Observatory for the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by or with the contribution of the National Reporter of Mexico, Prof. César Alejandro Ruiz, a representative from the Academia.

This questionnaire comprises the National Reporter assessment on the level of compliance of the minimum standards and best practices on the practical protection of taxpayers' rights identified by Prof. Dr. Pistone and Prof. Dr. Philip Baker at the 2015 IFA Congress on "*The Practical Protection of Taxpayers' Rights*". This report was filled in considering the following parameters:

1. It contains information on those issues in which there were movements towards or away from the level of compliance of the relevant standard/best practice in Mexico between 2015 and 2017.

2. It is indicated, by the use of a checkmark (☑) whether there were movements towards or away from of the level of compliance of the relevant standard/best practice in Mexico between 2015 and 2017.

It contains a summarized account on facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices) that serves as grounds for each particular assessment of the level of compliance of a given minimum standard / best practice, in a non-judgmental way.

Country: Mexico

Minimum Standard	Best Practice	Shift towards	Shift away	Development
1. Identifying taxpayers, issuing tax returns and communicating with taxpayers				
Implement safeguards to prevent impersonation when issuing unique identification numbers				
The system of taxpayer identification should take account of religious sensitivities				
Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes	Where tax is withheld by third parties, the taxpayer should be excluded from liability if the third party fails to pay over the tax			
Where pre-populated returns are used, these should be sent to taxpayers to correct errors		✓		The Mexican revenue service developed a website where taxpayers introduce their username and password. Once inside, they access to prefilled returns that can be easily modified or accepted. Since all tax notes are elaborated electronically, all the possible deductions are already included in the proposed return. Moreover, the system allows the online payment of the tax and if is the case, the return of the tax paid in excess in less than 30 days.
Provide a right of access for taxpayers to personal information held about them, and a right to apply to correct inaccuracies	Publish guidance on taxpayers' rights to access information and correct inaccuracies			
Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception				
Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis				
Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication		✓		A federal constitutional court ruled that the tax administration should provide additional means of communication with the taxpayer, besides the email. This criterion is not mandatory yet. *XVII.1o.P.A.8.A. Semanario Judicial de la Federación. Libro 40, Marzo de 2017, Tomo IV. P. 2624.*
2. The issue of tax assessment				

	Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms			
Minimum Standard	**Best Practice**	**Shift towards**	**Shift away**	**Development**
2. The issue of tax assessment (cont)				
	Use e-filing to speed up assessments and correction of errors, particularly systematic errors			
3. Confidentiality				
Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorised disclosures (and ensure sanctions are enforced)	Encrypt information held by a tax authority about taxpayers to the highest level attainable			
Restrict access to data to those officials authorised to consult it. For encrypted data, use digital access codes	Ensure an effective fire-wall to prevent unauthorised access to data held by revenue authorities			
Audit data access periodically to identify cases of unauthorised access				
Introduce administrative measures emphasising confidentiality to tax officials	Appoint data protection/privacy officers at senior level and local tax offices			
If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges)				
Introduce an offence for tax officials covering up unauthorised disclosure of confidential information				
Provide remedies for taxpayers who are victims of unauthorised disclosure of confidential information				
Exceptions to the general rule of confidentiality should be explicitly stated in the law, narrowly drafted and interpreted				
If “naming and shaming” is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer)	Require judicial authorisation before any disclosure of confidential information by revenue authorities			

No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes	Parliamentary supervision of revenue authorities should involve independent officials, subject to confidentiality obligations, examining specific taxpayer data, and then reporting to Parliament			

Minimum Standard	Best Practice	Shift towards	Shift away	Development
3. Confidentiality (cont).				
Freedom of information legislation may allow a taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard				
If published, tax rulings should be anonymised and details that might identify the taxpayer removed	Anonymise all tax judgments and remove details that might identify the taxpayer			
Legal professional privilege should apply to tax advice	Privilege from disclosure should apply to all tax advisors (not just lawyers) who supply similar advice to lawyers. Information imparted in circumstances of confidentiality may be privileged from disclosure			
Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege				
4. Normal audits.				
Audits should respect the following principles: (1) Proportionality (2) *Ne bis in idem* (prohibition on double jeopardy) (3) *Audi alteram partem* (right to be heard before any decision is taken) (4) *Nemo tenetur se detegere* (principle against self-incrimination). Tax notices issued in violation of these principles should be null and			✓	Although is not requested by the report; it is important to mention that the Supreme Court of Justice ruled that the principle of presumption of innocence does not apply to tax audits. *Tesis: 2a. VI/2016 (10a.), Gaceta del Semanario Judicial de la Federación, Libro 28, Marzo de 2016, Tomo II, Página: 1294*

void				
In application of proportionality, tax authorities may only request for information that is strictly needed, not otherwise available, and must impose least burdensome impact on taxpayers				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
4. Normal audits (cont).				
	In application of *ne bis in idem* thetaxpayer should only receive one audit per taxable period, except when facts that become known after the audit was completed	✓		In Mexico tax audits can be performed in different ways: a) visita domicilairia. b) Revisión de gabinete c) Revisión electronica. Recently, a Federal Constitutional Court decided that revision de gabinete has the same limits than visita domiciliaria. Therefore, it only can be performed on the same taxable year when new facts come into play. *I.16o.A.22 A. Semanario Judicial de la Federación, Libro 42, Mayo de 2017, Tomo III, P. 2107.*
In application of *audi alteram partem*, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final		✓		One of the new ways to perfom tax audits, it is the "revision electronica", in which the tax authority prepares an audit with the information already available or already in their hands. If found, they issue a pre-decision with a tax credit. If the taxpayer does not present evidence against this pre decision, it can be executed (article 53-b of the Federal Tax Code). Recently, the Supreme Court of Justice ruled that this article is against the right of a hearing and therefore, the pre-decision cannot be executed directly, but the taxpayer must have the chance to challenge the reasons and facts given by the authority. As consequence, the legislator modified article 53-b to meet the requirements of the Supreme Court of Justice. *2A./J. 157/2016 Semanario Judicial de la Federacion, Libro 35, octubre de 2016, Tomo I, p. 725.*
In application of *nemo tenetur*, the right to remain silent should be respected in tax audits.				
	Tax audits should follow a pattern that is set out in published guidelines			
	A manual of good practice in tax audits should be established at the global level			
	Taxpayers should be entitled to request the start of a tax audit (to obtain finality)			

Where tax authorities have resolved to start an audit, they should inform the taxpayer	Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they spell out the aims and procedure, together with timescale and targets. They should then disclose any additional evidence in their possession to the taxpayer			
Taxpayers should be informed of information gathering from third parties				
	Reasonable time limits should be fixed for the conduct of audits	✓		In case of request of refund of overpaid taxes, the Supreme Court of Justice ruled that if the authority does not require information to the taxpayer within 20 days after the request is presented, the procedure should end immediately with the information available. (Interpretation of article 22 of the Federal Tax Code). *Tesis 2a/J. 119/2017. Semanario Judicial de la Federación. Libro 46, Septiembre 2017, Tomo I, p. 556.*
Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer				
Minimum Standard	**Best Practice**	**Shift towards**	**Shift away**	**Development**
4. Normal audits (cont).				
The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer	The drafting of the final audit report should involve participation by the taxpayer, with the opportunity to correct inaccuracies of facts and to express the taxpayer's view	✓		
	Following an audit, a report should be prepared even if the audit does not result in additional tax or refund			
5. More intensive audits.				
	More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance			
If there is point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and				

statements from the taxpayer should not be used in the audit procedure				
Entering premises or interception of communications should be authorised by the judiciary				
Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for *ex post* ratification				
Inspection of the taxpayer's home should require authorisation by the judiciary and only be given in exceptional cases.	Where tax authorities intend to search the taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed			
	Access to bank information should require judicial authorisation			
	Authorisation by the judiciary should be necessary for interception of telephone communications and monitoring of internet access. Specialised offices within the judiciary should be established to supervise these actions	✓		According to Article 16 of the Mexican Constitution, intervention of communications (by any means) requires judicial authorization. Currently, 8 federal judges have competence to receive this kind of requests. (In may 2017, the Judicial Branch created a Center Specialized in the control of techniques of investigation, detention at home and intervention on communications). Link to the administrative rule issued by the Judicial Branch. http://www.dof.gob.mx/nota_detalle.php?codigo=5482579&fecha=15/05/2017&print=true
Minimum Standard	**Best Practice**	**Shift towards**	**Shift away**	**Development**
5. More intensive audits (cont).				
Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time				
	If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisors and the original left with the taxpayer			
Where invasive techniques are applied, they should be limited in time to avoid disproportionate impact on taxpayers				

6. Review and appeals.				
	E-filing of requests for internal review to ensure the effective and speedy handling of the review process			
The right of appeal should not depend upon prior exhaustion of administrative reviews				
	Reviews and appeals should not exceed two years			
Audi alteram partem should apply in administrative reviews and judicial appeals				
Where tax must be paid in whole or in part before an appeal, there must be an effective mechanism for providing interim suspension of payment	An appeal should not require prior payment of tax in all cases	✓		From 2017, Mexico has a new procedure called Juicio de Fondo. Under this procedure, (optional for the taxpayer) both, tax authorities and taxpayers disregard formal mistakes and allegations; they focus on the substance of the case. Under this procedure, taxpayers are nor obliged to pay the tax prior the final decision. This procedure is also expected to be faster than the standard judicial administrative procedure. Articles 58-16 to 58-29 of the Federal Administrative Procedure Law.
	The state should bear some or all of the costs of an appeal, whatever the outcome			
Legal assistance should be provided for those taxpayers who cannot afford it				
Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing				
Tax judgments should be published				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
7. Criminal and administrative sanctions.				
Proportionality and *ne bis in idem* should apply to tax penalties				
	Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied			
	Voluntary disclosure should lead to			

	reduction of penalties			
Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures				
8. Enforcement of taxes.				
Collection of taxes should never deprive taxpayers of their minimum necessary for living				
	Authorisation by the judiciary should be required before seizing assets or bank accounts			
Taxpayers should have the right to request delayed payment of arrears		✓		Taxpayers can chose between deferral of the payment (up to 12 months) and payment in partialities (up to 36 months). Article 66 of the Federal Tax Code. The tax credit will not be updated from the moment the request is authorized to the actual payment of the tax.
	Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment			
Temporary suspension of tax enforcement should follow natural disasters		✓		On September 7 and 19, two major earthquakes hit the South of Mexico. In both cases, the President of Mexico enacted rules to reduce the tax burden of legal entities and people living in the affected areas. The major given benefits include: 1. Suspension of the obligation to deliver provisional payments of income tax (income tax is paid in an annual basis on the third month of the following taxable year, but every two months provisional payments are due). 2. Immediate deduction of investment in real estate (this deduction is usually done in a 10 years period) 3. Deferral of the withheld income tax to the first three months of 2018. 4. Deferral of the payment of VAT and additional tax on products and services (IEPS) to the first three months of 2018. 5. In case of deferral of taxes authorized prior to the events, payments for the rest of 2017 were suspended without additional interest on the due amount. Link to the Administrative Rule http://www.dof.gob.mx/nota_detalle.php?codigo=5496798&fecha=11/09/2017
9. Cross-border procedures.				
The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer unless it has a reasoned request from the	The taxpayer should be informed that a cross-border request for information is to be made			

requesting state that the taxpayer should not be informed on grounds that it would prejudice the investigation				

Minimum Standard	Best Practice	Shift towards	Shift away	Development
9. Cross-border procedures (cont).				
	Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer			
	Provisions should be included in tax treaties setting specific conditions for exchange of information			
If information is sought from third parties, judicial authorisation should be necessary				
	The taxpayer should be given access to information received by the requesting state			
	Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information A requesting state should provide confirmation of confidentiality to the requested state			
A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observe high standards of data protection				
	For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights			
	Taxpayers should have a right to request initiation of mutual agreement procedure			
Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to progress of the procedure				

10. Legislation.				
Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail	Retrospective tax legislation should ideally be banned completely			
	Public consultation should precede the making of tax policy and tax law			Check point 12.2

Minimum Standard	Best Practice	Shift towards	Shift away	Development
11. Revenue practice and guidance.				
Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance				
Where legal material is available primarily on the internet, arrangements should be made to provide it to those who do not have access to the internet		✓		A Federal Constitutional Court ruled that mandatory guidelines for accountants should be published in the Official Federal Diary. If they are not published, accountants cannot be sanctioned for not following them. This is a criterion from a Federal Constitutional Court. It is not mandatory yet. I.9o.A.99 A. Semanario Judicial de la Federación, libro 46, septiembre de 2017, Tomo III, P. 1939.
Binding rulings should only be published in an anonymised form				
Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively				
12. Institutional framework for protecting taxpayers' rights.				
Adoption of a charter or statement of taxpayers' rights should be a minimum standard	A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited	✓		At the beginning of an audit, taxpayers receive an specific document called "Charter of audited taxpayer's rights". (This is not an improvement but it was not mentioned in the 2015 Report)
	A taxpayer advocate or ombudsman	✓		Mexico has a tax ombudsman, PRODECON since 2011. In 2016 and the beginning of 2017, PRODECON

	should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority			acted as moderator between SAT, taxpayers and tax practitioners to review the draft of the rules to follow action 13 of BEPS (rules to present informative declarations, article 76-A of the Income Tax Law). This is the first time that SAT rules were consulted to the public prior their enactment. An email account was opened and opinions received were analysed and compiled. Then a final meeting hosted by PRODECON and SAT, produced debate and exchange of ideas that were summarized in a final report. Link to the final report http://www.prodecon.gob.mx/Documentos/banner_principal/informe_final_consulta_publica_76a_lisr.pdf With all this information, the revenue service adjusted the rules to be applied on this matter. Link to the rules http://www.prodecon.gob.mx/Documentos/banner_principal/referencias/np_76alisr_11.pdf
	The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally			

ADDITIONAL IMPROVEMENTS.

SAT (Mexican Revenue Service) has implemented additional programs to promote enhance relationship and voluntary compliance.

1. Cobro persuasivo. Through this program, SAT sends letters to taxpayers with unpaid taxes. These letters invite to a dialogue to know his situation and specific conditions. A deal can be achieved without penalties or the expenses of the normal administrative procedure.
2. Síndico Fiscal. Through this program, some specialists are appointed to represent a group of taxpayers in a region. i.e. textile industries from the center of the country. Sindicos are the link between the taxpayers and the authority. They can ask for opinions and recommendations to the tax authority in relation to the interests of the taxpayer. (Article 33, II of the Federal Tax Code).

CRITERIA FROM THE SUPREME COURT OF JUSTICE

2a./J. 119/2017 (10a.), Gaceta del Semanario Judicial de la Federación, Libro 46, Septiembre de 2017, Tomo I Página: 556

DEVOLUCIÓN DE CONTRIBUCIONES. CONFORME AL ARTÍCULO 22, PÁRRAFO SEXTO, DEL CÓDIGO FISCAL DE LA FEDERACIÓN, SI LA AUTORIDAD FISCAL NO REQUIERE AL CONTRIBUYENTE EN EL PLAZO DE 20 DÍAS SIGUIENTES A LA PRESENTACIÓN DE LA SOLICITUD RELATIVA, PRECLUYE SU FACULTAD PARA HACERLO. El diseño normativo del precepto referido implica que cuando la autoridad fiscal ejerce su facultad de requerir al contribuyente datos, informes o documentos para verificar la procedencia de la solicitud de devolución, ese proceder debe acotarse conforme a los artículos 16 y 17 de la Constitución Política de los Estados Unidos Mexicanos, ya que el contribuyente debe tener plena certeza de que, por una parte, la autoridad tiene un plazo de 20 días para requerirlo y, por otra, que en caso de no hacerlo, precluye su facultad. Ello, porque el legislador no sólo fijó un lapso temporal al efecto, sino también facultó a la autoridad fiscal para que apercibiera al contribuyente que, de no cumplir con lo solicitado, se le tendría por desistido de su solicitud de devolución, siendo esta consecuencia en el incumplimiento al requerimiento formulado fuera del plazo indicado, lo que obliga a acotar la actuación de la autoridad fiscal, posibilitando que el contribuyente tenga pleno conocimiento sobre el cumplimiento de los plazos previstos en la ley por parte de la autoridad fiscal, pues dicho apercibimiento constituye un típico acto de autoridad, por su unilateralidad, obligatoriedad y coercitividad. Así, el hecho de que la mencionada porción normativa no contenga expresamente alguna consecuencia por el incumplimiento de realizar el requerimiento en el plazo aludido, no implica que se trate de una norma jurídica imperfecta que carezca de sanción, por el contrario, dicho proceder configura la causa de nulidad establecida en el artículo 51, fracción II, de la Ley Federal de Procedimiento Contencioso Administrativo, al omitir la formalidad consistente en que la autoridad fiscal no ejerció su facultad en el plazo señalado, por lo que la consecuencia es que, conforme al artículo 52, fracción IV, de la ley citada, el efecto de la nulidad de la resolución por la que se hizo efectivo el mencionado apercibimiento es que la autoridad fiscal deje sin efectos su determinación y con los elementos con que cuente proceda con plenitud de facultades a pronunciarse respecto de la solicitud de devolución relativa.

Tesis: 2a./J. 157/2016 (10a.), Gaceta del Semanario Judicial de la Federación, Libro 35, Octubre de 2016, Tomo I, Página: 725

REVISIÓN ELECTRÓNICA. EL SEGUNDO PÁRRAFO DE LA FRACCIÓN IV DEL ARTÍCULO 53-B DEL CÓDIGO FISCAL DE LA FEDERACIÓN, EN TANTO PREVÉ LA FACULTAD CONFERIDA A LA AUTORIDAD PARA HACER EFECTIVA LA CANTIDAD DETERMINADA EN LA PRELIQUIDACIÓN, TRANSGREDE EL DERECHO DE AUDIENCIA. En nuestro sistema tributario rige el principio de autodeterminación, lo que significa que, salvo disposición expresa en contrario, corresponde a los contribuyentes determinar el monto de las contribuciones a su cargo, razón por la cual, debe otorgárseles la oportunidad de alegar y probar lo que a su derecho convenga para desvirtuar los hechos u omisiones que pudieran entrañar el incumplimiento de sus obligaciones fiscales; de ahí que la autoridad fiscal podrá determinar el monto de las contribuciones omitidas en ejercicio de sus facultades de comprobación si, y sólo si, se trata de pagos y declaraciones definitivas y el contribuyente no ejerce su derecho de prueba en el procedimiento de fiscalización respectivo o, habiéndolo ejercido, no logra desvirtuar las irregularidades advertidas. En ese contexto, el segundo párrafo de la fracción IV del artículo 53-B del Código Fiscal de la Federación, al establecer que las cantidades determinadas en la preliquidación "se harán efectivas mediante el procedimiento administrativo de ejecución", cuando el contribuyente no aporte pruebas ni manifieste lo que a su derecho convenga en el procedimiento de fiscalización dentro de los plazos previstos al efecto, transgrede el derecho de audiencia reconocido por el artículo 14 de la Constitución Política de los Estados Unidos Mexicanos, toda vez que la preliquidación constituye una propuesta de pago para el caso de que el contribuyente decida ponerse al corriente en sus obligaciones fiscales, no así un requerimiento de pago cuya inobservancia dé lugar a su ejecución inmediata, a más de que se priva al contribuyente de sus bienes, derechos o posesiones sin antes darle la oportunidad de ofrecer en el recurso de revocación los medios de prueba que, por cualquier circunstancia, no exhibió ante la autoridad fiscalizadora para desvirtuar los hechos u omisiones advertidos.

Tesis: 2a. VI/2016 (10a.), Gaceta del Semanario Judicial de la Federación, Libro 28, Marzo de 2016, Tomo II, Página: 1294

FACULTADES DE COMPROBACIÓN. LA PREVISTA EN EL ARTÍCULO 49 DEL CÓDIGO FISCAL DE LA FEDERACIÓN, NO SE RIGE POR EL PRINCIPIO DE PRESUNCIÓN DE INOCENCIA. El principio de presunción de inocencia contenido en el artículo 20, apartado B, fracción I, de la Constitución Política de los Estados Unidos Mexicanos -originalmente previsto para la materia penal-, puede cobrar aplicación en la materia administrativa con matices y modulaciones en relación con el procedimiento administrativo sancionador, el cual puede entenderse como el conjunto de formalidades seguidas en forma de juicio ante autoridad competente con el objeto de conocer irregularidades, ya sean de servidores públicos o de particulares, cuya finalidad, en todo caso, será imponer alguna sanción. En este contexto, la hipótesis prevista en el artículo 49 del Código Fiscal de la Federación no está inmerso en el derecho administrativo sancionador y, por ende, no se rige por aquel postulado, en virtud de que si bien es cierto que regula la práctica de visitas domiciliarias para constatar que los contribuyentes cumplen con sus obligaciones tributarias, entre las que se encuentra la relativa a expedir comprobantes fiscales por las enajenaciones que realizan, la cual puede derivar en la determinación de una multa, también lo es que a través del ejercicio de esta atribución no se busca perseguir una conducta administrativamente ilícita, sino que se concreta al despliegue de la facultad tributaria del Estado para verificar el cumplimiento de sus obligaciones fiscales.

CRITERIA FROM FEDERAL CONSTITUTIONAL COURTS

Tesis: I.9o.A.99 A (10a.), Gaceta del Semanario Judicial de la Federación, Libro 46, Septiembre de 2017, Tomo III, Página: 1939

NORMAS Y PROCEDIMIENTOS DE AUDITORÍA. PARA QUE INICIEN SU VIGENCIA, DEBEN PUBLICARSE EN EL DIARIO OFICIAL DE LA FEDERACIÓN, SI LA AUTORIDAD FISCAL LOS TOMA COMO BASE PARA SANCIONAR A UN CONTADOR PÚBLICO EN CASO DE INCUMPLIMIENTO. Uno de los elementos del derecho humano a la seguridad jurídica es el de la publicidad de las normas generales o de la prohibición de su secrecía. Éste tiene vital importancia, pues la publicación en un medio de difusión oficial, es la única manera de asegurarse de que los destinatarios de las normas generales tengan conocimiento de ellas y sepan con certeza las sanciones que se les pueden imponer en caso de incumplimiento. Ahora, el artículo 52, antepenúltimo párrafo, del Código Fiscal de la Federación, vigente en 2011, establecía que cuando el contador público autorizado no dé cumplimiento a las disposiciones referidas en dicho precepto, es decir, a lo relativo a la emisión de dictámenes de estados financieros, o no aplique las normas y procedimientos de auditoría, la autoridad fiscal, previa audiencia, lo exhortará, amonestará o suspenderá hasta por dos años los efectos de su registro, conforme al reglamento de ese ordenamiento. Por su parte, el numeral 7o. del código citado, prevé que las leyes fiscales, sus reglamentos y las disposiciones administrativas de carácter general, entrarán en vigor en toda la República el día siguiente al de su publicación en el Diario Oficial de la Federación, salvo que en ellas se establezca una fecha posterior. En estas condiciones, si bien las normas y procedimientos de auditoría no son leyes fiscales, reglamentos ni disposiciones administrativas, pues el Código Fiscal de la Federación no las delega al Ejecutivo Federal, es decir, no son emitidas por una autoridad, sino por un ente particular, lo cierto es que son conceptos técnicos obligatorios para los contadores públicos que emiten dictámenes de estados financieros en términos del artículo 52 citado, que regulan su capacidad, independencia e imparcialidad en el trabajo que desempeñan y la información resultante de él, en la medida en que la autoridad fiscal, con base en el incumplimiento de dichas normas y procedimientos de auditoría, sanciona a los contadores, de acuerdo con el propio código y su reglamento. Por tanto, en respeto al derecho humano a la seguridad jurídica, así como al principio de publicidad de las normas generales o prohibición de las normas secretas, si la autoridad fiscal toma las normas y procedimientos de auditoría como base para sancionar en caso de su incumplimiento, deben publicarse en el Diario Oficial de la Federación para que inicien su vigencia, en términos del artículo 7o. aludido, pues sólo así, los contadores públicos tendrán conocimiento y certeza de su existencia y de sus obligaciones derivadas de aquéllos e, incluso, sabrán a qué sanción se harán acreedores si los incumplen.

I.16o.A.22 A (10a.) Gaceta del Semanario Judicial de la Federación, Libro 42, Mayo de 2017, Tomo III, Página: 2107

REVISIÓN DE GABINETE. CUANDO ABARQUE CONTRIBUCIONES O APROVECHAMIENTOS Y PERIODOS REVISADOS A LA MISMA PERSONA, DEBE CUMPLIR LAS FORMALIDADES ESTABLECIDAS AL RESPECTO EN EL ARTÍCULO 53-C DEL CÓDIGO FISCAL DE LA FEDERACIÓN (LEGISLACIÓN VIGENTE A PARTIR DE 2014). El artículo 46, último párrafo, del Código Fiscal de la Federación, vigente hasta el 31 de diciembre de 2013, establecía como limitante a la autoridad fiscal, que una vez concluida la visita domiciliaria, para iniciar otra a la misma persona, tratándose de las mismas contribuciones, aprovechamientos y periodos, sólo podría efectuarse cuando se comprobaran hechos diferentes a los ya revisados. Al respecto, la Segunda Sala de la Suprema Corte de Justicia de la Nación, en la jurisprudencia 2a./J. 134/2013 (10a.), de título y

subtítulo: "REVISIÓN DE GABINETE. AL NO SERLE APLICABLE LA LIMITANTE PREVISTA EN EL ÚLTIMO PÁRRAFO DEL ARTÍCULO 46 DEL CÓDIGO FISCAL DE LA FEDERACIÓN, TAMPOCO LO ES LA JURISPRUDENCIA 2a./J. 157/2011 (9a.) [*].", estableció que dicha limitante sólo resultaba aplicable a las visitas domiciliarias. Sin embargo, el legislador, en el decreto de reformas al citado ordenamiento, publicado en el Diario Oficial de la Federación el 9 de diciembre de 2013 (vigente a partir de 2014), la incluyó también para revisiones de gabinete y electrónicas. En ese contexto, la revisión de gabinete que abarque contribuciones o aprovechamientos y periodos revisados a la misma persona, por ejemplo: en una orden de visita declarada nula por incompetencia material de su emisor, debe cumplir las formalidades establecidas al respecto en el artículo 53-C del código invocado, el cual prevé que tratándose de las facultades de comprobación previstas en las fracciones II, III y IX del diverso 42, la autoridad, siempre que compruebe "hechos diferentes", podrá volver a revisar los mismos rubros o conceptos específicos de una contribución o aprovechamiento por el mismo periodo y, en su caso, determinar los créditos que deriven de esos hechos. De lo contrario, esa actuación violaría el derecho humano a la seguridad jurídica, reconocido en el artículo 16 de la Constitución Política de los Estados Unidos Mexicanos; habida cuenta que, en el supuesto señalado, la nulidad de la visita domiciliaria que anteceda, derivada de la indebida fundamentación de la competencia material de su emisor, debe considerarse concluida, al no ser jurídicamente posible que la misma autoridad reponga el procedimiento de fiscalización, y porque la infracción a la inviolabilidad del domicilio no desapareció con la nulidad.

Tesis: XVII.1o.P.A.8 A (10a.), Gaceta del Semanario Judicial de la Federación, Libro 40, Marzo de 2017, Tomo IV, Página: 2624

BUZÓN TRIBUTARIO. LAS REGLAS 2.2.6. Y 2.2.7. DE LAS RESOLUCIONES MISCELÁNEA FISCAL PARA 2015 Y 2016, RESPECTIVAMENTE, AL PREVER UN SOLO MEDIO DE COMUNICACIÓN PARA QUE LOS CONTRIBUYENTES QUE CUENTEN CON AQUÉL RECIBAN LOS AVISOS ELECTRÓNICOS ENVIADOS POR EL SERVICIO DE ADMINISTRACIÓN TRIBUTARIA, INCUMPLEN LA OBLIGACIÓN CONTENIDA EN EL ARTÍCULO 17-K, ÚLTIMO PÁRRAFO, DEL CÓDIGO FISCAL DE LA FEDERACIÓN. Del artículo 17-K, último párrafo, del Código Fiscal de la Federación, se advierte que las personas físicas y morales que tengan asignado un buzón tributario, deberán consultarlo dentro de los tres días siguientes a aquel en que reciban un aviso electrónico enviado por el Servicio de Administración Tributaria, mediante los mecanismos de comunicación que el contribuyente elija, de entre aquellos que se den a conocer mediante las reglas de carácter general, esto es, que contará con los medios o mecanismos de comunicación, en su concepción plural. Ahora bien, el Ejecutivo Federal pretendió cumplir lo ordenado por el precepto citado, por medio de las reglas 2.2.6. y 2.2.7. de las Resoluciones Miscelánea Fiscal para 2015 y 2016, respectivamente -cuya redacción coincide integralmente-, pero dispuso de un solo medio de comunicación, que es el correo electrónico, con lo cual, evidentemente no satisface la instrucción legislativa de que sean dos o más medios de comunicación como elegibles u opcionales para el contribuyente, pues no es suficiente la expresión que señala: "...para elegir el mecanismo de comunicación los contribuyentes ingresarán al menos una dirección de correo electrónico y máximo de cinco...", ya que aunque el particular cuente hasta con cinco correos electrónicos, ello no constituye los diferentes mecanismos de comunicación a que obliga el artículo 17-K mencionado y, por tanto, las reglas de carácter general aludidas son ilegales.