

## **General Communication with Tax Authorities in friendly or unfriendly ways**

**Tax Commission – of course...!**

**Prague, 2014 – Working Session 9**

### **National Report of Mexico**

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## **1. Introduction**

Tax authorities – surely each one of us had the pleasure to deal with one: as taxpayer at least with the tax authority of the country you are resident of, as a lawyer helping others in tax matters you might have had the chance to deal with the tax authorities of other countries as well. If the latter is the case you might have seen some differences in the behaviour of the different tax authorities. You might have realized that the tax authorities in some or even the majority of the countries do treat the taxpayers not as their customers or clients but rather as subordinates. In such cases the communications tends to be rather hierarchical and often results in administrative proceedings against the tax authorities with more or less success.

Other countries have realized that treating the taxpayer in ways like we know from the tale of Robin Hood and the Sheriff of Nottingham only results in the tax payers trying to circumvent their tax obligations. Some countries, thus, have not only reduced the taxes in their countries. They also made their tax authorities treat the taxpayers as their clients e.g. in offering the taxpayers the possibilities for tax rulings and trying to take a more tailored approach towards their taxpayers .

These – sometimes very significant – differences are what we are focusing on in this year's tax report: We want to show that there are big distinctions in the behaviour of and the dealing with the tax authorities in different countries both in the stage of an advance agreement on a tax position as well as in an objection or litigation phase. For this reason AIJA members from several countries around the globe were so kind to volunteer as national reporters for this report which is crucial for such a comparative topic.

The General Reporters would like to thank you all in advance for your contributions and are already very interested in the results of this year's annual congress session of the AIJA Tax Commission.

## 2. Questionnaire

*Note:* General assumption is discussions with the tax authorities regarding (corporate) income tax or indirect taxes. If a difference would apply in the treatment between either of these, please indicate in your report. Also, if there are different levels of tax authorities for different taxes or issues, please mark that in your report.

Please consider that our answers herein refer exclusively to federal taxes, which comprise the main taxes applicable in the Mexico (income tax, value added tax and excise taxes). Provisions for other specific taxes such as real estate tax, payroll tax and others are dealt with at a local level and answers to the questions below with regards thereto could vary from state to state.

### 2.1 Communication general

How does the General Communication with the Tax Authorities take place?

- a. Is a direct contact in between the tax payer and the Tax Authorities possible/common/advisable?

R= Direct contact with tax authorities is possible, common and advisable. In addition to formal communication through official written forms, direct personal contact with tax officials is open and usually helps deal with tax issues more fluently and efficiently.

- b. If not, does the communication only take place via tax counsels?

R= Tax officials are open for direct communication, however they usually require that the person acting on behalf of the tax payer prove its legal representation powers, where the case. It is not necessary to act strictly through tax counsels, but it is advisable.

- c. How can the communication regarding special matters be described?

R= Special matters are usually dealt with through direct communication with high-ranking tax officials involved in the matter, especially when dealing with matters of substantial economic impact. Even when official communication is always carried out in writing, a better understanding with tax authorities is usually obtained through direct verbal communications (meetings, etc.).

In any case, communication is always open with certain tax officials through duly scheduled appointments.

**d.** Does it take place only in a written form or are meetings possible?

R= Meetings are certainly possible and advisable, in addition to written communications.

**e.** Can the behaviour of the Tax Authorities in your country be described as all dominant, cooperative, customer-oriented or otherwise?

R= Behaviour from tax authorities may vary from location to location and case by case. In overall terms, it could be said that authorities tend to be more dominant than cooperative when it comes to tax auditing, and somewhat cooperative and customer-oriented in other matters.

## **2.2 Agreements between tax payers and tax authority**

**a.** Is there the possibility of a tax ruling and, if so, which costs can be expected?

R= Yes. Tax authorities have the obligation of responding to written inquiries by taxpayers, so long as such inquiries refer to real and concrete situations, including transfer pricing methodologies.

Also, as of year 2014, tax payers and tax authorities may reach agreements in order to put an end to ongoing tax audits, over one or more items being audited (conclusive agreements). These agreements are executed with the intervention of the Taxpayers' Defense Agency (*Procuraduría de la Defensa del Contribuyente*).

There are no costs for filing such inquiries or reaching such agreements, other than attorney fees which will vary case by case.

**b.** What is the average time frame to get a tax ruling done?

R= Tax authorities are bound by law to issue tax rulings regarding taxpayer inquiries within the three months following the date of their filing.

The procedure for reaching conclusive agreements should take approximately 40 to 60 business days, according to what is provided by law.

**c.** Are these consultations binding and, if so, which possible remedies do exist?

R= Rulings on inquiries before tax authorities are binding for such authorities but not for taxpayers. However, tax authorities may challenge resolutions issued in favor of taxpayers in case they deem these are illegal within the following 5 years.

Conclusive agreements are binding for both parties and are not challengeable by any of them.

- d. Once a tax ruling between all the parties concerned has been achieved, can one rely on it?

R= A favorable resolution on a tax ruling is fairly reliable. Nonetheless, in some cases, taxpayers need to keep in mind that it may be challenged in the future by tax authorities.

Conclusive agreements are definitive and reliable. They are, however, a new instrument that does not have much of a track record.

- e. What is the exact legal status of a tax ruling?

R= Rulings on tax inquiries serve as an instrument for added certainty on tax authorities criteria. They do not, however, represent a final resolution, since they may be challenged in the future by tax authorities.

Conclusive agreements are definitive and award complete legal certainty.

- f. Is it common in order to get a tax ruling that the tax payer has to give up certain rights or explicitly agree to e.g. information exchange?

R= No. A tax ruling is issued as per the information and documents filed with the corresponding inquiry. This does not, however, impede authorities from requesting additional information in the future on the corresponding matter.

- g. Is a tax ruling a public document or will it be treated confidentially by the tax authority? Does the taxpayer have an obligation to keep it confidential?

R= Tax authorities make a monthly publication including excerpts of the main tax rulings favourable to tax payers.

Tax payers don't have an obligation to keep tax rulings as confidential.

### **2.3 Remedies against decisions of the Tax Authorities**

- a. Is it common that one has to litigate if a decision has been made by the Tax Authorities and which remedies do exist?

R= Litigation opposing decisions made by tax authorities is very common. The main remedies available are:

- a) Administrative recourse; or
- b) Nullity claim before the federal tax court.

- b.** Is there the possibility of addressing a court or is this an administrative procedure?

R= The administrative recourse is addressed to the legal branch of federal tax authorities, while the nullity claim is a procedure before a federal court specialized in tax and administrative matters.

- c.** Which costs are to be expected in such a case?

R= In addition to attorney fees, these procedures may imply certain costs associated with the evidence that may need to be produced, such as notarization of documents, expert witness fees and others. These however, are usually minor.

- d.** Is it compulsory to have a lawyer in case of any remedy?

R= It is not compulsory to have a lawyer, but it is highly advisable.

- e.** What timeframe can be expected in case of a remedy/litigation?

R= It varies from case to case, but an average may be from 18 to 24 months.

- f.** Is it possible to postpone the payment of the tax debt as assessed by the tax authority until the end of a pending litigation with the tax authority? Will the tax authorities require guarantees for the postponement (Bank guarantees, mortgages etc.)?

R= Yes. Taxpayers may postpone the payment of any tax assessment until the end of litigation by posting any of the authorized means of guarantee (bond, mortgage, joint liability, etc.). Nonetheless, in case the final resolution in litigation is unfavorable to taxpayers, surcharges will be accrued for the time of postponement, in addition to the corresponding inflationary adjustment.

- g.** Is it possible that the tax authorities submit a report to the public prosecutor to investigate on possible criminal tax offences and under what circumstances?

R= Yes. Tax authorities may give notice to the public prosecutor of any possible criminal offenses they detect when auditing taxpayers.

- h.** Is it possible to include a clause in an agreement to automatically amend this agreement in accordance with the outcome of a discussion or litigation with the tax authority (e.g. if an “at arms length payment” is not accepted as such by the tax authority or if interests are held to be dividends or a loan is seen to be a gift)?

R= There is no prohibition for including such a clause. However, tax authorities will unlikely deem such a clause as amending a tax deficiency in how an operation is executed. It is not a very explored topic, and would have to be reviewed on a case by case basis.

## **2.4 Sanctions**

- a.** What is the statute of limitations for tax related matters?

R= The statute of limitations for tax related matters is five years and ten years in exceptional cases.

- b.** What is the typical sanction/amount of fines in your jurisdiction? Is there a different fine level for direct or indirect taxes?

R= The amount of fines in connection with the lack of payment or underpayment of taxes ranges from 55% to 75% of the amount due, except for cases deriving from arithmetic mistakes, where fines will range from 20% to 25% of the amount due. There are other different fines for specific infractions to tax provisions.

There is no distinction in fine levels for direct or indirect taxes.

- c.** Is it possible for a taxpayer to prevent tax penalties to be imposed should he/she be able to prove her good faith or reasonable interpretation of the law?

R= Taxpayers may request the condonation of fines in certain cases, granted that they prove they have a good history and other particular requirements are met. Also, taxpayers may elect to rectify their tax situation during an audit process and be eligible for a reduction in fines. However, there is no specific provision for a reduction of fines referred specifically to good faith or reasonable interpretation of the law.

- d.** Is it possible to regularize your tax situation with reduced or no fines/sanctions?

R= Yes. Taxpayers may regularize their situation spontaneously (prior to detection from tax authorities) and avoid any fines. Also, taxpayers may regularize their situation during a tax audit and obtain a reduction in fines.

- e.** May tax advisors/tax lawyers be held responsible by the tax authority for their advice to taxpayers?

R= Tax advisors/lawyers are not usually held liable for lack of payment or underpayment of taxes. Nonetheless, they may be fined in certain specific cases or even

held criminally liable when it is found that they aided and abetted in the commission of a crime.

## **2.5 Tax information exchange**

- a.** Does a tax information exchange on the EU level or OECD level happen and how does it take place?

R= Mexico has a number of tax treaties which include provisions on information exchange from the OECD model tax convention. Also, Mexico is part of the Convention on Mutual Administrative Assistance in Tax Matters.

- b.** Does your country enter into tax treaties that oblige to exchange information spontaneously, automatically and/or upon request?

R= Mexico enters into tax treaties which contemplate all of such types of exchanges.

- c.** Is the tax payer notified in case information is exchanged with foreign tax authorities?

R= There is no legal provision obliging authorities to notify taxpayers.

- d.** Can the tax payer object against an exchange of information?

R= Exchange of information with foreign tax authorities as part of a tax treaty is expressly authorized by federal tax legislation, and is therefore excluded from the tax confidentiality clause. Therefore, an objection would not be deemed to have solid grounds, unless for violations to procedure rules or other related provisions.