



Foreword.

Moving towards a better tax system that achieves legal certainty, substantive tax fairness, transparency, accessibility and economy within the context of an enhanced relationship with the tax administration has always been quite an ambitious proposition.

During my 30 years of practice as an international tax partner at Baker & McKenzie and for the last several years as Chair of the Baker & McKenzie's Global Tax Dispute Resolution Sub Practice Group, I have never seen such decisive and assertive actions toward the achievement of those lofty goals than those taken by my dear friend Diana Bernal Ladrón de Guevara, whose vision and passion have been key factors to secure these goals. I have always been impressed by Diana's legal skills and the compelling and erudite arguments she presents in favor of a better tax system.

Diana's outstanding performance and professionalism in both the judiciary and legislative arenas resulted in a recent major accomplishment for which she has been widely acclaimed. Thanks to her leadership, substantive steps towards those goals in the tax system have been effectively taken in Mexico with the enactment of the Federal Taxpayers' Rights Law ("Ley Federal de los Derechos del Contribuyente") and the creation of the Mexican Tax Ombudsman ("Procuraduría de la Defensa del Contribuyente-**PRODECON**").

Without any doubt, the ambitious proposition of a better tax system and justice is well underway and gaining momentum. A number of steps towards its achievement have been taken and more are yet to come. The recently enacted Federal Taxpayers' Rights Law and the creation of **PRODECON** together constitute a platform upon which taxpayers can effectively address their tax problems. In particular, while they were formerly bound by a heavy dependence on administrative and judicial appeals, they can now benefit from the much-desired and long-awaited alternative recourse.

PRODECON opened its doors to the public on September 1st, 2011 after a long waiting period triggered by the unsuccessful constitutional challenge 38/2006 filed by President Fox against **PRODECON**'s Organic Law. It was not until April 28, 2011 that Diana Bernal was elected as the first Mexican Tax Ombudsman by the Mexican Senate out of a three-candidate slate submitted by President Calderón.

From that moment onward and at a steady pace, several important steps towards a better and more just tax system have taken place. Chief among them are the Non-Judicial defense of taxpayers' rights through the Complaint Procedure ("Queja") and through the first-ever Mexican Alternative Tax Dispute Resolution Procedure ("Acuerdo Conclusivo" or

Conclusive Agreement). The guiding principle under which **PRODECON** participates in those non/judicial procedures is to look into the substance of the matter addressing the analysis in compliance with the pro persona constitutional obligation authorities have when interpreting the law.

Also, **PRODECON** is an example for other tax administrations around the world thanks to two great merits, its independence and its broad powers as it does not belong to nor is controlled either by the Mexican Treasury Department or the Tax Administration Service. It also offers a wide array of faculties and attributions ranging from the fostering of a refreshed ethical/tax culture to the submission of tax bills to Congress and the non/judicial settling of potential tax disputes.

This book describes in very accessible language the outstanding tool that **PRODECON** is for taxpayers. It offers support and very positive results for all parties from small taxpayers to multinational enterprises. A number of examples are given in this book of the benefits this new institution provides. These examples demonstrate that **PRODECON** is clearly a paradigm shift. For many years, the interpretation and application of tax laws has been very formalistic and in many cases this approach has not allowed to achieve real tax justice. This way of interpreting the

law has triggered unfair results and in many cases has not permitted to address properly the substance of the matter and the economic reality and capacity of the taxpayer. As previously mentioned, today, **PRODECON**, in advocating in favor of taxpayers' rights, looks more into the substance of the matter always privileging the pro persona interpretation of the law. Today, **PRODECON**'s recommendations regarding interpretation of the law are being increasingly observed and followed by tax authorities. This is a work in progress that is gaining ground as the new standard of interpretation of the law, which certainly is no longer regarded as unorthodox by tax authorities.

This book hails and celebrates the very attractive shaping the new face the Mexican tax justice is having. The author should feel confident that there will be many people in Mexico and abroad who will enjoy reading this book as it reports new ground-breaking policies and paradigm shifts in tax justice. The author is eloquent in describing the important progress achieved so far in defending taxpayers' rights and the example **PRODECON** offers for a worldwide audience of a model of advanced advocacy towards a better tax justice.

Today, Mexican taxpayers are in a much better position than years ago. The new system offers a

more substantive analysis of the specific problematics faced by taxpayers. Today, the tax administration is onboard and also part of this paradigm change as it is becoming more convinced that substance and the pro persona interpretation of the law is the best alternative going forward. Today, because of **PRODECON** influence, we have an enhanced relationship between tax authorities and taxpayers. The Mexican tax authorities have taken seriously the role **PRODECON** is playing in Mexico towards a better tax justice and they have joined **PRODECON** in that task.

There remains still more to accomplish, nonetheless there is no doubt in my mind that the solid steps taken this far have established the foundation necessary to continue developing this new and fairer system of tax justice. The leadership of Diana Bernal has been and will continue to be a key factor for the achievement of this ambitious proposition.

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