

TAXPAYERS' RIGHTS IN A TRANSPARENT AND GLOBAL SOCIETY

The Mexican's Ombudsman experience



Diana Bernal Ladrón de Guevara



**Procuraduría
de la Defensa
del Contribuyente**
PROTEGE • DEFIENDE • OBSERVA

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Diana Bernal Ladrón de Guevara is the Taxpayers' Ombudsman of México, proposed by the President, and appointed by the Senate, since the creation of **PRODECON**, for its acronym in Spanish: *Procuraduría de la Defensa del Contribuyente*.

Ms. Bernal earned a law degree from *Universidad Iberoamericana*, with a specialty in *Amparo* from the Institute of Judicial Specialization of the Supreme Court of Justice of Mexico, and Tax Law Diploma from *ITAM*.

With an extensive legal background, she has been designated District Judge, Circuit Judge and confirmed for another period by the Supreme Court of Justice of Mexico for the previous post. She has also acted as Judge of the Federal Court of Tax and Administrative Justice, nowadays, the Federal Court of Administrative Justice.

In the legislative area, in 2003 she was elected as Congresswoman in the Federal Congress of Mexico serving during the LIX Legislature. In this assignment, she designed and proposed the Federal Taxpayers' Rights Law and actively participated in the approval of the Taxpayers' Ombudsman Organic Law.

She is the first Taxpayers' Ombudsman, a position she has held since 2011, being elected by the Senate and ratified for a second period.

She has been a lecturer at the *Universidad Iberoamericana* and has taught at other prestigious higher education institutions.



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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.

Jorge Narvaez Hasfura

International Tax Partner of Baker & McKenzie



The Mexican Experience in the Non-Judicial Defense of the Taxpayers' Rights.

The Mexican Experience in the Non-Judicial Defense of the Taxpayers' Rights.

Introduction

Historically there was no defense available for the people who pay taxes. As we know, one of the principal ways in which the State Power shows its force to the people is precisely the imposition of taxes.

Nevertheless with the coming of the rule of law, the States met some limits to the unconditional exercise of their powers. First of all, we can mention the famous statement: "*No Taxation without Representation*"; which, at last, acquired as one of its principal meanings that the only remedy to an unfair taxation is to exercise the vote against the party or the representatives which passed the bill of the disproportionate levy.

Throughout time, many countries adopted special judicial procedures or administrative appeals (before tax authorities) in order to challenge different kinds of tax decisions like actions or resolutions of the Tax Administration Agencies.

In such way, in the Twentieth Century there was a strong development of tax justice within specialized tax courts. Even, in some countries as Mexico, taxpayers have the right to challenge precisely the law or bill which establishes taxes. Thus, the person who is obliged to pay the levy could go to a Constitutional Federal Administrative Court,

to claim that the tax was established in contravention with the principles of the Mexican Magna Carta. In Mexico such procedure is denominated as “*Juicio de Amparo contra leyes fiscales*”¹.

Such claims could even reach the Supreme Court of Justice of Mexico, which has the last decision in those matters.

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 Court justice in tax matters.

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.

¹ Constitutional judicial lawsuit available to citizens in order to oppose, among others, laws which establish or modify taxes.

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

Certainly we can observe that when justice begins to support their 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.

For example, if the tax assessment exclusively stands on the fact that the taxpayer did not present on time a tax informative note related to a certain operation he had made, such as the contracting of different loans, that omission could lead into a legal presumption: The taxpayer never acquired any loan, therefore the money obtained through those credits is going to be presumed as taxable income; even if in the judicial procedure, the taxpayer could fully prove that the loans had been certainly obtained in order to attend to his business operation.

The following data clearly shows the importance given by tax courts and judges to legal formalism in their rulings. Just as an example, in the past three years, the Federal Court of Administrative and Tax Justice³ have issued only a lower percentage of sentences based in the substance or material truth, meanwhile the Court decisions supported in legal formalism reached higher level.

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3 This Mexican Court is nowadays denominated with a new name: Federal Court of Administrative Justice. It is interesting to note that even the adjective of "Tax Justice" is lost in the new denomination. Nevertheless this Federal Court maintains its jurisdiction in tax matters, but in its new organization has acquired, in addition to its faculties to resolve any kind of administrative disputes, an original power to impose according with the law, the liabilities that may proceed against public officials for administrative responsibility.

2014			
Month	Total Number of criteria issued by the Federal Court of Administrative Justice	Total Number of criteria based on the substance	Percentage
January	78	12	15.38%
February	115	21	18.26%
March	148	29	19.59%
April	100	12	12.00%
May	67	18	26.86%
June	65	5	7.69%
July	60	11	18.33%
August	83	6	7.22%
September	63	5	7.93%
October	64	11	17.18%
November	80	10	12.50%
December	148	33	22.29%
Total	1071	173	16.15%

2015			
Month	Total Number of criteria issued by the Federal Court of Administrative Justice	Total Number of criteria based on the substance	Percentage
January	87	11	12.64%
February	52	2	3.84%
March	109	14	12.84%
April	80	7	8.75%
May	66	6	9.09%
June	61	8	13.11%
July	83	11	13.25%
August	100	15	15.00%
September	54	4	7.40%
October	86	4	4.65%
November	72	9	12.50%
December	87	9	10.34%
Total	937	100	10.67%

2016			
Month	Total Number of criteria issued by the Federal Court of Administrative Justice	Total Number of criteria based on the substance	Percentage
January	44	7	15.90%
February	44	5	11.30%
March	99	21	21.21%
April	65	4	6.15%
May	64	6	9.37%
June	51	8	15.68%
July	77	8	10.38%
August	47	5	10.63%
September	103	15	14.56%
October	100	15	15.00%
November	73	13	17.80%
December	68	9	13.23%
Total	835	116	13.89%

a) Mexican Legislation in the New Millennium. The Taxpayers' Rights Federal Bill and the Law which created the Procuraduría de la Defensa del Contribuyente (PRODECON by its acronym).

In 2003, some members of the Mexican Federal Congress realized the need to formulate a new way to defend and effectively vindicate the rights of the taxpayers.

The progressive complexity of Tax Legislation, the numerous Administrative Rules and Different Regulations issued by Tax Administration Service (SAT), the important and reinforced faculties of Tax Authorities to audit taxpayers and subject them to the collection procedure and also the new faculties to simply “invite” taxpayers to correct their tax situation without a formal ruling of the tax authorities, provoked a main concern about tax fairness.

Therefore and probably inspired in the United States experience⁴ a Senator and a Congressman proposed a Law Initiative to create a new system to protect, promote and defend taxpayers' rights outside the Judicial Defense. In other words, create new patterns to allow taxpayers to preserve their rights without going to Courts.

⁴ The Taxpayer Advocate Service in the US has an experience of more than twenty years. Important faculties have been granted to it and even it is within the Internal Revenue Service (IRS), actually acts as an independent agency and the head of the office can appear before the US Congress.

The new kind of defense and protection came from the ancient idea of the relevance that people can count with a popular advocate, a defender of society: the Ombudsman, who is committed to a flexible and holistic safeguard of the rights of the community in this case specifically the rights of the people who pay taxes.

Precisely, the Ombudsman is in the opposite side of legal formalism. Indeed, for the defense of taxpayers he pursues to accomplish the important and relevant task of focusing on the substance of the case: the fundamental truth involved in the particular situation the Ombuds deals with.

For communities it can be very hard to understand that somebody could be subjected to the imperative force of an official act issued by authorities, based only in legal formalities not in correspondence with the real conditions of the person or persons involved.

In this context the Congressman Juan Carlos Pérez Góngora and the Senator Martha Tamayo, submitted in the last months of 2003 two different Law Initiatives but with the same purpose: to create a new public and autonomous organism to safeguard the taxpayers' right to obtain tax justice.

Such purpose was finally reflected in the Article 1 of the law of the novel institution, which provides:

ARTICLE 1. *This Law is of public order, for application in the entire domestic territory, having as purpose to regulate the structure and faculties of the Taxpayer Advocacy Agency in order to assure the taxpayers' right to receive justice in tax matters, at the federal level, by providing advisory, representation and defense, resolution of Complaint Procedures and if proceeds, be competent to issue recommendations to tax authorities in the terms established by this law.*

It is important to mention that the Law was promulgated by the President of Mexico on September 4, 2006. Nevertheless it was until April 2011 when the following President proposed to the Senate the shortlist of three candidates to select the head of the new office. Finally, it was on April 28 when the Senate named the leader of the Procuraduría de la Defensa del Contribuyente, which is called “Procurador (a)”, term which in this case means a kind of Advocate, a Non-Judicial promoter of the defense and justice for every taxpayer. In other words a genuine Taxpayers’ Ombudsman.

In this way it is easy to appreciate that the Mexican experience led to the creation of an authentic Ombudsman in order to effectively guarantee tax

justice. Then we can realize that the sole system of judicial defense is not enough to secure that objective. It is interesting to try to explain the reasons that make it difficult for taxpayers to access real justice in Courts.

First of all, it is simple to understand that Tax Regulations are in general very vast and complex and frequently beyond the comprehension of common taxpayers. The requirement of a specialized adviser seems essential in tax matters. Additionally, by nature, the tax legal dispositions are not plainly interpretable. It could be said that they admit several directions or senses, and precisely is one of the main tasks of judges and courts to definitively establish the appropriate sense or direction of the tax rule. In many countries, such as Mexico, tax litigation is very difficult and necessarily requires the assistance of a legal counselor with a law degree. Furthermore, this kind of trials are destined to be attended by lawyers with a strong expertise in tax issues, and consequently the counselors' fees are commonly high.

Besides the showed up facts, taxpayers' ought to consider when they go to trial, that tax authorities have a high winning percentage at Courts. According to the data of the Mexican Tax Administration Service (SAT) around 55% of the cases resolved by Courts are issued in favor of Tax Administration. Look at the following table:



VIII. Tax trials

TAX TRIALS WON OR LOST BY THE TAX ADMINISTRATION SERVICE (SAT) January to June, 2016

	1st. Instance	Number of trials	% of Total	Amount (million pesos)	% of Total
Total		14,105	100.0	72,289.1	100.0
Won		7,291	51.7	49,499.3	68.5
Nullified for further actions		1,588	11.3	4,948.2	6.8
Lost		5,226	37.1	17,841.6	24.7
	2nd. Instance	Number of trials			
Total		5,281	100.0	63,551.1	100.0
Won		3,508	66.4	35,577.7	56.0
Lost		1,773	33.6	27,973.4	44.0
	Definitive	Number of trials			
Total		12,618	100.0	51,293.8	100.0
Won		6,666	52.8	26,750.3	52.2
Nullified for further actions		837	6.6	5,161.3	10.1
Lost		5,115	40.5	19,382.1	37.8

Preliminary figures subject to review.

Totals may not add up due to rounding differences.

1./SAT keeps its faculties to determine and, in such case, collect the challenged tax liability.

Source: Tax Administration Service (SAT)

It is interesting to remark that, beyond the numbers that indeed favored the tax authorities, it can be observed that in general terms the judicial system is trending to a progressive distrust in taxpayers' defense, as we can see in the following judicial precedents.

For example, the Supreme Court of Justice ruled in a very relevant precedent that the presumption of innocence -which might be considered as a fundamental principle that assumes that every person shall be treated as not responsible until it has been proved he is guilty- cannot be applicable when a taxpayer is subject to a tax audit; because according to the Supreme Court such principle of innocence, even if it could have force in administrative or tax law, merely applies in disciplinary procedures. In other words, the principle could apply if the taxpayer can be penalized with tax fines (*ius puniendi* in latin), but not if he is being reviewed by the tax authorities⁵.

It is difficult to realize that, as the Court considers, criminal law offenders subjected to a criminal process have in any case the presumption of innocence rather than taxpayers who support the government expending with the payment of their taxes.

Even since the appointment of the head of this new Agency (**PRODECON**) had been created on April 28, 2011, it was four months later when, by virtue of

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⁵ The precedent can be consulted under the following link: <http://sif.scjn.gob.mx/sifsist/paginas/tesis.aspx> Official web site of the Mexican Supreme Court of Justice. The name of the criterion is: "*Facultades de comprobación de las autoridades fiscales. Las previstas en el Código Fiscal de la Federación no se rigen por el principio de presunción de inocencia*"; December 2015. Register number 2010600.

transitory legal provisions, the organism opened to the public and began to exercise its legal faculties and powers. This topic will be developed in the next section, just now it is important to say, that the creation of **PRODECON** found an immediate precedent: the enactment of the Taxpayers' Rights Federal Law, which took place on June 23, 2005.

The mentioned ordinance came from a Legislative Initiative proposed by myself as a Congresswoman. Its principal purpose was to list, in an express and detailed way, the specific and principal rights that taxpayers have⁶.

Let's examine the kind of prerogatives granted by the Taxpayers' Bill.

Actually we can attempt to classify the catalogue of rights that figure in Article 2 of the law, attending to the topic or objective they pursue.

In this context, we can mention first those rights which attend to the due process of law, like the right to be informed about the status of the related procedures; the right to be heard prior to the assessment of the tax debt; the right to attend his defense before tax authorities through the exhibition of the appropriate evidence and documentation.

⁶ You can see the complete version of the referred law in the appendix of this work.

In a second group we can observe rights which pursue the promotion of a cooperative compliance between taxpayers and Tax Administration, such as the right to be assisted and supported by tax authorities to fulfill tax obligations and the right to not deliver documents which may already be in the possession of tax authorities.

We can also find rights referred to the substance of the tax duty like the right to obtain tax refunds, and the right of taxpayers to self-correct their tax obligations when it may proceed; or rights referred to identify tax authorities involved and the confidentiality that tax officials must observe with the personal data of taxpayers.

Finally it can be noticed in the Taxpayers' Rights Federal Law prerogatives addressed to promote the adoption of the best practices in the actions carried out by tax authorities, as the right of taxpayers to be treated respectfully, and, very important, the right to be informed about their rights by tax authorities.

b) The Importance of an Ombudsman as a Special Protector and Defender of the Taxpayers.

According to the background exposed in the previous subparagraph, we can appreciate that the establishment of a Taxpayers' defender seems to be especially relevant to achieve real tax justice.

One of the main roles that can be performed by an Ombudsman is to bring the most approachable solution of tax conflicts. It is inherent to such kind of defender to introduce innovative and fresh procedures, defined by its easy access for taxpayers. Appearing to Courts is imposing to ordinary people and in a majority of countries, the judicial defense requires the professional assistance of a private tax attorney, such as it happens in Mexico. Furthermore, when a person goes to trial he knows that the conflict he is facing is going to be resolved with a binding decision and if the judicial sentence were issued against his interests, the Tax Administration will proceed to a coercive collection of the tax debt.

The alternative to turn to an Ombudsman appears friendlier with obviously less risk and less stress to taxpayers.

In fact the novel public organism, Mexican Taxpayers' Ombudsman, **PRODECON**, is provided with significant powers in order to have an effective action in the promotion and defense of taxpayers.

It is important to emphasize that **PRODECON** does not have the supremacy of an authority. As a matter of fact it is a public agency but it is not invested with officialdom. As the true representative of the general public, the agency does not have the coercive powers of Government, its real function is to develop special procedures to make it easier for taxpayers to obtain a quick and effective solution to the problems which they may face in their relationship with tax officers.

For that purpose the Mexican Ombudsman is invested with a variety of faculties which truly allow the organism to act as an effective intermediary between the two parties involved in the tax-legal relationship. The target of the Ombudsman is to obtain efficient, fast and actual remedies for the taxpayers' problems, with an important distinguishing feature: by the procedures set by the organism, taxpayers could question any kind of actions issued by the tax authorities. It is not important if such kind of actions are not final because they are merely a phase of a whole administrative process, or because they are only simple summons to taxpayers to deliver some information, or plain informal "*invitations*" to taxpayers to present some tax returns, or simple proposals to pay certain amounts of presumed tax debts.

In other words, taxpayers can go to **PRODECON** when they feel affected for actually any type or kind of action coming from tax offices, even the sort of

acts which commonly could not be challenged before courts.

Through its special procedures, as we can see in the next chapters, the Taxpayers' Ombudsman can act with great flexibility. The public organism is empowered to do several actions: call the tax officers to working meetings, request and obtain any kind of information from tax authorities when it is related to the matter of the procedure in course; **PRODECON** can also suggest and recommend to the tax authorities which are exercising their powers with certain taxpayers, several and different ways to solve taxpayers' problems. For that purpose **PRODECON** has powers to interpret the tax legal rule or tax provisions which are in related to taxpayer's problems, and therefore propose the corresponding actions to tax officers.

When taxpayers turn to **PRODECON** they do not need to fulfill any special requirements nor provide any specific documents. Because of informality, flexibility and friendliness of the Ombudsman's procedures, **PRODECON** will help and assist users to gather the pertinent information or appropriate documents required to solve their particular problems with Tax authorities.

Another relevant feature is that taxpayers are allowed to reach **PRODECON**'s procedures through several

means. It is not even necessary that the taxpayer goes personally to the public offices, any person on behalf of the troubled taxpayer may go to such offices asking for advice and counsel. It is not required in this first approach of the Ombudsman's procedures that such person has the legal representation of the taxpayer, it could rather be a relative, a friend or one of his employees.

PRODECON does not give only personal and direct attention, taxpayers could make telephone calls⁷, enter the live chat in **PRODECON**'s web site or send an e-mail setting out their problems.

Furthermore, **PRODECON** has recently opened modern virtual modules with the capability to hold face to face live assistance. When the taxpayer access the module, through a set of headphones and a web camera, he can talk with a professional attendee of **PRODECON**. In such a way, users can request and obtain in the same moment the tax assistance they may require, or even, if it proceeds, present immediately their Complaints against the tax authorities. The modules (which size is not bigger than a small cabin) are equipped with scanner, so that the user can send the concerning documents to the **PRODECON**'s representative.

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⁷ **PRODECON** has a toll-free national phone number which allows taxpayers to easily reach the specialized call center available to any person for questions or tax advice.

Even more, the mentioned modules also have an integrated laser printer, therefore **PRODECON's** representative can immediately send to the user the official document in which the filed Complaint or formal request of legal defense appears, then the taxpayer can sign it and the specific procedure begins immediately.

It results easy to appreciate that the role of the Taxpayers' Ombudsman is to foster the possibilities to access tax justice through new and informal reachable procedures. Due to the great complexity of tax regulations or the difficulties to deal with Courts' justice, the option for taxpayers to go to a people's defender seems to have a very special and relevant attractiveness.

c) Main Powers and Faculties of the Mexican Taxpayers' Ombudsman. The Brand New Procedures in the Defense of Taxpayers.

It is common and well known that tax regulations are not only complex but extremely profuse. Anyone may go to the official web site of the Revenue Body of various countries to easily find that out.

Mexico is not an exception to the aforementioned situation. We have, as many countries, two main taxes, one which falls on income and the other that levies purchases and services, mainly. The income tax is regulated in our country by the denominated "*Ley del Impuesto sobre la Renta*" (Income or more precisely Profit Tax Law), and the other tax is established by the "*Ley del Impuesto al Valor Agregado* (Value Added Tax Law)".

Both of them are federal (national) laws. The Mexican Income Tax Law has almost two hundred articles (195 provisions) and the Value Added Tax has only 43 provisions.

It is important to notice that the mentioned laws regulate the imposition of levies or taxes.

With parallel importance, the Mexican tax legal system compiles in one legal body the provisions that rule the administrative procedures tax authorities can install in order to collect taxes, such as the faculties to review and verify the compliance of tax obligations, assess the tax debts or impose the related fines and penalties. That legal body is known as the Federal Tax Code ("*Código Fiscal de la Federación*") and it has more than two hundred articles⁸.

Nevertheless those legal dispositions (approved by the Mexican Federal Congress) do not represent the total of fiscal regulations, because, as it comes to happen in other tax systems, the Revenue Body in Mexico, the Tax Administration Service (SAT) yearly issues a lot of different regulations in order, as it may be justified, to make the tax legal dispositions applicable.

Such regulations are named "*Resolución Miscelánea Fiscal*" (Miscellaneous Tax Resolution) in Spanish (RMF for its initials) and here we can find hundreds or even thousands of provisions ordered, first, by the year they shall be applied and, second, by the number of the diverse resolutions which amend the original Resolution for that year.⁹

⁸ Even the Federal Tax Code ends in Article 196 B, there are various articles with letters that increase the total number. This is the case of the alternative dispute resolution procedure named Conclusive Agreements (exposed in a further chapter of this essay) which is regulated in Articles 69-C to 69-H.

⁹ On 2016 the Miscellaneous Tax Resolution had four further Modification resolutions while in 2015 there were five of them.

If we add to this vast framework the multiple judicial criteria in tax matters where we can find the way that Courts consider legal norms should be applied, we can assess that the Tax system is certainly a matter for highly qualified experts.

Thus, we may confirm the strong importance of a public defender and counselor of the taxpayers, and at the same time the essential relevance that involves that such a public defender can count with the necessary faculties to install brand new procedures with the characteristics of informality, flexibility and simplicity.

It is interesting to observe that the law that regulates the structure and faculties of **PRODECON** (**PRODECON** Organic Law) counts (unlike the Mexican Tax laws) with only 28 articles. The Taxpayers' Ombudsman began to implement the provisions of the law on September 1, 2016 and for the proper operation and development of its faculties **PRODECON** issued some special dispositions¹⁰ in 110 articles.

Through the interpretation of its law, the new public organism found out that it has nine main and substantive powers or faculties, which are as follows:

¹⁰ The dispositions are officially named "Dispositions to apply **PRODECON**'s faculties", and were issued by **PRODECON** and published in the Official Government Journal.

1. To counsel and advice taxpayers facing authorities' actions.
2. To attend legal defense in courts when the tax debt quantity does not exceed a certain limit¹¹.
3. To receive any sort of Complaints against tax authorities' acts.
4. To solve tax legal and specialized consultation.
5. To investigate and identify the systemic problems of the taxpayers and to propose to the Revenue Body suggestions for their better solution.
6. To issue its opinion about the sense and interpretation of tax regulations at the request of the Revenue Body.
7. To propose to such Body the proper amendments to its internal strategies.
8. To call high tax officers to hold meetings with taxpayers' organizations in order to discuss and propose different kinds of solutions to their main problems.

¹¹ This is the only faculty which is restricted to a certain amount, thirty annual minimum salaries, about forty thousand US dollars.

9. To propose before the Tax Legislative Committee of the Federal Congress amendments to tax regulations.

It is important to mention that since 2014 at scarcely two years from its foundation, **PRODECON** was invested by the Federal Congress with a new faculty to act as an intermediary between taxpayers and tax authorities when an audit is taking place. In such cases the taxpayer can go to **PRODECON** and suspend the audit asking for a Conclusive Agreement, which is the first mean to alternative dispute resolution in the Mexican Tax system.

Then **PRODECON** counts with a tenth power which is provided by Articles 69-C through 69-H of the Federal Tax Code, to:

10. Act as an intermediary and even as a public witness in the Conclusive Agreement procedures in order to settle, in an alternative way, the tax conflicts that may arise between audited taxpayers and tax authorities.

In accordance to these ten powers **PRODECON** has developed the corresponding procedures.

As we will see, the most relevant procedures are:

- a) Adviser and counselor procedure (1).
- b) Complaint Procedure (3).
- c) Legal defense at Courts (2).
- d) Conclusive Agreements (10).

The relevance of such procedures comes from the number of taxpayers who requested such services.

As per the following statistics:

PRODECON
Taxpayer's services in numbers
September 2011 – December 2016

Tax advice and Counseling	253,169
Legal defense at Courts	29,121
Complaints against tax authorities actions	75,912
Conclusive Agreements	4,853
Total of services	363,055

PRODECON
Taxpayer's services

September 2011 – December 2016

Calendar year	2011	2012	2013	2014	2015	2016	Total
Tax advice and counseling	533	2,986	17,389	56,141	73,595	102,525	253,169
Legal defense at Courts	243	347	2,775	5,476	10,041	10,239	29,121
Complaints against Tax authorities actions		431	5,407	17,683	24,455	27,936	75,912
Conclusive Agreements				982	1,800	2,071	4,853
Total of services	776	3,764	25,571	80,282	109,891	142,771	363,055

For a novel organism not sufficiently well known by Mexican taxpayers it is important to observe the relevant amount of services that **PRODECON** has given in its first five years. Equally important is the steady percentage of growth of such services.

The procedures described in numbers 5 and 8 refer to general problems of taxpayers.

In contrast the procedure described in number 4: To solve a tax legal and specialized consultation, is used by fewer taxpayers, which particularly confront a more complex problem with the Tax Administration. In such cases, **PRODECON** acts as a true expert, developing its written opinions to propose the solution to the query at hand.

Finally there are three kinds of procedures that the organism developed facing other State bodies, such as the Tax Administration Service (SAT) or even the Federal Congress. In these cases, mentioned in numbers 6, 7 and 9, **PRODECON** interacts with other public actors in the tax system in order to improve the protection and guarantee of the taxpayers' rights from different angles.

In this essay we are going to analyze only the two most relevant faculties of the Mexican Taxpayers' Ombudsman: i) Complaint Procedure against Tax authorities' actions; and ii) Conclusive Agreements.

They are considered relevant since their study may reveal the importance of a new pattern of protection of taxpayers' rights. At the same time, I strongly believe that the procedures of Complaints and Conclusive Agreements developed by **PRODECON** are exceptional in front of other kinds of similar processes by other public agencies of Taxpayers' defenders in different countries. Both procedures are relevant as for the following reasons:

- a) Complaint and Conclusive Agreement procedures have a wide access. Every individual or corporation, no matter its residence or nationality, can come to such procedures. In the same way the amount of the tax assessment or the relevance of the tax problem is totally irrelevant. **PRODECON** can serve, through those two procedures, from small taxpayers to truly Multinational Enterprises (MNEs).
- b) The two procedures are flexible and can help taxpayers before they go to courts.
- c) Therefore, both, Complaint and Conclusive Agreement procedures can be seen as alternative means to resolve tax disputes timely.

- d) They really have a relevant lower cost for taxpayers. Private professional counseling is not a requirement to access the procedures.

- e) Tax authorities have great confidence in the suggestions or proposals that **PRODECON** can make due to its character of being a public and official intermediary.



Complaint Procedure.

a) Main Purposes of the New Procedure.

First of all, it is relevant to mention that since the importance of the Ombudsman's role, in Mexico it was considered necessary to provide the establishment of such organisms in the constitutional text itself.

For such purposes, on January 28th 1990 the Political Constitution had an amendment to add part B to the text of Article 102. The current text reads as follows:

Article 102.-.....

B. *The Federal Congress and the legislatures of the local states, in their proper spheres of competence, must establish organisms to protect the human rights recognized by Mexican law; such organisms will attend, whenever violations occur of those human rights, the correspondent Complaints against actions or omissions of administrative authorities or public officers, with the exception of acts or omissions coming from the Federal Judicial Power.*

The mentioned organisms may issue public but non-binding recommendations and they will be entrusted to file any sort of petitions or Complaints when it proceeds. Every public officer must answer the stated recommendations issued by those organisms.¹

¹ Unofficial translation by the author

The constitutional text also provides that, despite the non-binding character of the recommendations issued by the organisms created to protect human rights, if the recommended authorities or public officers involved do not accept the suggestions of the Ombudsman, they, by any means, must give a response based on the law and expose the proper legal arguments.

Now, Mexico counts with an entity to defend and protect the whole spectrum of human rights, an Ombudsman named “*Comisión Nacional de Derechos Humanos*” (National Committee of Human Rights). Nevertheless it has been considered that the specific rights of the individuals or corporations which pay taxes certainly deserve a further and specific system to achieve effectively such important purposes.

Therefore, after more than 20 years since the creation of the National Committee of Human Rights², the specialized defender of taxpayers’ rights, Procuraduría de la Defensa del Contribuyente, began to act on behalf of them, on September 1st, 2011. As a result, at present, the National Committee of Human Rights sends to **PRODECON** every Complaint that it receives related to tax matters.

We can appreciate that, according to the Constitutional text -Article 102 part B-, the main reason for the creation of the new official defender is obviously to promote, protect and defend the taxpayers’ rights.

.....
² The mentioned organism was established since June 6, 1990.

Such task is accomplished by **PRODECON** through the reception and proper process of the Complaints that taxpayers submit to its attention.

In this part of our study it is useful to remember that the main importance of the tax Complaint Procedure before **PRODECON** is that it is not a judicial process and, for the same reason, Complaints are merely informal and simple procedures to reach easier, effective and timely solutions for the affected taxpayers.

Thus, the easy access to the Complaint Procedure and its lack of formalities allow taxpayers to find a practical solution to the controversies that arise between taxpayers and tax authorities.

It is important to emphasize that the Complaint Procedure will be appreciated more like a public alternative mean to solve conflicts with the Tax administration, rather than an instrument to develop or endorse a tax dispute. The main objective of the Complaint Procedure is to find the best possible solution to the disagreement among both parties and to avoid further and more complicated litigation.

These kind of alternative instruments seek to achieve solutions which can resolve the substance of the disagreement in a very transparent and institutional way. The taxpayers' Ombudsman actually advocates for the finding of solutions which will be convenient

not only for the taxpayer but also for the tax authority. The objective is to build progressively a new and, as OECD proclaims, enhanced relationship among such parties.

It is important to consider that the purpose of the Complaint Procedure is not only to resolve the conflicts between the taxpayer and the Tax administration at once, but other really important objectives also. As we know, traditionally the relationship between the Taxation State Power and the governed taxpayers is held among two specific parties, so the simple notion of a third and independent party which interacts between them acquires a notorious relevance and might be very helpful.

Thus, we may take into account that the general and panoramic vision of the Ombudsman's performance is that the relationship between the Tax authority and the taxpayers has, reminded Arthur Rimbaud, to be reinvented³.

Beyond the poetry quote, undoubtedly the new millennium is characterized by new patterns which, among other intentions, seeks for the promotion and implementation of more equal relations in societies, especially between Governments and citizens. In such way an important purpose of the new models is to become more transparent in such kind of relationships.

³ Compare: "A season in hell": "*Self-interest exists, attachment based on personal gain exists, complacency exists. But not love. Love has to be reinvented, that's certain*". Arthur Rimbaud.

When there is not any third party like a public agency between Tax authorities and taxpayers, as is the case of **PRODECON**, the interaction of such parties occurs necessarily in a closed environment and that may be an opportunity which might lead to not proper or legal arrangements. In any case the taxpayers and their tax advisers who look for a solution to their controversies by reaching arrangements with tax authorities in a direct way, could not be sure about legal certainty. The solution offered, in such cases, by tax officers could possibly not have solid legal basis or could depend only in the strictly personal approach of such tax officer to the particular case.

In the opposite side, if a public agency, like the Procuraduría de la Defensa del Contribuyente, implements new and transparent procedures to achieve solutions to tax conflicts, this should lead to institutionalize tax justice and, consecutively, to assure equal treatment for all taxpayers in the same or similar situations.

b) Actions of Tax Authorities which can be challenged in the Complaint Process.

Continuing with the importance of having new, informal, transparent and innovative procedures in order to achieve a better tax justice, we can easily appreciate the significance that in such complex matters, taxpayers can count with a public office which has been empowered to act as an independent party in order to provide advice, support and defense to each and every taxpayer, as **PRODECON** does.

So, if there are obvious difficulties in the trials or court processes and it does not result so easy or simple to access to judicial defense (area in which it is so important to count with the support of professional counselors) the opportunity to assure a quick response through a mere and essentially informal procedure of Complaint, seems to appear especially attractive.

In a first approach we can appreciate that, if taxpayers have any sort of disagreements or conflicts with the Tax Administration, in many cases, they cannot go immediately to judicial defense, because only certain classes of final or definitive acts of authorities can be brought directly to the Courts. Court actions require that such authority's acts be definitive, when they only constitute a phase of a whole tax-administrative procedure, the affected taxpayer has to wait for the final decision in the procedure in order to be able to challenge it before the Tax court.

We can read the correspondent criterion formulated by the Normativity Committee of **PRODECON**, available in its website:

“The Procuraduría de la Defensa del Contribuyente has legal competence to receive and attend the Complaints that taxpayers present against any sort of tax federal authorities acts, when such acts may cause any kind of violation of their rights during tax audits, even if such acts were not final administrative decisions and, therefore, cannot be challenged in trial yet.”

PRODECON 4/2012/CTN/CN (Approved in the 3th Ordinary Normativity Committee. March 16, 2012. With amendments made on March 26, 2023).

On the other hand there can be final tax-administrative decisions which taxpayers are already challenging in Court currently, as well as decisions which have been validated or confirmed in the judicial defense. In both cases, due to the informality and flexibility of the Complaint Procedure, a taxpayer may refer the matter to **PRODECON**, who is going to hear the case with its autonomous determination, in other words, with total independence of the judicial process. That is because the Taxpayers’ Ombudsman has different parameters to assess and propose the solution to the tax conflict. Observe the following criterion:

“The Procuraduría de la Defensa del Contribuyente has legal competence to receive Complaints that

taxpayers may present, even if the authority's acts exposed in such Complaints have been challenged in a trial or other mean of legal defense. It is irrelevant if the legal mean of defense has or has not been actually resolved."

PRODECON 3/2012/CTN/CN (Approved in the 1st Ordinary Normativity Committee. January 20, 2012. With amendments made on March 26, 2013).

In fact, the Ombudsman is always looking for the "real" justice of the specific case. The organism permanently prefers to achieve solutions that imply an authentic fairness for both parties, especially for the taxpayers. As we know, tax matters could imply severe consequences, which in some cases are produced only because of the inobservance of mere formal requisites. For example if a taxpayer forgot to file an informative notice about some specific loans he acquired, the consequence could be, according to tax law, that the corresponding amounts of borrowed money can be presumed as taxable income.

The Non-Judicial Defender, the Taxpayers' Ombudsman, is enabled to assess the factual relevance of the taxpayer's omission and conclude that tax authorities must attend to the taxes effectively paid, rather than to the lack of specific formalities.

PRODECON is continuously formulating and publishing in its official website the criteria which

informs the public about those kind of decisions. Please observe the following example:

Formal Requirements. The Legal Consequences of its Omission or its Untimely Filing, could be Overturned if the Loss of the Substantial Right is Notoriously Out of Proportion. *The Procuraduría de la Defensa del Contribuyente considers that formal requirements imposed by tax regulations as a condition to access to certain rights or special tax deductions or exemptions are certainly relevant by themselves. Even so, and taking into account the pro-person interpretation of law ruled by the new constitutional amendment of Article 1, with the governing principles of universality, interdependence, indivisibility and progressivity of fundamental rights, and also the rule contained in Article 31 – IV of the Federal Constitution, it must be concluded by this Ombudsman that taxpayers only are obliged to pay taxes according to their taxable capacity. Therefore, **PRODECON** as Non-Judicial public taxpayers' fundamental rights defender, ought to consider that the tax authorities should appraise in each case if the omission of a formal requirement is enough reason to penalize the taxpayer with the loss of the substantial right; mainly when the mere lack of such formal requisite implies taxable assumptions to the referred taxpayer.⁴*

PRODECON 3/2013/CTN/CS-SPDC (Approved in the 4th Ordinary Normativity Committee)

⁴ You may consult this and other criteria of **PRODECON** in Spanish: http://www.prodecon.gob.mx/Documentos/CriteriosNSAJ/compilacion_criterios_sustantivos_spdc_actualizada.pdf

Then, the Tax Ombudsman, as we can easily appreciate has a broad field of action. It results important to recall that tax law implies the possibility that tax authorities can issue several kinds of actions.

In Mexico, for example, tax authorities have four different kinds of faculties upon taxpayers. In the first place, they have the power to assist and help taxpayers to fulfill correctly their obligations. Second, they can review and audit any taxpayer in order to verify the proper compliance of their tax duties. As a third faculty, tax authorities can assess and fix tax debts as a result of tax audits. Fourth, they can impose tax fines and penalties if taxpayers do not comply properly and timely with their tax obligations.

Then, it is easy to appreciate that there are several kinds of tax actions which can interfere or affect taxpayers, and not all of them can be challenged in suitable administrative or judicial defense. Here is where we can find the great strength of the Non-Judicial defense represented by the Taxpayers' Advocate or Ombudsman, since its assistance and protection can be brought to any kind of problems or situations that taxpayers could face.

Look at the two following criteria:

“The Procuraduría de la Defensa del Contribuyente, as a public and tax specialized organism, defender of the taxpayers’ rights, considers that the term “action of authority” shall be interpreted in the widest sense to provide the maximum benefit to facilitate access to the Complaint Procedure.”

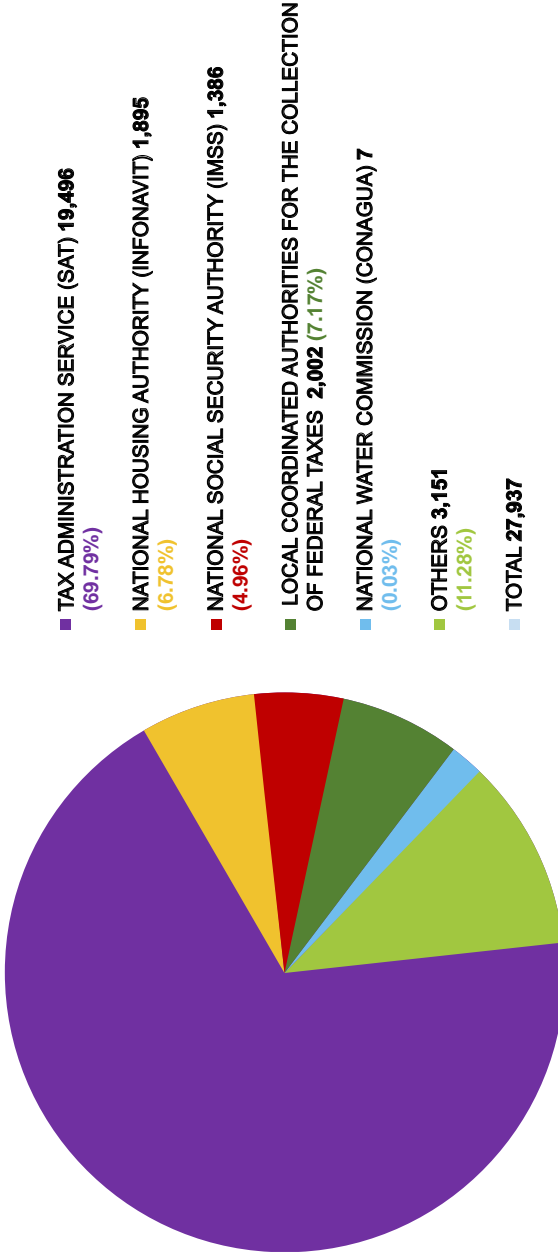
PRODECON 7/2013/CTN/CN (Approved in the 6th Ordinary Normativity Committee. June 14, 2013).

“The Procuraduría de la Defensa del Contribuyente understands the term “action of authority” as any act or omission which, directly or indirectly, impacts the legal or even legitimate interest of the petitioner of the counseling service or in the Complaint Procedure, even when such acts were forthcoming as a consequence of on-going authority acts....”

PRODECON 8/2013/CTN/CN (Approved in the 6th Ordinary Normativity Committee. June 14, 2013).

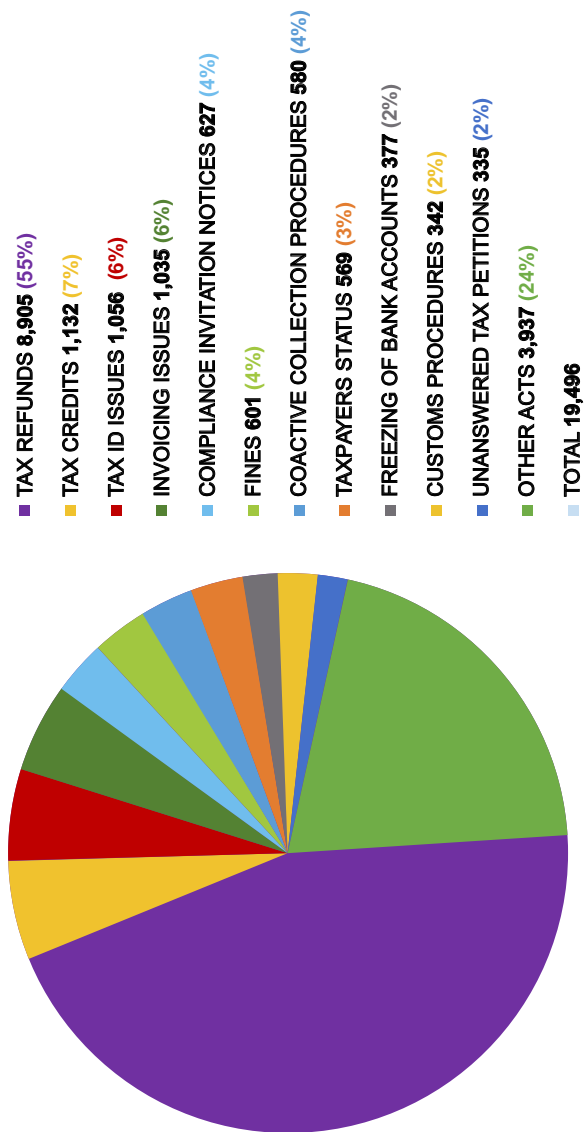
The following statistics can be very illustrative of the issues taxpayers may bring to the Ombudsman. They also show the relevant growth of the number of Complaints that **PRODECON** has received since 2012.

COMPLAINTS BY AUTHORITY FROM 1ST JANUARY TO 31ST DECEMBER OF 2016



MOST COMMON COMPLAINTS AGAINST THE TAX ADMINISTRATION SERVICE (SAT)

FROM 1ST JANUARY TO 31ST DECEMBER OF 2016



c) Opportunity, Promptness and Effectiveness of the Complaint Procedure.

Here we can appreciate other important and relevant attributes of the Complaint Procedure.

It seems logical that a new and alternative⁵ procedure ought to have necessarily special features which effectively assure that every taxpayer who files a Complaint upon the Ombudsman or Public Advocate will be attended to in a very simple and friendly manner. The objective is to provide a more reachable tax justice to every taxpayer involved in any kind of problem with the Tax Administration, such as we analyzed in the preceding chapter.

Furthermore, the participation of the Taxpayers' Ombudsman in any kind of problem that such taxpayers can face with the Tax Administration, becomes friendlier than any traditional relationship. It is very common that when taxpayers go to Tax authorities in order to elucidate their tax situation, tax authorities have a simple and unique kind of answer to such problems. Through the Complaint Procedure, Tax officers develop an approachable attitude to listen and solve the specific problems of different taxpayers.

The Complaint Procedure also has other important attributes.

.....
⁵ Alternative to the judicial defense.

For example, it is essential to ensure that in each and every step of the Complaint process, **PRODECON** counts with a wide range of flexibility to develop the specific procedure to each taxpayer in the best possible way to achieve concrete and positive results for him in a short time.

The Complaint Procedure is regulated in only seven articles of **PRODECON**'s organic law⁶. Also, the Taxpayers' Ombudsman has been developing criteria in order to mold the same procedure and make all the necessary adjustments to achieve its objectives: the efficient defense, safeguard and protection of the taxpayers' rights.

It is important to mention that the Complaint process has to be a speedy one. When **PRODECON** receives the taxpayer's Complaint, it almost immediately issues the official requirement to the responsible tax authority, which is compelled to respond within seventy two hours. Tax authorities must answer such requirements with clarity and they have to expose and justify the reasons of their actions which have generated the Complaint, as well as the legal and specific basis for them.

As well, it is important to remark that the effectiveness of the Complaint Procedure is basically sustained in the same nature of the Ombudsman. That is because such a kind of autonomous organism seeks essentially

⁶ Articles 15 to 21 of the referred law.

to solve the taxpayer's problems considering the "factual truth" over the strictly legal truth.

Let's see to the following criterion:

"Procuraduría de la Defensa del Contribuyente, as a Defender of Taxpayers' Rights (Ombudsman), will search not only for the legal but for the factual truth in order to achieve an effective defense of such rights."

PRODECON 5/2012/CTN/CN (Approved in the 8th Ordinary Normativity Committee. August 17, 2012).

Additionally, **PRODECON** is empowered with important faculties of investigation in order to inquiry about the facts that caused the Complaint. Such investigation can be made on its own initiative or at the request of the complainer taxpayer. In fact, the law which rules **PRODECON** textually confers the organism the power to require not only tax authorities, but also any public agency of Government.

"Article 4- Personnel in Charge of Service Rendering

Services rendered by the agency will be exclusively rendered at the request of the interested party and by the General Taxpayer Defense Attorney, Regional Delegates, and by a sufficient number of legal counsels to satisfy the demand having at least one Delegate with legal

and administrative personnel in each Regional Court of the Federal Tax and Administrative Justice Court.

Obligations of the Federal Tax Authority

Federal Tax Authority and federal, state and municipal public servants related to or possessing information or documents linked to the matter that is made known to the Agency, or that by virtue of their function or activity may provide useful information must respond punctually and promptly, in accordance with the provisions of the Federal Transparency and Access to Government Public Information Law, any information requested by this Agency needed to clarify any facts under investigation. Also Federal Tax Authority will be obligated to:

Hold Periodic Meetings

- I. Hold periodic meetings with the Agency, when requested by the latter, and*

Provide Information Related to In-House Criteria

- II. Maintain constant communication with Agency's personnel, and make available to such personnel information related to criteria in force as to performance with tax obligations of tax standards by the tax authority, as to the various forms used and how to fill them out, and in general, every information required by the Agency for the fulfillment of its purpose.*

Collaboration within the Sphere of Competence

Federal, local and municipal authorities and public servants shall collaborate with this Agency within the sphere of their respective authority.

Penalization for Noncompliance with Obligations

Non-compliance with obligations established herein with result in penalizations herein established and, as applicable Administrative Accountability of Public Servants Law.

Concept of Federal Tax Authority

Federal Tax Authority is to be understood including coordinated authorities regarding federal tax income, as well as autonomous tax federal organisms, such as the Mexican Social Security Institute (IMSS) and the National Worker Housing Fund Institute (INFONAVIT)."

Then, it is easy to appreciate that these sort of faculties actually contribute to the effectiveness and promptness of the Complaint Procedure. For example it is common that people come to **PRODECON** after suffering their bank accounts freezing, but they do not even know which authority ordered such measure. Through the Complaint process **PRODECON** easily investigates which is the public department of the Revenue body in charge of the case and helps the taxpayer to obtain the fast release of his bank accounts.

The Complaint Procedure is a very fast way to solve further taxpayers' difficulties, giving them a holistic solution. As an example if the person who files the Complaint comes to **PRODECON** because he received a negative administrative resolution to have a special tax regime (e.g. a tax authorization to receive donations which may be tax deductible), in such a case through the Complaint Procedure the involved tax authority can help or assist the taxpayer in order that he can again present the correspondent petition in the proper way, and therefore obtain the special tax regime.

As a matter of fact, in 8 out of 10 Complaints **PRODECON** has obtained satisfactory solutions for the taxpayers' problems. Therefore if the taxpayer complain is pleased, the Ombudsman issues the respective written decision in which it concludes that the tax officer or authority involved does not have any responsibility, because beyond that he actually caused a problem to the complainer, the solution was nevertheless achieved through the Complaint process.

Therefore in several ways the flexibility of the Complaint Procedure is a key factor to assure its effectiveness, even beyond the same procedure. And that is because it becomes a real an effective opportunity to assist taxpayers; so they can leave the procedure counting with the specific guidelines that they may follow to

avoid further difficulties. As an example if somebody comes to **PRODECON** because the tax authority refused to partially make a tax refund, and in the Complaint Procedure the authority responds that the refund was incomplete because the taxpayer must justify some expenses which have been deducted, the taxpayer can leave the Complaint Procedure with the provided advice to do the request in a correct manner.

d) Main Achievements and a Selection of Relevant Cases.

First of all, it is important to remember that the main goal of the new alternative procedure, which seeks to achieve real tax justice to taxpayers, is to offer a novel and transparent space to improve and facilitate dialogue between taxpayers and Tax authorities in order to solve in an easier, effective and friendly way tax conflicts, as we have seen through the preceding paragraphs.

Within this framework, we can enumerate five main achievements of the Complaint Procedure developed by **PRODECON**:

1. The Complaint Procedure has evolved to offer every taxpayer a real and effective alternative to solve any kind of tax conflicts.
2. Tax authorities have progressively modified various of their current criteria for the application of tax regulations, following several suggestions and proposals from the Taxpayers' Ombudsman. The numerous and frequent Complaints promoted by taxpayers in the few years that **PRODECON** has been working, have contributed to a more general and panoramic view of taxpayers' problems and to fair solutions for them. Such a modification of the Tax authorities' criteria is actually promoting a deeper change in the tax relationship, making it fostering its equality and transparency.

3. Step by step, Tax authorities have been acquiring more confidence in their approaches towards taxpayers. They feel more comfortable and confident when the Ombudsman proposes new ways to solve conflicts.
4. Meanwhile taxpayers are obtaining more efficient and less costly solutions and they are avoiding further pricey Court litigation.
5. Through the Complaint Process any taxpayer can get complete knowledge of his specific problems against tax authorities, and obtain the complete guidance to solve such problems.
6. A very important point is that through the performance of **PRODECON**, Tax authorities procure, not only to comply exactly with tax law regulations, but also to embrace best practices in their procedures and actions.
7. The Complaint Procedure allows and also guarantees a prompt, complete and efficient solution to taxpayers.

Look at the following cases:

Case 1

An enterprise incorporated different liabilities and assets from several subsidiaries that merged into it. So, these subsidiaries stopped filing tax returns, and the surviving company accepted the corresponding tax liability.

The merger agreement was presented on time to the Tax Authority, however, the Authority continued issuing tax return requests to the subsidiaries. Due to the lack of compliance, the Tax Authority penalized the subsidiaries with an important amount of fines that the surviving company decided to pay in order to avoid major contingencies.

Thereafter the company went to **PRODECON** asking for assistance and advice. The company pursued to obtain a refund of the unduly paid amount.

Through the Complaint Procedure, the Tax Authority realized that the evidence provided by the company showed that it actually filed a merger notice on time, and therefore the merged companies were no longer obliged to file tax returns.

Moreover, during the Complaint Procedure it was proven that other Authorities within the Tax

Administration Service cancelled the tax registration of the merged companies since the date of the merger; therefore, the fines imposed should have not been issued.

It is important to mention that the administrative resolutions which imposed the fines had not been challenged by the merging company, so actually they were presumed legal. Nevertheless, as a result of the dialogue achieved through the Complaint Procedure, the Tax Authority accepted to cancel all fines and refund the correspondent amount to the taxpayer.

Case 2

The Tax Administration seized the bank accounts of a psychologist and ordered the transfer of all the funds deposited in those accounts, supposedly to collect a multimillion tax liability, because it was argued that a few years ago, this person had a bank account in which she received deposits of large amounts of money.

When filing her Complaint at **PRODECON**, she mentioned that when the bank deposits occurred she had not even been registered in the Federal Taxpayer Registry and neither done any process to open bank accounts, because in that time she was only a university student.

Thanks to the Complaint Procedure, it was found out that someone stole the identity of this taxpayer. The offender forged her identity and then opened a bank account. In only six months this account had deposits for almost 900 million pesos⁷. Afterwards the unknowable offender withdrew all the money from the bank account and closed the account.

Such situation was informed and fully demonstrated to the Tax Authorities through the Complaint Procedure, pointing out that the evidence confirmed an identity theft case.

Therefore, due to the support and participation of **PRODECON**, Tax Authorities withdrew her tax liability.

Case 3

By the coercive collection procedure, a Tax Authority requested a tax liability and proceeded to seize real estate of the taxpayer which, afterwards, the Tax Authority assigned to itself.

The Tax Authority then notified the taxpayer that there was a surplus obtained from the auction of her property.

⁷ In that time the equivalent of sixty million dollars.

Therefore, the taxpayer requested the return of the surplus, but time passed without an answer.

Through her Complaint before **PRODECON**, the Ombudsman inquired about the case with the Tax Authorities and it appeared that the property had not yet been sold. The taxpayer expressed her interest in recovering the property after the due payment of the tax assessment.

Thanks to the suggestions of the Ombudsman, the Tax Authority was able to cancel the legal consequences of the supposed auction because it was found that it lacked some special formalities. This situation was clarified through an extraordinary appeal provided in Article 36 of the Federal Tax Code, named in Spanish “*reconsideración administrativa*”⁸ the Authority cancelled its acts and the taxpayer was able to obtain her property back.

This way, taxpayer’s claim was satisfied and the objective of the Tax Administration to collect taxes in accordance with the law was reached.

Case 4

A taxpayer came to **PRODECON** because he received a note of SAT inviting him to pay some income tax he

⁸ This is an extraordinary appeal which Tax Administrative Authorities can use in very special cases in order to be able to cancel tax liabilities if it is proven that they were not imposed according with the law, even in the case that such liabilities were final decisions because they were not timely challenged.

supposedly owed since 2014. The note explained that the tax was caused because of the cash deposits the taxpayer had received in his bank account.

However, the taxpayer expressed that he did not have a bank account in any financial institution in that year and consequently, he was not obliged to pay any income tax with regards to such deposits.

In the Complaint Procedure, **PRODECON** requested from the Tax Authorities involved in the case a report that specified which precise information was in their databases that led them to consider the existence of a tax liability for the taxpayer.

The Tax Authorities informed **PRODECON** that the taxpayer obtained cash deposits during the year 2014, as was reported by a financial institution. **PRODECON** helped the involved taxpayer to submit a Complaint upon another public organism named CONDUSEF⁹ to pursue an action against the financial institution for having reported such inexact information to the Tax Authorities.

Finally, the bank situation of the taxpayer was clarified and the financial institution issued to the taxpayer a letter acknowledging that the deposits previously reported to the Tax Administration Service, SAT, did not

⁹ CONDUSEF, Spanish acronym of *Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros*, National Commission for the Protection and Defense of Financial Services' Users.

actually correspond with the Federal Tax Registration (*RFC for its acronym in Spanish*) of the complainer taxpayer but belonged to an homonymous person. In such way, the taxpayer acquired full legal certainty about his tax status.

Case 5

A taxpayer who had traveled abroad returned to the country and when going through the Verification Point at Customs got the red traffic light. Therefore, the Authority carried out an inspection, and withheld several items that were part of the hand luggage of the traveler, including a special watch that a family member had given him. In order to recover his assets, the taxpayer paid the contributions supposedly omitted, but the Authority did not return him the goods.

Through the Complaint Procedure, it was demonstrated to the Customs Authority that the seized merchandise was for personal use. Then the taxpayer was not even obliged to declare or pay any contribution, and so the Customs Authority returned to the complainer taxpayer both the seized merchandise and the unduly paid amount of tax.

IV

Conclusive Agreements.

a) First Alternative Dispute Resolution Procedure (ADRP) in Tax Audits.

In Mexico, the audit procedures that tax authorities use to control the fulfillment of tax obligations are field audits, desk audits and electronic reviews. These administrative acts are all provided in Article 42 of the Federal Tax Code.

It is easy to figure out that one of the more vulnerable moments for all taxpayers is when they are put under the scrutiny of a tax audit. In Mexico this kind of procedures commonly last twelve months, but in some cases could endure eighteen or even twenty four months. The tax audit procedures also represent several financial and non-financial costs for the taxpayers: they have to maintain their whole accounts and documents available for tax auditors and, of course, attend and fulfill any sort of summons of documentation from them. Furthermore they have to hire, in many cases, professional tax advice to properly attend the tax review.

As we previously commented **PRODECON** began its public task as a Taxpayers' defender, since September 1, 2011, invested, as we have seen, with a novel and very important faculty to attend, through a new and special procedure the taxpayers' Complaints against Tax Authorities' actions. However, since the foundation of the new Ombudsman, one of the most common

and frequent reasons which taxpayers' argued in their complaints was definitively the actions that Tax authorities take during audit procedures.

It was in this framework that **PRODECON** figured out to draft a special procedure in order to offer better and definitive solutions to every audited taxpayer. The procedure was conceived as an alternative mean to solve in real time the tax conflict that audits bring with them.

Then, from an official proposal from **PRODECON**, Mexican President Peña Nieto sent to the Federal Congress a Legal Initiative to make an addition to the Federal Tax Code in order to add a new chapter named "Of Conclusive Agreements". The new chapter is made of six legal articles, 69 C to 69 H. The proposal was approved by the Congress.

As a result, since January 1st, 2014, taxpayers have a new alternative mean for settling tax disputes, named Conclusive Agreements. This figure allows them to request the assistance of the Taxpayer Defense Ombudsman, **PRODECON**, to act as an intermediary between the audited taxpayer and Tax authorities to reach a prompt, substantial and definitive solution to the arising tax conflict.

Conclusive Agreements procedure guarantees transparency and assure respect of the fundamental rights of taxpayers facing audits.

As we previously said, the immediate precedent of the Conclusive Agreements is the Complaint Procedure itself. In the precedent chapter we analyzed how the important power of **PRODECON** as an Ombudsman, is quickly opening an ideal space for a direct, confident and personal communication between Tax Authorities and taxpayers, allowing in many cases a prompt and efficient solution to the controversies between them.

With this important experiences, the new alternative mean, Conclusive Agreements pursue that **PRODECON** promote, facilitate and make transparent a reachable, timely and consensual solution to tax disputes, avoiding further litigation that may arise between taxpayers and Tax Authorities during the exercise of their audit powers.

b) Descriptive Analysis of the “Conclusive Agreements Procedure”. PRODECON as a Neutral and Independent Mediator between Tax Administration and Taxpayers.

Now, I will explain the steps to reach a Conclusive Agreement, and in a further chapter I will refer some practical and relevant cases derived from the topic, and, finally, share statistics concerning the number of cases that have been resolved since the implementation of these agreements to December 2015.

In a brief way this chapter presents:

- a) A descriptive analysis of the internal tax mediation in audits carried out in Mexico through the alternative mean named “Conclusive Agreements”.
- b) The key aspects that have made this mediation a useful procedure to solve tax conflicts without the need of going to trial.

As I previously said, the Conclusive Agreements Procedure appears since 2014 when it was incorporated into the Federal Tax Code. Therefore, it is the first alternative dispute resolution procedure during tax audits in Mexico.

This domestic ADRP is a mediation entrusted to a third independent party represented by **PRODECON** which may intervene in tax controversies that may appear between the tax authorities and taxpayers as a result of an audit, which according to Mexican legislation may be carried out during a visit to the domicile of the taxpayer, as well as by an office review in which the taxpayer must appear before the tax authority or through an electronic review.

The core of the mediation is given by the qualification or assessment which the Tax authority makes of the facts or omissions detected during an audit and can involve aspects related to the interpretation of laws as well as to the assessment of taxpayer's evidence. The important thing is that, in the case of consensus between the parties on the facts of qualification of the audit, the Conclusive Agreement is sufficient to finalize the respective process, making it practical and executable.

So, in the case that, during the inspection procedures, the taxpayer does not agree with the position set by the audit officers in respect of the compliance of his tax obligations, the taxpayer may appear before **PRODECON** in order to express the reasons of dissent and propose the tax effects that, according to his opinion, should be given to his tax situation.

It is important to mention that, as well as the new procedure is totally optional for the taxpayers, nevertheless, it becomes mandatory for the Review Tax authority which has been called to the mediation procedure before **PRODECON**; but, as in any other ADRP, it is optional for the tax authority to accept or refuse the terms of the taxpayer's proposal to settle the Conclusive Agreement.

In such way, the design of the new ADRP allows that in an accessible and transparent environment, the taxpayer may correct, if he decided so, totally or partially, his tax situation related to the observations made by Review Tax Authority. More interesting is that, Tax audit authorities can change easier and with more confidence their original positions or criteria regarding the tax situation of the taxpayer who required the alternative mean.

Indeed, it is common that when Tax authorities go through inspection procedures, they frequently are very rigid or severe in their appreciation of the tax situation of the individual person or corporation audited, even so, the proactive intervention of **PRODECON** allows secured modifications of the authorities' criteria in the assessment of the facts or omissions involved and admittedly in the criteria of the interpretation of tax law. The main reason for that important achievement can be seen in the transparency provided by the new procedure. Tax authorities feel very confident because the agreements they can reach occur before

the presence of an autonomous but very specialized organism. Thus, the mere presence or even opinion given by **PRODECON** about the tax conflict and the significant opportunity to exchange different points of view in the working tables held between audited taxpayers and Reviewer Tax Authorities, contributes seriously to the solution of the tax conflict through the signature of the Conclusive Agreement.

It is very relevant to remark that, as the Complaint Procedure, the Conclusive Agreements procedure is essentially flexible and it is ruled by the principles of celerity and immediacy. It is a procedure which lacks a majority of formalities and assumes, as a very important principle, the good faith of the parties involved, taxpayer and Tax authority in trying to find a consensual solution to a disagreement derived from an audit. Obviously the search for consensus between the parties necessarily supposes a procedure without rivalry, beyond that, we find a procedure which searches for understandings.

The procedure of Conclusive Agreements, as an alternative mean to solve conflicts, does not constitute an instance of administrative or judicial defense, not even an arbitration; it is an ADRP which incorporates an **active mediation**¹ of an independent organism, **PRODECON**, between tax authority and taxpayer so that the conflict may be overcome via consensus and always according to law.

¹ “Active mediation” means that **PRODECON** is not only a mute witness of the process; to the contrary, as the ruler of this procedure and expert in tax matters, can assist and help the parties to create the best-balanced atmosphere in order to overcome the conflict. This “active” role, in practice, gives **PRODECON** the chance to propose a possible solution to the parties, especially in cases of high complexity.

In this scenario the intention is not to have winners or losers; rather the vision is to see the procedure as a way to overcome the tax conflict following a “win-win” premise. Then, to achieve such purpose it is essential that the parties can negotiate, but supported by the mediation of **PRODECON**. It is definitely not a space where ideas or visions are imposed, but rather an area for finding coincidences which allow the promptness of solutions to differences in tax matters.

c) Technical Features, Legal Effects and Advantages of the Conclusive Agreement Procedure.

First of all, It is important to remark that in this procedure tax debts are not negotiated; to the contrary, this mediation finds a place prior to the assessment or calculation of such tax debts, when yet the audit procedure is ongoing and always before there is a definite administrative legal position on the tax situation of the taxpayer.

A point that shows the aforementioned flexibility is the freedom that the taxpayer has to request a Conclusive Agreement from the moment the audit procedure begins and before it is notified of a tax debt.

In his request, the taxpayer is not obliged to refer to all of the observations that the tax authority signals in the audit, but he is free to choose those which it deems necessary to submit to mediation.

Another significant feature of Conclusive Agreements is that they do not set any kind of legal precedent; this, without a doubt, creates an environment of trust between the authorities and the taxpayer to present proposals for solution which are meant to exclusively solve the conflict at hand. All the postures, offers or acceptances made in this procedure cannot be taken as positions that may compromise any past or future tax years.

As an additional and very important and attractive characteristic, the reaching of the Conclusive Agreement, allows the remission of any sort of fines and penalties provided by tax law. Such can be possible since the tax debt is yet not imposed or definitely assessed because the agreement is settled during the audit or inspection procedure.

Starting the procedure

The taxpayer must file a Conclusive Agreement request with **PRODECON**, pointing out the reasons for the dissent and the qualification that, in his opinion, must be given to the facts or omissions detected during the audit.

Suspension of deadlines

With the filing of the Conclusive Agreement request, all deadlines regarding the audit are suspended. This is relevant, since such suspension allows the authority not to finish the audit according to previous deadlines and in fact, it creates an ideal environment in which the case may be analyzed in detail and with the needed time.

Presentation of proofs. Displaying evidence that was not included in the audit.

The taxpayer may present all kinds of evidence to provide support to his proposal as long as the procedure is not finalized. Notwithstanding, it is important to clarify that the lack of preclusion that

rules this mediation does not imply that it can drag on indefinitely in time, since, **PRODECON**, as the ruler of the procedure must look for celerity.

The Conclusive Agreement procedure offers taxpayers the possibility of displaying documentary evidence to support their proposed qualification of facts or omissions. Such arguments can be provided and developed during the procedure.

In practice, **PRODECON** has witnessed that in many tax inspection processes, the taxpayer has been unable to show all accounting documentation that was required during the correspondent audit (for example, when the documentary support operations is abroad; when the tax authority does not grant an extension for its presentation or simply because it could not be properly annexed). The Conclusive Agreement gives them a new opportunity to provide documentary evidence enabling them to clarify their fiscal situation and undermine the facts that led the authority to consider that the taxpayer is in breach of the tax provisions.

Notification to the authority and response

Once the request for a Conclusive Agreement is filed, **PRODECON** must give notice to the authority so that in a 20 day term it files its response. The tax authority may accept the proposed terms, propose a different solution, or not accept any agreement.

If the agreement, whether total or partial, is finally reached through the procedure **PRODECON** elaborates the clauses for the agreement and submits it to both parties so they can offer observations or suggestions in a three day term. Afterwards the parties are called to sign the agreement in the presence of **PRODECON**, which also subscribes the correspondent contract.

When the tax authority proposes a diverse solution, the taxpayer is notified, so he may accept or refuse the proposal in a five day term.

Once the taxpayer receives the proposal from the authority, he may modify his original proposal by presenting a counter offer. It is important to say that he is not subjected in any strict way to the precise terms of his original proposal which was originally exposed in the request for an agreement, but rather he can change it or adequate it in order to achieve a consensus with the authority.

PRODECON may call the authority and the taxpayer to clarify any specific point in the conflict or discuss it in depth. These meetings are a space for negotiation headed by a **PRODECON** representative (here we can find the *active mediation* mentioned above). In this space the parties have the opportunity to exchange points of view in reference to the interpretation of tax law as well as technical and accounting points. These reunions are very useful in creating consensus. Said

reunions are generally carried out at **PRODECON**'s office, though they may also be carried out in the Tax authority's offices.

It is possible that an agreement can be reached on only some of the tax observations made in the audit by the authority; in this case, the authority may notify the taxpayer the resulting tax debt based on those issues which are not part of the consensus, and the taxpayer keeps the right to challenge the tax liability through any means of defense.

In case the tax authority does not accept the proposal terms for the subscription of the Conclusive Agreement, such authority is nevertheless obliged to hold its decision in law, mention, by force, the reasons and legal basis which support said refusal.

In this case, when it is impossible to achieve agreements, **PRODECON** closes the mediation procedure and the suspension of deadlines is lifted, so the authority may continue the audit or issue the correspondent tax debt to the taxpayer.

Legal consequences of the Conclusive Agreement

Once the Conclusive Agreement is signed, the tax effects stipulated applies immediately and it is not necessary any other legal act or action to go into force.

Then, both parties which sign the agreement are going to count with **complete legal certainty** on the terms of the consensus that has been reached, because all means of further legal defense against a Conclusive Agreement² are expressly proscribed for both, tax authorities and taxpayers.

In other words, the parties cannot challenge the result of a Conclusive Agreement on courts because such covenant is the result of their own will. This characteristic is not foreign to ADRP'S precisely because the objective and even the same nature of this kind of mechanisms is to find a final and definitive resolution of the tax conflict in scrutiny.

In the same way. If the Conclusive Agreement is only partial in front of the facts or omissions found in the tax review, nevertheless it will be considered incontrovertible by the alike reasons already exposed.

In the next paragraphs it will be useful to remark some very significant aspects which had contributed to the success of the new ADRP in solving tax conflicts out of legal defense or trials.

1.- The authority is obliged, as it was said, to attend the mediation procedure when it is requested by the taxpayer. This is very important to emphasize that the authority is free to accept or refuse the terms

.....
² Only if it is proven that the consensus was based on false evidence.

of the proposed agreement by the taxpayer, **but it is obliged to attend and be present in the mediation procedure as a legal and unavoidable obligation.**

When the figure began to work in Mexico, it was thought risky to submit the tax authority to a mandatory mediation³; however, experience shows multiple cases of success, precisely because the authorities must appear in all and every procedure requested by the taxpayers. It is interesting to mention that authorities progressively are becoming more confident in settling their tax conflicts, and also are looking forward to the procedure because they have seen it as a transparent, legal and quick way to collect taxes without going to trials.

In other words, after the “starting fear” of submitting to a brand new mandatory mediation, tax authorities have become more familiarized with the procedure, making it fruitful for the taxpayers, and meanwhile Tax Courts have also seen minimized the number of trials.

2.- Autonomy and tax professional specialization of PRODECON as the mediator. This point has been crucial for the success of mediation in Mexico. **PRODECON**, as an **independent**⁴ public body which according to the law is recognized as an expert in tax matters, has the necessary knowledge to handle the procedure effectively, creating an optimal environment to reach trustworthy agreements.

.....
³ Remember that the simple request of a Conclusive Agreement before **PRODECON** paralyzes the tax audit.

⁴ Independent before both parties, taxpayers and tax authorities.

Additionally, it is clear for both parties that given the nature of the mediator, **PRODECON** will not be part of any future litigation in case no agreement is reached. This gives an adequate balance to such mediation and generates trust in the parties to have an exhaustive negotiation during the correspondent process.

3.- The core of the mediation is confidential and does not set any sort of precedent. This characteristic has given trust and confidence to the parties involved to give-in to some of their claims, in order to find a solution to that unique and specific problem they are facing. In such manner, the parties can actually rely that all of their proposals, offers and positions made in the Conclusive Agreement procedure, will be safeguarded by the mediator and will not be, in any case, of public knowledge. While the alternative procedure never cannot set a precedent, the parties are clear that the agreed solution in a concrete case will not be binding or repeatable in any other similar or identical case.

4.- The flexibility of the procedure. The fact that mediation in Mexico has such scarce regulations has influenced, as has happened in the case of the Complaint Procedure, to the success that the Conclusive Agreements have achieved in solving tax conflicts since the new figure provides a large margin to the mediator to operate in the procedure. Acknowledging the good faith from both parties and

their will in looking for consensus, the mediator may order any action which may contribute for the parties to achieve success in resolving the controversy.

5.- Suspension of deadlines. Experience in Mexico shows that mediation without any time pressure tends to be successful; it is not the same to race against the clock than to carefully analyze all the elements of the tax conflict while looking for a solution. Notwithstanding the aforementioned, this quality must be well handled by the mediators, it is a positive point that the parties may have the needed time to look for solutions to the conflict; but the procedure must be, at the same time agile and expeditious.

6.- Partial solutions to the conflict may be reached without the risk of either winning or losing all the claims. In opposition to what happens during litigation agreeing in a mediation may take the parties to meet halfway. Experience shows in Mexico that with this possibility, the parties are more inclined to find a solution rather than facing a court instance, which in its own nature will rule to win or lose all or everything for the parties.

7.- Agreements reached in mediation give legal certainty to the parties since there are no means of defense against them. This characteristic has drawn the attention of those who seek mediation in

Mexico, since they are sure that when the conflict is settled through mediation, there is no legal possibility to revert that which was agreed. This gives predictability and absolute legal certainty.

8.- Mediation gives an opportunity to the parties to resolve the conflict in a friendly and reliable environment. Experience in Mexico shows that having a mediation procedure gives ways to better communication between the parties involved in the conflict. The cold and impersonal relation is overcome and the novel procedure creates a space for direct discussion, by which consensus can be reached. Discussions show that on many occasions, presenting arguments face to face, in presence of a mediator is much more useful in solving the conflict than the coming and going of notifications and positions in writing.

9.- Non-application of fines.

The Federal Tax Code provides that the taxpayer who subscribes a Conclusive Agreement is entitled, but only the first time that he subscribes such kind of agreement, to obtain the automatic remission of 100 % of the administrative fines (both formal and substantive). In further Conclusive Agreements, they may obtain the

benefit referred to in the Federal Law of Taxpayer Rights, i.e., the remission of up to 80 per cent of the fines.

In the event that a taxpayer submits several requests of Conclusive Agreement, **PRODECON** can join them in a single file, so that the benefit of remission, mentioned above, could be applied to the greatest possible extent.

Whenever the Conclusive Agreement deals with aspects that do not involve imposition of fines, the right of the taxpayer to be subject of the remission is preserved for further requests of Conclusive Agreements which he may propose in future occasions.

10.- In the case of the lack of success, the mediations helps to clarify the tax conflict in an eventual trial. Even if the mediation does not reach agreements bringing the parties closer through a mediator, nevertheless it will clarify the subject of dissent and thus the court or judge which analyzes the case in a further legal instance may in a more direct and easy way solve the conflict.

d) Principal Achievements and a Selection of Relevant Cases

At the end of January 2017, **PRODECON** had received and processed more than 5,000 taxpayers' requests to subscribe a Conclusive Agreement, precisely 5,029. Of that number, around 300 were requested by Multinational Enterprises (MNEs), understanding for this term such corporations which operate in various countries.

From that amount of 5,029, 1,981 Conclusive Agreements have already been subscribed; only 1,031 requests correspond to individual taxpayers, and 3,998 correspond to corporations.

Under the guidelines of the BEPS Action Plan the Mexican Tax Administration Service (SAT) in the last three years has reviewed the tax situation of several MNEs and in different cases rejected diverse aspects of their tax regime. Many of those corporations have come to **PRODECON** to request a Conclusive Agreement in order to, through mediation, obtain legal certainty in the new tax scheme they adopted.

In such way, corporations can obtain the release of tax liabilities, as they can also agree, if it is

the case, a new transfer pricing method, or modify for tax purposes its status of permanent establishment, and if it proceeds, correct their tax situation paying the corresponding taxes.

Some of the most important international corporations have trusted **PRODECON** to subscribe such agreements. In the next paragraphs, I will explain relevant and illustrative cases.

Case 1

Through the Conclusive Agreement, Business Transactions were reconfigured for Tax Purposes

A subsidiary corporation resident in Mexico, related party of a Multinational Enterprise (MNE) paid royalties to such related party without complying in a precise manner with the Arm's Length Principle.

Through the procedure derived from the request of a Conclusive Agreement, the Mexican taxpayer and the Tax Authority agreed to rename the royalties as dividends for tax purposes, in accordance with the 2010 OECD Transfer Pricing Guidelines.

Nevertheless, the renaming settled in the agreement, did not involve the payment of any additional amount of tax, because the parties arranged to take the dividends from the Net Tax Profit Account of the corporation.

Case 2

Proper Method Selection for Transfer Pricing Evaluation

In another case a supplier company resident in Mexico usually buys stock from its related party, a MNE, with its headquarters located abroad.

The Tax Authority carried out an audit and found important differences between the comparable set of independent parties selected for the purpose of the transfer pricing method and the comparables selected regarding the distribution of goods, assets and allocation of risks of every related party of the corresponding MNE.

The parties subscribed the Conclusive Agreement which established that the proper transfer pricing method to be adopted was the Transactional Net Margin Method.

The taxpayer paid a certain amount of tax and therefore corrected its tax situation, changing at

the same time its way to pay levies in Mexico and continued its operations with legal certainty.

Case 3

Tax Authority rejects advertising expenditures from an International Brand.

Through a tax audit, the Mexican Revenue Authorities considered that the expenditures that a Mexican company, related party of a MNE, made for the advertising of the brand it commercializes, should not be deductible because the brand is a third foreign party legal property.

The Mexican Company asked for a Conclusive Agreement before **PRODECON**. During the procedure the taxpayer offered a lot of documentation in order to prove that the advertising expense had as its only objective the positioning of the brand in the Mexican market.

Fortunately in the Conclusive Agreement the Tax Authority recognized that since the advertising activity was certainly related to the actual sales made in Mexico, the correspondent tax deduction was applicable.

Case 4

Deduction of Interests payments of a Company which had not begun to operate its business

A company was in the phase prior to start its operations in Mexico. This company obtained a loan from its foreign related party and made the correspondent deduction of the interest payments it made.

This company was subjected to a tax audit which was going to review only that particular year. In the audit it was considered by the Tax Authority that the deduction was not correct because the interest paid did not comply the law requirement that any expenditure must be related with the company's activities, since in this case the Mexican company, in the year regarded in the tax inspection, had not yet began to operate its business.

Through the Conclusive Agreement Procedure, **PRODECON** called to a working meeting and then Tax Authority was able to observe that the taxpayer company showed documents which clearly proved that the loan was in accordance with its related party for the purpose of obtaining cash to build the industrial plant which would

allow it to begin its operations the following year. When the audit took place the company was already operating its business.

Then, the company clarified its tax situation and did not pay any amount of taxes, thanks to the Conclusive Agreement Procedure.

On-line Conclusive Agreements

One of the latest news of this mediation process is the successful signing of a Conclusive Agreement during an electronic audit. As I mentioned above, the *on-line* reviews are the newest way to verify taxpayers' compliance in Mexico and are focused to identify, essentially, declared income but not accurately paid taxes such as Income Tax, VAT and payroll withholdings.

It is important to mention that although this new kind of audits were part of the outcome of the tax reform approved by the Federal Congress for year 2014, it was not until November 2016 that they began to operate, given the technical adjustments that had to be implemented in tax electronic systems.

During this “adaptation” period, considering that taxpayers were legally allowed to request a

Conclusive Agreement in the case of electronic audits, **PRODECON** and SAT worked together to prepare their institutional systems in order to carry on this mediation process entirely on-line.

One of the key issues that allowed this virtual interaction between taxpayers, **PRODECON** and the Tax Administration was the “*electronic tax mailbox*”: a digital platform in which individuals and corporations can consult their fiscal status, file tax returns, request tax refunds or receive any kind of notifications regarding their tax compliance.

Thus, with the legal and technological framework running, taxpayers can request an on line Conclusive Agreement at the same time the electronic audits started, sending a positive sign of joint efforts between the tax collection body and the taxpayers’ defender.

This remarkable advance may be seen as another iconic achievement in **PRODECON**’s mission to transparent tax authorities’ actions and protect effectively at the same time every taxpayer who needs such.

V

Challenges for the Taxpayers' Rights. Building Trust.

Challenges for the Taxpayers' Rights. Building Trust.

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:



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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PRODECON México
#ProdeconOficial

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





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 podrán 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.

—0—

Me gusta Comentar Compartir

EL ECONOMISTA

12 LUNES 9 de enero del 2017 Valores y Dinero

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

Val García / EL ECONOMISTA

LA PROCURADURÍA DE LA DEFENSA del Contribuyente (Prodecon) convocará a una reunión entre autoridades fiscales y contribuyentes, asociaciones, sindicatos empresariales y colegios de profesionistas, que se realizará en la ciudad de México sobre el diseño normativo del proyecto de reglas administrativas que establece las bases para la presentación de las declaraciones anuales informativas de partes relacionadas.

La intención destacó que la convocatoria a esta primera reunión técnica será a través de la Subprocuraduría General, y se pretende realizar el próximo martes 18 de enero del 2017.

El artículo 76-A de la Ley del Impuesto sobre la Renta vigente destaca que los contribuyentes que celebren operaciones con partes relacionadas deben presentar sus declaraciones anuales informativas de partes relacionadas del grupo empresarial matricial que deberá contener información financiera al grupo empresarial matricial, una declaración financiera local de partes relacionadas y una declaración informativa para cada una de las partes relacionadas.

Entre octubre y noviembre del 2016 la Prodecon y el Servicio de Administración Tributaria (SAT) realizaron tres consultas públicas para que contribuyentes, asociados fiscales, sindicatos y demás interesados hicieran comentarios sobre las reglas administrativas para establecer las bases de la presentación de dichas declaraciones.

La Prodecon recibió que dicha consulta pública fue con el objeto de lograr una regla clara, accesible en su cumplimiento y en línea con la legislación mexicana, así como con los compromisos y estándares internacionales de la que deriva la referida obligación formal.

Por su lado, y tras analizar la información recibida y detallar las principales categorías sobre las que se suscitó la mayor cantidad de opiniones y comentarios, la Prodecon informó que el siguiente paso es la gestión de la reunión entre autoridades fiscales e interesadas.

Este encuentro tiene por objeto que dichos 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 Prodecon, de lograr una interacción cercana una mayor aproximación al texto definitivo de la regla, así como garantizar fiscal.

Expuso que la consulta pública se llevará a cabo los días martes 17 de octubre y sábado que será de las 10 a las 13 horas, en el edificio central de la Prodecon en la Ciudad de México.

PRINCIPALES COMENTARIOS

La idea de recordar que la consulta pública que abre el SAT y la Prodecon tiene carácter de procedente y positiva, la Prodecon mencionó que los comentarios recibidos en esta primera reunión principalmente en sus categorías específicas.

ACCIÓN

Se considera que dos o más contribuyentes son partes relacionadas cuando una participa de manera directa o indirecta en la administración, control o capital de la otra, o cuando una persona o grupo de personas participe de manera directa o indirecta en la administración, control o capital de dichas personas.

La más importante se refiere a la necesidad de contar los datos posibles con los formatos y plataforma tecnológica que se emplearán para la recepción de las declaraciones. Se hizo hincapié en que el borrador que contiene la información que se debe incluir en la declaración muestra contiene puntos que exceden lo planteado en la Acción 13 de los Acuerdos de la Exención de la Base Imponible y Traslado de Beneficios (BEPF, por sus siglas en inglés).

Además, delido a que los conte-

mas de dicha declaración se incluyen a información que usualmente está en manos de la autoridad, hubo quienes expresaron la necesidad de entregar la información de forma al momento.

Asimismo, hubo comentarios que pedían que se detenga a los grupos con presencia económica en territorio nacional, dejen personal de dichas declaraciones informativas.

Otros interesados plantearon la posibilidad de que se puedan ajustar las principales cuentas relativas a operaciones con partes relacionadas y no la totalidad de ellas, es decir, que se analice la factibilidad de establecer un nivel 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, utilización del borrador de las reglas mexicanas, tales como: estructura de impresión, tamaño, colores, etcétera.

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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.

VI

Appendix.

TAXPAYER ADVOCACY AGENCY'S ORGANIC LAW

(Published in the Official Gazette of the Federation on September 4, 2006)

At the margin the Mexican Coat of Arms reading: United
Mexican States. - Presidency of the Republic.

VICENTE FOX QUESADA, President of the United
Mexican States, to the people, informs:

That the Honorable Congress of the Union has attentively
submitted to my consideration the following.

DECREE

THE GENERAL CONGRESS OF THE UNITED

MEXICAN STATES DECREES:

**THE ISSUE OF THE TAXPAYER ADVOCACY
AGENCY'S ORGANIC LAW**

CHAPTER I

GENERAL PROVISIONS

1- PURPOSE OF THE LAW

This Law is of public order, for application in the entire domestic territory, having as purpose regulating Taxpayer Advocacy Agency organization and operation in order to guarantee taxpayer's right to be granted justice on tax matters at federal level, by providing advisory, representation and defense, complaint management and the issuing of recommendations in the terms established by this ordinance.

2- AGENCY'S NATURE

The Taxpayer Advocacy Agency is a decentralized public entity, non-sectored, with own legal capacity and patrimony, as well as technical, functional and managerial autonomy.

BUDGETARY AUTONOMY

The Taxpayer Advocacy Agency's budget draft will be prepared by the Agency itself, subject to provisions contained in the Federal Treasury Preliminary Budget and Accountability Law and will be submitted to the consideration, in terms of general criteria of economic policy, in the Federal Disbursement Preliminary Budget. Following approval of the budget, the Agency will be free to exercise.

MINIMUM BUDGET

The budget assigned to the Taxpayer Advocacy Agency will under no event be lower than the budget assigned during the immediately prior year.

3- GRATUITOUS SERVICES

(1¹) Services regulated by this Law will be gratuitously rendered under integrity, honesty and professional principles. As to representation services referred to under Fraction II of Article 5, they will only be rendered when the amount of the matter does not exceed thirty times the annual minimum wages for Mexico City.

Representation services referred to in the above paragraph may be rendered without first having to exhaust the investigation process referred to under Fraction III of Article 5 hereof.

¹ We recommend that you bear in mind that the Executive Order that declares certain provisions of the Mexican Constitution with regard to de indexing the minimum wage, as reformed or added, was published in the Official Gazette of the Federation on January 27, 2016. The executive order establishes that the minimum wage may no longer be used as an index, unit, base, measurement or reference for purposes that have nothing to do with it, and that the organization responsible, the National Statistical and Geographical Institute (INEGI) will establish the value of the United of Measurement and Updating (UMA) that will be used as a unit of account, index, base, measurement or reference to calculate the value of the obligations and suppositions established by federal laws, state laws and the legal provisions that emanate there from. As from the date on which the executive order comes into effect, January 28, 2016. All references to the minimum wage in the form of unit of account, index, base, measurement or reference to calculate the value of the obligations and suppositions established by federal laws, state laws, the laws of Mexico City, and the legal provisions that emanate there from, shall be understood as referring to the UMA, The INEGI has calculated the daily value of the UMA as \$73.04 Mexican pesos, the monthly value as \$2,220.42 Mexican pesos and the annual value as \$26,645.04 Mexican pesos, as published in the Official Gazette on January 28, 2016.

4- PERSONNEL IN CHARGE OF SERVICE RENDERING

Services rendered by the agency will be exclusively rendered at the request of the interested party and by the General Taxpayer Defense Attorney, Regional Delegates, and by a sufficient number of legal counsels to satisfy the demand having at least one Delegate with legal and administrative personnel in each Regional Court of the Federal Tax and Administrative Justice Court.

OBLIGATIONS OF THE FEDERAL TAX AUTHORITY

Federal tax authority and federal, state and municipal public servants related to or possessing information or documents linked to the matter that is made known to the Agency, or that by virtue of their function or activity may provide useful information must respond punctually and promptly, in accordance with the provisions of the Federal Transparency and Access to Government Public Information Law, any information requested by this Agency needed to clarify any facts under investigation. Also federal tax authority will be obligated to:

HOLD PERIODIC MEETINGS

- I. Hold periodic meetings with the Agency, when requested by the latter, and

PROVIDE INFORMATION RELATED TO IN-HOUSE CRITERIA

II. Maintain constant communication with Agency's personnel, and make available to such personnel information related to criteria in force as to performance with tax obligations of tax standards by the tax authority, as to the sense of any consultation made to the tax authority, as to the various forms used and how to fill them out, and in general, every information required by the Agency for the fulfillment of its purpose.

COLABORATION WITHIN THE SPHERE OF COMPETENCE

Federal, local and municipal authorities and public servants shall collaborate with this Agency within the sphere of their respective authority.

PENALIZATION FOR NONCOMPLIANCE WITH OBLIGATIONS

Non-compliance with obligations established herein will result in penalizations herein established and, as applicable Administrative Accountability of Public Servants Law.

CONCEPT OF FEDERAL TAX AUTHORITY

Federal tax authority is to be understood including coordinated authorities regarding federal tax income, as well as autonomous tax federal organisms, such as the Mexican Social Security Institute (IMSS) and the National Worker Housing Fund Institute (INFONAVIT).

CHAPTER II

AS TO ATTRIBUTES

5- AGENCY ATTRIBUTES

The taxpayer Advocacy Agency is to provide:

ADVISORY AND COLSULTATION

- I. Attend and resolve any advisory and consultation requests submitted by taxpayers for the acts of federal tax authority;

REPRESENTATION BEFORE THE AUTORITY

- II. Represent taxpayer before pertinent authority, promoting in name of taxpayer any applicable administrative remedies and, if the case may be, representation before the Federal Tax and Administrative Justice Court, exercising any actions that may apply, opportunely and efficiently exercising rights of the represented taxpayers, until the total resolution of the issue.

INVESTIGATE COMPLAINTS AND ISSUE PUBLIC RECOMMENDATIONS

- III. Become knowledgeable and investigate any taxpayer complaints when these have been affected by federal tax authority acts resulting in alleged violations to taxpayer rights, in terms of this Law and make nonbinding public recommendations as to legality of acts such authority.

SUPPORT AVAILABILITY OF UPDATED INFORMATION

IV. Promote, jointly with federal tax authority, respectful and equal equality treatment to taxpayers, as well as making available updated information to guide and support taxpayers as to their obligations, rights and defense means available thereto;

SUPPORT TO TAXPAYER RIGHTS

V. Promote the study, teaching and disclosure of tax provisions, particularly those related to guarantees, administrative action elements, competence of pertinent authority, procedures and means of defense available to taxpayer;

INSTALL PROFESSIONAL CARRIER SERVICE

VI. Implement Professional Career Service available to counselors and legal personnel taking into account the principles set forth in the Federal Public Administration's Professional Career Service Law;

VII. OBLIGATIONS AS TO TRANSPARENCY AND INFORMATION

Attend, within legal limits existing on the matter for the tax authority, obligations on transparency and information ordered by the Federal Transparency and Access to Government Public Information Law, publishing amongst the general population, through its webpage on the internet the main actions initiated both as to the defense of

taxpayer and tax authorities, in strict terms of the authority granted thereto by this Law. Also, and for the purposes of guaranteeing compliance with this Law the Agency will provide the most relevant statistical data to allow the Federal Executive, through the Department of Treasury and Public Credit, to publish the information of its main administrative activities Official Gazette of the Federation at least every six months.

FINE IMPOSITION

VIII. Impose fines based on the assumptions and for the amounts established herein;

REPORTING OF POTENTIAL FELONIES

IX. Collect and analyze information related to complaints and reports made so to verify that the acts of the tax authority are in adherence to the Law in order to propose, as applicable, recommendation or the adoption of required corrective measures, as well as to report before any competent authority the potential existence of offenses and acts that may result in civil or administrative liability to the federal tax authority;

PROPOSING MEASURES IN FAVOR OF THE TAXPAYER'S RIGHTS

X. Propose to the Tax Administration Service any internal regulation modifications in order to improve the defense of taxpayer legal rights and legal certainty;

IDENTIFYING ANY ISSUES AUSING HARM TO TAXPAYERS

XI. Identify any systemic issues causing harm to the taxpayers and propose to the Tax Administration Service any pertinent recommendations;

GIVING AN INTERPRETATION TO TAX AND CUSTOMS PROVISIONS

XII. Issue an opinion on the tax and customs provisions when so requested by the Tax Administration Service.

PRODUCTION OF ORGANIC STATUTES

XIII. Issue its own Organic Statutes;

MAKING OF SUGGESTIONS REGARDING TAX AUTHORITY ACTIVITY

XIV. Call and hold periodic meetings with the federal tax authorities who will be obliged to participate, when so requested by this Agency, to meetings scheduled to such effect, in order to report o suggestions to the tax authority activities, as well as to warn or prevent the performance of any illegal act in detriment of an individual or group of individuals or propose avoid harm or have the damage repaired when said damages were caused by the tax authority when performing illegal acts or due to any unjustified cause. At such meetings may be present

and intervene, along with Agency's personnel, trustees and representatives of professional collegiate bodies, organized customer groups, unions, entrepreneurial chambers and confederations and, in general, legally established taxpayer groups who must in due time credit such capacity before the Agency;

FOSTER AND DISSEMINATE A NEW TAXPAYING CULTURE

XV. Foster and publicize a new taxpaying culture by launching communication and social information campaigns as to the rights and guarantees of taxpayers, proposing mechanisms that invite them to voluntarily comply with their tax obligations, including information as to the attributes and limits to the acts of the federal tax authority who must act in strict adherence to legality;

PROPOSE MODIFICATIONS TO TAX PROVISIONS

XVI. Propose to the treasury and Public Credit Commission of the House of Representatives any amendments to tax provisions and

ATTRIBUTIONS DERIVED FROM DIFFERENT ORDINANCES

XVII. Attributions deriving from different ordinances.

REMEDIES CONSTITUTING NO MEANS OF DEFENSE

Complains, claims or suggestions filed by taxpayers before Taxpayer Advocacy Agency will not constitute an administrative remedy nor any means of defense, neither their filing will affect or interrupt the terms, actions and proceeding that tax authorities are carrying out and are independent of the exercise or means of defense established under the law.

CONSEQUENCE OF AGENCY REPLIES

Replies given by the Taxpayer Advocacy Agency to interested parties as to complaints, claims and suggestions files do not create nor will extinguish rights or obligations of taxpayers and will not free public servants from liability therefore, such replies may not be challenged.

ACT CONSTITUTING NO INSTANCE

The filing of complaints and claims, as well as the resolutions and recommendations issued by the Proctor for the taxpayer's defense do not constitute legal instance and will not affect the exercise of other rights and means of defense that may be available to affected parties in accordance with the laws, nor will they interrupt or suspend preclusive, prescription or termination terms, they will not affect any actions or proceeding that tax authorities may be carrying out. This circumstance is to be made known to the interested parties under the notice of admission of the complaint or claim.

CHAPTER III

AGENCY'S STRUCTURE AND ORGANIZATION

6- AGENCY INTEGRATION

The Agency is integrated by the following bodies:

- I. The Proctor for the taxpayer's defense;
- II. The Agency's Government Body;
- III. Regional Delegates; and
- IV. Legal Counsel.

AGENCY'S PERSONNEL

Taxpayer Advocacy agency will have the necessary professional, technical and administrative career personnel required to complete its functions, therefore, the number organization and rules for its operation will be issued by the Agency's Organic Statures.

7. THE PROCTOR FOR THE TAXPAYER'S DEFENSE REQUIREMENTS

The Proctor for the taxpayer's defense is to satisfy for his/her appointment the following requirements:

BE A MEXICAN CITIZEN

- I. Be a Mexican citizen in full enjoyment and exercise of all civil and political rights

HAVING EARNED A DEGREE AND PROFESSIONAL PATENT ID

- II. Hold a degree and a professional patent to act as an attorney-at-law or a professional career related to tax matters;

TAX SUBJECT EXPERIENCE

- III. Having demonstrated experience on tax subjects for at least five years immediately prior appointment.

HAVING HELD NO PRIOR OFFICE IN THE FEDERAL GOVERNMENT

- IV. Having not held an office as state secretary or under-secretary or head of any state-owned company of the Federal Government, nor having acted as officer of the Tax Administration Service of the Secretary of Treasury and Public Credit in the last three years prior appointment.

NOT HAVING RECEIVED A NON-APPEALABLE SENTENCE

- V. Not having been condemned with a final non-appealable sentence on the grounds of intentional criminal offense imposing more than a years of imprisonment or an intentional patrimonial criminal offense regardless of the penalty, and not being disqualified to exercise an office or commissions as public servant , and

BEING SKILLED AND HONORABLE

- VI.Be of renowned professional competence.

8. THE PROCTOR FOR THE TAXPAYER’S DEFENSE OBLIGATIONS

The Proctor for the taxpayer’s defense will be obliged to

OVERSEE PERFORMANCE WITH FUNCIONS

- I. Oversee performance with Taxpayer Advocacy Agency functions.

EXERCISE THE BUDGET CAUTIOUSLY

- II. Exercise budgetary funds assigned thereto cautiously;

APPOINTMENT OF LEGAL COUNSEL

- III. Assign and appoint legal counsels;

SUBMIT PRELIMINARY BUDGET

- IV.** Prepare and submit to the consideration of the Government Entity for its approval the Agency's preliminary budget project. Such approval will be subject to the rules established in the Organic Statutes.

ISSUE PUBLIC RECOMMENDATIONS

- V.** Issue nonbinding public recommendations as well as resolutions resulting from procedures carried out;

CHAIR GOVERNMENT BODY MEETINGS

- VI.** Chair and lead the meeting of the Government Body

ISSUE PROVISIONS, RULES, GUIDELINES AND MEASURES

- VII.** Issue general provisions or rules and pronounce guidelines and specific measures for interpretation and application of the Taxpayer Advocacy Agency regulations, as well as for development and better performance regarding activities of the agency itself;

DELEGATION OF AUTHORITY

- VIII.** Delegate capacity onto Agency's officers in terms of the Organic Statutes;

EXERCISE THE TAXPAYER ADVOCACY AGENCY'S LEGAL REPRESENTATION

- IX.** Exercise legal representation of the Agency and, as applicable, grant powers on behalf of Agency, in terms established in its Organic Statutes;

PREPARE ORGANIC STATUTES DRAFT

- X.** Prepare Organic Statutes Draft of the Taxpayer Advocacy Agency Organic Law, as well as any amending provision thereto, and submit it to the consideration of the Government Body;

PROVIDE AS NEEDED

- XI.** Provide as needed regarding the administrative and work organization aspects within the Agency, and

EVERYTHING ESTABLISHED IN ANY OTHER PROVISION

- XII.** All other obligations that may be established in any other provision.

NON-ASSIGNABLE FUNCTIONS

Functions established under Fractions IV, VI, VII, IX, and X may not be delegated.

9- THE PROCTOR FOR THE TAXPAYER'S DEFENSE APPOINTMENT

(1) ² The appointment of The Proctor for the taxpayer's defense will be carried out by the senate of the Republic or, as applicable, by the Permanent Commissions of the Congress from amongst three candidates submitted by the President of the Republic to consideration thereof.

TERM IN OFFICE, RATIFICATION AND RESPONSABILITY

(1) ³The Proctor for the taxpayer's defense will hold his/her office four years and may be ratified for a second term. The Proctor for the taxpayer's defense may be destitute and charged due to the causes and in accordance with applicable provisions contained in the Federal Administrative Accountability of Public Servants Lay. Without detriment of any criminal liability in which the Proctor for the taxpayer's defense may incur.

INABILITY TO HOLD ANOTHER PUBLIC OFFICE

The Proctor for the taxpayer's defense, while in office, may not hold any other public or popular election office, have another job or commission, except when these are strictly academic activities.

2 Author's Note:

The SCJN declared to annul unconstitutionality action of Article 9, paragraphs one and two, of LOPRODECO, in Resolution dated February 28, 2008, rendered under the Unconstitutional Action 38/2006, published in the Official Gazette of the Federation on May, 2008

3 Author's Note:

The SCJN declared to annul unconstitutionality action of Article 9, paragraphs one and two, of LOPRODECO, in resolution dated February 28, 2008, rendered under the Unconstitutional Action 38/2006, published in the Official Gazette of the Federation on May 6, 2008.

10. REQUIREMENTS TO BE A LEGAL COUNSEL

Legal counsels are to satisfy, for appointment, the same requirements that The Proctor for the taxpayer's defense, except for that established under Fractions III and IV of Article 7, as it will be required that they have demonstrated experience in tax matters for an uninterrupted period of two years immediately prior appointment.

11. OBLIGATIONS OF LEGAL COUNSELS

Legal counsels will be obliged to:

RENDER LEGAL COUNSEL, REPRESENTATION AND DEFENSE SERVICES

- I. Personally render legal counsel, representation and defense service to taxpayers at their request;

PROMOTE DEFENSE OF INTEREST OF HIS/HER REPRESENTED CLIENTS

- II. Promote before the competent authority to promote everything related to the defense of his/her client interest, asserting actions, exceptions, incidents, remedies of any other act of procedure that may apply in terms with the law that proves necessary for an efficient defense; the above obligation will not be required when in the opinion of the legal counsel the client defense is legally inadmissible due to the lack of grounds or basis to such effect;

MAINTAIN CASE-BY-CASE CONTROL RECORD AND FILES

- III. Maintain a case-by-case control record and file for each case from the beginning until the closing of the case, and

ALL OTHER ORDERED BY LAW

- IV. All other obligations resulting given the nature of legal counselors function, as provided for by Law and any obligations entrusted thereto by the Proctor for the taxpayer's defense.

12. INTEGRATION OF GOVERNMENT BODY

The Agency's Government Body is a collegiate body integrated as follows:

THE PROCTOR FOR THE TAXPAYER'S DEFENSE

- I. The Proctor for the taxpayer's defense, who will have tie-breaking vote in the event of a tie when voting for Government Body resolutions, and

INDEPENDENT MEMBERS

- II. Six independent members who will be appointed by the head of the Federal Executive.

APPOINTMENT OF MEMBERS OF THE GOVERNMENT BODY

The President of the Republic will maintain proper balance when appointing such members of the government body, taking into account representatives of major country universities, professional association representatives, as well as main entrepreneurial chambers. These appointments are to be vested onto individuals with broad experience in tax matters and those who due to their knowledge, honorable career, professional prestige and experience be well-known and may help to improve Agency's functions.

CERTIFICATION AS TO NO IMPEDIMENT TO ACT AS MEMBER

Upon accepting the appointment, each independent member shall subscribe a document certifying under oath that there is no impediment to act as a member of the government body and assuming rights and obligations deriving from such office.

REQUIREMENTS TO ACT AS MEMBER

Independent members are to satisfy, for the purposes of their appointment, the same requirements as the Proctor for the taxpayer's defense, except for that provided under Fraction III of Article 7.

ALTERNATES AND HONORARY QUALITY OF A MEMBER

Each independent member is to have an alternate. The alternate member will be appointed at the time the independent member in question is appointed. The office as member is an honorary office and its term will be for up to four years.

ORDINARY AND EXTRAORDINARY MEETINGS OF THE GOVERNMENT BODY

The Government Body shall meet periodically, in ordinary meetings, at least once every three months and, in extraordinary meetings when required. In both cases, a quorum of a simple majority of its members is required for operation, and for the validity of the resolutions adopted the vote of half plus one members in attendance with voting right will be required.

VOTE OF GOVERNMENT BODY MEMBERS

All the members of the Government Body have a right to speak and vote.

CALL TO HOLD GOVERNMENT BODY MEETINGS

The meetings of the Government Body are to be called by the Proctor for the taxpayer's defense, or at request made to the Proctor for the taxpayer's defense by at least three

of the government body members. All other rules for proper operation of the Government Body will be established in the Organic Statutes.

13. ATTRIBUTES OF THE GOVERNMENT BODY

The Government Body will have the following attributes:

ANALYSIS AND APPROVAL OF BUDGET

- I. Analyze and, as applicable, approve the preliminary budget project submitted by the Proctor for the taxpayer's defense;

ESTABLISHING AND APPROVING GUIDELINES, PROGRAMS, ACTIVITIES AND POLICY

- II. Set guidelines and approve annual activity ,programs, as well as the Taxpayer Advocacy Agency's policy, including general guidelines as to its acts and the acts of its agent, and oversee adherence with professional carrier service rules;

APPROVAL OF THE ORGANIC STATUTES

- III. Approve to Taxpayer Advocacy Agency's Organic Statutes in which the structure and functions of each unit or integrating entity will be determined, including the sphere of authority of each of them;

EVALUATE AND APPROVE ANNUAL REPORT DRAFT

- IV.** Assess and, if applicable, approve the Proctor for the taxpayer's defense annual report draft;

PROMOTE TAXPAYING CULTURE

- V.** Establish bases and guidelines for the promotion of a taxpaying culture;

APPROVAL DELEGATE APPOINTMENT

- VI.** Approve the appointment of state or regional delegates of the Taxpayer Advocacy Agency carried out by The Proctor for the taxpayer's defense, and

ALL OTHER ESTABLISHED UNDER THE LAW

- VII.** All other established hereunder, in the Organic Statutes or in any other provision.

14. APPOINTMENT OF INTERNAL CONTROL BODY HEAD

Taxpayer Advocacy Agency is to have an Internal Control Body, the head of which will be appointed by the Department of Public Office in terms of that provided under Article 37, Fraction XII, of the Federal Public Administration Organic Law, and will be supported in the exercise of

his/her authority, by the heads of audit, complaints and accountability areas appointed in the same terms.

FUNCTIONS OF INTERNAL CONTROL BODY

Internal Control Body, its head and the heads of audit, complaints and accountability areas will perform their functions in accordance with the attributes conferred thereto by the Federal Public Administration Organic Law, the Federal Administrative Accountability of Public Servants Law, and other applicable Legal ordinances in accordance with the Secretary of Public Office's Internal Regulations.

CHAPTER IV

FILING, PROCESSING AND RESOLUTION OF COMPLAINTS OR CLAIMS

15. BREVITY AND SIMPLIFICATION OF PROCEEDINGS

Proceedings that may be pursued before the Taxpayer Advocacy Agency are to be brief, having no other formality than that of objectively and accurately establishing taxpayer's intent.

CONFIDENTIALITY OF INFORMATION AND DOCUMENTS

Agency's personnel are obliged to maintain information and documents related to matters within its sphere of authority under confidentiality.

PUBLIC ATTESTATION OF THE PROCTOR FOR THE TAXPAYER'S DEFENSE AND REGIONAL DELEGATES

Both The Proctor for the taxpayer's defense as well as Regional Delegates will be vested with capacity to publicly certify the accuracy of the facts in its proceedings.

FACT FINDING REPORT OF PROCEEDINGS

In any event that may be required, fact-finding report of the Taxpayer Advocacy Agency's proceedings will be drafted.

16. FILING OF CLAIMS OR COMPLAINTS

Any individual may file complaints or claims to report alleged illegal acts against his/her tax rights, and appear before Taxpayer Advocacy Agency offices to such effect, whether personally or by legal counsel.

MEANS OF FILING

Complaints or claims are to be filed in writing using to such effect any means, even through the webpage established by the Agency to such effect, except in emergency cases as rated by the Proctor for the taxpayer's defense or, as applicable, by Regional Delegates, which may be filed by any means of communication.

17. FORMS FOR ANY ACT BEFORE THE AGENCY

The Proctor for the taxpayer's defense or, as applicable, Regional Delegates, will make available to the general public forms that facilitate any acts within their sphere of competence and, in any event, will provide help to interested parties and explain their contents and how to fill them.

FACT FINDING REPORT OF ACTS

Whenever required, fact-finding report of procedures by the Taxpayer Advocacy Agency will be drafted.

18. TERM FOR FILING A CLAIM OR COMPLAINT

The filing of a claim or complaint referred to under Fraction III, Article 5, may be made at any time, unless the act claimed as to federal tax authorities becomes the subject of a litigious defense by the Agency, in terms of Fraction II, Article 5, in which event the complaint, for the purposes of any preceding recommendation, is to be filed no later than within 15 business days following the entry into effect of the act or resolution to be challenged, otherwise, failure to file claim or complaint within the above indicated term will result in the inadmissibility thereof.

NOTORIOUSLY INADMISSIBLE OR GROUNDLESS COMPLAINT OR CLAIM

Whenever the complaint or claim is notoriously inadmissible or groundless, it will be immediately rejected and such lack

of grounds or inadmissible causes are to be notified in writing to the complainant or claimant within five business days.

COMPLAINT OR CLAIM NOT IN THE SPHERE OF COMPETENCE OF THE AGENCY

When the claim or complaint is evidently not in the sphere of competence of the Taxpayer Advocacy Agency, the Agency is to notify complainant or claimant, as applicable, such lack of jurisdiction within five business days following filing of claim or complaint.

IMPOSSIBILITY TO IDENTIFY AUTHORITY OR PUBLIC SERVANTS

When claimants or complainants are unable to identify authority or public servants, whose acts or omissions, in their opinion, have affected their rights, the complaint or claim is to be admitted, if applicable, subject to the condition that in a subsequent investigation of facts the identification is achieved, provided not under the assumption referred to under Fraction II of Article 5 of this Law, in which case it will be deemed as not filed.

CLARIFICATION REQUEST

If, following filing of complaint or claim, the elements allowing intervention of Taxpayer Advocacy Agency are not found, the Agency, within three days following filing,

will request complainant or claimant to make pertinent clarification, warning him/her that this clarification shall be made within three days as from the date following the entry into effect of the above notice, if not the claim or complaint will be deemed as not filed.

19. COMPLAINT ADMISSION DECREE AND REPORT SUBMITTAL

In the event the claim is admissible, or if not once any omitted requirements were satisfied, an admission decree will be issued within three days following filing of complaint or claim. In such instrument the authorities identified as wrongdoers will be ordered to submit a report on the acts attributed thereto in the claim or complaint within three business days following the entry into effect of notice.

NOTICE BY E-MAIL

In emergency cases and for best management of notice The Proctor for the taxpayer's defense or, as applicable, Regional Delegates, may order that the notice is made to the offender authority by electronic means.

CONTENT OF THE AUTHORITY REPLY REPORT

The report submitted by the authorities is to evidence the background of the matter, grounds and motivation of claimed acts, whether such acts actually occurred, attaching certified copy of proof required to support the

contents of the report. The interested party is to pay in advance applicable dues for the issue of such certified copies.

DELIVERY OF RESOLUTIONS

Resolutions are to be notified no later than within the business day following the resolution is issued and the applicable grounds will be stated immediately after the resolution.

20. ATTRIBUTES OF THE AGENCY REGARDING INVESTIGATION

For resolution of complaint or claim, should any investigation be required, the Agency will be vested with the following attributes and capacity:

REQUEST OF REPORTS AND FURTHER DOCUMENTS

I. Request authorities or public servants to whom violation to taxpayer rights are attributed to submit the report referred to in the above article, including further documents, and

ALL OTHER ACTIONS TO BETTER UNDERSTAND THE MATTER

II. Carry out all other actions, which in accordance with law Agency deems pertinent to better know about the matter and clarify or better support claims or complaints.

21- EVIDENCE ASSESSMENT

Evidence submitted both by interested parties as well as by the authority or public servants allegedly offenders, or else, evidence required or sought as a matter of law, are to be assessed jointly in accordance with evidence assessment principles in terms of Articles 130 and 234 of the Federal Tax Code, in order to result in conviction on the facts subject matter of claim or complaint.

GROUNDINGS FOR RECOMMENDATIONS

Conclusions on the file that will act as grounds for recommendations are to be exclusively supported with documents and evidence contained in the file itself.

CHAPTER V

RESOLUTIONS AND RECOMMENDATIONS

22- RESOLUTIONS AND RECOMMENDATIONS RENDERED BY THE PROCTOR FOR THE TAXPAYER'S DEFENSE

The Proctor for the taxpayer's defense may issue:

PROCEDURAL RESOLUTIONS

- I. Procedural resolutions, to the effect that federal tax authorities render information or documents, except information or documents deemed reserved or confidential by Law;

NON-IMPERATIVE RECOMMENDATIONS

- II. Non-imperative recommendations to authority or public servant.

NON-LIABILITY RESOLUTIONS

- III. Non-liability resolutions

23- MAKING OF RECOMMENDATIONS

Within five days following reception of report from offending authority referred to under Article 19 hereof, the Taxpayer

Advocacy Agency will issue a recommendation after having analyzed facts, arguments and evidence, including conviction elements and any acts carried out in order to establish whether authority or servants have violated or not the rights of the affected parties, whether the authority or servants incurred in illegal acts or omissions, identifying, as applicable, any practice in which the responsible authority engaged.

MEASURES FOR INDEMNIFICATION FOR HARM AND DAMAGE AND REPAIR PROPOSAL

The recommendation will include applicable corrective measures for effective restitution of rights of affected parties and, if applicable, indemnification for harm and damages caused.

GOOD FAITH AND PUBLIC INTEREST PRINCIPLES

Taxpayer Advocacy Agency, when acting, is to take into account both the good faith assumed under the Law regarding taxpayers, as well as public interest existing in tax collection.

24- TERM FOR THE RENDERING OF NO LIABILITY RESOLUTION

In case of failing to demonstrate attributed irregularities, the Agency, within five days following reception of report from responsible authorities, will issue a non-liability resolution.

25- NATURE OF RECOMMENDATIONS

The recommendation will be of public nature and will not have a mandatory nature in regards to the authority or public servant the recipients thereof and, consequently, the Agency may not annul, amend or render null resolutions or acts against which complaint or claim was filed.

REPORT AGREEING OR REJECTING RECOMMENDATION

Following delivery of recommendation, the authority or public servant in question will report, within three business days following the entry into effect of notice, whether the recommendation is agreed or rejected.

REPRESENTATION BEFORE THE AUTHORITY

Upon failing or partially accepting the recommendation issued, the Taxpayer Advocacy Agency will proceed to act in accordance with the provisions of Fraction II, Article 5, of this Law.

PERFORMANCE WITH RECOMMENDATION

Should recommendation be accepted, the authority will deliver, within the following ten business days, any evidence demonstrating compliance with the recommendation. Such term may be extended only once for an equal term when the nature of recommendation so merits and is authorized

by the Proctor for the taxpayer's defense or Regional Delegates.

NON-APPEALABLE NATURE OF AGENCY ACTS

Against recommendations, resolutions or agreements rendered by the Proctor for the taxpayer's defense, there is no applicable remedy.

26- OBLIGATION TO CONTRIBUTE ELEMENTS TO GIVE COMPLIANCE TO RECOMMENDATIONS

Taxpayer Advocacy Agency must deliver any evidence necessary for the authority that received the recommendation, to allow such authority the responding elements to comply with the recommendation in question.

27- APPLICATION OF RECOMMENDATIONS AND RESOLUTIONS

Recommendations and non-liability resolutions will refer to particular cases; authorities may not apply them to any other cases by analogy or majority of reason.

CHAPTER VI

PENALTIES

28- PENALTIES TO PUBLIC SERVANTS

Public servants of federal tax authorities will be penalized:

WITH FINE BETWEEN 5 AND 10 MONTHLY SMGDF

(1⁴) I. With an amount from five to ten monthly minimum current wages for Mexico City, when:

FAILURE TO SUBMIT REQUIRED REPORT

1. Public servants who fail to submit the report required within established terms and conditions or fail to attach documents referred to under Article 19 hereof, when the interested party has paid pertinent dues

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4 Author's Note:

We recommend that you bear in mind that the Executive Order that declares certain provisions of the Mexican Constitution with regard to de-indexing the minimum wage, as reformed or added, was published in the Official Gazette of the Federation on January 27, 2016. The executive order establishes that the minimum wage may no longer be used as an index, unit, base, measurement or reference for purposes that have nothing to do with it, and that the organization responsible, the National Statistical and Geographical Institute (INEGI) will establish the value of the Unit of Measurement and Updating (UMA) that will be used as a unit of account, index, base, measurement or reference to calculate the value of the obligations and suppositions established by federal laws, state laws and the legal provisions that emanate there from. As from the date on which the executive order comes into effect, January 28, 2016, all references to the minimum wage in the form of unit of account, index, base, measurement or reference to calculate the value of the obligations and suppositions established by federal laws, state laws, the laws of Mexico City, and the legal provisions that emanate there from, shall be understood as referring to the UMA.

The INEGI has calculated the daily value of the UMA as \$73.04 Mexican pesos, the monthly value as \$2,220.42 Mexican pesos and the annual value as \$26,645.04 Mexican pesos, as published in the Official Gazette on January 28, 2016.

or upon failing to deliver documents or further data requested by the Agency.

FAILURE TO REPORT WHETHER THE RECOMMENDATION IS ACCEPTED

2. Upon failing to report within terms referred to under paragraphs two and four of Article 25 hereof, in the case, they accept the recommendation issued by the Agency, as applicable.

BETWEEN 20 AND 30 MONTHLY SMGDF

- II. With an amount ranging from twenty to thirty monthly minimum wages for Mexico City, upon failing to attend to periodic meetings established under Fraction XIV, Article 5;

REFUSAL TO PERFORM DIRECTED RECOMMENDATION

- III. In terms of that provided for by Article 34 of the Tax Administration Service Law, refusal by public servants representing federal tax authorities to comply with recommendation directed thereto will be ground for administrative liability, provided taxpayer by exercising administrative or contentious action to demonstrates that the act subject matter of Agency's intervention is declared null due to total absence of grounds or motivations in a final resolution.

APPLICATION OF FINES UNDER THE CHARGE OF THE PROCTOR FOR THE TAXPAYER'S DEFENSE AND DELEGATES

The application of fines will be under the charge of The Proctor for the taxpayer's defense and Regional Delegates within the sphere of their competences. Agency may delegate this capacity to other public servants of the Taxpayer Advocacy Agency.

TRANSITORY ARTICLES

ARTICLE ONE- INCEPTION OF THE EFFECTIVE TERM

This Decree will enter into effect the day following its publication in the Official Gazette of the Federation.

ARTICLE TWO- BUDGET FOR THE CREATION AND OPERATION OF THE AGENCY

The Federal Executive is to provide resources for the creation and operation of the Taxpayer Advocacy Agency.

ARTICLE THREE- APPOINTMENT OF FIRST THE PROCTOR FOR THE TAXPAYER'S DEFENSE

Appointment of first The Proctor for the taxpayer's defense is to occur within Thirty business days following the inception of the effective term hereof. Within forty-five business days

following appointment, the Agency Government Body is to be established and this body is to issue its organic statutes no later than within thirty days following establishment thereof. The Agency is to be operating and working no later than within one hundred and twenty days following the inception of the effective term hereof.

ARTICLE FOUR- AGENCY ACCOUNTABILITY DURING CREATION PROCESS

The Proctor for the taxpayer's defense is responsible for Agency incorporation process, that is, he/she is vested with capacity to clear any obstacle or unforeseen act preventing or delaying creation and establishment of the Agency, as above referred to, having to submit any issue to the consideration of the Government Body in the first meeting held following adoption of the resolution for ratification purposes, as applicable.

ARTICLE FIVE- APPOINTMENT OF INDEPENDENT MEMBERS

The Proctor for the taxpayer's defense is to arrange with pertinent institutions proposals for the appointment of independent members of the Government Body.

ARTICLE SIX- TRUSTEE REGISTRATION

In accordance with Fraction XIV of Article 5 hereof, individuals who at the inception of the Agency operations act as trustees may request they be registered thereto.

FEDERAL TAXPAYER RIGHTS LAW

VICENTE FOX QUESADA, President of the
Mexican United States informs to Mexican citizens:
That the Honorable Congress of the Union has been kind
to submit the following:

DECREE

THE UNITED MEXICAN STATES GENERAL CONGRESS

DECREES:

ISSUANCE OF THE FEDERAL TAXPAYER RIGHTS LAW

(Published in the Official Gazette of the Federation on June 23, 2005)

CHAPTER I

GENERAL PROVISIONS

Article 1. - PURPOSE OF THE LAW

The purpose of the current law is to regulate the basic rights and the basic guarantees of taxpayers in their dealings with Tax Authorities. If said law cannot be applied to the provisions herein contained, pertinent tax law and Federal Tax Code will apply.

Rights and guarantees described in the current Law in benefit of taxpayers will also apply to others who are joint and severally liable.

Article 2. - GENERAL TAXPAYER RIGHTS

General Taxpayer rights are as follows:

INFORMATION AND ASSISTANCE

- I. The right to be informed and assisted by Tax Authorities regarding fulfilling tax obligations, as well as the content and scope of these.

TAX REIMBURSEMENTS

- II. The right to obtain, applicable tax reimbursements in terms with the Federal Tax Code and applicable tax laws.

STATUS OF PROCEEDINGS

- III.** The right to be informed of the status of any proceedings in which the taxpayer is a party.

TAX AUTHORITY IDENTITY

- IV.** The right to know the identity of the acting Tax Authorities involved in any pending proceeding.

CERTIFICATION AND COPY OF FILED TAX RETURNS

- V.** The right to obtain certifications and copies of tax returns, prior payment of the applicable dues established under the Law.

DOCUMENTS IN POSSESSIONS OF THE TAX AUTHORITY

- VI.** The right not to deliver documents already in possession of acting tax authority.

CONFIDENTIAL NATURE OF DATA, REPORTS OR BACKGROUND

- VII.** The right to confidential personal data of taxpayer and third parties related to them, reports or background, held by public servants of the tax administration that may only be utilized in accordance with article 69 of the Federal Tax Code.

RESPECTFUL AND CONSIDERATE TREATMENT BY PUBLIC SERVANTS

VIII. The right to be treated respectfully and with consideration by the tax authority and its servants.

LESS ONEROUS ACTS

IX. The right that any act of tax authorities requiring taxpayers intervention is to be completed in the manner that is least costly for the tax payer.

ALLEGATIONS AND EVIDENCE OFFERING

X. The right to file claims, present arguments, submit and offer documents as evidence according to applicable tax provisions including the administrative file related to the challenged issue, all documents to be taken into account by the competent bodies to issue the relevant administrative resolution. .

BEING HEARD AT ADMINISTRATIVE PROCEEDING

XI. The right to be heard prior the issuance of a decisive tax credit resolution, under the terms of the respective laws. .

INFORMATION AT THE INCEPTION OF VERIFICATION EXERCISE ACTS

XII. The right to be informed of taxpayers' rights and obligations, at the beginning and during audit

proceedings, same to be developed within the period specified by the tax laws. Taxpayers will be considered as informed about taxpayer rights when the letter mentioned in the taxpayer rights is received and acknowledgement of receipt is registered in the corresponding administrative file.

The failure to comply hereunder will not affect the validity of any act carried out by the tax authority; however the public servant who incurs in such fault will be held accountable before the administrative liability.

CORRECTION OF TAX SITUATION

- XIII.** The right to amend its tax condition derived from audit procedures carried out by the tax authorities.

DOMICILE TO RECEIVE NOTICES

- XIV.** The right to identify, at the time of proceeding before the Federal Tax and Administrative Justice Court, a domicile to hear and receive notices located anywhere in Mexican territory, except when taxpayer domicile is within the jurisdiction of pertinent courtroom of such Court, in which event, the domicile identified to receive notices will be that located within the territorial circumscription of such Courtroom.

Article 3. - ACCESS TO FILES IN NAME OF TAXPAYERS

Taxpayers may access records and documents contained in a file opened in name of taxpayer held in administrative archives provided that such files are closed, on the date of request, in adherence to the provisions of article 69 of the Federal Tax Code.

Article 4. - TAX ADMINISTRATION PUBLIC SERVANT OBLIGATIONS

Tax administration public servants will at all time facilitate taxpayers to exercise their rights and comply with their obligations.

Tax Authority acts requiring intervention of taxpayers are to be completed in the manner that is least onerous to taxpayers, provided it is not in detriment of any tax obligations thereof.

CHAPTER II

INFORMATION PUBLICATION AND ASSISTANCE TO TAXPAYERS

Article 5. – OBLIGATIONS OF THE TAX AUTHORITY

Tax Authorities will render to taxpayers all needed assistance and information regarding their rights and obligations in tax matters. As well and not in detriment of what is set forth in Article 33 of the Federal Tax Code, said Authorities will publish updated wording of tax standards on its webpage and will promptly give reply to any tax consultation.

Taxpayers who adhere their situation to terms of the criteria issued by the tax authorities, which are published in the official gazette of the Federation, shall be exempted from tax liability.

Article 6. - TAXPAYER RIGHT PUBLICATION CAMPAIGNS

Tax Authority will launch campaigns through mass media to generate and allow the growth of taxpaying culture amongst the Mexican population and provide information on taxpayer rights.

Article 7. - INSTRUCTIONS AS TO ASSESSMENT PAYMENT. ACCESS TO GOVERNMENT PUBLIC INFORMATION

Tax Authorities will be compelled to publish briefing materials periodically and massively in accessible language informing taxpayers various forms for payment of taxes. Tax Authorities, the Federal Tax and Administrative Justice Court, as well as the Courts of the Federal Judicial Power with jurisdiction on tax matters, are to turnover, at the request of any interested party, text of resolutions on consultations and court judgments, in accordance with the provisions of the Federal Transparency and Access to Government Public Information Law.

Article 8. - TAX AUTHORITY OFFICES TO PROVIDE HELP AND INFORMATION TO TAXPAYERS

Tax Authorities will maintain offices in several places throughout national territory to provide help and information to taxpayers in regards to their tax obligations facilitating the consultation of information posted by such authorities in their web pages.

Article 9. - QUERY ON SPECIFIC SITUATIONS

Not in detriment to the provisions of the Federal Tax Code, taxpayers may consult the Tax Authorities about the applicable tax treatment to current specific situations. Tax Authorities are to reply any consultation made by taxpayers in writing within a maximum term of three months.

Such reply will be mandatory to Tax Authorities in the form and terms provided under Federal Tax Code.

Article 10. - INFORMATION ON INEGI SAT STATISTICAL DATA

Honoring individual data confidentiality, the Tax Administration Service will report to the National Statistics, Geography and Information Technology Institute, aggregate statistical data on income, taxes, deductions and other relevant taxpayer's data.

Article 11. - ORGANIZATION OF FISCAL LOTTERY DRAWINGS

For the purposes of encouraging the taxpayers' legal obligation to deliver tax invoices for any completed operation, Tax Authorities will organize fiscal lottery drawings amongst individuals who have obtained pertinent tax invoices and will award various prizes. Fiscal lottery drawings may be organized based on payment means, other than cash, to taxpayers.

CHAPTER III

RIGHTS AND GUARANTEES DURING AUDIT PROCEEDINGS

Article 12. – TAXPAYERS’ RIGHT TO BE INFORMED

Taxpayers have the right to be informed, at the beginning of any legal action by the tax authority to review compliance of tax obligations and rights in the course of such proceedings.

Articles 13. - TAX CORRECTION RIGHT INFORMATION

Whenever Tax Authorities exercise authority to verify performance with tax obligations as provided by section II and III of article 42 of the Federal Tax Code, taxpayers will be informed, at the very beginning of such audit exercise, regarding the right to correct their tax condition and as to the benefits of exercising such right.

Article 14. - TAX CORRECTION BY FILING TAX RETURNS

In compliance of section XIII, article 42, of the Federal Tax Code, taxpayers will have the right to correct their tax situation in the different taxes under audit by filing ordinary or supplementary return, as the case may be, in accordance with the provisions of the Federal Tax Code.

TERM TO COMPLETE A TAX CORRECTION

Taxpayers may correct their tax situation from the time when the audit procedures began and even before being notified of the decision to determine the amount of unpaid

taxes is given. The exercise of this right is not subject to authorization by the tax authority.

Article 15. - TAX CORRECTION FILING

Taxpayers must turn in to the reviewing authority a copy of their supplementary tax return filed. Such act shall be registered in a partial report of the administrative procedure when onsite inspections are underway. In all other cases, even when an onsite inspection has concluded, the reviewing authority, within a maximum period of ten days from the date of delivery must notify the taxpayer by official receipt of the statement of correction, such communication will not imply acceptance of the correction filed by the taxpayer.

Article 16. - ANTICIPATED CONCLUSION OF AUDIT

When in the audit process taxpayers correct their tax condition and at least a three month period has passed from the beginning of said audit, the onsite ordered will be deemed as completed, if at the discretion of the Tax Authorities and in accordance with the investigation carried out, it is clear that the taxpayer has corrected completely their tax obligations which gave way to the audit of an specific period of time. Under the referred assumption, the tax correction will be made evident in an official instrument that will be notified to the taxpayer as well as the conclusion of the onsite audit.

AFFTER CONCLUSION OF AUDIT When taxpayers correct their tax condition subsequent to the conclusion of the audit procedure and tax authorities ascertain the latter taxpayers will be notified of such fact in an official

instrument within one month as from the date the tax authority receives the tax correction resolution.

CORRECTION BEFORE TAXES OMITTED ARE DETERMINED When taxpayers submit the tax return after the conclusion of the audit procedure and at least five months of the period specified in article 18 of this law have elapsed without Tax Authorities having rendered a resolution establishing taxes omitted, such authorities will have an additional month to that provided in the referred to article, counted from the date taxpayers file the referred tax return to establish omitted taxes that may apply.

SUBSEQUENT AUDITS DIFFERENT FACTS No new tax omissions can be established for the period that was audited except when different facts are demonstrated. Verification of different facts must be substantiated on third party information, data or documents or on the review of specific concepts not previously reviewed.

If, by reason of the audit, new facts are discovered that may result in the determination of higher quantities of omitted taxes than those corrected by taxpayer or subject to audit that were not corrected by taxpayer, inspectors or, as applicable, tax authorities should continue with the onsite audit or with the review procedure as established under article 48 of the Federal Tax Code, up to completion. When the taxpayer, in accordance with the above paragraph has not entirely corrected its tax condition, Tax Authorities will render resolutions establishing the omitted taxes in accordance with the proceedings established under Federal Tax Code.

Article 17. - FINE FOR PAYMENT SUBSEQUENT TO THE INCEPTION OF VERIFICATION CAPABILITY

Taxpayers correcting their tax condition will pay a fine equivalent to 20% of omitted taxes, when the offender pays them along with accessories after the beginning of the audit by the Tax Authority and until the date the taxpayer is notified the final report on the onsite review or remarks official instrument referred to in fraction VI, article 48 of the Federal Tax Code, as the case may be.

If the offender pays omitted taxes jointly with accessories following notification of final report of onsite audit or notice of observations, as the case may be, but prior to the notification of the resolution that establish the amount of taxes omitted, the taxpayer will pay a fine equivalent to 30% of omitted taxes.

INSTALLMENTS

As well, payments may also be made in installments in accordance with the provisions of the Federal Tax Code provided the tax interest is guaranteed.

Article 18. - TERM TO ESTABLISH TAXES OMITTED

Tax Authorities will have six months so to establish taxes omitted that may come to light by reason of any audit practice without detriment of that provided in paragraph 3 of article 16 hereof. The term will initiate as mentioned in article 50 of the Federal Tax Code and limitation periods contemplated in such paragraph will apply. If taxes omitted

are not established within said term, it will be understood that there is no tax credit attributable to the taxpayer for the facts, assessments and periods reviewed.

Article 19. - NEW AUDIT PRACTICES

When Tax Authorities establish taxes omitted, no further taxes omitted may be established based on the same facts known during the review but may do so when different facts are verified. Verification of different facts is to be based on third party information, data or documents or when reviewing different concepts not already reviewed, in the latter case, the order that authorizes the new audit must be duly motivated expressing the new concepts to be reviewed.

Article 20. - REVIEW OF SAME FACTS, ASSESSMENTS AND PERIODS

Tax Authorities may review again same facts, taxes and periods as to which taxpayer corrected his tax condition or as to which omitted taxes were established but such re-review may not result in any tax credit to the taxpayer.

CHAPTER IV

RIGHTS AND GUARANTEES DURING PENALIZING PROCEEDING

Article 21. - TAXPAYER´S GOOD FAITH

In any event, the acts of taxpayers will be assumed as in good faith, and the tax authority is to demonstrate the concurrence of the aggravating circumstances identified in the Federal Tax Code in the commission of tax offences.

Article 22. - APPOINTMENT OF TAXPAYER AS DEPOSITARY

Taxpayers whose income in the previous year has not exceeded an amount equivalent to thirty times the annual minimum wage, when guaranteeing a tax interest by administrative assurance the taxpayer shall be appointed as depositary of assets and the assurance shall not include current inventory of business except foreign products with no appropriate documents which evidence their legal introduction into the country.

CHAPTER V

TAXPAYER MEANS OF DEFENSE

Article 23. - REMEDIES AND MEANS OF DEFENSE

Taxpayers will have within their reach applicable remedies and means of defense in terms with appropriate legal provisions against acts ordered by the Tax Authority, as well as the notice of such acts is to indicate the applicable remedy or means of defense, the term of filing and government agency before whom to file such remedy or means of defense. When the administrative resolution fails to provide the above referred information to taxpayers they will have twice the term established under legal provisions to file for administrative remedy or administrative contentious proceeding.

Article 24. - ADMINISTRATIVE FILE AS EVIDENCE

Throughout administrative remedy and administrative contentious trial before Federal Tax and Administration Justice Court, taxpayers may offer as evidence the administrative file originating the challenged act. This will be the one that holds documents related to the act that originated the challenged resolution; such documents will be that corresponding to the inception of act, any legal acts thereafter and the challenged resolution. The administrative file will not include any information identified by the Law as confidential, reserved information or government confidential.

For the purposes of this article, the documents acting as background for a resolution whereby no prior administrative proceeding is established under the law will not be considered as administrative file.

TRANSITORY ARTICLES

1. - INCEPTION OF EFFECTIVE TERM

The current Law will enter into effect a month following publication in the Official Gazette of the Federation. Tax Authorities will launch a mass campaign to disseminate new provisions therein contained.

2. - APPLICATION OF LAWFUL PROVISIONS

Provisions foreseen under current Law, will only apply to the Tax Authorities verifications that will be initiated once this ordinance comes into effect.

3. - MISCELLANEOUS PROVISIONS

As from the entry into effect of the current Law, the following will prevail:

DOMICILE TO HEAR NOTICES

- I. For the purposes of that provided under section I, article 208 of the Federal Tax Code, a domicile to receive notices can be appointed in accordance with that provided under section XIV, article 2, of the current Law.

NOTICES AS PER AUTHORIZED LIST

- II. For the purposes of that provided for under last paragraph of referred to article 208, when no domicile to receive notices is identified in the terms established under fraction XIV of the previously referred article 2 hereof, notices are to be made as per authorized list.

ADMINISTRATIVE FILE AS EVIDENCE BEFORE THE TFJFA

- III. Taxpayers may file nullity claims before the Federal Tax and Administrative Justice Court, the administrative file as evidence in accordance with article 24 of the current Law, notwithstanding the Federal Tax Code states the contrary.

México City, Federal District on April 28, 2005.- Representative Manlio Fabio Beltrones Rivera, Chairman.- Senator Diego Fernández de Cevallos Ramos, Chairman.- Representative Marcos Morales Torres, Secretary.- Senator Sara I. Castellanos Cortés, Secretary.- Signatures.

In compliance with the provisions of fraction I, Article 89 of the Political Constitution of the United Mexican States and for due publication and performance I issue this Decree at the Seat of the Federal Executive Power in the City of México, Federal District on June 17, 2005.- Vicente Fox Quesada.- Signature. The Secretary of the Interior, Carlos María Abascal Carranza.- Signature.

TAXPAYERS' RIGHTS IN A TRANSPARENT AND GLOBAL SOCIETY

The Mexican's Ombudsman experience

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