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Challenges for the Taxpayers' Rights. Building Trust.

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Tax Authorities can influence taxpayers' compliance in many ways. But in order to accomplish this, Tax administrations must increase taxpayers trust and one of the principles should be that taxpayers can actually rely on the authorities as true guardians of their rights, as well as a mechanism that facilitates compliance.

In the last couple of years, Mexico has experienced some improvements that can impact tax matters, such as: a transparency law that enforces public administration to disclose its procedures, as well as to protect and safeguard information classified as privileged or confidential; easier ways to fulfill taxpayers' obligations; the very newly Tax substance trial, which represents a major improvement in tax justice; as well as some other actions that **PRODECON** prosecutes along with the Tax administration in order to achieve a better compliance from taxpayers.

In this area, as we have mentioned, the role of **PRODECON** has been fundamental to transparent the authorities' acts. When a taxpayer goes to the Ombudsman he can be confident that, at least, he is going to be fully informed about the causes and legal basis of the Tax action.

a) Transparency vs. Tax Confidentiality.

One of the main issues within public administration is the way authorities handle information, whether it is public information or confidential, it is crucial when trying to enforce a culture of tax compliance, to achieve it through the prosecution of transparency and accountability of Tax Authorities.

Accountability refers to the perception of society that authorities recognize and undertake responsibility for their actions, decisions, policies and procedures and, as a consequence, the obligation to inform, explain and respond for them.

This would mean that all existing information related to the authorities' activity should be available to society, whether it affects the interests of the individuals or corporations, in a direct way, or not. Such disclosure would improve the concerned citizens' perception.

On the other hand, transparency is the way in which governments take appropriate action, in accordance to law and policy, to disclose information rapidly in forms that the public can easily find and use. Governments normally do this by publishing information in official government websites.

Transparency should provide accountability and information about the reliability on what tax authorities do.

In Mexico, the Federal Transparency and Access to Information Law mandates authorities to disclose all public information. On the other hand, it is very important, when talking about the transparency of taxpayers' information in possession of the authorities, that there must be a proper balance between transparency and taxpayers' right of confidentiality.

Therefore all tax information exchange is expected to be subject to strict confidentiality and data safeguard obligations. As a matter of fact, it is in the Federal Tax Code itself where the duty of Tax authorities to preserve the secrecy of taxpayer's information is provided. Nevertheless the same Tax Code provides exceptions in five cases, such as:

1. Taxpayers who have no-contestable tax liabilities¹.
2. Taxpayers who have tax liabilities challenged in law suits, but such liabilities have not yet been paid nor properly guaranteed according to the law.
3. Taxpayers who cannot be found at their tax domiciles.

¹ For Tax liabilities here and in the following subparagraphs, we must understand the tax assessment already calculated.

4. Taxpayers convicted for criminal tax offenses.
5. Taxpayers whose tax liabilities were cancelled because of the impossibility of their collection.
6. Taxpayers who have attained, according to some legal or administrative rule, the release of their tax liabilities.

It is important to mention that such disclosure only involves the revealing of the names of the taxpayers (individuals or corporations) and their Federal Taxpayer Registry number.

In this regard, the Mexican Federal Tax Code orders personnel who intervene in any kind of tax procedures, to keep absolute discretion related to the tax filings and data supplied by the taxpayers or third parties related, as well as those obtained from tax audits.

In this matter **PRODECON** also performs a very important function in its commitment towards the promotion of taxpayers' rights. Thus, the Tax Ombudsman frequently provides information through radio, television, printed and social media, so that, people can have a better knowledge of their rights and the real advances in the defense of taxpayers' benefits, as well as the way to comply properly with their tax obligations.

Moreover, as I said previously **PRODECON** has empowered to issue public Recommendations to Tax Authorities when their actions violate not only the tax law and regulations, but even the best administrative practices. Such Recommendations, are not legally binding, but the important thing is that the Ombudsman systematically publishes them in its official web site. Additionally, the relevance of the case could carry **PRODECON** to issue a press release about the specific case involved in the public Recommendation.

The Mexican Tax Ombudsman issues the electronic bulletin **PRODECONTIGO** on a monthly basis. It informs, in a very clear and brief manner about the more relevant cases that the organism has known.

This diminishes the traditional background where Tax Authorities have great secrecy of their actions, and one of the main roles of the non – judicial defense started by **PRODECON** as an Ombudsman, is precisely to foster the disclosure of tax actions in order to allow taxpayers to be fully aware of their rights and also of their obligations and timely compliance.

b) Transparent Experience in APA's Rules.

In behalf of taxpayers' rights **PRODECON** has also taken relevant actions in such a complex matter as Advanced Price Agreements (APAs).

Effectively in 2016, Mexican Tax Administration, SAT, in accordance with the new guidelines for transfer pricing issued by the OECD, disposed new tax administrative rules for the taxpayers petitioners of an APA.

Among such rules, it was provided that the request of an APA, allows tax authority not only to inquire all the proper and related data and documents, but even compromise the petitioner taxpayer to tolerate a field visit, with total access to his fiscal domicile in order to find evidence that the functional analysis of the taxpayer's transfer pricing method is a correct and proper one.

Such rule issued by SAT was seen by **PRODECON** almost as an open door to practice a real tax audit, but out of the due process of law disposed to this sort of acts. In Mexico constitutional rulings provide that only with a special written order and in the presence of witnesses can authorities' officers access to a private domicile, even it is a corporation's office.

PRODECON exposed the correspondent comments to SAT and achieved Tax administration to reconsider and modify its original position. Therefore, SAT accepted to require previously the approval of the involved taxpayer in order to be able to enter to his domicile in the referred circumstances.

As a conclusion we can easily see that transparency is a critical factor to set the basis of accountability. and when talking about transparency in public administration the expected goal is to progressively obtain that authorities make almost all their acts transparent. Undoubtedly the role of the Tax Ombudsman is to trigger such goal.

c) Mexican Digital Experience to Improve Taxpayers' Compliance

Another achievement in transparency matters can be seen in the following experience. Mexican Tax Administration, SAT, in accordance to some suggestions posed by **PRODECON**, have recently developed a new digital system to simplify compliance for three types of taxpayers, solving in such way almost any kind of problems they could face when filing their tax returns. The mentioned taxpayers are:

- a) Individuals under the tax regime of wages and salaries.
- b) Individuals with small and medium sized business activities.
- c) Taxpayers under the new tax regime applicable for “Simplified-Stock Corporations”.

With regard to the named “Simplified-Stock Corporations” it is relevant to mention that this kind of corporations was recently enacted into Mexican commercial law, with the main purpose to allow people concerned to set up in a very easy and speedy way a new commercial society. Actually the company can be legally established in one day only at a zero cost, reducing red tape and hasty procedures.

In attention to such legal reform, **PRODECON** proposed to SAT to draft a specific Tax regime for these kind of corporations, which finally provoked a parallel reform of the Tax law.

Furthermore, Mexican Tax Administration, SAT, created an also new digital system to facilitate and expedite the filing of tax returns and compliance of tax obligations, which normally inhibit the development of entrepreneurship in Mexico. This makes it easier for these three types of taxpayers to file their income tax and VAT returns due to the fact that it pre-fills taxpayers accounting information in the interface of the Tax Authorities' website.

This is done by extracting the accounting information of the taxpayers from the Certified Digital Tax Receipts, (CFDIs, for its acronym in Spanish) issued by themselves when doing business and receiving income from their transactions with customers.

Then the taxpayer can access his pre-filled tax returns in the SAT web site and easily accept or modify them.

Benefits of the pre-filled tax return digital system:

- It is free to taxpayers.

- It is done on-line.
- There is a guide in the website of the Tax Authorities in order to provide taxpayers detailed explanations on how to use the system.
- It makes it easier for taxpayers to file their tax returns and fulfill their tax obligations.
- The length of time for the preparation of the tax return is shorter than if it were done in the traditional way.
- In the case of untimely tax returns, the system automatically calculates the surcharges and, if applicable, it updates the tax payable.
- It simplifies the payment of federal taxes with the use of the referenced deposit banking service, via internet or through the network of bank branches.
- The system has online options to:
 - View the filed tax return, and
 - Print the receipt issued when the tax return is filed.

d) Transparency in the age of BEPS. PRODECON as a Unique and Modern Public Intermediary in the Domestic Design of the Rules to Comply with the New Informative Files Recommended by OECD (Master File, Local File and Country by Country Report)

Recently **PRODECON** has accomplished a very important and pioneering exercise of transparency and enhanced tax relationship.

In a very close cooperation with the Mexican Tax Administration Service (SAT), and in a true exercise of transparency **PRODECON** published for public consultation in its official web site the draft tax administration regulations, prepared by the Tax Administration Service (SAT), whose purpose is to establish the basis for the fulfillment of the three new informative and annual tax files provided by Final Report of BEPS Plan, in Action 13, knowing as the Master File, the Local File and the Country by Country Report.

Following one of the best practices in taxpayers' rights, **PRODECON** has assumed a compliance agent role, by undertaking the task of gathering Tax Authorities, Taxpayers, as well as Tax professionals, in order to participate in such unparalleled Public Consultation.

The main purpose is that taxpayers and Tax Authorities participate and contribute to the design of the most possible fair regulations, with the expected protection of the rights of taxpayers in the fulfillment of their tax obligations.

In order to accomplish this, **PRODECON** published the Public Consultation through its official website on October 10, 2016, as can be seen in the following picture:

The screenshot displays the official website of PRODECON (Procuraduría de la Defensa del Contribuyente). The main banner features the text: "PRODECON da a conocer para consulta pública proyecto del SAT: Reglas para la presentación de Declaraciones informativas de partes relacionadas. Artículo 76-A LISR." Below this, there is a "Clic aquí" button with a checkmark icon. The right sidebar contains several news items, including "PRODECON te alerta sobre los avisos que se deben presentar durante el mes de enero 2017" and "2da Conferencia Internacional de los Derechos del Contribuyente". The bottom navigation bar includes sections for "PUBLICACIONES", "BUZÓN DE LA PROCURADORA", "CONTACTO ATENCIÓN AL CONTRIBUYENTE", and "CHAT EN LÍNEA". Below the navigation bar, there are four images: a group of people in an office setting, a woman at a computer, a man speaking, and a hand holding a stack of papers.

Due to its exceptional character, the Public Consultation was commented on by some newspapers, national and international media, as well as social networks.

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Me gusta Seguir Compartir

PRODECON México
17 de octubre de 2016

Consulta pública para opinar sobre proyecto de reglas para la presentación de Declaraciones Anuales Informativas de partes relacionadas
#BoletínPRODECON. La Procuraduría de la Defensa del Contribuyente #PRODECON da a conocer a la opinión pública el proyecto de reglas administrativas elaborado por el Servicio de Administración Tributaria (SAT), cuyo objeto es establecer las bases para la presentación de las Declaraciones anuales informativas de partes relacionadas a que hace r...
Ver más

SHCP Secretaría de Hacienda y Crédito Público
Prodecon Procuraduría de la Defensa del Contribuyente
SAT Servicio de Administración Tributaria

Boletín 013 / 2016
Ciudad de México a 17 de Octubre de 2016.

PRODECON DA A CONOCER PARA CONSULTA PÚBLICA EL PROYECTO DE REGLAS PARA LA PRESENTACIÓN DE DECLARACIONES ANUALES INFORMATIVAS DEL SAT

En un ejercicio de transparencia y colaboración institucional, la Procuraduría de la Defensa del Contribuyente da a conocer a la opinión pública el proyecto de reglas administrativas elaborado por el Servicio de Administración Tributaria, cuyo objeto es establecer las bases para la presentación de las Declaraciones anuales informativas de partes relacionadas a que hace referencia el Artículo 76-A de la Ley del Impuesto Sobre la Renta vigente.

La presentación al público de este proyecto, previo a su emisión oficial por parte del SAT, tiene por objeto recibir propuestas, opiniones o comentarios de cualquier persona o grupo de personas interesadas, a fin de que puedan involucrarse directamente, en un marco de sana cooperación, en el diseño y alcances de la mencionada normatividad.

Es un importante ejercicio de apertura por parte del SAT que busca escuchar a los contribuyentes a través de PRODECON, organismo autónomo que por ministerio de ley se constituye como interlocutor público entre las autoridades fiscales y los pagadores de impuestos.

La dirección de correo electrónico a la que se podrán enviar estos comentarios es consultapublica@prodecon.gob.mx y el plazo que se tiene para ello es del 17 de octubre al 18 de noviembre del presente año. La unidad administrativa encargada de coordinar esta consulta pública es la Subprocuraduría General de la Procuraduría de la Defensa del Contribuyente.

Concluido el plazo, PRODECON concentrará la información y celebrará a sesiones técnicas con el SAT a fin de que se analicen las propuestas que se consideren que contribuyan a contribuir a un mejor diseño normativo de las reglas en cuestión. Posteriormente el SAT, en ejercicio de sus atribuciones legales, publicará la versión definitiva de las reglas administrativas correspondientes.

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12 LUNES 9 de enero del 2017 | Valores y Dinero | EL ECONOMISTA

SE BUSCA DIÁLOGO PARA REGULAR LAS DECLARACIONES INFORMATIVAS

Prodecon gestiona reunión entre contribuyentes y fisco

Entre octubre y noviembre se realizó la primera consulta pública

Por su carácter y tras analizar la información recibida y detallar las principales categorías sobre las que se formularon recomendaciones y comentarios, la Procuraduría informó que el siguiente paso es la gestión de la reunión entre autoridades fiscales e interesadas.

Este encuentro tiene por objeto que diversos interesados expresen de viva voz sus comentarios y reflexiones en presencia de autoridades tanto de la Secretaría de Hacienda y Crédito Público como de la Procuraduría, de lo que una interacción cercana a una mayor aproximación al punto de vista de los contribuyentes.

El espacio que se ha diseñado incluye el día de martes y sábado que será de las 10 a las 13 horas, en el edificio central de la Procuraduría en la Ciudad de México.

PRINCIPALES COMENTARIOS

Luego de recordar que la consulta pública que abre el SAT y la Procuraduría tiene carácter de procedente y positiva, la Procuraduría mencionó que los comentarios recibidos en esta breve hora principalmente en sus categorías específicas:

una de dichas declaraciones se refieren a informaciones que usualmente están en manos de la autoridad, habiéndose expresado la necesidad de entregar a la misma datos de forma oportuna.

Asimismo, hubo comentarios que pedían que se defina si los grupos con presencia económica en territorio nacional deben presentar dichas declaraciones informativas.

Otros interesados plantearon la posibilidad de que se puedan utilizar los principales comarcas relativos a operaciones con partes relacionadas y no la totalidad de ellas, es decir, pedían, que se analice la factibilidad de establecer un umbral de materialidad para las operaciones con partes relacionadas que se reporten en dichas declaraciones informativas.

Por último, hubo comentarios que expresaron la necesidad de estar con un listado de definiciones y términos de referencia en relación diversos como el uso utilizado en el borrador de las reglas mexicanas, tales como: "estructura de negocio, un grupo, etcétera."

Además, delido a que los conse...

The public disclosure of the aforementioned draft was aimed at receiving proposals, opinions or comments from any person or interested parties, within a framework of healthy cooperation and of course, Tax enhanced relationship.

It consisted in an important exercise by Mexican Tax Authorities in the search of taxpayers' feedback through **PRODECON**.

To accomplish this, **PRODECON** created the e-mail *consultapublica@prodecon.gob.mx* available from October 17 to November 18, 2016, through which it received the related comments.

By an entire month, **PRODECON** received any and all kind of comments and proposals from the public. Then, **PRODECON**'s officers made a summary of them, and identified six main issues. This abstract was shared with SAT officers' participants.

Before the deadline, **PRODECON** even held a previous technical session with some of the principal tax specialists in Mexico as well as some of the main enterprise representatives in order to review the regulations and some concerns they

got about the consistency of the SAT regulations regarding Action 13 of the BEPS Action Plan, with a special emphasis in not exceeding the scope of Action 13.

Afterwards **PRODECON** called a big technical meeting held on January 31, 2017 in which participated the SAT's and **PRODECON's** officers, leaders of this special project, with almost a hundred taxpayers and tax counselors.

SAT will publish the ultimate version of the corresponding regulations within the first semester of 2017, and taxpayers will have to comply with the Master File, the Local File and the Country by Country Report by December 2017. These files will refer to the previous year, 2016.

PRODECON also aims to be an auxiliary into flattening taxpayers' learning curve, right after the regulations are published. This shall reduce the risk of improper compliance.

e) The New Mexican Tax Substance Trial.

Mexico recently enacted Tax Substance Trial (Substance Trial), which may be seen as an important accomplishment, a true innovation to improve fair justice.

As I commented in Chapter I, after a peak on the Taxpayers' judicial defense a decline had come:

“Nevertheless, at the beginning of the new century, a progressive decline of the taxpayers’ judicial defense could be appreciated. Specifically in Mexico it seems that the courts lost trust in the taxpayers’ honest behavior and, concurrently, the taxpayers increasingly lost their confidence in tax court justice.

A relevant example of such process is that Tax courts began, more and more, to resolve the legal cases based not in the substance of the tax dispute, but rather in different formal questions related to formal requirements that according to law must be fulfilled by tax authorities when they issue their actions or decisions, such as textual mention of the precepts of law which

support the decision, as well as taxpayers' disrespect of some formal obligations they ought to fulfill (like present a specific tax informative note to report some operations or activities to the Tax Administration Agency²).

Such kind of practice had originated a genuine crisis of the judicial defense of the taxpayers' rights.

Certainly we can observe that when justice begins to support its verdicts in formal questions, people at the same time start to lose trust in the justice system itself. We can easily expect that judicial formalism leads to a justice unaware of the real needs of the claimers.”

Well, it happened that in the development of its tasks as Non-Judicial Defender of Taxpayers, **PRODECON** intervened in many cases in order to help taxpayers trying to remedy the final decisions of the Courts, which obedience would imply a severe damage for the current operation of taxpayer's business. As the reader of this words surely knows the tax debts bear important interests, and connote also administrative fines.

² In Mexico the Tax Administration Agency is named Servicio de Administración Tributaria (SAT).

Therefore it could easily happen that, after the affected taxpayer challenged the mentioned burdens in legal defense, he does not have the necessary monetary resources to afford the correspondent payment and even his bad debt can bring him to bankruptcy.

Obviously these kind of problems concern deeply the mission of the Taxpayers' Ombudsman, but curiously it also came about that the same Tax Authorities were really concerned because in many cases the tax debt only raised from the unfulfillment or even the untimely compliance of some mere formal tax obligations, such as informative tax notices. So the Tax debt has been increased in such a level that it is almost impossible to effectively collect it by Tax Administration and additionally authorities even could appreciate the significance of the taxpayer's business permanence.

Therefore **PRODECON** suggested to SAT the possibility to draft new legal regulations to create a new judicial procedure which seeks only for the real substance of the tax conflict rather than the mere obedience of formal tax requirements by the taxpayers.

Finally, with the collaboration of other important public agencies as the Procuraduría Fiscal de la Federación and the Tax Administrative Court, the President of Mexico sent the correspondent bill proposal to the Federal Congress. On January 1st, 2017, the Substance Trial bill was enforced.

The Substance Trial seeks to solve the tax conflict by analyzing the substance of the case more than the plain lack of formalities.

This new trial brings about an important benefit for taxpayers since it provides them with a procedure in which they can even challenge a Tax assessment which is based only on the unfulfillment of taxpayers' formal obligations.

This means that even though the taxpayer could have not presented a tax return or an informative notice on time or in the correct manner, he can demonstrate via the new procedure that in substance he does not really owe the charged tax because he never actually perform the imposed activity. Therefore, the specialized judges, in such cases, have the new significant authority to void the tax liability determined by Tax Authorities.

The lack of full compliance of formal Tax rules by the taxpayer who actually paid his taxes, but does not follow every single detail of the complex tax-administrative procedures cannot bring him to pay taxes which he had already paid.

One of the most important advantages of the new judicial procedure is that taxpayers are not obliged to guarantee the proper collection of the tax assessment when they challenge the Tax resolution.

Also, the Substance Trial introduces important elements of orality in a procedure that up until now has been predominantly written, through the establishment of a hearing in which the main issues of the controversy will be set.

This new procedure will also seek to render judgments in a faster time frame since it was enacted to attend to the principle of celerity. The Substance Trial pursues to reduce the procedural time.

As a conclusion, it is important to highlight that **PRODECON** strongly believes that the new Tax Substance Trial will bring about positive effects

for taxpayers in Mexico, due to the fact that this trial would be substantiated and resolved by specialized judges. This would make this procedure an effective trial in order to improve real justice for the people who afford, with their taxes, the State expenditures.