax obligations; the motivation of the actions of the tax administration, at a factual and legal level; the facilitation of the accreditation of the actions conducted by the taxpayer; that the actions of the tax authority do not affect the normal development of the operations or economic activities of taxpayers, except in the cases provided for by law; and, in addition, that a new control procedure cannot be restarted with respect to the same facts or audited taxes, in accordance with the provisions of the fifth paragraph of the aforementioned Article 8 bis of the Tax Code.

b) The creation of the Taxpayer Ombudsman's Office, as a decentralized public service, with its own assets and subject to the supervision of the President of the Republic through the Ministry of Finance[5].

c) The inclusion, at legal level, of the following aspects related to the digitalization of the Internal Revenue Service's audit activity: the definition of a personal site[6], the incorporation of the electronic tax folder and electronic files.

5 In this regard, article 3° of the Law establishing its creation, established that: "(... its main purpose will be to ensure the protection and safeguarding of the rights of taxpayers in matters of internal taxation. In the exercise of its legal powers, the Office of the Ombudsman shall, in particular, ensure the protection and safeguarding of the rights of the most vulnerable and of micro, small and medium-sized enterprises. For the purposes of the provisions of this Law, "taxpayer" shall be understood as defined in paragraph 5° of Article 8 of the Tax Code. Likewise, "taxpayers' rights" shall be understood as those established in article 8 bis of the Tax Code, in article 17 of Law No. 19,880, the right to legal security and constitutional guarantees in tax matters. The Ombudsman's Office shall observe in the exercise of its functions the principles of responsibility, efficiency, effectiveness, coordination, ex officio drive, control, probity, transparency and administrative publicity."

6 The new Article 8 N°16 of the Tax Code defines it as an electronic means that, after identification, allows the taxpayer to communicate, carry out procedures or become aware of the tax administration's actions.

d) A new administrative remedy called "Recurso de Resguardo" was established as an alternative in favor of the taxpayer to remedy, before the administration itself, possible violations that may occur in the context of an audit process or other actions carried out by the Service.

Of the latter, when a taxpayer opts to file an appeal for protection, he must be subject to the provisions of Article 8 bis, cited, as it prescribes the following:

> *"The taxpayer may file an appeal for protection when he considers that his rights have been violated as a result of an act or omission of the Service, before the competent Regional Director or before the National Director, as the case may be, if the action is carried out by the Regional Director, within ten days from its occurrence, and all the background information that the taxpayer accompanies the presentation to support the act or omission that originates such appeal must be received. Once the protection appeal has been received, it must be resolved reasonably within the fifth day, ordering the appropriate measures to be adopted. Any evidence that is submitted must be assessed reasonably. The decision of the Regional Director may be complained to the Tax and Customs Judge, in accordance with the procedure of Paragraph 2 of Title III of the Third Book of this Code.*
>
> *Without prejudice to the foregoing, alternatively taxpayers may claim directly against acts or omissions of the Service that violate any of the rights established in this article before the Tax and Customs Judge, in accordance with the procedure of paragraph 2° of Title III of the Third Book of this Code."*

However, recently, on January 29, 2024, the President of the Republic introduced a bill, by Message 326–371, whose objectives include that a series of modifications to the institutional framework in tax matters *"(...) formed by the Internal Revenue Service, the Treasury Service and the National Customs Service, they must modernize the way in which they relate to the taxpayer, as well as update a series of rules that allow monitoring and ensuring compliance with tax obligations"*.

Finally, recently, on October 24, 2024, with the publication in the Official Gazette of Law 21.713, which establishes rules to ensure compliance with tax obligations within the pact for economic growth, social progress and fiscal responsibility, a series of amendments were made to different regulatory bodies.

In what it says related to the present work, we can highlight the following modifications in the catalog of the taxpayers:

a) Article 8a No 5 was replaced by the following: '*That the Service does not re-initiate a new audit procedure, with respect to the same facts or taxes, in the terms of Article 59*", allowing greater certainty to both the administration and the administered.

b) In the path of modernization and digitalization of the administration, the following modifications were also incorporated:

   i) The obligation of the administration to report on the taxpayer's personal site "(...) all *the actions, requirements or interactions that it registers with the service in an updated way, for the purposes of its knowledge and follow-up".*

   ii) A new 20° was incorporated that establishes the obligation of the Internal Revenue Service to facilitate the fulfillment of obligations electronically for those taxpayers who lack the necessary technological means for such purposes, do not have access to electronic means or only act exceptionally through them.

c) An incorporation that we consider of great relevance is the one that incorporated a catalog of taxpayer rights in the Decree with the Force of Law N° 30, of 2005, of the Ministry of Finance that Approves the consolidated, coordinated and

systematized text of the Decree with the Force of Law of Finance N° 213, of 1953, on Customs Ordinance, by which the customs procedures were expressly incorporated [7].

d. The strengthening of the Taxpayer Ombudsman's Office, expanding its competence to advise and represent taxpayers before the Treasury Service and the National Customs Service, including, in the latter case, acting through the safeguard remedy, all measures to ensure the viability and effective protection provided by said institution, because, according to the diagnosis of the Message of the President of the Republic *"it is of utmost importance that the Ombudsman's Office does not focus its actions exclusively on ensuring the rights of taxpayers but also on implementing actions that allow them – especially small taxpayers – to comply with their tax obligations through knowledge of the rules, the way of filing their returns and relating to the tax administration. These new powers are essential for the proper functioning of the tax system, because they prevent or reduce the commission of errors due to ignorance, more usual in small taxpayers or in those who start a new activity, avoiding hours of supervision that distract not only the taxpayer but also the tax administration."*

(e) Finally, in other pertinent modifications, we can mention those that deepen the technological changes established by Law 21.210, for example, in the incorporation of the electronic filing for the performance of actions remotely; the implementation of the general rule of control actions by email, maintaining the notification by registered card or letter for those who cannot access electronic media on a regular basis.

In this way, progressively, in the last twenty years, on the one hand, a series of rights and guarantees of taxpayers have been incorporated, made explicit and systematized, mainly, through a non-exhaustive catalog in article 8 bis of the Tax Code, as well as, the stipulation, in legal rank, of a series of technological adaptations and innovations on the part of the administration, both at the level of declarations, life cycle information and control actions.

7 "1°. To be informed about the exercise of their rights, to facilitate the fulfillment of their tax and customs obligations, and to obtain clear information on the meaning and scope of all actions in which they have the quality of interested party.

2°. To be treated in a courteous, diligent and timely manner, with due respect and consideration.

3°. Obtain in a complete and timely manner the returns to which you are entitled in accordance with the duly updated tax and customs laws.

4°. Obtain copies in electronic format, or certifications of the actions conducted or of the documents presented in the proceedings, in the terms provided for in the law.

5°. That in the actions conducted by the Service, privacy is respected, and personal data is protected in accordance with the law; and that customs destination declarations, except in cases of legal exception, have a reserved character.

6°. To exercise the remedies and initiate the corresponding procedures, personally or represented; to formulate allegations and submit background information within the deadlines provided for by law and that such background information is incorporated into the procedure in question and duly considered by the competent official.

7°. To raise, in a respectful and convenient way, suggestions and complaints about the actions of the Service in which the taxpayer has an interest or is affected.

8°. To know the administrative criteria of the Service. For these purposes, the Service must publish on its website the rules of internal regime and the function or procedure manuals, orders and instructions, except those that are reserved in accordance with the law. The Service must also keep an up-to-date register of the interpretative criteria issued by the National Director of Customs in the exercise of his interpretative powers and of judicial jurisprudence in tax and customs matters.

9°. That the actions of the Service do not affect the normal development of operations or economic activities, except in the cases provided for by law.

10°. That, for all legal purposes and whatever the case may be, the tax and customs limitation or expiration periods established by law are respected."

That has been picked up by our higher courts of justice, in cause 8-2017, Rol Tributario y Aduanero, of the Ilustrísima Corte de Apelaciones de Santiago, who point out that access to challenge through a procedure of violation of rights because:

> "(…) *a particular mechanism for challenging the actions of the administration that do not directly affect the determination of a tax, but which, in view of the fact that they may cause a significant impairment to the rights of taxpayers, it was decided to enshrine it, as appears from the history of the law of its establishment. (…)*
>
> *The foregoing is also in view of the eminently precautionary nature of the procedure invoked, whose explicit objective is constituted by the restoration of the right and the due protection of the taxpayer's rights, as established in Article 156 of the Tax Code."*

2. GENERAL ASPECTS OF THE REGULATION OF TAXPAYERS' RIGHTS IN URUGUAY

In Uruguay, as in most countries, the tax administration faces the challenge of ensuring the efficient collection of taxes, within a *"a healthy balance between the collection powers and the taxpayer's rights in order to continue supporting the fair contribution to public charges within the framework of a rule of law"*[8].

However, in recent times – mainly from the private sector – there have been objections to the increase in the powers of the tax collection agencies, in particular, the General Tax Directorate, based mainly on the digitalization of the service, without the corresponding strengthening of taxpayers' rights.

> "*The reform of the DGI that began in 2003 is an example of successful state policy, which produced a positive historical change. This necessary strengthening of the tax administration must now also be balanced by a recognition and awareness of taxpayers' rights...*"[9]

Since the beginning, for such recognition within the national legal system, we have mainly resorted to the general provisions enshrined in the Constitution of the Republic, to international norms incorporated into our system by law, norms of legal rank established in the Tax Code as well as other lower-ranking systems.

In relation to our Constitution, although this fundamental norm does not expressly enshrine provisions in tax matters, it recognizes the existence of universal rights inherent to all persons extendable to the matter to the extent that the context and spirit of said body of legislation is analyzed. Article 12 of the Constitution, which reads *"No one can be punished or confined without a form of legal process and sentence"*, derives in the tax matter the right to be considered a good taxpayer fulfilling tax obligations and until proven otherwise, that is, the principle of innocence, to give an example.-

In turn, Article 72 of the Constitution establishes:

> *"The enumeration of rights, duties and guarantees made by the Constitution does not exclude others that are inherent in the human personality or derive from the republican form of government."*

8 Report on the Bill "Rights and Guarantees of Taxpayers before the Tax Administrations" by the Uruguayan Institute of Tax Studies, to the Finance Committee of the House of Representatives, 27/09/2023.

9 Ibid.

In relation to this article, Cassinelli[10] is of the opinion that it is implied that the Fundamental Rights pre-exist the Constitution, having a juridical validity of their own that the constitutional text does nothing more than recognize. Based on this generic recognition of rights and guarantees inherent to the human being, the normative seeks to overcome possible forgetfulness by listing the different Fundamental Rights, while allowing the recognition of new rights not considered fundamental at the time of the sanction of the constitutional text.

For its part, at the legal level, the Tax Code (1974) of our country has two articles of particular importance in the regulation of relations between the Tax Administration and taxpayers, such as articles 68 and 70, entitled the first "Powers of the Administration" while the second "Obligations of taxpayers". From these norms it is possible to glimpse a vision of a fiscal and repressive administration in accordance with the time of its sanction, since it does not pronounce itself in relation to the rights of the taxpayers, paradigm of a modern tax administration.

Indeed, article 68 establishes the powers of the Administration, aimed at ensuring transparent, fair and legally compliant performance in the exercise of its functions and on the other hand, while article 70 regulates the obligations of taxpayers, ensuring that they meet public burdens in an equitable manner.

Article 68 Tax Code (Powers of the Administration).- The Administration shall have the broadest investigative and supervisory powers and, in particular, may:

A) Require taxpayers and responsible parties to display their own and third-party business books, documents and correspondence, and require them to appear before the administrative authority to provide information.

B) Intervene the inspected documents and take security measures for their conservation.

C) Seize said books and documents when the gravity of the case requires it and for up to a period of thirty working days; the measure will be duly documented and can only be extended by the competent judicial bodies, when it is essential to safeguard the interests of the Administration.

D) To carry out inspections of movable and immovable property occupied, under any title, by taxpayers and responsible parties. Private homes may only be inspected with a prior judicial search warrant.

E) Request information from third parties, being able to order their appearance before the administrative authority when it deems it convenient or when they are not presented in a timely manner. (*)

F) Request the creation of a sufficient guarantee with respect to the specific credits whose debit is pending.

G) Intervene or seize movable goods when they lack the external elements of control or the stamps, seals or value stamps that accredit the correct payment of the tax.

When it is necessary for the fulfillment of the preceding steps, the Administration will require a judicial search warrant.

Article 70 (Obligations of Individuals).- The taxpayers and responsible are obliged to collaborate in the tasks of determination, control and investigation carried out by the Administration; and in particular, they must:

10 Cassinelli Muñoz, H. (2010). Protection in the enjoyment of fundamental human rights and amparo action. in H. Cassinelli Muñoz, Constitutional and Administrative Law. The Uruguayan Law.

A) *To keep the special books and records and to document the taxed transactions in the manner established by the law, the regulations or the resolutions of the collecting agencies.*

B) *To register in the relevant registers, to which they will provide the necessary data and communicate their modifications in a timely manner.*

C) *To keep the books and other documents and records in an orderly manner during the term of limitation of the tax, as provided for by the relevant regulations.*

D) *To facilitate the authorized tax officials, the inspections or verifications in any place, domiciles, industrial or commercial establishments, offices, warehouses and means of transport.*

E) *Present or exhibit in the tax offices before the authorized officials the declarations, reports, proofs of legitimate origin of goods, and any documentation related to facts generating tax obligations, and formulate the extensions or clarifications that may be requested.*

F) *Communicate any change in their situation that may lead to the alteration of their tax liability.*

G) *To attend the tax offices when their presence is required.*

It should be mentioned that, at the international level, the first pronouncement on Human Rights that expressly enshrines the fiscal matter within the aspects to be protected, is given in paragraph 1 of Article 8 of the American Convention on Human Rights – Pact of San José de Costa Rica, 11/22/1969-, approved and incorporated into our legal system by Law No. 15,737 dated 03/22/1985:

> "*Everyone has the right to be heard, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or tribunal, previously established by law [...] for the determination of his rights and obligations of a civil, labor, fiscal or any other nature*".

Protection of taxpayers against the violation of their rights by the Tax administration.

In Uruguay, when faced with an administrative act detrimental to their rights, the parties may file administrative appeals against such acts. Once they have exhauster this administrative procedure by express Resolution or by fictitious refusal, or by application of the Urgency Institute provided for by the New Contentious Administrative Code – Law 20.333 dated 11/09/2024.; the administrative litigation route is enabled.

With regard to the tax administrative procedure, they will be applied in accordance with Article 43 of the CT and, unless otherwise provided, the rules governing administrative procedures or, failing that, for the contentious-administrative process. That is, Decree No. 500/991 dated 09/27/1991 entitled "Approval of the administrative and disciplinary procedure applicable to the Central Administration official" and the recently approved by Law No. 20.333 dated 09/11/2024 "Administrative Litigation Code".

The regulatory standard, for its part, establishes the regulatory framework for the execution of the various necessary administrative procedures, ensuring that the actions of the fiscal body comply with principles such as legality, transparency and efficiency. At the same time, it establishes essential provisions for the processing of procedures, including aspects related to notification, the presentation of appeals, administrative deadlines and procedural guarantees for taxpayers. This regulatory framework not only regulates the actions of the Administration, but also protects the rights of the taxpayers, allowing the exercise of defense against possible actions or resolutions that may affect their interests.

On the other hand, with regard to the jurisdictional tax protection of our country, it should be said that in Uruguay the control of the legality of administrative acts, introduced since the Constitution of 1952, is, in words from Ferrari "the offspring *of the French contentious*

annulment, inspired in turn by the distrust towards the judges of the ancien régime".[11]

The Administrative Litigation Court – hereinafter TCA – was created in 1952, and its minor courts recently created by the Budget Law No. 20,212 – the Courts with jurisdiction in annulment proceedings – are separated from the judicial power, limited in their jurisdiction to annul or confirm the administrative act, without reforming it, and subject in their action to the prior exhaustion of an administrative route or application of the Emergency Institute.

It is worth mentioning that the taxpayer may also opt for a patrimonial reparation, this time before the judiciary. In those cases in which the taxpayer has opted to file a nullity action, the reparation action may not be filed until the judgment annulling the act has been issued; or, the annulment proceeding is concluded by the issuance of a judgment that ends the proceeding without deciding on its main subject matter or in an extraordinary manner, with the exception of when this occurs due to discontinuance of the proceeding or withdrawal of the annulment claim.

On the way to a Taxpayer Statute?

In 2006, Resolution No. 1809/2006 was promulgated, which introduced the Code of Ethical Conduct for Officials of the Directorate General of Taxation (DGI). This regulatory instrument represented a significant advance in the promotion of integrity and transparency within the tax administration.

The Code establishes a set of principles and rules aimed at regulating the conduct of officials in the exercise of their functions, with the aim of guaranteeing an ethical and professional performance that inspires confidence in citizens. Its provisions include rules on impartiality, confidentiality of information, the prohibition of conflicts of interest and the obligation to act honestly and responsibly.

This ethical framework not only seeks to improve the quality of the service provided by the DGI, but also to strengthen the legitimacy of the tax system by ensuring that those who administer it or provide the tax service are governed by high standards of behavior. But until now, the focus was on the Administration and the actions of its officials, a process that, although it began in 2006, ends up being legally enshrined in 2019 with Law No. 19,823 dated 18/09/2019 "Declaration of General Interest of the Code of Ethics in the Public Administration".

On the other hand, attention was strongly focused on taxpayers and their rights and guarantees starting with the First Conference on Taxation, Faculty of Economics and Administration, December 2008, where the importance of having a "taxpayer statute" enshrined as a formal regulatory body is recognized.

Although, as stated above, in Uruguay, the rights of the administered do not depend on the enactment or promulgation of a taxpayer's statute, since due to their constitutional roots they are pre-existent to the enactment of a law that summarizes them, the convenience is highlighted due to its didactic function for taxpayers in general, but especially for the smallest taxpayers, who normally cannot access specialized professional advice.

On this basis, in 2010 the Association of Accountants, Economists and Administrators and the Bar Association drafted a bill called the "Taxpayer Charter", an initiative that did not receive the impetus and approval necessary to become a positive norm.

11 Ferrari, M. (2016). – The Jurisdictional Tax Protection in Uruguay: Illusion or Effective Right? The feasibility of small, big changes. Tax Magazine N°251. VOLUME XLIII. Uruguayan Institute of Tax Studies.- IUET-II-DCIV-900.

Years later, but this time at the initiative of the DGI, the so-called "Taxpayer's Bill of Rights and Duties" (2012) emerged. In this document, which mentioned the rights and obligations of taxpayers, listing in detail seven rights and seven obligations, it was expressly clarified that "*the current regulations, and not this Charter, create the rights and obligations to which the administration and taxable persons are subject*"[12]. This statement makes it clear that its purpose was to serve as a set of guidelines aimed at strengthening the relationship between the Tax Administration and taxpayers, promoting values such as trust, transparency, and that the "Taxpayer Charter" lacked binding regulatory force that allowed it to be invoked on a mandatory basis. Rather, it constituted a summary of good practices, guidelines or guiding guide aimed at promoting respectful and equitable treatment between the parties in the tax field.

Recent novelties

On April 4, 2024, Decree No. 101/2024 was promulgated, which approved the Ordered Text 2023 (TO 2023), which regulates taxes under the competence of the DGI. One of the main novelties introduced by this provision is the inclusion for the first time, within Title 1 relating to national tax law, of a specific chapter that addresses the rights, guarantees and duties of the taxpayers. Specifically, in Section IV of Title 1, referring to General Rules of National Tax Law, the rights and guarantees of taxpayers are incorporated, organized into five key chapters that cover the different aspects of the tax regulatory framework:

1. Chapter I – General Provisions: establishes the basic principles and general guidelines governing the relationship between the Tax Administration and taxpayers.

2. Chapter II – Administrative Procedure: regulates the administrative procedures and actions that must be conducted, ensuring compliance with the rights of taxpayers.

3. Chapter III – Petitions detail the mechanisms available to taxpayers to submit applications or raise concerns with the Tax Administration.

4. Chapter IV – Administrative Appeals: defines the procedures for taxpayers to file appeals.

5. Chapter V – Judicial Protection: addresses the right of everyone to have effective, simple and rapid legal avenues of protection before competent judges or courts in case their fundamental rights are violated.

The introduction of this section in Title 1 of the Ordered Text, although relevant from an organizational point of view, does not imply the creation of new rights, guarantees or duties for taxpayers. The normative texts incorporated there were already in force, although dispersed in different legal and regulatory provisions. Its systematization in a single chapter seeks to facilitate its consultation and application, contributing to the clarity and accessibility of the regulatory framework.

Among the provisions incorporated are Decree 500/991, Resolution 1809/006, articles of the Pact of San José de Costa Rica included in Law No. 15,737, Law No. 19,823 on the Code of Ethics in the Public Service, as well as regulations related to the administrative litigation process.

In this way, Decree 101/2024 does not introduce modifications in the field of taxpayers' rights and obligations, but rather consolidates pre-existing regulations, allowing for a more consistent and uniform interpretation of them. This compilation effort reflects the commitment to providing the tax system with greater systematicity and predictability, key aspects to strengthen legal security and trust in relations between the managed and the tax administration.

12 Letter from the Taxpayer, General Tax Directorate, Ministry of Economy and Finance – Eastern Republic of Uruguay, p. 20.

Without prejudice to highlighting the value of the compilation, it is mentioned that this body of legislation does not include or mention the rights of taxpayers deriving from the general constitutional norms extended to tax matters, nor those arising from the CT itself, which is why, for a wide sector, it does not satisfy the need to have a "Taxpayer Statute" or "Taxpayer Bill of Rights and Guarantees".

Approval of the Contentious-Administrative Code (CCA)

Another important step forward in this area has been the recent adoption of the Contentious Administrative Code, hereinafter referred to as the CCA. This Code not only compiled existing standards but also brought with it a number of modifications. Among these, it is highlighted that the deadline for the filing of administrative appeals that went from being 10 calendar days after the notification to the Administrator to working days, as well as the extension of the deadline for filing the cancellation request, going from 60 calendar days from the exhaustion of the administrative procedure, to 90 calendar days counted from that moment.

Another novelty is the so-called "urgency" institute, which allows reopening the 90-day period for filing a nullity action.

At the same time, hearings by videoconferencing and the possibility of initiating reparatory action are also provided for in the event that the annulment process is concluded by the issuance of a judgment that puts an end to the process but without deciding on its main purpose or by an extraordinary way, with the exception of when this occurs due to the continuation of the instance or by withdrawal of the annulment claim.

Likewise, with the implementation of the CCA, the competences were distributed between the Administrative Litigation Tribunal (TCA) and the Lawyers' Courts in the Annulment Litigation created by Law No. 20,212, and the creation of the Appeals Tribunal in the Annulment Litigation was foreseen. Despite this distribution, the TCA will maintain the leading role in the most complex and important annulment cases. For their part, the Contentious Annulment Courts will hear, in the first instance, applications for annulment of definitive administrative acts that produce particular legal effects; and in cases of lesser amounts. At the moment, the TCA will hear an appeal at second instance, but it is expected that if the volume requires it, the Administrative Appeals courts will do so.

With the approval of the first CCA in Uruguay, the aim was to simplify and streamline the administrative litigation, providing greater guarantees and more reasonable deadlines for both parties, promoting a more balanced and, above all, effective process.

Draft law "Rights and guarantees of taxpayers vis-à-vis tax administrations"

In 2023, the Association of Accountants, Economists and Administrators of Uruguay and the Bar Association of Uruguay will resume the bill called in 2010 "Taxpayer's Charter" with the aim of updating it and presenting it for debate and approval again.

The purpose of this new project is to compile normative provisions that were previously scattered in different legal texts, to specify already existing rights of constitutional origin, as well as to incorporate new rights and guarantees in favor of taxpayers.

An outstanding aspect of the new rights is that they are designed to especially benefit small taxpayers, who usually face greater difficulties in accessing specialized technical advice, which strengthens their position within the tax system and promotes greater tax equity.

As far as it has to do with the specification of rights in constitutional tax matters, the Project refers to the presumption of innocence of the taxpayer, publicity regarding the proceedings, to have the due advice and, perhaps the right that has most opened the debate, not to declare against himself in a tax audit process.

In relation to the new rights in favor of taxpayers that are intended to be incorporated, the literal K and

M regulated in Articles 5 and 6 stand out. The first establishes precise time limits for inspections, limiting the notification of the final inspection act, except in some specific cases, to a period of 12 months and the notification of the determination act to a period of 24 months, from the beginning of the tax audit.

It should be noted that, currently, the regulations speak of a "reasonable period" without defining what it means by such.

Decree 500/991, Article 5 included in Article 170 of the T1 of the TO 2023:

> *"(... Those interested in the administrative procedure shall enjoy all the rights and guarantees inherent to due process, in accordance with the provisions of the Constitution of the Republic, the laws and the norms of International Law approved by the Republic.*
>
> *These rights imply a procedure of reasonable duration that resolves your claims."*

Article 8"*In the administrative procedure, the speed, simplicity and economy of the same must be ensured and the realization or requirement of unnecessary or arbitrary formalities, formalisms or precautions that complicate or hinder its development should be avoided, (...)*".

For its part, the literal M regulated in Article 6, mentions the right to obtain the refund of the unduly paid with the corresponding readjustments, establishing the mechanism for such updating, so far, a solution not enshrined normatively but present in isolated jurisprudential interpretations of the TCA.

The position of the Tax Administration of our country and in particular of DGI and the Social Security Bank is of at least partial opposition to the Project[13], for understanding in substance, that it recognizes taxpayers' rights that collide with the duty of collaboration imposed by the CT in Article 68, also establishing temporary and operational limitations that would disable the structure on which the tax system is based.

As for the deadlines that are intended to be imposed, the Administration understands that these limitations do not differentiate the particularities of the audits carried out on a small company or a multinational, considering that a request for information from abroad could take, for example, half of the deadline that is intended to be imposed. In turn, limiting the deadlines could result in a detriment to taxpayers since their ability to provide evidence could be limited, or at least deadlines should also be established for this stage.

On the other hand, they understand that if the Project does not add new rights it would result in a legislative overabundance; and on the contrary, if it contemplated new guarantees for the taxpayer it would neglect the implications that this would entail for the organization and operation of the Administration.

Despite this, the Bill has been approved by the majority of the Commission dated 05/22/2024 and will continue with the due process until it is resolved whether or not it becomes national law.

3. CONSIDERATIONS AND CHALLENGES RELATED TO THE RIGHTS AND GUARANTEES OF TAXPAYERS IN COMPARATIVE MATTERS

We can appreciate that both countries are making progress in the digitalization of their processes and, as a result, in a new paradigm of relationship with taxpayers, which is posed in a scenario of increasing importance of protecting their rights and guarantees.

13 See more details. Majority and Minority Report to the Bill obtained from https://parlamento.gub.uy/documentosyleyes/ficha-asunto/159004

Furthermore, the countries in question are in different time scenarios with respect to the establishment of a catalog of taxpayer rights and guarantees, since while Chile is about to celebrate 15 years since its establishment at the legal level, Uruguay is in the initial stage of enactment of the Law "Rights and Guarantees of Taxpayers before the Tax Administrations".

It is interesting to appreciate the debate raised in Uruguay regarding the idea of a consecration, in a single normative body of legal rank, of the rights and guarantees of taxpayers, or at least, to the specification or concretization of those that derive from general constitutional norms, not expressly referred to the tax matter.

The reasons for the reluctance to this approach on the part of the Tax Administration turn out to be varied, ranging from concepts such as the legislative overabundance, to arguments that allude to limitations on the prerogatives of the Administration necessary for the fulfillment of its purposes, which would attack the Uruguayan Tax System itself.

The truth is that there was an important step in the compilation of rules when a chapter was included in the T1 of the TO 2023 referring to the rights and guarantees of taxpayers, however, this chapter does not make any mention of those rights that derive from constitutional norms or those that may arise from the Tax Code itself.

If the aforementioned Bill is approved, the rights and guarantees of taxpayers would acquire legal status, as well as the rules that establish the powers of the Administration in the Tax Code, and even over time, they could be incorporated into the same regulatory body.

In the current scenario, it is usually argued that those who are somewhat unprotected are small and medium taxpayers, who in addition to the tax burden must pay for advisors if they want a successful defense of their rights when they are violated by the actions of the administration. Mainly, due to the lack of clarity in the boundaries between the powers of the Administration and the Rights of Taxpayers.

A possible solution to this would be to have a Taxpayer Advocate, as it has existed since recent times in Chile or as proposed in the CIAT Model Tax Code, which effectively ensures the rights and guarantees of this sector. However, this would imply a constitutional reform.

On the other hand, as we should point out, Chile has a catalog of taxpayer rights and guarantees enshrined at the legal level in the Tax Code, which has been the subject of at least three legislative reforms, all of them, with the aim of improving and granting certainty to the participants in the tax legal relationship.

An important part of the modifications have been related to the establishment, at the legal level, of the technological advances and information tools that the Administration makes available to the managed, with all the situations that this entails, regarding the processes of control, tax reservation, requests and challenges of actions on the part of taxpayers as well as the due information that the managed must have for the realization of their procedures and tax declarations.

Finally, it is worth highlighting the recent reform of Law 21,713, of October 2024, which, among its objectives, seeks to expand the competence and role of the Taxpayer Ombudsman before the tax administration as a whole.

Challenges

The increasing implementation of technology and the ability of the tax administration to access relevant information has highlighted the issue of taxpayers' rights and guarantees in the face of this reality.

In this sense, computer controls are usually the starting point for carrying out intensive audits, which, supported by advanced technological tools, allow addressing a small group of taxpayers identified by computer systems as outside the expected compliance parameters.

In this way, technology makes it easier to prioritize the cases with the highest probability of irregularity, optimizing human and material resources. However,

this approach raises important questions regarding taxpayers' rights.

When the tax administration selects a taxpayer supported by technology for its audit, can this be interpreted as a presumption of guilt? Is it necessary to find irregularities in all selected cases?.

Therefore, although technology has improved the accuracy of controls and optimized the use of resources, it highlights the importance of ensuring that the tax process is balanced, fair and with full respect for the rights and guarantees of taxpayers. This implies not only detecting non-compliance, but also recognizing taxpayers who comply with their obligations, as well as facilitating the same, thus strengthening the trust and legitimacy of the tax system.

In this last point, it is important to highlight in Uruguay, the new digital channels and online procedures, corporate mobile applications and telephone procedures, made available to the taxpayer in order to facilitate voluntary compliance, the fundamental basis of the Uruguayan Tax System.

However, with regard to Chile, in accordance with the aforementioned and also with the provisions of article 74 of the CIAT Model Tax Code, an express and non-exhaustive catalogue of taxpayers' rights and guarantees was established, mainly agreeing on the right to be informed and assisted in the exercise of taxpayers' tax obligations, to due process and the right of defense, which, although they are part of our legal system, their express and more specific regulation has allowed to increase legal certainty on the part of the administered.

In the same way, Chile has stood out for the innovation in its technological systems, especially in the personal site of taxpayers, a site from which a series of procedures related to their economic activity, tax declarations and responses to requests from the tax authority can be carried out.

In this sense, as Faundez, Osman, and Pino point out, one cannot neglect, *"the permanent tension in the face of the collision of fundamental rights, especially between material tax law and the procedure through which the administrative supervisory power is exercised, cannot be neglected."* (Faundez, Osman y Pino, 2018).

That is why we are facing new challenges, which realize the need to properly regulate auditing with technological means. An example of that was a recent conflict, claimed in the seat of courts of justice, through which a group of taxpayers, each one on their own, claimed regarding the massive blocking of the tax code by the Internal Revenue Service, that is, the mechanism by which the personal site of the tax administration is accessed, in which a series of procedures can be performed, such as declaring taxes and returns, making requests and being informed about ongoing procedures, knowing tax information of their company, issuing tax documents, among others.

In that case, the Taxpayer Ombudsman's Office carried out actions aimed both at providing guidance to taxpayers who have requested it and requesting information from the administration, through Ordinary Office No. 106 of 2024, since in its opinion the correct application of the taxpayers' rights was put at risk due to the fact that, in its opinion, they made it impossible to obtain timely information, the lack of certainty of the application of the applied control rules, the adoption of a measure without a well-founded or validly notified resolution.

Although it is not a settled conflict, which accounts for the challenges in this matter, the Supreme Court, the highest court of the country, hearing the problem through another action not directly related to the rights and guarantees of the taxpayer, has confirmed the decision of the administrative authority, in order that these measures are transitional and preventive of taxpayers who have or have had an irregular tax behavior, as well as that these measures do not impede the right to develop a legitimate economic activity in the terms denounced by the taxpayers.

CONCLUSIONS

The comparative analysis between Chile and Uruguay highlights significant advances in both countries to strengthen the rights and guarantees of taxpayers in a context of technological modernization and tax control. Chile, with the incorporation of an explicit catalogue of rights in its Tax Code and the figure of the Taxpayer Ombudsman, has achieved an institutional framework that fosters trust and equity in relations between taxpayers and the administration.

In Uruguay, the approval of the 2023 Orderly Text and the Contentious-Administrative Code represent important steps towards a regulatory systematization that facilitates access and understanding of taxpayers' rights. Although the Uruguayan model does not include a figure such as the Taxpayer Advocate, the focus on the continuous improvement of technological and regulatory processes demonstrates the commitment of the tax administration to an increasingly efficient and equitable system.

The strengthening of taxpayers' rights and guarantees must be a permanent objective of the tax administrations, of which both countries, although at different stages and in different ways, have shown significant progress and areas of opportunity, which reinforces the importance of adapting information tools and technologies both to the regulations in force, to the powers and application of auditing plans and to respond to the growing needs of the taxpayers.

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The Challenge of Value Added Tax (VAT) Refunds in Angola

António Feliciano Braça

SYNOPSIS

The VAT refund in Angola has allowed the adoption of measures to ensure excellence and greater control of fraud.

KEYWORDS: Fiscal policy, VAT (Value-Added Tax), Refund, Tax fraud, Angola.

CONTENTS

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INTRODUCTION

In this study on the challenges of VAT refunds, the objective is to address the barriers of the VAT refund process in Angola and to propose effective and efficient solutions, aiming at combating fraud.

The State develops various financing mechanisms, including income from assets, taxes and public loans. In order to focus on just one of the various taxes implemented in Angola, we will focus on VAT, the so-called fair tax. It is not surprising that this tax has been conquering various legal systems, with more than 200 countries already having it in their legal systems, and those that do not have it specifically base their consumption taxation system on it.

During the post-war period, there was an economic growth based on the high price of a barrel of oil, which represents more than 90% of the GDP. In mid-2014, due to external shocks, with immediate impact on Angola's balance of payments, the intention arises to consolidate public policies, guided by tax policies.

According to Article 21 of the Constitution of the Republic of Angola, "Fundamental Functions of the State", paragraph d), the fundamental functions of the Angolan State are "to promote the welfare, social solidarity and improvement of the quality of life of the Angolan people, mainly of the most disadvantaged population groups".

The fulfillment of these functions, understood as public policies, presupposes the adoption of a tax policy appropriate to the Angolan tax structure, with a view to increasing revenues.

For the preparation of this article, we will make a bibliographical review on the subject in question by national and international authors, as well as other studies already conducted on the barriers to VAT refunds in Angola.

In the methodological field, given the general objective set, it was decided to carry out a qualitative research, being the fundamental procedure the graphic analysis developed from a descriptive approach.

According to the Constitution of the Republic of Angola, in Article 101, "The tax system shall have the obligation to meet the financial needs of the State and other public entities, ensure the realization of the economic and social policy of the State and proceed to a fair distribution of income and national wealth". The implementation of the tax system is guided by the best and most efficient contribution of taxes, duty of contribution provided for in Article 88a "Everyone has the duty to contribute for public and society's expenses, according to their economic capacity and the benefits they generate, through taxes and other tributes, based on a fair tax system and under the terms of the law."

In view of the above, this article considers the following guiding questions:

What are the challenges of VAT refunds in Angola?

Based on this question, the following general objective of the study was raised:

a) Mapping the VAT refund regime in Angola

The general objective of this article is based on six specific objectives listed below:

b) Characterize the current Angolan tax system;

c) Identify the barriers to the implementation of fiscal public policies in Angola;

d) Analyze the challenges of fiscal public policies in Angola;

e) Map the main economic policy measures in education;

f) Assess the impact of the fiscal public policies adopted;

g) Analyze the implementation of the Value Added Tax; and

h) Investigate the impact of VAT refunds on public finances.

We consider that the research strategy that best suits the purpose of this study is the qualitative methodology, the documentary analysis developed from a descriptive approach being the fundamental procedure.

The organization of the work is structured in three chapters.

In the first chapter we present the theoretical framework where we address the concept of VAT, devolution, public policies and tax policies, characterize the Angolan fiscal system, as well as an approach to the implementation of fiscal public policies in Angola and its challenges.

The second chapter presents the research plan, the general and specific objectives, as well as the methodology and data collection to be developed.

The third is dedicated to the presentation, analysis and interpretation of the data collected by the research instrument used and presented in graphs, based on the survey.

Finally, we conclude the presentation of the article by reflecting on the analysis of the results, which indicate the major obstacles to the implementation of fiscal public policies in Angola, their challenges and barriers.

1. THEORETICAL FRAMEWORK

1.1. Tax Context

1.1.1. Value-added tax

VAT is a general tax on consumption, with a single obligation, non-periodic, neutral, based mainly on the destination principle, which is levied on all stages of the production process, with the support of the indirect subtractive credit method.

It is a multiphase tax, without being cumulative or having a cascade effect, since it taxes the net amount of each transaction, i.e., the added value that the product bears within the economic circuit. This is due to the indirect subtractive credit method or invoice method, allowing the deduction and settlement of the tax at each stage of this economic circuit, i.e., the final consumer and holder of the contributive capacity is responsible for the payment of the tax, since it is up to the taxable person who has provided a service or sold a good to the final consumer to settle the tax, being in this way the final consumer the holder of the VAT tax burden, and the producer, seller or service provider being mere conductors of the tax. This fact also gives the tax an indirect character.

It is administratively efficient and seeks neutrality, domestically or internationally, has a history of very high revenue collection, for its liquidation and collection it uses the tax credit method, the subtractive method that gives the possibility of neutrality and collection to any act of consumption.

1.1.2. VAT Refunds

All taxpayers under the general VAT taxation system who have registered a credit in their favor in the last 3 (three) monthly returns (form 7) may apply for a refund.

The refund must be requested in the fourth monthly return (form 7) provided that the amount to be requested is equal to or greater than AKZ 299,992.00 (Two hundred and ninety-nine thousand nine hundred and ninety-two Kwanzas).

In order to apply for a refund, taxpayers must meet the following requirements:

- To have complied with the obligation to electronically submit the SAF-T file;

- To have complied with its declaration obligations during the last 4 (four) fiscal years;

- To have submitted to the VAT Services Directorate a letter issued by their bank, duly stamped and signed, accrediting the ownership of the IBAN indicated in the declaration of commencement of activity (model 6);

- The invoices and equivalent documents declared in the supplier annex and in the SAF-T file must comply with the legal regime of invoices and equivalent documents.

An innovative model adopted in the Angolan tax system to facilitate VAT refunds, a model praised by many tax experts, is provided for in Article 52, paragraph 2 of the VAT Code, whereby "of the revenue collected daily, 85% is collected for the Single Treasury Account and the remaining 15% for the refund account", facilitating and accelerating the requested refunds, after remediation and compliance with the assumptions inherent to them.

1.1.3. Captive VAT

VAT has inaugurated a new era of taxation in Angola[1], not only because it contributes greatly to the collection of non-oil revenues, but above all, because it has created the necessary conditions to strengthen *tax compliance*, imposing a high level of formality and organization on economic agents, since with the entry into force of the tax, taxpayers began to have a set of essential and indispensable obligations for the operation, management and monitoring of VAT, naturally with repercussions on the entire tax system, such as the obligation to (i) have an accountant, (ii) process invoices or equivalent documents through a computer system certified by the Tax Administration or, alternatively, use invoice blocks printed by authorized printers or typographers, (iii) electronically file the periodic return on a monthly basis, (iv) electronically file, also on a monthly basis, the taxpayers' accounting elements (through the SAFT file), among other obligations, whose advantages, it is reiterated, benefit the entire tax system.

Angola introduces in its tax system a tax that, in addition to enshrining cross-cutting rules in accordance with international best practices, also adopts its own unique solutions to meet the idiosyncrasies of its economic and business reality [2]. One of these solutions, which immediately attracts attention, is the institution of the captive tax or, simply, captive VAT.

This is a figure that, strictly speaking, is not new in the Angolan tax system, since the revoked *Imposto de Consumo*[3] already used a similar legal instrument to address certain situations in the oil sector[4], provided that it involved the provision of rental services of areas specially prepared for the collective collection or establishment of vehicles, and vehicle rental services, the Oil Investment Companies were obliged to withhold the tax paid on the invoice or equivalent document

1 It was implemented on October 01, 2019, with the publication and entry into force of Law no. 7/19, of April 24.

2 Objective defended by the General Guidelines of the Executive for Tax Reform, approved by Presidential Decree No. 50/11, of March 15, determining, in its numeral 1.4.3 (priorities for intervention in the legislative plan), that *"the taxation of consumption, within the scope of the reform, would be done essentially through the introduction or evolution of the current consumption tax to a VAT-type tax, without cascading effects and adapted to the Angolan socioeconomic structure".*

3 In this sense, CLOTILDE CELORICO PALMA, Introdução ao Imposto sobre o Valor Acrescentado Angolano, Almedina, 2020, pp. 160–162. The author emphasizes that «in Angolan legislation there is a peculiar figure which is that of the captive tax, a type of VAT withholding, inherited from the old Imposto de Consumo».

4 The difference is that VAT has a very broad objective and subjective scope of application, since it applies to many entities and covers all taxable transactions.

issued by the service provider, under the terms of paragraph 2 of Article 10 of the Excise Tax Regulation[5], combined with paragraphs g) and o), respectively, of paragraph 1 of Article 1 of the same regulation.

In the VAT Code (hereinafter, VAT Code), the first impressions of the captive tax are found in Article 2, paragraph b), which presents a brief propaedeutic notion of this institute*, according to which the amount withheld, as Value Added Tax, for delivery to the State, by the purchaser of goods or services, which appears in an invoice or equivalent document, under the conditions provided for in Article 21 of this Code, is considered captive tax.*

The taxpayer intervenes in the capacity of a tax substitute, an intermediary whose mission is to collect the tax paid by the final consumer and deliver it to the State, the sole owner of the tax, and is therefore prohibited from using it for purposes (other than the latter) that make it impossible to correctly deliver the tax to the person to whom it corresponds[6].

Therefore, regardless of whether or not the receipt of the amounts corresponding to the transactions has been verified, the difference, if any, between the tax paid and the input tax must be paid into the State's coffers within the legally established period (no. 1 of article 30 of the CIVA) [7].

The general rules on tax captivation are set forth in Article 21 of the CIVA, which establishes in its numeral 1º *that the Oil Investment Companies, the State, as well as any of its services, establishments and agencies, even if personalized, and the local autarchies, with the exception of the Public Companies, must captivate the totality of the tax contained in the invoice or equivalent document issued by the subject when carrying out the transfer of goods or rendering of services.*

The purchasers of goods and services, classified as captive agents, are responsible for the delivery to the State of the VAT incident to the invoice issued by their suppliers, and are obliged, under the terms of numeral 1º of article 31 of the CIVA, to submit, by means of electronic data transmission, the annex to the periodic return corresponding to such operations, which automatically generates the Settlement Note, and must deliver the amount of the captive tax no later than the last day of the month following the operations for which the tax has been captive. The tax must be paid in its entirety to the State's coffers.

The tax captivated by the State and local entities must be transferred to the Single Treasury Account, at the time of payment of the invoice or equivalent document, in accordance with numeral 4º of Article 31 of the CIVA, without prejudice to the distribution of revenues taking into account the quota assigned to the VAT refund

5 Revised and republished by Presidential Legislative Decree No. 3-A/14, of October 21.

6 The Supreme Court of Justice of Portugal shares the same perspective, in a judgment signed on May 31, 2006 (Proc. No. 06P1294) clarifies that "whoever receives tax benefits from the hands of a third party, acting in the capacity of depositary of the same, and does not deliver them, as a general rule, is because he appropriates them, granting them a non-legal destination".

7 The Court of Appeal of Guimarães, in Portugal, in a judgment issued on November 20, 2006 (Proc. No. 1796/06-2), concluded that "*VAT registered is due regardless of whether or not the price of the goods sold or services rendered is received or whether any compensation is requested, since it is clear from the respective provisions of the VAT Code and the configuration of the tax in question that the declaration of the transactions carried out (...) and the final amount settled (found, and which simultaneously serves as recognition of the payment obligation) do not depend on the actual collection of the tax from the customers". In turn, the judgment of the Court of Appeal of Porto, dated October 1, 2008 (Proc. No. 0842659), considered that "VAT accrues from the respective sale, invoicing, settlement and declaration of services, and not from the time of payment of the operation that gave rise to it. Therefore, the payment of the liquidated and declared VAT is due after the respective term has elapsed, whether or not it has been received from the next debtor".*

account referred to in Article 52 of the CIVA, with the modification introduced by Law 32/21, of December 30, approving the General State Budget for the 2022 Financial Year. This means that these entities should not use the captive tax to finance their expenses, however pressing they may be, since it is not a revenue that is legally assigned to them.

The captive VAT institute has great advantages, both for taxpayers and for the Treasury, many of which we have tried to enumerate above in accordance with the vicissitudes of the various sectors of economic life to which it is destined. However, in practice, many questions arise which, in many cases, cannot be answered under the protection of the legislation, a fact which leads, in certain situations, the tax authorities to try out solutions, many of which, it must be said, may be questionable in relation to the essential core of the taxpayers' guarantees.

The VAT Code provides for the legal consequences of *the tax being held captive and not delivered to the State's coffers*. In other words, if the buyer retains the tax settled on the invoice and does not deliver it to the State, a fine corresponding to twice the amount of the tax due will be applied, in accordance with § 6 of Article 70 of the VAT Code.

However, we must point out that the legal configuration of this VAT institute is clearly new in relation to the rest of the world, insofar as Angola had to "look at its own navel" in the process of construction and adaptation of this legal-fiscal instrument: it is truly a typically Angolan solution.

Public policies

Currently, with the diverse voices that are increasingly raised in favor of democracy, it is common to affirm that the role of the State is to promote the welfare of society, based on education, health, sports, environment and others. To achieve this welfare, the State must develop public policies, which should be understood as:

> The set of government actions and decisions aimed at solving (or not) the society's problems, (Carvalho, 2008, p. 5).

> Carvalho understands Public Policies as the set of actions, goals and plans that governments (national, state or municipal) draw up to achieve the welfare of society and the public interest. It is true that the actions that public leaders (governors or decision makers) choose (their priorities) are those that they understand as demands or expectations of society. In other words, the welfare of society is always defined by the government and not by society. This happens because society is incapable of expressing itself in an integrated way.

It is important to underline, initially, that public policy does not refer only to the issues involved in its formulation, i.e., from the developments in the application of resources, its legal aspects, legitimacy or simply as an attribute of the State. But we must also discuss its historicity, the emergence of ideas and the actors involved. In short, it is from the relationship between actors, such as the State, social classes and civil society, as Boneti (2007) explains, that the agents capable of defining public policies emerge. Moreover, as Dias and Matos (2012) rightly point out, cooperation between the actors involved, in a participatory dialogue, is essential in the process of implementing a given public policy (Estevão and Silva, 2018, 172).

Public policies are, therefore, instruments for the implementation of citizen rights, mediating the pact between the State and society. However, there is no certainty that social rights will be implemented, as everything will depend on the greater or lesser representation that each represented segment has (Estevão and Ferreira, 2018, p. 172).

Public policies" are guidelines, guiding principles for the action of public authorities, norms and procedures

for relations between public authorities and society, mediation between the actors of society and the State. They are, in this case, policies that are made explicit, systematized or formulated in documents (laws, programs, lines of financing) that guide actions that normally involve the application of public resources (Teixeira, 2002, p.2).

Boneti, cited by Estevão and Ferreira (2018), highlights the definition of public policies as the determination of the interests of global elites, such as the International Monetary Fund and the World Trade Organization. These agencies interfere in the elaboration of public policies in peripheral countries, taking advantage of their economic power, through loans, making them adopt homogeneous models of economic and social development in order to satisfy the interests of the elites.

Therefore, it should be noted that the concept of public policy has evolved over time, especially in political science. Initially, Public Policies were considered almost exclusively as outputs of the political system, i.e., actions conducted by a state entity based on demands captured, negotiated and transformed from society; while political science was concerned only with studying the inputs, which were the demands of society responsible for the formation of these outputs (Tude, 2010, p.11).

Ta policies

Tax policy consists of actions and measures, with an impact on revenue collection and expenditures, with the objective of achieving income distribution, resource allocation, macroeconomic stabilization, reduction of inflation and unemployment rates, and a better supply of goods and services. Good tax management is taken as a basic condition for reformulating macroeconomic aspects, favoring sustainable economic growth.

The 2008 crisis clearly demonstrated the importance of tax policies in capitalist economies such as Angola, whose concavities are always financed, e.g., with some public enterprises. Despite the divergence of economic currents regarding the policies to be implemented in the context of crisis, thus taxation arises as a set of legal provisions designed to ensure that, through taxation, the public treasury assumes responsibility for the payment of the expenses it is responsible for.

Thus, considering the theoretical reference, tax policy is understood as the set of measures that influence revenues and expenditures, in order to achieve and maintain sustainable growth rates, focused on taxation in general, and on taxes in particular, in order to maintain the government structure.

Tax policy challenges in Angola

The challenge of tax policy in Angola begins with the approval of Presidential Decree No. 50/11, of March 15, approving the General Guidelines of the Executive for Tax Reform, consolidated with the Organic Statute of the General Tax Administration on December 15, 2014, whose objective was greater coordination in the execution of tax policies. The objective is to transfer the personnel, assets, attributions and legal powers of the National Tax Directorate (DNI), the National Customs Service (SNA) and the Tax Reform Project (PERT) of the AGT, as well as to grant them autonomy and administrative, financial and asset management.

The Provisional Plan, a guiding instrument for Angola's economic and social management, is also emerging as a challenge. Among its necessary actions is the creation of "Political Measures and Actions to Improve the Current Economic Situation". It still guides the creation of a macroeconomic stabilization cycle, in order to lay the foundations for development, the promotion of confidence, economic growth and social inclusion, with a view to resuming the path of prosperity and inclusion, which was interrupted by the 2014 crisis, in perfect alignment with the National Development Plan 2018–2022, and adjusting tax policies in harmony with the SADC countries.

The challenge of tax policy in Angola is to transform it into a fairer policy, more rigorous and less prone to fraud and tax evasion, and with adequate tax benefits for entrepreneurs. The General Tax Administration (AGT) is the entity with competencies to execute tax policies, and primary objective is to become an integrated agency, of reference, capable of responding to current demands, capable of reducing the need for external financing, configuring taxes as the main source of financing.

The tax policy seeks the reduction of costs in the taxation sector by simplifying the administrative structure, increasing investment in information technology systems, rationalizing the organization of regional and local services, training employees and, finally, reducing oil revenues, this policy being a privileged ally of the Executive to achieve the objectives proposed in the governance program, which can contribute to the social welfare of all Angolans.

Barriers to VAT refunds in Angola

Companies that have not received a refund of VAT payments by the end of the third month after the request may demand compensatory interest from the General Tax administration (AGT), in accordance with Article 26(4) of the Value Added Tax Code.

The VAT refund rules are set forth in the VAT regulation, which was published in the Official Journal of the Union on May 24, 38 days before the new tax came into force for large taxpayers.

The regulation, which contains the procedures for applying for refunds and reimbursements granted to taxable persons and diplomatic agents, removes from the horizon the postponement of the entry into force of the new tax, scheduled for July 1, as requested by businesspeople and accountants, and with which the State expects to collect Kz 235.3 billion annually.

2. METHODOLOGICAL PROCEDURES

2.1. Methodological options

Recalling that the central research question raised in this study is the barriers to VAT refunds in Angola, this chapter aims to present the strategies and methodological procedures implemented to effectively respond to this guiding research objective. Ultimately, it seeks to map the fiscal public policies, as well as the challenges and barriers to their implementation. Table 1 below presents the organization of the specific objectives according to the general objective, which should not be understood as independent, but as consequent for the understanding of the subject under study.

The qualitative method is suitable for studies of history, representations, beliefs, relationships, perceptions and opinions, that is, the products of the interpretations that humans make during their lives, the way they construct their material artifacts and themselves (Minayo & Deslandes, p. 5).

According to Andrade (2001, p.95) research “is the set of systematic procedures, based on logical reasoning, which aims to find solutions to proposed problems, through the use of scientific methods”. Doxsey (2011, p. 130) understands that research is “the construction of original knowledge, according to certain scientific requirements. It need not be exclusively empirical, although this is generally assumed to be the most common and important. Methodology will then be defined as the study of the instruments for the assembly of a theory and the study of the theoretical foundations.

After identifying the objectives of the study and determining the methodological strategy to be used, the information collection instruments used to analyze the understanding of VAT refunds in Angola and its challenges and barriers are presented below.

Table 1
General and specific objective

General Objective	
Mapping the VAT refund regime in Angola	
Specific objectives:	– Characterize the current Angolan tax system; – Identify the barriers to the implementation of fiscal public policies in Angola; – Analyze the challenges of fiscal public policies in Angola; – Map the main economic policy measures in education; – Assess the impact of the adopted fiscal public policies; – Analyze the implementation of the Value Added Tax; and – Investigate the impact of VAT refund on public finances.

The information collection instrument will be based on a survey with questions addressed to senior executives of the Administração Geral Tributária, as the entity with competence to implement and execute tax policies, and to civil society, on whom the policies fall, randomly selected on September 28 and 29, 2022 from a sample of 31 respondents, in the Provinces of Benguela, Kwanza Sul, Huambo and Bié, territorially representative of the Fourth Tax Region.

The data obtained will be analyzed from a descriptive approach whose objective is to map the barriers to refunds in Angola, taking into account the decrease in the growth rate of adherence to the general VAT regime and the constant requests for refunds, seeking to identify, analyze and describe the evidence to be observed, with a view to scientific knowledge. The descriptive analysis is performed with the aim of describing the characteristics of the phenomenon (Doxsey, 2011) and "has as its main objective the description of the characteristics of a certain population or phenomenon or the establishment of relationships between variables" (Gil, 1999, p.42).

Carvalho distinguishes 4 (four) phases of Public Policies, understanding that the process of Public Policy formulation, also called Public Policy Cycle, presents several phases:

Formation of the agenda (selection of priorities);
Formulation of policies (Presentation of solutions or alternatives);
Decision-making process (choice of actions); and
Implementation (or Actions implementation);

In view of the above, we consider that the research strategy that best suits the purpose of this study is the qualitative methodology, having as a fundamental procedure the analysis of graphs developed from a descriptive approach; the questions will be focused on point 4 (four), implementation or execution of actions, by means of a survey.

3. PRESENTATION AND ANALYSIS OF RESULTS

In this chapter, we will begin the analysis of the results of this article, which has the general objective of mapping the implementation of fiscal public policies in Angola, considering the decrease in the growth rate of the Gross Domestic Product and the consolidation of the fundamental functions of the State:

Amand & De Rick (2005) point to the fact that fraudulent companies often introduce innocent companies into the system, which transact goods, claiming that they know a very profitable client (who is involved in the fraud, without

the knowledge of the "innocent" companies), giving the excuse that they do not transact directly with them for legal or commercial reasons. Of course, the intention of the fraudulent companies is to make it difficult to establish a direct link between the companies conducting the fraud scheme, thus including innocent companies, in order to hinder the work of the tax authorities.

Tomaz (2007) lists a set of measures to combat fraud: more intensive use of administrative cooperation mechanisms;

Modernization of control methods by Member States, in particular by including potential risk analysis as one of the main methods for selecting taxpayers to be audited;

Implementation of computerized auditing as a modern control tool for companies, which increasingly use electronic means of transmitting and keeping accounting documents and records;

Effective coordination of taxpayer-driven multilateral control schemes of common interest to several Member States;

Removal of barriers to effective mutual assistance in the fight against fraud, in particular in confidentiality legislation;

Urgent need for additional decisions/initiatives to combat carousel fraud, in particular stricter controls on start-up declarations;

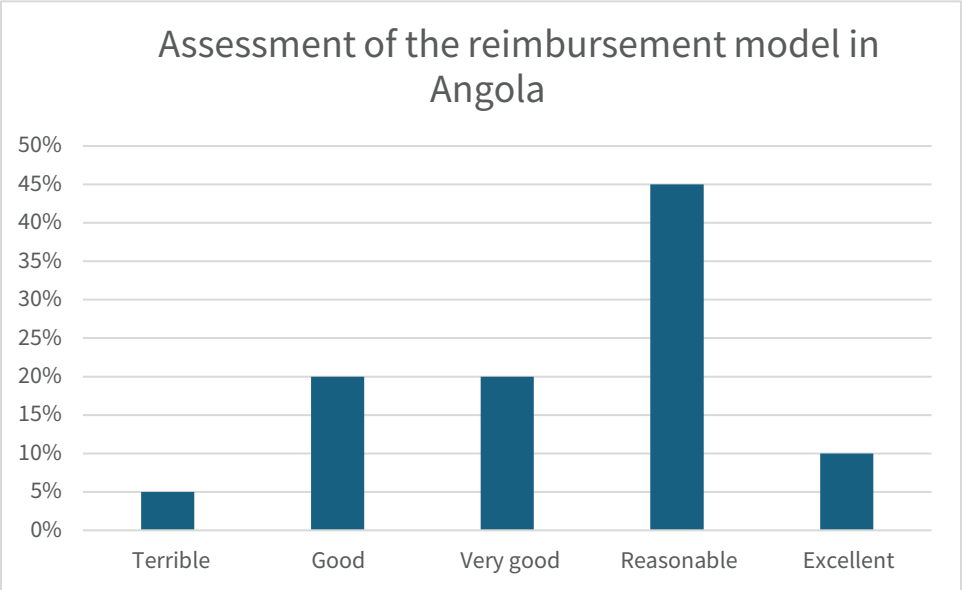
Creation of **anti-fraud units.**

The survey was conducted between September 28 and 29, 2022, *using the SurveyMonkey* software, sent by email to the respondents. It is observed that the period with more responses was at 13:00, when part of these take the lunch break and there is greater availability.

Graph 1, and also the research conducted, shows that more than 40% of respondents consider the devolution model adopted in Angola to be reasonable.

If we analyze the methodological model adopted, and according to the criteria of return in Angola, according to the penultimate paragraph, it is number

Graph 1
Volume of responses to the VAT refund form in Angola



3 of Thomaz's measures, i.e. "**Implementation of** computerized auditing as a modern tool of control of companies, which increasingly use electronic means of transmission and conservation of documents and accounting records".

After requesting the refund, the taxpayer is subjected to a rigorous tax audit process, based on physical and electronic mechanisms to evaluate its real tax situation, a method that has been so far assertive in terms of the refund.

CONCLUDING REMARKS

In this study, we proposed the barriers to VAT refunds in Angola and came to the following reflections:

/The Angolan tax system is in the process of change and increasingly seeks the best tax practices adopted internationally. Currently, the tax system is typical of developing countries, with diverse taxes and complex tax legislation, with a growing impact on the national budget balance.

The informal sector, among others, constitutes a barrier to the implementation of fiscal public policies in Angola. It is pertinent to note that actions related to the formulation of the process of formalization of economic activity are increasingly evident and subject to tax policies. Therefore, public policies are consolidated with the effectiveness of tax policies.

It is concluded that the mechanism adopted in Angola to prevent VAT refund fraud is, to some extent, effective, fast and technological, and within the reach of taxpayers. To this end, points 3 and 7 of the Thomaz fraud control methods are assertively implemented in the refund process.

- Notwithstanding the reasonableness of the refund process, it is important to address the following challenges in the VAT refund process to ensure excellence and greater fraud control:

- Define the fundamental characteristics of the future VAT system, with the objective of strengthening the collection capacity, revising VAT obligations for the provision of services and distance sales, adopting measures to combat financial fraud, creating a one-stop shop, reducing bureaucracy and ensuring a solid and modern control that can keep pace with social changes, the possibility of improved and simplified VAT collection with the help of new technologies, a greater degree of harmonization of rates and a reduction of administrative burdens. This need has arisen due to the exponential growth of intra-community transactions, the significant loss of revenue, and the need to harmonize governmental IT systems;

- Creation of a single VAT space for ATAF member countries, including the creation of several groups to deal with tax reform, many of which are internal consultants, to conduct this VAT reform;

- A robust system needs to be put in place to stop VAT fraud and tax evasion in Africa. This will require tax authorities to pay more attention to risky behavior and to adopt rapid reaction measures. The exchange of information, cooperation and coordination between member states and the fractioned payment system are some of the measures to be found to achieve this purpose. An effective system will be obtained by introducing a generalized tax rate, broadening the tax base and limiting reduced rates, which will result in higher revenue collection; and

- Ensure that the right to a VAT refund is considered a legitimate right of the taxpayer. The VAT creditor position results from the combination of the splitting of the payment of the tax by the different participants in the economic circuit (as a multiphase tax) with other factors such as VAT exemptions or the delivery of the tax through captive entities.

It is recommended that ATAF member countries carry out an in-depth study of the VAT model implemented in Angola, with emphasis on refunds, since it has had excellent results, and therefore an exchange of experiences is necessary.

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VAT Harmonization in the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC)

Altair Marta

OVERVIEW

The article “Harmonization of VAT in the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC)” analyzes how Value Added Tax (VAT) is applied in these communities. Using a comparative approach, the study highlights the differences in VAT rates between member countries, the impact of the tax on GDP and on revenue collection, as well as the benefits of tax harmonization to facilitate trade and reduce tax competition. The paper also explores the challenges related to economic differences and administrative capacity, concluding that the standardization of VAT can boost economic development, strengthen regional integration and increase administrative efficiency.

KEYWORDS: VAT, ECOWAS, SADC, Tax harmonization, Economic development.

CONTENT

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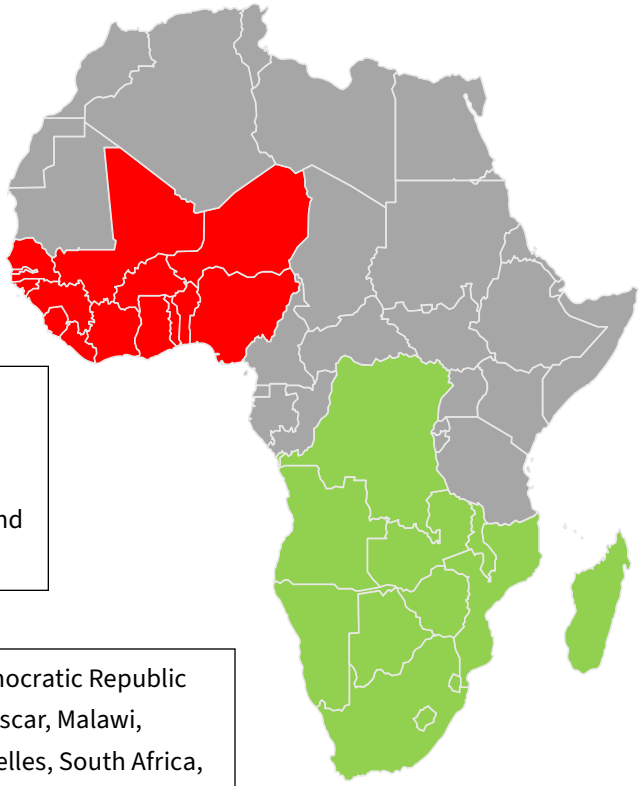
INTRODUCTION

The Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC) are highly relevant regional organizations, representing more than half of African countries (31 out of a total of 54). These communities aim to promote cooperation and economic integration among their members, facilitating trade and boosting economic development. For this reason, the choice of these regions makes tax harmonization in these communities an initiative with a potentially significant impact on the economic integration of Africa as a whole. ECOWAS stands out for its historical efforts in economic integration, while SADC is recognized for the strategic importance of its economic sectors, such as agriculture and mining. In addition, these regions include countries with different levels of economic development and have the two largest economies in sub-Saharan Africa, namely Nigeria in ECOWAS and South Africa in SADC. Thus, focusing on the harmonization of VAT in ECOWAS and SADC is essential not only because of the number of countries involved, but also because of the central role these communities play in promoting trade and regional development in Africa.

The implementation of Value Added Tax (VAT) in the countries of these organizations has been a challenge from the beginning, but it also represents an excellent opportunity to increase tax revenues and improve economic efficiency.

1. VAT OVERVIEW

First of all, it is important to note that the first implementation of VAT took place in Ivory Coast, a member country of ECOWAS, where between 1950 and 1951, the French authorities decided to introduce the tax on an experimental basis in this former colony. Due to the success of this experience, continental France officially adopted the VAT in 1954. This consumption tax applies to a wide range of goods and services, from the production phase to distribution, and the final



ECOWAS: Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

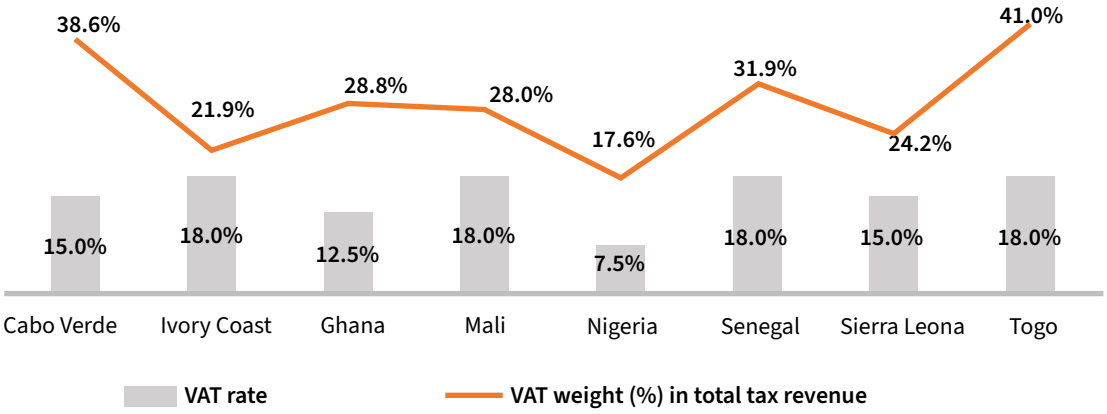
SADC: Angola, Botswana, Comoros, Democratic Republic of the Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe.

burden falls on the consumer and not on societies. These, under certain conditions, have the possibility of recovering the VAT payment, making the system more balanced and efficient. It should also be noted that VAT is generally a neutral tax, since it helps to reduce economic distortions and tax evasion. This tax reduces tax evasion through several key mechanisms, such as refunds, self-regulation and the requirement of detailed invoices and accounting records. In VAT, companies have incentives to comply with the rules because they can recover the VAT paid, which promotes a more accurate declaration and greater transparency. The self-regulatory aspect arises when companies ensure that their suppliers and customers comply with the rules in order to benefit from VAT credits. This feature, combined with the need for detailed documentation, increases transparency and makes it difficult for companies to evade taxes.

With regard to (general) rates, the data below illustrate that while there is an almost uniform VAT rate within ECOWAS (many countries have a standard rate of 18%), the proportion of VAT in total revenues varies significantly, influenced by several factors. For example, in Cape Verde, the high proportion of VAT in total revenues is influenced by a large tax base and the important role of the tourism sector in the local economy. On the other hand, the tax base in Nigeria is much narrower, since basic food products are exempt from VAT and the country has a high type of informality.

Graph 1

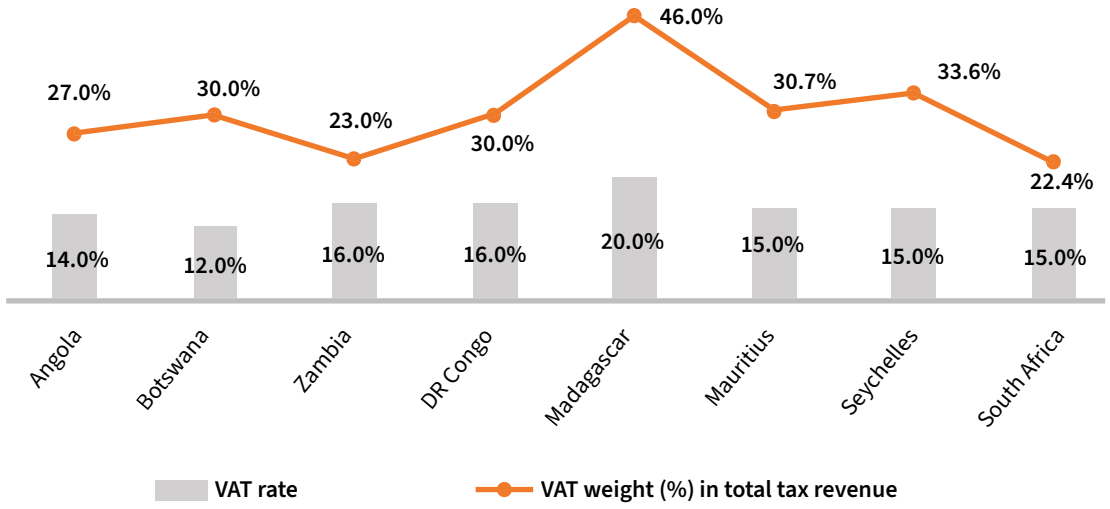
List of VAT rates and VAT share (%) in total revenue in some ECOWAS countries CEDEAO



In SADC, it is noted that, in Madagascar, VAT accounts for almost half of total revenues. This is explained by the high volume of transactions in certain sectors of the economy subject to VAT, such as agriculture, digital services, mining, telecommunications and tourism. In Angola, where VAT accounts for about 27% of total revenues, this performance is attributed to sectors such as commerce and manufacturing, due to the high volume of transactions subject to the tax. For example, in the manufacturing industry, VAT is applied to the entire production process.

Graph 2

List of VAT rates and VAT share (%) in total revenue in some ECOWAS countries



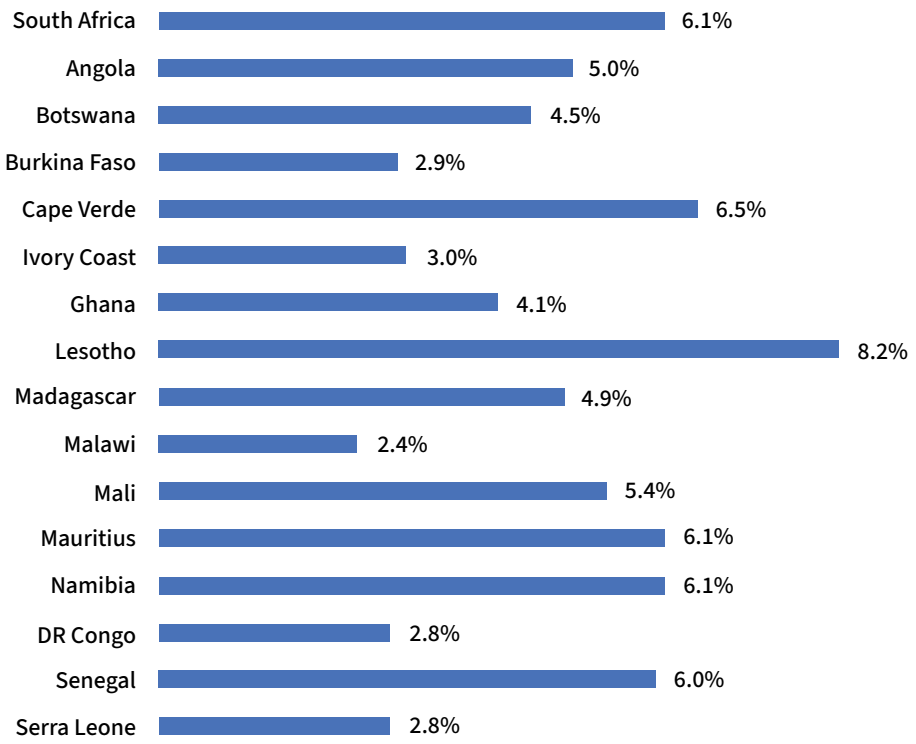
As we can see, in terms of revenue collection, this tax is an important source of revenue for governments, being essential, for example, for the financing of infrastructure. This information is illustrated in graphs that reflect the weight of VAT in a country's GDP and total tax revenues.

The weight of VAT in GDP makes it possible to measure the effectiveness and efficiency of a tax system, reflecting, among other things, the collection capacity and the tax base of the tax. Thus, if the VAT has a high weight, it may indicate that a country's economy is robust and that most transactions are taxed, demonstrating a highly efficient tax administration. Understanding the weight of VAT on GDP is also an excellent tool for policy makers seeking fiscal growth through tax revenues.

The weight of VAT in GDP is considered high when the proportion of VAT revenues in relation to GDP significantly exceeds that of other countries or regions. As there are no specific criteria to define this weight, various methods of analysis can be used, such as comparison with other countries, the impact on the economy and the amount collected. In addition, the variability of the percentage of this tax in the GDP of the different regions and in the international context is noteworthy, as shown by the following graphs for the years 2021/2022.

Graph 3

VAT share (%) in the GDP of certain ECOWAS and SADC countries



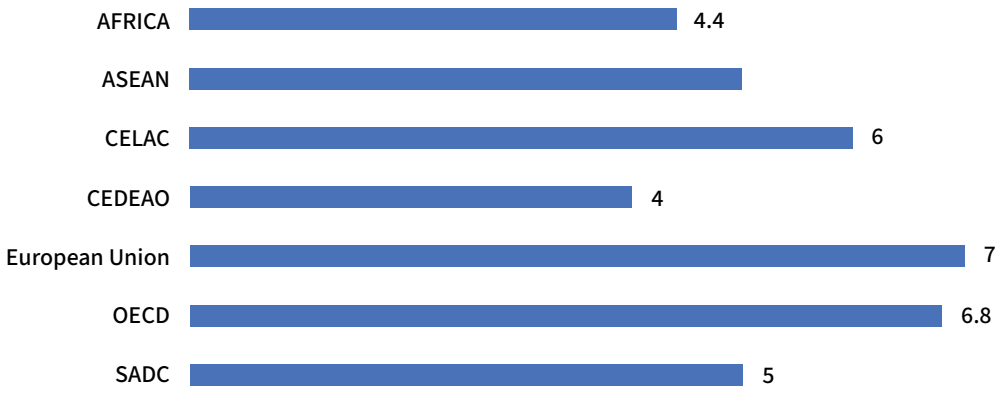
Source: OECD.Stat.

Thus, when looking at the previous graph, it can be seen that several countries have a high VAT-GDP ratio, such as Lesotho and Cape Verde, since they are above the continental average. In the case of Lesotho, its VAT/GDP ratio is even higher than the average of the continents and regions presented, given that this country relies heavily on VAT for revenue collection, with fewer tax alternatives, such as income tax or corporate tax, which contribute significantly.

The OECD data.STAT and other OECD documents, such as *Revenue Statistics* 2023, *Tax Revenue Buoyancy in OECD Countries* and *Revenue Statistics in Latin America and the Caribbean,* highlight the variability in the contribution of VAT to GDP between different regions and intergovernmental organizations. The European Union (EU) member states lead with an average of 7%, followed by the OECD countries with 6.8% and the Community of Latin American and Caribbean States (CELAC) with around 6%. In contrast, the countries of the Association of Southeast Asian Nations (ASEAN) have an average of 4% to 5%, while the African regions of SADC and ECOWAS contribute 5% and 4% respectively. These differences reflect the different levels of economic development, the effectiveness of tax administrations and the economic structures specific to each region, indicating that more developed regions tend to have more efficient VAT systems and a higher contribution to GDP.

Graph 4

The weight of VAT (%) in the GDP of certain Regions and organizations



A high VAT/GDP ratio may indicate a strong revenue collection capacity of the State, resulting from an efficient tax administration and a broad tax base. On the other hand, a low VAT/GDP ratio can lead to the existence of a large informal economy, high levels of tax evasion or inefficiencies in tax administration. This indicator is also crucial for assessing a country's capacity to finance development programmes. To improve this indicator, countries need to invest in the modernization and strengthening of their tax services, as well as adopt policies that encourage the formalization of the economy.

2. THE ROLE OF VAT IN ECONOMIC DEVELOPMENT

VAT has the potential to play an even more important role in the economic development of ECOWAS and SADC, as its revenues are essential to increase GDP per capita, finance public services, improve infrastructure and formalize the economy, with direct impacts on increasing tax revenues without causing significant economic distortions. The direct correlation between the efficient collection of VAT and GDP per capita, or socio-economic development, is evidenced by the fact that an efficient collection (i) ensures essential resources for the financing of public spending, (ii) reduces tax evasion, (iii) stimulates public and private investment, (iv) reduces informality, since companies are encouraged to formalize to benefit from the advantages of VAT (for example refunds), and (v) improves socio-economic indicators by allowing investments in crucial areas such as education and health. These factors, in turn, can contribute to the reduction of unemployment and, consequently, to the increase in consumption.

On the other hand, it is important to note that high standard VAT rates can have negative implications. While they can significantly increase the state's ability to collect essential revenues to finance infrastructure and public services, they also impose a greater burden on consumers, especially those with lower incomes, reducing their purchasing power. Higher rates can also discourage consumption and generate an increase in informality, therefore a decrease in tax revenues and an intensification of unfair competition, which can lead societies to move their investments to other territories. Thus, it is essential to find a balance that

maximizes revenue collection without overburdening consumers.

Another relevant aspect of the role of VAT in economic development is related to the promotion of trade within these regions. By simplifying tax regimes and reducing tax barriers between Member States, a harmonised VAT facilitates the movement of goods and services within the ECOWAS and SADC regions, so that this tax integration is essential for the creation of more competitive markets and the attraction of foreign investment.

In addition, it is important to recognize that VAT has a relatively stable tax base and is less susceptible to economic fluctuations, which is particularly relevant in regions such as ECOWAS and SADC, where countries such as Angola and Nigeria are heavily dependent on oil.

Finally, in the ECOWAS and SADC economies, where informality still dominates a large part of economic activity, the implementation of digital systems can facilitate the inclusion of small and medium-sized enterprises in the tax system. This promotes a greater formalization of the economy and expands the tax base in a sustainable way. In addition, a fair VAT can contribute to social cohesion and inclusive development through specific policies that protect the most vulnerable groups.

3. THE HARMONIZATION AND STANDARDIZATION OF VAT RULES IN ECOWAS AND SADC

Unfair tax competition is one of the main challenges faced by tax systems, characterized by the manipulation of tax policies in order to attract foreign investment. I am referring, for example, to the excessive reduction of tax rates, the granting of tax exemptions or benefits and the negligent application of tax rules, which result in the erosion of tax bases, the increase in economic inequality and a frantic race between countries to offer more advantageous tax conditions, a scenario that compromises the global collection of revenues that are essential to sustain any economic and social development.

To mitigate this unfair competition, four main strategies are generally adopted: (i) tax harmonization, which aims to promote the standardization of tax rates and definitions of tax bases; (ii) tax coordination, which involves the joint definition of tax policies by a group of countries; (iii) tax cooperation, which guarantees the training of tax administration personnel and offers greater flexibility to some countries to improve their procedures and align their tax policies based on mutual interests; and (iv) the digitalization of tax administrations, a strategy that it allows the automation of processes, contributing to a significant increase in efficiency in the management of fiscal data, facilitating the exchange of information between countries, promoting greater transparency and effectiveness. In addition, digitalization can reduce economic informality by integrating small businesses and businesses into the tax system, as well as reduce unemployment by encouraging the creation of start-ups that play a crucial role in generating jobs and strengthening the formal economy.

Thus, the combination of these four strategies can help to address the challenges posed by unfair tax competition. Tax harmonization, coordination and cooperation continue to play a central role, but digitalization is increasingly indispensable in the modernization of tax systems. By integrating technology and transparency, it is possible not only to mitigate the negative effects of unfair tax competition, but also to create a fairer and more sustainable tax environment, capable of responding to the demands of the global economy.

As already mentioned, there is no uniform VAT rate in ECOWAS and neither in SADC. However, several countries in ECOWAS have a standard rate of 18%, which can be attributed to the trend towards harmonization and

standardization of the general rate, as well as to the fact that some of these States belong to the CFA franc zone, namely Benin, Burkina Faso, Ivory Coast, Guinea and Senegal.

Having stated the above, ECOWAS has presented several projects with the aim of harmonizing and standardizing VAT rules in the region, such as the Fiscal Harmonization Program, launched in 2009 [1], Directive C/DIR.8/07/23, adopted on July 7, 2023, and the ECOWAS VAT Protocol. This attempt at harmonization is demonstrated by the fact that only two of the eight countries of the West African Economic and Monetary Union (WAEMU [2]), namely Guinea-Bissau and Niger, do not have a standard VAT tax rate of 18%.

Guinea-Bissau has a standard rate of 15%, agreed with ECOWAS, as it is the most recent country in the region to implement VAT (2023) and faces more serious economic and fiscal challenges than the other countries in the region. Therefore, a rate of 15% is considered essential for increasing tax revenues without penalizing taxpayers with an exponential increase in prices. On the other hand, Niger increased its standard VAT rate from 18% to 19% in the year 2020, due to the need to significantly increase tax revenues, which were severely affected by the COVID-19 pandemic.

Within the framework of this harmonization programme, the ECOWAS VAT Protocol can also be briefly mentioned[3], which aims to harmonize tax legislation within the Community. This protocol has sought to replace indirect consumption taxes with a uniform VAT, with a broad taxable base. The Protocol also defines taxed and exempt transactions, including articles related to the rates applicable in the region, granting States the freedom to apply the rate that best suits their realities. However, the States of the region have gradually converged towards a standard rate of 18%, contributing to a more equitable, balanced and fair business environment among the ECOWAS States.

Article 3(a) of the Revised ECOWAS Treaty[4], in turn, establishes that in order to achieve the objectives of the organization, the Treaty will guarantee the harmonization and coordination of national policies and promote integration programs, projects and activities, in particular in areas such as food, agriculture and natural resources, industry, transport and communications, energy, trade, finance and currency, taxation, economic reform policies, human resources, education, information, culture, science, technology, services, health, tourism and legal affairs. Thus, the organization itself enshrines the need for harmonization and coordination of fiscal policies, including the standardization of rates, to reduce unfair competition between states.

Moreover, it is equally important to address the C/DIR Directive.8/07/23, adopted on July 7, 2023, in Guinea-Bissau, which deals with the harmonization of VAT legislation in ECOWAS countries. One of the main objectives of this directive is to contribute to the coherence of the tax systems of the ECOWAS member countries, promoting joint action that allows the

1 Obazee, Uyioghosa, and Isaiah Igbinosa Omozuwa. "*Comparative Analysis of Tax Harmonization in ECOWAS, AU, and EU*." African Development Finance Journal 5, no. 3 (June 2023): 19–41. https://journals.uonbi.ac.ke/index.php/adfj.

2 The 8 countries of this organization are part of ECOWAS. The WAEMU is a subgroup of the ECOWAS with a focus on economic issues, formed by 8 countries that share a common currency (the CFA Franc), and have as their main focus economic and monetary integration, with harmonized fiscal and economic policies.

3 A/P2/7/96 *Protocol Establishing Value Added Tax in ECOWAS Member States*

4 24th July, 1993

approximation of their VAT systems, in order to improve tax performance and avoid harmful unfair competition practices. Thus, the implementation of an ECOWAS harmonized VAT system aims to mitigate the disparities between national legislations, which have historically created distortions in the regional market and hindered the free movement of goods and services.

The Directive addresses crucial aspects such as the definition of the generating event, the delimitation of the taxable base, the treatment of cross-border transactions and the management of VAT credits, seeking to promote tax neutrality and avoid double taxation. An emphasis is observed on the standardization of procedures and ancillary obligations, such as the issuance of invoices and the submission of periodic declarations, with the aim of simplifying taxpayers' obligations and strengthening the tax administration.

One of the most relevant aspects of this directive is the search to reduce the possibilities of tax avoidance and evasion, so the harmonization of the rules on exemptions, special schemes and deductions aims, therefore, to reduce the opportunities for aggressive tax planning, as well as to ensure greater fairness in collection. The Directive also promotes cooperation between the tax administrations of the Member States by promoting the exchange of information and mutual assistance in the taxation and collection of VAT, which is essential to combat cross-border tax fraud.

Thus, this Directive reinforces, in paragraph 1 of its Article 2, the activities that should be considered taxable in the ECOWAS Member States, more specifically operations related to an economic activity conducted for consideration by any individual or legal entity who independently, habitually or occasionally, carries out acts related to industrial, commercial, non-commercial, agricultural, extractive or artisanal activities, excluding salaried activities. Paragraph 2 of the same Article details the operations referred to in paragraph 1, such as imports, deliveries of goods, real estate works, provision of services, provision of services to oneself, transfers of goods not included in the list of exempt goods in each Member State, among others.

Article 5 establishes that it is up to each Member State to determine the invoicing threshold, while Article 7 recommends some exemptions, in particular in the medical sector, the sale of scientific books, the payment of school fees, the sale of real estate and businesses conducted by people who are not taxable. In addition, the amounts paid by the Treasury and by the authorized general administrations of the Member States to the central bank in charge of the privilege of issuing currency are exempt, as well as the income generated by these banks through their operations of issuing securities. Other exemptions include the rental of empty buildings for residential use, the sale of original crafts by their authors, among others.

Another important point concerns the fact that under Article 8, Member States may not grant exemptions other than those provided for in the Directive.

As for the place of taxation (Article 13), the rules are exactly the same as those that apply globally, more specifically, the place where the goods are located at the time of delivery, the place where the goods are located at the time of departure of the shipment or transport to the recipient, etc. In relation to tangible services, the directive establishes that they must be taxed at the place where the service is provided, while, in the case of intangible services, taxation may occur in the country where the acquirer is established. It is also important to note that the directive determines that services provided to residents of a Member State through e-commerce platforms, whether local or foreign, as well as commissions received by the operators of such platforms, must be taxed in that same Member State. This approach guarantees taxation at the place of consumption or at the corresponding establishment, promoting greater tax equity and alignment with the principles of destination taxation.

It also presents when it should be considered a generating event (Article 17) and the chargability of the tax (Article 19). Another interesting aspect concerns Article 22, which underlines that any tax charged must be refunded, which implies that the ECOWAS States must provide mechanisms for the refund of the VAT charged to ensure that the tax does not become a final cost for taxable persons acting as intermediaries in the production and marketing chain, thus preserving the neutrality of VAT.

As for VAT rates, Article 30 determines that it is up to each Member State to set the general VAT rate at a minimum of 10% and a reduced rate of 5% to 10% for some goods and services. It is further reinforced that the zero rate (0%) applies only to exports for which an exit declaration has been made by customs and to the provision of services related to the transit of goods.

In short, the C/DIR Directive.8/07/23 ECOWAS represents a crucial step in the construction of an integrated economic space in the region. By promoting the harmonisation of VAT, the Directive contributes to establishing a fairer, more transparent and predictable business environment, stimulating investment, trade and economic growth. However, it is important to recognise that the effective implementation of this Directive will depend on the Member States' ability to adapt their legislation and administrative structures, addressing the challenges associated with the harmonisation of complex tax systems in a context marked by significant economic and social diversity.

In relation to SADC, this organization has also worked on the harmonization of VAT rules (including rates) through various studies, the Guidelines for Cooperation on VAT-related issues and the Memorandum of Understanding on Cooperation in Tax and Related Matters of 2002.

Thus, in accordance with the Guidelines for Cooperation in VAT-Related Matters, Guideline No. 1 establishes that the VAT implemented in the Member States should have as main objectives revenue generation, economic neutrality, administrative efficiency and fairness, among others. In turn, Guideline No. 2 determines that SADC countries should not apply a general VAT rate of less than 10%. Guideline No. 3 recommends that countries avoid the adoption of multiple VAT rates, thus promoting greater simplicity and uniformity in the tax system.

If we look at Guideline 7 (Right to VAT credit), we can see that the organization states that granting a VAT credit on inputs, in principle, to people registered for VAT purposes is a good measure since it promotes VAT neutrality, essential to avoid the tax becoming a cost for business.

Guideline 10 establishes that States should adopt a common approach to the registration and cancellation of VAT registration, including, for example, the establishment of a threshold for mandatory registration that maximizes the number of registered taxpayers, taking into account the capacity of the tax administration, the costs of compliance for registrants and the efficiency of collection. Thus, the standardization of the registry improves administrative efficiency and ensures that states treat local and foreign taxpayers in a similar way. Allowing voluntary registration broadens the tax base, while requiring the registration of international suppliers helps prevent evasion in cross-border transactions.

I also consider it pertinent to make a brief reference to Guideline 11, which seeks to standardize the deadlines for VAT refunds, declaratory forms, deadlines for filing returns and payments, VAT invoice forms, etc., thus reducing administrative costs and promoting transparency. These rules are crucial for economic integration in the SADC.

Finally, another relevant guideline is Guideline 12, which refers to returns. According to it, Member States agree that making refunds to low-risk registered individuals is a good practice, since it would improve the cash flow of companies, encouraging tax compliance.

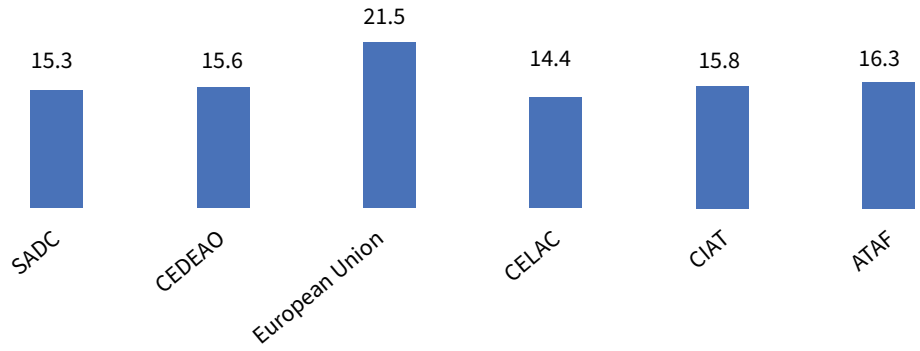
It is also relevant to note that the stipulated guidelines also provide for the harmonization of indirect taxes, which will gradually replace income from international trade in goods and services, expanding the taxable base of indirect taxes. In addition, these guidelines aim, among other objectives, to maximize tax cooperation between SADC countries, promoting, for example, the exchange of information related to VAT and the implementation, introduction or adoption of ad valorem taxes on goods and services subject to special taxation, as an alternative to multiple types of VAT.

Thus, it is observed that the harmonization of VAT rules in these regions, including the applicable rates, could bring advantages to their members, such as facilitating trade between the countries of these regions, creating a more predictable, stable and reliable business environment, possibly reducing unfair competition, since States no longer use VAT rates as a tax advantage, and simplifying processes, since the rules will be uniform. It is a continuous process that involves multiple phases and challenges, both economic and social, with the aim of achieving uniform VAT rates and simplified compliance.

It is also interesting to note that, according to Ade, Rossouw and Gwatidzo[5], *the VAT rates in the SADC had a positive and significant impact on the attraction of FDI between 2000 and 2010, suggesting that moderate VAT levels were effective in attracting investments, in line with economic expectations. In addition, the harmonization of VAT policies has proven to be crucial to encourage FDI flows, demonstrating that greater fiscal coordination can strengthen regional economic integration and increase SADC's competitiveness on the international stage.*

However, despite these (and other) advantages, it is important to note that this future harmonization will have to overcome several challenges to be achieved successfully. These challenges are related to the economic and fiscal differences between countries, administrative capacity and the fact that the countries of these regions are linked to other blocs or groups.

Figure 5
Average VAT rate in certain regions and organizations



5 ADE, Michael; ROSSOUW, Jannie; GWATIDZO Tendai. The effect of tax harmonization in the Southern African Development Community on Foreign Direct Investment, The Journal of Developing Areas, p. 61, Volume 55, n. º 1, Winter 2021.

The graph above seeks to represent the average VAT in certain regions, although I have tried to include only the VAT itself and not similar taxes as *the Personal Property and Services Transfer Tax (ITBMS)* from Panama. For its part, Brazil does not have VAT [6].

Comparing the regions analysed, it can be seen that in ECOWAS the average standard VAT rate is 15.6%, and seven of its Member States apply the same rate (18%), namely Benin, Burkina Faso, Ivory Coast, Guinea, Mali, Senegal and Togo. In the SADC region, the average standard rate of VAT is 15.3%, and five of the 15 countries in the region apply the same standard rate (15%), namely South Africa, Eswatini, Lesotho, Mauritius and Namibia.

6 https://www.globalvatcompliance.com/globalvatnews/world-countries-vat-rates-2020/).

CONCLUSION

Despite the measures outlined above in the approval of certain legislations, tax harmonization faces serious challenges arising from the economic and fiscal diversity of the member countries, differences in administrative capacities and the need to align policies with diverse economic blocs to which these countries belong. This is not only observed in the African context, but also in other regional economic communities around the world.[7]

The standardization of VAT rates in ECOWAS and SADC is therefore an essential strategy to promote a more stable and predictable business environment. By eliminating disparities in VAT rates between member countries, it is possible to reduce harmful tax competition, facilitate intraregional trade and encourage foreign investment. In addition, the establishment of uniform tax rules that reduce tax evasion will also contribute to improving administrative efficiency and increasing essential revenues for infrastructure financing.

In this way, the harmonization of VAT rates has the potential not only to foster economic integration, but also to promote inclusive and sustainable growth in the region.

7 QUAK, Evert-Jan, *Tax coordination and tax harmonisation within the regional economic communities in Africa*, Knowledge, Evidence and Learning Development, 2018, p.2

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Analysis of Progressivity and Redistribution in the Main Tax Benefits in Spain

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Rafael Frutos Vivar*

SYNOPSIS

At the political management level, tax benefits often go unnoticed, compared to the prominence of budgetary spending. This creates the need for these benefits to be quantified and systematically evaluated. One way to do this is by examining the degree of progressivity and redistribution of these benefits. This article has presented an exercise in that direction, using traditional metrics, but complemented with indicators that address the limitations of the former. The diversity of the results obtained indicates that, regardless of the type of evaluation conducted, the effects on progressivity and redistribution should always be considered a relevant part of that evaluation.

KEYWORDS: Taxes, Tax benefits, Progressivity, Redistribution.

CONTENT

*The opinions expressed are those of the authors and do not necessarily reflect those of the Agencia Estatal de la Administración Tributaria.

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INTRODUCTION

Tax benefits (in Spanish legislation) or tax expenditures (in other legislations) are instruments available to the tax administration that, by reducing the tax burden on taxpayers, aim to achieve specific economic or social policy objectives. They can take many forms (exemptions or reductions in the tax base, reduced tax rates, rebates, or deductions on the amount to be paid), although the goal is always the same: to generate an incentive to modify taxpayers' behavior and, ultimately, to achieve results that are considered desirable.

As deduced from the above, tax benefits are an alternative to direct spending policies. The same results can be achieved in one way or another. However, tax benefits have the appeal for lawmakers of being less visible, and therefore, less controversial and easier to introduce into the budgetary process. This highlights the need for their quantification, along with other budgetary revenues and expenditures, and the evaluation of their impact.

Regarding this last aspect, the evaluation can be carried out solely in terms of the direct objectives that are sought to be achieved, or it can also analyze other aspects, such as the progressivity and redistribution that the tax benefit entails, or its indirect impact on other areas such as consumption, savings, or the markets for goods and factors. In this article, the focus will be on the effects of certain tax benefits on the progressivity and redistribution of personal income tax.

1. THE SITUATION OF TAX BENEFITS IN SPAIN

In Spain, there is a general mandate for calculating tax benefits outlined in Article 134.2 of the Spanish Constitution:

> *"The General State Budgets will be annual, include all public sector state revenues and expenditures, and will specify the amount of tax benefits that affect state taxes."*

Although the wording refers only to the State, considering it as the Central Administration, this obligation to calculate tax benefits also applies to other administrations (regional or local) for their own taxes and for those shared with the Central Administration. In the case of the latter, the general rule is complemented by Articles 33.2[1] and 37.2[2] of the General Budget Law and the additional provision 24th[3] of the General State Budget Law for 1995.

For the purposes of this article, the tax benefits to be considered are those corresponding to the Central Administration of the State. All information about these benefits is found in the Tax Benefits Budget (PBF in Spanish), which defines and quantifies the tax benefits in effect for each fiscal year.

Regarding the definition, beyond general considerations, there are no widely shared criteria among all countries or international organizations. In the Spanish case, over time, certain conditions have been established that determine whether a fiscal incentive can be considered a tax benefit. These are basically four:

1 *"The General State Budgets will determine: (…) e) The estimation of the tax benefits that affect state taxes."*

2 *"The General State Budget Bill will be accompanied by the following supplementary documentation: (…) (k) A report on tax benefits."*

3 *"Starting with the General State Budget for 1996, the economic-financial report will include an explanatory report on the quantification of the tax benefits that affect state taxes."*

(a) That the regulation deviates from the basic structure of the tax,

(b) That it is an incentive aimed at a specific group of taxpayers,

(c) That it can be modified or eliminated,

(d) That it does not respond to a technical simplification to facilitate compliance with tax obligations.

Regarding quantification, the availability of information determines how tax benefits are calculated. In general, it can be said that for direct taxes, tax benefits are estimated using all the information from taxpayer declarations, simulating the tax calculation for each taxpayer with and without tax benefits. In the case of indirect taxes, the approach is more aggregate in nature.

While there is a long tradition in the determination and quantification of tax benefits, there are fewer experiences in their evaluation. Two notable experiences can be highlighted, both linked to commitments with the European Commission.

The first is the analysis of tax benefits conducted by the Independent Authority for Fiscal Responsibility (AIREF in Spanish)[4] as part of a broader review of public spending (known as the Spending Review). The purpose of the study was to evaluate the most important tax benefits (specifically 13, which accounted for 60% of the total tax benefit) to determine whether they were fulfilling the objectives for which they were created and to analyze whether they caused any type of distortion that would require a change in their design. The results were published in July of 2020[5].

The second analysis responded to the commitment made within the Recovery, Transformation, and Resilience[6] Plan and consisted of the analysis of 15 tax benefits over the years 2021 to 2022. For this study, a working group was formed, which included the Institute of Fiscal Studies, the Agencia Estatal de Administración Tributaria, and the General Directorate of Taxes. As in the previous case, the goal was to evaluate whether the tax benefits were fulfilling their purpose and to explore potential improvements in their design. The conclusions were published in 2022 and 2023[7].

Unlike these two experiences, the perspective adopted in this article is to evaluate the degree of progressivity and redistribution of four of the main tax benefits currently existing in the Spanish personal income tax. These tax benefits are as follows:

- The reduction in income derived from the rental of housing.
- The reduction in the taxable base for joint taxation.
- The reduction in the taxable base for contributions to social security systems.
- The deduction in the full tax amount for donations.

4 The AIREF is an independent institution whose mission is to ensure the effective compliance by public administrations with the principle of budgetary stability, through continuous evaluation of the budget cycle, public debt, and economic forecasts. In 2021, it incorporated the evaluation of public spending, including tax benefits, as one of its additional functions.

5 https://www.airef.es/es/estudios/estudio-beneficios-fiscales/

6 The Recovery, Transformation, and Resilience Plan is the plan agreed upon within the European Union for the economic and social recovery following the COVID-19 pandemic in 2020.

7 https://www.hacienda.gob.es/GabineteMinistro/varios/31-03-22-informe-revision-beneficios-fiscales-2021.pdf
https://www.hacienda.gob.es/GabineteMinistro/varios/informe-revision-beneficios-fiscales-2022.pdf

The selection of these four benefits is related to their importance within the set of tax benefits in the income tax system, but also due to their diversity, which allows for the observation of different effects on progressivity and redistribution.

In the first case, it is a reduction enjoyed by property owners when they rent their properties to others for use as their primary residence. The number of property owners earning income from these rentals is very high and is distributed across all income brackets, although logically there is a greater concentration in the higher-income brackets of the distribution.

The reduction for joint taxation applies in cases where two taxpayers[8] decide to combine their income tax declarations, which are generally always individual. Around 15% of declarations are of this type, and their number has been decreasing over time. It could almost be said that it is a remnant of previous legislation, which has been maintained to avoid negatively affecting certain diverse groups of taxpayers who, if this option were not available, would see a significant increase in their tax liability.

The third tax benefit to analyze is the reduction in the taxable base for contributions and contributions to social security systems, also known as pension plans. This is an incentive aimed at promoting savings through specific instruments to complement public pensions, to which taxpayers are almost universally entitled. The benefit consists of a reduction in the taxable base by a limited amount related to contributions made to these pension plans. While many taxpayers contribute to these systems, the largest amounts, those that fully benefit from the reduction, come from taxpayers with high-income levels.

Lastly, the fourth selected benefit is the deduction on the tax liability for donations made to non-profit organizations. The reason for selecting this benefit is its wide reach among taxpayers across all income levels, although its impact on the tax liability tends to be much smaller than in the previous benefits.

2. METHODOLOGY TO BE USED

The different metrics used to measure the progressivity and redistribution of a tax system aim to quantify how that system contributes to reducing economic inequalities among the individuals it applies to. Ultimately, they seek to verify whether those with higher incomes or greater economic capacity are the ones who contribute more to the financing of public services through their tax payments.

When assessing progressivity, or the degree of deviation from proportionality, of a given tax or fiscal system, the most frequently used measure is that of Kakwani (1977). In this regard, one tax is more progressive than another alternative to the extent that its tax liabilities are distributed more unevenly. The index that synthesizes this measure of proportionality is the well-known Kakwani Index (1977), which is defined as:

$$K = C_T - G_X \qquad [1]$$

where C_T is the concentration index of tax liabilities, and G_X is the Gini index of pre-tax income[9]. The underlying intuition is that a positive value of the index indicates that tax payments are more unevenly distributed than pre-tax income, while a negative value suggests that pre-tax income is more unevenly distributed relative to the tax payments made.

8 Single-parent families can also opt for this modality.

9 Detailed expressions of these general indices can be found in any of the references cited at the end of this article.

To calculate the redistributive capacity of the system, the most commonly used measure is the Reynolds-Smolensky Index (1977):

$$RS = G_X - G_{X-T} \quad [2]$$

where G_{X-T} is the Gini index of post-tax income. In this case, a positive RS Index indicates greater redistribution, as post-tax income is more evenly distributed. Conversely, a negative value suggests less redistribution, as post-tax income is more concentrated.

The progressivity and redistributive capacity of taxes are notions that are closely linked. From both expressions [1] and [2], it is possible to deduce the following relationship between them[10]:

$$RS = \frac{t}{1-t} K - Z \quad [3]$$

where $t = \frac{T}{X}$ represents the average effective tax rate (denoting T as the total tax revenue and X as the total income) and Z is the so-called re-ranking effect, which is simply:

$$Z = G_{X-T} - C_{X-T} \quad [4]$$

i.e. the difference between the Gini index of after-tax income and the after-tax quota concentration index.

Ultimately, expression [3] indicates that the RS Index, or the variation in the redistributive capacity of a tax, can be decomposed into changes in its average effective tax rate ($t/1-t$) and variations in its progressivity. In other words, maintaining the redistributive capacity of a tax involves a trade-off between its revenue-raising capacity and its progressivity.

On the other hand, as noted in Díaz de Sarralde et al. (2010 and 2011), the Kakwani and Reynolds-Smolensky indices have certain limitations when analyzing the effects on the progressivity and redistributive capacity of taxes, particularly when the goal is to evaluate tax reforms that involve changes in revenue. To address this, they suggest complementing these traditional measures with the so-called "level effect" and "distance effect" and their corresponding indices.

Thus, if we denote the superscript (') as the value of a variable after a specific reform, the variation in the Reynolds-Smolensky index can be expressed as the difference between its corresponding level and distance effects:

$$RS' - RS = EN_{RS} + ED_{RS} \quad [5]$$

$$EN_{RS} = C_{X-T}\left(1 - \frac{1}{1+\beta_{RS}}\right) \quad [6]$$

$$ED_{RS} = \left(\frac{D_{RS} - D'_{RS}}{2N^2\mu(1-t')}\right) \quad [7]$$

where β_{RS} is the rate of variation in average net income after the application of the tax, expressed as: $\beta_{RS} = \frac{(1-t') - (1-t)}{(1-t)} = \frac{t-t'}{(1-t)'}$, D_{RS} is the sum of the distances between net incomes prior to the reform, D'_{RS} is the sum of the distances between net incomes after the reform, μ is the average income, and N is the total number of individuals.

In this way, ED_{RS} will be positive if net incomes converge after the reform (a positive contribution to redistribution), meaning $D_{RS} > D'_{RS}$ and negative if net incomes diverge after the reform (a negative contribution to redistribution), meaning $D_{RS} > D'_{RS}$.

10 A detailed development can be found in Lambert (2001).

For its part, EN_{RS} will be positive for tax reductions and negative for tax increases. That is, if ∇t this will result in $\beta_{RS} > 0$ making $EN_{RS} > 0$, while if Δt this implies $\beta_{RS} < 0$ which necessarily leads to $EN_{RS} < 0$.

In response to this, the authors define the distance-level redistributive index as:

$$I_R = \frac{\Delta RS}{|\Delta RS|}\left(1 + \frac{ED_{RS}}{|ED_{RS}| + |EN_{RS}|}\right) \quad [8]$$

where $\frac{\Delta RS}{|\Delta RS|}$ Will necessarily be –1 o +1, thereby providing the sign of the indicator, and the term $0 \leq \left(1 + \frac{ED_{RS}}{|ED_{RS}| + |EN_{RS}|}\right) \leq 2$ reflects the relative importance of the distance effect in the reform. This results in one of the following four scenarios:

a) $1 < I_R \leq 2$ involves a strong redistributive reform

b) $0 < I_R \leq 1$ involves a weak redistributive reform

c) $-2 < I_R \leq -1$ is a weak non-redistributive reform

d) $-1 < I_R \leq 0$ is a strong non-redistributive reform

On the other hand, applying a similar reasoning to the progressivity analysis, the variation of the Kakwani index can also be expressed as the difference between its level and distance effect:

$$K' - K = EN_K + ED_K \quad [9]$$

$$EN_K = C_T\left(\frac{1}{1+\beta_K} - 1\right) \quad [10]$$

$$ED_K = \frac{D'_K - D_K}{2N^2\mu t'} \quad [11]$$

where β_K is the rate of variation in the average tax rate, expressed as: $\beta_K = \frac{t' - t}{t}$, D_K is the sum of the distances between tax liabilities before the reform, D'_K is the sum of the distances between tax liabilities after the reform, μ is the average income, and N is the total number of individuals.

In this case, ED_K will be positive if the tax liabilities diverge after the reform (a positive contribution to progressivity), and negative if the tax liabilities converge after the reform (a negative contribution to progressivity).

Likewise, EN_K will be positive for tax cuts and negative for increases. In other words, if ∇t this will result in $-1 < \beta_K < 0$ which means $EN_K > 0$, on the other hand, if Δt this implies that $\beta_K > 0$ which necessarily leads to $EN_K < 0$.

The distance-level progressivity index is then defined as:

$$I_K = \frac{\Delta K}{|\Delta K|}\left(1 + \frac{ED_K}{|ED_K| + |EN_K|}\right) \quad [12]$$

where $\frac{\Delta K}{|\Delta K|}$ will necessarily be –1 o +1, thus determining the sign of the indicator, and the term $0 \leq \left(1 + \frac{ED_K}{|ED_K| + |EN_K|}\right) \leq 2$ summarizes the relative importance of the distance effect in the reform. This will lead us to one of these four situations:

a) $1 < I_K \leq 2$ It implies a strong progressive reform.

b) $0 < I_K \leq 1$ It implies a weak progressive reform.

c) $-2 < I_K \leq -1$ It implies a weak regressive reform.

d) $-1 < I_K \leq 0$ It implies a strong regressive reform.

In conclusion, as noted by Díaz de Sarralde et al. (2011), these indicators provide a more comprehensive classification of tax reforms, as they add the condition of “strong” or “weak” to the usual qualifiers of “redistributive” or “progressive” (depending on the positive or negative value of RS and K), which is derived from the contribution made by the effect in each case. Additionally, since the value of the indices is normalized with respect to the size of the revenue effects, this

allows for the comparison of alternative tax reforms with different quantitative impacts.

3. RESULTS

In this section, the metrics described will be applied to assess the degree of progressivity and redistribution provided by the four tax benefits outlined in the second section: the reduction in the taxable base for contributions to social security systems (hereinafter, BF1), the reduction in rental income from housing (BF2), the reduction in the taxable base for joint taxation (BF3), and the deduction in the gross tax amount for donations (BF4).

According to the various Tax Benefit Reports (PBF in Spanish) corresponding to the General State Budget Projects for the different years of the 2020–2023 period (Ministry of Finance, 2020, 2021, and 2022), the estimated amounts of the considered benefits for those years are shown in Table 1.

Table 1

Amount and weight relative to the total tax benefits of the Personal Income Tax (PIT).

	PBF 2020		PBF 2021		PBF 2022		PBF 2023	
	Amount (million euros)	Share (%)	Amount (million euros)	Share (%)	Amount (million euros)	Share (%)	Amount (million euros)	Share (%)
Total PIT TB	11,219.0		11,178.1		11,365.2		11,178.9	
BF1	937.5	8.4%	936.8	8.4%	836.0	7.4%	645.5	5.8%
BF2	708.4	6.3%	671.2	6.0%	763.2	6.7%	716.6	6.4%
BF3	1,138.1	10.1%	1,070.3	9.6%	1,015.8	8.9%	1,006.4	9.0%
BF4	284.6	2.5%	313.0	2.8%	327.9	2.9%	345.1	3.1%

Note: Adapted from the Tax Benefit Report of the General State Budget Project for 2023, Ministry of Finance, 2022.

It can be observed that the four benefits together represent approximately 25% of the total tax benefits associated with the Personal Income Tax (PIT). All of them maintain a relatively stable weight, except for the benefit related to contributions to social security systems, which has been progressively decreasing. This is due to a substantial regulatory change for the latter, while the rest have remained relatively unchanged. Specifically, there have been successive modifications in the contribution limits for these systems, decreasing from a limit of 8,000 euros in 2020, to 2,000 euros in 2021, and to 1,500 euros starting in 2022.

In our analysis, we will focus on the years 2020–2022, as for the 2023 fiscal year, the AEAT still does not have definitive closed data.

In the calculation of the metrics, two scenarios will be compared: one with the PIT as it resulted in the different years for the total set of taxpayers, versus the alternative scenario where the specific tax benefit is removed for the same group. The calculation of the various measures is summarized in Table 2.

Table 2

Measures of progressivity and redistribution of the different tax benefits.

Year 2020	RS	Kakwani	Average effective rate	EN_{RS}	EN_{K}	ED_{RS}	ED_{K}	I_{R}	I_{K}
PIT with TB	0.0446	0.1911	18.96%						
Without BF1	0.0462	0.1927	19.38%	–0.0024	–0.0150	0.0040	0.0167	1.6249	1.5254
Without BF2	0.0450	0.1887	19.28%	–0.0018	–0.0116	0.0022	0.0092	1.5443	–1.4417
Without BF3	0.0447	0.1855	19.44%	–0.0028	–0.0172	0.0028	0.0116	1.5039	–1.4021
Without BF4	0.0449	0.1903	19.10%	–0.0008	–0.0052	0.0011	0.0045	1.5649	–1.4607

Year 2021	RS	Kakwani	Average effective rate	EN_{RS}	EN_{K}	ED_{RS}	ED_{K}	I_{R}	I_{K}
PIT with TB	0.0473	0.1916	19.84%						
Without BF1	0.0483	0.1922	20.10%	–0.0015	–0.0089	0.0024	0.0096	1.6202	1.5170
Without BF2	0.0477	0.1893	20.16%	–0.0018	–0.0110	0.0022	0.0088	1.5502	–1.4434
Without BF3	0.0473	0.1862	20.29%	–0.0025	–0.0153	0.0025	0.0099	–1.4982	–1.3931
Without BF4	0.0475	0.1908	19.98%	–0.0008	–0.0046	0.0010	0.0039	1.5613	–1.4536

Year 2022	RS	Kakwani	Average effective rate	EN_{RS}	EN_{K}	ED_{RS}	ED_{K}	I_{R}	I_{K}
PIT with TB	0.0491	0.1949	20.12%						
Without BF1	0.0498	0.1954	20.34%	–0.0012	–0.0071	0.0019	0.0076	1.6230	1.5157
Without BF2	0.0496	0.1928	20.46%	–0.0018	–0.0111	0.0023	0.0090	1.5583	–1.4474
Without BF3	0.0491	0.1900	20.53%	–0.0023	–0.0136	0.0022	0.0087	–1.4988	–1.3894
Without BF4	0.0493	0.1942	20.25%	–0.0007	–0.0044	0.0009	0.0037	1.5679	–1.4555

Note: Prepared by the author based on AEAT data.

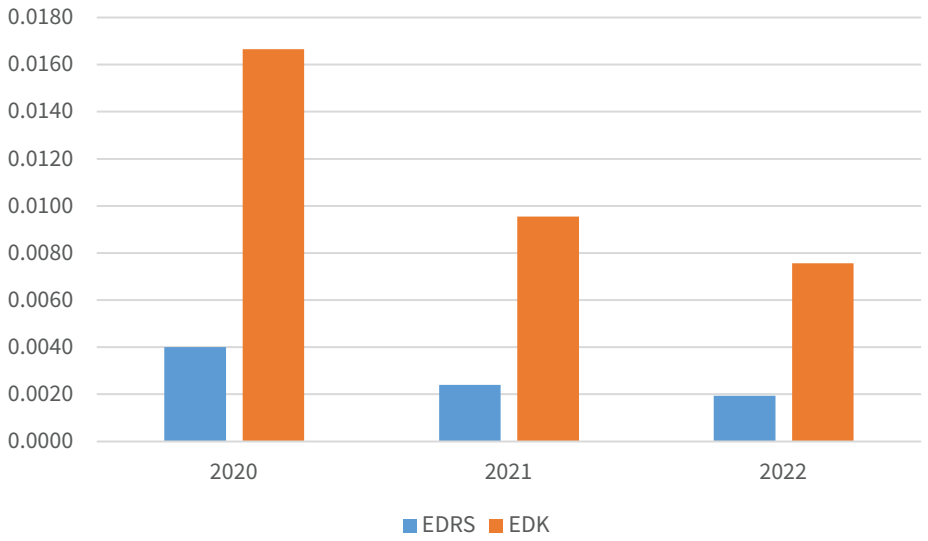
Focusing on the type of tax benefit, starting with the reduction in the taxable base for contributions to social security systems (BF1), it can be observed that for all years, the removal of this tax benefit results in the Reynolds-Smolensky index being higher than in the case of a normal tax settlement. Meanwhile, the Kakwani index is very similar, being systematically higher with the elimination of the benefit throughout the entire period under study. Therefore, according to the traditional interpretation, the benefit reduces the redistributive capacity of the tax, while also causing a decrease in its progressivity.

If we now complement this analysis with the one proposed by Díaz de Sarralde et al. (2010 and 2011), we observe a positive contribution from the distance effect, resulting in a smaller distance between net incomes after the benefit is removed (as reflected in RS), and a greater difference between tax liabilities in the absence of the benefit (as reflected in K). Meanwhile, the level effect is negative for both indices, as in every case and for all years, the removal of the benefit leads to an increase in revenue due to the rise in the average tax rate. In summary, the distance-level redistribution and

progressivity indices always remain positive, ranging between 1 and 2, meaning the removal of the benefit can be classified as a strong redistributive and strong progressive reform.

However, in this tax benefit, there has been a distinguishing factor, which is that the contribution limits to social security systems that allow the reduction have been modified each year. Specifically, in 2020, the limit was 8,000€, in 2021 it was reduced to 2,000€, and in 2022 it decreased further to 1,500€. These actions aimed to improve the progressivity and redistribution of the benefit, something that seems to have been achieved, as evidenced by Figure 1, which shows a clear reduction in the distance effects in both the progressivity and redistribution areas.

Figure 1
Distance effects for the tax benefit of contributions to social security systems. Years 2020–2022.

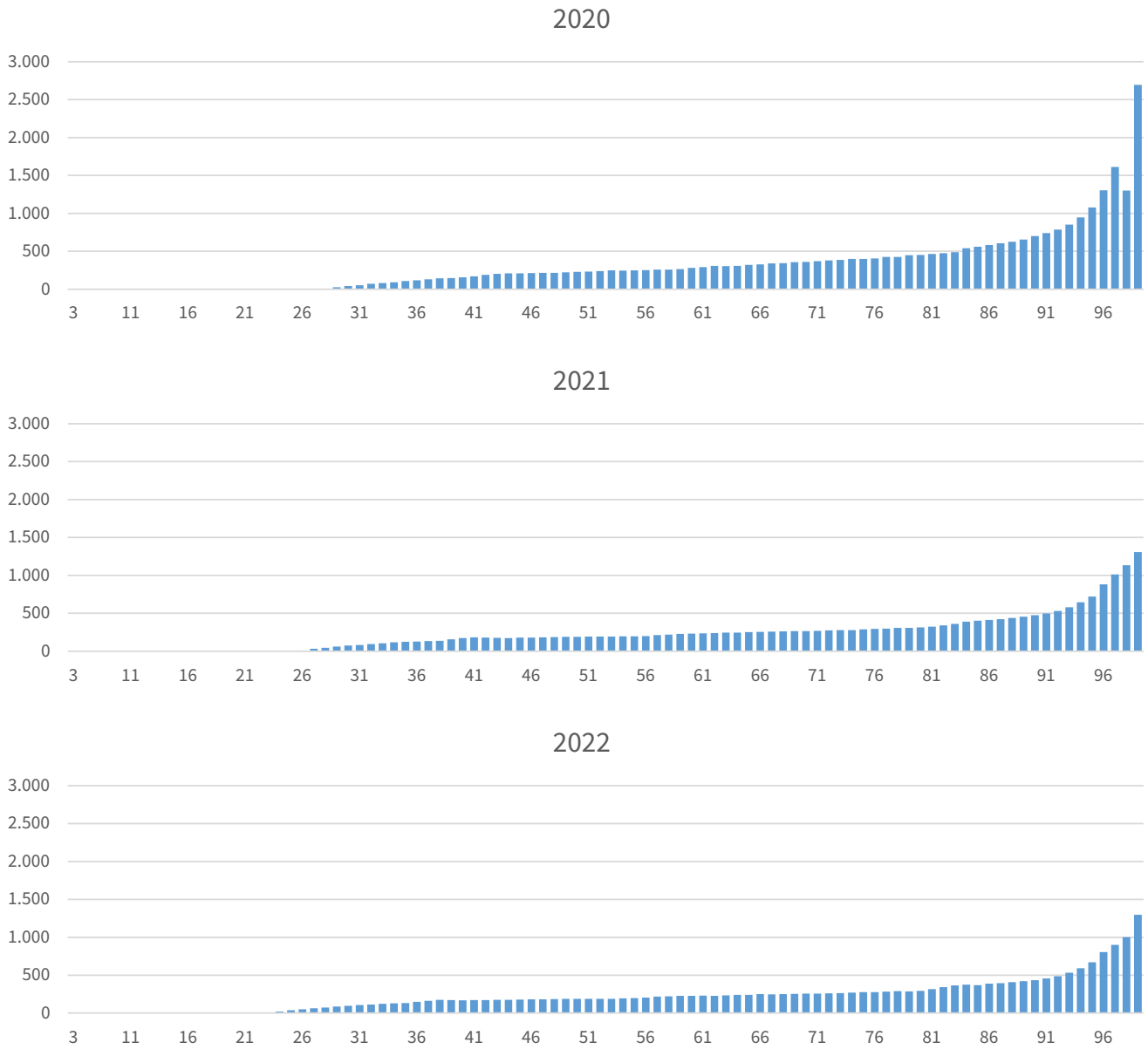


Note: Prepared by the author based on AEAT data.

This can also be clearly seen by observing the average increase in tax liabilities per beneficiary (which could also be viewed through net incomes) and by income percentile when the tax benefit is removed in the years under study (see Figure 2). The graph clearly shows how the average increase in tax liabilities resulting from the elimination of the benefit has been homogenized in successive years thanks to the legislative changes that took place.

Figure 2

Average increase in tax liabilities per beneficiary and by income percentile when the tax benefit for contributions to social security systems is removed. Years 2020–2022.



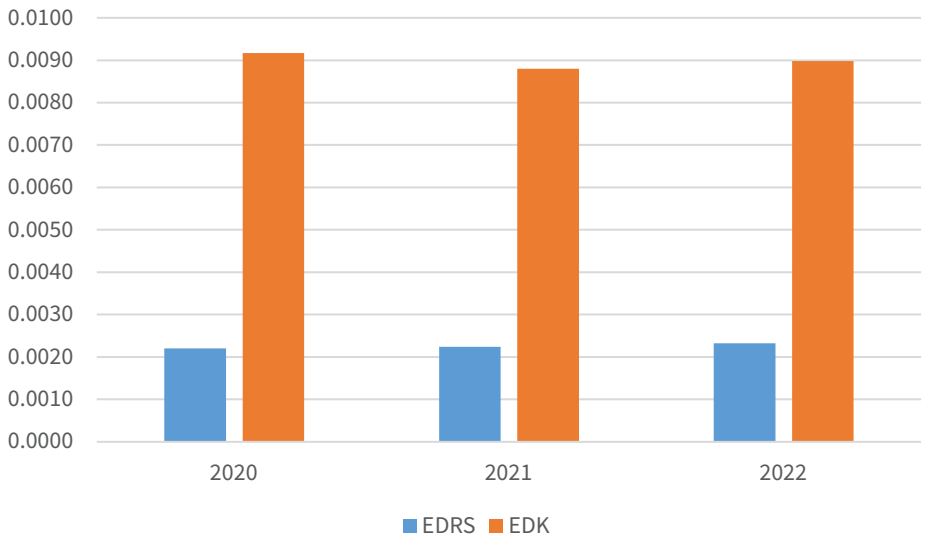
Note: Prepared by the author based on AEAT data.

If we now focus on the case of the tax benefit for the reduction in rental income from housing (BF2), the removal of this benefit results in the Reynolds-Smolensky index being higher compared to the baseline tax scenario. On the other hand, for the Kakwani index, the situation is the opposite, with the index being consistently lower for all years when the benefit is removed. In short, this means that the benefit leads to a deterioration in the redistributive capacity of the tax, although it induces an improvement in progressivity.

Considering the distance and level effects, in RS, the first always has a positive contribution, derived from the shortening of the distance between net incomes when the benefit is removed, while in K, the same occurs as a result of a greater difference between tax liabilities. Additionally, and as will be the case with all tax benefits by definition, the level effect is negative for both metrics, as its removal always translates into an increase in revenue due to the rise in the average tax rate. In this case, the distance-level redistribution index always remains a positive value between 1 and 2, while the corresponding progressivity index remains very stable around –1.44. This is interpreted as meaning that its removal would result in a strong redistributive reform and a weak regressive reform.

Unlike what occurred with the benefit for contributions to social security systems, its legislative stability during the analysis period means that both the distance effect (see Figure 3) and the average increase in tax liabilities per beneficiary and by income percentile resulting from the removal of the benefit (see Figure 4) are hardly modified.

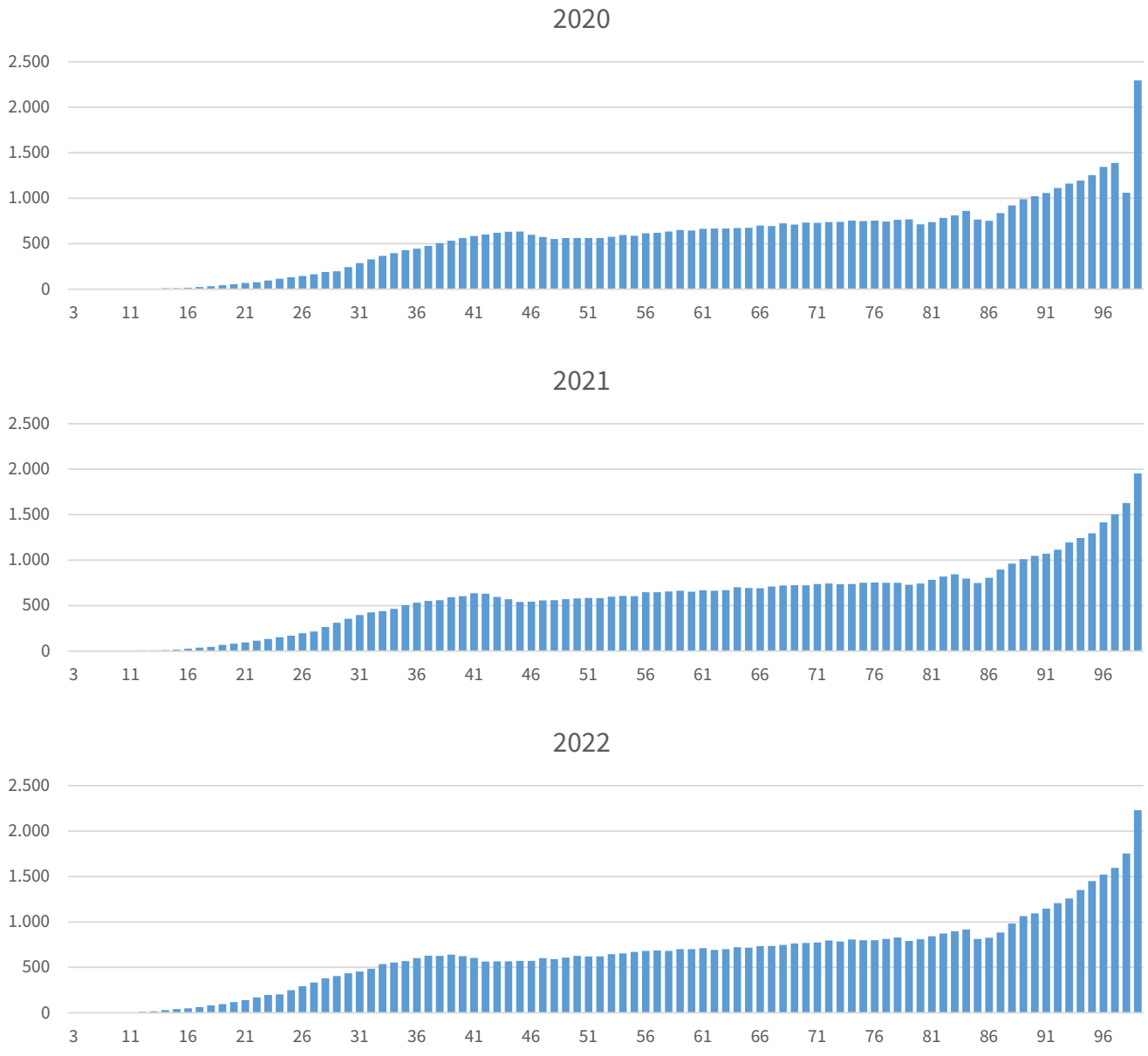
Figure 3
Distance effects for the tax benefit of the reduction in rental income from housing. Years 2020–2022.



Note: Prepared by the author based on AEAT data.

Figure 4

Average increase in tax liabilities per beneficiary and by income percentile when the tax benefit for the reduction in rental income from housing is removed. Years 2020–2022.



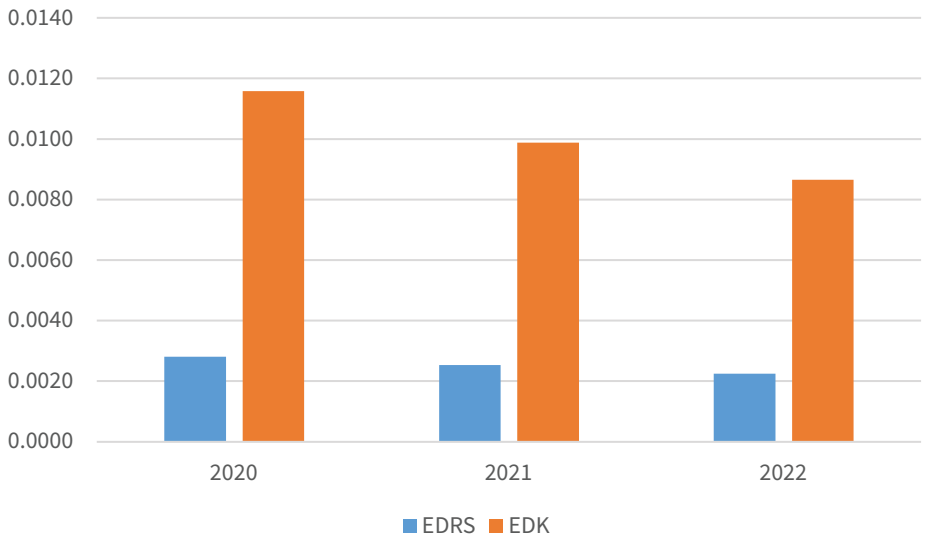
Note: Prepared by the author based on AEAT data.

Bringing the analysis to the tax benefit for the reduction in the taxable base for joint taxation (BF3), its removal leads to a Reynolds-Smolensky index almost identical to the normal situation (minimally higher or lower depending on the year), while for the Kakwani index, the result is significantly lower. This reflects that the presence of the benefit causes little deterioration in the redistributive capacity of the tax, while promoting an improvement in progressivity. Regarding the distance and level effects, qualitatively they do not differ from those mentioned in the previous benefits. However, the distance-level redistribution index shows a positive value for the year 2020, due to a minimal positive differential in the RS index for that year, which does not carry over to the following years. For 2021 and 2022, the value remains negative, ranging between –1 and –2, while the progressivity index remains close to –1.4. Overall, it can be considered that its removal would lead to a weak non-redistributive and weak regressive reform.

It is worth noting that, in this case, a mitigation of the distance effects is observed (see Figure 5), consistent with an improvement in progressivity and redistribution as a result of the existence of the benefit. Meanwhile, as there were no changes in its design during the years under study, its removal barely affects the average increase in tax liabilities per beneficiary and by income percentile (see Figure 6).

Figure 5

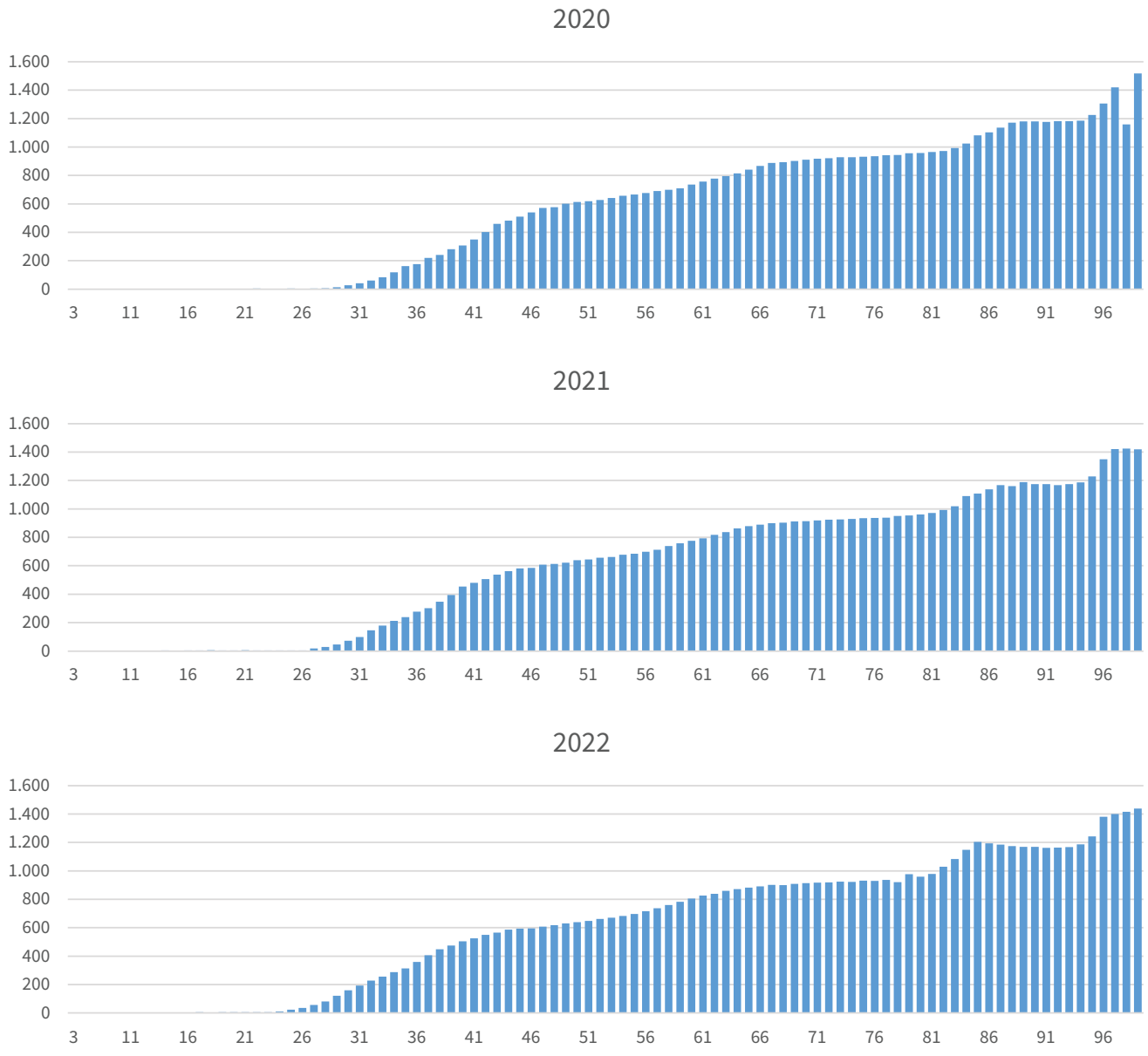
Distance effects for the tax benefit of the reduction in the taxable base for joint taxation. Years 2020–2022.



Note: Prepared by the author based on AEAT data.

Figure 6

Average increase in tax liabilities per beneficiary and by income percentile when the tax benefit for the reduction in the taxable base for joint taxation is removed. Years 2020–2022.



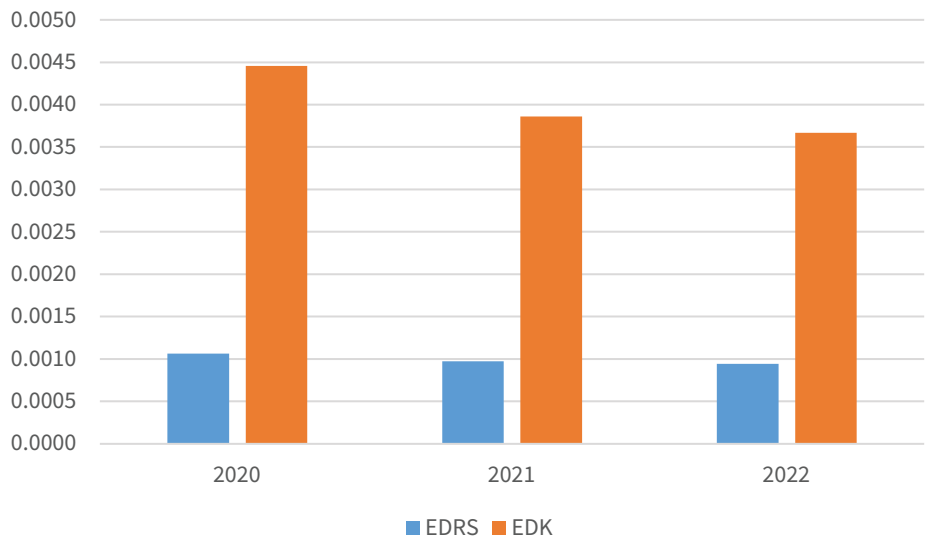
Note: Prepared by the author based on AEAT data.

Finally, when examining the tax benefit for deductions in the gross tax amount for donations (BF4) with the measures outlined, it appears that removing the benefit results in a Reynolds-Smolensky index slightly higher than what would be expected in the baseline scenario, while the Kakwani index is slightly lower. This indicates that the existence of the benefit leads to a deterioration in the redistributive capacity of the tax, although it enhances its progressivity.

For the distance and level effects, although qualitatively they do not differ from those observed in the previous benefits, their magnitude is much smaller. The distance-level redistribution and progressivity indices show very stable values, around 1.56 for RS and –1.45 for K. Therefore, the interpretation suggests that its removal would lead to a strong redistributive reform, while also resulting in a weak regressive reform.

In this case, a clear mitigation of the K distance effect is observed (see Figure 7), consistent with an improvement in progressivity due to the existence of the benefit.

Figure 7
Distance effects for the tax benefit of deductions in the gross tax amount for donations. Years 2020–2022.



Note: Prepared by the author based on AEAT data.

On the other hand, in Figure 8, it can be observed that this benefit is more evenly distributed, in the sense that it reaches the lower income percentiles, and that the few modifications in its design have not substantially altered this composition for the considered years, with the average increase in tax liabilities per beneficiary and by income percentile hardly changing.

Finally, as a summary, Table 3 shows the effects on progressivity and redistribution of the elimination of the analyzed tax benefits for the year 2022 (reforms ordered in terms of redistributive effect and progressivity, based on the normalized results regarding their revenue impact using the Level-Distance Indices).

Figure 8

Average increase in tax liabilities per beneficiary and by income percentile when the tax benefit for deductions in the gross tax amount for donations is removed. Years 2020–2022.

Note: Prepared by the author based on AEAT data.

Table 3

Effects of the reforms from the elimination of the tax benefits (2022).

Tax Benifit Removal reforms (2022)	Redistribution (RS)	Progressivity (K)	Redistributive Index Level Gap (I_R)	Progressivity index level gap (I_K)
Social Security Contribute (BF1)	+	+	Strong Redistribute	Strongly Progressive
Donations (BF4)	+	–	Strong Redistribute	Weekly Progressive
Rental Income From Housing (BF2)	+	–	Strong Redistribute	Weekly Progressive
Joint Taxation (BF3)	–	–	Non-Redistribute Weak	Weekly Progressive

Note: Prepared by the author based on AEAT data.

CONCLUSION

Tax benefits have the appeal for policymakers of going largely unnoticed, especially in comparison to public spending, which is always visible in budgetary documents. Therefore, the need arises for the obligation to quantify and systematically evaluate them.

The need for this evaluation has become established across all administrations, although not always with the same objectives. Typically, tax benefits are evaluated in relation to the goals they aim to achieve, although it is not always possible to clearly define these objectives. However, other perspectives may exist that complement this view. One such perspective focuses on the degree of progressivity and redistribution of these benefits. This article has presented an exercise in this regard by evaluating four prominent benefits of the Spanish personal income tax. The diversity of the results obtained indicates that, regardless of the type of evaluation conducted, the effects on progressivity and redistribution should always be considered as a relevant part of that evaluation.

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Disclosure of tax information in Colombia: what are the current limits of the Fiscal Reserve of the information managed by the DIAN

Juan Pablo Fuentes Triviño
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SYNOPSIS

The discussion about the degree of disclosure and access to tax content information obtained by the tax authorities is not new. This article seeks to clarify the legal limits and procedures governing the exchange of tax information from the perspective in Colombia, with special emphasis on the interaction between the relevant tax and information privacy laws. Thus, this document is intended to serve as a comprehensive guide for taxpayers, public servants and in general, to understand the scope and limitations of sharing taxpayer information for control purposes, judicial processes, and audits.

KEYWORDS: Fiscal reserve, Tax information, Public information.

CONTENT

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INTRODUCTION

The exchange of tax information is a term that has no legal definition. However, an initial definition is offered by the OECD (2012), which mentioned: *"Although there is no universal definition of what constitutes tax information, we consider that in general, it covers all the information obtained in the exercise of the functions of a person who serves as an official in tax control processes. The obligation to maintain confidentiality applies even after the official has stopped working for the tax administration"*.

We consider that this definition, although it covers part of the universe of tax information, the definition is insufficient in the Colombian context, since it presents a limited and reductionist vision that is not adequately aligned with the national legal system or with the tax procedure. By focusing exclusively on the information obtained by officials during audit processes, it omits the wide range of sources and types of data that make up tax information in Colombia, such as tax returns, accounting records, banking information, and third-party reports. In addition, it does not consider the recent technological and legal mechanisms that facilitate the collection and exchange of information, such as automated systems and international data exchange agreements.

Globally, the definitions of tax information usually cover both initiative-taking sources (self-declarations) and reactive (audits), as well as the regulatory framework that regulates their management and protection. The omission of these elements in the proposed definition limits its applicability and precision, since it does not reflect the complexity and multidimensionality of the Colombian tax system, where the integration of various sources of information and compliance with strict regulations are essential for effective and transparent tax management.

Therefore, for the purposes of this study, we will understand tax information in Colombia as all the documents and data that the Directorate of National Taxes and Customs (DIAN) collects to manage and supervise taxpayers' tax and customs obligations. It includes tax returns, payment vouchers, accounting books, customs documentation, banking information, third-party reports and personal and business data. The DIAN obtains this information through self-declarations, formal requirements, exchange with financial and international entities, automated systems and voluntary complaints. The entire process is conducted in accordance with current legal regulations, guaranteeing the protection and confidentiality of taxpayers' data.

Keeping this in mind, the proper management of tax information is a crucial component for effective tax administration and government transparency, in Colombia and internationally. Regarding the treatment that should be given to the tax information obtained in the different activities of the administrations, at the international level two main trends that can be observed. A pro-disclosure one, which is present in tax systems that allow greater public scrutiny of taxpayers' tax information, higher rates of transparency and tax compliance, as stated by the International Monetary Fund (IMF) (2021) "...". "*Transparency is one of the key factors of the integrity of the tax system. It takes many forms*[1]" thus, in the recent IMF study of the year 2021 it was identified that jurisdictions that allow the public to conduct scrutiny on the level and magnitude of taxes declared by taxpayers from certain sectors of the economy (i.e. financial and extractive) sheds a better

1 See Nakayama, Kiyoshi. "Public Disclosure of Taxpayer Information as a Measure to Improve Tax Compliance". In Public Disclosure of Taxpayer Information as a Measure to Improve Tax Compliance, (USA: International Monetary Fund, 2021) accessed Oct 1, 2024, https://doi.org/10.5089/APTBV27N03.073.CH001

perception on the transparency of the system as a whole and encourages tax compliance in such companies[2].

On the other hand, the Organization for Economic Cooperation and Development (OECD) (2012) has indicated the importance of the confidentiality of tax information, as follows: "*The confidentiality of taxpayer information has always been a cornerstone of tax systems. To have trust in their tax system and comply with their legal obligations, taxpayers also need to be sure that often sensitive financial information is not inappropriately disclosed, either intentionally or by accident.*"

The position that advocates a higher level of confidentiality and protection of the information provided by taxpayers is mainly based on the importance of creating trust systems between taxpayers and the administration, so that control activities are perceived as a safe space where the taxpayer can anticipate that the information provided will only carry the corresponding tax consequences.

However, in Colombia, with the issuance of Law 1712 of 2014 on Transparency and Access to Public Information, questions have been raised about how this interacts with the confidentiality provisions established in the Tax Statute, specifically in the articles 583–587, 622, 623, 623-1, 623-2, 623-3, 624–628, 629-1, 630–633. The above implies a main doubt about what the legal position of the country is in front of this debate, considering the interaction of the norms in question.

This article aims to address these concerns, providing a detailed guide on the legal framework that regulates the fiscal reserve in a general way, interpreting it from the interaction between access to public information and its interaction with information that could be considered private in nature, where finally a discussion can be generated regarding the information that can be shared between public entities and the judicial branch, offering practical recommendations for its proper management.

1. PREVIOUS QUESTION: DIAN'S MISSION FUNCTION AND ITS ROLE IN HANDLING TAX INFORMATION

Mission function

Within the structure of the Colombian State, the Special Administrative Unit Directorate of National Taxes and Customs -DIAN, fulfills essential functions for its operation and compliance with the provision of the service, since it seeks to guarantee the fiscal sustainability of the same through the administration of tax, customs and exchange obligations; adding that it has the objective of facilitating foreign trade operations, essential for the country's economy and national security.

In accordance with article 189 of the Political Constitution[3] (C.P.) and Decree 1742 of 2020, it is established that the DIAN fulfills as its main mission function the administration of national taxes, customs duties and foreign trade, and other national taxes whose competence is not assigned to other State entities, whether it is internal taxes or foreign trade, in what corresponds to their collection, supervision,

2 As mentioned in Ibid: "*The public disclosure of information about taxpayers is not a primary measure to improve compliance with tax obligations, and it cannot correct the shortcomings of the current tax legislation. But it can complement other general compliance activities*."

3 As established by: *Article 189. Corresponds to the President of the Republic as Head of State, Head of Government and Supreme Administrative Authority: 16. To modify the structure of Ministries, Administrative Departments and other national administrative entities or agencies, subject to the general principles and rules defined by law. 20. To ensure the strict collection and administration of public revenues and funds and to decree their investment in accordance with the laws.*

control, repression, penalty, settlement, discussion, collection, refund and sanction and the others that the laws determine, that are not assigned to other entities[4]; as well as the other functions established in the aforementioned Decree.

For the fulfillment of the main mission and other missions legally and constitutionally assigned to the DIAN, the entity has different registers and declarations so that taxpayers and non-taxpayers obliged to provide information can send it to the tax administration, within which some:

a) *Single Tax Register*[5]*:*

This register incorporates information about the taxpayer's identification, name, contact information, economic activity and the different tax responsibilities such as: being responsible for VAT, withholding agent, responsible for the national consumption tax, among others. Additionally, the registration requires that information be provided on the details of the commercial establishments or headquarters that the taxpayer owns inside or outside Colombia, their location, and in the case of foreign legal entities the country of tax residence, identification number in that country, and documents that prove legal representation if applicable.

b) *Tax returns*: they contain the accounting and tax information of taxpayers and those required to submit formal returns for taxes withheld with respect to the income generated by their economic activity, the associated costs and expenses, applicable tax benefits, among others.

c) *Customs declarations*: these are import and export declarations regarding the traffic of goods made by taxpayers and customs users in the country, which includes the value of the declared goods and descriptions of the contents being transported, among other data.

d) *Provision of information on magnetic media by taxpayers*[6]: which roughly includes the type and identification number of people with whom operations were carried out, the payments or account credits made to and received by the reported taxpayers, and in the case of agreements with international organizations and business collaboration contracts the income accrued in the contract, contract number, the total value, the dates of conclusion and execution and the type of contract[7]: In that sense, according to the articles 622, 623, 623-1, 623-2, 623-3, 624–628, 629-1, 630 and 633 of the Tax Statute establishes the entities obliged to generate the aforementioned report on an annual basis. In addition, the Statute requires the taxpayer, as a general rule[8], keep for a period of 5 years various

4 See Article 3 Decree 1742 of 2020.

5 See Decrees 1091 of 2020 and 678 of 2022.

6 as stated in the articles 623, 623-2 623-3, 624, 625, 627, 628, 629, 629-1, 631, 631-1, 631-2, 631-3 and 633 of the Tax Statute, Article 2.8.4.3.1.2 of Decree 1068 of 2015 Single Regulatory of the Finance and Public Credit Sector, Articles 1.2.1.4.4., 1.2.1.5.3.6., 1.5.5.8., 1.6.1.28.1. and numerals 1 and 2 of Article 2.1.1.20 of Decree 1625 of 2016 Single Regulatory on Tax Matters and Article 2.2.9.3.7. of the Decree 1072 of the 2015 Only Regulatory of the Labor Sector.

7 Created from the information required under the latest regulation on third-party reported information (Resolution 162 of October 31, 2023) and the formats 1008, 1009, 1159, 1019, 1020, 1024, 1003, 1034, 2275, 1037, 1010, 1058, 5247, 5248, 5249 and 5250.

8 In some specific cases, the taxpayer is required to have a longer period of possession and conservation of certain information in case of accessing certain specific tax benefits for the entire duration of the benefit (i.e., incentives Articles 235-2 E.T.)

information[9] that the Tax Administration may require at any time

e) *Control activities*[10]*:* Within the framework of its supervisory and investigative powers, the DIAN is authorized to request from taxpayers and third parties a variety of relevant information to verify compliance with tax obligations. This information may include accounting books and records, financial statements, sales and purchase invoices, cost supports and deductions, tax returns filed, commercial contracts, banking information such as statements and account movements, reports on economic and financial operations, documentation related to imports and exports, and any other document or data that is relevant for the correct determination of the taxpayer's tax obligations, which must be attended by taxpayers[11].

As can be seen, the tax administration has large sources of information, which means that it administers data of all kinds, from personal characteristics of the taxpayers that allow their full identification (i.e., gender, age, identification number, name) up to information regarding their financial behavior and economic information about their work and business activity.

In the same way, in the exercise of the broad powers of supervision, investigation, and control, the DIAN has information that rests on different types of files on each taxpayer or formal taxpayer individually considered.

2. CONSTITUTIONAL PROTECTION AND TYPOLOGIES OF INFORMATION

Constitutional protection of the rights of access to information and habeas data:

As stated in the previous section, the DIAN has a universe of different and varied economic information from individuals and legal entities who have been the subject of research or who have reported information to the entity in compliance with a legal duty. This accumulation of information is known as the tax information, which is in the possession of the tax authority.

Thus, the DIAN, when disposing of the economic and personal information of individuals and legal entities in Colombia, must guarantee the protection of two main fundamental rights. On the one hand, the right to privacy and good name, from which derives the autonomous fundamental right to habeas data[12].

9 In accordance with Article 632 of the E.T. these are the following: *1. In the case of persons or entities obliged to keep accounts, the accounting books together with the internal and external proofs that gave rise to the accounting records, in such a way that it is possible to verify the accuracy of the assets, liabilities, assets, income, costs, deductions, exempt income, discounts, taxes and withholdings entered in them. When accounting is carried out on a computer, in addition, the magnetic media containing the information must be kept, as well as the respective programs 2. The specific information and evidence contemplated in the current regulations, which entitle or allow to prove the income, costs, deductions, discounts, exemptions and other tax benefits, active and passive credits, withholdings and other factors necessary to establish the liquid assets and liquid income of taxpayers, and in general, to correctly set the taxable bases and settle the corresponding taxes. 3. The proof of the recording of the withholdings at the source practices (sic) in their capacity as withholding agent. 4. Copy of the tax returns filed, as well as the corresponding payment receipts.*

10 See Articles 684, 684-2 of the Statute

11 See Articles 686 of the Statute

12 See Article 15 C.P.: "*Everyone has the right to their personal and family privacy and to their good name, and the State must respect these and make them respected. Likewise, they have the right to know, update and rectify the information that has been collected about them in data banks and in files of public and private entities." In the collection, processing and circulation of data, the freedom and other guarantees enshrined in the Constitution shall be respected." Correspondence and other forms of private communication are inviolable. They can only be intercepted or searched by court order, in the cases and with the formalities established by law." For tax or judicial purposes and for cases of inspection, surveillance and intervention of the State, the presentation of accounting books and other private documents may be required, in the terms indicated by the law.*"

This right generates the following limits to the individual:

a) not to promulgate, publish or divulgate to third parties their circumstances, behaviors, data that are not normally brought to the attention of strangers unless, by the will of the holder, they transcend the domain of public opinion (Constitutional Court of Colombia, Judgment SU-056, 1995).

b) To protect and ensure respect for their good name, which refers directly to the assessments that both individually and collectively are made of a person. Therefore, the State must actively participate in its safeguarding.

c) The right to know, update and rectify the information that has been collected in data banks and in files of public and private entities. This implies "*I. The right of people to know the information about them in the databases. II. The right to include new data in order for the information to be updated. III. The right to rectify and correct the information. IV. The right to exclude information from a database that is improperly used" (Constitutional Court of Colombia, Judgment T-260, 2012)*. This is the minimum protection guaranteed by the right to habeas data.

On the other hand, the right to access information has its origin in the right of petition as a gender[13] and access to public information[14] as a manifestation of the right[15] linked to the right to freedom of expression[16]. In that sense, this right in its facet of access to public information implies a series of guarantees for its recipients; jurisprudentially[17] they are located:

1. The principle of maximum disclosure: As a general rule, by virtue of the provisions of article 74 of the Constitution, 13 of the Inter-American Convention on Human Rights and 19 of the International Covenant on Civil and Political Rights, individuals have a fundamental right of access to State information. In this sense, wherever there is no express legal reservation, the fundamental right of access to information must prevail.

2. Any limitation to the right must be established in the law: the law that limits access to information must be precise and clear when defining what type of information can be subject to reservation and which authorities can establish such reservation.

3. The reservation must safeguard a fundamental right, therefore it must be reasoned and it must be restrictive: In this regard, the Court has pointed out that any decision intended to keep certain information confidential must be reasoned and that the interpretation of the rule on reservation must be restrictive, in such a way that only the part of the document containing the information whose disclosure may affect the protected legal good is subject to reservation.

13 See Article 23 C.P.: "*Everyone has the right to submit respectful petitions to the authorities for reasons of general or particular interest and to obtain a prompt resolution*"

14 See Article 74 C.P.: "*Everyone has the right to access public documents except in the cases established by law*".

15 As the Constitutional Court has indicated in its jurisprudence: "See, among others, judgments T-473 of 1992, T-695 of 1996, T-074 of 1997 and C-491 of 2007. In the judgment T-705 of 2007, it was expressed in this regard: "*3. The jurisprudential precedent defined by the Constitutional Court (...) has established that the systematic interpretation of the right of petition (art. 23 C.P.) and free access to public documents (art. 74 C.P.), as well as the norms that make up the constitutionality block, in particular, articles 13 of the Inter-American Convention on Human Rights and 19 of the International Covenant on Civil and Political Rights, derive the fundamental right of access to public documents."*

16 See Article 20 C.P.: "*Everyone is guaranteed the freedom to express and disseminate his thoughts and opinions, to report and receive truthful and impartial information, and to fund mass media. They are free and have social responsibility. The right to rectification under equitable conditions is guaranteed. There will be no censorship*".

17 See Judgments C 491 of 2007, C 274 of 2013.

4. In the following situations the reservation may be legitimate: (1) to guarantee the defense of the fundamental rights of third parties who may be disproportionately affected by the publicity of information; (2) in the face of the need to maintain the reservation to guarantee national security and defense; (3) in the face of the need to ensure the effectiveness of State investigations of a criminal, disciplinary, customs or foreign exchange nature; (4) in order to guarantee commercial and industrial secrets.

5. The reservation must be temporary: guaranteeing a reasonable period and proportional to the legal issue that is sought to be protected. Once the term has expired, it must be lifted.

6. At a minimum, the disclosure of the existence of the document containing the information must be guaranteed, even if its content is reserved.

Now, to establish how to resolve the conflicts between the aforementioned fundamental rights and their guarantees, in Colombia there are also 3 main laws related to the management of information with their corresponding jurisprudential developments, namely; Law 1266 of 2008 referring to general provisions of habeas data, the management of information contained in personal databases, especially financial, credit, and commercial, Law 1581 of 2011 referring to the statutory regulation of personal data protection, and Law 1712 of 2014 regulating the right of access to public information.

Thus, constitutional jurisprudence, when interpreting current laws, indicates that the level of intensity with which information is protected varies according to its content and the reasons that ground the competing interests or rights in the processing of the information. Consequently, it is important to locate the different types of information processed by the DIAN within the universe of information typologies recognized in Colombia, because the level of protection and limitation to their access will also increase or decrease according to their classification.

Typologies of information recognized in the Law and jurisprudence:

To begin with, one must first understand what information is from a legal point of view. In Colombia, article 6 of Law 1712 of 2014 defines information as "*an organized set of data contained in any document that the obligated subjects generate obtains, acquires, transforms or controls*". In this sense, the data becomes relevant within the definition of information. Now, according to the dictionary of the Royal Spanish Academy, the data is understood as:

1. m. Information about something concrete that allows its exact knowledge or serves to deduce the consequences derived from an event

For the above, the word *personal data* it is defined in Article 3 of Law 1581 of 2012 as: "*Any information linked or that may be associated with one or more specific or determinable individuals*". In this way it is understood that data is everything that allows us to obtain information from someone who will be the owner of the data. Legally, the concept of personal data creates a link between a data and a specific person.

According to the above definitions, the Constitutional Court and the national legislation[18] have classified the information depending on the data set that is handled in it. Thus, they have been identified, at least from the jurisprudential point of view[19] the following categories:

18 See Laws 1266 of 2008, 1581 of 2012, and 1712 of 2014.

19 See Constitutional Court, judgments T 729 of 2002, T 559 of 2007, T 547 of 2008, T 1137 of 2008, C 274 of 2013

1. Impersonal information and personal information:

According to constitutional jurisprudence, personal data are those that refer to "*i) exclusive and proper aspects of an individual, ii) allow to identify the person, to a greater or lesser extent, thanks to the overview achieved with them and with other data; iii) their property resides exclusively in their owner, a situation that is not altered by their obtaining by a third party in a lawful or unlawful manner, and iv) its treatment is subject to special rules (principles) regarding their capture, administration and disclosure"*(Constitutional Court of Colombia, Judgment C-1108 of 2008, reiterated in judgment C-748 of 2011). In contrast, the data will be impersonal when none of the above requirements are met. Hence, personal data are subject to greater protection against their processing and disclosure[20].

1.1. Personal information: data, public, semi-private and private or sensitive:

This classification refers to the level of acceptance of the disclosure of personal data and according to case law (Constitutional Court, Judgment C-748 of 2011) there are the following levels:

> "*(f) Public data. It is the data qualified according to the mandates of the law or the Political Constitution and all those that are not semi-private or private, in accordance with this law. Are public, among others, the data contained in public documents duly executed judicial judgments that are not subject to reservation and those related to the civil status of people;*
>
> *(…)*
>
> *Public information is that which can be obtained without any reservation, including public documents, considering the mandate provided for in article 74 of the Political Constitution. This information can be acquired by anyone, without the need for any authorization for it*
>
> *(g) Semi-private data. Semi-private is the data that does not have an intimate, reserved, or public nature and whose knowledge or disclosure may be of interest not only to its owner but to a certain sector or group of people or to society in general, such as the financial and credit data of commercial activity or services referred to in Title IV of this law.*
>
> *(h) Private data. It is the data that by its intimate or reserved nature is only relevant to the holder.*"

With regard to public data, case law has stated: "*As far as public data and the civil registry of individuals are concerned, their nature means that they are not subject to the principle of authorization. Public information is that which can be obtained without any reservation, including public documents, considering the mandate provided for in article 74 of the Political Constitution. This information can be acquired by anyone, without the need for any authorization for it.*" (Constitutional Court, Judgment C-748 of 2011).

The situation of semi-private data is different, compared to which the Constitutional Court has indicated that they are subject to a prior authorization

20 This is mentioned in the principle of confidentiality regarding the processing of personal data according to which: "*All persons involved in the Processing of personal data that are not public are obliged to guarantee the reservation of the information, even after their relationship with any of the tasks that comprise the Treatment has ended, being able to only carry out supply or communication of personal data when it corresponds to the development of the activities authorized in this law and in its terms*" article 4 Law 1581 of 2012.

regime by the owner of the personal data[21]. In any case, such authorization must be prior, expressed and informed by the owner to conduct the processing of personal data, by an authorized means[22] and this authorization can only be waived by the owner in the following cases[23]:

a) Information required by a public or administrative entity in the exercise of its legal functions or by court order.

b) Data of a public nature.

c) Cases of medical or health emergency.

d) Processing of information authorized by law for historical, statistical or scientific purposes.

e) Data related to the Civil Registry of Persons.

It is worth mentioning that the assumption of the *section a* does not imply a general authorization for the delivery of personal data by administrative or judicial order. In any case, according to the constitutional jurisprudence[24], the public entity requesting access to the aforementioned data shall comply with **two conditions** in the substantiation of the act requesting access:

i. The qualified nature of the link between the disclosure of the data and the fulfillment of the functions of the entity of the executive power: the motivation for the request for information must be based on a clear and specific functional competence of the entity.

ii. The assignment to such entities of the duties and obligations that the statutory regulations predicate for the users of the information.

Finally, private data is assimilated to sensitive data[25] and has been defined in Law 1581 of 2012 as:

> "*those that affect the privacy of the Owner or whose misuse may generate discrimination, such as those that reveal racial or ethnic origin, political orientation, religious or philosophical convictions, membership of trade unions, social organizations, human rights organizations or that promote the interests of any political party or that guarantee the rights and guarantees of opposition political parties as well as data related to health, sexual life and biometric data*".

In other words, they are those that have the highest level of protection since, in these events, the nature of such data belongs to the essential core of the right to

21 In accordance with Article 9 of Law 1581 of 2012: "*Article 9°. Authorization of the Holder. Without prejudice to the exceptions provided for by law, the Processing requires the prior and informed authorization of the Owner, which must be obtained by any means that may be the subject of subsequent consultation*."

22 See Article 2.2.2.25.2.3. from Decree 1074 of 2015: "*These mechanisms may be predetermined through technical means that facilitate the Holder of its automated manifestation. It will be understood that the authorization complies with these requirements when it is manifested (i) in writing, (ii) orally or (iii) through unequivocal behaviors of the holder that allow to reasonably conclude that he granted the authorization.* ***In no case can silence be assimilated to an unequivocal conduct***."

23 See article 10 Law 1581 of 2012.

24 See Judgments C 1011 of 2008 and C 748 of 2011.

25 Jurisprudentially equated to private data see Judgment C 748 of 2011.

privacy.[26]. Hence, the Law establishes as a general rule the prohibition of its treatment except in particular cases[27], that the person responsible for the processing of these data complies with a series of precise obligations his or her duty of information to the owner[28] and that the services provided cannot be restricted by the refusal of the owner to hand over the sensitive data.

1.1.1. Protection of personal data by third parties who legitimately access it:

Similarly, the national legislation[29] points out that the personal data can be known and used directly by the natural or legal person who owns the data, or by other people. Thus, in the matter of personal data related to financial and credit information, the following are:

1. *A source of information: the person, entity or organization that receives or knows personal data of the owners of the information, by virtue of a commercial or service relationship or of any other nature and that, by reason of legal authorization or of the owner, supplies those data to an information operator, which in turn will deliver them to the end user*[30].

2. *An information operator: the person, entity or organization that receives from the source personal data about various information holders, manages them and makes them known to users under the parameters of the law. Therefore, the operator, as soon as it has access to personal information of third parties, is subject to the fulfillment of the duties and responsibilities provided for guaranteeing the protection of the rights of the data owner. Unless the operator is the same source of the information, he has no commercial or service relationship with the owner and therefore is not responsible for the quality of the data provided by the source.*

3. *An information user: an individual or legal entity who can access personal information of one or more information holders provided by the operator or by the source, or directly by the information holder. The user, as soon as he has access to personal information of third parties, is subject to the fulfillment of the*

26 Defined in Judgment C 1011 of 2008 as: "*understood as that 'sphere or space of private life not susceptible to the arbitrary interference of other people, which, being considered an essential element of being, is concretized in the right to be able to act freely in the aforementioned sphere or nucleus, in exercise of personal and family freedom, without any limitations other than the rights of others and the legal limitations*".

27 As indicated in article 6 of Law 1581 of 2012: *a) The owner has given his explicit authorization to such processing, except in cases where the granting of such authorization is not required by law; b) The Processing is necessary to safeguard the vital interest of the owner and he is physically or legally incapacitated. In these events, the legal representatives must grant their authorization; c) The processing is carried out in the course of legitimate activities and with due guarantees by a foundation, NGO, association or any other non-profit organization, whose purpose is political, philosophical, religious or trade union, provided that they refer exclusively to their members or to people who maintain regular contacts by reason of their purpose. In these events, the data may not be provided to third parties without the authorization of the owner; d) The processing refers to data that are necessary for the recognition, exercise or defense of a right in a judicial process e) The processing has a historical, statistical or scientific purpose. In this event, the measures leading to the suppression of the identity of the holders must be adopted."*

28 As established in Article 2.2.2.25.2.2. from Decree 1074 of 2015: "*1. Inform the owner that because sensitive data is being processed, he/she is not obliged to authorize their processing. 2. Inform the owner explicitly and in advance, in addition to the general requirements of authorization for the collection of any type of personal data, which of the data to be processed are sensitive and the purpose of the processing, as well as obtain their express consent. No activity may be conditioned on the owner providing sensitive personal data."*

29 See article 3 Law 1266 of 2008.

30 It should be noted that the Ibidem Law states: "*If the source delivers the information directly to the users and not through an operator, it will have the dual status of source and operator and will assume the duties and responsibilities of both. The source of the information is responsible for the quality of the data provided to the operator which, as soon as it has access and provides personal information of third parties, is subject to compliance with the duties and responsibilities provided to guarantee the protection of the rights of the data owner."*

duties and responsibilities provided for guaranteeing the protection of the rights of the owner of the data.

Each of these subjects fulfills a series of obligations depending on whether it is an operator, source or user of the information and depending on the faculties and the moment in which they interact with the financial or commercial personal data[31].

Now, Law 1581 of 2012 brings an autonomous category[32] in the case of data processing of personal data contained in databases and files other than those regulated in Law 1266 of 2008, Law 79 of 1993 on national statistical information, databases and files whose purpose is national security and defense, as well as the prevention, detection, monitoring and control of money laundering and terrorist financing, or whose purpose and contain intelligence and counterintelligence information:

1. *Responsible for the processing of personal data: it is understood as the individual or legal entity, public or private when deciding on the database in which they are found or their treatment, that is, their collection, storage, use, circulation or deletion* [33].

2. *Data processor: Individual or legal entity, public or private, who by himself or in association with others, conducts the Processing of personal data on behalf of the Person Responsible for the Treatment;*

The responsible[34] as the data processor[35] have particular obligations regarding the processing of the data received from the owners. Likewise, the processor must assume the obligations of the person in charge when they are established in the contract for the transmission of personal data[36].

Regarding the use or processing of personal data, according to article 3 of Law 1581 of 2011 it is understood as: "*any operation or set of operations on personal data, such as collection, storage, use, circulation or deletion*".

1.1.2. Case of the personal data of minors:

In the case of children and adolescents, the law[37] it establishes that it is only possible to process personal data of a public nature and what is established in its civil registry. Now, in the face of semi-private and private/ sensitive data, case law has pointed out that *they may only be the subject of treatment as long as the purpose pursued by such treatment responds to the best interests of children and adolescents and ensures, without any exception, respect for their prevailing rights*[38], for which their treatment is subjected to demanding requirements that must be substantiated on a case-by-case basis[39].

31 See articles 7, 8 and 9 of Law 1266 of 2008.

32 See article 3 Law 1581 of 2012.

33 See Concept 18039 of 2014 Superintendency of Industry and Commerce.

34 See article 17 of the Law *ibid.*.

35 See article 18 of the Law *ibid.*.

36 See Article 2.2.2.25.5.1. of Decree 1074 of 2015.

37 See article 7 Law 1581 of 2011.

38 See Judgment C 748 of 2011.

39 As established in Article 2.2.2.25.2.8. of Decree 1074 of 2015, where the following parameters must be met: "*1. That responds to and respects the best interests of children and adolescents. 2. To ensure respect for their fundamental rights. Once the above requirements have been met, the legal representative of the child or adolescent will grant the authorization prior to the minor's exercise of his or her right to be heard, an opinion that will be valued considering maturity, autonomy and ability to understand the matter. Any person responsible and in charge involved in the processing of the personal data of children and adolescents, must ensure the appropriate use of them. For this purpose, the principles and obligations established in Law 1581 of 2012, and this decree must be applied.*".

2. Public information or in the public domain:

Case law has defined public information as follows:

> *information that can be obtained and offered without reservation and regardless of whether it is general, private or personal information. By way of example, normative acts of a general nature, public documents in the terms of article 74 of the Constitution and duly executed judicial orders can be counted; likewise, data on the civil status of persons or on the conformation of the family will be public. Information that can be requested by anyone directly and without the duty to satisfy any requirement.*

Also, Article 2.2.2.25.1.3. Decree 1074 of 2015 defines public data as:

> *the data that is not semi-private, private or sensitive. Data related to the marital status of individuals, their profession or trade and their status as merchants or public servants, among others, are considered public data. By their nature, public data may be contained, among others, in public registers, public documents, official gazettes and bulletins and duly executed court judgments that are not subject to reservation.*

In this sense, both the jurisprudence and the regulations understand public information according to the nature of the information as it is freely accessible because it is not restricted by any law or by the constitution and any subject can know public information without it being necessary to prove a direct interest or a personal affectation.

Otherwise, article 6 of Law 1741 of 2014 understands this typology as *"any information that an obligated subject generates obtains, acquires, or controls in his or her capacity as such"*. Thus, the following are obliged subjects to the rule in question with respect to information directly related to the performance of their function: i) public entities of a national and decentralized by services or territorially of a national, departmental, municipal and district order, ii) independent or autonomous state and control agencies and entities, iii) individuals and legal entities who perform public functions or provide public services, iv) any individual and legal entity and their dependencies that perform public functions, v) public enterprises created by law, State enterprises and companies in which this has participation, vi) Political parties or movements and significant groups of citizens, vii) Entities that administer para-fiscal institutions, funds or resources of a public nature or origin[40].

Therefore, Law 1712 of 2014 enshrined the principle of maximum disclosure at the legal level in its second article by indicating that: *"All information in the possession, under the control or custody of an obligated subject is public and may not be reserved or limited except by constitutional or legal provision, in accordance with this law"*.

In this sense, the legal criterion starts from a subjective qualification, since it understands public information depending on the subject who owns it and consequently establishes that as a general rule the information held by the obligated subjects is of a public nature and unrestricted access.

However, the above does not mean that Law 1741 of 2014 is not harmonized with the postulates of the laws on data protection and that guarantee the right to privacy. For the above, the law in question created different subclassifications of the public information held by the obligated subjects depending on the content and the possibility of preventing their access in a motivated way as well[41]:

40 See Article 5 Law 1712 of 2014.

41 See article 6 *ibid.*.

a) Classified public information: refers to that information that, being in the possession or custody of an obliged subject, belongs to the own, particular and private or semi-private sphere of an individual or legal entity, so that its access may be denied or excepted, provided that it is the legitimate and necessary circumstances and the particular or private rights enshrined in article 18 of this law.

According to the Constitutional Court, this classification seeks to protect in principle the information of private, semi-private or sensitive personal data to which the statutory laws 1266 of 2008 and 1581 of 2012 explained above refer, and whose dissemination seriously affects the right to privacy of citizens[42].

Thus, the rule in question establishes an admissible limit to access to public information containing personal data that only belongs to its owner and whose disclosure could affect a legitimate right of his such as the right to privacy, or the disclosure of his commercial, industrial and professional secrets, whose access may affect the exercise of economic freedoms.

In this regard, article 18 of the Law *ibid.* it establishes that access to public information whose disclosure may cause damage to the following rights may be denied: a) The right of everyone to privacy, under the limitations imposed by the condition of public servant, b) The right of everyone to life, health or safety. c) Trade, industrial and professional secrets.

In the event that the obligated subject foresees that any of these rights may be affected by accessing the access request, he/she must, in accordance with constitutional jurisprudence[43] to motivate the act of rejection by mentioning in it:

- Identify the constitutional or legal provisions that provide for the reserved nature of the information[44].

- An examination of the potential harm that may be generated by disclosure to any of the rights in question, in terms of **reality** of the damage (i.e. that the probability of damage is not just remote), **specificity** (the damage must be clearly determined and not just expressed in a vague or superfluous way) and **probable** (that is to say that its occurrence is not just possible, but that there are reasons and factors that prove its probability of occurrence).

- Indicate the substantial effect of the damage since it would not be constitutional for a negligible damage to lead to such a serious restriction of the right of access to information. The determination of how substantial a damage is determined by weighing whether the damage caused to the protected interest is disproportionate to the benefit that would be obtained by guaranteeing the right to access public documents.

- Identify the term of duration of the invoked exception: in this case, in view of the collision between the right to privacy (article 15), the right to information (article 20), and the right to petition (Article 23), the jurisprudential interpretation indicates that although the latter must yield to the former under a reasoned argumentative burden, in any case the limitation cannot be unlimited. So as for the term of duration there are the following rules:

42 See Judgment C 274 of 2013.

43 See judgment T 324 of 2024 quoting judgment C 274 of 2013.

44 See Article 2.1.1.4.3.1. of Decree 1081 of 2015.

Rate of duty concerned	Duration
Affecting interests such as the rights to life, health, personal safety or privacy	As long as the material conditions that justify the reservation remain
professional, commercial or industrial secrets	Commercial or industrial secret: as long as its character of secret remains in the terms of Article 260 the Decision 486 of 2000 of the CAN[45]. Professional secret: as long as there are no circumstances for its disclosure decided by jurisprudentially[46].

Source: *own creation.*

It should be clarified that this exception does not apply when the requested information was disclosed by the individual or legal entity involved in the disclosure of their personal or private data or when it is clear that the information was provided as part of that information that should be under an applicable publicity regime. In which case the subject of obligation must disclose it under the principle of maximum publicity.

b) Reserved public information: It is that information that, being in the possession or custody of an obligated subject in his capacity as such, is excepted from access to citizenship due to damage to public interests and under compliance with all the requirements enshrined in article 19 of this law

Article 24 of Law 1437 of 2011 (Code of Administrative Procedure and Administrative Litigation-CPACA) indicates a first list of information and documents that can be considered public information but that have the character of reserved as well:

1. *Those related to national defense or security.*
2. *Instructions on diplomatic matters or on confidential negotiations.*
3. *Those that involve rights to the privacy and intimacy of people, included in the resumes, work history and pension records and other personnel records that are in the archives of public or private institutions, as well as the clinical history.*
4. *Those related to the financial conditions of the public credit and treasury operations carried out by the nation, as well as the technical valuation studies of the nation's assets. These documents and information will be subject to reservation for a period of six (6) months from the completion of the respective operation.*
5. *The data referring to the financial and commercial information, in the terms of the Statutory Law 1266 of 2008.*
6. *Those protected by commercial or industrial secrecy, as well as the strategic plans of public utility companies.*

45 According to which it is understood that it remains secret as long as: It is secret: It is not generally known or easily accessible to people within the circles that normally handle such information. It has commercial value: Due to its secret character. Has been the subject of reasonable measures: By its legitimate owner to keep it secret.

46 These are: Legal duty to report: In cases where the law requires reporting certain crimes, such as child abuse or crimes against public safety. Prevention of serious and imminent harm: If confidentiality puts the life, integrity or health of third parties at risk, the professional can disclose the necessary information to prevent the harm. Express court order: A judge may order the disclosure of information in specific cases and under strict conditions. See judgments C 301 of 2012 and C 200 of 2012.

7. *Those protected by professional secrecy.*

8. *The human genetic data.*

In this case, article 19 of the Law *ibid.* also allows to exempt and reject the request for disclosure of the information on a reserved basis, this time based on the potential effects that its disclosure would have for the following national interests:

(a) National defense and security;

(b) Public security;

(c) International relations;

(d) The prevention, investigation and prosecution of crimes and disciplinary offences, as long as the security measure is not implemented or a statement of charges is formulated, as the case may be;

(e) Due process and equality of the parties in judicial proceedings;

(f) The effective administration of justice;

(g) The rights of children and adolescents;

(h) The macroeconomic and financial stability of the country[47]*;*

(i) Public health.

Thus, the following conclusions are drawn:

i) The list of reserved information indicated in the CPACA includes in its assumptions 3,5,6 and 7 situations not covered by Law 1712 of 2014, so the examination of this exception must be carried out jointly with the two norms.

ii) Unlike the exception enshrined in Article 18, this is not based on the existence of personal data that may undermine a specific fundamental right, but on the consequences that its disclosure may have for the matters in question.

Thus, the jurisprudential[48] and legal[49] criterion indicates that when seeking to invoke this exception the obligated subject must in the act that motivates it mention:

- Identify the constitutional or legal provisions that provide for the reserved nature of the information[50].

- An examination of the potential harm that may be generated by disclosure to any of the rights in question, in terms of **reality** of the damage (i.e. that the probability of damage is not just remote), **specificity** (the damage must be clearly determined and not just expressed in a vague or superfluous way), **probable** (that is to say that its occurrence is not just possible, but that there are reasons and factors that prove its probability of occurrence), and **significance** (that is to say that it is founded that the affectation to the particular interest may be substantial that exceeds the public interest of its not just minimal publicity).

47 It is worth mentioning that this exception was developed in Article 2.1.1.4.2.2 of Decree 1081 of 2015, and points out that for its application it must be demonstrated the circumstances that may affect macroeconomic and financial stability, stated some as*: (1) It may affect the stability of the economy or markets, the effectiveness of macroeconomic and financial policy or the fulfillment of the functions of the entities that are in charge of the design and implementation of these policies; or, (2) It is related to the necessary supervisory tasks to guarantee the stability of the financial system and public confidence in it.*

48 See Judgment C 274 of 2013.

49 See article 25 Law 1437 of 2011.

50 See Article 2.1.1.4.3.1. of the Decree *ibid.*

- Mention the duration, which may not exceed a period of 15 years in accordance with article 22 of the Law *ibid.* counted from the period in which the information was generated[51].

- In the case of the literal a), b) and c) listed in the law, it will correspond exclusively to the head of the unit or area responsible for the generation, possession, control or custody of the information, or official or employee of the managerial level who, due to his complete and integral knowledge of public information, can guarantee that the qualification is reasonable and proportionate[52].

2.1. Full and partial disclosure rules:

As stated in the constitutional jurisprudence, subsequently reflected in the regulation, the limitation to the right to access public information cannot be of such an entity that "*the secrecy of a public document cannot be taken to the extreme of keeping its existence a secret*[53]*"*, also the limitation in any case must allow: "*that it is possible to know those parts not protected by constitutional or legal exceptions or reservations, which guarantees the principle of maximum disclosure*[54]*"*.

Hence, in Article 21 of the Law *ibid.* it is established that: *"In those circumstances in which the totality of the information contained in a document is not protected by an exception contained in this Law, a public version must be made that keeps the reservation of only the indispensable part. The public information that does not fall into any exception assumption must be delivered to the requesting party, as well as be of public knowledge"*.

Therefore, under the article in question, it establishes the practical application of the principle of maximum disclosure, in such a way that the regulated entities must create public versions of the documents that: i) may be disclosed in their entirety because there is no exception to their disclosure and ii) may be partially disclosed, since not all of the document contains information whose disclosure and disclosure may be excepted.

In the case of partial disclosures, the obligated subject may make the disclosure of the document by deleting, anonymizing or deleting the information that cannot be disseminated or creating a file with the public information that can be disclosed, and must prepare the rationale inside the document indicating the constitutional and legal grounds for retaining the data that cannot be disclosed.[55].

2.2. Rules for access to public information containing personal or sensitive data (Law 1581 of 2012) or semi-private or private data (Law 1266 of 2008)

Apparently, the obliged subjects can exempt access to public information under certain parameters. However, this does not mean that in any case public information that has information related to personal data or semi-private or private or reserved data is in a position to be excepted and much less cannot be accessed or transmitted.

We repeat it, the general rule is the principle of maximum disclosure, hence the Decree 103 of 2015, incorporated into the single Decree of the Presidency Sector-1081 of 2015, establishes that access to this kind of information requires on the one hand that none of the circumstances

51 See Article 2.1.1.4.2.3. of the Decree *ibid.*

52 See Article 2.1.1.4.2.1. of Decree 1081 of 2015.

53 See judgment C 491 of 2022, citing judgment T 216 of 2004.

54 See Judgment C 274 of 2013.

55 See Article 2.1.1.4.3.2. of the Decree *ibid.*

described in article 18 of Law 1712 of 2014 already mentioned, and, on the other:

d) *With respect to classified public information*[56]*:* it may be accessed provided that there are any of the following circumstances: i) one of the exceptions enshrined in articles 6° and 10 of Law 1581 of 2012 already explained concurs; or ii) through authorization of the owner of the data; or iii) through authorization of the owner, semi-private, private and sensitive data contained in public documents may only be accessed by a decision of a judicial authority or of a competent public or administrative authority in the exercise of its functions[57].

e) *Regarding public information containing personal data information of minors*[58]: access will be allowed whenever it concerns data of a public nature about minors or that being personal or sensitive, its transmission is necessary for the guarantee of the best interests of the minor in the terms of article 7 of Law 1581 of 2012.

2.3. Entities excepted from the application of the legal reserve because it is confidential or reserved information:

In general, national legislation allows judicial, legislative and administrative authorities that are constitutionally or legally competent to access information even when they have the character of reserved[59]. Thus, there are constitutional norms and enabling laws for certain entities (i.e., Office of the Comptroller General of the Republic[60]) may access the information of other obligated subjects even when it may be considered reserved or classified provided that such faculty is expressed in the law.

In this sense, the Constitutional Court has interpreted it by indicating that:

> *First of all, it is not a question of the request of any authority, but of the one specifically empowered for it. The apparent generality with which the provision refers to "judicial, legislative and administrative" authorities, is not really so, since the same statutory norm stipulates that the request for information or reserved documents must come from authorities (i) constitutionally and legally competent for it and that*

56 See Articles 2.1.1.4.1.1 and 2.1.1.4.1.2. of Decree 1081 of 2015.

57 Regarding the expression "competent entity in the exercise of its functions", the Council of State in concept 2458 of May 6, 2021 mentioned that generic expressions or requests for mass access to all kinds of data are not valid, because in any case the request must be specific and relate the specific function that the entity intends to develop based on the requested information limited to the particular activity it intends to perform: "*The Chamber concludes then, that in the exercise of the preventive function the PGN cannot massively access the personal data (private, semi-private and sensitive) that rest in a database managed by a public entity, or by individuals performing public functions, since such a request does not correspond to a "clear and specific functional competence" that has been granted to it by law.*"

58 See Article 2.1.1.4.1.2. of Decree 1081 of 2015.

59 See Article 27 of the CPACA which states: "*Inapplicability of the exceptions. The reserved nature of information or certain documents shall not be opposable to the judicial, legislative, or administrative authorities that, being constitutionally or legally competent for it, request them for the proper exercise of their functions. It is the responsibility of these authorities to ensure the confidentiality of the information and documents that they come to know in accordance with the provisions of this Article.*"

60 According to Article 136 of Law 1955 of 2019: "*Article 136. Access to information The Office of the Comptroller General of the Republic, in order to carry out its functions, shall have unrestricted access to the information systems or databases of public and private entities that have or administer resources and/or perform public functions. The legal reservation of information or documents will not be opposable to the Office of the Comptroller General of the Republic and will be understood to be extended exclusively for its use within the framework of its constitutional and legal functions.".*

(ii) it must be related to the exercise of the functions of these authorities. In other words, it is not that the unopposability of the reservation can be invoked by any judicial, legislative or administrative authority for any matter and without further motivation; on the contrary, the lifting of the reservation that implies the request of such officials requires that they deal with issues related to their functions, that is, with the competences they hold and that such information is required for its due exercise (Judgment C 951 of 2014).

In this way, **in front of the first requirement**, it is necessary that in principle the authorities that have a competence from the constitutional point of view to access the reserved information are those indicated in Article 15 C.P., that is to say: the tax authorities (which includes the DIAN), those that exercise judicial functions and those administrative authorities that exercise inspection, surveillance and control functions including the control bodies[61].

Now, **in the face of the second requirement,** it should deal with matters that are related to specific processes and actions that the authority is aware of in the performance of its functions and not in a general, indeterminate or integral way to all the matters protected by the reserve. Therefore, the request for confidential information must be made by the competent authority and must relate to a specific matter that it is aware of within its sphere of competence, for which it requires such information or documents.

In development of the aforementioned, the Superintendency of Industry and Commerce[62]-SIC has conceptualized in this regard, stating that any public entity that is exempt from the application of the reservations enshrined in Law 1712 of 2014 must:

a) Substantiate the request for access in terms of the need and relevance of the data collected by the excepted entity to fulfill its constitutional and legal functions, pointing out precisely the means-to-end relationship between the requested information and the required legal function.

b) The applicant entity has a risk management system associated with the processing of reserved personal data – sensitive, private, semi-private. For which it can be verified that said system is in accordance with the "Guide for the implementation of the principle of Proven Responsibility (Accountability)" created by the SIC[63], the foregoing in order to ensure that the entity in question maintains the confidentiality of classified or reserved information[64].

3. Penalties for non-compliance with data protection regulations.

However, the rules in question are complemented by punitive rules on the disclosure of personal data or the suppression of public information that should have been disclosed in this way:

61 As indicated by the Constitutional Court in the sentence C 951 of 2014*"Indeed, article 15 of the Constitution enshrines the inviolability of private documents in line with the right to privacy. At the same time, it establishes three cases in which the reservation of private documents cannot be opposed to the authorities, which are those required for purposes: 1) tax; 2) judicial; and 3) inspection, surveillance and State intervention. This means that, constitutionally, the authorities that can have such privileged access to information and confidential documents are only the tax authorities, those that exercise judicial functions and those administrative authorities that exercise inspection, surveillance and control functions. In this regard, it should be noted that the expression "administrative authorities" contained in article 27 corresponds to a gender within the public administration that includes control bodies."*

62 See Concept 19-162799-2-0 of July 29, 2019.

63 Available at: https://www.sic.gov.co/noticias/guia-para-la-implementacion-del-principio-de-responsabilidad-demostrada

64 In the terms of what the article of Decree 1081 of 2015 states: "*If an obligated subject sends or delivers public information classified as classified or reserved to another obligated subject, it must warn of such circumstance and include the motivation for the qualification, so that the latter also exempts its disclosure*".

Kind of norm violated	Legal consequence for private individuals	Legal consequences of public entities	Common legal consequences
Disclosure without authorization or in violation of the obligations regarding personal data protected under Law 1581 of 2012:	Sanctions imposed by the Superintendency of Industry and Commerce-SIC[65]: a) *Fines of a personal and institutional nature up to the equivalent of two thousand (2,000) legal minimum monthly salaries in force at the time of the imposition of the sanction. The fines may be successive as long as the non-compliance that originated them persists;* b) *Suspension of activities related to the Treatment for up to a term of six (6) months. The act of suspension shall indicate the corrective measures to be adopted;* c) *Temporary closure of the operations related to the Treatment once the suspension term has expired without the corrective measures ordered by the Superintendency of Industry and Commerce having been adopted;* d) *Immediate and definitive closure of the operation involving the Processing of sensitive data;*	Sanctions determined by the Office of the Attorney General of the Nation-PGN in the exercise of the sanctioning function within the framework of Law 1952 of 2019[66] (General Disciplinary Code) individualized for public servants who have violated the rule on the protection of personal data.	Punishment imposed by the criminal justice[67]: Anyone who, without being authorized to do so, for his own or a third party's benefit, obtains, compiles, steals, offers, sells, exchanges, sends, buys, intercepts, discloses, modifies or uses personal codes, personal data contained in files, archives, databases or similar means, will incur a prison sentence of forty-eight (48) to ninety-six (96) months and a fine of 100 to 1000 monthly legal minimum wages in force.

65 See article 23 Law 1581 of 2012.

66 According to Article 48 they can be: *1. Dismissal and general disability from ten (10) to twenty (20) years for the most serious intentional offenses. 2. Dismissal and general disability from eight (8) to ten (10) years for the most serious offenses committed with the most serious guilt. 3. Suspension in the exercise of office from three (3) to eighteen (18) months and special disability for the same term for serious intentional offenses. 4. Suspension in the exercise of office from one (1) to twelve (12) months for serious culpable offenses. 5. A fine of ten (10) to one hundred eighty (180) days of the basic salary accrued at the time of the facts for minor intentional offenses. 6. Written warning for minor culpable offenses.*

67 See Section 269F of the Criminal Code.

Kind of norm violated	Legal consequence for private individuals	Legal consequences of public entities	Common legal consequences
Disclosure without authorization or in violation of the obligations regarding commercial, financial or service personal data within the framework of Law 1266 of 2008	Sanctions imposed by the SIC[68]: *Fines of a personal and institutional nature up to the equivalent of two thousand (2,000) legal minimum monthly salaries in force at the time of the imposition of the sanction, for violation of this law, rules that regulate it, as well as for non-compliance with the orders and instructions issued by said Superintendency. The fines provided for herein may be successive as long as the non-compliance that originated them persists.* *Suspension of the activities of the data bank, for up to a term of six (6) months, when the administration of the information is being carried out in serious violation of the conditions and requirements provided for in this law, as well as for non-compliance with the orders and instructions issued by the aforementioned Superintendencies to correct such violations.* *Closure or closure of operations of the data bank when, once the suspension term has expired, its technical and logistical operation, and its rules and procedures have not been adapted to the requirements of law, in accordance with the provisions of the resolution that ordered the suspension. Immediate and definitive closure of the operation of data banks that manage prohibited data.*		
Concealment, destruction or alteration of public information protected under Law 1712 of 2014.	Punishment imposed by criminal judges[69]: *Anyone who destroys, suppresses or conceals in whole or in part a public document that may serve as evidence shall be liable to imprisonment for thirty-two (32) to one hundred and forty-four (144) months.* *If the conduct is carried out by a public servant in the exercise of his functions, imprisonment for forty-eight (48) to one hundred eighty (180) months and disqualification from exercising public rights and functions for the same term shall be imposed.* *If it is a document constituting a procedural piece of judicial nature, the penalty will be increased from one third to one half.*		

Source: *own creation.*

68 See article 18 Law 1266 of 2008.

69 See article 292 of the Criminal Code.

It should be borne in mind that in the case of public information that should have been excepted and was disclosed causing damage to the aforementioned fundamental rights or to the national interests protected under Law 1712 of 2014 or the CPACA, they may give rise not only to the aforementioned sanctioning consequences on the part of the PGN, but to the corresponding criminal consequences as long as a crime is configured (i.e. against national security).

3. EFFECT OF LAW 1712 OF 2014 ON THE TREATMENT OF TAX INFORMATION

Situation prior to laws 1266 of 2008, 1581 of 2012, and 1712 of 2014:

In tax matters, the tax information mentioned in the first chapter finds a rather rigorous regulation regarding the limitation to its access in the Tax Statute (E.T.) of 1989. Thus, the most relevant regulations of the statute on tax information enshrine that both the declarations[70] as the file by research[71] in progress will be reserved, and only the taxpayer or the person expressly authorized by him to access[72] to him, just consecrating some exceptions:

i. For the exchange of information with other public entities for the purposes of investigation in the field of money laundering, with the Attorney General's office of the Nation[73].

ii. In the framework of criminal proceedings, when the corresponding authority decrees it as evidence in the respective providence[74].

iii. For the purposes of national, departmental or municipal taxes, information can be exchanged with the Ministry of Finance and Public Credit, the Ministry of Health and Social Protection, the National Planning Department (DNP), the National Tax and Customs Directorate (DIAN), the Pension and Parafiscal Management Unit (UGPP) and the municipal and departmental tax authorities[75].

iv. For the realization of crossings in terms of compliance with payment of parafiscal contributions with the Social Insurance Institute, I.S.S. (nowadays New EPS), the Colombian Institute of Family Welfare, I.C.B.F., the National Learning Service, SENA[76].

v. For statistical purposes and the development of economic surveys with the National Administrative Department of Statistics – DANE[77].

vi. For the purposes of administrative contracting processes before the National Institute of Concessions-INCO, today the National Infrastructure Agency[78].

vii. By direct request of foreign governments based on reciprocity agreements, tax information may be provided in the event that it is required for

70 See Article 583 of the E.T.

71 See Articles 693, 729 and 849-4 of the E.T.

72 See Article 584 of the E.T.

73 See Article 583 E.T.

74 See Article 583 E.T.

75 See Article 585 E.T.

76 See Article 587 E.T.

77 See Article 587-1 E.T.

78 See article *ibid.*

tax control purposes or to act in tax or criminal proceedings[79].

As can be seen, the possibility of accessing tax information is restricted to the cases in question, reflecting a trend of limited disclosure in favor of the right to privacy[80] of the taxpayers who provide information to the DIAN. However, constitutional jurisprudence has had the opportunity to evaluate the rules that strictly regulate access to tax information by third parties and other public and judicial entities other than those mentioned above, arriving at the following conclusions:

1. The rules of the statute only allow access to tax information in the framework of judicial processes as long as it is a criminal process, the other classes of processes do not have access to this information[81], since it is up to the legislator to establish additional assumptions of disclosure within the framework of his constitutional competence[82].

2. Any information handling carried out by the DIAN must respect the right to habeas data and be limited to the specific function that the entity intends to develop as a mission[83].

3. The duty of reporting commercial and financial information by third parties required by the DIAN fulfills a legitimate constitutional purpose. In any case, the officials must make a judgment of the reasonableness of the requested information, determining whether the requested information pursues a legitimate purpose and whether it is useful as a means to achieve the required purpose[84].

4. The information collected by the DIAN from the hands of individuals should be kept inside the entity and used by other public entities only with regard to their tax collection functions, because if it is left in

79 See Article 693-1 of the E.T.

80 Remember that the tax reserve is a manifestation of the fundamental right to privacy and good name, as it protects taxpayers' personal and economic information from access and disclosure by unauthorized third parties

81 This was mentioned in the Supreme Court of Justice judgment 2100 of August 9, 1990, where it was mentioned that: "*Another thing is that the legislator, when determining the cases in which the search of private papers is possible, restricts such possibility, in certain matters (...) Consequently, restricting that evidentiary sense to the criminal field, as the accused rule does, cannot be a factor of unconstitutionality*"

82 See judgment C 489 of 1995 where it was mentioned: "*the law may decide to lift the tax secrecy in cases where the existence of an employment relationship or a maintenance obligation is being debated, in which case the scope of the right to economic privacy is legitimately restricted. In doing so, with regard to criminal proceedings, it has not given up on legislating the lifting of the reservation in other proceedings, which may well be decided in the future*".

83 See judgment C 540 of 1996 where it is mentioned: "*The provision examined will be declared constitutional only on the understanding that the task of data collection by the center is restricted to the financial information necessary for the supervision of the person's tax behavior, and that the guiding principles of habeas data are complied with.*".

84 See judgment C1147 of 2001 where he stated: "*The Court is not unaware of the fact that the DIAN must have the legal tools that allow it to fulfill its constitutional and legal functions, also, in the field of the Internet. However, the development of this faculty, which in the present case is specified in the possibility of requesting information from material agents about the economic transactions they carry out through the network, must be in accordance with the Constitution, so that when users' fundamental rights are compromised, on this occasion privacy and habeas data, it must be analyzed whether such a measure is reasonable and proportionate in constitutional terms*".

the hands of individuals, a clear violation of the right to habeas data may be generated[85].

5. The authorization enshrined in Article 15 of the C.P. to the DIAN to process, collect and process data for strict tax purposes, that is, of a financial and fiscal nature, is precisely for the purpose of determining tax consequences, and therefore they cannot circulate outside the state for different purposes[86].

Situation after the issuance of the laws on data protection and access to public information:

As a result of the issuance of Laws 1266 of 2008, 1581 of 2012 and 1712 of 2014, the DIAN has issued different administrative acts in which it tries to incorporate its content into the relationship with third parties and public entities regarding the tax information administered. Thus, the following regulations are in force:

a) Circular 1 of January 25, 2019

Under this circular, the processing of personal and sensitive data protected under Law 1581 of 2012 is printed to all activities where the DIAN, in compliance with its functions and competencies, stores, processes, operates, transmits or transfers information containing personal data.

Thus, the personal data provided by both the owners and third parties in compliance with their tax, customs or exchange obligations administered by the DIAN, may be subject to processing for the fulfillment of the control and monitoring functions that have been assigned to it, without the need to request prior, express and informed authorization from the owner.

In this sense, the DIAN may carry out the following activities without the authorization of the personal data holder:

1. Apply the exceptions to the prior authorization indicated in article 10 of the Law *ibid.* to require third parties to store or have information about the owner by the authority in the exercise of its legal functions.

2. Apply the exceptions to prior authorization in the field of sensitive data enshrined in Article 6 of the Law *ibid.* ensuring its integrated application.

3. To exchange personal data information with public authorities, control bodies and judicial authorities when they request it in the exercise of their functions, or by applicable legal provisions. For the exchange with other public entities, information exchange agreements or agreements must be previously signed, with their respective security protocols to guarantee the proper processing of the data.

85 See Judgment C 993 of 2004: "*The Court draws attention to the way the law deals with the issue of data expiration. It is one thing for the data to circulate inside the State, among the bodies responsible for collecting taxes, and another thing is for it to circulate outside the State, in the hands of private individuals, and what is more serious is that it is the State that feeds the databases of private individuals with its information, delivering the information that private individuals have given it only for tax purposes (...) The demanded rule allows the data obtained by the DIAN to be disclosed to third parties without the consent of the taxpayer, which violates the trust placed in the public administration. The consent of the individual must be prior, express and informed*".

86 See Judgment C 981 of 2005: "*Additionally, it must be distinguished when the data is put into circulation within the State, between the entities responsible for collecting taxes in order to control the respective tax burden, which would not contravene the Constitution, as long as the right of people to know, update and rectify such data is respected, but without having to mediate their authorization for it because it is about the harmonious collaboration that must mediate between the different State organs in order to protect the public patrimony. Personal data collected and processed for tax purposes, which therefore cannot circulate outside the State for different purposes, that is, the administration cannot put them into circulation by placing them in the hands of individuals, under penalty of contravening the Constitution*".

4. In the field of international exchange of information, it is indicated that *to the extent that international treaties to which the Republic of Colombia is a party are signed, based on the principle of reciprocity, and that these are implemented through the DIAN, personal data may be exchanged without prior authorization from the holders. In any case, they will be advanced in accordance with current regulations for the international transfer of data and the receiving countries of the information must guarantee the appropriate levels of data protection, and security of the transferred information*.

The absence of prior authorization of the holder related to the mission functions of the DIAN, does not subtract it from the fulfillment of the duties as responsible or in charge of the treatment, and does not mean that personal information can be freely disclosed, because the documents and information that involve rights to privacy and intimacy of people enjoy reserve in accordance with the Constitution and the law.

Now, in front of the veracity of the information that rests in the DIAN, it is indicated that ensuring the quality, veracity and updating of the personal data that the DIAN keeps and manages are the responsibility of the owner. Therefore, to the extent that this report of the novelties presented, the entity will make its modification or update

Finally, with regard to sensitive data, the DIAN must inform the owner that because sensitive data is being processed, he is not obliged to authorize its processing. In addition, they must explicitly and previously inform the purpose of the processing, its purpose and the duty to obtain the express consent.

b) Circular 026 of November 3, 2020

Under this regulation, the aim is to give practical application of Law 1712 of 2014 to the various processes in which access to information held by the DIAN as an obliged subject is requested. Thus, the circular requires the responsible officials in each process to perform the following duties without which the provisions of the law are not fulfilled *ibid.*:

1. Duty of interpretation: the responsible official, in the interpretation of the request to be processed or answered, or in establishing the internal procedures to ensure the right of access to information, **it must not establish requirements or previous stages whose exhaustion can be used to unreasonably delay** or disproportionate the exercise of this right, but to give a response in an accurate, complete and in the shortest possible time.

2. It is the duty to create the information asset register: the DIAN must create and keep updated the Information Asset Register by making a list of a) All categories of information published by the obligated subject; b) Any published record; c) Any record available to be requested by the public. The lists of classified and classified information published on the transparency website of the entity's website are indicative and do not constitute by themselves a legal source to catalog the nature of the information, nor do they exempt the competent official to substantiate his response within the framework of the procedure established in the regulation on right of request procedures.

In the same way, the aforementioned circular establishes guidelines regarding the information that the DIAN can request from other public entities even if it is reserved because it is an excepted entity as mentioned in the **chapter II** by indicating that you may request this kind of information provided that compliance with the following requirements is argued:

i. *The competence of the requesting authority.*

ii. *The nature of the information requested, distinguishing between the two categories of information: public and private, to the extent that access to public information is governed by the principle of maximum publicity (Article 74 of the C.P.), while private information and documents are not publicly accessible, by virtue of the provisions*

of Article 15 of the Political Charter and only in the foreseen situations may access documents and information, that is, specific processes or actions, of which the authority is aware in the exercise of its powers.

iii. *The need, purpose and relevance of the information must be informed, as well as the protection measures that will be adopted to guarantee the obligation of reservation and limits on its disclosure.*

The DIAN shall require compliance with the same requirements for those excepted entities that request access to classified or classified information by the DIAN.

Now, faced with the way in which the DIAN can grant access to the tax information that rests on it, it is worth making the following clarifications in front of each type of document based on what is indicated in the circular in comment

a) Tax returns: *the circular indicates that, by their nature, tax returns are private documents prepared by taxpayers. Thus, because they contain the taxpayer's private financial information, the declarations are subject to confidentiality in accordance with Article 583 of the aforementioned Tax Statute. They are also protected by Article 15 of the C.P. that establishes the fundamental right to privacy, in this case economic privacy, which can only be disclosed for tax purposes and lifted exclusively in the cases indicated in the same article (criminal proceedings and for the purposes of money laundering control).*

b) Customs declarations: *although there is no legal reservation about the information of customs declarations, it should not be lost from view that they, as well as the information of customs officers may contain personal data that are protected by the right to privacy, so for the attention of these requests the general guidelines established in the Statutory Laws 1266 of 2008 (financial and commercial information), 1581 of 2012 (protection of personal data), 1712 of 2014 (transparency and access to public information), as well as in the regulatory decrees and the guidelines established in this circular, in order to prevent potential damage to the rights of individual or legal entities and to commit the responsibility of the entity for their improper treatment*.

c) Dossiers: *The resource files may only be examined by the taxpayer or his legally constituted proxy, or authorized lawyers by means of a memorial personally submitted by the taxpayer. The investigations that are carried out due to the breach of exchange obligations may only be examined by the interested party or its legally constituted proxy. The actions and the information contained within the respective investigation will be considered reserved, except for the exceptions enshrined in Article 583 of the E.T. In any case, the information provided must guarantee respect for privacy, enshrined in the Political Constitution. (Article 8 of Decree 2245 of 2011). Those who have access to the file containing an exchange administrative investigation are obliged to keep the due reservation about the documents that rest there and have a reserved character according to the Constitution or the law*.

d) Exogenous information from third parties: *In relation to exogenous information, the official doctrine of the entity has interpreted that, in addition to its reserved nature, it is protected by the right to financial privacy of its owners and its use, by virtue of the principle of purpose, is restricted to the determination of taxes*.

e) Taxpayers' account statements*: payment receipts and the account statement in general have the protection of the reserve surrounding the tax information (Concept 090058 of November 26, 1996, and Office 022859 of April 9, 2014). The payment agreements concluded by taxpayers with the DIAN enjoy the reservation provided for in Article 849-4 of the Tax Statute (Concept 044060 of December 1, 1999).*

f) Information contained in the RUT: *it does not have the character of a public registry, so its information is not freely available, and its content is limited for the purposes of its creation (Article 555-2 of the E.T.), with the exceptions imposed by law regarding its*

disclosure. The RUT records information related to the identification, location and classification of the taxable persons administered by the DIAN. Therefore, the entity responsible for the information is obliged to apply the principles and parameters established in the Statutory Laws 1266 of 2008, 1581 of 2012 and 1712 of 2014 and their regulatory decrees, in relation to restrictions on use and disclosure.

As of January 1, 2013, for national and territorial tax purposes, the basic identification, classification and location information of customers must use the Electronic Computer System Unified Tax Registry (RUT) administered by the DIAN, preserving the same structure and data validation. For the exercise of the aforementioned public functions, Article 63 of Decree Law 0019 of 2012 indicated that the information contained in the RUT may be shared with public entities and individuals exercising public functions. In relation to the basic information that can be shared for the exercise of the above functions, the doctrine of the Special Administrative Unit Directorate of National Taxes and Customs contained in Official 039078 of June 20, 2012, concluded that it is the one related to identification (NIT, names, surnames, company name) and location (email, telephone, address, municipality, department, country), prior to compliance with the forms, conditions, reservation and requirements for the supply, handling, use and safeguarding of the information.*

At this point, it is worth mentioning that the circular does not seem to include the disclosure cases contemplated in Law 1712 of 2014 in connection with what is indicated in Law 1266 of 2008 on personal financial, commercial and service data and in Law 1581 of 2012 on other personal and sensitive data.

Therefore, it is recommended to consider that even when the tax regulations establish a restricted fence to access information, it must be harmonized with Law 1712 of 2014 that makes access to this information more flexible. This is as it is a special subsequent law in the handling of public information and should take precedence in its application in each particular case[87].

In that sense, when applying Law 1712 of 2014, it is recommended that in each particular case, the officer should observe whether there are reasons to consider that access to information can be granted depending on the request:

i) If it is a competent administrative, judicial or legislative authority and meets the requirements for the application of Article 27 of the CPACA outlined in chapter ii.

ii) If it is an individual or legal entity of a private nature different from the holder of the personal data or financial or commercial personal data to the DIAN, if it is incurs of any of the grounds established in article 5 of Law 1266 of 2008 for financial or commercial personal data or services, or in Articles 6 and 10 for the case of personal data other than those mentioned.

87 See Articles 2 Law 153 of 1887: "*The subsequent law prevails over the previous law. In the event that a later law is contrary to an earlier one, and both pre-existing to the fact being judged, the later law will be applied*." And article 3: *"A legal provision shall be declared null and void by express declaration of the legislator, or because of incompatibility with subsequent special provisions, or because there is a new law that fully regulates the matter to which the previous provision referred"*.

CONCLUSIONS AND RECOMMENDATIONS

According to the above, in principle, the Tax Statute regulations are oriented towards a pro-confidentiality vision of tax information, since they regulate in a particular way specific cases in which tax information may be shared with entities within the State and with individuals exclusively authorized by the owner of the data delivered to the DIAN. On the other hand, the subsequent regulations on the protection of personal data, financial information and disclosure of public information are aimed at establishing general evaluation criteria that must be evaluated on a case-by-case basis either to give access to information containing personal data, or to deny access to public information because it is considered classified or reserved.

As can be seen, the legislative currents that inspire the rules that interact in the field of treatment and exchange of tax information are located in antagonistic positions at first glance. However, it is necessary to harmonize these rules in order to safeguard the competing rights to a greater or lesser extent. Currently, the rules that protect the right to privacy in Colombia admit flexibilizations that were not available at the time of the promulgation of the rules that protected tax privacy, hence it is necessary to adapt the internal regulations of the DIAN in order to incorporate the new legislative and constitutional moment to the procedures and requests for information.

For the above, the following form is proposed (**annex 1)** of decision-making so that the officials within the DIAN practice it in the evaluations they make before each submitted request for access to tax information with the corresponding legal basis.

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ANNEX

Annex 1.

The following questionnaire will allow you to understand when the request is made by an excepted person or an individual or legal entity and the limits to access to information:

1. Who makes the request for access to information?

    a. The owner of the requested data
    b. Person authorized by the owner of the requested data
    c. A public entity, judicial or legislative entity or natural or legal person in the exercise of a public function.
    d. A third individual or private legal entity without the authorization of the owner of the requested data.

If the answer is A or B, you can stop here and access the delivery of the requested information.

If the answer is C or D please go to question 2.

2. what kind of information is this about?

    a. Public information: for example, request for access to data indicating information that is already available in other public documents such as marital status, name, gender, class and document number (i.e., general information available in the TIN)
    b. Public information that contains data protected under Laws 1266 of 2008 or 1581 of 2012: for example that the request is about access to documents that may contain information about racial origin, political orientation, religious convictions, health, sexual life, biometric data that allow to fully identify the person, economic data about the financial behavior of the person (e.g. tax returns, information reported by third parties (financial institutions) regarding the owner of the data).
    c. Public information related to any of the matters listed in Article 19 of Law 1712 of 2014: for example, access is requested to information related to the macroeconomic and financial stability of the country, understood as that which may affect the stability of the economy or markets, the effectiveness of the macroeconomic and financial policy or the fulfillment of the functions of the entities that are in charge of the design and implementation of these policies; or, it is related to the necessary supervisory tasks to guarantee the stability of the financial system and the public's confidence in it. (i.e., requests for information on the identification of the largest creditors of balances in favor in the country, their amount and the next date of payment).

If the answer is A, proceed to deliver the information on the basis of Articles 74 of the C.P. and 3 and 24 of Law 1712 of 2014

If the answer to question 1 was C and question 2 was B or C, move on to question 3.

If the answer to question 1 was D and to question 2 was B move on to question 8.

If the answer to question 1 was D and to question 2 was C go to question 14.

3. Does the entity in question argue the competence it has to request the information either by a specific enabling law or by a rule of constitutional rank?
    a. Yes
    b. No

If the answer is Yes, continue to the next question, if the answer is No, deny access to the information because you are in breach of the provisions of Article 27 of the CPACA and judgment C 951 of 2014.

4. Does the entity identify the mission function it intends to perform and for which it requires access to the requested information?
    a. Yes
    b. No.

If the answer is Yes, continue to the next question, if the answer is No, deny access to the information because you are in breach of the provisions of Article 27 of the CPACA and judgment C 951 of 2014.

5. Does the entity argue how the requested information is related to the exercise of the functions of that authority?
    a. Yes
    b. No

If the answer is Yes, continue to the next question, if the answer is No, deny access to the information because you are in breach of the provisions of Article 27 of the CPACA and judgment C 951 of 2014.

6. Does the authority point out the specific circumstances of the matter it is dealing with within its sphere of competence that justify access to the information?
    a. Yes
    b. No

If the answer is Yes, continue to the next question, if the answer is No, deny access to the information because you are in breach of the provisions of Article 27 of the CPACA and judgment C 951 of 2014.

7. Is the requested information defined by specific criteria or is it a generic request for general access to all kinds of information?
    a. Yes
    b. No

If the answer is Yes, continue to the next question, if the answer is No, deny access to the information because you are in breach of the provisions of Article 27 of the CPACA and judgment C 951 of 2014.

8. the private person requests access to what kind of personal data of the data subject?
    a. Financial, commercial or service information.
    b. Personal or sensitive information.
    c. Both of them.

If the answer is A or C, continue to question 9
If the answer is B, proceed to question 12.

Questions about access to financial, business or service information:

9. does the private law person argue in his application that he is following a court order?
    a. Yes
    b. No

If the answer is Yes, move on to the next question, if the answer is No, deny access to the information because you are in breach of the provisions of article 5 of Law 1266 of 2008.

10. With the delivery of the information can a damage be caused a) The right of everyone to privacy, subject to the limitations imposed by the status of public servant, b) The right of everyone to life, health or safety. c) Trade, industrial and professional secrets.?
    a. Yes
    b. No

If the answer is No, the information can be delivered because it is not defined as information excepted for being classified, if the answer is Yes, move on to the next question.

11. Can the delivery of the information cause a real, specific and probable?
    a. Yes
    b. No

If the answer is No, the information related to personal financial, commercial and service data requested cannot be delivered because: i) it is not defined as

information excepted for being classified, if the answer is whether the sending of the information should be restricted to only that part that does not affect the fundamental right indicated and indicate that the reasons for which the information is restricted and a partial disclosure is carried out in the terms of articles 21 and 28 of Law 1712 of 2014.

Only if the answer to question 8 was C and the answer to question 11 was Yes, apply the corresponding consequence regarding this kind of information and move on to question 12.

Questions about access to personal or sensitive information:

12. Is the requested information of a sensitive nature in the terms of Law 1581 of 2012 and does the private individual argue to be in any of the following grounds and supports it? a) The owner has given his explicit authorization to such Processing; b) The Processing is necessary to safeguard the vital interest of the owner and he is physically or legally incapacitated. In these events, the legal representatives must grant their authorization; c) The processing is carried out in the course of legitimate activities and with due guarantees by a foundation, NGO, association or any other non-profit organization, whose purpose is political, philosophical, religious or trade union, provided that they refer exclusively to their members or to people who maintain regular contacts by reason of their purpose. In these events, the data may not be provided to third parties without the authorization of the owner; d) The processing refers to data that is necessary for the recognition, exercise or defense of a right in a judicial process e) The processing has a historical, statistical or scientific purpose. In this event, the measures leading to the suppression of the identity of the holders must be adopted."
    a. Yes
    b. No

If the answer is Yes to deliver the sensitive information, if the answer is No deny access to the sensitive information for violation of the provisions of article 10 of Law 1581 of 2012.

13. Does the information requested by the person of private law not refer to sensitive data and argues to be in the presence of any of the following grounds and supports it? a) It is in compliance with a court order; b) c) Cases of medical or health emergency; d) Processing of information authorized by law for historical, statistical or scientific purposes.

If the answer is Yes to deliver the sensitive information, if the answer is No deny access to the sensitive information for violation of the provisions of article 10 of Law 1581 of 2012.

14. Is it foreseeable that the information requested by the private person may cause a real, specific, probable and significant impact on any of the legally protected interests?
    a. Yes
    b. No

If the answer is yes, deny access to the information because it is reserved information, basing on the answer the impact that the disclosure of the tax information may cause to the protected interest identified in terms of reality, specificity, probability and significance, being in violation of the provisions of article 19 of Law 1712 of 2014. Additionally, indicate the period for which the information will be subject to reservation, which cannot be longer than 15 years.

Finally, it is recommended to review for cases where tax information is disclosed with public authorities and entities to establish that said entity has a risk management system associated with the processing of reserved -sensitive, private, semi-private personal data (For which it can be verified that said system is in accordance with the "Guide for the Implementation of the Principle of Proven Responsibility (Accountability)" created by the SIC).

Artificial Intelligence in the Primary Education Tax: innovation for tax justice

Rodrigo Gastón Giménez-Mermot*

SYNOPSIS

In Uruguay, the Primary Education Tax (IEP) finances part of the educational budget, taxing real estate according to its classification: urban, suburban or rural, based on the real values defined by the General Directorate of the National Cadaster.

In the digital world, advanced technologies such as deep learning are transforming the cadastral classification.

Using satellite images, it is possible to accurately identify whether a register is urban, rural or has features such as swimming pools, impacting its value and tax classification.

Artificial intelligence improves transparency, reduces errors and adapts the tax system to modern requirements, promoting a fairer and more efficient distribution.

KEYWORDS: Primary education tax (IEP), Cadastral classification, Determination of urban and rural registers, Deep learning for satellite analysis, Fiscal tools.

CONTENTS

*The opinions expressed in this work are of a personal nature and do not necessarily reflect the position of the Tax Administration.

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INTRODUCTION

The Primary Education Tax (IEP) is levied on immovable properties according to their classification as urban, suburban or rural, based on the real values defined by the General Directorate of the National Cadaster. This classification is essential to ensure a fair and efficient application of the tax, especially in the face of the various fees and exemptions provided for by the regulations.

The incorporation of advanced technologies, such as the *deep learning*, opens up new possibilities to improve the accuracy in the classification of cadastral parcel types. Through the analysis of satellite images, it is not only possible to identify whether a register is urban or rural, but also to detect specific characteristics, such as the existence of swimming pools, which can influence the assessment of their value and their fiscal classification.

These innovative tools have the potential to complement traditional methods of cadastral classification, reducing errors and increasing fairness in the allocation of tax burdens. The use of artificial intelligence represents a significant step towards a more transparent, efficient and modernized tax system.

As already mentioned, this paper addresses the importance of optimizing the Primary Education Tax (IEP) by integrating advanced technologies for the detection of relevant cadastral characteristics. In the **section 2**, the background of the IEP and its impact on taxation are presented. The **section 3** details how the identification of swimming pools, as indications of luxury equipment, can contribute to the reclassification and revaluation of cadastral parcels. In the **section 4**, the economic relevance of these techniques in the detection of sub-valuations and the strengthening of the tax system is exposed.

The **section 5** explores the methodology used, describing the training of the **deep learning**, the use of satellite images and the generation of accurate predictions to associate them with cadastral parcels. Finally, in the **section 6**, conclusions on the feasibility of these technologies to improve tax transparency and efficiency are presented. A technical annex includes details about the performance of the model.

1. BACKGROUND OF THE PRIMARY EDUCATION TAX (IEP IN SPANISH)

The Primary Education Tax (IEP) was established as a financing mechanism to cover basic educational needs and strengthen school infrastructure in Uruguay. According to article 9th of Law No. 15,903, the tax came into force on July 1st, 1987, and its initial collection was in charge of the Council of Primary Education. The funds generated were deposited in a special account called "Primary Education Treasury", administered by the National Administration of Public Education (ANEP).

Subsequently, Law No. 19,535, in force since January 1st, 2018, transferred the responsibilities of collection, administration and supervision of the IEP to the General Tax Directorate (DGI). This change also included the management of tax obligations prior to that date, while the ANEP retained certain administrative and litigation management functions related to previous determinations.

The regulations granted the DGI the power to make public the data related to the IEP, including the taxed records, the amount of tax obligations and the payment history. This change sought to increase transparency in the administration of the tax, ensuring adequate accountability.

The purpose of the collection is specifically intended to finance budgetary appropriations of the General Directorate of Initial and Primary Education, also covering expenses associated with educational modalities, school meals and other essential needs. Additionally, the regulations have defined procedures to adjust compensation in case of collections below historical levels, as mentioned in article 10th of Law No. 19,333.

These modifications have been accompanied by detailed regulations on the use of the funds, allowing the National Council of Primary and Normal Education to conduct investments in infrastructure, equipment, food and other services necessary for the fulfillment of its educational objectives, under specific conditions established in article 11th.

In summary, the IEP has evolved since its creation to guarantee a more efficient management of resources destined to primary education, consolidating a tax system with greater levels of supervision, equity and transparency.

2. THE IDENTIFICATION OF SWIMMING POOLS AS A TOOL FOR RECATALOGATION AND CADASTRAL REVALUATION.

The detection of swimming pools in cadastral parcels using artificial intelligence-based methodologies represents a key step to addressing two fundamental objectives:

2.1. Determination of the character of urban register and recatalogation of exonerated cadastral parcels

In many cases, the cadastral parcels categorized as rural are exempted from the primary education tax. However, the presence of swimming pools and other sumptuous elements evidences a predominantly urban or residential use, incompatible with tax exemption. By identifying these facilities, it is possible to re-catalog the affected cadastral parcels, ensuring that they are classified according to their true character and contribute adequately to the tax system.

2.2. Indication for the revaluation of the cadastral parcels

Swimming pools, like other luxury goods, significantly increase the cadastral value of a property. Their automated detection offers a valuable indication to revalue the cadastral parcels, reducing the gap between the tax value and the real market value. This process contributes to a more equitable distribution of the tax burden.

3. RELEVANCE FOR IDENTIFYING UNDERVALUATIONS AND OPTIMIZING THE PRIMARY EDUCATION TAX.

The primary education tax is an important resource to guarantee income destined to education, depending on an updated and fair cadastral base. The undervaluation of cadastral parcels, as a result of omissions in their classification or in the consideration of sumptuary equipment, generates inequity and significant losses in tax collection.

3.1. Contextualization of the economic impact

Improving the accuracy in the evaluation and categorization of the cadastral parcels directly contributes to the strengthening of the educational system. Each correctly classified and valued cadastral parcel represents an additional source of resources for public schools, especially in areas with a higher density of undervalued cadastral parcel.

3.2. Relationship between luxury equipment and the tax

The identification of swimming pools acts as an objective indicator of the contributory capacity of the owners. Cadastral parcels that previously remained outside the tax system can be incorporated, while those already registered can be adjusted to reflect their true value.

4. USE OF ADVANCED TECHNOLOGIES FOR THE DETECTION OF LUXURY FEATURES

Technological evolution is transforming the traditional methods of assessment and tax classification of real estate. Today, access to high-resolution satellite images and the development of artificial intelligence (AI) tools make it possible to tackle complex problems with

unprecedented accuracy and efficiency. In particular, deep neural networks (**deep learning**) stand out for their ability to recognize patterns and objects in images, offering innovative solutions for cadastral analysis.

In this context, the implementation of an algorithm designed to detect and map swimming pools using satellite images arises. This development seeks to identify sumptuary characteristics of the registers, which directly impact on their value and tax classification. This approach is crucial to address the undervaluation of cadastral parcels and optimize the collection of the Primary Education Tax (IEP). By incorporating advanced technologies, progress is made towards a more equitable and modern tax system, reducing discrepancies in valuation and improving tax efficiency.

The proposed solution is based on **Raster Vision**, an open-source library developed for Python that significantly simplifies the application of deep learning on geospatial data. This tool allows to comprehensively manage all the stages of the process, from image preprocessing to neural network training and obtaining results.

Within its ecosystem, **Raster Vision** integrates a series of specialized packages that provide key functionalities for the implementation. For example, *rastervision pipeline* is designed to build efficient workflows, optimizing tasks related to computer vision in raster images. Complementarily, *rastervision_core* provides the necessary data structures and abstractions to handle geospatial images and tags in a robust and scalable way.

For the training of models, *rastervision_pytorch_learner* it offers specific support for PyTorch, one of the most widely used deep learning libraries in Python, incorporating advanced configurations for optimization and learning. This package is integrated with *rastervision_pytorch_backend*, which acts as a reliable backend for running and evaluating neural networks.

Thanks to its development in Python, Raster Vision maximizes interoperability with other machine learning tools and its modular and extensible design allows the detection of specific features in satellite images to be more efficient, facilitating advances towards more accurate and equitable cadastral and fiscal management.

4.1. Training of the Model

Training a neural network to identify swimming pools, or any other object of interest, is a technical challenge that begins with the generation of a pre-classified data set known as *dataset* of training. This *dataset* consists of images in which the presence of swimming pools has been previously delimited or labeled manually, a work that requires precision and human effort. These tags act as references that guide the neural network in its learning, helping it to recognize specific patterns in similar images.

With a labeled dataset, the next step is to use it as input for an image segmentation neural network. These networks are computational systems that, through complex mathematical operations, learn to identify patterns of shape, color and location that correspond to swimming pools, based on the human marks of the *dataset* of training. This learning, carried out through an iterative process and fed by a high processing capacity, allows the neural network to refine its detection skills.

The result of this training is a model: a file containing the instructions necessary to perform the mathematical operations that best replicate the learned detection ability. This model is subsequently used to analyze new images, those that were not part of the training, generating predictions about the areas in which there is a high probability that open-air pools will be found.

This approach combines the initial human effort with the power of artificial intelligence, enabling the development of efficient solutions for identifying luxury features within cadastral parcels. By applying these models in cadastral data, it is possible to obtain more accurate information about properties, thus contributing to a more equitable and transparent fiscal management.

4.2. Obtaining satellite images

The pools, in this case, unlike other open-air objects, are visible in [publicly accessible satellite images][1], [Google Maps][2]. We chose the following image, which captures part of the territory corresponding to the department of Maldonado-Uruguay.

Figure 1
Satellite image: Maldonado-Uruguay

Source: Own elaboration

4.3. Generation of "annotations"

To train a neural network to identify specific objects, such as swimming pools in satellite images, it is essential to have a set of examples that act as a reference. In the field of _machine learning_, these examples are called "labels" (_labels_) or "annotations" (_annotations_), the latter term being the most commonly used when working with images. Annotations are essential, as they define the areas of interest in the images and guide the algorithm in its learning.

In some cases, it is possible to take advantage of already labeled datasets, developed by third parties, which speed up the implementation process. However, in most projects, the creation of these annotations is a step that falls on the work teams. This involves analyzing the images and manually marking the areas of interest using specialized tools, such as the QGIS software[3]. This initial effort of annotation, although demanding, is the basis for neural networks to learn to identify patterns and offer accurate predictions.

The labeling process requires not only mindfulness, but also a clear understanding of the fiscal and technical objectives of the project, since its accuracy will directly impact on the effectiveness of the detection tools and, ultimately, on the ability to optimize tax management.

1 https://apps.sentinel-hub.com/eo-browser/

2 https://www.google.com/maps/@-34.8667698,-56.1051936,7290m/data=!3m1!1e3?entry=ttu

3 https://qgis.org/

Figure 2
Tagged with Swimming Pools: Maldonado-Uruguay

Source: Own elaboration

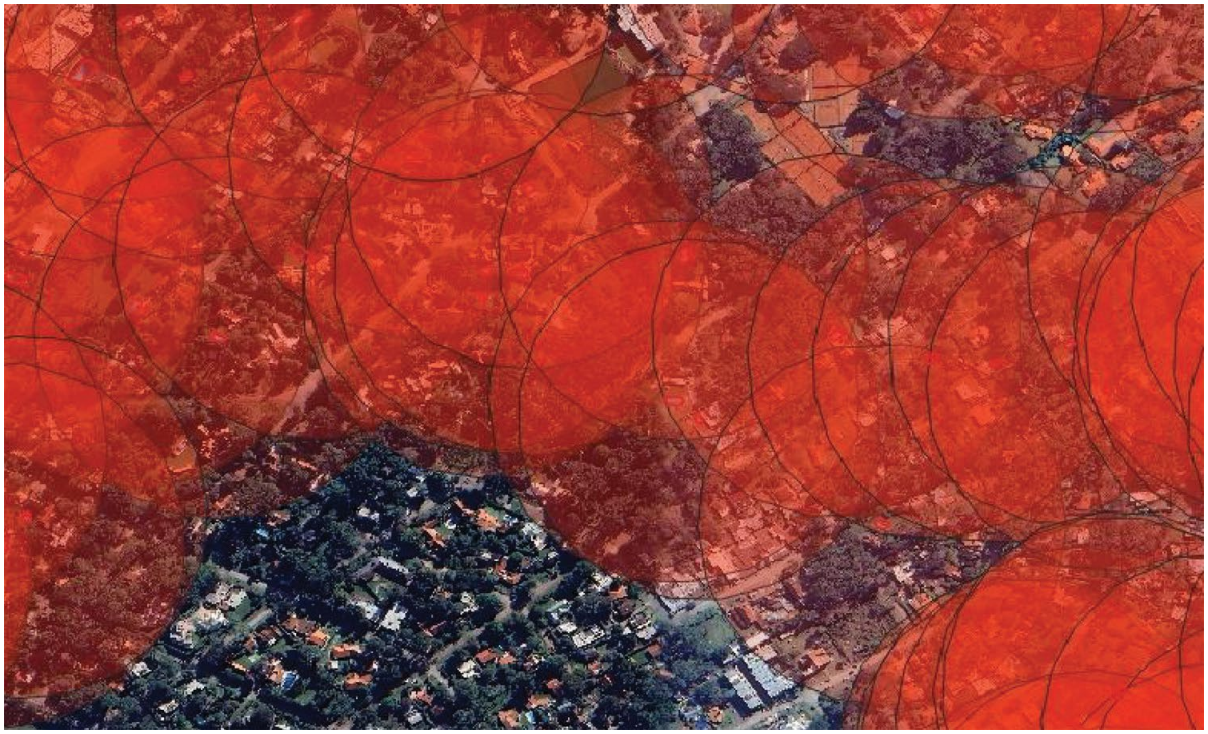
4.4. Definition of Area of Interest (AoI)

One of the key strategies to optimize the training process of object detection algorithms, such as swimming pools, is to define an area of interest (AOI). This step involves selecting and demarcating a specific portion of the image to be processed, ensuring that the algorithm focuses only on the relevant areas. In tax terms, this decision has a direct impact on the efficiency and effectiveness of the tool, since it allows to focus the analysis efforts on the areas where there is a greater probability of finding sumptuous features, such as swimming pools.

When large images are available, and objects of interest are only found in limited areas, defining an area of interest becomes crucial. In this way, it avoids wasting time and resources processing surfaces where it is not expected to find relevant results. This increases operational efficiency and reduces costs. In this sense, delimiting a buffer (surrounding area) around swimming pools, with distances varying between 100 and 1500 meters has proven to be an effective practice to ensure that the detection model works optimally. The choice of the buffer size can be adjusted by *fine-tuning* depending on the specific characteristics of each region and the needs of the tax analysis.

This delimitation process can be performed automatically or manually, depending on the tool used. In the case of QGIS, for example, buffers can be plotted quickly and accurately, ensuring that both the labeled areas (annotations) and their closest surroundings are included. This is crucial to obtain a more accurate assessment of the cadastral value and, therefore, of potential sub-valuations.

Figure 3
Area of Interest: Maldonado-Uruguay



Source: Own elaboration

4.5. Random Windows

In the design of the training dataset that will feed the detection algorithm, it is essential to carefully choose the image sampling strategy. Instead of building a mosaic of contiguous windows, which fragments the images into a regular grid where no pixel is repeated between cropping, it is widely recommended[4] use a random sampling with overlapping windows.

This technique, although it may seem less intuitive at first glance, has proven to generate significantly more accurate results in algorithm training. By allowing the sampling windows to share common areas, redundancy in the processed data is increased. This, in turn, improves the model's ability to identify consistent patterns that correspond to the presence of features of interest, such as swimming pools.

From a tax perspective, this training strategy is particularly relevant, as it allows the development of more effective tools to detect luxury items in the cadastral parcels. This facilitates the identification of possible sub-valuations and promotes a more equitable and efficient fiscal management.

Random sampling allows to generate an almost unlimited number of clippings from the original images,

4 https://docs.rastervision.io/en/stable/usage/tutorials/sampling_training_data.html.

each one slightly different. This ability is essential in the training of algorithms of *machine learning*, since having a greater volume of data considerably improves the performance and accuracy of the model in identifying specific characteristics, such as swimming pools or other sumptuous elements in the cadastral parcels.

However, this strategy must be implemented considering the available hardware limitations. Extremely high-resolution images, combined with large cropping windows, can lead to prolonged training cycles and even failure due to lack of memory before completing the process.

Therefore, a good practice is to balance sampling, generating a high number of clippings for model training, while maintaining a controlled volume of examples reserved for validation. This approach ensures that the algorithm is trained with a wide variety of patterns and at the same time allows to evaluate its performance with data not used in the learning phase.

4.6. Results of the training

The data obtained during the training of the neural network show promising results in terms of accuracy and ability of the model to identify pools in satellite images. The training of the model reached a high generalization capacity, standing out in the precise detection of patterns in satellite images. In global terms, the metrics obtained reflect a robust performance, with an efficient model in the distinction between bottom and pools.

The analysis by class shows an excellent performance in the identification of background areas, while for the "swimming pools" class, the results are equally solid, presenting a margin of improvement in the reduction of false positives and negatives.

Additionally, it is highlighted that the training and validation process turned out to be efficient in terms of time. Demonstrating practical feasibility even for applications with high data volumes.

Note: The metrics and specific details of the results are presented in the corresponding annex for technical reference.

4.7. Detection of swimming pools through the pre-trained model

The development of an artificial intelligence model based on neural networks is central to this process. The final product of the previous section is a file that encapsulates the instructions of the model. This file, fed with previously unknown images, generates **predictions**: areas in the images where the algorithm detects a high probability of the presence of swimming pools.

The implementation of this approach not only modernizes tax management but also allows for a more agile and accurate analysis of cadastral data, generating value in terms of fairness and tax efficiency.

4.8. Loading of satellite images

To apply the trained model and generate predictions, the same input images that were used in the training process were used. Because the manual labeling generation does not cover the completeness of the existing pools in the selected territory; These images not only serve as a reference to validate the performance of the model and observe how it reconstructs the pools that were previously identified by human inspection but also serve to generate new labels (swimming pools).

To work with large images, especially those that occupy several gigabytes, the original images are divided into smaller portions before running the model. This procedure ensures that each segment can be efficiently processed within the limits of the available memory and computational power.

This technique not only optimizes the use of resources but also facilitates the application of the model in larger-scale images, extending its usefulness for detection projects in large or complex areas. At the end of the

process, the predictions generated for each fragment are integrated to reconstruct the complete picture of the areas where the model has identified pools with a high probability.

4.9. Prediction of swimming pools and association to cadastral parcels

Once the process of detecting and creating polygons based on the model predictions is completed, they are integrated with the cadastral shapes (layers) available in the open catalogues[5] of cadastral paterns[6]. This step allows to accurately identify the cadastral parcels that have the characteristic of having swimming pools, based on the geographical location and the limits previously established in the cadastral data.

Subsequently, a cross-check with complementary databases is carried out to classify those standards that, in addition to having swimming pools, are registered as **rural parcels**. This analysis enables a specific segmentation, aimed at characterizing rural properties with constructions that include swimming pools, key information for various tax and planning purposes. The combination of automated detection tools and public databases not only streamlines this process but also increases the accuracy in identifying relevant attributes of the cadastral parcels.

5 The catalog is managed by the Open Government team of AGESIC (Electronic Government Agency and Information and Knowledge Society) in the Information Society area, responsible for its maintenance, evolution and management of users and incidents.

6 https://catalogodatos.gub.uy/dataset/direccion-nacional-de-catastro-padrones-urbanos-y-rurales

CONCLUSIONS

The development of algorithms to identify luxury features in the cadastral parcels represents a key advance for the fiscal modernization. Firstly, it improves the accuracy in determining the urban or rural character of a cadastral parcels, allowing fairer reclassifications and eliminating undue exonerations. Secondly, it offers an efficient and transparent method to update the real values of real estate, contributing to a more equitable redistribution of tax burdens.

This approach based on advanced technologies marks the beginning of a new era in tax administration, where artificial intelligence plays a crucial role in strengthening not only the primary education tax management system but also to improve tax systems and improve cadastral management.

TECHNICAL ANNEX

An analysis of the key metrics and their technical implication is detailed below:

Overall performance of the model

The training reached a total of 777 epochs, achieving an average loss (*train_loss*) of **0.0061** in the training set and a loss of validation (*val_loss*) of **0.0038**, indicating a sustained improvement in the model's ability to generalize to previously unseen data.

In addition, the global accuracy metrics (**0.9986**), sensitivity (**0.9986**), and F1-average score (**0.9986**) reflect a highly efficient model in detecting patterns in the processed images.

Evaluation by class: background vs swimming pools

Background

The model manages to distinguish exceptionally the areas not associated with swimming pools:

Precision: 99.93%
Sensitivity: 99.93%
F1-score: 99.93%

This ensures that the bottom areas are correctly identified and do not interfere with pool detection, minimizing false positives.

Swimming Pools:

As for the target class, "swimming pools", the results are also remarkable:

Precision: 91.34%
Sensitivity: 91.95%
F1-score: 91.64%

Although these values are slightly lower than those of the background, they show that the model has a strong ability to identify pools in the images. The small difference in accuracy and sensitivity suggests that the model generates a slight ratio of false positives and negatives, an area of potential improvement.

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Logit Model: characterization and prediction of Non-Filers in Income and/or Value-Added tax returns

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SYNOPSIS

This study analyzes the variables that influence the defaults in income and/or VAT returns, allowing to predict and characterize the defaulting taxpayers. A predictive Logit model is used with data from the DGI (November 2019 – October 2020), classifying taxpayers into defaulting and non-defaulting. The results highlight the geographical location and certain risk indicators generated in 2017 as key factors.

Greater seniority and tax credit application reduce the defaulters, while some sectors show greater non-compliance. The good performance and application of the model will deepen the progress in the use of machine learning in Tax Administration.

KEYWORDS: Tax default prediction, Logit Model, Non-filing of tax returns, Income Tax, Value Added tax, Data analysis, Business Intelligence, Tax risk, Machine learning in taxation.

CONTENT

*The opinions expressed in this paper are personal and do not necessarily reflect the position of the Tax Administration.

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INTRODUCTION

The identification of variables or characteristics shared by taxpayers who fail to file their tax returns (non-filers) provides valuable information for the Tax Administration (TA), as this knowledge can be highly useful for mitigating filing gaps through institutional policy actions. To identify key characteristics, we opted for the creation of a Logit model that is fed by "raw" and "calculated" variables.

In relation to the chosen model, it fulfills the objective of having interpretable estimated coefficients, and also the output variable yields a probability value that allows to address the problem of supervised classification, in this case, Non-Filer or Filer.

Therefore, it would be adding to the obtaining of characteristics of the taxpayers who subsequently become Non-Filers, the possibility of predicting, with a certain level of confidence, a priori (before the fact happens) the taxpayers who have a high probability of incurring in non-filing and in this way, being able to structure actions in the search of generating a change in their behavior.

The ultimate objective of the above is to reduce the gaps of non-compliance with formal obligations related to the submission of affidavits. Throughout the document the stages that make up the creation of the characteristic-predictive model are presented, detailing the stages of creation of the base used, as well as the validity tests applied. For the estimation of the Logit model, the open-source software R and the integrated development environment (IDE) RStudio were used. Finally, conclusions are presented, as well as future proposals to attack the breach of formal obligations.

1. MULTIPLE LOGISTIC REGRESSION MODEL

Identifying the factors that determine the classification of taxpayers as Non-Filer or Filer is a complex task, especially when it is required to estimate the probability of this event for non-pretrained data. However, current advances in Machine Learning (ML) and computational capability have made it possible to achieve this goal. In the context of supervised classification, there are approaches that range from complex and difficult to interpret models (such as Artificial Neural Networks, ANN) to simpler models with better interpretability (such as logistic regression).

Although more complex models offer a greater predictive capacity, they sacrifice the interpretation of the parameters. In this work, logistic regression is chosen due to its balance between predictive ability and interpretability, which allows us to understand the factors that influence the classification of contributors and predict future events in a more understandable way.

The variables used in the model come from the Data Warehouse system and are divided into "raw" (without transformation) and "calculated" variables (which have been previously transformed).

The chosen model is a multiple logistic regression, which extends the simple logistic regression allowing to predict a binary response based on multiple predictor variables, be they continuous, categorical or binary. The model returns probabilities between 0 and 1, applying a sigmoid function (Logit function).

In regression models, the results can vary significantly between models with a single predictor and those with multiple predictors, especially if there is interaction between them, which produces a phenomenon known as confounding.

In linear models, this phenomenon is adjusted by ANCOVA analysis, while in Logit models it is handled by adjusted Odds and interaction variables. A change in the sign of a β coefficient when adding new variables

suggests that a previously unidentified relationship between predictors has been captured[1].

2. CONSTRUCTION OF THE DATABASE

For the preparation of the database used in the modeling **Logit** first, the universe of obligations for each of the procedures was created. Then the data corresponding to the independent variables are extracted and finally the matching of the labels Non-Filer = 1 and filer = 0.

3. DATA SOURCE

The database used is built from the internal data warehouse, which represents the main integrated and reliable source of information within the Tax Administration, specifically designed to support analysis and strategic decision-making. From this centralized repository, essential data for the study are extracted, organized into various categories that cover both current and historical registry information of contributors and their activities.

In addition, it includes detailed records of payments and debits, tax credit applications, risk assessments and specific procedures, allowing a comprehensive and up-to-date view of taxpayers' profiles. This data structure facilitates access to critical information necessary for effective policy formulation and accurate tax administration.

Universe of taxpayers required to file Income and/or Value-Added Tax returns

Defining the groups of taxpayers obliged to pay taxes and declare is a complex task, since there is currently no direct method to obtain these universes. To do this, documents are used that establish combinations of mandatory factors according to the type of tax and the tax classification, differentiating between Income and Value-added taxpayers and organizing them into specific management categories. In the case of taxpayers obliged to pay taxes and declare Income, monthly consultations are generated for different accounting periods, grouping them by balance sheet month and type of taxpayer. In contrast, for taxpayers classified as having the largest economic size, in the area of Added Value, the obligation is determined based on its monthly validity, thus generating a more stable and constant universe of obligors' month by month, covering almost all taxpayers in this segment. Finally, in the field of Added Value, but in classified taxpayers of smaller economic size, the criterion used for Income is taken.

Creation of the label base of Non-Filer vs Filer

The generation of the labels "Non-Filer" and "Filer" is conducted by identifying the periods of omission, where the taxpayers of these periods are matched with those required to submit returns. First, the omission period is determined, and the taxpayer base is segmented based on it. The universes of taxpayers are divided into different groups, each one associated with different management, depending on the balance date. Once the databases are matched, the taxpayers who appear in the omissions database are labeled as "Non-Filer", while those outside this database are labeled as "Filer". This process is replicated for taxpayers required to submit VAT returns, differentiating between groups according to the corresponding forms, and adjusting the data extraction dates according to the omission or balance information.

1 Gareth, J., Written, D., Hastie, T., Tibshirani, R., (2021):'An Introduction to Statistical Learning whit Application in R'

Independent variables

For taxpayers identified in different categories, a system for extracting information and assigning indicators was established, allowing a detailed profile on their tax behavior to be created. The methodology considers, for each taxpayer, specific periods according to their obligations to submit tax returns, which allows to evaluate their behavior in a 12-month time frame. In the case of certain taxpayers, the period is adjusted to the full year from the balance sheet date; for others, on the other hand, the period covers the previous 11 months and the month corresponding to the filing, ensuring a 12-month review. When an omission is detected, the period is calculated from the first occurrence of non-filling or the balance sheet date. To characterize each taxpayer, variables grouped into different categories are used. First, the group to which each taxpayer belongs is identified, which is relevant for the omission analysis. The activity condition is also considered, that is, whether the taxpayer was active in all or part of the control period.

Another factor assessed is compliance with specific tax obligations, such as taxation related to certain taxes. In addition, the taxpayer profile is completed with tax location and incorporation data, considering their main establishment in one of the 19 defined jurisdictions (departments). The types of balance sheets that apply for each taxpayer are also analyzed, prioritizing those corresponding to specific activities such as agriculture, other activities, or assets.

The analysis includes a series of risk indicators, such as the behavior associated with the RUC (Unique Taxpayer Registry), to identify possible risk patterns. Signs of evasion are also evaluated through the analysis of inconsistencies, either in the taxpayer's own information or in comparison with data from third parties, and compliance with formal obligations is also observed, identifying patterns that, although they do not generate debt, may reflect risk trends.

Additional risk variables are also considered, such as the ability to pay, accuracy and punctuality, as well as the risk of contagion, which analyzes the taxpayer's relationship with other related persons. This indicator arises from the combination between the personal profile and that of the business associates.

Additional indicators, such as the materiality of the taxpayer, help to determine their relative importance in the tax context. Other aspects, such as the total income to employees in the period and the number of average employees, are also analyzed, along with sectoral groupings.

Finally, features are included on the adoption of electronic invoice issuance, the existence and amount of tax credit applications in the last three years, and the number of active records for the printing of documentation, which allows to build a broad and detailed profile of the tax behavior and associated risks of each taxpayer.

Creation of labels

To classify the records of each taxpayer, a labeling system was implemented that assigns each one the category of "Non-Filer" or "Filer", according to their compliance in the evaluated period. Once the data sets are defined, they are linked to the main mass management administration base, in order to integrate all the necessary information into a unified structure.

The integration of these bases is conducted in several phases. Firstly, the non-compliance information is organized by dividing it into two large groups, according to the different management approaches to which it corresponds. Subsequently, each group of non-compliance data is further subdivided according to key relevant dates in the monitoring process, which allows creating a structure that facilitates the analysis of these events. This organization, called "simplified management of non-filing cases", allows data to be

captured in a summarized way, responding to the need to reduce complexity and optimize the structure of queries, simplifying reality to make it more manageable within the system.

Finally, after linking the corresponding databases, each record is evaluated and labeled with "Non-Filer" (1) if non-compliance is detected, or with "Filer" (0) if no fault is observed. This standardized methodology allows the system to manage in an effective and simplified way the classification and analysis of each taxpayer, integrating the information from different records into a single scheme.

4. PRESENTATION OF THE PROBLEM

For each taxpayer, an estimate is made of the probability of non-compliance in tax return filing, which allows defining a probability threshold as a criterion to identify, in advance, those who are likely to default in future periods.

Methodology: modeling and partitioning

The modeling is conducted in two stages, in a first stage the choice of the variables to be included in the model is made according to the level between the model parsimony, the explanatory level of the variables and the descriptive need that gives rise to the research. Considering these three pillars, the final model obtained in the so-called **train** set or partition is selected. The **training (train) set** is defined as a partition of the total database corresponding to 70%, while the remaining 30% corresponds to the so-called testing partition or test. The parsimony and explanatory level of the variables will be measured through the criteria of **deviance** and of **AIC** which determine the measure of the adjustment error.

The application of the criteria is given through comparing values obtained in each of the valuation methods applied to a range of models (from simple models to complex models) and choosing the one with the lowest value, determining this, a better quality of adjustment. It should be noted that the summary () command of the R base package provides us with both values.

In a second stage, it is estimated that through the application of the technique **cross-validation k-fold**, the so-called hyper parameter **cutoff**, this determines the probability boundary that divides the probabilistic space into **Non-Filer** and **Filer**. The **cross-validation k-fold** technique partitions the training data group into, again, a train group, and into a group called validation.

The size of the validation group will depend on the value of k, in this case a value of k = 10 is used, therefore a partition corresponding to 10% will be performed which will be called validation and the remaining 90% will be called, again training. With the training partition the parameters corresponding to the coefficients of the **Logit** model are estimated again, and we proceed to estimate the probabilities for the validation set, this is iteratively repeated 10 times. With this we will have an estimation of the probabilities for the total of considered data. Finally, the **cutoff** parameter is estimated optimal with the estimates of the validation data obtained in the successive iterations. The probability cutoff boundary is obtained by maximizing one of the evaluation metrics of the models, in particular the accuracy maximization or the **ROC** curve maximization is used, in the latter case it is obtained at the point where the curves called (**sensitivity**) and specificity (**specificity**) intersect.

Logit Multivariable Models

In order to capture the interaction between the different variables related to taxpayers and extract signals that allow characterizing their behavior, several independent variables are incorporated into the simple model.

On the other hand, the selection of the variables for the final model is conducted using advanced evaluation techniques, which will be detailed when presenting both models: one aimed at detecting omissions in value-added tax returns and the other focused on income tax returns.

5. MULTIVARIATE LOGIT MODELS: INCOME TAX NON-FILERS AND VAT NON-FILERS

After applying the three pillars mentioned in a previous section (parsimony, explanatory level and descriptive need), the Logit model called Logitfull is generated.

Several categories of explanatory variables that influence the probability of occurrence of a certain event are incorporated into the model, divided as follows:

1. **Group characteristics:** Factors that differentiate groups with specific economic or structural characteristics are included, which allows us to understand how these group attributes can influence the probability of the event.

2. **Financial and debt aspects:** This category includes variables that reflect individuals' financial history, as well as their debt status and repayment practices. These variables allow to evaluate how financial conditions and behavior in past payments affect the event.

3. **Observed conduct:** Here, variables are considered that capture patterns of behavior and compliance over time, helping to measure the influence of these behavioral antecedents on the event. These variables represent levels of responsibility and commitment.

4. **Sectoral classification:** Categorical factors are included that represent the different sectors of activity or industries (such as manufacturing, financial services or agriculture) to which individuals belong. Each economic sector may have unique characteristics that have a different impact on the probability of the event.

5. **Geographical variables:** This category considers differences in behavior according to geographical location, such as the fiscal or constitution department. Local particularities, such as the tax culture or the regional economy, can influence the result.

6. **Age and persistence of activities:** Variables that capture the uptime or persistence in certain behavioral patterns. This can be linked to the experience or stability of the taxpayers and how these factors affect their likelihood of experiencing the event under study.

7. **Interactions between variables:** Some considered interactions allow us to see how certain factors enhance or modify each other, suggesting that not all effects are independent. This makes it possible to identify combinations of factors that influence the event to a greater or lesser extent.

Through these categories, the model manages to evaluate a variety of economic, geographical and behavioral factors. This structure allows an integral analysis of the determining elements of the event, considering both individual and contextual factors.

Evaluation of predictive models: ROC and AUC curves

The ROC (Receiver Operating Characteristic) curves are essential tools in predictive analysis to evaluate the accuracy of a model when classifying events into categories, such as Non-Filer and Filer in this case. The ROC curve represents the discriminative capacity of a model, and its Area under the Curve (AUC) quantifies the predictive accuracy. A higher AUC

indicates a better ability of the model to differentiate between categories. In this analysis, the rent model shows an AUC of 0.8305 while the value-added model shows an AUC of 0.8414, in the training data, which indicates a high predictive capacity. The cross-validation (K-Fold) also shows a close AUC of 0.8303 for the income model and 0.8404 for the value-added model, which indicates that the models are stable and not over-adjusted.

Selection of optimal cutting points

The definition of an optimal cutoff point (cutoff) is essential for an accurate classification of events. In this analysis, two cut-off points are established for each model: one that maximizes the overall accuracy (accuracy) and another that optimizes the balance between sensitivity and specificity. For the income model, the cut-off point at 0.56 was identified as optimal for overall accuracy, while the value of 0.43 offers the best balance between sensitivity and specificity. In the case of the value-added model, the optimal cut-off point for accuracy was set at 0.35, and a value of 0.54 optimally balances sensitivity and specificity.

This dual approach provides flexibility to the classification, allowing public policy makers to choose the criterion that best suits their objectives and operational needs.

Efficiency test of the new data model

To ensure the robustness of the model in real situations, its performance was evaluated using a test data set that was not used in the training.

This strategy makes it possible to measure the predictive power of the model in unprecedented contexts, thus mitigating the risk of overfitting. Dividing the database into 70% for training and 30% for testing, the results indicate that, for the rental model, using the cutoff of 0.56, the model reaches an accuracy of 0.772. Alternatively, using the cutoff of 0.43 a different balance is observed, with an accuracy of 0.755 and an increase in specificity. For the value-added model, using the cutoff of 0.54, the model achieves an accuracy of 0.793. Alternatively, using the cutoff of 0.35 a different balance is observed, with an accuracy of 0.76 and an increase in specificity. This evaluation allows tax policy and administration managers to adapt the model for more precise classifications according to the objective or the context.

Analysis of the average marginal effects

The average marginal effects offer a precise view of the expected impact on the probability of occurrence of the dependent variable Y (Non-Filer) in the face of variations in the explanatory variables X. This approach makes it possible to identify how a unitary change in one of the independent variables affects, on average, the probability that the event of interest will occur, providing a key tool for economic interpretation and informed decision-making in probability models.

The model estimates the marginal effects, which represent the expected variation in the probability of occurrence of the dependent variable when one of the explanatory variables changes by one unit, keeping the other variables constant. The positive and significant coefficients indicate a direct relationship between the increase in the value of certain variables and a greater probability that the event under study will occur. The magnitude of the coefficients reflects the specific weight of each factor in the estimated probability, and the associated significance levels reinforce the solidity of these relationships.

Broadly speaking, some of the variables with the greatest impact are those related to the observed behavior, the payment history, and the configuration

of the debt, all of them with high and highly significant statistical z-coefficients, which suggests a strong association with the modeled event. In addition, sectoral factors such as those grouped by economic activity (especially in the category of motor vehicles, textile manufacturing, and metal products) also show significant coefficients, suggesting that economic activity plays an important role.

Finally, specific geographical variables related to fiscal location, such as belonging to certain departments, also have a considerable impact, which indicates the relevance of regional factors in the behavior of the dependent variable. This econometric analysis facilitates the identification of key variables, providing a robust framework for informed decision-making around risk prediction and management.

CONCLUSIONS

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This econometric analysis facilitates the identification of key variables, providing a robust framework for informed decision-making around risk prediction and management. This approach allows to structure preventive actions aimed at the groups with the highest risk, offering a useful tool to improve the accuracy in the management of omissions and optimize the use of tax control resources.

ANNEX

A. INTERPRETATION OF LOGIT COEFFICIENTS

Logit regression: In this case we are modeling the probability as follows:

$$P(Y = 1|X = x) = \frac{e^{\beta_0+\beta_1 X_i}}{1 + e^{\beta_0+\beta_i X_i}} \quad (7)$$

In multiple linear regression models, the value of the dependent variable Y is modeled as a function of the independent variable X, in contrast, logistic regression models the probability of the response variable Y belonging to the reference level 1 (Non-Filer in our case) depending on the value acquired by the predictors X, using LOG ODDs.

Having:

$$P(Y = k|X = x) = \frac{e^{\beta_0+\beta_1 x_1+\beta_2 x_2+\cdots+\beta_p x_p}}{1 + e^{\beta_0+\beta_1 x_1+\beta_2 x_2+\cdots+\beta_p x_p}} \quad (1)$$

Reorder factors:

$$\frac{P(Y = k|X = x)}{1 - P(Y = k|X = x)} = e^{\beta_0+\beta_1 x_1+\beta_2 x_2+\cdots+\beta_p x_p} \quad (2)$$

Applying logarithms:

$$\ln\left(\frac{P(Y = k|X = x)}{1 - P(Y = k|X = x)}\right) = \beta_0 + \beta_1 x_1 + \beta_2 x_2 + \cdots + \beta_p x_p \quad (3)$$

Using the following equality:

$$ODDs = \frac{P(Y = k|X = x)}{1 - P(Y = k|X = x)} \quad (4)$$

Substitute (3) in (4):

$$\ln(ODDs) = \beta_0 + \beta_1 x_1 + \beta_2 x_2 + \cdots + \beta_p x_p \quad (5)$$

The left part is known as the logarithm of the odds (log-odds) or logit. Therefore, the coefficient ßi associated with the independent variable xi of the modeling **logit** represents the impact of changes that occur in the independent variable on the log-Odds. A direct and generic way of interpreting the ßi corresponds to the observation of the associated sign, that is, if the sign associated with the ßi is positive, then increasing increases the probability of occurrence of the event Y = 1 (Non-Filer), on the other hand, if the sign is negative, to increase decreases it.

A.1. Simple Logit model, interaction analysis: an independent variable

For the analysis of interactions, a simple model is first presented that evaluates the effect of an independent variable on a set of subjects obliged to submit income declarations. In this instance, a dichotomous variable is used that assumes a positive value (one) if the subject belongs to a specific group of large taxpayers and a reference value (zero) if he does not belong to that group.

Simple Model:

$$glm.simple < -glm(as.factor(omisonumerc) \sim as.factor(tamañoecon), family = binomial)$$

The simple logistic regression model includes two key coefficients. The intercept represents the model constant, while the second coefficient measures the impact of belonging to the interest group on the probability of the studied event, expressed in terms of the logarithm of the probability ratio (log-odds).

Both coefficients show a high statistical significance, indicating that the effects observed in the model are robust. The additional indicators, such as the null deviation, the residual deviation and the AIC, reflect the quality of the model fit, with values that suggest a good level of adequacy for the analyzed data.

Table 1
Coefficients estimations

Estimate	Std. Error	z value	Pr(>|z|)	sig.
(Intercept)	–0.2265	0.0061	–37.3722	0
granDimEco	–0.8792	0.0209	–41.9983	0

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1
Null.deviance: 1.68379×10^5
Deviance: 1.66422×10^5
AIC: 1.66426×10^5

The coefficient β1 represents the ratio of the logarithms of omission probability between two economic dimensions. A negative value for β1 indicates that, without the influence of other variables, belonging to the economic dimension of greater size or relevance reduces the probability of incurring non-compliant. In other words, there is a lower probability of omission associated with taxpayers with a large economic dimension compared to those with a smaller size or relevance.

The question that arises is: Is it possible to determine what is the probability of being non-compliant based on the economic dimension? The answer is simple, yes, this probability can be calculated using a simple Logit

model with a single regressor, which allows to obtain the probability ratio of being non-compliant.

To answer the question, the ODDs ratio is first calculated by comparing the proportion of Non-Filer taxpayers with Filer taxpayers within the same group. Then, the ODDs ratio is calculated for the group with the smallest economic size and the odds ratio (log-odds) of being non-compliant in the first group with respect to the second (of medium and large economic dimension) is obtained. By applying the neperian logarithm to this ratio, a value corresponding to the coefficient of the model is obtained.

This analysis, however, starts from a simplified hypothesis that assumes that only the group of contributors is relevant to determine whether a contributor will be non-compliant, which in practice is untenable. In reality, there are multiple variables that influence this determination, so it is necessary to include them in the model for greater accuracy. Without this, the model would be limited and would not allow to develop effective policies beyond the trivial strategy of changing groups.

A.2. Interaction capture, Logit models

In the Logit model with a single regressor (economic group), the change in the logarithm of the probability ratio of the Non-Filer variable is estimated as the economic size level of the contributor varies. The results indicate that the probability of non-compliant decreases when the taxpayer belongs to the group with the largest economic dimension. However, it is possible that the level of economic size does not constitute the fundamental explanatory variable and that there is a confounding variable that is introducing difficulties in the interpretation of the results.

A model with two independent variables:

In the previously presented Logit model, the change in the logarithm of the probability ratio of the Non-Filer variable is estimated as the taxpayer's economic size level varies. The results indicate that the probability of non-compliant decreases when the taxpayer belongs to the group with the largest economic dimension. However, it is possible that the level of economic size does not constitute the fundamental explanatory variable and that there is a confounding variable that is introducing difficulties in the interpretation of the results.

glm.two <– glm(as.factor(omiso_numeric – as.factor(granDimEco) + Materialidad,
family = 'binomial', data = omiso)

Table 2
Coefficients estimation

	Estimate	Std. Error	z value	Pr(>|z|)	sig.
(Intercept)	1.4093	0.0163	86.4940	0	***
as.factor(granDimEco)1	1.4599	0.0348	42.0053	0	***
Materiality	–0.0882	0.0008	–111.5400	0	***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1
Null.deviance: 1.09147×10^5
Deviance: 9.1706×10^4
AIC: 9.1712×10^4

When an economic dimension variable (Materiality) is incorporated into the simple model, the sign of the coefficient associated with the grouping variable changes from negative to positive. This suggests that belonging to the group with the largest economic dimension has a positive effect on the probability of being a Non-Filer. This change of sign indicates that the economic dimension variable potentially acts as a confounding variable, affecting the interpretation of the effect of the contributor group on the probability of being Non-Filer.

To address this problem, it is necessary to create an interaction variable that captures the joint relationship between the group of contributors and the level of economic materiality. In this way, a more accurate representation of the interaction between the two dimensions is achieved. The generated interaction variable, granDimEco: Materiality, allows to adequately capture this dependence between the dimension of the contributor the level of materiality, granDimEco: Materiality[2].

Model with a simple independent variable and one independent variable of interaction capture

```
glm.three <– glm(as.factor(omiso_numeric – as.factor(granDimEco) + Materialidad:as.factor(granDimEco
family = 'binomial', data = omiso)
```

Table 3
Coefficients estimation

	Estimate	Std. Error	z value	Pr(>|z|)	sig.
(Intercept)	1.5392	0.0174	88.4878	0	***
as.factor(granDimEco)1	–0.8163	0.0923	–8.8444	0	***
as.factor(granDimEco)0:Materialidad	–0.0955	0.0009	–110.8954	0	***
as.factor(granDimEco)1:Materialidad	–0.0396	0.0019	–20.4430	0	***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1
Null.deviance: 1.09147×10^5
Deviance: 9.1088×10^4
AIC: 9.1096×10^4

A.3. ROC Curves

The analysis of the ROC curve (Receiver Operating Characteristic Curve) is a fundamental statistical approach in the evaluation of predictive models, aimed at measuring their diagnostic accuracy. This analysis allows to fulfill three main objectives: (i) to evaluate the discriminative capacity of the model, that is, its ability to differentiate between Non-Filer and Filer, and (iii) to compare the discriminative capacity between multiple models[3]. In this study, the ROC curve is used to calculate the AUC (Area Under the Curve) from the estimated probabilities, derived from both the K-Fold cross-validation approach and the full-model.

2 Fox, J. (2003): Effect Displays in R for Generalized Linear Models.

3 Cerda, J., Cienfuentes, L. (2011): Using ROC curves in clinical investigation. Theoretical and Identify the optimal cut-off point on a continuous scale, maximizing both sensitivity and specificity (cutoff), (ii)

Figure 1
ROC Curve of the full income Model

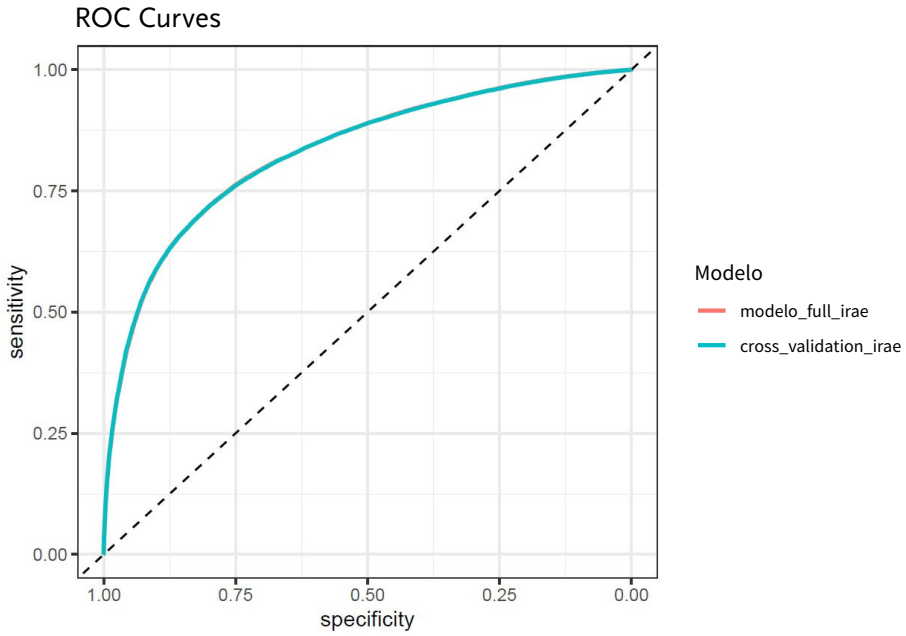
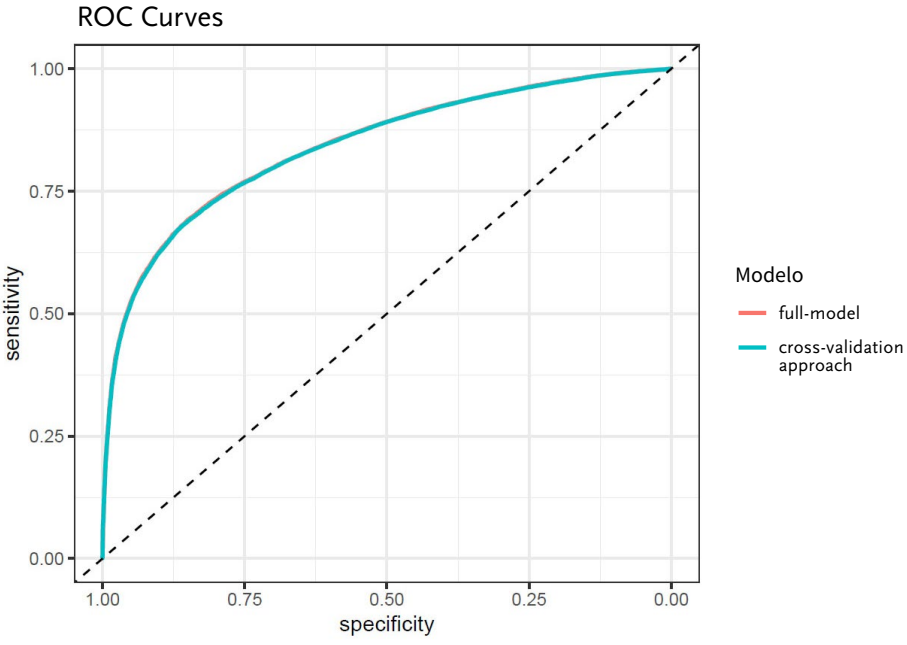


Figure 2
ROC Curve of the full VAT Model



The ROC curve (AUC) for the income training model shows a value of 0.8305, while the value-added model reaches an AUC of 0.8414, both indicating a high capacity for discrimination between classes. When applying K-Fold cross validation, the rental model presents an AUC of 0.8303 and the value-added model an AUC of 0.8408, which confirms both accuracy and predictive stability in different subsets of data. The close proximity between these values suggests that the models are not over-adjusted and maintain a robust generalization capacity when evaluating unobserved data.

A.4. Cutting points, optimization of the parameter P.

The cutoff point or cutoff is the threshold value that separates the probability of occurrence into two categories to classify events (Non-Filer, not confiscating). The choice of the optimal cut requires defining the evaluation metric to be maximized and on which set of probabilistic data the classification is carried out. In this analysis, it is chosen to establish two cut-off points in the estimates of the validation group: the first maximizes the overall accuracy of the model (accuracy), while the second optimizes the cut-off point of the ROC curve, thus maximizing the balance between sensitivity and specificity. This double approximation allows a greater adaptability of the model to different classification criteria.

Next, the evolution of various evaluation measures of the model is plotted using the cross-validation methodology:

Figure 3
Cross Validation Model Renta

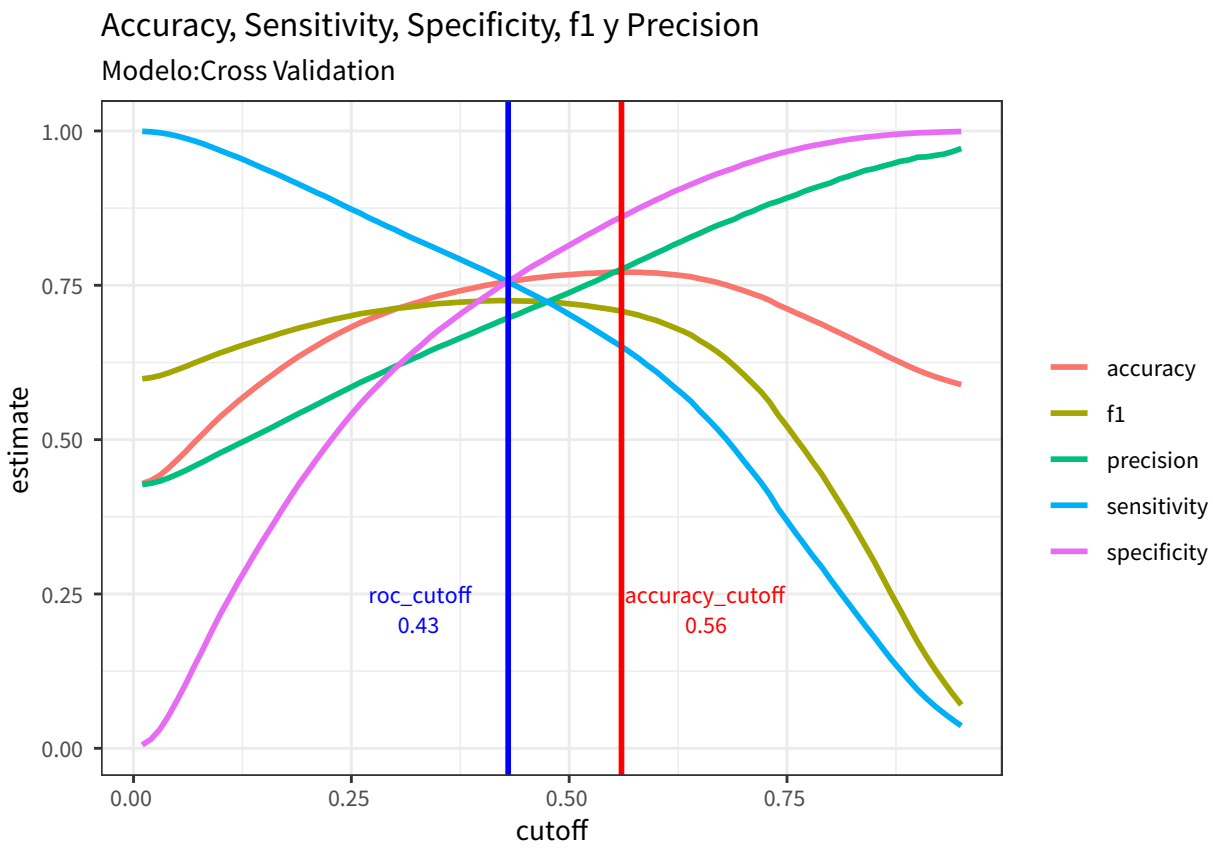
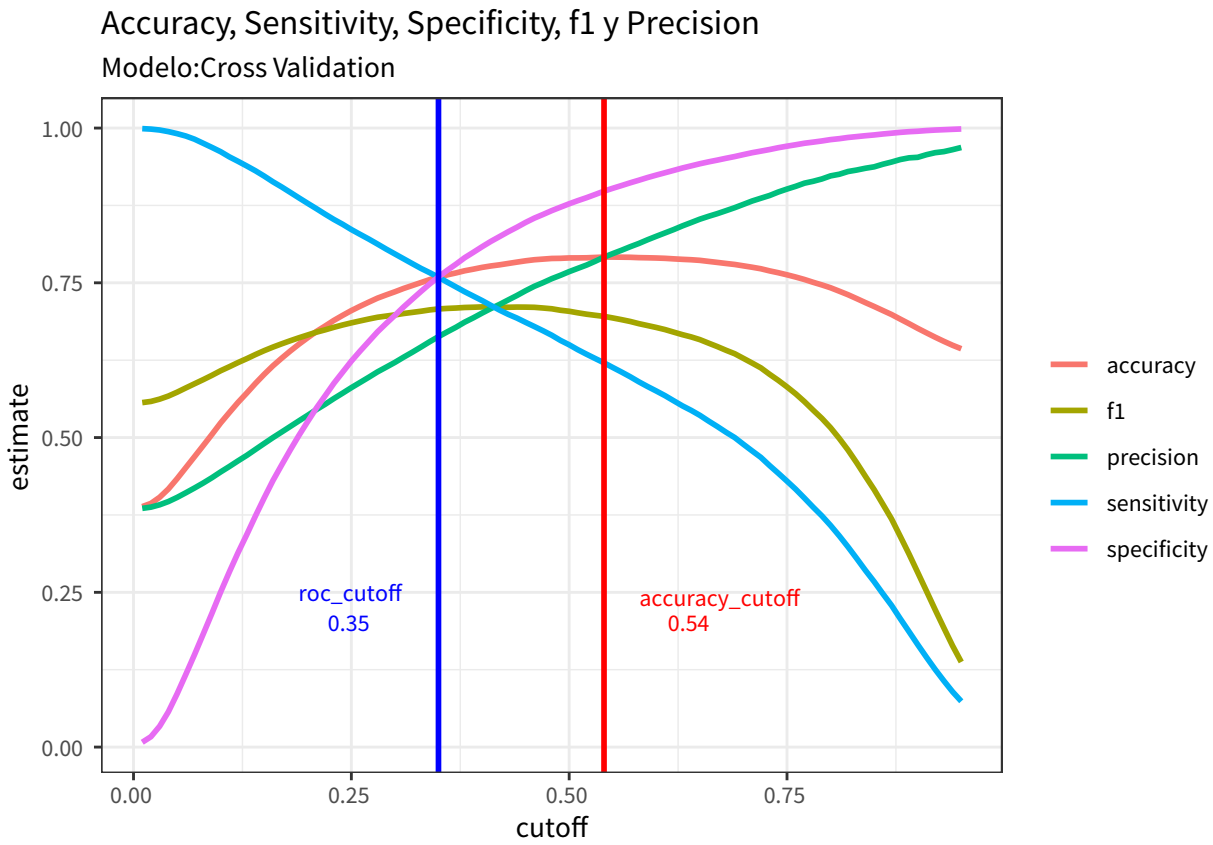


Figure 4
Cross Validation Model Valor Agregado



The optimal cutoff point (cutoff) that maximizes the accuracy of the rental model has been identified at 0.56, while for the value-added model it is 0.54. On the other hand, the cutoff that simultaneously optimizes sensitivity and specificity stands at 0.43 for the income model and at 0.35 for the value-added model, which allows a more appropriate balance between true positive and negative, thus achieving a more balanced classification in both econometric models.

A.5. Analysis of the model using the set test

In the present predictive analysis, an independent data set is used, never before seen by the model in the parameter training phase. This approach allows to evaluate the predictive power of the model in a context where it must handle new data, a crucial practice to avoid overfitting.

Overfitting occurs when a model achieves optimal performance with training data, but fails to accurately predict on unknown data sets, which affects its applicability in real scenarios.

To mitigate the risk of overfitting, the database is divided into two sets: the training set and the test set. In this study, the convention of assigning 70% of the data to the training set has been followed, reserving the remaining 30% for the test set. This partition allows the model to adjust its parameters on the train set while retaining an independent set for final validation.

Using the cutoff that maximizes the accuracy of the income model, which in this case is 0.56, the following confusion matrix is obtained.

Table 4
Prediction set test – Income

Estimate	P.Filers	P.Non-Filers
Filers	16.828	2.744
Non-Filers	5.075	9.613

Accuracy value: 0.772 – Sensibility value: 0.778 – Specificity value: 0.768

For the value-added model, using the 0.54 cutoff point (cutoff) that maximizes the accuracy, the following confusion matrix is obtained.

Table 5
Prediction set test – Value Added tax

Estimate	P.Filers	P.Non-Filers
Filers	13.845	1.520
Non-Filers	3.669	6.068

Accuracy value: 0.793 – Sensibility value: 0.8 – Specificity value: 0.791

These matrices are a fundamental resource to evaluate the performance of the models by correctly classifying between different categories, based on the selected criterion of maximum precision.

On the other hand, if the cutoff that maximizes the value of the sensitivity and specificity evaluation methods is used, 0.43 the following confusion matrix for the income model is obtained:

Table 6
Prediction set test – Value Added tax

Estimate	P.Filers	P.Non-Filers
Filers	11.750	3.667
Non-Filers	2.337	7.338

Accuracy value: 0.76 – Sensibility value: 0.666 – Specificity value: 0.834

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The Influence of Culture on Tax Administration: A Comparative Analysis of the Tax Administrations of the CIAT Based on Hofstede's Dimensional Model

Antonio H. Lindemberg Baltazar
Juliano Brito da Justa Neves

SYNOPSIS

This article aims to analyse the cultural dimensions of Hofstede's model in the member countries of the Inter-American Centre of Tax Administrations (CIAT) and to understand how cultural traits influence the institutional behavior of tax administrations. Using a comparative methodology, the six dimensions of the model are examined: "distance from power", "aversion to uncertainty", "individualism/collectivism", "masculinity/femininity", "long/short-term orientation" and "indulgence/restriction". This approach is particularly relevant to explore aspects such as tax morality, tax compliance, innovation in the public sector, and the development of sustainable policies. The results show how these factors affect tax administration in various contexts, suggesting that greater cultural adaptation could improve the effectiveness of fiscal and administrative policies.

KEYWORDS: Hofstede, Organizational culture, Tax administration, Inter-American Center of Tax Administrations, Cultural dimensions.

CONTENT

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INTRODUCTION

Culture as an object of study has been consolidated, especially since the 70s of the last century, as an important theme in the scope of public administration research, and its concepts are used in a plethora of complex situations, in order to examine the way in which values influence the activities of public organizations (MacCarthaigh & Saarniit, 2019).

According to MacCarthaigh and Saarniit (2019), the most fundamental debates about culture in the contemporary world, from the perspective of organizations, are related to the interaction between cultures and subcultures in the environment of national bureaucracies, the influence of administrative traditions and styles on the results of public policies, and the influence of administrative culture in boosting or delaying administrative reforms in the public sector.

Therefore, taking into account the importance of the study of cultures for the understanding of the logic of organizational action, this article will seek to analyse the dimensions of Hofstede's (2003) national culture model of the countries that are part of the Inter-American Centre of Tax Administrations (CIAT) and, from this comparative analysis, to understand the influence of cultural traits on the institutional action of the respective tax administrations.

The innovative contribution of this research lies in the application of Hofstede's (2003) model of cultural dimensions to the field of tax administration, specifically in the context of the member countries of the Inter-American Centre of Tax Administrations (CIAT) that have data available in Hofstede's (2003) research. This approach presents a new perspective that seeks to analyse the possibility of national cultural traits influencing the organizational identity of tax administrations and the tax morale of taxpayers, an issue that has received little attention in comparative studies in this area.

The relevance of this research lies in its ability to promote a deeper understanding of how to adapt administrative strategies to the cultural characteristics of different nations, contributing to more effective and culturally sensitive tax reforms. The comparative analysis of Hofstede's dimensions provides subsidies to understand how tax administrations can shape policies and practices that are more appropriate to local cultural realities, thus allowing to improve the efficiency of tax policies and increase tax compliance.

The current literature points out that national cultures exert influence on organizational management structures and models. Hofstede, Hofstede and Minkov (2010) state that cultural differences profoundly shape organizational interactions, while Pollitt and Bouckaert (2017) highlight that cultural characteristics can impact the efficiency of public administrations, especially with regard to the acceptance and execution of public policies. Alm and Torgler (2006) also emphasize that organizational culture plays a significant role in tax compliance, influencing the behavior of taxpayers in relation to the fulfilment of their obligations.

Thus, this study seeks to contribute to the development of the field of tax administration, by articulating Hofstede's cultural dimensions with fiscal management practices, offering reflections for the development of more adaptive and effective strategies. This is in line with what Bruce-Twum (2024) and Seno et al. (2021) suggest, when they argue for the need for more flexible and cooperative approaches in tax administrations, especially in diverse cultural contexts.

1. HOFSTEDE'S CULTURAL MATRIX

For Hofstede, Hofstede and Minkov (2010), culture is the result of the dynamics of society, being a collective mental programming that ends up distinguishing one group from another. In this line of thought, seeking to establish the dimensions that would make it possible to measure the cultural aspects of different societies,

Hofstede (2003) conducted pioneering research, not specifically directed to the public sector, having as its object the dimensions of national culture.

Hofstede, who was an instructor for the international executive development department of *International Business Machines Corporation* (IBM), conducted his empirical research with IBM employees around the world, aiming to understand the patterns and differences of national cultures. For Hofstede (2003), national culture would influence management models, in view of the influence of history, politics, religion, their traditions and habits, so that national culture and organizational culture inspire each other.

In the first two phases of the research, conducted in more than fifty countries between 1967 and 1973, data were collected on Hofstede's first four dimensions, "distance from power", "individualism/collectivism", masculinity/femininity" and "aversion to uncertainty". Later, in the 1980s, based on a survey conducted by Michael Harris Bond for the *Chinese Value Survey* (CVS), with 23 Asian countries, Hofstede, replicating the survey with the World *Value Survey database,* increased his model with a fifth dimension, "long-term orientation". Hofstede's sixth cultural dimension, indulgence/ restraint, was conceived in recent research conducted with Michael Minkov and relates to aspects linked to hedonism (Hofstede, Hofstede, & Minkov, 2010).

1.1 Power Distance

The first of the dimensions observed in Hofstede's cultural matrix, "distance from power", refers to the expectation that the classes with less social influence accept that power is distributed unequally. In other words, a culture based on deference to authority, formal leadership, personal and organizational hierarchy, has a high distance from power, while societies in which values are based on equal treatment of all, enabling horizontal social and organizational structures, have a short distance from power (Hofstede, 2003). As Pollitt and Bouckaert (2017) point out, a high distance from power brings with it a prominent tolerance for the existence and manifestation of inequality.

In cultures with a high distance from power, there is often a great distance between the authority of tax administration officials and the general public. This can lead to a perception of tax authorities as distant and inaccessible, which can decrease taxpayers' tax morale and willingness to comply with tax obligations (Alm & Torgler, 2006). On the other hand, in cultures with a low power distance, tax administrations can be seen as more accessible and responsive to taxpayers' needs, fostering a sense of partnership and collaboration (Bruce-Twum, 2024).

Based on the research of Hofstede (2003), taking into account that the median of all the countries in his study has a score of 62 points on a scale of 0 to 100, with a low distance from power, Austria (11 points), Israel (13 points), Denmark (18 points), New Zealand (22 points) and Switzerland (34 points) stand out, while with a high distance from power appear Russia (93 points), the Philippines (94 points), Guatemala (95 points), Panama (95 points) and Malaysia (100 points).

1.2 Uncertainty Aversion

The second dimension, called "uncertainty aversion", is related to the discomfort that people in a given society have in relation to ambiguity, to the unplanned. The aversion to uncertainty indicates the low capacity to deal with risk and the unknown, thus generating, in societies where this dimension is prominent, the need to surround oneself with rules and norms, notable for the formalism of social relations.

Tax administrations in countries with a high aversion to uncertainty tend to implement extensive regulations to mitigate institutional risk and ensure adherence to tax laws. However, this can lead to bureaucratic inefficiencies and a lack of flexibility when dealing with taxpayer concerns. In contrast, tax administrations in cultures with low uncertainty aversion tend to adopt

more adaptive and innovative approaches to tax compliance, which can increase taxpayer engagement and satisfaction (Seno et al., 2021).

Considering that the median of all countries has a comparative score of 69.5 points, with low aversion to uncertainty, Singapore (8 points), Jamaica (13 points), Denmark (23 points), Sweden (29 points) and Hong Kong (29 points) stand out, while Belgium (94 points), Uruguay (98 points), Guatemala (98 points), Portugal (99 points) and Greece (100 points) stand out with high aversion to uncertainty.

1.3 Individualism and Collectivism

The third dimension, "individualism and collectivism," refers to the way people relate to others. In individualistic societies, people feel more independent, with less gregarious impetus, while in more collective societies, dependence is greater, tending to provide greater bonds between individuals, which value gregariousness and the mutual protection that derives from it (Pollitt & Bouckaert, 2017). In individualistic societies, the space of protection refers only to the individual or to his or her most intimate family nucleus, while in societies where there is a predominance of collectivism, the space of protection gains latitude, providing aspects of social cohesion (Hofstede, 2003).

In individualistic cultures, taxpayers tend to prioritize personal gain over collective responsibility, potentially leading to higher rates of tax evasion. On the other hand, collectivist cultures emphasize group harmony and social responsibility, which can increase tax morality and compliance. Research indicates that societies with strong collectivist values tend to have higher tax compliance rates, since individuals feel a greater sense of duty in contributing to the common good. This cultural orientation can significantly influence how tax administrations design their outreach and education programs to encourage compliance.

Considering the median of 43.5 points, Guatemala (6 points), Ecuador (8 points), Panama (11 points), Venezuela (12 points) and Colombia (13 points) stand out with low individualism, while the Netherlands (80 points), Hungary (80 points), England (89 points), Australia (90 points) and the United States (91 points) stand out with high individualism.

1.4 Masculinity and femininity

The fourth dimension, "masculinity and femininity", has as its central approach the implications that the biological differences between the sexes entail for emotional and social relationships. It is important to consider that this dimension does not effectively consider gender itself, but rather the characteristics attributed, in a hypertrophied way, to the male and female sex.

Therefore, in male societies, values such as assertiveness, competition, performance and focus on material success predominate, which are widely valued. These cultures tend to prioritize tangible achievements and results, with a greater emphasis on hierarchy and individual achievement. On the other hand, in women's societies, values such as modesty, generosity, cooperation, and the search for collective well-being stand out. In these cultures, there is a greater appreciation of interpersonal relationships, solidarity and social balance, with an orientation more focused on care and harmony (Hofstede, 2003; Pollitt & Bouckaert, 2017).

In the tax sphere, male cultures tend to value competitiveness and achievement, which can translate into a focus on maximizing revenue collection. This can lead to an institutional culture that has an emphasis on law and control. In contrast, women's cultures prioritize cooperation, which can result in tax administrations adopting more supportive and educational approaches to compliance. This cultural orientation can foster a more positive relationship between tax authorities and taxpayers, thereby increasing compliance rates.

Considering that the median of all countries has a comparative score of 48.5, with low masculinity, Sweden (5 points), Norway (8 points), Latvia (9 points), the Netherlands (14 points) and Denmark (16 points) stand out, while Venezuela (73 points), Austria (79 points), Hungary (88 points), Japan (95 points) and Slovakia (100 points) stand out with high masculinity.

1.5 Long-term orientation *Versus* short-term

The fifth dimension, "long-term *versus* short-term orientation", having the philosophy of Confucius as its matrix of thought, inserts long-term orientation in the perspectives of persistence, perseverance and parsimony directed to the future, while short-term orientation is reconciled with aspects correlated to the present and past, with respect for tradition and the fulfilment of social obligations as guiding values.

Confucius' matrix of thought emphasizes the importance of social harmony, hierarchical relationships, and respect for authority, promoting values such as loyalty, ethics, and mutual responsibility. Confucius advocates a long-term orientation, focusing on perseverance, discipline, and fulfilment of social obligations to ensure stability and collective well-being. This philosophy values moral education as the basis for individual and societal progress. (Li & Shang, 2021)

Tax administrations in long-term oriented cultures can prioritize sustainable tax policies that promote economic growth and social well-being over short-term revenue maximization. This perspective can lead to the development of tax incentives that stimulate investment in long-term projects, benefiting both taxpayers and the economy at large. On the other hand, countries with a short-term orientation may focus on immediate revenue collection, potentially compromising long-term economic stability.

In Hofstede's (2003) research, the median of all countries has a comparative value of 44.5. With low long-term orientation, Puerto Rico (0 points), Ghana (4 points), Egypt (7 points), West Africa (9 points) and Trinidad and Tobago (13 points) stand out, while with high long-term orientation appears Ukraine (86 points), China (87 points), Japan (88 points), Taiwan (93 points) and South Korea (100).

1.6 Indulgence *Versus* restriction

The last dimension researched by Hofstede (2003), "indulgence *versus* restriction", seeks to capture ideas contained in recent studies on the theme of happiness and correlates with the impulse or control to the satisfaction of desires, that is, societies with high indulgence seek the satisfaction of desires related to pleasure, freedom and happiness, while societies in which there is a predominance of restriction are directed by the need to control the dimension of pleasure by means of strict social norms. Doing what you want, freely, is valued in indulgent societies. In restricted societies one feels that life is difficult and that duty, more than freedom, is the predominant value (Hofstede, Hofstede, & Minkov, 2010).

Cultures that lean toward indulgence may have a more relaxed attitude toward tax obligations, viewing them as less critical to personal happiness and well-being. This can lead to higher rates of tax evasion and non-compliance. On the other hand, cultures that emphasize restriction can foster a stronger sense of duty and responsibility regarding tax compliance, as individuals see their contributions as essential to social well-being.

The median of all countries in Hofstede's (2003) research has a comparative score of 43. With low indulgence, Pakistan (0 points), Egypt (4 points), Latvia (13 points), Ukraine (14 points) and Albania (15 points) stand out, while with high indulgence appear Nigeria (84 points), El Salvador (89 points), Puerto Rico (90 points), Mexico (97 points) and Venezuela (100 points).

2. COMPARATIVE ANALYSIS BETWEEN THE TAX ADMINISTRATIONS THAT ARE PART OF THE CIAT

The comparative analysis of Hofstede's cultural dimensions applied to the tax administrations that are part of the CIAT allows us to understand how cultural aspects shape the tax administrations of different nations, allowing future research to focus on the data presented, correlating them with the factual reality of each country.

This analysis is important because in tax administrations cultural factors such as power dynamics, tolerance of ambiguity and the degree of individualism or collectivism directly influence the behavior of both tax administrations and taxpayers. These cultural influences permeate several aspects, from the acceptance of tax regulations to the interaction between the taxpayer and the government, shaping compliance and inspection strategies.

Consequently, understanding the cultural influences on tax administrations allow for a more effective adaptation of organizational identity, promoting reforms aligned with the unique cultural characteristics of each nation. Such cultural harmonization can favour a more cooperative tax environment, less dependent on punitive approaches.

2.1 Power Distance

Brazil, with 69 points, shares a high distance from power with countries such as Chile (63 points), Portugal (63 points), Peru (64 points), Dominican Republic (65 points), El Salvador (66 points), Colombia (67 points), France (68 points), Morocco (70), Paraguay (70 points), Kenya (70 points), India (77 points), Bolivia (78 points) points), Ecuador (78 points), Honduras (80 points), Nigeria (80), Venezuela (81 points), Mexico (81 points), Angola (83), Suriname (85 points), Guatemala (95 points) and Panama (95 points). These countries tend to have centralized tax administrations, in which decision-making power is vertically distributed, and taxpayers generally accept formal authority without much question.

Countries such as Costa Rica (35 points), Canada (39 points), the Netherlands (38 points), the United States (40 points), Jamaica (45 points), Trinidad and Tobago (47 points), Argentina (49 points), Italy (50 points), Spain (57 points), and Uruguay (61 points), with a shorter distance from power, tends to adopt more horizontal tax administrations, with greater participation of citizens in the decision-making process and greater transparency, promoting greater voluntary compliance on the part of taxpayers.

2.2 Uncertainty Aversion

Brazil, with 76 points, as well as Italy (75 points), Venezuela (76 points), Colombia (80 points), Mexico (82 points), Paraguay (85 points), Costa Rica (86 points), Argentina (86 points), Chile (86 points), Spain (86 points), France (86 points), Panama (86 points), Bolivia (87 points), Peru (87 points), Suriname (92 points), El Salvador (94 points), Guatemala (98 points), Uruguay (98 points) and Portugal (99 points), share a marked aversion to uncertainty, which tends to result in a complex tax system, based on detailed rules to minimize risk and ensure predictability.

On the other hand, countries with low aversion to uncertainty, such as Jamaica (13 points), India (40 points), Dominican Republic (45 points), United States (46 points), Canada (48 points), Kenya (50 points), Honduras (50 points), Netherlands (53 points), Nigeria (55), Trinidad and Tobago (55 points), Angola (60), Ecuador (67 points) and Morocco (68) tend to present tax administrations that are more open to innovation and able to adapt quickly to changes in the economic environment. In these nations, tax reforms tend to be implemented more easily, as they tend to have less cultural resistance to change.

2.3 Individualism versus Collectivism

Brazil, with thirty-eight points, presents itself as a collectivist society, where the well-being of the group is a priority. This cultural trait is also found in countries such as Nigeria (0), Kenya (4 points), Panama (11 points), Paraguay (12 points), Costa Rica (15 points), Angola (18), El Salvador (19 points), Peru (20 points), Honduras (20 points), Bolivia (23 points), India (24 points), Ecuador (24 points), Morocco (24), Trinidad Tobago (25 points), Venezuela (26 points), Colombia (29 points), Mexico (34 points), Dominican Republic (38 points), Guatemala (36 points) and Jamaica (39 points). In these countries, fiscal policies tend to be oriented towards the redistribution of wealth and the promotion of social equity, favouring the implementation of progressive fiscal policies, which seek to reduce inequalities and promote the common good.

Countries with a high level of individualism such as Suriname (47 points), Chile (49 points), Argentina (51 points), Italy (53 points), Portugal (59 points), Uruguay (60 points), the United States (60 points), Spain (67 points), Canada (72 points), France (74 points) and the Netherlands (100 points) tend to emphasize more individual responsibility and the role of taxes as a fundamental duty, but with less focus on social redistribution. In these countries, tax policies tend to be more focused on encouraging entrepreneurship and economic competitiveness, rather than promoting social cohesion.

2.4 Masculinity vs. Femininity

With forty-nine points, Brazil is close to the global median in the "masculinity" dimension, balancing competitive and collaborative values. Countries such as Canada (52 points), Morocco (53), Argentina (56 points), India (56 points), Trinidad Tobago (58 points), Nigeria (60), Kenya (60 points), United States (62 points), Ecuador (63 points), Colombia (64 points), Dominican Republic (65 points), Jamaica (68 points), Mexico (69 points), Italy (70 points) and Venezuela (73 points) tend to present a tax administration that is more oriented towards performance and economic success, with a focus on efficiency and growth.

On the other hand, countries with less masculinity, such as the Netherlands (14 points), Angola (20), Costa Rica (21 points), Chile (28 points), Portugal (31 points), Uruguay (38 points), Guatemala (37 points), Suriname (37 points), El Salvador (40 points), Honduras (40 points), Paraguay (40 points), Bolivia (42 points), Spain (42 points), Peru (42 points), Panama (44 points) and France (43 points), tend to adopt a tax administration that is more oriented towards social equity and quality of life. These administrations tend to be more inclusive, focusing on tax policies that promote social justice in addition to economic efficiency.

2.5 Long-Term vs. Short-Term Guidance

Brazil, with forty-four points, shows a slight inclination towards the short-term orientation. Other CIAT countries with strong short-term orientation include Venezuela (0 points), Peru (5 points), Colombia (6 points), Nigeria (8), Dominican Republic (11 points), Chile (12 points), Kenya (11 points), Angola (15), Trinidad and Tobago (17 points), El Salvador (20 points), Bolivia (21 points), Mexico (23 points), Ecuador (24), Morocco (25), Guatemala (25 points), Uruguay (28 points), Argentina (29 points), Italy (39 points) and Portugal (42 points). Such countries tend to have difficulties in implementing tax reforms and adopting policies with a long-term vision.

In contrast, countries such as Spain (47 points), the United States (50 points), India (51 points), Canada (54 points), France (60 points), and the Netherlands (67 points) tend to have a more pronounced long-term orientation, which allows them to adopt more stable tax policies aimed at sustained economic growth, aiming to ensure economic stability for future generations.

2.6 Indulgence vs. Restriction

Brazil, with fifty-nine points, is presented as an indulgent society, where leisure and personal satisfaction are important. Countries such as Spain (44 points), Bolivia (46 points), Peru (46 points), France (48 points), Uruguay (53 points), Dominican Republic (54 points), Paraguay

(56 points), Argentina (62 points), Canada (68), Chile (68), United States (68), Netherlands (68), Trinidad and Tobago (80 points), Colombia (83), Costa Rica (83 points), Angola (83), Nigeria (84) El Salvador (89 points), Mexico (97 points) and Venezuela (100 points) share this characteristic, which can influence taxpayers' perception of the tax system, leading them to see paying taxes as an interference in their lifestyle and personal freedom.

In contrast, countries such as Morocco (25 points), India (26 points), Italy (30 points) and Portugal (33 points) are more restrictive, with a more disciplined outlook on life and a greater acceptance of tax obligations as a fundamental duty. In these companies, compliance with tax obligations tends to be more valued and accepted as part of the articles of association, which can facilitate tax compliance and reduce tax evasion.

3. HOFSTEDE'S CULTURAL MATRIX AND THE TRENDS OF BRAZILIAN TAX ADMINISTRATION

The analysis of Brazilian tax administration in the light of Hofstede's cultural dimensions reveals the influence of national culture on the way tax institutions are conceived and how their acts are implemented and socially accepted, thus helping to understand the structural and behavioural characteristics of tax administration in Brazil, as well as the impacts of tax policy on the national environment.

3.1 Power Distance

With sixty-nine points in the "distance from power" dimension, Brazil is characterized as a country with high acceptance of power inequalities, which indicates a consensus regarding hierarchical structures and authority within organizations, including public institutions, which can reflect in centralized and hierarchical organizational structures.

In the tax context, even with the current efforts aimed at implementing alternative means of conflict resolution, such as mediation and tax settlement, the high-power gap may explain the tendency of tax authorities to favour mechanisms for complying with tax obligations that are strongly based on coercion.

In contrast to this coercive tendency, as a result of efforts at greater tax cooperation, the tax transaction was regulated in Brazil through Law No. 13,988/2020, allowing direct negotiation between the parties to resolve tax debts, with the possibility of mutual concessions, such as reductions in fines and interest, provided that the legal limits and the public interest are respected. Also in this context, two complementary bills (PLP 124/2022[1] and PLP 125/2022[2]) are pending in the Senate that expressly provide for the preferential use of alternative forms of conflict resolution, in addition to establishing the use of these mechanisms as a guiding principle of Brazilian tax litigation (article 4, II, PLP 125/2022).

3.2 Uncertainty Aversion

In the "uncertainty aversion" dimension, Brazil has seventy-six points, reflecting a strong need for control, stability, and predictability, indicating a preference for structured environments and clear rules to mitigate ambiguity. This cultural trait manifests itself in the public sector through extensive regulations and procedures, which can sometimes result in bureaucratic delays and inefficiencies. The tendency to avoid uncertainty can also hinder innovation, as public sector employees may be reluctant to experiment with innovative approaches or technologies that deviate from established norms.

1 PLP 124/2022 – Federal Senate, accessed on 25 October of 2024.

2 PLP 125/2022 – Federal Senate, accessed on 25 October of 2024.

This cultural characteristic is reflected in tax administration through a complex legal system, marked by extensive and detailed regulations, which seek to reduce ambiguity and risk as much as possible. In this sense, tax administration tends to be conservative, with a highly standardized institutional environment, where flexibility is limited by the need to ensure strict compliance with established rules.

For example, since the enactment of the Brazilian Constitution of 1988, more than 466 thousand rules related to the tax area have been issued, including eighteen constitutional amendments (CNJ, 2022).[3] This scenario contributes significantly to the complexity of the tax system. In relation to the three spheres of government, the Federal Court of Accounts (TCU) observes that the absence of a single document that consolidates all the rules related to each tax, as determined by article 212 of the National Tax Code, makes it very difficult for taxpayers to manage taxes and, consequently, to comply with tax obligations (TCU Ruling 1,105/2019[4]).

The plethora of regulations undoubtedly increases the cost of compliance for taxpayers, increasing tax litigation. According to the report published by Insper's Taxation centre in December 2020, as part of the "Tax Litigation Observatory" survey, the total number of administrative and judicial disputes in the tax area in Brazil in 2019 corresponded to 75% of GDP. The report points out that, in 2013, the median of these disputes in OECD countries was 0.28% of GDP, while for a group of Latin American countries it was 0.19%. (CNJ, 2022)[5].

3.3 Individualism versus Collectivism

Brazil, with thirty-eight points in the collectivism index, demonstrates a significant alignment with a culture in which collective well-being prevails over individual interests. The collectivist nature of Brazilian culture can foster a sense of community and shared responsibility among public sector employees, which is essential for effective teamwork in public administration. However, it can also generate challenges, such as nepotism and favouritism, where personal relationships can override meritocratic evaluations in hiring and promotion processes (Martins et al., 2013).

In the tax context, this cultural characteristic manifests itself in a bias towards redistributive policies, which aim to promote social equity and cohesion through mechanisms of fiscal progressivity and tax benefits. The predominance of collectivism in Brazil is reflected in the justification and implementation of these policies, which highlight the need for redistribution and the confrontation of social inequalities. However, this orientation may compromise the search for efficiency in tax administration and, consequently, the collection of public resources necessary for the implementation of public policies.

In addition, the expansion of tax benefits, in the Brazilian case, ended up generating an economic distortion that, instead of reducing social and regional inequalities, ended up widening them. In this sense, constitutional amendment 132/23 brought the extinction of the tax benefits granted by the states, except for the cases provided for in the Constitution itself, aiming to standardize taxation and reduce unfair competition between the states.

3.4 Masculinity vs. Femininity

With forty-nine points, Brazil is close to the global median in the dimension of masculinity, indicating a balance between values linked to assertiveness and

3 relatorio-contencioso-tributario-final-v10-2.pdf, accessed on 25 October 2024

4 Textual research | Federal Court of Accounts, accessed on 25 October 2024

5 relatorio-contencioso-tributario-final-v10-2.pdf, accessed on 25 October 2024

competition (associated with masculinity) and those related to cooperation and quality of life (associated with femininity). This profile suggests that Brazilian culture tends to value both success and achievement and social harmony and collective well-being.

An example of this characteristic is the emergence of tax cooperation programs in the last decade, which reflect an effort by the Brazilian tax administration to balance efficiency in collection with a more collaborative and inclusive treatment among taxpayers. In this sense, according to the rules established in RFB Ordinance No. 402, dated March 7, 2024, 20 large companies were certified for the pilot phase of the cooperative tax compliance program – Confia.

Additionally, Bill (PL) No. 15/2024[6], sent to the National Congress earlier this year, presents a comprehensive proposal aimed at regulating tax and customs compliance programs. PL No. 15/2024 establishes guidelines for the operationalization of these programs, in addition to addressing the figure of the persistent debtor and defining the conditions for the granting and use of tax benefits. The initiative represents a relevant normative advance, by proposing a regulatory framework that seeks to promote greater legal certainty and efficiency in the relationship between the Tax Administration and taxpayers.

3.5 Long-Term vs. Short-Term Guidance

With forty-four points, Brazil shows a slight inclination towards short-term orientation, which indicates a tendency to prioritize immediate solutions, often to the detriment of long-term strategies. This cultural trait can impact the formulation and implementation of public policies, in which short-term gains can be prioritized over long-term strategic planning. This short-term orientation also contributes to volatility in the regulation of tax obligations, characterized by frequent regulatory changes at the infra-legal level.

Such instability compromises the predictability of the fiscal environment, negatively affecting investor confidence and taxpayers' legal certainty. The constant adaptation to the new rules creates a scenario of uncertainty, harming the country's financial planning and competitiveness in the international scenario. The implications for public administration of a short-term orientation are significant, as such guidance can lead to reactive rather than initiative-taking governance, undermining the effectiveness of public sector initiatives aimed at addressing complex societal challenges (Tsakumis et al., 2007)

However, after 40 years, the National Congress approved constitutional amendment No. 132/2023[7] that enacts the Brazilian tax reform, regulating several aspects of the collection of the Tax on Goods and Services (IBS), the Social Contribution on Goods and Services (CBS) and the Selective Tax (IS), which will replace PIS, COFINS, ICMS, ISS and part of the IPI. The text defines the reduction percentages applicable to different sectors and products, in addition to providing for tax benefits, such as presumed credit, reductions in the calculation basis, immunities, exemptions and other tax incentives. The reform also included the return of taxes to low-income consumers through a cashback system.

3.6 Indulgence vs. Restriction

With fifty-nine points in the indulgence dimension, Brazil is characterized as an indulgent society, where pleasure and personal satisfaction are priority values. This indulgent tendency can generate challenges in the construction of the state budget, where public resources

6 Portal of the Chamber of Deputies, accessed on 25 October 2024

7 Constitutional Amendment No. 132, accessed on 25 October 2024

can be directed to initiatives that prioritize gratification or immediate returns, to the detriment of long-term sustainable solutions (Minkov et al., 2017). In the context of tax administration, this dimension can result in a lower internalization of tax obligations as a fundamental duty (Nabais, 1998), with the payment of taxes often perceived as a restriction on individual freedom.

This tendency to indulgence can fuel a culture of resistance to paying taxes and encourage tax evasion, aggravating the difficulties in implementing fiscal policies that demand greater commitment from the population. The tax administration, faced with this scenario, faces the challenge of dealing with the negative perception of compliance with tax obligations, often being forced to resort to coercive mechanisms to ensure tax compliance. In this way, cultural indulgence makes the task of promoting a collective tax awareness, essential for the sustainability of public policies, more complex.

4. RESEARCH LIMITATIONS

Despite the recognized importance attributed to the studies of human values based on research on national cultures conducted by Hofstede, the dimensional model idealized by Hofstede (2003) has been questioned from several angles, the most prominent of which are summarized below.

Regarding the methodological approach, Orr & Hauser (2008), as well as McSweeney (2002) direct their criticism to the formal aspect of the construction of the questionnaire applied by Hofstede (2003), especially because the base questions were initially developed to obtain information about job satisfaction within IBM, and not to evaluate cultural values.

Regarding the research design, McSweeney (2002) asserts that the conclusions made by Hofstede were based on insufficient samples, because, although 117,000 questionnaires were conducted, only the results of forty countries were used, and, of this set of countries, in only six of them were more than one thousand respondents obtained. In a total of fifteen countries, the number of respondents is less than two hundred.

Also, according to McSweeney (2002), the breadth of the sample was limited in scope, characterized by the choice of certain IBM categories, excluding several others, weakening the sample. In the same sense, Orr and Hauser (2008) state that when the research was first conducted by Hofstede, the majority of IBM employees were male, thus reducing the female perspective in the sample.

In another dimension, some authors postulate criticisms about the obsolescence of the original data collected for Hofstede's research. With the world and culture having changed so radically since Hofstede's research began, for Orr & Hauser (2008) it would be difficult to rely on the survey data to understand the current national culture. In the same sense, Holden (2002), when criticizing the obsolescence of the data collected, states that the research refers to a world that no longer exists, a new world resulting from changes in the political, economic and cultural environment (end of the cold war and the decline of communism), as well as impacted by the various transformations that occurred in the work environment.

It is important to consider that the fact that the world has changed radically does not affect the importance of reflections on administrative models and cultures, as well as Hofstede's dimensional paradigm. On the contrary, such cultures and models allow us to understand the logic and implications that arise from the changes in social context themselves (Hofstede, 2009).

In this sense, Beugelsdijk, Maseland and van Hoorn (2015) assert that, in fact, national cultures have undergone transformations, with a tendency towards the hypertrophy of individualism, the expansion of indulgence and the reduction of the distance to power in a similar way in all the nations investigated, allowing the inference about the current validity of Hofstede's investigation.

FINAL CONSIDERATIONS AND SUGGESTIONS FOR FUTURE RESEARCH

The main objective of this article was to analyse the model of cultural dimensions proposed by Hofstede (2003), investigating its dominant elements and, singularly, identifying the effect of each of the dimensions on the tax environment, intending, with this, to enable a greater understanding of the context of the national culture presented and the main criticisms offered by the specialized literature.

Overall, the analysis of Hofstede's cultural dimensions among CIAT countries, including Brazil, reveals how cultural factors tend to influence the way tax administrations operate and how citizens perceive tax policies. Brazil, as well as other Latin American countries, influenced by the administrative traditions of the rule of law of Continental Europe (*Rechtsstaat culture*) has a high distance from power, an aversion to uncertainty and a collectivist orientation, which favours a centralized tax administration, with a focus on legality and control, highly regulated and oriented towards income redistribution, but that face challenges related to long-term planning and social acceptance of tax obligations. In contrast, countries with an Anglo-American matrix (culture of public interest), with less aversion to uncertainty and greater individualism, such as Canada, the Netherlands and the United States, tend to have more transparent, flexible and long-term-oriented tax administrations.

From the analyses conducted in this article, several possibilities for expanding the study are identified, with the aim of deepening the understanding of the influence of culture on tax administration. In this sense, several avenues of future research emerge as natural developments of the present study.

An interesting line of research would be the longitudinal analysis of the evolution of cultural dimensions proposed by Hofstede, especially with regard to the distance from power and the aversion to uncertainty, in tax administrations of different countries over time. Such an approach would allow us to examine how these cultural dimensions have transformed in recent decades and how these changes impact tax reforms and interactions with taxpayers.

Another line of inquiry would be to explore how diverse cultural dimensions (distance from power, individualism versus collectivism, and aversion to uncertainty) influence the success or failure of tax reforms. Comparative studies among CIAT member countries could analyse how these cultural factors shape the social acceptance of reforms and, consequently, their effectiveness.

The third research suggestion would be focused on the comparison between cooperative and punitive tax approaches in cultures that are distinguished by the dimensions of masculinity versus femininity. In more "masculine" cultures, where values such as assertiveness and competitiveness are dominant, it would be possible to verify a trend towards the adoption of punitive approaches and stricter inspections. On the other hand, in "feminine" cultures, where cooperation and collective well-being are prioritized, the adoption of cooperative tax approaches, such as tax education and incentives for compliance, may be more prevalent. Research could look at the effectiveness of these different approaches in promoting voluntary tax compliance.

Another aspect to be investigated would be the relationship between the predominant collectivism in certain countries and the implementation of redistributive fiscal policies. Collectivist cultures tend to value social cohesion and mutual protection, which could favour the adoption of more progressive tax systems. By comparing countries with elevated levels of collectivism and those with more individualistic cultures, it would be possible to identify how these cultural traits influence income redistribution strategies through fiscal policy, as well as provide an empirical basis for the development of more equitable tax systems.

The cultural dimension of indulgence versus restraint also deserves to be investigated in the context of tax evasion. More indulgent cultures, which value personal satisfaction and individual freedom, may have higher rates of tax evasion, as tax obligations are perceived as restrictive to freedom. In contrast, cultures with a greater inclination toward restriction may foster a stronger sense of social duty, with lower tolerance for avoidance. Future research could focus on identifying effective strategies to address tax evasion in indulgent societies, as well as analysing the impact of cultural constraint on tax compliance.

Long-term versus short-term guidance also provides a significant investigative opportunity. Countries with a long-term orientation tend to adopt tax policies that aim at long-term economic and social sustainability, while short-term-oriented cultures prioritize immediate collection, often to the detriment of future fiscal stability. An interesting line of research would be to explore how these temporal orientations affect the implementation of fiscal reforms, particularly in CIAT member countries, and how the transition to a long-term view can be promoted in cultures that traditionally favour the short term.

Finally, an important future contribution would be the comparison between the scores attributed by Hofstede to the cultural dimensions of each country and the reality observed in the tax administrations of these nations.

This study could verify whether the theoretical cultural characteristics attributed to each country effectively correspond to the tax practices adopted. The analysis of discrepancies or convergences between Hofstede's scores and the administrative reality of the nations investigated would provide a deeper understanding of the interaction between culture and tax administration. This could also provide subsidies to adjust fiscal practices to specific cultural contexts, optimizing the effectiveness of fiscal policies.

These suggestions for future research offer a vast field of possibilities to deepen the study of cultural influences on tax administrations. Hofstede's analysis of cultural dimensions in the fiscal context provides a robust theoretical framework, but there is much room to expand this analysis beyond theoretical correlations, developing empirical and comparative investigations that can contribute to the formulation of more effective fiscal policies adapted to the cultural particularities of each country. Top of Form.

In conclusion, it is important to highlight the fundamentality of the study of culture in the scope of both public and private administration, as well as in the field of anthropology, ensuring that culture as a sign allows us to enter a deep field of reflection, that is, that of the symbolic dimension that structures the way of acting and thinking of organizations and their forms of management.

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Communication, Trust and Tax Compliance: A Case Study on the Newsletter of the State Revenue of Rio Grande do Sul – RS (Brazilian Subnational Public Finance)

Anderson Taironi Lippert Scheid
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SYNOPSIS

Voluntary compliance is a fundamental issue in a modern and efficient tax administration. The aim of this paper is to present a study on the impacts that effective institutional communication and taxpayer confidence have on the levels of voluntary tax compliance. The work is original, given the field research carried out. In addition, there are theoretical contributions since the interrelated approach to the topics is innovative and fills a gap in the literature. The method used was interviews with employees of the State Receipt of Rio Grande do Sul – RS (Brazilian subnational public finance) in order to discuss the current model of legislative change newsletter adopted by the institution, as well as collect suggestions for improvement. The study found the positive implications that effective communication with the taxpayer and trust in the tax institution has on voluntary compliance and the Taxpayer-Tax Authority Relationship.

KEYWORDS: Voluntary tax compliance, effective communication, Trust, Tax morality, Tax Administration Diagnostic Assessment Tool (TADAT).

CONTENT

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INTRODUCTION

The literature presents studies that address elements that help to generate trust between Tax Authorities and taxpayers and the resulting beneficial consequences for both parties. In this sense, taxpayers will have higher levels of confidence when they believe that the information they receive from the tax institution is accurate, timely and/or useful because the amount of information reduces vulnerability (Siahaan, 2012).

There are also studies that relate how certain attitudes of the tax authority drive certain types of tax compliance by taxpayers. Power measures based on control and punishment result in mandatory compliance, while confidence-building measures should lead to voluntary cooperation (Kirchler, Kogler & Muehlbacher, 2014).

From the perspective of communication with taxpayers, there are several studies that suggest the use of information technology (ICT) tools. For example, the Organization for Economic Cooperation and Development argues that the use of innovative tools makes it possible to increase the personalization of communication and self-service services available to taxpayers, even in real time (OECD, 2019).

However, there is a lack of an approach in the literature that relates the topics "communication, trust and tax compliance" in the same study. Therefore, the present work explores this gap regarding the impacts that effective institutional communication has on the levels of voluntary tax compliance by increasing the taxpayer's feeling of trust in the tax institution. In addition, our goal is to collect suggestions for improving the current flow of the newsletter, through interviews, to add value to the service of the tax institution and positively impact our levels of voluntary compliance and conduct discussions and academic considerations on the topics covered.

1. DESCRIPTION OF THE PROBLEM

Essentially, the Receita Estadual – RS monitors due compliance with the legal norms related to the occurrence of trigger events committed by taxpayers (companies and individuals), as well as their consequences in relation to the calculation of taxes and collection. Thus, in order to achieve this purpose, far beyond the simple use of the coercive power constitutionally conferred on it, the institution also establishes numerous forms and channels of communication with taxpayers.

In this scenario, communication is carried out in a two-way flow: (i) taxpayers report their tax operations and calculations through tax returns, provide the requested information through summons, inform corporate changes, etc.; and (ii) the Tax Authority requests information clarifications, communicates innovations in systems and, mainly, informs about changes made in tax legislation.

As the sender of the message, the communication of legislative changes by the Tax Authorities to taxpayers occurs, fundamentally, through publication in the Official State Gazette (DOE). There is also a newsletter on legislative changes that is sent to emails voluntarily registered by taxpayers, see example in Annex II. However, this current communication process is incomplete and presents opportunities for improvement.

Publication through the DOE is required by law. Although all interested parties can access it for free, the instrument has, in practice, a limited scope, since a large number of government acts are published every day, which makes it complex to search for selective information of specific interest to each taxpayer. Too much information pollutes the context and truncates communication.

The current communication process via newsletter is incomplete, since it does not cover all taxpayers who must be informed of legislative updates, considering that the registration of emails is conducted by the taxpayers themselves on an optional and voluntary basis. In addition, the system, like communication through the DOE, also

sends excessive information (all legislative changes from all economic sectors to all registered emails).

In this way, the current flow of communication does not provide the opportunity to know relevant information for each specific taxpayer (by segment, by economic category, by tax regime, by size), which characterizes an information gap and potentially reduces voluntary tax compliance, understood as the spontaneous action of the taxpayer in fulfilling his tax obligations, without effort on the part of the inspection.

This fact was verified by TADAT (*Tax Administration Diagnostic Assessment Tool*), an international entity that evaluates good practices applicable to tax administrations, see D02. In the evaluation conducted in August 2021, the Receita Estadual – RS received only a grade of "C" in the dimension "*A3-8-2 – To what extent is the information updated in relation to tax laws and policies*", from the indicator "*A3-8 – Comprehensiveness, timeliness and accessibility of information*", in "*ARD 3 – tax compliance support*", in which, among others, the following item was evaluated:

How are taxpayers informed about changes in the laws that affect them?

Thus, having identified the opportunity, the present work aims to discuss the topics "communication, trust and tax compliance" addressed in an interrelated way, thus filling the gap identified in the literature, in addition to collecting suggestions for improvement regarding the current flow of communication with the taxpayer.

Literature

Communication, trust and tax compliance.

The quantity and, especially, the quality of the information provided by the tax authority is associated with higher levels of taxpayer confidence in the institution. And the higher this level of trust, the greater the voluntary tax compliance.

Taxpayers will have higher levels of trust when they believe that the information they receive from the tax institution is accurate, timely and/or useful because the amount of information reduces vulnerability (Siahaan, 2012). The amount of information or the adequacy of the information refers to whether taxpayers feel adequately informed. Therefore, these arguments suggest that there is a strong relationship between communication and trust.

If there is a growing sense of inability or unwillingness on the part of tax authorities to sanction tax evaders, the resulting feeling of injustice tends to result in lower levels of voluntary compliance and, consequently, lower tax collection. This issue is especially pressing in Latin American and Caribbean countries, where often more than half of the workforce works in the informal economy. Institutions are important in all countries, but they are especially crucial in developing countries, where their quality is generally lower than in developed countries. Due to the crucial role of these institutions, improving tax compliance requires focusing mainly on improving social institutions, especially the social norm of compliance (or tax morality) and the tax administration itself (Alm and Martínez-Vázquez, 2007).

Power and trust-building measures are supposed to stimulate different motivations in taxpayers to pay taxes. Power measures based on control and punishment result in mandatory compliance, while confidence-building measures should lead to voluntary cooperation. In addition, the power and trust in the authorities are indicators of the interactive climate that prevails between taxpayers and the authorities. A synergistic climate is characterized by a high mutual trust between the two in which taxpayers are willing to comply, and the tax administration provides customer-oriented services. In this way, the importance of trust as a precondition for voluntary cooperation is emphasized. It is also noteworthy that tax regulation occurs on a slippery slope and the authorities are forced to find the right balance between offering taxpayer support services and management with an iron fist (Kirchler, Kogler and Muehlbacher, 2014).

In this way, communication can be a powerful tax compliance tool available to the leaders of tax institutions, as it increases the degree of trust of taxpayers in the Tax Authorities. After all, taxpayers who see, hear and understand tax collection plans are more likely to pay taxes voluntarily (Siahaan, 2012).

In a survey conducted with large global companies, it was found that several approaches are being implemented that increase the available communication channels between taxpayers and tax administrations, as well as improve existing channels. These approaches range from participation at the time of tax policy development to improving requests for information during audits. They have a common interest in facilitating more effective communication and reducing disputes (Organization for Economic Cooperation and Development – OECD, 2022).

In this sense, the possibility of sending notifications to the taxpayer's electronic address is a new opportunity to make further progress in an area in which the interest of the tax administration to improve voluntary compliance with tax obligations fully coincides with the taxpayer's interest in incurring the lowest possible costs in fulfilling said obligations (Inter-American Center of Tax Administrations – CIAT, 2020).

In addition, the creation of an Electronic Mailbox or an Electronic Address enabled in the virtual office of the tax administration is a technologically simple option that guarantees the taxpayer knowledge of administrative acts and allows for greater administrative speed, along with a significant reduction in costs for the public entity. (Sánchez, 2019).

Therefore, it is essential that the tax authority has the identification of taxpayers and their proper registration, culminating in the creation of a complete, timely, dependable and reality-based registry database. This registration, combined with the creation of the Electronic Mailbox (or Electronic Tax Address (DT-e)), allows notifications to be sent to taxpayers.

Thus, the ideal Tax Code model suggested by the Inter-American Center of Tax Administrations – CIAT, an international entity that studies and gathers the best practices in the sector, highlights the obligation of the tax administration to notify taxpayers of resolutions and laws that affect their rights and interests, since the effectiveness of its laws is conditioned on the issuance of these notifications (CIAT, 2020).

Of course, voluntary compliance can be strongly affected by elements outside the control of the tax administration, such as the economic situation of the company or the country, changes in the reporting environment (for example, a shift from salaried work to self-employment) and the perceived fairness of tax policy, among other things. However, there are several areas in which tax administrations can act to support voluntary compliance, such as the education and communication of social norms and the provision of effective services to taxpayers.

Therefore, it should be noted that the use of innovative tools allows a greater personalization of the communication and self-service services made available to taxpayers, even in real time (Organization for Economic Cooperation and Development – OECD, 2019).

The economic feasibility of implementing information technology (ICT) tools applied to tax administrations has already been studied in several countries, such as Slovenia, Italy and Romania. Investment in ICT cannot be treated as a one-time long-term investment, as constant changes in the information technology world require constant updating, adaptation and development. This means that the overall cost-benefit ratio is not necessarily the best and ICT cannot be recommended as a tool for government performance when considered in purely financial terms (Dečman, Stare and Klun, 2010).

Therefore, it is emphasized that the costs of ICT can be greater than the savings (cost reduction) if non-financial benefits or difficult to measure financially are not considered. On the other hand, the non-financial

benefits are high (greater satisfaction, better transparency, easier control and better data processing, etc.) and can offset the costs of ICT and maintain its role as an important tool for better government performance.

Method

To conduct interviews with employees of the Receita Estadual – RS who use the newsletter and who would potentially be involved in the redesign of the process. The interview protocol is included in Appendix I.

The interviews will aim to verify the impacts of communication on tax compliance, in addition to collecting suggestions to improve the current flow of the newsletter.

Unit of analysis: Flow of communication of legislative changes to taxpayers – newsletter.

Observation unit: Members of the groups and divisions presented in Table 1.

Table 1
Profile of the interviewees

Interview	Position	Sector	Experience in position (years)
E01	AFRE	Sectorial Specialized Group – GES	7
E02	AFRE	Sectorial Specialized Group – GES	37
E03	AFRE	Control division – DF	7
E04	TTRE	Tax Consultation Division – DCT	3
E05	AFRE	Control division – DF	7
E06	AFRE	Taxpayer Relations Division – DRC	7
E07	AFRE	Control division – DF	13
E08	AFRE	Taxpayer Relations Division – DRC	13
E09	AFRE	Tax Information and Technology Division – DTIF	16
E10	AFRE	Deputy Regional Delegate – DRE	26

Source: *authors*
Data collection techniques: Documents and interviews.

Table 2
Documents list

Document	Type	Source	Content	Date
D01	E-mail:	Tax Consulting Division – DCT	Number of emails registered in the Newsletter.	19/09/2023
D02	Report	TADAT	TADAT – RS evaluation report.	January/2022

Source: *authors*
Data analysis: content analysis

2. ANALYSIS OF THE INTERVIEW

Basis of registration

The interviews were useful to diagnose the importance of the cadastral base for the work conducted by the State Revenue – RS on several fronts. In this regard, as highlighted in E07, "*registration is the first part of the inspection*". In addition, the current registration base is considered quite broad, including data from rural producers. E05 emphasizes that "*we still need to include data on Individual Micro-entrepreneurs (MEI), but this project is already under development.*"

Aware of the importance of the registry for the institution, the interviewees pointed out their current weaknesses and the improvements that could be implemented to strengthen it. In this sense, one of the weaknesses is the taxpayer's obligation to register, in addition to the State Receipt – RS, with several other public bodies, such as the Federal Revenue Service, the Chamber of Commerce and municipalities, for example. There is an established flow of exchange and synchronization of this information between institutions through Redesim. With this, "*it was possible to verify that the register of Receita Estadual – RS is not always up to date, because occasionally there are discrepancies in the information between the registers*", as noted in E08. Regarding these differences, E07 adds that "*this results in some lack of credibility in the cross-information in the records*".

Regarding this aspect, a possible solution would be for the State Revenue – RS to require from the taxpayer only the information that they "own", that is, that they manage. According to E06, "*in this way, the rest of the information would be extracted directly from the databases of other institutions*". This procedure would require a greater integration than is currently observed between the different public agencies involved, but it would greatly facilitate the day-to-day of taxpayers, since they would have to report less data from each of the institutions that maintain the registry bases.

Another point raised was that, although the registration base has improved a lot in recent years, "*its main weakness is that it depends on the information provided by taxpayers*", highlights E03. Thus, an incorrectly filled in email address would be enough, for example, to hinder communication between the Tax authorities and the taxpayer. This same feature was also mentioned in E07, highlighting that "*another problem is that the information provided by the taxpayer, or the accountant is not always correct. For example, due to ignorance or bad faith, the National Classification of Economic Activity (CNAE) reported may be different from the one actually operated by the company*".

As an alternative, to correct this discrepancy between the informed CNAE and the real CNAE, the Virtual CNAE project was mentioned, in which the system considers the operations conducted by the company, through the tax documents issued by it and artificial intelligence, to determine the correct CNAE. "*This project is underway, but it is not finished, as there are still problems in some sectors*", highlights E07.

Finally, it was suggested to periodically conduct a "registry inspection", a practice that consists of identifying taxpayers who are not registered, but who should be registered; taxpayers who are registered but do not reflect the real situation; and taxpayers who are registered, but who should not be registered. "*This practice is a guideline of TADAT and could be carried out using external information sources, as prescribed by good tax administration practices*", highlights E09.

Sectoral segmentation

The State Receita – RS uses the CNAE informed by the taxpayer in the registry to perform the sectoral segmentation. According to interviews, the specialized model by segment has proven to be quite useful and suitable, *"already that facilitates the work since it allows us to create specific tax networks for each sector and treat all taxpayers of the same sector in the same way, seeking tax justice*", notes E01. A similar argument is expressed

in E02: "*when you have a segmentation, you can make a comparison of equals, of a sector, of a division. Without this, there would be no way to give the same deal*".

In addition, the advantages of the specialized model in relation to the regionalized model – used until 2019 – were highlighted, in which taxpayers could eventually receive different treatments due to differences in work scheduling of regional police stations, reaffirming the importance of tax justice. In this sense, "*the change to specialization was a great advance, a very successful path, and today the inspection, monitoring, billing and services sectors work considering this paradigm*", highlights E08.

In the current model, the taxpayers representing 95% of the VAT (ICMS) collection in Rio Grande do Sul are under the umbrella of a specialized sectoral group (GES), *"generating important impacts on the inspection work and on the specialization of auditors, both in terms of speed and quality*", according to E05.

A warning point raised by the interviewees was the quality of the sectoral segmentation since it depends on the quality of the information (CNAE) provided by the taxpayer. In this sense, according to E02, "*if the sectoral segmentation is not very close to reality, this will compromise the analysis and the model*". Thus, the verification of records and the Virtual CNAE project, mentioned in E10 and E09, respectively, become relevant as possible solutions to this challenge. In addition, the creation of sub-layers within the current segmentation was suggested, in order to facilitate communication with taxpayers from even more specific niches.

Effectiveness of the electronic tax domicile

The creation of the Electronic Tax Domicile (DT-e) by the State Receita – RS as a means of communication with taxpayers was considered by the interviewees as a great advance in relation to the previous model, which largely depended on postal shipments, in addition to being more aligned with the institution's own desires to be a "Digital Revenue agency".

However, the effectiveness of communication through the DT-e was widely questioned, especially in relation to small taxpayers, given the difficulties they face in accessing the system and the low frequency with which they do so. In this way, most of the communication ends up becoming reviewed in a period of time, as highlighted in E02: "*there are several taxpayers that I have already analyzed, that I checked their DT-e and saw that they have large amounts of documents that were sent to them and were not read. So, that unspoken 10-day science kicks in*".

Aware of this difficulty, some of the interviewees reported that they make additional contact with the taxpayer, via telephone or email, in order to increase the knowledge of the documents sent by the DT-e, especially those of greater importance, as highlighted in the E01: "*to increase effectiveness, I usually notify the taxpayer by phone or email that there is a new document in their electronic mailbox, requesting recognition*".

Other highlights that compromise the effectiveness of communication by DT-e are the high number of messages, not all important, sent by this method, in addition to the fact that it is "*considered as a novelty that society is still adapting to*", according to E10. In this sense, there were several suggestions for improvement, such as the use of DT-e in a cell phone application; the use of the platform GOV.BR as a form of access for those who do not have a digital certificate, generally small taxpayers; and sending messages via SMS or WhatsApp. As highlighted in E09, "*DT-e is good, but to be more effective, it should be combined with other information tools."*

Impacts of institutional communication on tax compliance

The interviews showed that institutional communication has a strong influence on tax compliance, both voluntary and coercive. Regarding the first, *"it helps a lot, especially when it comes to levels 1 and 2 of the base of the compliance pyramid, who are taxpayers who are unaware of the legislation, who are not structured to defraud*", highlights E05. In this regard,

the respectful relationship between tax authorities and taxpayers is fundamental for voluntary tax compliance, which leads us to the concept of tax morality. *"If the tax authorities have a good image and good communication, this certainly has a positive influence on voluntary compliance",* highlights E09.

Some improvements were suggested for institutional communication. For example, "*when there is an important change in the legislation, such as the arrival of the substitution of the tax (ST), a face-to-face event could be held at the FIERGS with entities from the affected sectors and accountants to explain and resolve doubts, in the model of a seminar",* it suggests E07. In addition, the communication requires confidence that the position of the Receita Estadual – RS will not change soon, that is, it requires legal certainty in that position. *"Changing the interpretation of something all the time is extremely detrimental to the Taxpayer-Tax Authority Relationship. It is bad to have no orientation, but it is worse to change it all the time",* highlights E10.

In relation to repressive tax compliance, the dissemination of news, in the main media and on the institution's own website, about repressive operations carried out by the Receita Estadual – RS increases the perception of risk among taxpayers. According to E03, "*the fact that they have at some level, information that the State Receita is operating in that segment or in those operations, has a positive effect on compliance, in the sense of "pushing" them to act correctly*".

Effectiveness of the current newsletter flow

The interviewees were unanimous regarding the lack of effectiveness of the current flow of the newsletter of legislative changes from the point of view of sectoral specialization, in particular due to its generic nature. According to E03, *"as for the sectoral effectiveness, I do not see that happening, because our newsletter is general, it is not divided into segments. The partner who has a footwear company is receiving legislative changes in the medical sector, for example*".

Thus, it seems that although the sectoral segmentation of taxpayers exists in the registration database, it is not used as a tool to increase the effectiveness of communication, as highlighted in E07: *"Today we are sending everything to everyone. Thus, the taxpayer will receive a lot of information that does not interest him because it is not specific to his sector. The sectoral specialization that we have in the registry does not serve to improve communication with taxpayers."*

The consequence of this generic model is a growing under-utilization of the tool, considering that "*it ends up not encouraging the taxpayer to continue viewing the service if they receive several communications that are not from their sector*", as highlighted in E10. This reasoning is corroborated in E01: *"due to the large amount and generality of the communication, it can generate disinterest on the part of the taxpayer."*

Suggested strengths and improvements for the current flow of the newsletter

The main strength of the current flow highlighted by the interviewees was the very existence of the legislative update tool available to taxpayers for free, especially compared to other tax authorities.

"It seems like a small thing, but you have to see it as a strong point. There must be some state of the country that does not have this flow or newsletter, so the taxpayer is left only to keep updated through the Official Gazette", highlights E07. In line with this argument, E10 highlights that "*worse than seeing everything is not seeing anything. At least, we currently have this tool to disseminate information. We are quickly updated, in a very short time."* In addition, the ease with which taxpayers register on the tool was highlighted, such as "*a system that works*", notes E04.

As for the suggested improvements, the most outstanding one was to allow the selective sending of legislative changes to the specific sectors affected by them, in order to increase the degree of effectiveness in communication. This change would require greater

assertiveness in the sectoral segmentation of taxpayers in the registry base through the CNAE, as highlighted by E03: *"to have a well-segmented registry base so that it is possible to direct the content of these legislative changes to those who are really interested in it, that is, to create a sectoral specialization within the newsletter"*. In addition, it would be necessary to allow taxpayers, *"when registering, choose which topics or sectors they want to be informed about",* highlights E04.

In addition to this separation by sectors, it was suggested to separate the messages between those addressed to the partner and the accountant, according to their content. In addition, *"the text could be better organized, separated into sections by type of norm (decree, regulation, normative instruction), by type of obligation (main or accessory) and by category (General or Simple National)",* as specified in E07.

In relation to the internal audience of the State Receipt – RS, it was suggested that everyone register officially in the tool, something that currently does not happen, because it is optional. According to E10, "*legislation is a working tool, which is why the newsletter should be mandatory for all colleagues. Everyone should be officially registered to receive it*".

If these improvements are implemented, the interviewees pointed out that there will be numerous institutional and social benefits, with an emphasis on greater voluntary tax compliance. "*Those interested taxpayers in working correctly would be aware of the changes and could comply with the legislation, correct the mistakes made and stay at the base of the compliance pyramid*", highlights E02. In the same vein, E07 notes that "*consequently, the errors that the taxpayer could make due to ignorance of the legislation tend to be reduced. And that is what we want. Inform them so that they can comply correctly, increasing tax compliance*".

In this regard, it should be noted that one of the pillars of the institutional program of Receita Estadual – RS called "Receita 2030+" is precisely voluntary compliance. However, it does not necessarily mean raising more, because, as E03 highlights, "*the main idea is tax compliance and not collecting more or less. It is up to the taxpayer to comply with the legislation, which is overly complex, so it is not always easy to comply*".

In addition, other outstanding gains were the reduction of litigation and the improvement of the institutional image and, therefore, of fiscal morale. "*In the institutional aspect, it will improve the image of the State Receita – RS before the taxpayer. It will generate value, because the taxpayer will always be updated with the information that applies to his business. And this improvement in the relationship between the tax authorities and the taxpayer will reduce the need for litigation, since the taxpayer will be aware of his obligations*", suggests E01.

Interestingly, it was found that not all interviewees were aware of the newsletter, suggesting the need for greater dissemination of this tool to internal and external audiences.

3. DISCUSSION AND ACADEMIC CONSIDERATIONS

The literature is expressed by relating the quantity and quality of the information provided by the tax administration with the confidence that the taxpayer has in that institution, which, as a practical consequence, will interfere with the levels of voluntary tax compliance. Such arguments were echoed in the interviews, for which "*communication tends to help at levels 1 and 2 of the compliance pyramid",* remembering the concept of tax morality as a fundamental element in the search for tax compliance.

In addition, the strong relationship between communication and trust highlighted in the literature of Siahaan (2012) was expressed in the interviews through the need for legal certainty regarding the content reported by the Receita Estadual – RS, as *"changing*

the interpretation of something all the time is extremely detrimental to the Relationship between Tax Authorities and Taxpayers".

In relation to forced (or coercive) tax compliance, the interviews also chose communication as an important tool to achieve this, given the impact that the disclosure of repressive operations carried out by the Receita Estadual – RS has on taxpayers' perception of risk.

Although Dečman, Stare and Klun (2010) relativize the strict cost-benefit assessment of ICTs, the same authors understand that they result, in the long term, in important non-financial benefits for taxpayers and tax authorities, which justifies the investment. In the same sense, CIAT (2020) defends the need for the tax administration to notify taxpayers of resolutions and laws that affect their rights and interests. Although Dečman, Stare and Klun (2010) relativize the strict cost-benefit assessment of ICTs, the same authors understand that they result, in the long term, in important non-financial benefits for taxpayers and tax authorities, which justifies the investment.

The interviews corroborated the thesis of the literature by pointing out that the creation of the Electronic Tax Domicile (DT-e) by the Receita Estadual – RS was a great advance in the way of educating taxpayers about the documents of their interest, especially in the context of "Digital Receita" in which the institution currently operates. However, the degree of effectiveness of communications through this medium was strongly questioned by the interviewees, given the high rate of tacit silence (due to the passage of time) observed, especially in the case of smaller taxpayers.

Aware of this insufficiency, the interviewees suggested ways to make communication more effective, many of them expanding it through new forms, such as institutional applications and WhatsApp. However, in this communication the registration base was strongly recalled as a crucial point, becoming relevant to the implementation of measures to increase the reliability, timeliness and usability of the information contained in the registry, especially if the CNAE reported therein corresponds to the de facto business activity committed by the taxpayer. Therefore, the better the registration basis, the better the institutional communication through the DT-e.

In the relational field between communication and trust, the current newsletter of legislative changes provided by the State Receita – RS to taxpayers is included. In this sense, the interviewees pointed out as a positive point the existence of the service, being a way for, in theory, the taxpayer to stay updated, if he wishes to register for the service. According to a survey conducted by the Tax Consultation Division (DCT), there are currently more than 41,000 registered emails to receive the newsletter, see D01.

However, the effectiveness of communication through the current model was also questioned, especially because there is no direct shipment to taxpayers depending on the economic segment, that is, *"all legislative changes are sent to all registered taxpayers*". For the interviewees, this generalist model usually generates disinterest on the part of the contributors to remain fans of the newsletter, since they will receive a lot of information that will not be of interest to them.

Therefore, improvements to the current process were suggested, including (i) the use of the registration database for the segmented sending of information; (ii) the better arrangement of the content, with separation by type of modified legislative norm and by tax regime (General and Simple National); (iii) in addition to making registration in the tool mandatory for the internal public of the State Revenue – RS. The interviewees pointed out that, if the suggestions are implemented, the expected gains are the improvement of the institutional image of the State Revenue – RS and the reduction of errors committed by taxpayers, therefore, the increase in voluntary compliance.

In this sense, restructuring a process can have a positive impact on the organization's value generation. This

concept agrees with the interviewees' suggestion to make the current newsletter on legislative changes more effective from the point of view of sectoral communication, since, as a result, it is expected to add value to the service provided by the Receita Estadual – RS to the taxpayer.

In this way, this work offers **theoretical contributions** by complementing the studies of Siahaan (2012), of Kirchler, Kogler and Muehlbacher (2014), of the Inter-American Center of Tax Administrations (CIAT, 2020), of Dečman, Stare and Klun. (2010) and the Organization for Economic Cooperation and Development (OECD, 2019), by interrelating the issues of communication, trust and tax compliance, with the insertion of information technology (ICT) tools in the context studied.

In addition, it also offers **practical contributions** to the tax institution in the sense that improvements are suggested to the current flow of newsletters, in order to add value to the service.

CONCLUSION

The literature strongly relates the trust that taxpayers have in the tax authorities with the levels of spontaneous compliance. If trust has the capacity to increase desired voluntary compliance, how could tax institutions improve their tax morale and, consequently, increase the taxpayer's willingness to contribute to the public treasury? Thus, the notion of tax morality gains importance and becomes fundamental to the aspirations of a successful tax administration.

If trust has the capacity to increase desired voluntary compliance, how could tax institutions improve their tax morale and, consequently, increase taxpayer confidence levels? This study concludes that institutional communication can be a good way. Communicating, in an appropriate and timely manner, the necessary contents to the specific recipient can greatly reduce the tax errors committed by taxpayers, in addition to improving the image of the institution in society.

This study described the relationship between communication, trust and tax compliance, as well as collected suggestions for improvement regarding the current flow of the newsletter, based on opinions collected in interviews with 10 (ten) public servants working in different sectors of the State Receita – RS. Therefore, considering the limitations of the sample, it is not possible to extend the results obtained to the institution as a whole, nor to other tax administrations. In addition, this is not an official position of the State Revenue – RS, considering that the authorities of the institution were not interviewed.

In this way, the scope of the future work could be expanded by collecting interviews (i) with taxpayers and/or their representative entities, (ii) with high authorities of the State Revenue – RS and the Treasury Department – RS, and (iii) with tax administrations of other Federated Units. In addition, further studies could be conducted on other aspects that could also influence voluntary tax compliance, as indicated in the literature.

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APPENDICES

1. INTERVIEW PROTOCOL

Contextualization:

This is an Applied Graduate Course Completion Project, which aims to discuss the current model of communicating legislative changes to taxpayers.

In order to obtain higher levels of tax compliance, in addition to better compliance with the precepts of TADAT (Tax Administration Diagnostic Assessment Tool), in the indicator "To what extent is information updated in relation to tax laws and policies", we propose to discuss the redesign of the current flow of communication with taxpayers, allowing the segregation and sending of information segmented by activity/sector.

In this sense, I count on your collaboration in this interview.

Questions:

1. What is your opinion on the basis of registration and sectorial segmentation of taxpayers used in the Receita Estadual – RS, in terms of form and practical usefulness??

2. What is your opinion on the use of the Electronic Fiscal Address (DT-e) by Receita Estadual – RS, in terms of efficiency in communication with taxpayers??

3. In your opinion, what impact does institutional communication with taxpayers have on tax compliance?

   3.1 Do you know the newsletter on legislative changes? Do you know how it works?

   3.2 Do you know where to register to receive the newsletter?

4. What is your opinion on the current flow of communication of legislative changes (newsletter) to taxpayers, in terms of effectiveness from the point of view of sector specialization?

5. What are the strengths of the current flow?

6. What improvements do you suggest to the current flow?

7. If these suggested improvements are implemented, what are the expected institutional and social benefits?

Closing:

Thank you for your collaboration with my final graduate work, as well as with the possibility of making Receita Estadual – RS more effective in its institutional mission.

3. EXAMPLE OF THE CURRENT NEWSLETTER

04/10/2023 - DECRETO 57.236/2023

MODIFICAÇÃO NO REGULAMENTO DO ICMS (RICMS)

Implementação de Convênios a seguir relacionados, aprovado pelo Conselho Nacional de Política Fazendária - CONFAZ, na legislação estadual.

Art. 1º: Conv. ICMS 188/17:

Alt. 6178 - Revoga redução de base de cálculo de ICMS, a partir de 01/01/24, nas saídas internas de querosene de aviação destinadas ao abastecimento de aeronaves de empresa prestadora de serviço aeroviário regular de passageiros que opere rota que atenda município do interior do Rio Grande do Sul. (Lv. I, art. 23, LXVII, "caput", nota 03, e "a")

Art. 2º: Convs. ICMS 188/17, 126/22 e 49/23:

Alt. 6179 - Concede isenção de ICMS, no período de 01/01/24 a 31/12/25, nas saídas internas decorrentes de venda de querosene de aviação destinadas a companhia aérea que opere Centro Internacional de Conexões de Voos - HUB, em aeroporto internacional localizado neste Estado, conforme especifica. (Lv. I, art. 9º, CCXXV)

Alt. 6180 - Concede redução de base de cálculo de ICMS, no período de 01/01/24 a 31/12/25, nas saídas internas decorrentes de venda de querosene de aviação destinadas a companhia aérea que opere Centro Internacional de Conexões de Voos - HUB, em aeroporto internacional localizado neste Estado, conforme especifica. (Lv. I, art. 23, XCIV)

Alt. 6181 - Concede benefício do não estorno às entradas de mercadorias cuja operação subsequente seja beneficiada com a isenção prevista no art. 9º, CCXXV ou com a redução de base de cálculo prevista no art. 23, XCIV. (Lv. I, art. 35, IV, "a" e "b")

(Publicado no D.O.E. de 04/10/23, 3ª ed., pág. 4)

Clique para consultar a norma em nosso Portal de Legislação

04/10/2023 - DECRETO 57.235/2023

MODIFICAÇÃO NO REGULAMENTO DO ICMS (RICMS)

Alt. 6175 - Conv. ICMS 128/94 - Exclui a restrição que limita a redução da base de cálculo do ICMS nas saídas internas das mercadorias que compõem a cesta básica de alimentos do Estado do Rio Grande do Sul, em relação à carne e produtos comestíveis, inclusive salgados, resfriados ou congelados, resultantes do abate de frangos, às mercadorias industrializadas neste Estado. (Ap. IV, item VI, nota)

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Democratizing Tax Law with AI: Enhancing Accessibility for Citizens and Efficiency for Tax Administrations

Antonio Lopo Martinez

SYNOPSIS

This article explores how Artificial Intelligence (AI) can democratize tax law by making it accessible to non-specialists and enhancing the efficiency of tax administrations. Leveraging natural language processing to translate complex legal jargon into plain language, creating personalized educational content like interactive infographics and practical simulations, and deploying intelligent chatbots for immediate, simplified responses to common tax queries, AI plays a pivotal role in improving tax literacy and compliance. The study highlights benefits for tax authorities, including increased transparency, better taxpayer engagement, and streamlined communication processes. Ethical considerations such as ensuring information accuracy and protecting user data when implementing these technologies are also discussed.

KEYWORDS: Artificial Intelligence, Tax law, Tax literacy, Tax administration, Legal technology.

CONTENT

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INTRODUCTION

Tax law has long been recognized for its complexity, posing significant challenges to both individuals and businesses in understanding and complying with their fiscal responsibilities.[1] This intricate web of regulations not only hampers compliance but also exacerbates social inequalities, as those with fewer resources struggle to navigate convoluted tax systems. The proliferation of intricate tax codes and the constant evolution of fiscal policies create barriers that can lead to unintentional non-compliance and widen the gap between different socio-economic groups.

Artificial Intelligence (AI) emerges as a transformative tool capable of demystifying tax law and promoting greater accessibility. By leveraging AI technologies, it's possible to simplify complex tax concepts, provide personalized education, and enhance fiscal transparency. For instance, AI can process vast amounts of legal texts and interpret complex regulations, making it easier for taxpayers to understand their obligations.

Moreover, AI's ability to learn and adapt makes it an invaluable asset in the realm of tax administration. Machine learning algorithms can predict outcomes in tax law, assisting both tax authorities and taxpayers in making informed decisions.[2] This automation not only streamlines operations for tax authorities but also minimizes the compliance burden on taxpayers. In the judicial system, AI can improve efficiency by analyzing legal documents and aiding in decision-making processes, ultimately contributing to a more equitable and transparent fiscal environment.

However, integrating AI into tax law is not without its challenges.[3] Concerns arise regarding the potential displacement of human tax professionals and whether traditional skills and qualifications might become obsolete in an AI-powered environment. Additionally, there is a risk that AI systems, if not properly designed and supervised, could unintentionally reinforce existing inequalities by favoring certain groups over others due to biases in data or algorithms (Roshanaei et al., 2023). Ethical considerations, data privacy issues, and the need for professionals to adapt by developing new skills to work alongside AI technologies present significant hurdles (Carvalho & Aquino, 2023).

Data protection and privacy concerns are particularly significant. The utilization of AI in tax administration necessitates processing vast amounts of personal and financial data, raising issues about data breaches and unauthorized access. Compliance with data protection regulations is essential to ensure that AI applications do not compromise taxpayer privacy. Addressing these concerns requires a multidisciplinary approach involving legal, technical, and ethical expertise.

Moreover, it is crucial to address systemic inequalities that AI technologies might inadvertently perpetuate. AI systems must be designed to resonate with the diverse nuances of the taxpayer population, ensuring that they do not reinforce existing socio-economic disparities. Policies must propel the ideation and integration of AI tools that are finely attuned to socio-economic, gender, and cultural variances, actively working to bridge these divides.

1 For an overview of the complexities involved in tax compliance and the impact on different socio-economic groups, see OECD's report on tax compliance: https://www.oecd.org/tax/administration/tax-compliance-by-design-9789264223219-en.htm .

2 The role of predictive analytics in enhancing tax compliance is detailed in the CNBC article on AI's impact on taxation: https://www.cnbctv18.com/technology/ai-impact-on-taxation-the-hype-and-realities-tax-compliance-deep-learning-and-natural-language-processing-19410701.htm

3 Ethical concerns, data privacy issues, and potential biases in AI systems are critical challenges, as outlined by the OECD's principles on AI ethics: https://www.oecd.org/en/topics/policy-issues/artificial-intelligence.html

Despite these complexities, the potential benefits of democratizing tax information through AI are substantial, offering pathways to reduce errors, enhance compliance, and empower citizens with a better understanding of their tax rights and responsibilities. By embracing AI technologies, tax administrations can improve efficiency, transparency, and fairness in the tax system (Mazur, 2021).

In this article, we explore the transformative role of Artificial Intelligence (AI) in democratizing tax law. The paper is structured as follows: Section 2 discusses AI as a solution for democratizing tax information, highlighting how AI technologies simplify complex tax concepts and enhance fiscal transparency. Section 3 delves into AI technologies in fiscal education, examining tools like natural language processing and machine learning that make tax laws more accessible. Section 4 presents practical applications and success cases from various countries, demonstrating AI's impact on tax compliance and administration. Section 5 addresses ethical and technical challenges associated with AI integration, including data privacy and algorithmic bias. Finally, Section 6 considers the impact of AI on fiscal transparency and citizen empowerment, emphasizing how these technologies foster trust and engagement between taxpayers and tax administrations. The article concludes with a summary of findings and references for further exploration.

1. AI AS A SOLUTION FOR DEMOCRATIZING TAX INFORMATION

Artificial Intelligence (AI) holds the potential to revolutionize the dissemination and comprehension of tax information, making complex tax laws more accessible to individuals and businesses alike. By simplifying tax concepts, providing personalized education, and promoting fiscal transparency, AI can effectively bridge the gap between taxpayers and the intricate world of tax law.

Simplification of tax concepts

The complexity of tax concepts and regulations poses a significant barrier to compliance for many taxpayers. AI technologies can process vast amounts of tax data and legal texts, distilling intricate regulations into understandable language for the average taxpayer.[4] AI-powered tools utilizing Natural Language Processing (NLP) can analyze legal documents and extract pertinent information, simplifying the interpretation of tax obligations (Buriak & Streicher, 2023).

For instance, the Italian tax administration leveraged Big Data and AI to analyze data from various sources, including tax returns and public records. They proactively communicated with taxpayers about potential errors in their income tax returns, inviting them to correct or justify their information (Serrano Antón, 2021). This approach not only simplified the tax compliance process but also resulted in significant payments from taxpayers to rectify their returns, demonstrating how AI can enhance interactions between tax authorities and taxpayers.

Moreover, AI can assist in predictive modeling to identify potential areas of non-compliance. By analyzing patterns and anomalies in tax data, AI systems can flag discrepancies and prompt early intervention, thereby preventing costly audits and fostering a more compliant taxpayer base. In Japan, for example, AI has been employed to detect tax evasion behaviors by analyzing various data points and taxpayer characteristics (Górski et al., 2024).

4 For more on how AI simplifies tax concepts using Natural Language Processing, see the Springer article on leveraging AI in tax systems: https://link.springer.com/article/10.1007/s00146-024-01885-4 .

Personalized education

AI enables the creation of personalized educational platforms that cater to the specific needs of individual taxpayers (Roshanaei et al., 2023). By leveraging machine learning algorithms, AI systems can identify areas where a taxpayer may lack understanding and provide tailored educational content to address these gaps (Maghsudi et al., 2021). AI-powered chatbots and virtual assistants can interact with taxpayers in natural language, answering queries and providing guidance on tax matters in real-time. These tools not only educate but also engage users in a more interactive and accessible manner.

Additionally, AI can simulate tax scenarios based on a taxpayer's unique circumstances, helping them make informed decisions. Predictive analytics can forecast tax liabilities under different conditions, allowing taxpayers to plan effectively and understand the implications of their financial choices (Marino & Monaca, 2023). This personalized approach demystifies tax concepts and empowers individuals with the knowledge to manage their tax affairs confidently.

Promotion of fiscal transparency

AI can significantly enhance fiscal transparency by making information more accessible and processes more transparent.[5] In France, for example, the tax authorities implemented AI systems to collect and analyze publicly available data from online platforms, aiming to detect tax fraud and ensure compliance. This use of AI fosters a more transparent tax environment where taxpayers are aware of the scrutiny and the importance of accurate reporting (Kuznetsova et al., 2023).

Furthermore, AI's ability to handle large datasets and perform complex analyses allows for the development of decision-making matrices that can assist in policy formulation and implementation. Such systems can aid in the visualization of tax data, helping both policymakers and the public to understand fiscal policies and their impacts more clearly (Akhila et al., 2024).

AI also plays a role in improving communication between tax administrations and taxpayers. By automating routine communications and providing clear, data-driven insights, AI supports a more transparent dialogue regarding tax obligations and policies. This openness encourages compliance and builds trust in the tax system, as taxpayers feel more informed and engaged with fiscal matters.

2. AI TECHNOLOGIES IN FISCAL EDUCATION

Artificial Intelligence (AI) is revolutionizing fiscal education by introducing innovative tools that enhance understanding and engagement. By employing advanced technologies such as **Natural Language Processing (NLP)**, **Machine Learning**, and **AI-driven chatbots**, tax administrations and educational institutions are making tax laws and obligations more accessible and comprehensible.

Natural Language Processing (NLP) and machine learning

NLP combines AI and linguistics to enable machines to interpret and generate human language.[6] In fiscal education, NLP processes vast amounts of legal texts

5 For a discussion on how AI enhances fiscal transparency, refer to the MDDP article on AI's impact on tax authorities: https://www.mddp.pl/how-ai-is-changing-the-work-of-tax-authorities/

6 For a comprehensive overview of how NLP and machine learning are transforming tax law, see the article on AI's impact on tax compliance: https://tax.thomsonreuters.com/blog/use-ai-to-stay-on-top-of-tax-regulations-and-legislation/

and tax regulations, simplifying complex information for taxpayers. Machine Learning enhances NLP systems by allowing continuous improvement through exposure to more data, enabling algorithms to learn and make informed decisions. Machine Learning, a subset of AI that focuses on the development of algorithms that can learn from and make decisions based on data, enhances the capabilities of NLP systems by allowing them to improve over time through exposure to more data (Nay, 2021).

These technologies facilitate the analysis and clustering of legal documents, aiding in the identification of patterns and similarities across vast datasets. For example, clustering by similarity of legal documents using NLP techniques can help tax professionals and educators to categorize and summarize tax laws efficiently. Advanced models such as BERT (Bidirectional Encoder Representations from Transformers) have significantly improved the understanding of context and semantics in legal texts,[7] providing more accurate interpretations and summaries. This aids tax professionals and educators in efficiently summarizing and disseminating tax laws.

Moreover, NLP and Machine Learning enable predictive modeling in tax compliance. By analyzing historical data, AI systems can predict potential areas of non-compliance, allowing tax authorities to take proactive measures. In Italy, the tax administration utilized Big Data and AI to analyze data from various sources to detect potential errors in income tax returns, demonstrating the practical application of these technologies in enhancing tax compliance (Serrano Antón, 2021).

AI-Powered chatbots and virtual assistants

AI-powered chatbots and virtual assistants are transforming taxpayer interaction with tax information and services.[8] Utilizing NLP, these tools understand and respond to user queries in natural language, providing immediate and personalized assistance. Chatbots handle routine inquiries, assist with filing tax returns, and offer information on tax obligations and benefits, making tax information more accessible and reducing the need for direct interaction with tax officials (Baliyan et al., 2024).

In educational settings, chatbots can serve as virtual tutors, helping students understand complex tax concepts and stay engaged with the learning material. They adapt to individual learning styles and pace, providing customized support that enhances the overall educational experience. The use of chatbots promotes continuous learning, as they are available at any time to answer questions and provide resources.

An example of this technology in practice is the Inland Revenue Authority of Singapore's "Ask Jamie",[9] an advanced chatbot that uses NLP and data analysis to understand and accurately answer taxpayer questions. By leveraging predictive analytics, "Ask Jamie" efficiently identifies the information taxpayers need, effectively addressing issues related to taxes. Such AI-driven chatbots assist taxpayers in comprehending complex topics and facilitate the efficient resolution of tax-related issues (Baliyan et al., 2024).

7 The use of BERT in legal text analysis is explored in detail in the Springer article on AI's role in legal technology: https://link.springer.com/article/10.1007/s10506-024-09395-w

8 For insights into how chatbots are enhancing taxpayer services, see the article on AI's impact on tax authorities: https://www.vatcalc.com/artificial-intelligence/tax-authorities-adopt-ai-for-tax-fraud-and-efficiencies/

9 Ask Jamie is an AI-powered virtual assistant developed by Singapore's Government Technology Agency (GovTech) to enhance public service delivery, including tax-related inquiries.

The integration of AI-powered virtual assistants also improves efficiency and reduces operational costs in tax administration. By automating routine tasks, these assistants free up human resources to focus on more complex issues requiring expert judgment. Additionally, AI-driven chatbots contribute to fostering fiscal transparency by facilitating clear communication between tax administrations and taxpayers, building trust in the tax system.

3. PRACTICAL APPLICATIONS AND SUCCESS CASES

The integration of Artificial Intelligence (AI) into tax administration has revolutionized the way tax authorities operate, resulting in significant improvements in tax compliance, error reduction, and process optimization. Several countries have pioneered the adoption of AI technologies, demonstrating tangible successes that underline the potential of AI in transforming tax systems.

International examples

In **France**, the tax authorities have leveraged AI systems to collect and analyze publicly available data from online platforms to detect tax fraud and ensure compliance.[10] By employing advanced data analytics and AI algorithms, they efficiently monitor taxpayer activities, identifying potential fraudulent behavior more effectively than traditional methods. This proactive approach enhances the accuracy of tax assessments and deters tax evasion by increasing the perceived risk of detection.

The **Italian** tax administration has made substantial strides by utilizing Big Data and AI to analyze information from various sources,[11] including tax returns, public records, and third-party data. They implemented a program where taxpayers were proactively contacted and warned of potential errors in their income tax returns. This initiative invited taxpayers to correct or justify the information provided, simplifying the compliance process and fostering a cooperative relationship between taxpayers and authorities. Remarkably, this approach led to payments amounting to EUR 1.3 billion in 2017, as taxpayers rectified their returns voluntarily, demonstrating the effectiveness of AI in enhancing compliance and revenue collection (Serrano Antón, 2021).

In **Spain**, the tax agency launched "Hermes," an AI-driven system designed for compliance management.[12] Hermes optimizes the use of international information sources and adapts to emerging risks by incorporating new datasets. It enhances the effectiveness of tax campaigns by providing immediate information that can be used to assess and correct risks within days. This agile system allows the tax agency to respond quickly to potential compliance issues, reducing the time between the occurrence of a taxable event and any necessary interventions.

In the **United States**, the Internal Revenue Service (IRS) has been actively incorporating AI technologies to enhance its tax administration capabilities. The IRS utilizes machine learning algorithms and advanced analytics to improve fraud detection, streamline audits, and provide better taxpayer services. Additionally, the

10 For more on France's use of AI in tax administration, see An article from Connexion France discussing how French tax officials are using AI to track fraud: https://www.connexionfrance.com/practical/how-french-tax-officials-are-using-ai-to-track-fraud/609238

11 Details on Italy's AI implementation in tax compliance can be found at the Italian Revenue Agency's website: https://www.agenziaentrate.gov.it/portale/web/english

12 Information on Spain's "Hermes" system is available from the Spanish Tax Agency's official site: https://sede.agenciatributaria.gob.es/Sede/en_gb/gobierno-abierto/transparencia/informacion-institucional-organizativa-planificacion/inteligencia-artificial.html

IRS has implemented chatbots and virtual assistants to provide taxpayers with 24/7 support for common inquiries.[13]

The IRS's use of AI technologies is enhancing the accessibility of tax information, empowering citizens to better understand their tax obligations and rights.[14] By implementing machine learning and AI-driven tools, the IRS aims to simplify complex tax concepts and improve transparency in taxpayer communication. This approach helps reduce unintentional non-compliance and fosters a more transparent relationship between taxpayers and the tax authority.

Error reduction in tax returns

AI technologies play a crucial role in reducing errors in tax returns by processing and analyzing large volumes of data to detect inconsistencies and anomalies in tax filings. For instance, the Italian tax administration's use of AI to analyze tax returns and communicate potential errors to taxpayers not only increased the accuracy of tax reporting but also enhanced voluntary compliance. This proactive error detection prevents costly audits and penalties, benefiting both taxpayers and tax authorities.

Moreover, AI-powered chatbots and virtual assistants, such as the TaxBot in **India**, demonstrate the potential for improving taxpayer assistance.[15] TaxBot utilizes Natural Language Processing (NLP) to understand and respond to user queries about double taxation issues, providing personalized and accurate guidance. This not only streamlines tax compliance but also promotes fair taxation practices by making information more accessible to individuals and businesses (Baliyan et al., 2024).

Enhancing tax compliance and administration efficiency

The adoption of AI in tax administration has also led to improved efficiency and reduced operational costs. By automating routine tasks and employing AI for risk assessment, tax authorities can allocate resources more effectively and focus on complex issues that require human expertise. For example, the Canada Revenue Agency utilizes AI-based solutions to enhance tax processes, allowing for better resource allocation and improved service delivery.[16]

Furthermore, AI aids in risk management by enabling ex ante predictions of taxpayer non-compliance. Advanced data analytics and AI algorithms allow tax administrations to carry out simultaneous checks and make informed decisions based on real-time data. This shift from traditional post-event audits to proactive compliance strategies enhances the overall effectiveness of tax administration and promotes voluntary compliance among taxpayers.

4. ETHICAL AND TECHNICAL CHALLENGES

While the integration of Artificial Intelligence (AI) into tax law offers significant benefits for democratizing tax information, it also raises substantial ethical and technical challenges

13 The IRS is utilizing AI-enabled voicebots and chatbots to enhance taxpayer services, although improvements are needed. This is discussed in a report by FedScoop: https://fedscoop.com/irs-ai-chatbot-voicebot-taxpayer-service/ .

14 For a discussion on how the IRS is expanding its use of AI-powered chatbots to enhance taxpayer assistance, see: https://insightfulaccountant.com/tax-practice-news/irs-expands-ai-powered-chatbot-capabilities/

15 For insights on India's TaxBot, see Atriina's product page detailing its features and applications: https://atriina.com/business-solutions/taxbot/ .

16 Canada's use of AI in tax administration is discussed on the Devi Blog about CRA's AI Tax Chat tool: https://ddevi.com/en/blog/cra-ai-tax-chat-canada-ai-tax-filing

that must be carefully addressed. Key concerns include ensuring the accuracy and timeliness of AI-generated information, safeguarding data protection and privacy, mitigating biases within AI systems, and overcoming technical and infrastructural limitations (Zafar, 2024).

Ensuring accuracy and up-to-date information

The dynamic nature of tax laws, which frequently evolve due to new legislation and policy adjustments, presents a considerable challenge for AI systems tasked with providing accurate and current information.[17] AI models must be continually updated and monitored to reflect these changes, preventing the dissemination of outdated or incorrect tax guidance. As emphasized, "the better the quality of the data used, the better the result of the AI". Establishing comprehensive data governance, including the creation of corporate metadata dictionaries, ensures semantic clarity and integration of information across the organization (Shaw, 2022).

Moreover, AI systems need robust mechanisms to incorporate legislative updates promptly and accurately. Failure to maintain up-to-date information can lead to unintended consequences, such as misinforming taxpayers and increasing the risk of non-compliance. Regular audits and validation processes are essential to ensure the reliability of AI-generated tax advice.

Bias and fairness in AI systems

Another critical ethical concern is the potential for AI systems to exhibit biases or make errors that human experts might not,[18] especially in complex legal interpretations. AI algorithms, if not properly supervised and trained on diverse datasets, could unintentionally discriminate against or harm certain groups of taxpayers. For instance, biases in data or algorithms may reinforce existing inequalities, as AI systems may favor certain groups over others.

Implementing robust AI ethics governance frameworks is crucial to mitigate these risks. This includes the adoption of a "human-in-the-loop" approach, where human oversight complements AI decision-making processes to ensure fairness and equity (Zafar, 2024). Continuous monitoring and periodic audits of AI systems can help identify and correct biases, promoting transparent and accountable AI applications in tax law.

Data protection and privacy concerns

The deployment of AI in tax administration necessitates processing significant amounts of personal and financial data, heightening data protection and privacy concerns. AI systems require access to sensitive taxpayer information, increasing the risk of data breaches and unauthorized access. Compliance with data protection regulations, such as the General Data Protection Regulation (GDPR) in the European Union, is imperative. These regulations demand strict adherence to how personal data is collected, processed, and stored.[19]

Tax administrations and AI developers must design AI systems with privacy by default and by design principles, incorporating strong encryption, access controls, and anonymization techniques where appropriate.

17 For more on the importance of data accuracy and governance in AI systems, see the American Bar Association's discussion on AI challenges in tax policymaking: https://www.americanbar.org/news/abanews/aba-news-archives/2024/05/challenges-of-ai-tax-policymaking/

18 The KPMG article discusses frameworks for ensuring fairness and accountability in AI systems: https://responsibletax.kpmg.com/article/how-to-create-an-ethical-framework-for-ai-in-tax

19 Explore the ethical implications of AI in tax law, including data privacy issues, at LawCyborg: https://lawcyborg.com/knowledge-base/exploring-the-ethical-implications-of-ai-in-tax-law-and-accounting

Transparency in data handling is also vital; taxpayers should be informed about how their data is used by AI systems, and mechanisms should allow them to control their personal information.

Addressing these concerns requires a multidisciplinary approach involving legal, technical, and ethical expertise. Establishing rigorous security protocols and compliance with legal standards are non-negotiable to effectively safeguard taxpayer data. Continuous monitoring, regular audits, and impact assessments are necessary to identify and mitigate potential risks associated with data handling in AI systems.

Technical and infrastructural limitations

Implementing AI technologies in tax administration also encounters technical and infrastructural challenges.[20] Integrating AI requires a robust technological infrastructure, including advanced computing resources and data storage capabilities. Such requirements can pose significant hurdles, especially for tax administrations in developing countries where resources might be limited.

Moreover, there is a need for technical expertise to manage and maintain AI systems effectively. Training personnel and updating systems demand time and investment, which could strain the resources of tax administrations.

Collaborations between governments, technology providers, and educational institutions can help alleviate these challenges by fostering skill development and sharing best practices.

Regulatory and legal frameworks

The evolving legal and regulatory landscapes surrounding AI application in tax systems add another layer of complexity. Clear and comprehensive legal frameworks are necessary to govern AI use, covering aspects such as data usage, AI decision-making processes, and the legal status of AI-generated determinations. Continuous development and updating of these frameworks are essential to keep pace with technological advancements and ensure ethical and legal compliance (Marino & Monaca, 2023).

5. IMPACT ON FISCAL TRANSPARENCY AND CITIZEN EMPOWERMENT

The integration of Artificial Intelligence (AI) into tax administration is transforming the landscape of fiscal transparency and citizen empowerment. By leveraging AI technologies, tax authorities can enhance communication with taxpayers, promote a better understanding of tax obligations, and facilitate active participation in fiscal matters. These advancements contribute to a more equitable and transparent tax system, fostering trust and engagement between citizens and tax administrations (Pislaru et al., 2024).

Enhancing fiscal transparency through AI

AI significantly enhances fiscal transparency by making tax information more accessible and processes more transparent. For instance, the French tax authorities have implemented AI systems to collect and analyze publicly available data from online platforms, aiming to detect tax fraud and ensure compliance.[21] This proactive use of AI not

20 The Digi-Con article provides insights into technical challenges faced by tax administrations using AI: https://digi-con.org/good-administration-in-the-ai-era-the-case-of-tax-administrations/

21 For more on France's use of AI in tax administration, see: https://taxnatives.com/france-targets-corporate-tax-evasion-with-new-ai-tools/

only improves tax enforcement but also fosters a transparent tax environment where taxpayers are aware of scrutiny and the importance of accurate reporting.

Moreover, AI's ability to process vast amounts of data enables the visualization of tax policies and their impacts, aiding both policymakers and the public in understanding fiscal matters more clearly. By providing insights into how tax revenues are utilized and how tax policies affect different socio-economic groups, AI tools promote accountability and transparency in fiscal governance.

Empowering citizens through accessible tax information

AI empowers citizens by providing advanced tools and personalized assistance to navigate complex tax regulations. AI-driven applications such as chatbots and virtual assistants offer real-time support, answering queries and guiding taxpayers through tax filing processes.

These tools not only simplify tax concepts but also enable taxpayers to make informed decisions. Predictive analytics can forecast tax liabilities under different scenarios, allowing individuals to plan effectively and understand the implications of their financial choices. This personalized approach demystifies tax obligations and empowers taxpayers with the knowledge to manage their tax affairs confidently.

Facilitating citizen participation in fiscal matters

AI technologies facilitate greater citizen participation in fiscal matters by promoting transparent and interactive engagement between taxpayers and tax authorities. AI systems can provide platforms for citizens to offer feedback on tax policies, engage in discussions, and contribute to fiscal decision-making processes. By incorporating citizens' perspectives and ensuring transparency in AI applications, tax administrations can foster more democratic and inclusive fiscal policymaking.[22]

Furthermore, adopting ethical AI practices, such as integrating privacy by design and ensuring data protection, enhances trust in AI systems. Addressing data protection and privacy concerns is essential, as taxpayers are more likely to engage with AI-driven services when they are confident their personal information is secure. Transparent data governance policies and the ethical use of AI reinforce the legitimacy of tax administrations and encourage active citizen involvement.

Overcoming challenges to maximize impact

While AI offers significant benefits, it is crucial to address ethical and technical challenges to maximize its positive impact on fiscal transparency and citizen empowerment. Ensuring the accuracy and up-to-date information in AI systems is vital, as outdated or incorrect data can misinform taxpayers. Implementing robust AI ethics governance frameworks can mitigate risks associated with biases and unfair treatment, promoting fairness and equity in tax administration.

By proactively addressing these challenges, tax administrations can fully harness the potential of AI technologies to enhance transparency, empower citizens, and build a more equitable tax system.

22 For insights on how AI enhances citizen engagement in fiscal matters, see IBM's article on responsible AI for tax agencies: https://www.ibm.com/think/topics/ai-for-tax-agencies

CONCLUSION

Artificial Intelligence (AI) stands at the forefront of transforming tax administration by offering innovative solutions to longstanding challenges in tax compliance and enforcement. The integration of AI technologies—such as data analytics, machine learning, and natural language processing—empowers tax administrations to process vast amounts of information efficiently, enhancing their ability to detect tax evasion and improve taxpayer services.

Tax administrations globally are increasingly data-driven, utilizing AI to transform raw data into actionable insights. AI algorithms enable the identification of tax risks and taxpayer segmentation, facilitating more targeted and effective compliance strategies. Countries like Canada and Spain exemplify this transformation; the Canada Revenue Agency employs AI-based solutions to enhance tax processes and improve service delivery, while Spain's Tax Agency has developed the "Hermes" system to optimize the use of international tax information and respond swiftly to compliance issues.

However, the implementation of AI in tax administration brings forth critical considerations regarding transparency, fairness, and taxpayer rights. The complexity of AI algorithms necessitates measures to ensure that taxpayers understand how decisions are made, safeguarding their rights to defense and due process. This may involve external auditing of algorithms or ex post certification to validate the fairness and accuracy of AI-driven assessments.

Looking ahead, the adoption of AI presents a promising avenue for creating more efficient, fair, and transparent tax systems. Policymakers are encouraged to develop strategies that leverage AI's capabilities while addressing the ethical, legal, and technical challenges associated with its integration. This includes ensuring the accuracy and currency of AI systems, mitigating biases, safeguarding data protection and privacy, and overcoming technical limitations.

By fostering a data-driven public sector and embracing digital transformation, tax administrations can enhance their effectiveness in service delivery, compliance, and policy-making. AI technologies not only streamline operations but also empower citizens with a better understanding of their tax rights and responsibilities. Facilitating transparent and interactive engagement between taxpayers and tax authorities strengthens trust in the tax system and promotes voluntary compliance.

In conclusion, AI holds transformative potential for tax administration by improving efficiency, enhancing compliance, and fostering transparency. As tax administrations continue to harness AI technologies, it is imperative to balance innovation with the protection of taxpayer rights and the maintenance of trust in the tax system. Through careful planning, ethical considerations, and effective governance, AI can be a powerful tool in shaping the future of tax administration.

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Cooperative Tax Compliance: a Comparative Approach

Alessandra Helen Magacho Vieira

SYNOPSIS

This paper explores the shift toward cooperative tax initiatives, emphasizing trust, transparency, and certainty between taxpayers and tax authorities. It highlights the role of OECD guidelines and international benchmarks in fostering compliance through collaborative programs and simplification measures.

A comparative analysis of the Brazilian CONFIA Program and the U.S. Compliance Assurance Process (CAP) illustrates the transition from adversarial models to trust-based frameworks. Both programs showcase modern compliance tools aimed at minimizing material controversies, reducing costs, and fostering collaboration, offering valuable insights for advancing cooperative strategies and improving tax governance.

KEYWORDS: Cooperative tax compliance, Tax governance, OECD guidelines, RFB CONFIA Program, IRS Compliance Assurance Process (CAP).

CONTENT

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INTRODUCTION

The cooperative tax compliance is a concept that has been remodeling the relation between the taxpayers and the revenue bodies towards standards of mutual trust, predictability, transparency, and certainty. Potential benefits of the cooperative model, such as reduction of compliance costs and litigations, have motivated many tax administrations to depart from command-and-control actions.

Although focusing on similar outcomes in tax compliance, revenue bodies carry out different policies that must be considered when cooperative compliance approaches are formulated. Besides that, the complexity of tax structures has been challenging the management of agreements related to the collaborative initiatives. Loopholes, questionable material issues, unclear regulations, and controversial interpretations in tax legislation have been largely explored by taxpayers especially when different systems are interconnected.

In this scenario, the Organization for Economic Co-operation and Development (OECD) has developed reports and guidelines that recommend strategies to facilitate the establishment of collaborative propositions in different tax structures. In addition, international programs implemented worldwide, though naturally shaped in diverse administrative practices and cultures, have been benchmarks to new compliance programs.

This paper presents a comparison involving relevant compliance initiatives employed by the Federal Revenue of Brazil (RFB) and the Internal Revenue Service of the United States (IRS) in the last years. The analysis focusses on the cooperative tax compliance actions and the correlation between the RFB CONFIA Program and the IRS Compliance Assurance Process (CAP).

1. TAX COMPLIANCE: FROM TRADITIONAL APPROACHES TO MODERN CONCEPTS

Traditionally, the administrations in most countries have been guiding their fiscal actions through a deterrence model. In the deterrence approach, strategies to achieve tax compliance are mainly based on command-and-control procedures that disregard active participation of the taxpayers. Through decades, the deterrence model has been considered a worthwhile way to deter tax misconduct and directly enforce legislation.

However, recent papers have heavily sustained that it is unable to work properly. As noted by Youde and Lim (2019), a regulatory approach that focuses on sanctions and penalties to rebuke misconduct has triggered an environment of mistrust between the taxpayers and the tax administrations. In this adversarial context, taxpayers had demonstrated resistance to cooperate and had invested in developing independent interpretations to questionable tax transactions.

Besides that, the risk involving misstatements in tax returns has been routinely balanced with low detection and penalty rates (Kirchler et al., 2014). A crucial fact is that tax administrations usually do not have enough resources to audit every sensitive self-reported information in tax returns specially regarding complex fillings of large entities. In addition, even if misconduct is timely audited, penalty defenses in litigations may exempt the correlated impositions (Slemrod & Bakija, 2017).

In this sense, the tax administrations have been recognizing the deficiencies in the deterrence approach and started to incorporate compliance initiatives that could increase voluntary tax compliance. Voluntary cooperation correlates with trust in the tax administration where taxpayers experience an obligation to honestly contribute with the tax system instead of feeling substantially enforced by potential detection and fines (Holmes, 2011).

The tax compliance administrative actions encompass all mechanisms (such as educational practices, system matching notices, and cooperative initiatives) that tax authorities implement to promote taxpayer's conformity with tax legislation by paying their share timely and accurately (Youde & Lim, 2019).

Educational practices, such as informative letters and instructional lectures, are compliance initiatives that provide general information concerning tax liability. In turn, the system matching notices are procedures largely employed to report inconsistences detected through computer data analysis that aims to offer the taxpayer an opportunity for self-regulation before an ordinary examination is installed (Meng, 2017).

In contrast to general educational practices and to system matching notices, which are basically unilateral actions performed by the tax administrations, the cooperative tax compliance initiatives are structured towards preventive and collaborative relationship between the tax authorities and the taxpayers. The cooperative perspective relies on transparency and predictability to engage the taxpayers into a collaborative workforce team with the tax administration (Ventry, 2008).

Emerging material issues related to uncertain tax items are discussed in real-time open dialogues to trade secrecy for certainty before the tax return is filled (Ventry, 2008). The process provides readily guidance and creates positive incentives for compliant taxpayers such as a coordinator assigned as a primary contact within the tax administration and the authorities' commitment in preventing agreed issues from post-filling examinations (Holmes, 2011).

Cooperative initiatives also involve mutual trust and particular commitment in risk management routines. Strategic plans for implementing cooperative actions focus on the taxpayer's risk profile and the ratification of a compliance risk management framework that legitimate good corporate tax governance policies (OECD, 2013).

Modern risk management frameworks combine governance tools to ensure voluntary and timely corporate compliance with tax obligations and indicate the need for enforcement measures to non-compliance conducts. The risk management process must extensively enable the corporation to identify, escalate, mitigate, and monitor tax risks, as well as to establish effective disclosure to internal and external stakeholders (OECD, 2013).

Evidently, programs implemented under current cooperative tax compliance concepts consist of compliance actions that maximize the departure from the deterrence views (Kirchler et al., 2014). In opposition to a tax system that focuses on reactive measures, the collaborative view permits taxpayers to know in advance the authorities' positions concerning sensitive material tax issues (Ventry, 2008).

As a result of working along with taxpayers who want to comply with tax legal provisions before compliance problems start, revenue bodies can restrict labor-intensive coercive measures to those taxpayers who decide to gamble under detection routines and subvert the tax system (Wallace, 2022). Thus, the adoption of cooperative tax compliance actions enables usually understaffed tax administrations to adjust resources, optimize time, and ultimately reduce compliance costs.

Another remarkable direct benefit is that an approach based on dialogues and agreements potentially decreases misstatements and correlated costly litigation disputes. The cooperative tax compliance environment privileges simplified resolution of divergences between the taxpayers and the revenue bodies through open discussions (Holmes, 2011).

2. OECD GUIDELINES IN COOPERATIVE TAX COMPLIANCE

Notably, the Organization for Economic Co-operation and Development (OECD) has been developing reports to facilitate the implementation and to promote convergence of the international cooperative tax compliance programs. Since 2004, the OECD Forum on Tax Administration (FTA), composed by Commissioners and tax administration officials from both OECD and non-OECD countries (including Brazil and the United States), has been debating risk management priorities related to emerging tax concerns.

In 2008, these debates resulted in the OECD report *Study into the Role of Tax Intermediaries,* which emphasized the importance of encouraging corporations to voluntarily disclose information to support risk management processes. The report introduced the concept of cooperative tax compliance and advocated for the establishment of an "enhanced relationship" based on mutual trust between tax authorities and large taxpayers.

In 2013, the OECD proposals included the project *Base Erosion and Profit Shifting (BEPS)* and the report *Co-operative Tax Compliance: A Framework. From Enhanced Relationship to Co-operative Compliance*. The BEPS consisted of a G20-OECD multilateral examination to the problem of profit shifting to tax-favored jurisdictions and the erosion of countries' tax base (OECD, 2013).

The report *Co-operative Tax Compliance: A Framework. From Enhanced Relationship to Co-operative Compliance* sustained that the terminology "cooperative tax compliance" was more appropriate than the previous "enhanced relationship" to correlate tax cooperation standards with the compliance panorama. In addition, this report upheld two elements for qualifying a justified trust: the Tax Control Framework (TCF) and the disclosure of tax controversial transactions (OECD, 2013).

The Tax Control Framework consists of an internal control system designed to ensure the integrity of the information that the corporations submit to tax administrations. When associated with the taxpayer's commitment with disclosure and transparency requirements, a well-developed control system provides higher levels of certainty that relevant tax risks are well conducted (OECD, 2016).

Following these reports, the OECD introduced the International Compliance Assurance Program (ICAP) pilot projects in 2018 and 2019. The purpose of the ICAP was primarily to provide legal certainty to the application of different transfer pricing rules for multinational groups operating in several countries. The ICAP has been a useful example to show the implementation of compliance risk management to highly complex matters that involve several revenue bodies and require the establishment of multilateral cooperative relationship.

The OECD recommendations have been permeating the international cooperative actions in accordance with the policy and the legislative environment of each tax system. Therefore, its reports and the proposals are relevant tools for comparisons between programs and for development of new cooperative compliance strategies.

3. BRAZILIAN INITIATIVES AND THE RFB CONFIA PROGRAM

Consistent with the international scenario, the Special Secretariat of the Federal Revenue of Brazil (RFB) has been applying compliance tools that facilitate voluntary tax regularization. The RFB educational tax compliance actions are mostly executed within a special program named National Tax Educational Program (PNEF). The PNEF actions are oriented to engage taxpayers in tax management and the socioeconomic purpose of taxes (Meng, 2017).

Other RFB compliance actions are performed through electronically pre-filled tax returns, compliance meetings, and systematic computer matches that detect and inform about possible irregularities such as the Personal Income Tax Matching System, the Corporate Income Tax Matching System, and the Alerting System for Enterprises included in the Simples Program (Meng, 2017).

These are compliance actions that involve the taxpayers only in the sense that they have an opportunity to choose regularity based on the administration recommendations. In these actions, taxpayers do not participate actively in the interpretations as prescribed in the cooperative compliance model.

Unilateral initiatives have frequently led to conflicting interpretations and do not contribute to the relationship between taxpayers and tax authorities. Therefore, the RFB started to look for alternatives in cooperative actions that could effectively achieve compliance essential benefits and respond to the institutional strategies (RFB, 2021).

Appropriately, the cooperative compliance scheme has prescribed that the emerging issues must be served with readily available interpretations within a respectful relationship that motivates compliant taxpayers. Following these principles, the first Brazilian efforts towards a cooperative compliance model have considered the Tax Administration Diagnostic Assessment Tool (TADAT).

The TADAT is a diagnostic method that evaluates the tax administration relationship with taxpayers and contributes to determining the stability of a tax system. In addition, tax guidelines developed by international organizations, such as the OECD reports, influenced the administration's decisions for adopting collaborative concepts in the relationship to taxpayers.

In 2018, the Brazilian Internal Revenue Service planned to launch a tax compliance program with cooperative nature named Pro-Conformity Program. Self-regulation would be encouraged by taxpayers with a low risk profile by providing benefits such as previous notices for possible irregularities.

On the other hand, taxpayers that expressed greater risks to compliance would be primarily subject to direct application of coercive measures. However, after considering public comments on the proposal, the program was not implemented.

Currently, the Brazilian cooperative tax compliance initiatives are directed to the development of the RFB CONFIA Program. The RFB CONFIA proposal originated in 2021 and it focus on improving the relationship between the taxpayers and the tax authorities to facilitate voluntary compliance with tax obligations.

Subsequently, the collaborative debates resulted in a document that compiles general guidance, target taxpayers, main program's characteristics, fundamentals, international references, gains, and challenges. By continually working together with taxpayers, the Brazilian Federal Revenue Service aims to reduce tax litigation, increase revenue, and achieve greater efficiency in tax administration through the next steps (RFB, 2021).

Moreover, the RFB CONFIA Program has been planned in accordance with the OECD recommendations and modern perspectives of international compliance programs. It incorporates the concept of compliance risk management to treat taxpayers pursuant to a risk profile that derives from the compliance history and the overall tax control structure.

The interaction between the tax administration and the taxpayers has been designed to take place *before* the

occurrence of triggering events that leads to tax liability. For the treatment of a questionable transaction, the taxpayer is empowered to participate in the process and access the tax authority's interpretation before the transaction occurs. This heightened interaction is expected to establish an environment of mutual trust, transparency, and legal certainty that reduces compliance costs within a short period.

There are three main pillars for the construction of the RFB CONFIA program: the CONFIA Model, the Code of Best Tax Practices (CBPT), and the Tax Control Framework (TCF). The CONFIA Model defines the eligibility criteria, the risk assessment methods, and the available benefits.

The Code of Best Practices provides core principles, guidelines, and commitments. For its part, the TCF encompasses methods for certifying that the corporation implemented a proper risk management system in a responsible corporate tax governance frame (RFB, 2021).

Following the international guidelines, the Federal Revenue of Brazil elected to ground these pillars by hearing large corporations' interests in a multiparty Dialogue Forum. It consists of a permanent channel of communication that have recently hosted systematic debate for the collaborative development of the RFB CONFIA Program.

4. THE UNITED STATES INITIATIVES AND THE IRS COMPLIANCE ASSURANCE PROCESS (CAP)

The compliance actions implemented in the United States meet with the IRS mission that includes the establishment of a high-quality service by helping the taxpayers to comply with their tax responsibilities. These initiatives range from actions that do not require the IRS to review books and records to more extensive examinations (Internal Revenue Manual [IRM]).

According to Wallace (2022), the focus has been on providing tools and services that the taxpayers may need to avoid inaccurate returns. The IRS determines which procedure to apply by measuring the benefit of the compliance tool and the burden generated to the taxpayer in each situation. The rationale for choosing among actions is optimizing the resources and imposing the minimum burden necessary to achieve compliance.

On one hand, correspondence audits, in-person examinations, and criminal investigations are demanding and time-consuming post-filling compliance actions. In these approaches, taxpayer's fiscal documents are peer reviewed to assure conformity during complex investigations. Therefore, compliance costs for these procedures are usually high for both the taxpayer and the tax administration (Holmes, 2011).

On the other hand, basic compliance tools are less burdensome and do not demand book and records audits. The IRS adopts ordinary soft letters and educational letters to indicate or to explain a circumstance that might affect tax obligations. Basic compliance strategies also include the Automated Underreporter Program (AUR), the General Math Errors Procedures, the Automated Substitute for Return Program (ASFR) and the Compliance Checks for Suitability and Monitoring. In these programs, the IRS informs taxpayers about possible inconsistencies detected through computer system matchings to provide an opportunity to address an issue that could avoid further examination proceedings (Internal Revenue Manual [IRM]).

In the specific area of the cooperative compliance, the IRS has substantially sustained the collaborative tax regulation principles with large business taxpayers. The Private Letter Ruling (PLR), the Pre-Filing Agreement

(PFA) and the Compliance Assurance Program (CAP) outlined the interest in increasing certainty levels regarding a transaction. Through these pre-filling programs, the IRS emphasizes the benefits of working together with taxpayers to resolve tax issues before emergence of the facts that determine tax liability to reduce the cost and the burden related to post-filing examination (Holmes, 2011).

The Private Letter Ruling (PLR) is a written statement that interprets and applies the tax laws in response to a taxpayer's request formulated for a specific set of facts prior to filling a return. There are some limitations to the extent that these requests are accepted by the IRS (Internal Revenue Service, 2020). The interpretations will only be issued to factual requests related to definite prospective transactions that pertain to applicable regulations, statutes, or published guidance. Typically, a PLR will not be provided if the answer cannot be obtained without the promulgation of a regulation or other published guidance. Another relevant limitation is that some topics, such as international tax, are not accepted through letter rulings.

The Pre-Filing Agreement Program (PFA) is a relatively recent strategy. It became permanent after a pilot implemented in 2000. Analogous to the Private Letter Ruling, the Pre-Filing Agreement Program permits requests for addressing potential disputes and controversy before the tax return is filed. However, in contrast to the letter rulings, the Pre-Filing Agreement Program qualified requests must relate to a transaction that is already complete. Furthermore, although not all issues are eligible for consideration the PFA process includes some listed international issues (Internal Revenue Manual [IRM]).

Expanding the scope of the previous compliance programs, the IRS Compliance Assurance Process (CAP) started as a pilot in 2005 and became permanent in 2011. The IRS CAP has operated on a year-to-year basis and has been considered the most innovative program that the IRS developed within the large business tax administration (Osofsky, 2012).

Under the IRS CAP, taxpayers work collaboratively with an IRS team to contemporaneously resolve all material issues before the tax return is filed each year and achieve tax certainty easier than through conventional examinations. Since its implementation, the IRS and taxpayers have been recognizing a great deal of advantages in advancing the verification process of federal income tax return through the program (Opper, 2011).

To be eligible for the IRS CAP program, the taxpayer must be a U.S. publicly held corporation with assets of $10 million or more. The eligibility criteria exclude taxpayers under investigation by, or litigation with, the IRS or any other government agency that would restrict access to current tax records. In addition, the taxpayer must not have more than one filed return and one unfiled return open if submitted to IRS examination (Internal Revenue Manual [IRM]).

Besides that, the taxpayer must comply with suitability requirements. It includes demonstrating transparent and cooperative behavior through consistent disclosure of all relevant information in a timely manner and a regular routine for adequate responses to information requests. It also requires adherence to the CAP Memorandum of Understanding (MOU) that sets the expectations and requirements for both the taxpayers and the IRS. The taxpayers may be removed from the IRS CAP if they fail to conform to the Memorandum of Understanding (Internal Revenue Manual [IRM]).

Enrolled participants are straightway linked to an Account Coordinator (AC) assigned as the primary contact for the taxpayer with the IRS. The coordinator will manage, and review material issues designated by the taxpayer according to the related business practices. If necessary, the Account Coordinator will access specialized IRS staff and advisors to

resolve the taxpayer's issues (Internal Revenue Manual [IRM]).

The IRS CAP Program is structured in three phases: the CAP Phase, the Compliance Maintenance Phase, and the Bridge Phase. In the CAP phase, the IRS and the taxpayer work transparently and collaboratively prior to filing of a tax return with the purpose of reaching real-time tax positions for disclosed material issues (Internal Revenue Manual [IRM]).

In brief, in the CAP Phase, the pre-filing review intends to assure an acceptable level of accuracy for the tax return. The taxpayer is expected to submit a list with comprehensive and contemporaneous disclosures of the material issues to be included in the issue development process. The IRS and the enrolled taxpayer must recognize that all the relevant facts have been provided. After filling the return, the taxpayer provides a Post-Filing Representation that states that the return is consistent with the pre-filing agreements.

If all the issues under consideration have been resolved in the pre-filing period, the IRS issues a Full Acceptance Letter that confirms that the return will be accepted as filed for the material issues previously disclosed, resolved, and reported as agreed. In return, with potential tax issues largely settled before filing, participant taxpayers can minimize or eliminate the need for adjustments or post-filing examinations.

If it is not possible to reach agreement for some issues, or if the IRS determines that the participant did not disclose all material issues, the IRS releases a Partial Acceptance Letter. Remaining controversial issues are eligible for the Fast Track Settlement Program (FTS), which is a non- binding negotiation process that counts on the assistance of an Appeals Official, in a quicker process than a traditional appeal. The Fast Track Settlement Program is designed to resolve tax issues at the earliest stage with mediation skills and settlement authority that reduces the taxpayer burden.

The Compliance Maintenance Phase encompasses adjustments in accordance with the number and the complexity of the issues for a taxpayer that continues to satisfy the requirements and that completed at least one CAP phase. The Compliance Maintenance Phase relies on the same criteria and mechanisms that apply to the CAP Phase. Third, the Bridge Phase is designed for taxpayers that demonstrated risks of noncompliance that does not support continuation of the same review process for assurance regarding any issues.

For the taxpayers, the advantages of participating in the IRS CAP program include early certainty regarding the tax return positions, tax plan stability, avoidance of having to set up financial statement reserves, opportunity to develop a best practice layout with the IRS CAP team, shortened resolution for material issues, and reduction of time-consuming and costly post-filing examinations (Opper, 2011). For the IRS, the CAP positive outcomes encompass an acceptable level of accuracy for the tax returns, a risk management structure that displays the likelihood of noncompliance, and a more efficient allocation of resources focused on taxpayers that present higher risks (Osofsky, 2012).

Notwithstanding the benefits, some challenges regarding the IRS CAP implementation have been grouped as reduced accountability, lack of meaningful penalties for failure-to-disclose violations, and potential self-selection bias problems. Nonetheless, at the same time, several solutions that includes risk management standards and responsive tax administration doctrine have been drawn to offer a reasonable and prosperous path forward (Osofsky, 2012).

5. COMPARATIVE DISCUSSION

The Federal Revenue of Brazil (RFB) and the Internal Revenue Service of the United States (IRS) have expressly been investing in compliance programs in the last

years. Both tax administrations have been managing a transition from a deterrence model to a collaborative approach in accordance with the OECD guidelines and the fundamentals of international cooperative tax compliance programs already experienced in other countries.

Although immersed in different policies and administrative proceedings, the RFB and the IRS have presented similar compliance initiatives to educational practices and system matching notices. Alongside these actions, cooperative proposals have emerged in both countries most substantially under the RFB CONFIA Program and the IRS Compliance Assurance Process (CAP).

In the category of educational practices, instructions posted on governmental websites of Brazil and the United States have been reaching taxpayers widely to reinforce the socioeconomic meaning of the taxes, tax public resources concepts and social control fundamentals. Besides that, while Brazilian additional educational compliance endeavors have been concentrated in the National Tax Educational Program (PNEF) actions, further instructional issues in the United States have been significantly addressed through official correspondences, such as the informational letters, to provide specialized guidance to the taxpayers (Internal Revenue Service, 2020).

Matching system notices have also been applied in both revenue bodies to provide relevant information and specific directions to encourage taxpayers' self-regulation. These notices point out possible inconsistences checked in electronic analysis that combines informational reports provided by third parties, such as employers, who participate in the tax-collection process. They are usually unilateral post-filling issued communications that allow a period in which the taxpayer can regularize misstatements before an ordinary post-examination takes place (Slemrod & Bakija, 2017).

The most common matching system notices systems that aims toward self-regulation in Brazil have been performed under the Personal Income Tax Matching System, the Corporate Income Tax Matching System, Compliance Meetings, and the Alerting System for Enterprises that compose the National Simples Program.

In the United States, as aforementioned, the main unilateral self-regulatory initiatives have been executed through the Automated Underreporter Program (AUR), the General Math Errors Procedures, the Automated Substitute for Return Program (ASFR), and the Compliance Checks for Suitability and Monitoring.

Another significant similarity is the perception that the compliance tools bring long-lasting benefits, such as the possibility to rationalize resources and reduce litigation that the deterrence model was unable to provide. It strives to limit the costly coercive examination procedures to taxpayers that intentionally resist compliance with tax regulations (Holmes, 2011). It also legitimates both countries' efforts to construct sophisticated cooperative compliance methods that corroborate these expected advantages.

The United States has invested in shifting from adversarial enforcement techniques to increased service that emphasizes procedural fairness. The IRS has promoted cooperative tax compliance schemes through the Private Letter Ruling (PLR), the Pre-Filing Agreement (PFA), and the Compliance Assurance Program (CAP). Among these collaborative programs, the IRS CAP is the one that better represents the cooperative tax compliance structure (Opper, 2011).

Brazil is in an advanced stage for implementing the RFB CONFIA program in the cooperative perspective. The RFB CONFIA program has been structured on the grounds of risk management, compliance history, and tax control frameworks (RFB, 2021).

Its basis on cooperation-based relationship with selected large business taxpayers resembles the IRS CAP Program. Therefore, narrowing the contrasts in these two cooperative programs (IRS CAP and RFB CONFIA) could not only bring an international perspective to concluding the CONFIA's framework but also raise improvements that could be considered to the IRS CAP's structure.

In this view, the main points to be discussed that could be helpful for establishing the RFB CONFIA's strategy comprises the eligibility and suitability criteria, the consolidation of a primary contact with the revenue body, the workflow in solving complex questions, and the possibility of transition rules in case consensus is not reached.

a) Eligibility and suitability criteria that restricts the programs to large taxpayers.

The RFB CONFIA program in Brazil, likewise the IRS CAP program in the United States, considers beforehand only large corporations to be eligible. The minimum assets a corporation must hold to apply to the program shall be adjusted to the domestic peculiarities and the capacity of the tax administration team to properly operate with complex taxpayers' issues.

At that point, criticisms have involved equity concerns with this restriction of the cooperative programs to large corporations. Some contend that these programs should be available to all taxpayers. However, for most tax administrations, including Brazil and the United States, it is not realistic to treat all the taxpayers at one time in a cooperative program and it would probably also not be rational.

For Slemrod & Bakija (2017), some of the main reasons for the restriction regarding the taxpayers' inclusion are limited resources, combined with the impact of the large companies in the total revenue collection and the complexity of the issues that large corporations are more likely to face. First, the revenue bodies usually have scarce resources to respond to pre-filling and post-filling demands. It would probably not be logistically possible to handle all the taxpayers at the same time in a close relationship.

Second, the large business enterprises typically reflect more than half of the total revenue collected each year. So, it becomes possible to treat a significant amount of the income by focusing on a few large corporations. Third, the large business corporations are exactly the most likely taxpayers that face puzzling issues that may not be solved only by referring directly to the existing rules and regulations.

One of the cooperative purposes is to deal directly with taxpayers in complex legislative issues that typically cannot be treated unilaterally by themselves or by intermediaries, without representing a high-risk for misstatements that significantly reduce tax collection (OECD, 2013). The collection processes can reasonably obtain expressive results for the community in directing cooperative compliance actions to large taxpayers and prevent misstatements that could cost millions for the society if not properly reviewed.

Therefore, concentrating the workforce in large corporations' issues is the alternative for managing in advance a great part of the revenue with limited resources and teaming up for the sustainability of the entire collection process. Moreover, properly treating relevant parts of the revenue potentially generates a moral sense that most income is monitored along with the possible side-effect of energizing other taxpayers to comply with their fair-share in the tax system (Slemrod & Bakija, 2017).

Additionally, eligibility requirements must be cumulatively coordinated with suitability criteria. Cooperative programs subsistence relies on the commitment of the taxpayers with transparency in a sort of trading secrecy for certainty. For that reason, among other compromises, the IRS CAP program requires continuous commitment to the Memorandum of Understanding (MOU) to secure the taxpayers'

participation (Internal Revenue Manual [IRM]). The RFB CONFIA program also advocates engagement of the taxpayers with the expectations and requirements of the program through adhering to the Code of Best Tax Practices (CBPT) and the Tax Control Framework (TCF) (RFB, 2021).

b) Primary contact with the tax administration and the workflow in resolving issues.

The assignment of an Account Coordinator (AC) to the enrolled taxpayer is another attribute that the RFB CONFIA Program could develop in parallel to the IRS CAP Program. The coordinator role as the taxpayer's point of contact for the revenue body meets frequent claims regarding adversities in accessing the revenue body. It also alleviates concerns towards the ability of the tax administration to readily respond the issues in a tight schedule.

In the IRS CAP, the Account Coordinator conciliates the discussion in the CAP phase focusing on the active participation of the taxpayer in an extensive cooperation-based relationship (Internal Revenue Manual [IRM]). In this context, the RFB CONFIA Program could also harmonize the coordinator role and include notice-and-comment fundamentals to guide cooperative interpretations.

In its workflow, along with the CAP phase where the main proceedings take place, the IRS CAP presents a Compliance Maintenance Phase and a Bridge Phase that the RFB CONFIA Program could also contemplate as management techniques regarding participants in different circumstances. Monitoring taxpayers in categories could be helpful to systemize the cooperative structure, integrating results to the risk management framework, and evaluating the RFB capacity of absorbing new applicants in the program.

c) Transition rules when a consensus is not possible.

Even considering all the efforts to come to a cooperative agreement, the taxpayer may not ultimately agree with the reached interpretation. That raises the question about how to maintain the cooperative relationship in disagreement situations.

In the IRS CAP routine, when the taxpayer and the Account Coordinator disagree on the resolution of some issues, the program identifies the remaining items susceptible to be resolved through regular examination processes. The IRS releases a Partial Acceptance Letter to indicate that not all identified material issues were resolved. Moreover, the unresolved issues are eligible for the Fast Track Settlement (FTS) process moderated by an independent appeals mediator without withdrawing any of taxpayer's appeal rights that still valid to any conventional examination that may be conducted (Internal Revenue Manual [IRM]).

In the Brazilian tax system, adjustments for disputes involving unsettled issues could also consider a collateral treatment in the administrative judgement structure. That is an alternative to be considered as unresolved issues would have already been extensively discussed within the RFB CONFIA proceedings.

Besides that, the records containing the comments and the divergent positions would contribute to an accelerated process to resolve divergences. Accordingly, it would be a significant advantage for both the taxpayers and the RFB because a traditional process would demand much more time and cost.

If a settlement is subsequently reached for these remaining issues, the taxpayer would follow the agreed procedures and the tax return would be approved in the CONFIA process. However, in case the parties remain unable to agree, the same way as in the IRS CAP program, the taxpayer retains all original resources available to traditional disputes. Lower penalties rates should also be considered in case of traditional disputes if all the cooperative steps were followed beforehand.

The modulation of disagreements in a cooperative relationship could also include development of a

tracking system for the information reported in a tax return according to the status of the related issues. This tracking system could be developed analogously to some customs procedures where green, red, and yellow patterns are followed in accordance with predefined circumstances. In the cooperative tax compliance context, proposed green information would correspond to the issues in which an agreement had been reached, red information would represent the issues in which agreement was not achieved, and the yellow information would correlate with special situations in which the taxpayer was unable to agree in the beginning of the collaborative process but agreed to discuss the issue under a special administrative stage of settlement.

CONCLUSION

Remarkably, cooperative tax compliance integrates transparency and certainty perspectives for determining a cooperation environment between tax authorities and the taxpayers. The challenges in reaching cooperative agreements are extensively related to the necessity of resolving questionable, uncertain, and controversial issues immersed in the complexity of tax systems (OECD, 2013).

Positive outcomes from revenue bodies that already developed cooperative tax programs have been valuable for implementing new strategies that facilitates voluntary adherence to tax laws and regulations. In this context, cooperative actions experienced worldwide in connection with international guidelines and simplification procedures play a significant role in supporting tax systems that aims to make compliance easier for conscientious taxpayers (Slemrod & Bakija, 2017).

The Federal Revenue of Brazil (RFB) and the United States Internal Revenue Service (IRS) are good examples for examining tax relations constructed from an adversarial command-and-control paradigm towards a mutual trust environment. Accordingly, the comparison approach regarding cooperative actions elaborated in Brazil and in the United States, especially within the RFB CONFIA Program and the IRS Compliance Assurance Process, improve the alignment of international collaborative initiatives.

As a conclusion, Brazil and the United States have similarly been investing in modern compliance tools and have been incorporating the cooperative perspective in their tax systems in the last years. Therefore, the comparative approach presented in this paper contributes with the RFB and IRS in analyzing recent proposals and exploring qualified practices that potentially reduce material controversial tax issues, compliance costs and tax litigations.

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International Comparison of the Tax Regime for Controlled Foreign Companies (CFCs)

Marlon Manya Orellana

SYNOPSIS

This article aims to develop an analysis of the CFC regime, exploring its conceptualization, the specific scopes in different legislations, and its applications in international scenarios. Through a comparative review, variations in the implementation of the CFC regime across jurisdictions and its impact on companies' tax planning strategies will be evaluated. This study will also investigate the way in which the provisions function as control mechanisms to limit tax evasion, aligning the CFC regime with the actions proposed by the BEPS Plan to strengthen transparency and international cooperation in tax matters.

KEYWORDS: OECD; BEPS; CFC; ECE; Anti-Avoidance

CONTENT

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INTRODUCTION

The tax regime of Controlled Foreign Companies (CFCs) is a set of regulations aimed at countering the transfer of income to controlled entities in jurisdictions with low or no taxation. These rules focus on allocating the income attributable to the parent entity in its country of residence, integrating them into its taxable base in order to avoid the erosion of that base. The main objective of the regime is to restrict the artificial diversion of profits and thus strengthen the fiscal integrity of the country in which the parent company resides.

The definition of a CFC is usually applied to any entity located outside the jurisdiction of the parent, but under its control or significant influence, frequently used to reduce tax burdens. This control usually involves a direct or indirect participation that gives the parent shareholder considerable control over the decision-making of the foreign entity. The concept of control is regulated by national and supranational legal frameworks, such as those promoted by the OECD and the European Union, which establish specific limits on shareholding and guidelines on the allocation of income.

The purpose of these regulations is to protect the tax base of the States against the loss of tax revenues generated by aggressive tax planning strategies in multinational companies. In this context, passive income represents a considerable source of fiscal diversion for countries where multinationals centralize their operations. The lack of revenue collection on these offshored revenues imposes a double barrier for States: it reduces their public financing capacity and creates an environment of unbalanced tax competition, in which local companies lack the international tax optimization mechanisms available to multinationals.

Thus, the CFC regime seeks to recover these revenues for the national tax system, integrating the incomes that, by their economic nature, correspond to the country of residence of the parent, even when they have been transferred to foreign subsidiaries. This situation contributes to greater tax equity, reducing the tax burden that falls on local companies and small and medium-sized enterprises without access to this type of structures.

In addition, from an economic perspective, CFC rules discourage structures that distort the overall allocation of resources. In the absence of CFC rules, multinationals could base their investment decisions on purely tax considerations, directing capital and profits towards jurisdictions that offer tax savings with no productive value.

Within this framework of action, the countries promote joint cooperation in the fight against tax evasion and the strengthening of their tax systems. This coordination allows states to limit the use of regulatory loopholes by multinationals and promote a tax system aligned with the principles of equity and economic efficiency.

1. THEORETICAL FRAMEWORK

Pascuali (2015) argues that, in general, income generated abroad is subject to tax once it is received, that is, at the time the taxpayer receives it and transfers it to the country of residence. This treatment is based on the principle of worldwide income, which is widely adopted by States to tax the income of their residents.

Due to this rule, which imposes the taxation of foreign income only when it is received, there is the possibility of deferring the tax burden by keeping such income outside the country. This is achieved through the creation of subsidiary companies in low- or no-tax jurisdictions, where the profits remain untaxed in the taxpayer's home country. To counteract this avoidance strategy, many jurisdictions have implemented specific regulations, known internationally as CFC (Controlled Foreign Corporation Rules) rules.

According to Pascuali, the CFC rules are based on:

a) **Control or level of participation:** Most tax systems require the resident taxpayer to own at least a 50% stake in the foreign company in order to qualify it as a CFC. However, there are exceptions. Some jurisdictions also recognize de facto control or a significant stake, considering in some cases a stake of less than 50% if a resident owns, for example, a minimum of 40%.

(b) **The legal nature of the CFC:** In general, the foreign entity must be a corporation with independent legal personality, created under the laws of the country in which it is domiciled. Generally speaking, the CFC schemes do not cover entities such as trusts or permanent establishments abroad.

(c) **Methods for determining income subject to the CFC regime**: There are two main approaches.

- The transactional approach taxes only passive income generated by the CFC, regardless of the jurisdiction in which it is obtained.

- On the other hand, the jurisdictional, or localization, approach applies the CFC rules to all the income of subsidiaries domiciled in tax havens or low-tax jurisdictions. The latter approach usually uses lists of non-cooperating jurisdictions or defines minimum limits of tax rates to establish its scope.

For their part, Mozule and Rezevska (2016) analyze the impact of CFC rules on the capital structure of European multinationals, observing a decrease in the financial leverage of subsidiaries due to the limitation of internal loans as a profit transfer strategy. This shows that the CFC rules directly affect corporate financing decisions, reducing the advantages of complex structures abroad.

At the European Union level, Moser (2017) examines the regulation raised by the Anti-Tax Avoidance Directive (ATAD), which establishes a common framework on CFC standards for member States. This regulatory framework is based on the CFC legislation of Germany, one of the most consolidated and strict in Europe. The ATAD standards harmonize Anti-Avoidance policies in the European Union, establishing standards that strengthen tax transparency and limit the movement of income to territories with reduced taxation.

Canè (2017) highlights the relevance of the CFC rules in the preservation of the national tax base, by avoiding the deferral of taxes on offshore income. However, it suggests that the coordination of these rules through international treaties could reduce tax conflicts and prevent adverse effects on foreign investment policies, proposing the use of multilateral provisions that integrate the treatment of CFC entities as transparent entities in certain cases.

Khoruzhy et al. (2020) explore the relationship between the CFC framework and investment localization, identifying a negative correlation coefficient between the tax base and the reduction of tax rates. For CFC entities regulated under foreign legislation, the economic effect of a lower effective tax rate is associated with a significant reduction in investments, while those CFCs subject to national regulation show a positive correlation, characterizing a tendency towards adjusting their investment strategies depending on fiscal policy.

Savostyanova and Kuznetsov (2021) examine the impact of a flat tax on the profits of CFCs in Russia, noting that, although it exempts controlling entities from filing financial reports, it implies a levy independent of the entity's financial results. This tax, without the possibility of compensation of losses, allows the tax authorities to request reports after the deadline, highlighting a tax structure that restricts deductions and credits for foreign taxes, which generates both advantages and disadvantages for taxpayers.

Finally, Beebeejaun (2023) emphasizes the challenges associated with the accelerated implementation of CFC standards, which can lead to interpretation

problems and a possible negative impact on the competitiveness of the local economy vis-vis multinationals. This study recommends expanding tax exemptions in the first years of implementation, as well as developing clear guidelines for the determination of CFC revenues and their tax attribution, in order to balance tax collection with the encouragement of foreign direct investment.

These studies reflect the multiple approaches and challenges that countries face when applying CFC standards, highlighting their relevance in protecting national tax bases and in the fight against international tax avoidance.

2. INTERNATIONAL COMPARATIVE

This article analyzes the fundamental characteristics of the CFC regime based on various sources of highly relevant information. One of the main resources used is the database of the Inter-American Center of Tax Administrations (CIAT, 2024), which monitors the progress of the implementation of the BEPS Plan in Latin American and Caribbean countries. In particular, it focuses on Action 3, aimed at strengthening regulations on CFCs. This compendium of information includes an analysis of the legislations of Argentina, Chile, Colombia, Ecuador, Spain, Mexico and Portugal, providing a broad overview of the development and application of CFC standards in the region.

Also, the comparative study of Pascuali (2015) is incorporated, which examines the most consolidated legislation on CFCs, particularly in pioneer countries such as the United States and the United Kingdom. This analysis allows contextualizing the differences in the design and application of CFC standards in countries with a tradition in policies against the erosion of tax bases, enriching the comparative approach with historical experiences and legislative contrasts between countries with a long history and those that have recently adopted this tax regime.

2.1 The United States

The regulation of CFCs in the United States is contemplated in sections 951 to 965 of the Internal Revenue Code (IRC), within the regulations known as Subpart F, being the first country to regulate CFCs and establish the taxation of passive income of subsidiaries abroad.

This regime imposes a limitation on the tax deferral on certain types of income obtained by CFC entities, obliging US taxpayers to include in their taxable income the proportional portion of the income generated by the CFC during the corresponding fiscal year. This treatment seeks to reduce the possibility of indefinitely postponing the taxation of passive income accumulated in foreign jurisdictions.

Definition of CFCs according to the legislation

To qualify as a CFC under U.S. tax law, a foreign entity must meet specific requirements of control by U.S. shareholders. An entity is considered a CFC if:

- The entity is a foreign company in which U.S. shareholders own, directly or indirectly, at least 10% of the voting shares.
- American shareholders, collectively, own more than 50% of the voting rights or ownership of the shares.
- This control threshold can be adjusted in particular circumstances, such as in the case of foreign insurance companies, where the requirements are less stringent to adapt to the peculiarities of the insurance sector.

Scope of application

Subpart F applies to CFCs located in any jurisdiction, although it imposes more stringent rules for those located in countries classified as sanctioned countries, where the tax treatment is even more restrictive. This differentiation reflects both a tax and a political

approach, which allows regulations to respond to foreign policy considerations in addition to fiscal objectives.

Types of income

The Subpart F regime adopts a hybrid approach that combines transactional and jurisdictional criteria to define the income subject to imputation. Generally speaking, passive income is the main one affected by these rules. These include Dividends, interest, royalties, and other income of a passive nature, such as certain types of insurance income.

In addition, Subpart F regulates specific income of a political rather than tax nature, such as income from certain countries or illicit payments made to foreign governments.

Exemptions and benefits in the distribution of income

To avoid double taxation, the Subpart F regime allows certain benefits and exemptions that apply when the income previously imputed to the taxpayer in the United States is effectively distributed by the foreign company. These revenues, when distributed, are exempt from additional tax at the time of distribution, so they are excluded from the gross income of the U.S. shareholder. This benefit guarantees that the income attributable under Subpart F, once subject to initial taxation, is not taxed again, favoring tax fairness and the efficiency of the imputation system.

2.2 United Kingdom

The CFC regime in the United Kingdom has undergone significant revisions in recent years, reinforcing its applicability and scope. The regulation applies when an entity resident abroad is subject to effective control from the United Kingdom. This control is presumed when the shareholders of the foreign company can guarantee that operations are carried out in accordance with the interests and wishes of a resident of the United Kingdom. This definition of control is broad and allows the tax authorities a flexible assessment, considering the real influence of the shareholder resident in the United Kingdom on the decisions and management of the foreign entity.

Imputation of CFC income and exemptions

In general terms, all income generated by the CFC entity domiciled abroad would be subject to taxation in the United Kingdom, unless they comply with one of the numerous exemptions established in the regulations. This approach focuses on taxing passive income, while commercial income is usually exempt. For example, income generated from active business activities of the CFC does not require declaration in the United Kingdom.

However, if passive income is considered an integral part of a commercial operation, it may also benefit from the exemption, as well as those cases in which it is demonstrated that, despite the existence of effective control, the administration of the foreign entity is conducted independently and autonomously in the country of origin of the CFC.

Flexibility and discretionary power of the Tax Administration

The structure of this regime allows greater flexibility for British taxpayers interested in developing business operations abroad, by offering a framework that distinguishes between passive and active income, and by exempting from taxation those that are managed independently. However, the regime also gives the Tax Administration broad powers to apply the CFC rules rigorously. If evidence of an intention to defer or avoid taxes through the use of a controlled foreign entity is established, the control body has tools to subject the attributed income to taxation, facilitating the direct tax imputation to the British taxpayer.

This regulation, with its flexible approach and broad exceptions, seeks to balance the encouragement of legitimate operations abroad with a robust control

against tax avoidance practices, ensuring that international structures used by residents in the United Kingdom are subjected to a thorough assessment of their income, in line with the principles of transparency and fiscal control of the British tax system.

2.3 Argentina

The CFC regulations in Argentina, introduced in the Income Tax Law as part of the reform to the international tax transparency regime, are aligned with the recommendations of BEPS Action 3 to combat base erosion and profit shifting. This regime attributes the income generated by the CFCs to the Argentine resident in the fiscal year in which the accounting period of the foreign entity ends, regardless of the effective distribution of income.

The income generated by a foreign entity is allocated to the resident in proportion to his participation in the result or equity of that entity. However, in cases where the resident controls a trust or foundation that manages assets abroad, all of the income from these entities is attributed to the Argentine resident. This attribution operates under the principle of tax transparency, considering the beneficial owner as the taxable person of the tax obligation in the country.

To apply the CFC regime, it is considered that the resident exercises control over foreign entities when they pay a similar tax of less than 75% of the one that would correspond in Argentina. This 75% threshold is presumed when the entity is located in non-cooperating or low- or no-taxation jurisdictions, eliminating the need to specifically prove this tax difference.

In situations where the tax paid by the foreign entity in its jurisdiction of incorporation is less than 75% of the tax that would be applied in Argentina, and its income derives from passive income, from activities without economic substance, or generates deductible expenses for related entities in Argentina, it is considered that this condition is evident when the entity is domiciled in low-taxation jurisdictions.

The imputation of foreign income in the country is conducted as if the resident had obtained said income directly, applying the rules for determining net income, currency conversion and local aliquots that correspond to each income category. This ensures that the income is taxed on an equal basis to those generated in Argentina.

For the income of a foreign entity to be attributable to the resident, the following conditions must be met simultaneously:

- **Prior special tax treatment:** The income must not have been subject to other preferential treatment within the Income Tax Law.

- **Significant control or linkage**: The Argentine resident must own, individually or jointly with other people (including relatives), at least 50% of the capital or voting rights in the foreign entity.

- **Lack of economic substance or generation of passive income**: The foreign entity must lack sufficient infrastructure and personnel to carry out its main activity, or at least 50% of its income must come from passive income. Additionally, it is considered when these incomes generate deductible expenses for related parties in Argentina.

- **Effective tax abroad less than 75%:** The tax burden on passive income in the foreign entity must be less than 75% of the tax that would be applied in Argentina. This condition is automatically assumed for entities in non-cooperative or low-tax jurisdictions, with no possibility of proof to the contrary.

This regime also covers indirect participations in foreign entities, applying the same conditions and ensuring that income is attributed transparently and equitably to the Argentine resident, with the aim of limiting the transfer of income to international structures designed to minimize the tax burden.

2.4 Chile

In the regulatory framework of CFCs in Chile, the control provisions do not include those resident taxpayers who act in a coordinated or concerted manner, which excludes indirect or unrelated participants. Likewise, the relationship rule omits any controller that is a non-resident entity in Chile and that is also not under the control of a Chilean entity. In addition, Chilean regulations lack Anti-hybrid provisions regulating intra-group payments to controlled foreign entities, so these payments do not influence the calculation of taxable income subject to the International Tax Transparency regime (ITR).

Definition and classification of income subject to the ITR regime

The income subject to ITR is defined under a classification that distinguishes between active and passive income. Passive income includes profits, interests, royalties, capital gains, income derived from leasing real estate, assignment of rights of use, and those obtained from operations with Chilean taxpayers, provided that certain requirements are met. It is important to note that income derived from insurance is not considered passive in this classification, which represents a specific exception in Chilean regulations.

Exceptions to the application of the CFC rules

The CFC regime in Chile establishes certain thresholds and conditions under which the income of controlled entities will not be subject to the CFC regulations. These thresholds are:

- **Passive income threshold:** The CFC rules shall not apply if the passive income of the controlled entity does not exceed 10% of its total income during the corresponding fiscal year.

- **Threshold of passive income-generating assets:** The regulations will not be applied if the assets of the entity capable of producing passive income represent less than 20% of the total value of its assets, determined proportionally according to the time of residence in the financial year.

- **Tax rate in the jurisdiction of the CFC:** If the entity's passive income has been subjected to an effective income tax rate equal to or greater than 30% in the jurisdiction where the entity is domiciled, established or incorporated, these incomes will be excluded from the CFC regime.

Imputation of passive income

The passive income received or accrued by the controlled entities is attributed directly to their owners residing in Chile, at the end of the respective fiscal year. This attribution is made in proportion to the direct or indirect participation that each owner has in the controlled entity. To determine the taxable amount of these passive income in Chile, local rules on the taxable base are applied, ensuring that income earned abroad is integrated into the Chilean tax system in accordance with current regulations.

This scheme ensures that passive income generated abroad contributes to the national tax base, limiting opportunities for income offshoring and allowing more efficient control over cross-border tax planning structures.

2.5 Colombia

The Foreign Controlled Entity (FCE) regime, corresponding to the CFC regime in Colombia, is based on the notion of control established by the subordination criterion, which is evaluated according to the linkage guidelines of the transfer pricing regime. This approach allows the FCE regulations to cover foreign entities in which Colombian taxpayers maintain substantial control through their shareholding or influence in the entity's decision-making.

Absence of Anti-avoidance requirements and tax thresholds

The FCE regime in Colombia does not establish specific Anti-Avoidance requirements nor does it provide for an exemption based on the tax burden in the jurisdiction of the controlled entity. Likewise, the regime does not impose a minimum threshold of effective taxation abroad, which means that any passive income generated by the FCE, regardless of its level of taxation in the foreign jurisdiction, may be subject to tax imputation in Colombia.

This absence of a tax threshold reinforces the scope of the regime, ensuring that income earned abroad does not benefit from reduced tax burdens abroad.

Classification of passive income subject to the FCE regime

The regulations of the FCE regime specify that certain types of passive income generated by the controlled entity are attributable to the Colombian taxpayer, these being mainly:

- **Dividends:** Distributions of profits obtained from the shareholding in the foreign controlled entity.
- **Financial returns:** Income derived from financial investments or debt instruments held by the FCE.
- **Income from the disposal or transfer of passive income-generating assets**: It includes the gains obtained from the sale or assignment of rights over assets that produce passive income.
- **Disposal or lease of immovable property:** It includes income derived from the sale or rental of real estate owned by the FCE.
- **Income from purchase of tangible property:** These revenues will be attributable when they meet specific transaction requirements, generally related to transactions between related parties or when the acquisition of tangible assets by the FCE is linked to the generation of passive income.

The detailed classification of these incomes allows the FCE regime in Colombia to have an exhaustive and rigorous approach to passive income, reducing opportunities for tax deferral through the relocation of income. This regulatory structure strengthens the tax control over the income obtained by foreign entities in which the Colombian taxpayer exercises effective control, aligning the regime with the objectives of transparency and the fight against the erosion of fiscal bases.

2.6 Ecuador

The tax regulations of Ecuador incorporated the CFC regime in December 2023, which is effective from the 2024 tax period. In this sense, its practical application could be evidenced in the year 2025, a period in which the subjects reached must comply with the regular obligations of tax returns and other individuals provided for in the new regime.

According to what is indicated in Article 51.1 literal b) of the Law on Internal Tax Regime, a company will be considered CFC when at least one final beneficiary, a tax resident in Ecuador, directly or indirectly owns an effective participation equal to or greater than 25% of the capital, voting rights, distribution of dividends, profits, profits, liquidation remnants or other similar economic rights.

This control threshold guarantees that foreign entities with substantial ties to an Ecuadorian resident are subject to the tax transparency provisions.

Determination of the tax base

The tax base of the attributable income of a CFC is calculated on the net profit generated, taking as a reference the end of the applicable fiscal year in the

jurisdiction where the CFC has its tax residence, a permanent establishment (PE), or its formal constitution. In cases where the CFC jurisdiction does not establish a specific fiscal year, it will be taken as the end of the fiscal year on December 31 of the corresponding year.

The taxable base, once calculated, is considered taxable income for the final beneficiary resident in Ecuador. The tax losses of the CFC can only be offset with positive income in subsequent fiscal years, provided that they correspond to the same CFC, without the possibility of being applied against other income.

Tax credit for taxes paid abroad

Taxpayers can use as a tax credit in Ecuador the tax of a similar or analogous nature actually paid abroad by the CFC, in proportion to the profits or income taxed by the taxpayer. The tax credit is conditional on the payment having been made definitively and without the right to reimbursement in the foreign jurisdiction. In no case can this credit exceed the tax caused in Ecuador on the income of the CFC, thus ensuring an alignment with the Ecuadorian tax burden.

Effective rate criterion for defining a CFC

Additionally, for the classification of an entity as a CFC, the Internal Revenue Regime Law in its Article 51.1 literal c) establishes that the company must be subject to an effective income tax rate (or similar taxes) lower than 60% of the rate applicable in Ecuador, or to an unknown rate. This minimum rate criterion ensures that entities in low-tax jurisdictions do not avoid tax obligations by applying reduced rates on their income.

Classification of attributable passive income

The CFC regime in Ecuador classifies as passive income those derived from capital gains, exploitation of real estate property, dividends, financial returns, royalties, as well as income from commissions, intermediation margins and technical, administrative or consulting services, provided that they originate, directly or indirectly, in Ecuador. This classification allows the Tax Administration to identify and attribute income of Ecuadorian origin generated by controlled foreign entities.

Attribution and obligation of the final beneficiary

The passive income generated by the CFC is attributed to the final beneficiary resident in Ecuador, in proportion to his effective participation in the foreign company. Said final beneficiary is considered the income taxpayer in Ecuador and, as such, must include these incomes in his global income tax return, in the proportion corresponding to his participation in the CFC. This direct attribution ensures that income from foreign sources is included in the Ecuadorian tax base, guaranteeing adequate transparency and fiscal control.

2.7 Spain

The Spanish CFC regulatory framework implements a total income imputation regime that operates in those cases where the entity controlled abroad does not have sufficient material and human resources to conduct its main activity. This presumption allows the Tax Administration to impute all the income generated by the CFC to its parent entity resident in Spain, unless the taxpayer provides evidence to the contrary that proves the existence of economic substance in the foreign entity.

The Spanish legislation establishes a specific classification of passive income that will be considered as taxable income under the CFC regime. These income include, among others, income from dividends, interest, royalties, capital gains, and other income that is not generated from a substantial economic activity.

Following the adaptation of EU Council Directive 016/1164 of July 12, this classification of passive income is subject to extension, so that new categories of passive income will be included and will be subject

to the CFC scheme. This modification strengthens fiscal control over international structures and reduces the possibilities of relocating benefits to entities with limited real economic activity. With these provisions, the CFC regulations in Spain seek to limit tax avoidance opportunities through the use of foreign entities that do not have an adequate economic structure and, at the same time, aligns national regulations with European Union standards, guaranteeing greater consistency and fairness in the cross-border tax system.

2.8 Mexico

The tax legislation in Mexico has reformed its regulations to define a comprehensive framework of effective control over foreign entities under the CFC regime. This legislation incorporates various control modalities, including legal, economic, de facto and consolidation control, as well as the level of taxpayer participation in the controlled entity. These provisions ensure an exhaustive coverage of the control structures, aligning the regulations with international standards.

Determination of the participation and tax result

The standard details the method for calculating the proportion of the taxpayer's participation in the controlled foreign entity, establishing that the income generated by the CFC will be attributable to the taxpayer residing in Mexico in proportion to his participation, whether direct or indirect. These incomes are considered subject to preferential tax regimes if they are not taxed abroad or if the tax burden is less than 75% of the income tax that would be generated in Mexico according to Titles II or IV of the Income Tax Law.

To determine this proportion, the taxes on dividends mentioned in Article 140 and section V of Article 142, the annual adjustment for inflation, or foreign exchange gains or losses derived from currency fluctuations against the national currency are not considered.

Types of income included in the calculation

The income from CFCs includes those generated in cash, goods, services, credit, or those allegedly determined by the tax authorities. Once the tax result of the foreign entity is determined, the taxpayer must calculate his proportion based on his participation in the CFC according to the following specific criteria, established in Article 176 of the Income Tax Law:

- **Daily direct or indirect control (Section I or Section A of Article 176):** The daily average of the taxpayer's direct or indirect participation in the CFC during the corresponding financial year will be considered.

- **Participation in assets and profits in cases of capital reduction or liquidation (Section II or Paragraph B of Article 176):** Here, the direct or indirect participation in the assets and profits of the CFC is considered. If the proportion varies throughout the year, the highest percentage reached will be taken.

- **Sum of shares in combined control modalities (Fractions I or II, Paragraphs A or B):** If the control is exercised through a combination of modalities, the taxpayer must add up the shares calculated according to fractions I and II, even if any of these would not generate effective control.

- **Participation according to accounting standards (Section IV or Paragraph C of Article 176):** The participation will be determined according to the accounting rules applicable in case of effective control over the CFC.

- **Participation in the case of agreements or securities other than shares (Section V of Article 176):** The average daily participation, together with the proportion of assets and profits in cases of capital reduction or liquidation, will be calculated

if the control is established through agreements or securities other than shares.

If the taxpayer complies with more than one of these assumptions, we must consider the highest participation ratio among the applicable ones, ensuring that the imputation of income corresponds to the actual effective control exercised over the CFC. This regulatory scheme strengthens fiscal control over the international structures of companies and aligns the fiscal results of CFCs with Mexican regulations, limiting opportunities for avoidance by relocating income in low-tax jurisdictions.

2.9 Portugal

Law 32/2019, of May 3, incorporated the provisions on CFCs into Portuguese legislation in accordance with the Anti-Tax Avoidance Directive (ATAD) of the European Union. This transposition establishes a specific framework for the taxation of income of foreign subsidiaries controlled by entities resident in Portugal, with the aim of minimizing aggressive tax planning practices and relocation of profits to low-tax jurisdictions.

The reform of Article 66 of the Corporate Tax Code (CIRC) in Portugal allows the imputation to the resident parent company of the income obtained by a controlled subsidiary that is subject to a low tax burden. This mechanism reallocates the subsidiary's income to the parent level, in order to integrate into the Portuguese tax base those revenues generated in jurisdictions that apply a lower taxation than the Portuguese tax standards.

This regulation specifically includes passive income, such as dividends, interest, royalties, capital gains, and other income of a similar nature, which are considered as income subject to a low taxation regime when the effective income tax rate in the jurisdiction of the controlled subsidiary is less than 50% of the applicable corporate rate in Portugal. By paying these incomes back to the parent company, it is guaranteed that there is no tax advantages derived from the geographical location of the profits, ensuring an equitable treatment of international income within the Portuguese tax system.

These provisions strengthen the tax control over international structures, aligning Portuguese regulations with the principles of transparency and fiscal fairness promoted by the ATAD and the regulatory framework of the European Union.

3. CASE STUDY

The multinational company MANANTIAL, based in Country A, conducts transactions through a structure that includes subsidiaries in low-tax jurisdictions. The parent company located in Country A, has experienced significant tax losses due to the transfer of income to its subsidiaries abroad. This case explores how the CFC regime applied in Country A can counteract this erosion of the tax base, ensuring that passive income obtained abroad is taxed in the country of residence.

MANANTIAL (parent company) a technology company with annual sales of $1.2 billion, has structured its international operations through two main subsidiaries: MANANTIAL I in the Bahamas and MANANTIAL II in Ireland. The passive income generated in these subsidiaries includes income from patent royalties and intra-group financing services, amounting to $400 million. Both subsidiaries are located in low-tax jurisdictions: In the Bahamas they have an income tax rate of 0% and in Ireland a reduced rate of 12.5% applies.

The tax structure of MANANTIAL (parent company) is designed to optimize its tax burden by transferring passive income to these subsidiaries. This translates into a reduction of the tax base in Country A, and lower taxation in foreign jurisdictions. The scheme has allowed MANANTIAL II to defer the payment of taxes in Country A and benefit from a total effective tax burden of only 7% on its global income, as can be seen in Table No. 1.

Table No. 1
Tax structure of MANANTIAL (parent company)

Subsidiary	Passive income (millions of $)	Country	Tax rate (%)	Tax paid (millions of $)	Tax in Country A. ($million) Applying CFC (30%)
MANANTIAL I	200	Bahamas	0%	0	60
MANANTIAL II	200	Ireland	12,5%	25	35
Total	**400**			**25**	**95**

Source: Elaboration by authors.

Under the current scheme, tax losses in Country A have accumulated to $70 million annually, due to the displacement of income to foreign subsidiaries. However, when the CFC regime is applied, passive income is distributed to the taxable base in Country A, allowing the tax authorities to tax this income at the rate of 30%.

The CFC regime in Country A establishes that any foreign entity under the control of a resident in that country will be considered a CFC if:

- The control of the subsidiary exceeds 50%, directly or indirectly, by the parent in Country A.
- Passive income represents at least 10% of the total income of the foreign entity.
- The entity is located in a low-tax jurisdiction (defined as an effective rate of less than 75% of the corporate rate of Country A).

Since MANANTIAL has full control over MANANTIAL I and II, and both meet the criteria of passive income and low taxation, the CFC regime of Country A applies. This means that the passive income generated in these subsidiaries will be charged to the parent company in that country.

Calculation of the tax effect with the CFC regime:

When applying the CFC regime, the $400 million in passive income from foreign subsidiaries is distributed to the parent in Country A. This means that, instead of being taxed in low-tax jurisdictions, the income will be taxed in Country A, preventing the erosion of the tax base and guaranteeing a fairer tax burden.

Total taxes payable:

- **Without CFC**: Only $25 million would be paid in taxes on passive income, resulting in an effective rate of 7%.
- **With CFC:** Taxation is increased by an additional $70 million, reaching a total of $95 million in taxes and an effective rate of 23.75%.

When this income is taxed in Country A, the CFC regime:

- It strengthens the national tax collection by avoiding income losses due to relocation of benefits.
- It promotes tax transparency by requiring the complete declaration of income abroad.
- It reduces unfair competition between multinationals and local companies that cannot benefit from international tax structures.

CONCLUSIONS

- The results of the comparative analysis on the CFC regime show that these regulations are necessary to mitigate the erosion of tax bases and the transfer of benefits. The CFC regimes constitute a mechanism in the protection of national income, ensuring that the income generated abroad by entities under the effective control of tax residents does not remain outside the tax scope.

- The study confirms that, although each jurisdiction applies specific criteria to define the control and nature of taxable income, there are common patterns, such as the subjection of passive income to tax imputation and the classification of jurisdictions according to their taxation levels. The application of these criteria responds to the importance of balanced tax competition, limiting the use of subsidiaries in territories with low or no taxation for tax deferral purposes.

- The analysis also highlights the influence of international regulations, such as the European Union's Anti-Tax Avoidance Directive and the OECD's recommendations under the BEPS framework, on the harmonization of CFC policies. These international guidelines have prompted many countries to establish equity participation thresholds, effective minimum tax rates and lists of non-cooperating jurisdictions. This regulatory convergence favors consistency in the application of CFC rules, reducing the possibility of tax arbitrations and promoting transparency in global financial flows.

- In terms of economic efficiency, these rules contribute to a more aligned allocation of resources to productive activity, by reducing incentives to structure operations based on tax benefits. By taxing passive income without economic substance, these regimes discourage tax planning practices aimed exclusively at tax savings, reinforcing the integrity of the tax system.

- To further strengthen the impact of the CFC regime, a continuous monitoring of international transactions is recommended where the Tax Administration should maintain constant supervision over intra-group transactions and the use of subsidiaries in tax havens to identify avoidance patterns.

- It is also necessary to update non-cooperating jurisdictions whose list of low-tax countries should be reviewed and updated regularly to ensure the effectiveness of the regime.

- Finally, a guide on the treatment of passive income and the calculation of tax credits, in order to facilitate compliance and transparency in taxpayers' tax returns.

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Cooperative Compliance and Tax Compliance as a New Voluntary Tax Compliance Regime with a Peruvian Approach

Sonia Jackeline Miranda Ávalos

SYNOPSIS

The objective of this article is to explore how tax compliance and cooperative compliance have been taking place in other areas outside Peru. The method is a qualitative approach under the documentary analysis technique.

The results show that Spain is one of the pioneering countries in applying tax compliance models through the UNE 19602 Standard. Australia, the United Kingdom and the Netherlands have led the new relationship scheme through cooperative compliance.

In Latin America, cooperative compliance models have started in Brazil, Ecuador and Peru with preliminary studies.

KEYWORDS: Tax compliance, Cooperative compliance, LATAM

CONTENTS

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INTRODUCTION

In recent years, some legal systems have been implementing approaches in which the relationship between the tax administration and companies, especially multinationals, is based more on cooperation and mutual trust than on confrontation. This approach seeks to improve collection figures and reduce tax litigation, preventing conflicts through collaboration. These formulas have been called Enhanced Relationship and, lately, Cooperative Compliance.[1]

Cooperative compliance is a program implemented by tax administrations under the relationship of mutual or reciprocal cooperation based on transparency and collaboration. In turn, it provides greater security to taxpayers, leading to the reduction of costs of compliance with their tax obligations.

The first country in Latin America to apply this cooperative compliance program is Brazil with its CONFIA program, and in Europe they are applied in Spain, the Netherlands, Australia, the United Kingdom, Italy, among others (CIAT, 2022). This will be detailed in the research especially in the application of procedures and models with this type of new horizontal relationship, leaving aside the coercive relation between tax administrations and taxpayers.

This is becoming a challenge for tax administrations, especially those in Latin America, and one of the main purposes is to reduce tax litigation.

On the side of tax compliance, we must start from the fact that the term tax compliance aims to prevent a company from incurring penalties, breaches or situations that could compromise the future viability of the company (UNIR, 2023).

Therefore, tax compliance is the set of practices and actions that is conducted to guarantee the due **compliance with all tax obligations in accordance with the applicable tax regulations.** This includes the payment of taxes, filing of tax returns, compliance with tax regulations and the control and mitigation of tax risks that may affect the organization. The model to consider for this good practice is Spain, where the **UNE 19602 Standard** establishes the key elements that an organization must consider for implementing a **tax compliance system** (Fernández J., 2023).

The tax compliance system is applied by taxpayers through the identification of tax risks through the elaboration of tax risk management matrices, if necessary; in other countries the companies have been incorporating their tax control frameworks (TCF) that have as antecedent the internal control frameworks in matters of internal audit under the accounting approach.

Taxpayers apply the tax compliance programs to be able to have their tax risks identified through a tax control framework, as a first step to be able to apply to cooperative compliance programs with the tax administrations.

This is a very new topic for Peru, taking as an initiative to begin to know the advantages and procedures in detail that have been applied in other jurisdictions, taking them as a reference and good practices for their application as a result of the IDB-SUNAT initiative already conducted. Therefore, it is a topic that will have to be applied in the near future, hence the relevance of this research.

The present article is structured in four parts, developing of the topic through the theoretical bases, method, results and conclusions.

1 Rosas, José: Los sistemas de relaciones cooperativas: una perspectiva de derecho comparado desde el sistema tributario español", Doc. No 6/2016, p.5. *Institute of Fiscal Studies, (https://www.ief.es/docs/destacados/publicaciones/documentos_trabajo/2016_06.pdf)* .

1. THEORETICAL BASES

1.1 The Organization for Economic Cooperation and Development (OECD)

In 2006, the OECD developed a forum on tax administrations where the Seoul Declaration was approved. This declaration encourages large companies, and their senior management to assume greater responsibility and interest in their tax strategies in addition to expanding the guidelines of good corporate governance, between the relationship of taxes and the concept of good corporate governance.

Then in the year 2008, in Cape Town, the following statement was provided: "*Exploring options for applying OECD corporate governance principles to the tax area, sharing experiences, and dialogue with listed companies in relation to the tax risk management approach"* (Gónzales, y otros, 2021)

In 2011, OECD proposed guidelines for multinational enterprises in its chapter XI, initial principles of action to what is now known as tax compliance, focusing on three pillars: 1. Interpretation of the tax rules in the spirit of the normative 2. Transparency and cooperation with the tax administration, 3. Responsibility in companies through their board of directors in the management of tax risks." (Gónzales, y otros, 2021)

The OECD was a pioneer in the promulgation of the Fiscal Control Framework allowing taxpayers to provide the tax administration with verifiable evidence that the information they provide is complete and correct based on the application of audit techniques. Defining and dividing the Tax Control Framework into six components:

1. Defined tax strategy
2. Comprehensively applied to the entire organization (scope of application)
3. Properly assigned roles and responsibilities
4. Documented government
5. Thoroughly tested
6. Subject to audit by third parties

These six components are intended to ensure that tax risks are controlled, and tax compliance is correct and adequate (Gónzales F. & Rodríguez, El mapa de riesgos en el compliance tributario, 2021).

In relation to cooperative compliance in 2013 OECD in its report coined this new term to refer to the tax administration-taxpayer relationship that encompasses the cooperative relationship and tax compliance; making it essential to use Tax Control Frameworks defined as the internal control of all processes and transactions with tax incidence.

In 2016, the Tax Control Framework guide was published at the forum organized by OECD, becoming a basic requirement for the cooperative tax compliance model" (Gónzales, y otros, 2021). They also identified five principles that should guide the actions of tax administrations for successful cooperation. In addition, I add one more principle which is that companies must have an internal tax control model (tax compliance).

This tax compliance model plays an especially important role for the concept of cooperative compliance because the taxpayer provides information about their tax risks voluntarily, generating transparency for the tax authority, as well as confidence in the information submitted by the taxpayer.

The surveillance and control by the tax administration would be considerably reduced, proposing three models to facilitate cooperation such as monitoring, control of tax risks and compliance by design based on taxpayers' trust (Melgar, 2023).

1.2 Tax compliance

Compliance is the correct compliance under the rules and in the business field it has become an important tool to improve through prevention in all aspects of a

company such as reputational, organizational, financial, commercial and cultural.

Implicitly related to good corporate governance, leading to the application of compliance within companies being a key factor in sustainability and profitability that affect stakeholders such as suppliers, customers, employees, etc; therefore the application of compliance helps the reputation of companies because it represents to its stakeholders a high level of commitment through the application of values such as honesty, ethics, regulatory compliance (Fernández Ó., 2019). In this line of ideas, Merino (2021) points out that tax compliance is a tool that prevents and controls tax risks.

Elements of tax compliance:

a) Risk diagnosis; where the scope must be defined and for this all the tax rules that affect the company or taxpayer must be identified. In the compliance regulations there is no diagnostic model to be developed, however, methodologies from the field of internal control management have been taken as a reference through the analysis of risk assessment, using parameters of probability, occurrence and impact graphically represented through maps or risk matrices.

They need to be planned for the short, medium and long term.

b) Monitoring; there is no specific procedure specified in the corresponding Spanish regulations, however, there are certifying entities that carry out audits with a period of more than 3 years, based on an initial audit and then conducting annual audits.

(c) Control Body; from a *Chief Compliance Officer (of large corporations, full-time)*, compliance committee and ethics committee.

d) The communication of irregularities and disciplinary system (Lacunza & Zarraonandia, 2021).

It is made up of four fundamental pillars:

1. Corporate tax policy that details the group's tax strategy: the tax strategy is detailed, constituting the framework policy where the tax risk management and control system will be based, establishing objectives, strategies, rules of action and good tax practices of the group so that it complies with its tax strategy. The document that supports the corporate tax policy must contain the following rules:

   - Mandatory compliance
   - Dissemination inside and outside the organization
   - Free to raise any query regarding corporate tax policy by any member of the company.
   - Report any non-compliance.

2. Tax risk management and control framework: it must be aligned with all the group's tax risk management tools such as: internal control system over the financial information of listed entities (SCIIF), *Committee of Sponsoring Organizations of the Treadway Commission (COSO), which should contain a gear that covers the fiscal side.*

   All the characteristics of the business group, sector, number of employees, countries in which it operates, business lines, tax profile (which taxes this, benefits and special tax regimes) should be considered; data that will serve for the control system and management of tax risks.

   Finally, the effectiveness of the tax risk management and control framework should be periodically tested through internal audits.

3. Procedures for the settlement and presentation of taxes**.** Periodic controls on the effectiveness of the settlement and presentation of taxes should be introduced in all jurisdictions where the group operates.

4. Tools technologies that improve tax management and automate controls**.** To ensure that all tax management procedures are automated with all the resources provided by the use of technology, for example artificial intelligence, massive and automatic downloading of different reports, analytical data, etc. (Gutiérrez, y otros, 2021).

Advantages of tax compliance

1. To exempt or mitigate the criminal responsibility for the commission of the tax crime.

2. Evidence of voluntary compliance with tax obligations and in the prevention of tax infringements.

3. The reputational aspects would improve as an advantage in relation to other companies or taxpayers.

4. Reducing conflicts with the tax administration would lead to an increase in legal certainty.

5. Greater efficiency in the internal management of the organization.

6. The certification for compliance with the regulations of tax compliance.

7. It avoids joint and subsidiary liability for tax debts.

8. It generates an advantage to apply for an investment project in public tenders for European projects.

9. Increases the sales and with it the value of the company (Lacunza & Zarraonandia, 2021).

   The first joint works between tax administrations of the countries of Australia, Canada, Spain, Italy, Japan, the Netherlands, the United Kingdom and the USA and between 8 multinational companies residing in each country indicated was given in 2018 through the pilot program "*International Compliance Assurance Programme pilot*[2]", the first designs of the tax compliance program were given. On the planet, Australia is the one that leads in the development of tax compliance policies, and on the European stage, the United Kingdom and the Netherlands have led (Lacunza & Zarraonandia, 2021).

Tax compliance policies mainly identify, analyze and evaluate risks, which allows planning actions to address the risks that are necessary to prevent or reduce the effects, which must be communicated to all interested parties. A *tax compliance officer* must be appointed as the person responsible for tax compliance, to make decisions on tax matters together with the legal representative (Carrazco & Erazo, 2021).

Tax compliance allows us to incorporate a tax risk matrix that used to be part of the internal audit branch and is now being transformed into a tax aspect.

1.3 From an Internal Control Framework (ICF) to a Tax Control Framework (TCF)

The effectiveness of an ICF is based on the ethical and moral values of the directors of an organization and the way they ensure the application of these values in daily practice, of which the ICF is an essential element. Materializing this ICF through the declaration of information on tax risks constitute greater transparency and disclosure of the information, reflecting a strong ICF (OCDE, 2013).

The tax administrations rely on taxpayers who have a good corporate governance that implies that they have ICF which implies that they have an internal control

2 International compliance assurance pilot program.

system, of which three countries such as Australia, the United Kingdom and the Netherlands; according to OECD information have declared that taxes constitute an explicit object of corporate governance rules. Tax risk declarations in some countries are mandatory, in others voluntary and in others, through a cooperative compliance program.

Tax Control Framework (TCF)

Taxpayers who take advantage of a Collaborative and/or Cooperative Compliance Program (CCP) should preferably have a solid TCF structured that contains reliable reports and audits. The TCF must detect execution risks, identify key changes in the operating environment of a company and the way in which they have been detected, documented and communicated.

The countries that have formalized a TCF are Austria, Australia, China, Germany, Italy, Poland, and Russia. In all these countries, several components of the TCF are related to the COSO Integrated Internal Control Framework model[3] for enterprise risk management (GRE).

Consequently, the TCF reviewed by the tax administrations constitute a guarantee and security framework to be able to rely on the tax returns submitted by taxpayers who are part of a CCP (OECD, 2013).

2. COOPERATIVE COMPLIANCE

Cooperative tax compliance originated in the Netherlands in 2005, and its first study was concluded in March 2015 by the Inter-American Center of Tax Administrations, hereinafter CIAT, with Australia, Spain, the United States, the United Kingdom and the Netherlands being the first countries to apply this approach.

Owens and Leigh(2021) point out that cooperative compliance is currently practiced by six out of ten tax administrations in the world.

The term cooperative relationship was initiated by the Organization for Economic Cooperation and Development – OECD -in 2008. This relationship has as its fundamental objective a higher level of voluntary compliance through mutual cooperation; however, the term relationship was considered ambiguous as if it were a privileged relationship with the TA. That is why it was changed into cooperative compliance.

The OECD (2013) maintains that the objective of cooperative compliance is to guarantee transparency and the communication of information by the parties of both the taxpayer and the tax administration, reducing the uncertainties of the tax positions of companies in more effective and efficient ways, guaranteeing the payment of the correct taxes in due time.

To conduct cooperative compliance, taxpayers are required to have a good tax governance that implies that they have a tax risk management control system called the Tax Control Framework. In that sense, the taxpayers who apply cooperative compliance are the most important taxpayers according to their size and complexity. In Peruvian terms, they would be the mega taxpayers or large taxpayers. It is important to point out that the Netherlands is the only country that applies a cooperative relationship that includes SMEs.

Taxpayers within the cooperative compliance program must provide communication and information such as: access to the company's accounting information systems, to strategic documents of the main changes with an impact on tax management with emphasis on transfer pricing and agreements with foreign tax authorities, when available (OCDE, 2013).

3 Committee of Sponsoring Organizations of the Treadway Commission

Requirements of cooperative compliance

For Quiñones et al. (2022) the tax administration must carry out three specific actions:

> *I. To promote voluntary compliance by facilitating the means for the taxpayer, ii. Prevent default by intervening at the point of the transaction and iii. Respond robustly to non-compliance by those who purposely evade or evade. p. 27).*

Benefits of cooperative compliance

- Speed in responding to tax queries
- Uncertainty of the tax positions resolved, before being informed
- Fewer long-term tax audits, fewer definitive audits that can last from one to two years in cases of transfer pricing audits.
- Greater predictability and legal certainty
- Cost reduction in tax compliance for both the Administration to control and for the taxpayer (Owens & Leigh, Cumplimiento Cooperativo: Un enfoque para la fiscalidad sostenible y con múltiples partes interesadas., 2021).

Consequently, what Cooperative Compliance seeks is to change the vertical relationship between the tax administration and the taxpayer to a horizontal relationship where trust, transparency and legal certainty prevail; it would no longer be a unilateral action as in audit procedures, but a relationship where the initiative of voluntary compliance relies on a partnership between the parties involved.

Table 1

Countries that present the declaration of the tax risks under cooperative compliance

Under cooperative compliance
Australia, Austria, Ireland, The Netherlands
New Zealand, Singapore, South Africa

Note: Data taken from the IDB. IDB Adaptation, 2021

Table 2

Countries that submit the declaration of tax risks under cooperative compliance on a mandatory basis

Mandatory information declaration regime.
Canada
Ireland
South Africa
USA: Declaration of uncertain positions (FIN 48)
United Kingdom; presents the Framework for Managing the Risks Associated with Tax Compliance (TMRC) and the Disclosure of Tax Avoidance Schemes (DOTAS), or disclosure of elusive transactions.
Australia; Declaration of uncertain positions (FIN 48)

Not: Data taken from the IDB. IDB Adaptation, 2021

3. COOPERATIVE COMPLIANCE IN THE CONTEXT OF DEVELOPING COUNTRIES

These initiatives are in the implementation phase and are led by Brazil, followed by Ecuador, which already has an implementation schedule, and Peru, which is in the research and implementation proposal phase.

Potential advantages and risks:

Among the advantages are the reduction of litigation, as the tax system is very dynamic, the rules are constantly changing which makes the application of tax regimes

complex, consequently, cooperative compliance will provide greater certainty through legal interpretation agreements.

The position of the authors Quiñones et al. is interesting. (2022) when they point out that at the same time it is a risk to have a complex tax system or very changing regulations because it can generate distrust on the part of the taxpayer to continue with the cooperative compliance program already started; for this they point out that once the cooperative compliance programs are signed, the tax administration needs to take the initiative to work with the tax policy makers to reduce the pace of regulatory notification, in order to keep the program attractive.

Challenges

The culture that cooperative compliance brings is the identification and mitigation of tax risks. This implies changing from a culture of learning already gained from a culture of confrontation, of supervision of prescribed periods, of sanctioning and determining the correct tax obligation, to a culture of pro-activity, of alliance, of help support and of working together with the taxpayer. This, to avoid tax contingencies on the part of the tax administrations and on the taxpayer's side. They become initiative-taking partners of the voluntary compliance role based on identification of tax risks and begin to see the tax administration as an ally and not as adversary.

Another of the most important challenges for cooperative compliance are the high rates of corruption in addition to the high rates of inequality, which has led to an erroneous position by some taxpayers, who point out that the cooperative compliance model is a preferential treatment, in violation of the principle of equal treatment before the law. These perceptions must be corrected (Quiñones et al, 2022).

Vilela (2020) argues that on the side of the tax administrations they recommend the structuring of some areas and activities for the purposes of the implementation of the cooperative compliance program such as:

- Mental and/or cultural change of both the tax administrations and the taxpayers involving the formation and training for the incorporation of new tools and skills such as teamwork, negotiation, communication, etc; in this new form of horizontal relationship.

- Behavior change and communication, in this new form of relationship under cooperative compliance, the changes are structural and behavioral rather than giving emphasis to legislative change, giving priority to dialogue forums and training programs. In addition to distinguishing companies through disclosure on the websites of the tax administrations that are attached to this new cooperative compliance relationship.

- Internal governance measures of the tax administration; the author proposes an exclusive official for the taxpayer who took advantage of this new cooperative compliance relationship where there is an open relationship, prioritizing transparency based on the taxpayer's business reality, which must incorporate internal control mechanisms.

- Model of evaluation of results and remuneration of civil servants; based on the identification of indicators that demonstrate the effectiveness of tax management, impacting the change in taxpayer behavior through voluntary tax compliance, which will be related to the remuneration of officials for the indicators aligned with the new model. (Vilela, 2020).

4. TAX COMPLIANCE AND COOPERATIVE COMPLIANCE IN PERU

4.1 Problems in the Peruvian legal system

The tax administration-taxpayer relations have been mainly one of coercion. Taxpayers maintain a concept of

rigidity and vertical hierarchy in the face of the actions of the tax administration, mainly the large taxpayers where the highest level of collection is concentrated, to such an extent that they are constantly monitored for the importance for the country.

This is the only existing relationship to date, except for the control actions of the Peruvian tax administration through verifications and inductions by means of inductive letters and summons, where the main task is voluntary compliance due to the fact that its population are the micro, small and medium taxpayers (MEPECOS) where the level of collection is very low.

We could even point out that the only horizontal relationship that has been presented normatively is the one corresponding to advance pricing agreements in Transfer Pricing, typified in Art. 32-A subparagraph (f) of the Income Tax Law together with art. However, to date no advance pricing agreements have been signed precisely because of the lack of trust between the tax administration and the taxpayer, among other causes, and consequently we do not have an amicable relationship between the tax authorities and the taxpayer..

In addition, we have the contentious action both in administrative and judicial way by the taxpayer when he does not agree with what is determined by the tax administration to such an extent that a case in judicial way for tax controversy took 20 years culminating this past April 2024. This telephone case that has just been resolved in favor of the Peruvian TA.

Therefore, we point out that the traditional methods of resolving tax disputes (administrative and judicial) have turned out to be ineffective, this is additionally reflected in the high number of cases that are pending to be resolved; the increase in the rate of tax litigation maintained by the resolving bodies, who generally present a unilateral position.

An event held on June 22, 2023, organized by SUNAT and the IDB, was the first step towards a challenge and revolution with the first advances that our country has implemented in relation to cooperative compliance.

The Super Intendant of the tax administration, Luis Enrique Vera Castillo pointed out: The current management model the tax application in our country is based on subsequent control, which has generated numerous situations of legal uncertainty, increased litigation and costs for the taxpayer.

Currently, the tax administration needs to be modernized and there is greater communication and closeness between the tax administration and the taxpayer. This will allow for better relations between the two. Collaborative tax compliance, as this model has been renamed in Peru, is based on two fundamental aspects, trust and transparency.

This model demands a change in the organizational culture transforming the way of seeing, thinking and doing things. The most important challenge is to turn towards a preventive tax administration that, through collaborative tax compliance, reduces its operating costs, strengthens trust with taxpayers, increases legal certainty and reduces litigation, before and during the taxpayers' economic transactions.

This trust on which it is based is not and should not be given blindly, trust is earned, and for the model to work it must be maintained over time.

The Tax Administration is committed to providing quality services, standardizing legal criteria and taking care of taxpayers' data to avoid disclosure and misuse. On the other hand, large companies are invited to make their information transparent so that they can be audited in the process of commercial operations, thus guaranteeing voluntary and timely compliance.

At the same event held on June 23, 2023, proposals were also presented by the private sector, represented by lawyer Walker Villanueva (2023), who, among other issues, pointed out that:

The construction of trust to enter the collaborative compliance program in Peru should be gradual and it should be considered that the relationship that exists today between the Tax Administration and the taxpayer is antagonistic. Since the formulation of tax rules, the interpretation of these and the audits, there is a conflicting approach; therefore, the taxpayer during the audits offers the minimum and indispensable to sustain their economic operations and the tax administration generally maintains a distrust of the taxpayers' operations.

The one who knows the business is the taxpayer, but many times there is not the necessary openness for him to explain his economic activities, not on all occasions, depending on the audit team. The audits are aimed at reliable evidence and not at substantive issues, this type of friction is what should be addressed, that reciprocal distrust, in which the treasury usually ends up presuming bad faith.

Despite the fact that the General Administrative Procedure Act points out the opposite. Agreements should be reached on the facts in an audit, not in law because there will always be ways of interpreting the rules; for example, in Germany there is the determination by adhesion or in Italy in the concordat, in such agreements the Tax Administration and the taxpayer agree on the areas of uncertainty.

We consider the experience in Chile, where there is the possibility of remission of interest and fines in the audit stage, in the administrative litigation stage and in the judicial stage; in addition, they maintain the figure of a mandatory conciliation, in the administrative litigation stage there is the possibility of reaching an agreement, and often, huge litigation is closed on the basis of an agreement between the tax authorities and the taxpayer. Regarding the binding opinions, today it is only open to the unions, why not open them to the professional associations or the universities, in order to have a greater openness to request consultations on the interpretation of the law.

For example, there is only one particular binding opinion on the SUNAT portal, and the rule has been in force since 2015. Finally, the perception of taxpayers towards the Tax Administration is that today we have a much more closed and less flexible administration, not open to dialogue, presuming bad faith and distrusts the taxpayer; in addition, for several years the figure of the sector officer, who managed some taxpayers in a specific way, was eliminated.

Looking at the positions regarding the new cooperative compliance program that is being implemented in Peru, we can recognize that one of the main obstacles will be trust. This is because the aforementioned program requires trust between the Tax Administration and the taxpayer; however, currently the relationship between the two, at least in Peru, is the opposite (SUNAT, 2023).

4.2 Legislation

In Peru, Cooperative Tax Compliance has been renamed "Collaborative Tax Compliance", which has been incorporated into the Institutional Strategic Plan (2024–2027) as an Institutional Strategic Action (ISA), within the Institutional Strategic Objective 01: To Improve the tax and customs compliance. It is important to clarify that it is just in the implementation stage, and we do not have any formal legislation.

4.3 Doctrine

This initiative is a strategy of the Tax Administration in the promotion of compliance based on three pillars, transparency, legal certainty and above all mutual trust. It is mainly focused on large taxpayers at first. They must begin to implement a tax control framework that entails identifying and evaluating their tax risks.

In relation to tax risks, the tax administration has implemented the high tax risk catalogues in addition to professional meetings to discuss tax avoidance modalities. It is also seeking the creation of a risk assessment unit for cross-border operations (BID, 2023).

4.4 Proposal for the Peruvian case

To implement the "collaborative tax compliance" program presented by SUNAT in June 2023 according to the recommendations of the IDB's Cooperative Compliance Manual, in what corresponds to the identification of the criteria for access or affiliation to the program, the model regulations, the specifications of a required tax control framework and the methods to quantify the costs and benefits of the cooperative compliance program.

In the first stage of implementation of the "Collaborative Tax Compliance" program, it is recommended to gather the position of the business community regarding the significance for them of measures to strengthen confidence in the tax administration. This would demonstrate a real change of attitude towards the taxpayer, especially in issues such as complex and unclear regulations, lack of unity of criteria in judicial instances, insufficient technological tools, non-application of tax court criteria if they have not been approved by binding jurisprudence, among others.

Then to promote the development of a pilot project that includes a small group of large taxpayers with whom the details of an initial phase are validated, training along the way the personnel who would be solely responsible for the management of the program, establishing clear indicators.

Take as a reference the cooperative compliance program of the countries where it was successfully applied, adapting it to the Peruvian reality, also take as a reference the cooperative compliance program customs version that is developed through the Authorized Economic Operator (AEO) program of the SUNAT.

The AEO provides a series of benefits to foreign trade operators who have achieved certification before the tax administration, after compliance with minimum standards such as an adequate accounting and logistics records system, demonstrated financial solvency and an adequate level of security; becoming a trusted operator for the customs administration, which simplifies controls and procedures. Hence the importance of taking it as a model.

As a complementary contribution to the implementation of the CCP we must consider the following:

1. **The identification criteria for access to cooperative compliance**; before the PCC is admitted, the taxpayer must have a compliance framework and commitment to respect the corresponding rules. The CCP must be voluntary both to join and to withdraw, the tax administration must determine the admission criteria to the CCP, being public, in addition to indicating which taxes are included in the CCP.

2. **Model legislation to facilitate Cooperative Compliance programs.** It is recommended to implement the CCPs by means of administrative actions, since it is the initiative of the tax administration and in its discretionary faculty that counts, instead of implementing a legal regulation.

   However, the regulation of the following elements must be taken into account: the competence of the tax administration, decisions and participation thresholds between the tax administration and the taxpayer, the tax reserve of the information provided by the taxpayer, the binding nature of the decisions of the tax administration, the possibility of challenge via tax court and the use of the information provided by the taxpayer once the CCP has been completed.

   In addition, 4 key elements are recommended to be contained in the CCP such as: objectives, commitments based on transparency, fair treatment, impartiality, mutual trust, certainty

and less administrative burden; duration of the CCP and recognition in tax law interpretations without losing the essence of the CCP.

3. **The MCF must have a guarantee via an audit report submitted by the taxpayer:** the declarations and the provision of information given by taxpayers for the sake of the CCP must be in a tax control declaration issued by the company's senior management backed by an external audit.

4. **Methodology for evaluating the costs and benefits of the CCP;** considering the following aspects:

> :... the stability of the tax system, tax certainty, operating costs, the long-term framework for action, conflict resolution channels, the need for the tax administration to guide large taxpayers and the recognition of legitimate trust as a legal concept (Owens and Leigh-Pemberton, 2021, p. 38).

Consider as a measurement the total taxes paid by those who accessed the CCP minus those that are the subject of controversy.

5. **To obtain the trust of society through the dissemination of the CCP;** through the periodic disclosures of their impact on the tax administration, to promote communication skills and relationship between the functions of the tax administration and the knowledge of tax controls and risk management based on the use by taxpayers of the MCF.

As well as investing in experimental research that CCPs are effective and can benefit society at large, this leaves open research through the implementation of CCPs to high-income individuals, expanding cooperative compliance to SMEs as well as multilateral CCPs (Owens & Leigh-Pemberton, 2021).

5. METHOD

The present research is basic since it focuses on the development of a new knowledge(Fernández M., Urteaga, & Verona, Guía de investigación en derecho, 2015) through the comparative analysis of the international Community legislation on tax compliance and cooperative compliance.

The research was developed under the qualitative approach. Vara (2010) argues that qualitative research is based on the depth and understanding of a topic through synthesis and schematization. Discursive reflections are used as a result of the information obtained(Campos, 2017).

The level of the research is exploratory because currently there are no specific studies to understand the object of study. The design of the research is bibliographic or documentary, having as main characteristic the fidelity of the information (Vara, 2010). Bibliographic research preeminently starts from the consultation of information sources, printed or virtual, and this is fundamental since bibliographic sources are consulted in all types of research (Fernández M. & Del Valle, Cómo iniciarse en la investigación académica; Una guía práctica, 2016).

The instrument has been the documentary review, using secondary sources such as sources published nationally and internationally that include works, legislative documents, court rulings, technical documents of national and international organizations, research articles that address the topic of study (Martinovich, 2022).

6. RESULTS

Here are presented the results of the tax compliance model in Spain, detailed in Figure 1. In addition to the pioneering cooperative compliance models in the world indicated in Figure 2, Figure 3 shows the pioneering countries of the cooperative compliance program in Latin America.

Figure 1

Tax Compliance- Chosen Model Spain

Note: The figure shows the activities developed by Spain in the formal implementation of its tax compliance model.

Figure 2

Pioneering countries cooperative compliance program in Europe

NETHERLANDS

"Horizontal monitoring" - large taxpayers, medium and small companies and high net worth individuals (2005).

Under a Tax Administration Policy- Taxpayer seeks anticipated tax certainty- TAX CONTRACT indefinite-taxpayer- TA. Signing of an "Individual Compliance Agreement (ICA) - TOP, LARGE, MEDIUM AND OTHERS. Voluntary

AUSTRALIA

Trust Management Plan "Annual Compliance Agreement" - ACA(2001) - mandatory, fiscal risk control procedures.

Taxpayer must have sound corporate tax governance practices. The ATO also expects companies to establish operate and evidence the existence of a tax governance and risk management framework, which should go beyond technical tax risk and consider broader issues,: people, processes and information technology.

UNITED KINGDOM

"Compliance risk rating"-large taxpayers-2008

Code of Good Tax Practices-2009"-CBPT-2011-180 member companies; Forum of Associations and Colleges of Tax Professionals, Code of Good Practices of Associations and Colleges of Tax Professionals, Forum of Small and Medium Enterprises (SMES) and Forum of Self-Employed. Volunteer)

SPAIN

"Forum of large companies"-2009-27 member companies

"Code of Good Tax Practices-2009"- 2011-180 member companies: Forum of Associations and Colleges of Tax Professionals, Code of Good Practices of Associations and Colleges of Tax Professionals Forum of Small and Medium Enterprises (SMEs) and Forum of Self-Employed. Volunteer

UNITED STATES

"Performance guarantee process"-cap-2005-Permanent 2012-

Have assets of US$10 million or more, be publicity traded in the U.S.; provide the IRS with quarterly financial statements and annual financial statements audited by the entity that was accepted into the program, CAP Memorandum of Understanding.

Note: The figure shows the main contributions of the cooperative compliance program based on a selection of 5 European countries: The Netherlands, Australia, the United Kingdom, Spain and the United States.

Figure 3

Pioneering countries cooperative compliance program Latin America

Description	Brazil	Ecuador	Chile	Peru
F/ PCC	04/2021-CONFIA (only formal program)	Pilot Program 2022-2025	2021- Tax Collaboration Agreement (TCA). The Companies do not participate directly, but indirectly through the trade association to which they belong.	CCP has been renamed "Collaborative Tax Compliance" Pilot Program 2023-2025.
ETAPA	1.INITITIAL PHASE : concluded 2. PROGRAM DESIGN: in process. 3. TRIAL: pending 4. IMPLEMENTATION: pending 5. EXPANSION: pending	Consolidation stage- Development stage.	Initial implementation stage.	Implementation phase
Condition	Obligatory	Voluntary	Voluntary	Voluntary

***Note*:** The figure shows the main contributions of the cooperative compliance program corresponding to the pioneer countries of initiation in Latin America: Brazil, Ecuador, Chile and Peru..

CONCLUSIONS

1. Many European countries and Latin America do not have an express regulation as it happens in Spain of tax compliance, for its part Peru also does not have an express regulation of tax compliance; however, taxpayers have the base rule which is the Tax Code where their tax obligations are indicated and the sanctions to them for non-compliance, complemented with regulations via lower rank rules such as regulations and superintendencies resolutions.

2. In order to properly implement tax compliance, companies must develop regulations according to their needs, based on their activities, organizational chart; defining roles and responsibilities of those involved in tax management, as well as risk prevention measures.

3. The cooperative tax compliance program is an important means by which tax administrations have been getting closer to the taxpayer in order to improve their relationships and voluntary tax compliance.

   This program has contributed to giving greater legal certainty to taxpayers, to having clearer and more precise criteria in the application of tax rules and above all has allowed the taxpayer to feel part of this new approach by actively participating in forums, debates and giving alternatives that contribute to a better functioning of the tax system.

   Establishing a cooperative relationship between the treasury and the taxpayer reduces uncertainty and the need to make provisions to deal with possible tax debts, in addition to reducing the risk of overpayments of taxes.

4. From the analyzed results we can point out that initially there have been initiatives of compliance relations between tax administrations and taxpayer such that CIAT had its first study in 2015, then as these relations progressed an advantage was attributed to large taxpayers and the principle of equality before the law could be affected; such is the case that the model of tax cooperativism was worked on under a collaborative tax compliance relationship tax administration – horizontal taxpayer, in order to promote trust and transparency.

   Appearing tools to apply this new methodology based on the use of internal control theories under the internal control framework COSO to the fiscal control framework making the application of these new tax compliance approaches richer.

5. According to IDB studies (2022), cooperative compliance programs formally implemented in the countries of the United Kingdom, Denmark, Ireland, Finland, Belgium, Italy, Austria, Ghana, Russia, the Netherlands, Spain, Chile, Brazil, Ecuador and Peru have been reported.

   It is curious to mention that the second pioneer country in this cooperative compliance model apart from the Netherlands is Australia, however it does not have it formally applied, or they do not have a cooperative compliance program model, followed by South Africa, Canada, New Zealand, Norway.

6. The cooperative compliance program is a novelty for Latin America, while it has been applied in the countries of the European world since the nineties, which means that we must be at the forefront and copy good global practices such as the one we have disclosed in this research.

7. The cooperative compliance program constitutes a challenge for the tax administrations of Latin

America and especially of Peru, which has had the support of the IDB and the University of Vienna, to start the cooperative compliance Pilot, with the objective of application to the large taxpayers as the countries of the world have been applying it.

What is interesting is the applicability of internal controls to internal tax controls from an internal control approach to managing business risks to manage tax risks through the tax control framework (TCF), no doubt these challenges place the accountant from all its edges to the tax approach based on tax risk control.

8. Collaborative compliance in Peru is considered as a program that will help prevent tax litigation through trust and transparency between the taxpayer and the tax administration, especially in conflicts with large taxpayers, who are the ones that contribute the largest amount of taxes to the State.

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Analyzing the Impact of COVID-19 on the Tax Burden: An Exercise for the LATAM Countries that are Part of the OECD and those that are in Accession

Manuel Palmi
Sergio Pérez

SYNOPSIS

This document analyzes the changes in the tax burden of the member countries of the Organization for Economic Cooperation and Development (OECD) that are part of Latin America (LATAM) and of those that are in the process of joining the aforementioned organization. The study compares the projections prior to COVID-19 with the real effects of the pandemic. Using a linear regression model based on the growth expectations of the International Monetary Fund (IMF) WEO, the transitional and permanent measures that altered the expected trajectory of tax revenues are incorporated and evaluated. The results show how the pandemic changed the tax burden and how, through various policies, some countries managed to mitigate its effects.

KEYWORDS: OECD, Tax burden, COVID-19, Regression, WEO.

CONTENTS

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INTRODUCTION

The pandemic significantly affected the emerging economies of LATAM, particularly those that are part of the OECD (Chile, Colombia, Costa Rica and Mexico), and those that are in accession (Argentina, Brazil, and Peru). The economic slowdown, initially seen as a temporary consequence of social distancing measures, restrictions on certain service activities, restrictions on mobility, among others, were constantly prolonged in many cases due to new waves of contagion and the lack of installed capacity for the provision of health services at both public and private levels to cope with such scenarios, thus deepening the health crisis. This general impact on families and businesses led many economic agents in various sectors to face financial difficulties due to lack of payment capacity, low income generation, productivity problems, negative impacts on direct labor, among others.; thus, according to the OECD[4] the impact of the crisis on economic activity and the particularly serious social situation was observed with a reduction in economic growth in 2020 that resulted in major setbacks in terms of GDP per capita. Several international organizations estimated a negative annual growth of the Gross Domestic Product (GDP) in Latin America and the Caribbean by 2020, representing a drop of between 7% and 9% (IMF, 2020)[5] (ECLAC, 2020)[6].

In this context, the tax burden[7] emerges as a crucial indicator to assess how Latin American countries, particularly those that are part of the OECD (Chile, Colombia, Costa Rica and Mexico), and those that are in accession (Argentina, Brazil, and Peru), have faced tax challenges[8] derived from the pandemic. This analysis seeks to provide evidence on the variations in tax burden trajectories during and after this disruptive event.

Given that the Government's Tax Revenues (GTR) are closely anchored to economic performance, captured by Gross Domestic Product (GDP), it is essential to explore how these relationships have been altered by the pandemic. This exploratory approach not only highlights the tax gaps generated but also offers a preliminary vision for the design of public policies based on what has been observed in recent years.

In line with the above, it is hypothesized that the COVID-19 pandemic generated significant changes in the tax burden trajectories in the OECD member or accession process countries of LATAM. This would have caused tax gaps between the projections made before the pandemic and those adjusted later, affecting fiscal sustainability and the performance of tax policies in the region[9].

The present document is structured in five main sections. First of all, the literature review is presented,

4 See the document: COVID-19 in Latin America and the Caribbean: socio-economic consequences and policy priorities.

5 IMF (2020), Regional Economic Outlook for Western Hemisphere (October).

6 ECLAC (2020), Preliminary Stocktaking of the Economies of Latin America and the Caribbean.

7 It is defined as the proportion of the central government's tax revenues in relation to the Gross Domestic Product (GDP). This indicator allows to evaluate the collection capacity of the central government and its effectiveness in the implementation of tax policies. For this analysis, the tax burden derived from taxes is considered exclusively, not including social contributions.

8 Public spending increased considerably in response to the need to strengthen health systems, purchase protective equipment, finance unemployment benefits and support affected sectors. This increase in spending generated budget deficits for most countries, prompting some governments to approve measures that temporarily suspended the established fiscal limits.

9 In contexts of economic crisis, it is common to observe pressures on tax collection due to economic contraction. In the case of the COVID-19 pandemic, this effect could have accentuated the dependence on tax revenues to sustain public spending and support economic recovery, especially in countries in the region with high levels of pre-existing public debt (see Annexes N° 01 and N° 02).

which contextualizes the impact of economic crises on tax burden. Secondly, the methodology details the approach used to estimate tax gaps based on the WEO projections[10] from the IMF[11]. Subsequently, the results are obtained, and their implications are discussed. Finally, the conclusions are presented, accompanied by a pending agenda for future studies.

1. REVIEW OF THE LITERATURE

The tax burden is a quantitative indicator that relates the tax revenues of an economy and the Gross Domestic Product (GDP), in the economic literature it is also usually called tax burden, this indicator is calculated by dividing the revenues collected by the GDP[12]. This indicator is relevant when analyzing the behavior of tax revenues and the possible collection scope that could be had, in addition to comparing the fiscal effort of one country with respect to others.

On the one hand, the Fiscal Observatory of Latin America and the Caribbean (OFILAC) defines tax revenues as those collected by the state to finance public sector activities, such as taxes, duties, products and benefits. Of these, taxes constitute the largest part of the fiscal resources available to the State to finance its expenditures. Taxes can directly tax income, wealth or property (direct taxation) or tax consumption (indirect taxation). Although taxes are intended to finance the services provided by the public sector and serve as a tax policy instrument, they can also have extra-fiscal purposes such as correcting market failures. While the Gross Domestic Product (GDP) is the monetary value of all the final goods and services produced by a country in a given period, usually a quarter or a year; and it counts all the product generated within the country, only the value of the final goods and services or the added value is counted, because including the final and intermediate goods and services would lead to accounting for the same product twice.

This study uses figures from the International Monetary Fund's World Economic Outlook (WEO) Report. The WEO is a survey of prospects and policies conducted by IMF staff, usually published twice a year, with interim updates. It presents analyses and projections of the world economy in the short and medium term, which are integral elements of the IMF's monitoring of the economic evolution and policies of its member countries and of the global economic system. They consider issues affecting advanced, emerging and developing economies, and address issues of pressing current interest (IMF 2024).

However, it should be borne in mind that tax discipline requires sound fiscal accounts that promote macroeconomic stability and sustainable economic growth, allowing governments to cope with unexpected shocks that affect the economy in the medium term and anticipated pressures in the long term (such as due to population aging), as well as avoid an excessive accumulation of public debt (Hageman, 2011).

Tax accounts with a prudent and sustainable position promote economic growth, since given the lower

10 The World Economic Outlook (WEO) is a report prepared and published by the IMF. It is presented twice a year, in April and October. This report offers a detailed overview of the world economy in the short and medium term, accompanied by a database that includes projections of key macroeconomic indicators such as GDP, inflation, public debt, current account balance, among others.

11 International Monetary Fund.

12 Depending on which type, or level of income is being assessed, the type or level of tax burden will be considered, since in some countries there are levels of government with different levels of income, for example.

financing needs of public spending[13] inflation rates in countries with low fiscal deficits are usually lower, low deficits that also, on the one hand, increase the availability of savings for higher levels of investment, and that, on the other hand, reduce the probability of economic crises due to concerns associated with the ability to pay public debt, promoting economic growth (IMF, 2002).

For example, Peru has had outstanding macroeconomic figures compared to other countries in the region; thus, Peru's good economic performance in the almost three last decades can be explained by firm macroeconomic stabilization, so a more advanced stage of development necessarily requires preserving macroeconomic stability and deepening structural reforms in order to achieve and sustain high levels of growth in the future (Werner and Santos, 2015). Peru's solid macroeconomic fundamentals and commitment to tax responsibility have allowed the country to register the lowest level of risk in the region and access financing at competitive and reasonable costs.

In terms of revenue generation through tax collection, these should be structurally stable and growing over time (generally related to the growth of economic activity) in order to be able to meet public spending, in this line, many countries aim to increase them, however, for various factors, including political ones, a series of tax benefits are given, which often lack technical support for their implementation and a measurement and evaluation over time in order to measure the impact they have had.

Tax expenditures are defined as a transfer of public resources conducted by reducing tax obligations with respect to a benchmark tax, rather than through direct spending. One of the main difficulties when defining and identifying tax expenses within a particular legislation lies precisely in agreeing on a standard or reference tax against which the provisions of the tax legislation can be contrasted (OECD, 2004). While the CIAT defines tax expenditures as resources that the State renounces due to the existence of incentives or benefits that reduce the direct or indirect tax burden of certain taxpayers, in relation to a reference tax system, to achieve certain economic and social objectives (CIAT, 2011).

That said, and the subject of analysis of this document, the positions of transitional reforms given during COVID-19 as a containment measure of the pandemic should be taken into account, so (EUROSOCIAL, 2022) points out that these measures should be mainly aimed at distributing the social cost of the crisis and financing the measures that allow activating the economic recovery. These measures require a special effort to the assets and the highest incomes not only for reasons of equity, but, in the case of assets, as they are incomes accumulated in previous periods, the effect on consumption would be lower, also achieving a certain effect on the reduction of inequality. They should be of a transitory nature and, in order to promote their social acceptance, the link of these surcharges with the extraordinary expenses derived from the pandemic should be explicitly formulated: increased health spending, social coverage programs, public aid to companies, general and sectoral programs aimed at reviving the economy, and other items affected by social distancing rules. To avoid undesirable effects on the economic recovery, its introduction should be gradual, as the advanced indicators of macroeconomic behavior (consumption, GDP, employment, inflation, and the relevant sectors) appear.

Thus, many countries provided a series of incentives and tax benefits in order to safeguard future economic stability, support business liquidity and help the neediest families, in this way the following benefits were observed by countries:

13 Through the creation of money.

Table 1

Latin America and the Caribbean: tax measures announced to address the coronavirus disease (COVID-19) crisis

		Providing Cash to households and companies							
Instrument	**Attention to Health Crisis**	**Households**	**Total companies**	**Companies by specific sectors**	**SMEs**	**Accelerated refunds**	**Households**	**Total companies**	**SMEs**
Income Tax	Bolivia		Argentina Belize Brazil Bolivia Chile Colombia Costa Rica Salvador Granada Guatemala Guyana Honduras Panama Paraguay Peru Dominican. Rep Santa Lucia	Colombia Salvador Honduras Dominican Rep.	Chile Panama Peru Paraguay	Belice Chile Peru Trinidad and Tobago	Venezuela	Bolivia Chile Honduras Saint Kitts and Nevis Santa Lucia	Bolivia Honduras Panama
Social and parastatal contribution			Argentina Brazil Barbados Colombia Uruguay	Aggentina Colombia	Argentina Uruguay			Argentina Brazil	
Taxes on goods and services	Argentina Bolivia Brazil Colombia Salvador Guatemala Guyana Honduras Jamaica Panama Paraguay Peru Saint Kitts and Nevis, Saint Vincent and Grenadines, Venezuela		Brazil Chile Colombia Costa Rica Ecuador Honduras Paraguay Doninican Rep. Uruguay	Colombia	Chile	Belize Peru Trinidad and Tabago	Dominca Guyanica Saint Vincent and Grenadines	Colombia Costa Rica Panama	Bolivia Colombia
Other taxes		Chile	Brazil Chile Colombia Granada Guatemala Guyana	Ecuador Saint Vincent and Grenadines	Brazil Colombia		Brazil Chile	Brazil Chile Colombia	

Source: Economic Commission for Latin America and the Caribbean (ECLAC) on the basis of official data.
Note: The payment of taxes is generally deferred.

In general, the most appropriate strategy for forecasting public revenues will depend on the country and, in practice, on the availability of data. It seems clear that the most common forecasting method — the use of aggregate tax reaction capacity – is likely to result in a bias in the results. This bias will often, but not always lead to an overestimation of income, so strategies for measuring income could be diversified and not only use one, but also combine them (IMF, 2021).

2. METHODOLOGY

2.1. Justification of the approach and modeling

2.1.1. Relationship between GTR and GDP

This study analyzes the relationship between GTR and GDP in Latin American countries that are members of the OECD or are in the process of accession. Thus, the tax burden, defined as the ratio of the GTR to GDP, is presented as a key indicator to evaluate both tax sustainability and the effectiveness of tax policies in the medium and long term, in a context that includes the periods before and after the COVID-19 pandemic.

Along these lines, the GDP can be calculated in three ways: expenditure approach, value added approach and income approach[14]. This document will address the latter approach, under which GDP is decomposed by the factors of production in the economy resulting in the following standard equation:

$$PBI = R + CKF + Ipm + EE \quad (1)$$

Where:

R : Remunerations to employees (salaries and benefits).
CKF : Consumption of fixed capital.
Ipm : Net taxes on production and imports.
EE : Operating surplus.

In this relationship, the GTR is linked to the components of GDP that constitute taxable bases, contributing to the tax collection according to the effective tax rates (τ):

a. Remuneration (*R*):
   - Taxed through personal income taxes and social contributions.
   - Contribution to the GTR: $\tau_R.R$.

b. Consumption of Fixed Capital (*CKF*):
   - Usually, this component is not taxable in most countries. Therefore, its contribution to tax income is marginal or zero and can be excluded from the analysis.

c. Tax on Production and Imports (*Ipm*):
   - They include internal consumption taxes (VAT[15]/ IGV[16]) and tariffs on imports.
   - Contribution to the GTR: $\tau_{Ipm}.Ipm$.

d. Operating surplus. (*EE*):
   - Taxed through corporate and capital gains taxes.
   - Contribution to the GTR: $\tau_{EE}.EE$

In this way, the general relationship between the GTR and GDP would be expressed as:

$$GTR = \tau_R.R + \tau_{Ipm.} Ipm + \tau_{EE}.EE \quad (2)$$

14 INEI (n.d.), "Methodology for Calculating the Annual Gross Domestic Product". See more in: https://www.inei.gob.pe/media/MenuRecursivo/metodologias/pbi02.pdf

15 Value Added Tax

16 General Sales Tax.

2.1.2. Simplified Tax Modeling

To simplify the analysis and compactly capture the combined effect of the tax bases, they are condensed into an average effective tax rate remaining as follows:

$$GTR = \tau_{average}.PBI \quad (3)$$

Then, the contemporary relationship between the GTR and GDP is explored using a static econometric model[17] estimated by ordinary least squares (OLS):

$$GTR = \beta_0 + \beta_1 .PBI + \mu \quad (4)$$

Where:

β_0: Represents income not related to GDP (e.g., non-recurring income or external transfers).

β_1: Captures the relationship between the ITGC and GDP, interpreted as the estimated average effective tax rate.

μ: An error term that represents those factors not explained by the model.

After obtaining the estimated parameters $\hat{\beta}_0$ and $\hat{\beta}_1$, the GTC is projected based on the GDP values projected by the IMF for each country:

$$GTR_{projected} = \hat{\beta}_0 + \hat{\beta}_0 . PBI_{projected} \quad (5)$$

This makes it possible to obtain an estimate of future tax revenues with pre- and post-pandemic expectations.

Finally, for the tax burden (PT) this is calculated as:

$$PT = \frac{GTR_{projected}}{PBI_{projected}} \quad (6)$$

This exercise allows to evaluate the trajectory of tax sustainability and the performance of tax policies in a context that includes periods before and after the COVID-19 pandemic. It is also complemented with the projections of the International Monetary Fund (IMF) on GDP, through the World Economic Outlook (WEO), thus providing an analytical horizon both historical and projective.

2.2. Objectives and execution of the analysis[18]:

The main objective is to analyze how the COVID-19 pandemic altered the projected trajectories of tax burden in selected Latin American countries, combining historical data and IMF projections using the WEO.

The analysis is developed in three stages:

2.2.1. Estimation of the tax burden

All the available historical information of the GTC and GDP of the Tax Administrations, Central Banks, and Ministries of Economy and Finance of the Latin American countries that are members of the OECD or are in the process of accession is collected, and then their TP is calculated.

Then, the TP is calculated for the sections:

a. WEO October 2019: Projections until 2024 based on pre-pandemic expectations.

17 Given the exploratory approach and the limitations in the amount of available data, the analysis is restricted to a contemporary relationship, assuming that GDP directly impacts the GTC of the same period (the analysis of seasonality, cointegration, among others is omitted).

18 The limitations of the analysis derive mainly from the availability of the data, since the range of observations is very variable, ranging from 14 to 44 years per country. This justifies the use of an exploratory approach based on simple regressions. In addition, the temporary impact of COVID-19 reflects immediate alterations that may not capture long-term dynamics. In the future, adding larger time series and incorporating additional variables such as specific tax policies could enrich the analysis.

b. WEO October 2024: Calculations based on data observed after the pandemic and projections adjusted with the latest available information from the IMF.

2.2.2. Identification of tax gaps

The gaps between the pre- and post-pandemic tax burden projections are calculated:

$$Gap_{2024-2020} = PT_{WE02024} + PT_{WE02019} \quad (7)$$

2.2.3. Changes in the trajectory

The tax burden trends are presented in graphs that illustrate the historical evolution and future projections, complemented by tables that summarize the gaps between the pre- and post-pandemic scenarios. This approach facilitates the identification of significant variations, leaving the interpretation open for a more detailed analysis according to the specific needs of each case.

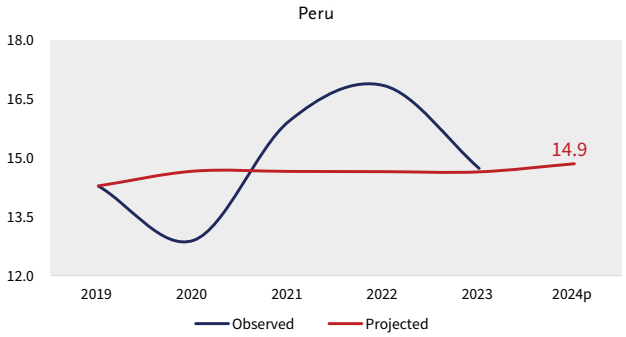
3. DISCUSSION OF THE RESULTS

The analysis of the tax burden in the countries studied shows how the COVID-19 pandemic altered the trajectory of tax revenues, affecting pre-crisis expectations. Comparisons between the values observed in 2019 and the projections made from the IMF's WEO (2019–2024) reveal significant adjustments in the collection, which reflects the magnitude of the economic impact generated by the pandemic.

3.1. Gaps in the tax burden

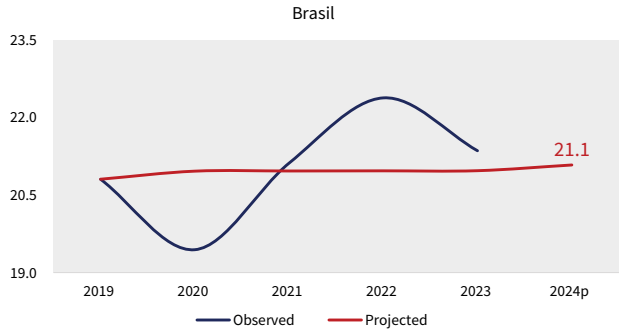
The results show a generalized decrease in the tax burden in 2020 compared to the projections made before COVID-19, especially in countries such as Peru, Brazil and Chile. The economic shock of the pandemic, together with the tax measures adopted, contributed to a decrease in tax revenues and an adjustment in collection in these countries.

- Peru experienced a significant drop in the observed TP in 2020 (12.9%) compared to the projection of 14.7%, although it achieved a slight recovery in 2021, reaching 16.0%. Projections for 2024 put the TP at 14.9%, which shows that the country is on the way to restoring its level of tax collection.



Source: Tax Administrator, Ministry of Economy and IMF. Elaboration of the authors

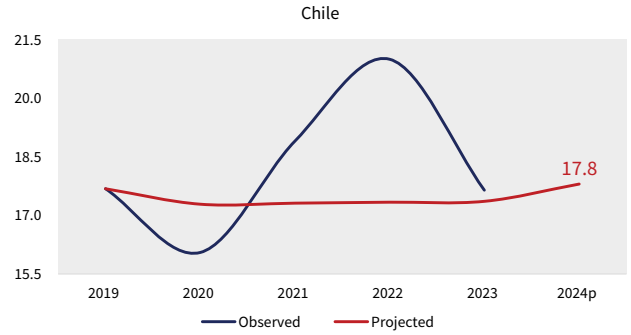
- Brazil also registered a representative gap, with a drop in the TP observed in 2020 (19.4%) compared to the pre-pandemic projection (21.0%). The recovery of the tax burden is projected for 2024 at 21.1%, managing to exceed the collection levels prior to the crisis.



Source: Tax Administrator, Ministry of Economy and IMF. Elaboration of the authors

- For the Chilean case, the TP of 2020 was 16.1%, and according to the calculations made, a ratio of 17.3% was

expected. Thus, based on IMF data, it is projected that by 2024 the collection should represent 17.8% of GDP.



Source: Tax Administrator, Ministry of Economy and IMF. Elaboration of the authors

3.2. Regional trends and advances in tax burden compared to 2019

The comparison between the levels of tax burden observed in 2019 and 2023 reveals significant differences between the accession countries and the OECD members. Countries such as Colombia (with an increase of 2.9 pp.) and Mexico (1.5 pp.) made notable progress in fiscal recovery, while Chile showed a slight decrease (–0.1 pp.).

In the acceding countries, the increase in the tax burden was more moderate, as observed in Peru and Brazil (0.4 and 0.6 pp., respectively). These changes reflect the limited capacity to implement structural reforms that expand the tax base and reduce tax evasion.

In projected terms, the tax burden for 2024 could show additional progress, with increases expected in countries such as Mexico (1 pp.) and Argentina (0.6 pp.); however, the figures suggest that some countries would still be lagging behind the levels of tax burden needed to achieve robust tax sustainability.

Progress of the Tax burden: 2019 vs. 2023 and 2019 vs. 2024

Countries		Observed		2019 vs. 2023 (%GDP)	Projected	2019 vs. 2024p (% GDP)
		2019	2023		WEO2019–2024	
In process of Accession	Perú	14.3	14.7	0.4	14.9	0.6
	Brazil	20.8	21.4	0.6	21.1	0.3
	Argentina	15.3	16.1	0.8	15.9	0.6
OECD	Chile	17.7	17.6	–0.1	17.8	0.1
	Colombia	14.8	17.7	2.9	15.2	0.3
	Costa Rica	12.9	13.6	0.7	13.1	0.2
	México	12.7	14.2	1.5	13.7	1.0

Source: Tax Administrator, Ministry of Economy and IMF. Elaboration of the authors

Note:

p: Projected.

3.3. Prospects for recovery and tax adjustment

The data projected for 2024 indicate a gradual recovery of the tax burden in most of the countries analyzed. Among the countries in the accession process, Brazil shows the highest projection (21.1% of GDP), while Argentina and Peru show more modest increases, reaching 15.9% and 14.9% of GDP, respectively. The latter would have the lowest level of debt service in the region and in the sample.

On the other hand, OECD member countries, such as Chile (17.8% of GDP) and Colombia (15.2% of GDP), stand out for maintaining a stable rate of tax recovery; however, the dependence on indirect taxes and the challenges related to tax equity limit the redistributive impact of these collections.

In general, the tax adjustment will depend on the implementation of effective reforms that reduce exemptions, simplify tax systems and increase tax progressivity. In fact, the countries analyzed have faced significant challenges in managing their fiscal deficits. During the period 2020–2023, several countries presented marked imbalances in their public finances due to high levels of spending to cope with the pandemic and difficulties in recovering tax revenues.

Looking ahead to 2024, a general improvement in fiscal consolidation is projected, highlighting Argentina, which could reach a fiscal deficit close to 0%, according to estimates, thanks to its efforts to contain public spending and improve collection efficiency. This case contrasts with other countries in the region that still face challenges in reducing their deficits, which underlines the need to prioritize structural reforms and move towards greater fiscal sustainability.

CONCLUSIONS AND PENDING AGENDA

The analysis of the tax burden in the LATAM countries that are part of the OECD or are in the process of accession shows that crises, such as the one triggered by COVID-19, are a constant in economic development. Although the pandemic represented an unprecedented shock, it also highlights the importance of having resilient and adaptable tax systems to face adverse scenarios. The observed trajectories and projections based on the 2019 to 2024 WEO data show that, although tax burden levels are approaching pre-pandemic values, the region has gone through a period of stagnation of approximately five years. This delay highlights the need to strengthen public institutions to reduce the impacts of future crises.

Despite the difficulties, the recovery of tax burden towards 2024 is a positive sign for some countries, such as Chile and Mexico, which have shown sustained progress thanks to specific reforms and adjustments in their tax policies. For its part, Argentina stands out for its efforts to mitigate the fiscal deficit, projecting to achieve a budget balance close to 0% in 2024, without compromising the stability of its tax burden. This case highlights the importance of policies focused on containing public spending and improving collection efficiency. In contrast, Peru faces significant structural challenges, such as its high informality and limited capacity to implement comprehensive fiscal reforms; however, it has the lowest debt service in the entire region, which gives it room for maneuver to strengthen its fiscal policies. These disparities between countries highlight the importance of taking advantage of tools such as the IMF's WEO, not only to measure the recovery, but also to have an *outlook* of the trajectory of the variables of the region and propose policies that respond to the needs of long-term economic and social development.

In general terms, the stagnation observed during 2020–2023 reflects not only the immediate impacts of the pandemic, but also the pre-existing structural weaknesses in LATAM's fiscal systems. Dependence on transitional income, high informality and limited fiscal progressivity are barriers that need to be addressed urgently. The trajectory towards 2024 suggests that the region is in a stage of slow adjustment, which makes it essential to prioritize reforms that expand the tax base, strengthen progressivity and reduce fiscal gaps.

As a pending agenda, this document proposes to advance in the design of public policies that incorporate fiscal sustainability as the central axis of economic development. In addition, it is crucial to improve the quality and accessibility of tax administrators' data to facilitate more robust and timely analyses. Finally, this study highlights the need to build more robust and resilient tax systems, capable of responding not only to current crises, but also to lay the foundations for inclusive and sustainable growth in the future.

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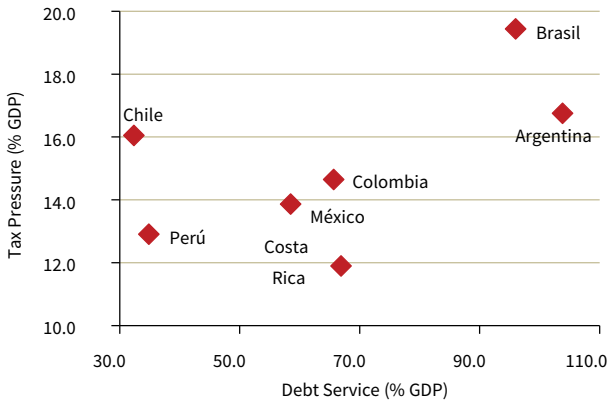
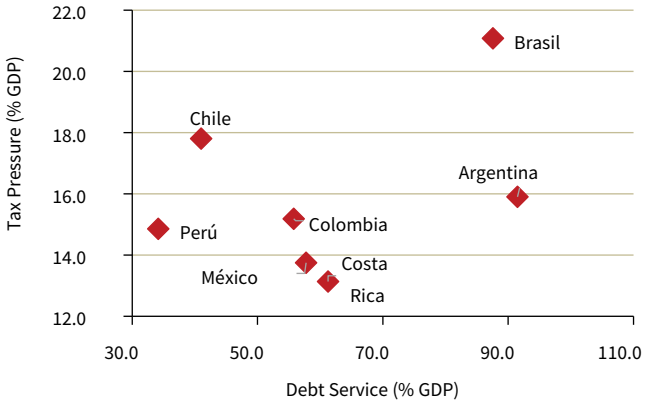
ANNEX

Annex N° 01

Tax burden and Debt Service, 2020 vs. 2024p

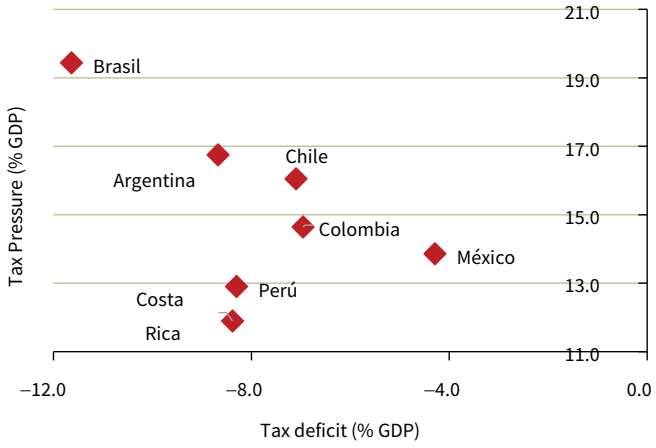


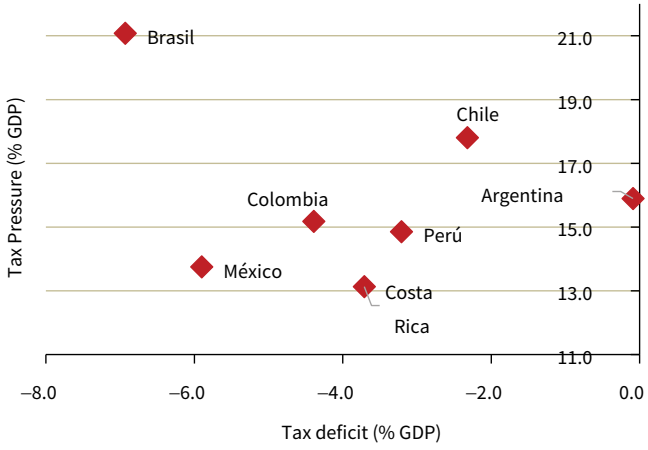


Source: IMF.
Elaboration of the authors
Note:
p: Projected.
Debt service: Gross debt of the general government.

Anexo N° 02

Tax burden and tax deficit, 2020 vs. 2024p





Source: IMF.
Elaboration of the authors
Note:
p: Projected.
Fiscal deficit: Calculated from General Government Revenues minus Total General Government Expenditures.

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