

What has non-jurisdictional justice in tax matters contributed to Mexico during this decade?

• Achievements • Services • **PRODECON** in the international arena

**PRODECON** will unveil its digital tool, Taxpayer Rights Protection Program: "*Kabil, Tax Defense*" of Alternative Social Fiscal Justice in Mexico



**10**  
**YEARS**

## Alternative Social Fiscal Justice in Mexico

On September 1st, **PRODECON** commemorates its anniversary



New proposals for legal reform in favor of the rights and guarantees of taxpayers

Transparency, Information Access and Protection of Personal Data at **PRODECON**

The benefits established in Articles 70-A and 74 of the Federal Tax Code related to the reduction and forgiveness of fines by the federal tax authorities

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Consignment Note Supplement

Tax regime applicable to "other" income from digital platforms

The legal reforms applicable to authorized donees in 2021 and the principle of non retroactivity

Do you know what the "Transparency, Prevention and Fighting Improper Practices in Advertising Contracting's Law" contemplates

The Customs Verifier's Identification during the Administrative Procedure in Customs Subject

Be careful! Is the tax authority collecting you a debt and you know that you didn't generate it?... It may be a case of homonymy

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# Editorial Note



The purpose of this edition is to highlight the importance that has in a democratic state, the non-jurisdictional federal tax justice system (alternative justice) for the protection of the rights and guarantees of taxpayers, and especially the most vulnerable people and sectors, entrusted to a decentralized public entity/agency such as Taxpayer Advocacy Agency (**PRODECON**), which on September 1st celebrates its tenth anniversary of opening their doors to all taxpayers in our country.

Throughout these ten years, **PRODECON** has assumed its role as the first Mexican Tax *Ombudsperson*, whose objective is to seek an adequate and fair balance in the actions of the tax authorities towards the citizens, to strengthen the good faith that the federal tax authorities must recognize in taxpayers, to create an environment of trust between both, as well as to review and permanently improve the actions and practices in the tax auditing processes.

This Taxpayer Advocacy Agency (**PRODECON**) was created when it was published on January 5, 2004, in the Official Gazette of the Federation, the addition of article 18-B in the Federal Tax Code (in Spanish, Código Fiscal de la Federación), providing for the first time in the national legal system, a governmental entity specialized in the protection and defense of the rights and interests of taxpayers in tax matters.

The *Ombudsperson* system, as this tool for the protection and defense of taxpayers' rights is also known, has efficient and effective guarantee instruments to ensure the protection and respect of the citizens' interests, for which **PRODECON** has established up-to-

date communication channels that contribute to the concept of a social-fiscal justice, in addition to a tax-digital justice through its guidance, advisory, legal representation and defense services, the adoption of conclusive agreements, complaints and claims procedures, specialized consulting and the identification and investigation of systemic analysis in tax matters, among other aspects.

In this commemorative magazine, there is a compendium of articles and important topics in tax matters, which reflect the highness of commitment, effort, duty and vocation to public service, institutional and professional performance by the members of this institution, which translates into the good reception and trust that taxpayers have placed in this Taxpayer Advocacy Agency, a situation that is demonstrated by the increased of topics and issues attended in a decade (from September 1, 2011 up to this date).

In a retrospective view, since the Greeks, it has been postulated that the purpose of public activity among individuals is what Aristotle called "common good", which means, that one of the main government principle is to attend the welfare (and happiness) of people; for this philosopher, happiness is the supreme good, but in terms of a higher benefit: the interest of the community, which is above individual interests.

In this line of thought, the President of the Mexican Government, Andrés Manuel López Obrador, pointed out in his third government report and in his book "Halfway down the road," that inequality must be addressed and public life must be moralized, and for this purpose "the formula honesty, austerity, and welfare" must

be used; and *“It is a matter, then, of turning honesty into a way of life and government:...”*<sup>1</sup>; it is in this context that alternative social-fiscal justice is immersed with a protective vision to generate legal certainty for people facing the tax authority actions.

In this edition, an analysis is made of what has meant the application of a non-jurisdictional system (alternative justice) for the protection of rights and guarantees of taxpayers, through the Taxpayer Advocacy Agency (**PRODECON**), a situation that has allowed this institution to establish itself as an advocate, which assures the taxpayer an effective response to the taxpayers’ tax questions and contingencies, free of charge.

Another part of this magazine focuses on the analysis of some successful cases obtained by this Agency, addressing practical tax issues in its advisory functions, legal representation, complaints, systemic analysis, and conclusive agreements procedures.

The magazine contains several articles of interest to taxpayers, which deal with topics such as: the new legal reform proposals in favor of Taxpayers’ Rights and Guarantees; Transparency, Access to Information and Protection of Personal Data in the Fiscal *Ombudsperson*; the benefits established in Articles 70-A and 74 of the Federal Tax Code, related to the reduction and forgiveness of fines by the Federal Tax authorities; the tax regime applicable to “other” income from digital platforms; the analysis of the Law for the Transparency, Prevention and Combat of Undue Practices in Advertising Contracting Law; the study of the fiscal effects of the consignment note; the legal reforms applicable to the authorized donees in 2021, as well as the principle of non-retroactivity; the Federal

Tax Authority's Deep Surveillance Program; the identification of the verifier during the Administrative Procedure in Customs Subject, among other points that are made of public knowledge.

Finally, it is important to mention that **PRODECON** is a permanent ally of taxpayers, but also a promoter of the right of zero tolerance to tax evasion and avoidance; that is, it is aware of the importance of taxpayers complying with their tax obligations since they have an impact on the public interest of collecting what is fair and necessary for the State to satisfy collective needs. Therefore, it is important to strengthen a culture of taxpaying based on the aforementioned principles.

The phrase that sums up **PRODECON**'s philosophy during this decade is: **“citizens serving other citizens, make a difference in the taxpayers lives”**.

<sup>1</sup> López Obrador Andrés Manuel. A LA MITAD DEL CAMINO. Editorial Planeta. 1ª Edición 2021, pp. 69 y 85.

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# Alternative Social Fiscal Justice in Mexico

On September 1st, **PRODECON** commemorates its anniversary

A growing society is the result of diverse factors that intervene in its development, for example, its people, culture, personal needs as well as those of the group of people that conform it, its geography and even the climate itself and an endless number of circumstances that will be molding the society, where difficulties and insufficiencies also arise and must be addressed in different areas, without making any distinction among its members, by people and institutions that guarantee them to be well treated and heard.

Our country is a society in constant growth, with hardworking and enterprising people, full of projects and dreams that demand attention and safeguarding of their fundamental rights, as well as immediate and expeditious access to justice that allows them to resolve any setbacks that violate their rights as taxpayers.

One of the areas in which Mexican society has required the guarantee that its rights are not violated, is related to tax matters; this means that in the first instance, it must be taken into account that all Mexicans are obligated to contribute to public spending, but also that each citizen has the right to be heard and treated with respect in every act that the tax authority carries out, especially in the case of vulnerable sectors, groups or individuals.



*Headquarters, Insurgentes Sur 954, CDMX.*

For this reason, it is imperative that the Mexican State itself protects its citizens against any authority act that disrupts their rights as taxpayers, seeks access to social justice in tax matters, and make the taxpayers part of the society with a new tax culture, where principles and values get reinforced at having an ethical, social and responsible commitment to contribute a part of its wealth to sustain public expenditure.

In the same way, the tax authorities must strengthen the right to have a tax administration of good practices, which allows taxpayers to fulfill their obligations within a framework of legality, security, and legal certainty, which undoubtedly contributes to social, economic development, and growth for any country.

On January 5th, 2004, the Federal Tax Code was amended, including in its content, Article 18-B, which established the creation of the Taxpayer Advocacy Agency, a specialized *Ombudsperson* that grants protection and defense to the taxpayers.

From this need to guarantee taxpayers' rights and to promote an effective approach with the tax authorities, in addition to being within international standards in the tax context, on June 23, 2005, the Federal Taxpayer Rights Law was published in the Official Gazette of the Federation (OGF or DOF in Spanish), which provided security in the legal-tax relationship between the taxpayer and the federal tax authorities.

Despite the fact that taxpayers already had regulations that guaranteed the safeguard of their rights, society was eager to be heard by someone who would watch over them, who would become the voice of the taxpayers, an *Ombudsperson* who could protect them from some adversities that afflicted them when they had to deal with situations of tax nature, not only because of ignorance or because of the complexity of the tax matter laws, but also because they considered that their rights as taxpayers continued to be transgressed by being subject to possible undue practices by some tax authorities.

On September 4th, 2006, the Taxpayer Advocacy Agency's Organic Law was published in the OGF, which regulates the organization and operation of the Mexican Tax *Ombudsperson*, and on September 7th, 2009, the Decree reforming several legal provisions of the aforementioned law was published in the same official federal publication.

Similarly, on April 28, 2011, the first Proctor for the Taxpayer's Defense, Diana Rosalía Bernal Ladrón de Guevara, was appointed, who with high encyclopedic thinking, led and built all

the scaffolding for **PRODECON**. She made possible all the legal and material functions, which took place on September 1st, 2011, highlighting that she was the first taxpayer's *Ombudsperson* in office for the first 4 years, achieving its ratification by the Mexican Senate, unanimously, for 4 more years.

This September 1st, 2021, the Taxpayer Advocacy Agency (**PRODECON**) not only celebrates 10 years since it opened its doors to taxpayers, but also it is thankful to the society for a decade of trust given in every consultancy, legal representation and defense, in every conclusive agreement procedure, complaint procedure and specialized consultations, to allow the Institution to act as a defense attorney that provides access to an alternative social-tax justice, without making any distinction, free of charge, and with the conviction that the work of women and men who make up this public agency will strengthen their taxpayer-tax authority relationship, always within the legal framework.

Ten years ago, **PRODECON** received its first taxpayer with the conviction that a change in the way of thinking and acting of the federal tax authorities would begin, as well as that the rights of taxpayers would be guaranteed and safeguarded. Today we are not only witnesses of that change, but we remain committed to taxpayers, individuals and companies, and to our beloved Mexico, to position ourselves as one of the countries that has a specialized taxpayer's *Ombudsperson*, with integrity, solid, reliable, responsible, transparent and that generates outstanding results, in addition to protecting, defending and observing that taxpayers' rights are not violated, and also contributes to the development and strengthening of the tax cycle through proposals for amendments to tax legislation, the detection of systemic problems and dialogue with the tax authorities through periodic meetings, among other duties conferred upon it.



The ten years of operation of the taxpayer's *Ombudsperson* match with the ten years of the constitutional reform on Human Rights, on June 10, 2011, therefore, it must be recognized that one of the most important advances of that constitutional reform, was to establish as an obligation of all authorities, promote, respect, protect and guarantee human rights under the principles of universality, interdependence, indivisibility and progressivity, which implies that the Mexican government must comply with the duty of the State to provide the right conditions for citizens to have a dignified life with opportunities available to all, not only by ensuring the proper administration of justice and security, but also by complying with its duty to educate, disseminate and create institutions that have such principles in their structure, since their formation, object and purposes that they pursue, such as all those public institutions whose purpose is to guarantee the enjoyment and exercise of the citizen rights and, in case of **PRODECON**, to enforce taxpayers rights.

With this new acceptance of the evolution of Human Rights, the Mexican State opened the possibilities of access to justice by contemplating the implementation of Alternative Dispute Resolution, which constitutes a change in the way of understanding the relationship between the authorities and society, considering the presumption of good faith in the actions of taxpayers, by the tax authorities, by placing the person as the end of all government actions.

An example of this is materialized both with the Conclusive Agreement Procedure processed before **PRODECON**, a figure that has been fundamental in the creation of a new tax culture for the Mexican State, as well as with the various services provided by this Agency, which have led to a new way of solving taxpayers' problems without the urgent need of going to court to seek justice in tax matters.

**PRODECON** is thankful to each one of you, for these first 10 years of mutual support, for allowing us to watch over your rights, for being part of the taxpayers who have opted for alternative social-tax justice, for participating as citizens committed to our country, but above all for your trust; thank you also to every collaborator of this taxpayer's *Ombudsperson* who makes their best, day by day, with their dedication, heart, passion, love, and commitment in each activity aimed at protecting those who trust in **PRODECON**.

### What has federal social-tax justice (non-jurisdictional protection in tax matters) brought to Mexico in this decade?

- Immediate attention and defense of their rights in tax matters, mainly to vulnerable sectors, groups or persons: **students, pensioners, retirees, salaried workers, people with disabilities, farmers, artisans, small businessmen, etc.**
- A solution to contingencies or problems of a tax nature, through the implementation of multiple protocols for efficient and effective attention to taxpayers, regarding a variety of issues, among which stand out: **Tax refunds, compliance with tax obligations, acts related to the Federal Taxpayers Registry, determination of tax debt, restriction or cancellation of the digital seal certificate (an electronic tool used to generate electronic invoices), immobilization of bank deposits, etc.** This allows an effective dialogue with the tax authorities, which translates into an immediate response to their requirements, thus benefiting the relationship not only between taxpayers and this *Ombudsperson*, but also with the tax authority itself.
- New, flexible, simple and effective procedures for resolving tax disputes.

- Balanced relationship between federal tax authorities and taxpayers.
- New vision of the tax conflict: **Weighting the substance over the form.**
- A potential alternative justice mechanism that fully contributes to satisfying the constitutional mandate to compel federal tax authorities to promote, respect, protect and guarantee the rights of taxpayers.
- The first alternative dispute resolution procedure during tax audits: **Conclusive Agreements Procedure.**

In the period from 2014 (year in which the Conclusive Agreements Procedure became effective) to August 15, 2021, **PRODECON** has achieved that the federal treasury collects an estimated of **\$90'851,007,378.09 (Ninety thousand eight hundred and fifty one million, seven thousand three hundred and seventy eight pesos 09/100 MXN)**, becoming a highly transparent, genuine, fair, efficient and effective alternative tax justice mechanism that protects both the rights of taxpayers to comply with their obligation to pay taxes in a proportionate and equitable manner, and the public interest in the collection by the tax authorities.

We want to express with pleasure that only in the period from January 1st to August 15, 2021 (seven and a half months), **PRODECON**, through this alternative dispute resolution procedure during tax audits, practically reached the amount of money that the tax authorities collected through this figure during the entire fiscal year 2020, as taxpayers have paid the amount of **\$15'458,249,831.98 (Fifteen thousand four hundred and fifty eight million, two hundred and forty nine thousand, eight hundred and thirty one pesos 98/100 MXN)**, estimating that by December the tax collection through conclusive agreements will

reach, by the Tax Administration Service (TAS or SAT for its acronym in Spanish), more than 20 billion pesos.

## What services has **PRODECON** provided to taxpayers in these first ten years?

During this decade, the taxpayer's *Ombudsperson* has provided **more than one million four hundred thousand services**, achieving efficiency in its results of 70% in favor of taxpayers. That is, 7 out of 10 people that comes to **PRODECON**, obtain a favorable solution to their problems.

The number of services is schematized as follows:

## Numerary of services from September 1st, 2011, to August 31, 2021

Area	Total
Advisory provided to taxpayers	1,162,037
Legal representation and defense	79,738
Complaints and Claims Procedures	228,022
Conclusive Agreements Procedures	15,142
Opinions to specialized consultations	1,398
Systemic Analysis	104
Total of services	1,486,441

## What are the ten achievements that can be highlighted during this decade of alternative social-tax justice in Mexico?

1. In 10 years, a solid foundation was established to promote a new tax culture among children, young people, and citizens in general, with a total of **51 different publications** (including

specialized books on tax matters, didactic notebooks, and specialized picture books for children and teenagers); **3 short films and 26 tutorial videos were produced, and 118 workshops organized for young people and children**, through which implemented programs called “**PRODECON KIDS**” and “**YOUTHS AND TAXES**”, achieving through them a direct impact on almost 20,000 people. In addition, we have participated in various exhibitions and book fairs, highlighting, as an example, the exhibition entitled “**CONTRIBUTIVE CULTURE IN THE METRO COLLECTIVE TRANSPORT SYSTEM**” (CULTURA CONTRIBUTIVA EN EL SISTEMA DE TRANSPORTE COLECTIVO METRO), which was seen by more than 5.5 million people.

2. In order to generate actions to disseminate and facilitate access to its services and strengthen relationships with influential actors within the governmental, economic, academic, and professional sectors, **44 collaboration agreements** have been signed, and **137 entailment actions** have been carried out with the main social and economic organizations in the country.
3. As an added value of the advisory service, this tax *Ombudsperson* has inserted, since its creation, electronic justice, constituting a communication of easy access to taxpayers, where through remote channels such as telephone counseling, online chat, email and video conferences, those specialized services are provided with in federal tax matters. These services channels allowed to optimize the attention to taxpayers due to the pandemic generated by SARS-CoV-2, without having them to go directly to the **PRODECON** offices.
4. Using the benefits offered by information technologies, such as digital platforms, for example, Zoom and YouTube, the dissemination of workshops and Webinars with current tax topics have been boosted,

allowing taxpayers to understand in a simpler way the new tax provisions, thus causing the timely compliance with their tax obligations.

5. Legal sponsorship through **PRODECON** has focused primarily on defending the rights and guarantees of sectors of the most vulnerable taxpayers, therefore, **79,738 legal representation services** have been provided, which if they had not been provided by **PRODECON** free of charge, many of them would not have received tax justice to their problems or would have obtained it by paying the corresponding fees of a private attorney, so for this type of taxpayers, such as **salaried employees, retirees, pensioners, independent workers who pay taxes under the Tax Incorporation Regime (RIF in spanish) and small businessmen**, it is clear that this *Ombudsperson* fulfills its mission to be considered as a public attorney within reach of those most in need.
6. **PRODECON** has achieved strategic, functional, intelligent, comprehensive, and cutting-edge litigation, with satisfactory results, since the percentage of efficiency in the trials, in which the final resolution obtained in favor of the taxpayers currently corresponds to 78% out the 100%, i.e., 7 out of every 10 administrative remedies or lawsuits that are sponsorship by **PRODECON**, are favorable.





As an example of the favorable effects of the trials that **PRODECON** has promoted in favor of taxpayers, some of the most relevant Theses that have been obtained by the jurisdictional courts are listed below:

Thesis: 2a./J. 171/2016 (10a.)

Item: INCOME. RULE I.3.10.4 OF THE MISCELLANEOUS TAX RESOLUTION FOR 2014 THAT REFERS TO ARTICLE 145 OF THE RELATED TAX LAW TO CALCULATE THE WITHHOLDING CORRESPONDING TO THE WITHDRAWAL OF THE RESOURCES CONTAINED IN THE RETIREMENT SUBACCOUNTS AS SPORADIC INCOME, VIOLATES THE PRINCIPLE OF TAX LEGALITY IN ITS ASPECT OF RESERVATION OF LAW AND HIERARCHICAL SUBORDINATION.

Thesis: 2a./J. 175/2016 (10a.)

Item: INCOME. RULE I.3.12.1 OF THE MISCELLANEOUS TAX RESOLUTION FOR 2009 AND I.3.10.5 IN FORCE IN 2011, 2012 AND 2013, WHICH REFER TO ARTICLE 170 OF THE RELATED TAX LAW TO CALCULATE THE WITHHOLDING CORRESPONDING TO THE WITHDRAWAL OF THE RESOURCES CONTAINED IN THE RETIREMENT SUBACCOUNTS AS SPORADIC INCOME, VIOLATE THE PRINCIPLE OF TAX LEGALITY IN ITS ASPECT OF RESERVATION OF LAW AND HIERARCHICAL SUBORDINATION.

Thesis: PC.I.A. J/166 A (10th.)

Item: INCOME TAX. FOR ITS CALCULATION WITH RESPECT TO THE INCOME DERIVED FROM LOST WAGES, THE MECHANICS PROVIDED IN ARTICLE 95 OF THE LAW OF THE MATTER IS APPLICABLE SINCE IT IS AN INDEMNITY DERIVED FROM THE TERMINATION OF THE LABOR RELATIONSHIP.

In addition, the Technical Committee of Regulations of **PRODECON** has issued 519 Jurisdictional Criterias, derived from the favorable resolutions obtained in lawsuits and administrative appeals, on relevant and/or novel issues in tax matters, motivated by the avant-garde arguments made in the statement of claims or in the administrative appeals to which is applied all the experience obtained throughout the 10 years of litigation of this Agency, among which are some issues such as:

- A. The illegality of taxing lost wages as ordinary wages, even though they constitute a severance payment and, therefore, should be taxed at a lower rate.
- B. The illegality of denying income tax refunds to pure salaried employees, under the argument that the withholding employer did not pay the corresponding tax to the Tax Administration Service.

- C. The illegality of the tax authority's refusal to allow corporations to file the Notice of Suspension of Activities provided for in the Regulations of the Federal Tax Code, by illegally stating that this procedure is not applicable to them.
  - D. The illegality of Rule 3.10.11 of the Miscellaneous Tax Resolution for 2018 and 2019, which imposes on donors the obligation to file a special informative form with respect to an assumption that is not provided for in the Income Tax Law.
  - E. The illegality of Articles 27 and 89 of the Federal Law for the Administration and Disposal of Public Sector Assets, since they do not provide for fair compensation for taxpayers whose assets were illegally seized and cannot be returned to them because they have been disposed of.
  - F. The illegality of the denial of the VAT refund, under the argument that the origin of the resources that originated the refund is not accredited, despite the fact that this requirement is not provided for in the VAT Law.
  - G. The illegality of article "Eleventh" of the "Regulations of the Committee for Tax Payment in Kind" issued by such Committee, regarding the payment of contributions by means of the delivery of plastic works made by their authors, by establishing additional requirements to those foreseen for that purpose.
7. Regarding the Complaints and Claims Procedure service, **PRODECON** has managed to consolidate a true alternative justice in tax matters in Mexico, highlighting the social approach of such procedure, since the taxpayers who request it are mostly individuals or small businesses; with this service, the Institution acquires the character of a true *Ombudsperson* in the

fiscal matter, managing to restructure the model of relations between tax authorities and taxpayers, always seeking to ensure a fair balance in the legal tax relationship, without leaving aside the rights and guarantees of taxpayers.

The Complaint procedure has been consolidated as an effective alternative to solve the controversies that taxpayers have with the tax authorities. It has been gaining ground in the trust of taxpayers, which complies with the constitutional mandate to receive prompt and expeditious justice, which in turn has largely prevented matters from being prosecuted through the traditional justice system by filing lawsuits before the Federal Administrative Justice Court (FAJC or TFJA, for its acronym in Spanish) or the Judiciary.

Likewise, through this procedure, the tax authorities strive to ensure that, at all times, taxpayers' actions are presumed to be in good faith, in accordance with the right enshrined in Article 21 of the Federal Taxpayer Rights Law.

Therefore, the Complaint procedure, as already mentioned, due to its non-jurisdictional nature and flexibility, has turned out to be a highly effective tool for safeguarding the rights of taxpayers, since, through dialogue and conciliation with the tax authorities, **8 out of 10 cases** are solved in a satisfactory manner for taxpayers, even achieving a constant improvement in their administrative practices.

8. Regarding **PRODECON** Systemic Analysis function, the tax authority has been able to recognize the damages caused to the rights of various taxpayers, such as plastic artists, animal feed producers, or simply for all of those who have received an invitation letter from the tax authority, obtaining the issuance of general rules, internal regulations, with which the problems of taxpayers whose tax rights have been affected are solved.

9. Another service available to taxpayers is **specialized consulting**. Throughout these 10 years, **PRODECON** has issued **1,398 consultation opinions** in different matters of federal tax nature, highlighting that, only in 2020 and 2021, more than 470 opinions have been issued, being one of the issues that have generated uncertainty in taxpayers, mainly from labor subcontracting contractors, is the reform to Article 1-A, section IV, of the Value Added Tax Law, in which the Tax Administration Service was required to indicate its interpretation regarding the content of the article of merit; In response, the TAS issued the Normative Criteria SAT 46/IVA/N, by means of which it specified the scope that the concept of personnel disposition would have in which the 6% withholding foreseen in the referred legal precept would be applied, a situation that for 2021 might be replicated in the matter of specialized services subcontracting, for which reason the corresponding requirements have been issued to know the criteria of the authorities involved.

10. **PRODECON** also has the attribution to **propose amendments to tax provisions before the Treasury and Public Credit Commission of the Chamber of Deputies**, some of which have been approved, are:

- Add in the Federal Tax Code, within Title III, Chapter II "Of the Conclusive Agreements," a procedure that allows taxpayers who are subject to the exercise of a tax audit and do not agree with the facts or omissions discovered by the tax authorities, to file a request for a conclusive agreement procedure in which they express their position, in order to be assessed by the reviewing authority.
- The configuration of the extinction of a tax debt if it has more than 10 years from which the tax debt is due.

- The elimination of the restriction that prevented small entrepreneurs who acquired a business transfer, from being taxed under the Tax Incorporation Regime(RIF, for its acronym in Spanish).
- The obligation of the tax authorities to inform the taxpayer and, in the case of legal entities, their board of directors, at least ten working days prior to the issuance of the last partial assessment of the audit, of the official notice of observations or of the final resolution in the case of electronic reviews, the status of the procedure to which they are audit, when the tax authority detects facts or omissions that may imply non-compliance in the tax payments.

**How has the tax *Ombudsperson* contributed to obtaining in favor of taxpayers a daily, digital, agile, and close alternative tax justice, especially in these times of pandemic caused by the SARS-CoV-2 virus?**

**PRODECON**, like many other institutions, companies and individuals, has had to show a resilient character in the face of complex and hazardous situations, which has forced it to renew, reinvent and rethink its tools and mechanisms to aspire to an unfading social-fiscal justice in favor of taxpayers.

To this end, it has enhanced the use of information and communication technologies (ICT's or TIC's in Spanish), making available communication channels to taxpayers in order to provide them our services through digital consulting, online chat, telephone service, email, as well as personalized or written attention.

In September, **PRODECON** will unveil an important technological advance in the protection and defense of taxpayer's rights, the



application “*Kabil, Tax Defense*” program, which is intended to be an electronic tool available to the most vulnerable taxpayers, that will contain information and resources on tax matters, with a simple and didactic language, so that the people may know and assert their rights in a timely, efficient and adequate manner in such tax matters.

The above, considering the complexity of the Mexican tax system that in many occasions hinders an efficient defense of the taxpayer's interests, so to counteract such circumstance, we took the task of elaborating digital didactic books, practical manuals, forms, and intelligent questionnaires with necessary, functional and practical information that allows a strategy of adequate, fair and restorative defense of the taxpayer's rights, prevailing, of course, to generate and strengthen a tax culture for the Mexico's development and growth, through its infants, young people and adult population.

It should be noted that the word “*Kabil*” has a Mayan origin and means “*who has a good hand to sow.*”

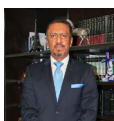
## What has been the projection of Mexico, through **PRODECON**, in the international arena?

- Mexico, through **PRODECON**, has become an international reference, exporting specialized literature and expertise in the protection and defense of taxpayers' rights.
- **PRODECON** has been considered by the governments of Guatemala, Chile, and Poland, as a model for the creation of Public Institutions that might function as taxpayer's *Ombudsperson*.
- In January 2018, **PRODECON** hosted the first meeting of the new United Nations (UN) Subcommittee on Tax Dispute Resolution and Avoidance Mechanisms.





- The new UN Tax Dispute Resolution Manual takes **PRODECON** as a model of international best practice.
- Chile and Argentina have implemented Conclusive Agreements Procedures in their tax legislation as an alternative mechanism for the resolution of tax controversies.
- An effective relationship has been arranged with 16 embassies in Mexico to support their compatriots with tax problems in our country. An effective relationship has been arranged with 16 embassies in Mexico to support their compatriots with tax problems in our country.
- There has been participation and coordination with international organizations, such as the World Bank in the preparation of the “Comparative Study about Taxpayer’s defense Organisms in Latin America - Experiences and Opportunities for improvement”, and with the Economic Commission for Latin America and the Caribbean (ECLAC) in the research “Tax justice in the Salvador, Guatemala and Mexico, and the role of **PRODECON** in access to tax justice through non-jurisdictional procedures”.
- **PRODECON** has participated in various international events, including the “2nd International Conference on Taxpayer Rights” and the “Subcommittee on MAP Dispute Avoidance and Resolution” (UN Subcommittee of Tax Experts).



**Luis Alberto Placencia Alarcón**

Proctor in Charge for the Taxpayer's Defense



# New proposals for the legal reform in favor of the rights and guarantees of taxpayers

Faced with a complex and uncertain stage, in which the economic, social, and health effects generated by the COVID-19 pandemic still prevail, undoubtedly in a state of law, it is essential to continue observing and guaranteeing taxpayer's rights.

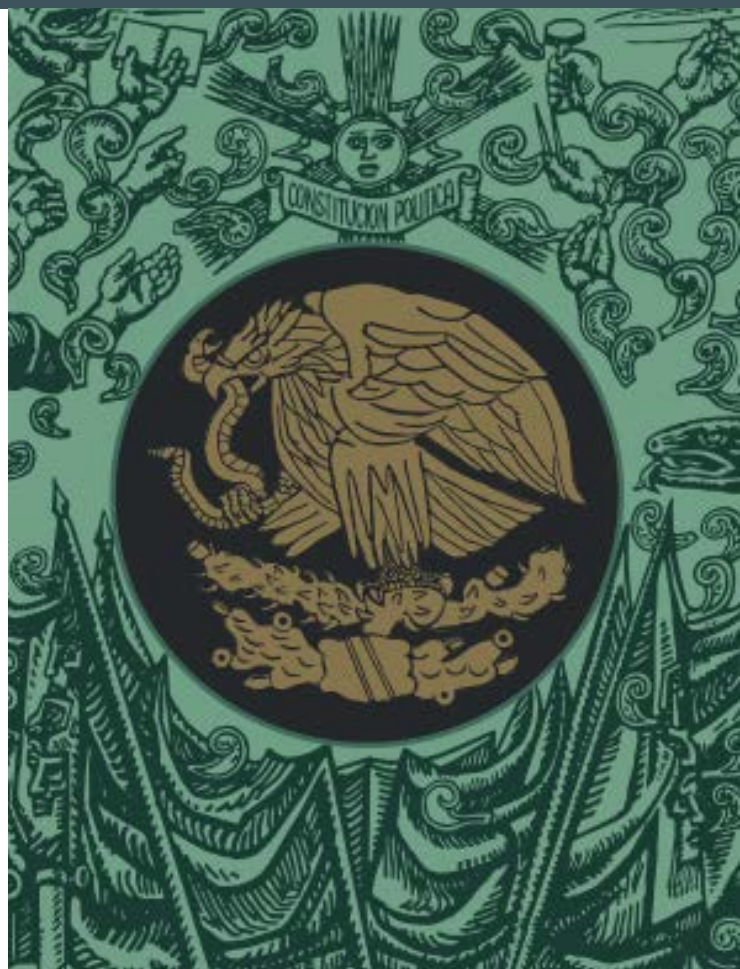
However, it is not unknown that taxpayers have suffered economic damages in this pandemic; even in some cases, they have closed their businesses, mainly due to low demand in consumption and due to the closure of economic activities.

Notwithstanding the foregoing and despite the context of great economic adversity in which we live, in the first semester of 2021, it was reached a tax collection higher than the established in the corresponding program of the Federal Income Law of 2021 . This achievement was thanks to the taxpayers. They have contributed significantly to this effort by continuing to comply with their tax obligations. In this framework, it is important to recognize that taxpayers have been allies in the tax collection target.

However, this Advocacy Agency, being the Fiscal **Ombudsperson**, cannot be oblivious to the task of strengthening the rights and guarantees of the people in tax matters and participating in the preparation of fiscal modification proposals that contribute to enhancing those prerogatives. With the firm purpose of helping to improve the relationship between federal tax authorities and taxpayers to increase tax compliance, that is, through measures that give them legal certainty and security.

Hence, from the analysis of the problems that taxpayers have expressed to us, through our various services, is that the experience has been retaken to raise bill proposals of specific modifications, which pay to ensure the rights and guarantees of taxpayers, bill proposals that we will make known to you in a comprehensive and developed way in our next magazine that comes out in October 2021.

On the other hand, from the international comparative analysis based on the evolution of taxpayer's rights, it is pointed out that countries such as the United States and Denmark established rights that we do not have in our Federal Taxpayer Rights Law; and it is convenient to incorporate those rights to improve the relationship between the taxpayer and the fiscal authority, in such a way that, through efficient protection mechanisms, taxpayers' rights are protected and safeguarded.



*Chamber of Deputies - H. Mexican Federal Congress*



For those purposes, the Tax *Ombudsperson* deemed it necessary to present some modification proposals to the Federal Taxpayer Rights Law, which since its publication on June 23, 2005, it has not been modified; however, in the past years, the Mexican tax system has undergone huge changes focused on strengthening the control, management, and oversight labor of the tax authority.

For this reason, we consider that it is necessary to update the specific law that regulates taxpayers' principal rights and guarantees through a modification proposal, which is consistent with changes already made in the tax system and in the international law.

The law reform proposal, in addition to others that **PRODECON** will present to the Treasury Commission of the H. Chamber of Deputies, consists of incorporating the following prerogatives to the Federal Taxpayer Rights Law.

**1. Right to have a public or private defender.**

In all actions and resolutions issued by the tax authorities, it must be informed through the respective document that the taxpayer has the right to be advised and represented by the Taxpayer's Defense Attorney, if he decides so.

**2. Presumption of innocence.** Taxpayers have the right to presume compliance with their tax obligations if no certain tax debt against them is found.

**3. Privileging substance over form.** It is considered that each case or tax problem should be the object of a special assessment to determine if the omission of a formal requirement is enough to sanction the offender with the loss of a substance right; without the principle of substance over form being unrestricted in favor of taxpayers, since it must be assumed that the specific case has to update certain conditions in order to do so.

**4. Tax regulations issued by tax authorities that grant administrative facilities to taxpayers must be simple and accessible.** In order to grant legal certainty to taxpayers on the application of rules in those cases where the legislator grants the tax authority to issue general rules, these must be established clearly and precisely, so they should not establish additional charges or obligations to those contemplated in the law.

**5. Right to receive an upstanding tax justice in the administrative jurisdiction.** The tax authorities have the character of judging when taxpayers choose to file administrative appeals, from which they are obliged to observe the principles of the fundamental right of justice administration, based on Article 17 of the Constitution.

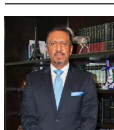
**6. To establish that, in all the actions and resolutions issued by the tax authorities, they must contain the following legend:** "You have the right to be informed and assisted by the tax authorities and to be treated with respect and consideration. If you require guidance or assistance regarding your rights, you can go to the Taxpayer Advocacy Agency, [www.prodecon.gob.mx](http://www.prodecon.gob.mx), or call (+52) 55 12 05 90 00 and 800 611 0190".

### Regarding VAT

One of the Tax *Ombudsperson's* fundamental concern is the problem taxpayers refer to in terms of VAT refunds, and without ceasing to be oblivious to the risks of aggressive fiscal planning that the tax authority has detected regarding the materiality of the operations, to the absence of withholdings or transferred taxes, as well as to the commonly called "ghost companies", it has been considered pertinent to submit a tax modification proposal to establish, as an alternative to the tax payers for the VAT refund, the presentation of a special certificate of compliance with tax obligations of their suppliers and, in this way, the taxpayer

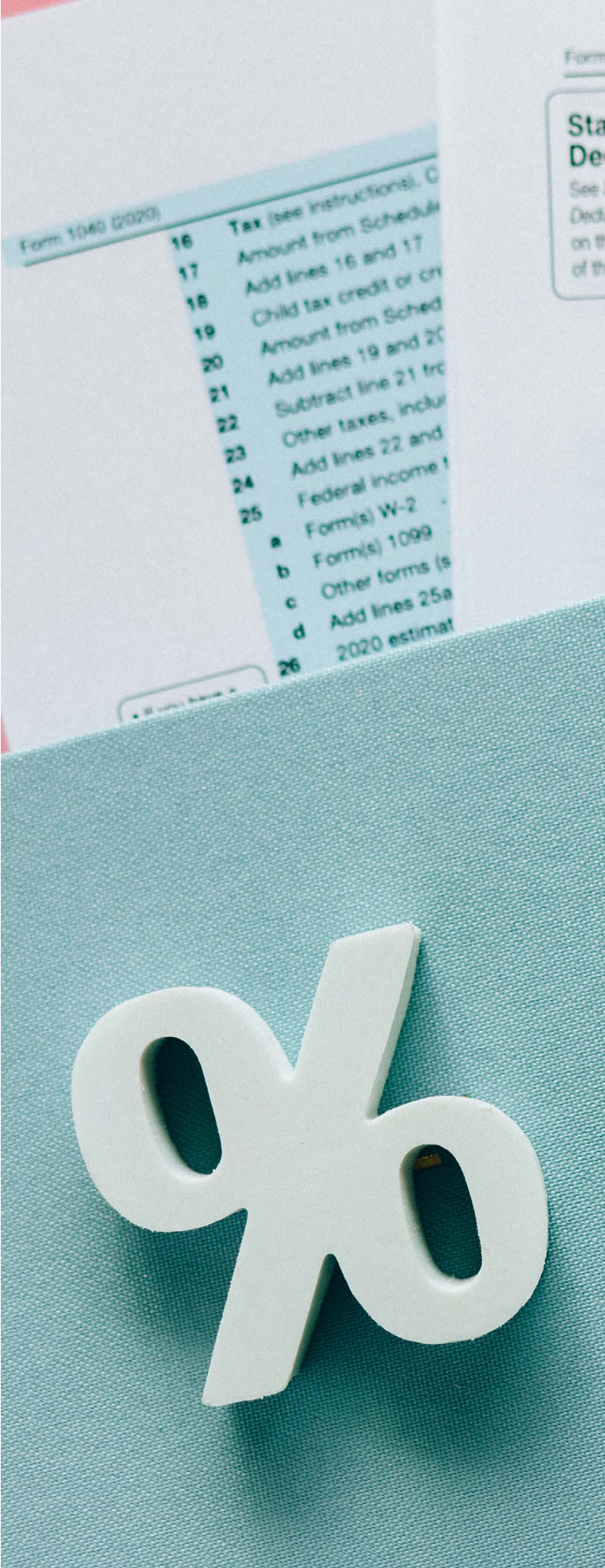
wouldn't have to apply requirements that doesn't correspond him to meet. The objective of this certification proposed is to be added to the different existing VAT certifications, as well as the opinions on compliance with tax obligations.

The integral part where the how, why and for what is exposed, will be shared in a wide and developed article, in our next magazine on October 2021.



Luis Alberto Placencia Alarcón

Proctor in Charge for the Taxpayer's Defense



# Transparency, Information Access and Protection of Personal Data at PRODECON

Parallel to what **PRODECON** projects around its substantive processes, which of course these are the proof of being an institution that places taxpayers' rights at the center of its objectives and regular activity, the administrative procedures developed from the General Secretariat with the support of its administrative units, show the institutional commitment to the mission of guaranteeing the taxpayers right to have access to the mechanisms of justice in tax matters.

For the General Secretariat, obtaining concrete and measurable results is a priority, as this shows that the resources invested in the operation of the Institution are oriented to the benefit of its target population, providing the various administrative units with the necessary inputs for the continuity and improvement of the services offered.

## Services close to taxpayers

As a decentralized, non-sectorized agency of the federal public administration, one of its objectives is to provide services to a sector of the population that is in legal or factual situations of a tax nature vis-à-vis the State, it should be noted that the institution is not only committed to guaranteeing access to justice in tax matters in favor of taxpayers, but also to make it accessible throughout the national territory. Therefore, the operation of institutional services has been prioritized in accordance with the principle of decentralized organization of functions through Delegations

of the Taxpayer's Advocacy Agency, established in thirty states and, in some of them, in addition to the Delegation, there are representative offices in the main municipalities. In this way, there will always be a **PRODECON**'s physical office close to taxpayers, not to mention that the new normality scheme due to the pandemic has also allowed an approach with the population, through the use of remote communication platforms for the purposes of its substantive services.

How does **PRODECON** contribute to guarantee Transparency, Access to Information, and Protection of Personal Data?

First of all, it must be acknowledged that all information generated, obtained, acquired, transformed, or in possession of the federal compelled subjects is public and accessible to any person, with the exceptions established by the law on the matter; that the human right of access to information includes requesting, investigating, disseminating, seeking and receiving such information; and that the protection of personal data is an imperative need nowadays.

Based on this, the Taxpayer Advocacy Agency has public servants trained in such matters, which has led to obtain the recognition and their respective endorsements, as "100% trained institution" and "100% Transparency Committee's trained", granted by the National Institute for Transparency, Access to Information



and Protection of Personal Data (INAI in Spanish) to the obligated subjects that complied with their training on issues of the Transparency and Access to Public Information Federal Law and the General Law on Protection of Personal Data Held by Obligated Subjects.

In addition, this Agency, through the General Secretariat, has a coordinated training for certain public servants on specialized topics, such as: Instructional Guide on the use of the Transparency Obligations Portal System, for compliance with transparency obligations; Classification of Information and Proof of Damage, and Introduction to the General Archives Law, for the preparation of public versions; and, Security Measures for the Protection of Personal Data in the Public Sector, Privacy Notices, Security Document, and Treatment of biometric data and management of security incidents of personal data, to ensure the exercise of ARCO Rights; thus ensuring that the processes followed by **PRODECON** in its interior and towards taxpayers lack opacity and, consequently, are subject to public scrutiny.

Also, in order to comply with national standards on transparency, **PRODECON** has obtained a rating of **100% in compliance with its transparency obligations**, which can be corroborated with the results published by the INAI in the global index of compliance with transparency portals, where it is possible to notice that this Entity is among the 249 Obligated Subjects (out of 889 at the federal level), which in the fiscal year 2020, has obtained the highest rating in this topic, evidencing the high commitment that the Institution has to ensure this fundamental right, by making available to all citizens complete, timely, truthful and accessible information, thus complying with accountability.

How does **PRODECON** guarantee the quality of its processes and services?

**PRODECON** is committed to satisfy the needs of taxpayers by providing expeditious, relevant, and timely services, permanently promoting the continuous improvement of our work processes, through the implementation of a Quality Management System.

Since 2013, the institution was certified under ISO 9001:2008 and, as of 2018, under ISO 9001:2015, which guarantees that the substantive processes of customer service operate efficiently and have a high level of quality and recognition by users.

As part of the structural elements of the Quality Management System, the Taxpayer Advocacy Agency conducts a taxpayer satisfaction survey in order to know the taxpayer's perception of the service provided. This survey is distributed and compiled by the areas that provide guidance, advisory, representation and legal defense services, complaints and claims, and conclusive agreements.

The results obtained show that it has a high degree of recognition by taxpayers, **obtaining a satisfaction rate of more than 95%**. An outstanding fact is that taxpayers learn about the services provided by this agency, mainly by personal recommendation, which supports the excellence quality service.

The implementation of this system has brought benefits, such as work integration, process efficiency, continuous improvement, and efficient use of resources, which allows the institution to meet its objective of ensuring the exercise of the right to justice in tax matters.

1 Rights of Access, Rectification, Cancellation and Opposition in the processing of personal data. (ARCO in Spanish)

2 [https://home.inai.org.mx/?page\\_id=3330](https://home.inai.org.mx/?page_id=3330)

Following this line of responsible, transparent, and ethical action, **PRODECON** has been one of the institutions with the best performance in the creation and operation of its Ethics and Conflict of Interest Prevention Committee.

This action, proposed by the Ministry of Public Administration through the National Program to Combat Corruption and Impunity and Improve Public Management 2019-2024, as part of the National Development Plan 2019-2024, was installed in **PRODECON** as one of its most valuable elements, thanks to its objectives and functions, which are developed around prevention, surveillance, dissemination of values, attention to complaints and issuance of recommendations to ensure the non-repetition of conducts not in accordance with the Constitutional principles of Legality, Honesty, Loyalty, Impartiality and Efficiency.

**PRODECON** is one of the best-qualified institutions in this area, always maintaining firm and constant lines of action. It has a Code of Conduct aligned with the guidelines established by the Republic Presidency, which is disseminated and promoted among the staff of the institution through electronic, printed, and educational media.

It actively participates in the work of surveillance and attention to complaints, not only capturing, reviewing, and addressing the demands and concerns of individuals and public servants, but also issuing recommendations, informing to the Internal Control Office about possible misconduct by public servants of the Agency that could be subject to sanctions, and following up on the measures agreed upon in a collegial manner.

Through the implementation of positive actions, good practices, and promotional measures, we have sought, on the one hand, to create a permanent mechanism for the execution of

improvement actions and, on the other hand, to make ethics a constant in the conscience of all the collaborators.

In conclusion, beyond the obligation to legally and efficiently manage public resources, as well as to provide the administrative, technical and logistical support necessary for the proper and correct functioning of **PRODECON** administrative units, we have also assumed the commitment to guide the institution's activities towards a future with values, principles and tangible results.

With these actions, **PRODECON** reaffirms its commitment in defense of taxpayers while contributing to enforce the guiding principles established by the present administration, such as: *Honesty and righteousness, Nothing outside the law, No one above the law, Eradicate corruption, waste, and frivolity, Recover the rule of law and Command by obeying.*



**María de los Ángeles Ocampo Allende**  
General Secretary in Charge

# Do you know the benefits established in Articles 70-A and 74 of the Federal Tax Code related to the reduction and forgiveness of fines by the Federal Tax Authorities?

Knowing the benefits provided by the Federal Tax Code will help you to reduce the burden of payment of omitted taxes and their accessories

When the tax authority exercises its fiscal inspection faculties to a taxpayer, with the purpose of verifying compliance with the tax provisions, the uncertainty that is generated for taxpayers lies in the fact that such authorities find facts or omissions that could result in contributions pending to be paid to the federal treasury and which invariably can affect their assets, since with such qualification, the result will not only be the determination of omitted taxes but also of updates, surcharges, as well as fines, which generate an even more burdensome tax burden.

Hence the importance of knowing the benefits available to taxpayers to legally reduce the payment of the accessories of the omitted taxes, such as the substantive fines, or in its case, the fines of form derived from non-compliance with tax obligations related to the filing of returns, applications, documentation, notices or information, issuance of the digital tax receipt (DTR or CFDI, for its acronym in Spanish), among others.

## What are fines?

It is important to specify that fines are defined as an economic sanction, provided by law, imposed by the tax authorities on taxpayers when they do not comply voluntarily or spontaneously with their tax obligations or when they comply with them incorrectly.

Likewise, such fines shall be applied regardless of the payment of the omitted contributions, updates, and surcharges, or the corresponding penalties when criminal liability is incurred.

## What types of fines are there?

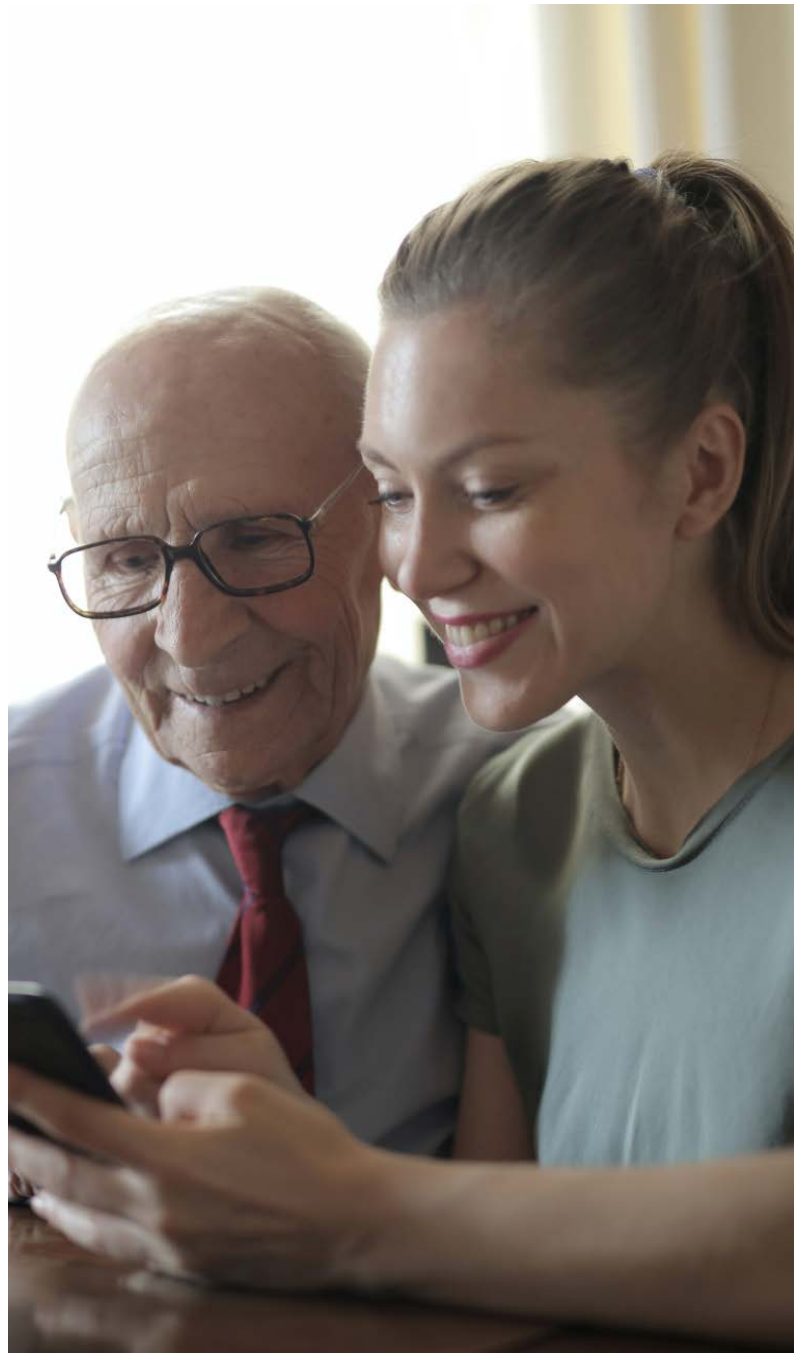
There are two types of fines, commonly referred to as:

**Formal Fines.** Those that are applied for committing behaviors considered as infractions in the fiscal laws, such as in the Federal Tax Code or the Customs Law, for example:

- Failure to file the returns, applications, notices, or certificates required by the tax provisions.
- Failure to file returns through the electronic means indicated by the Tax Administration Service (TAS, or SAT, for its acronym in Spanish).
- Filing returns at the request of the tax authorities, among others.

**Substantive Fines.** Those applied for committing infringing conduct, such as:

- The total or partial omission of the payment of contributions (VAT, Income Tax (IT or ISR, for its acronym in Spanish), The Special Tax on Production and Services (STPS or IEPS, for its acronym in Spanish), for example).
- Declaring tax losses greater than those actually incurred.
- Obtain a refund, crediting or compensation, undue or in an amount greater than that which corresponds.
- Failure to report to the tax authority, taxes withheld or collected, among others.





In that sense, when taxpayers are in the exercise of the fiscal inspection faculty by the tax authority, and chooses to correct their tax situation, or when the authority has already issued the resolution by which it determines tax debt to the taxpayer and the same is firm (definitive), taxpayers have the benefits granted by **Articles 70-A and 74 of the Federal Tax Code (FTC or CFF, for its acronym in Spanish)**, which will allow them to reduce the amounts owed and facilitate their payment.

The tax benefits provided for in the legal provisions of reference, consisting on the reduction and remission of fines, may be requested at different times:

- During the exercise of the tax authorities fiscal inspection faculties.
- Within the Conclusive Agreement Procedure.
- When the resolution that determined the tax debt is definitive.
- When the resolution is not definitive, but the taxpayer has consented to it. It is understood that there is consent of the fine when the remission request is made by the tax payer before the expiration of the legal terms for its challenge or when the taxpayer decides to correct his tax situation before the debt is settled by the reviewing fiscal authority.

## Benefits contained in Article 70-A of the FTC

### What does it consist of?

In the reduction of fines to 100% and the application of the rate of surcharges for extension, which for 2021, for example, would be

0.98%<sup>1</sup>, instead of 1.47%<sup>2</sup>, on taxes determined by reason of the exercise of the tax authority's fiscal inspection faculty, such as desk reviews, audits, or electronic reviews (all three are different kinds of fiscal inspection faculties).

### When do these benefits proceed?

**1.** When the tax authority, upon carrying out any of the fiscal inspection faculties, has determined the total or partial omission of tax payments, without including those that are obligated to withhold, collect or transfer. Therefore, the benefits **will proceed on fines that are already firm or are recognized or determined by the own taxpayer.**

**2.** Notwithstanding the above paragraph, there is the possibility of requesting such benefits on fines and surcharges determined for withheld, collected, or transferred taxes, **as long as they have not been collected or deducted from the obligor (their costumer), and are paid directly by the taxpayer to whom the tax debt were determined**<sup>3</sup>.

**3.** Likewise, when taxpayers who, without having exercised their fiscal inspection faculties by the tax authorities, have been determined to be ineligible for any compensation and, as a result, are assessed fines and surcharges, they may also request the benefits of reduction of fines (100%) and application of the surcharge rate for an extension.

### When doesn't these benefits proceed?

This benefit does not apply with respect to those taxes that the taxpayer is obliged to withhold, collect or transfer (those that the taxpayer collects or retains from a third party, for example, Value Added Tax), and the taxpayer has withheld or transferred them, omitting to report them to the tax authority.

<sup>1</sup> In accordance with the provisions of Article 8 of the Federal Revenue Law in force.

<sup>2</sup> Rule 2.1.23 of the current Miscellaneous Tax Resolution.

<sup>3</sup> Rules 2.16.1 and 2.16.3. of the Miscellaneous Tax Resolution in force.

## To whom are these benefits requested from?

In accordance with the provisions of processing form 198/CFF "Request for reduction of fines and application of the surcharge rate for extension" of Annex 1-A of the Miscellaneous Tax Resolution in force, the request to obtain the benefit referred to in Article 70-A of the Federation Tax Code, must be submitted in writing through the official electronic mailbox (called in Spanish, buzón tributario) or in-person, to the corresponding Tax Collection Administration in accordance with the taxpayer's tax domicile, which must comply with the requirements established for such purpose. If the tax debts are determined by a coordinated tax authority (the tax authorities of the different Mexican states), with the Reviewing Authority that is exercising the fiscal inspection faculties.

## What are the requirements?

- Submit a duly signed written document, under oath, which at least contains: name or company name of the taxpayer, Tax Registration Number (TRN or RFC, for its acronym in Spanish), address to hear and receive notifications, indicate the authority to which it is addressed, accredit the legal representation in case it corresponds.
- To have compliment with the appropriate filling of the notices, returns, and other information required by the tax provisions, corresponding to the last three fiscal years.
- Not having certain differences in the payment of taxes and their accessories of more than 10% with respect to those declared.
- Not having unduly declared losses 10% greater than those actually incurred if the tax authorities had exercised their fiscal inspection faculties for any of the last three fiscal years.

- Comply, if applicable, with the requirements issued by the tax authorities in the last three fiscal years.
- Not having incurred in any of the aggravating circumstances referred to in Article 75 of the Federal Tax Code. (Determination of fines for recidivism, a commission of the infraction consisting of the omission in the payment of contributions, among others).
- Not being subject to one or more criminal proceedings for offenses under tax legislation or not have been convicted of tax offenses.
- Not having requested in the last three years payment in installments of withheld, collected, or transferred contributions.

## How much time does the authority have to report on provenance?

The authority must respond to the taxpayer within a maximum period of 3 months from the date the request is filed; the tax authority may require to the applicant, within a period of no more than 20 days after filing of the request, to provide data, reports, or documents that it deems necessary.

## Once authorized, how long do I have to pay the omitted taxes?

The taxpayer will have 15 business days following the notification date of the response to the petition, to make the total payment specified by the authority in its resolution, which cannot be challenged in court, since it does not constitute an instance (however, only indirect constitutional protection may be applicable).

## Example of application of benefits provided for in Article 70-A of the FTC

The taxpayer acknowledged omission of annual income tax for the fiscal year 2019, amount to be regularized that corresponds to **\$1'520,000.00**, updated amount that was determined during the audit practiced to detect the possible omission of that year's taxes; therefore, requested the benefit under Article 70-A of the FTC, resulting favorable his request, generating savings as follows:

Concept	Fines reduced to 100%	Amount of late payment sur-charges	Rollover surcharge amount	
Due to the correction of the annual income tax form	\$14,230			
Due to the pay-ments omission of annual income tax	\$836,000	\$268,128	\$178,725.25	
Updated Omitted Tax				\$1'520,000
Final Amounts				
Total fines reduced				\$850,230
Amount of surcharges decreased				\$89,375.75
Income Tax (ISR in Spanish)				\$1'520,000
Total Amount Payable				<b>\$1'609,375.75</b>

As it is observed in the previous example, fines were reduced in a total amount of **\$850,230.00**; as well as the benefit in the reduction of the rate of surcharges for extension was applied, generating a reduction in the amount of **\$89,375.75**; therefore, in order for it to be applicable, it is obligated to cover the updated omitted contribution and the surcharges that were not susceptible to reduction, which amounts to a total of **\$1'609,375.75**.

Thus, instead of paying **\$2'638,358.00**, he ended up paying **\$1'609,375.75**.



## Benefits contained in Article 74 of the FTC

### What does it consist of?

In the remission of fines in different percentages, depending on the type of infraction and particular situation in which the taxpayer is, and this reduction will be up to 100% of the amount of the penalties.


## When do these benefits proceed?

- Due to fines imposed for infringement of tax and customs provisions.
- Due to fines imposed or determined due to the omission of foreign trade taxes.
- Due to those fines self-determined by the taxpayer, due to an infraction committed.
- Due to the imposition of fines due to reporting tax losses greater than those actually incurred, which when those losses are reduced in the income tax returns of subsequent years, derived from the authority tax audit, results in the filing of the respective supplementary returns with payment of the updated omitted income tax and its accessories.
- Due to fines imposed on land holders under the “ejido” system (a piece of land farmed communally under a system supported by the state), commoners, small landowners, settlers, “nacionaleros” (they are the owners of vacant or national lands that have the use and usufruct thereof); or, in the case of common land, cooperatives with agricultural, livestock, fishing or forestry business activities, unions, mutual benefit societies, workers’ organizations or companies that are majority or exclusively owned by the workers, constituted under the terms of Mexican law.
- Due to fines imposed for non-compliance with federal tax obligations other than payment obligations to taxpayers who pay taxes under Titles II, III, and IV of the Income Tax Law.
- Due to fines imposed for non-compliance with obligations other than payment, in Foreign Trade matters.
- When the taxpayer chooses to regularize their tax situation, and they are subject to fiscal inspection faculties.

## When doesn't these benefits proceed?

- Taxpayers with a final conviction for tax offenses established in Article 95 of the FTC (conspiring to commit a crime, allying, deceiving, inducing, aiding or abetting such action, etc.).
- For legal entities (that their legal representatives, partners, or shareholders) are located within any of the assumptions mentioned in the previous point.
- Due to those fines that are not definitive, except when the taxpayer has consented to them.
- Due to those fines that are allied to a contested act.
- Taxpayers whose data, such as name, denomination, or company name and Tax Registration Number code, are or have been published in terms of Article 69-B of the FTC.
- Taxpayers who are not located in the Federal Taxpayers Registry (FTR).
- In the case of fines for infractions contained in provisions other than tax or customs provisions.
- In the case of fines in which the taxpayer has requested the suspension of the administrative enforcement procedure (procedure used to collect the tax debts), the remission has been authorized and the part not remitted has not been paid within the term granted.
- Regarding fines in which the tax authority has authorized their remission, and this has not taken effect because the taxpayer did not pay the part not remitted within the period granted.
- In the case of fines derived from acts or omissions that imply the existence of aggravating factors in the commission of infractions, in terms of Article 75 of the FTC.





## To whom are these benefits requested from?

Pursuant to the provisions of the procedure form 149/CFF “*Application for remission of fines*” of Annex 1-A of the Miscellaneous Tax Resolution in force, the application must be filed to the corresponding Tax Collection Office in accordance with the taxpayer’s tax domicile or, in the case of fines imposed by the coordinated tax authorities, to the Reviewing Authority that is exercising the fiscal inspection faculties, through a free writing filed in the tax mailbox (buzón tributario, in Spanish) or at the physical offices of the Reviewing Authority, which contains and complies with the requirements established for such purpose.

## How much time does the authority have to report on provenance?

The authority must respond to the taxpayer within a maximum period of 3 months from the date the request is filed; the tax authority may require to the applicant, within a period of no more than 10 days after filing of the request, to provide data, reports, or documents that it deems necessary.

## What are the requirements?

- Freewriting signed by the taxpayer or, in its case, legal representative, in which the data of the taxpayer is established, such as: name, company name, tax domicile, Federal Taxpayers Registry, address to hear and receive notifications, as well as stating under oath that they were not and are not subject to criminal proceedings for tax offenses, briefly stating the

reason, the period or periods of fines for which the remission is requested, the amount of the debt, type of tax, period to which it corresponds and, if applicable, the operation number of the respective tax return, filing the date and the authority that, if applicable, is exercising fiscal inspection faculties.

- To file, when required, the annual income tax return corresponding to the last fiscal year or, if applicable, the supplementary tax returns within a period of three days from the date following the day on which the respective requirement is notified, in order to resolve the request for remission.
- Cover the amount of the omitted contribution, together with its updates and surcharges and, if applicable, the amount of the fines or part of them in which it has not proceeded to its condoned.

## Once authorized, how long do I have to pay the omitted taxes?

The taxpayer will have 10 business days following the date of notification of the response to the petition; this resolution may not be challenged in court because it does not constitute an instance (however, only indirect constitutional protection may be applicable).

## How are the percentages to be forgiven determined?

Next, we will look at how the forgiveness percentages will be determined:

### a) During the audit procedure

The taxpayer must fully self-correct to the satisfaction of the authority.

Assumptions of fines to be condoned	Own tax	%	Withheld or Transferred tax	%
Derived from the exercise of the fiscalization faculties (prior to the determination of the tax debt).	✓	100	✓	100
When you regularize your tax situation through installments or deferred form (66 and 66-A of the FTC).	✓	90	✓	70
Due to the application of undue tax losses	✓	90	--	--

### b) After the audit procedure (with determining tax debt)

The tax authorities shall determine the percentage to be condoned, considering the age of the fine, as of the date of expiration of the obligation to file the form in question, or in the case of fines in foreign trade, as of the date on which the goods were dispatched, the violation was committed or discovered, in accordance with the following:

I. Fines already determined	Own tax	%	Withheld or transferred tax	%
Up to 1 year	✓	100	✓	70
(+) 1 year (up to) 2 years	✓	90	✓	60
(+) 2 years (up to) 3 years	✓	80	✓	50
(+) 3 years (up to) 4 years	✓	70	✓	40
(+) 4 years (up to) 5 years	✓	60	✓	30
(+) 5 years	✓	50	✓	20

<b>II. Fines already determined - regularized in installments or by deferral (66 and 66-A of the FTC)</b>	<b>Own tax</b>	<b>%</b>	<b>Withheld or transferred tax</b>	<b>%</b>
Up to 1 year	✓	90	✓	60
(+) 1 year (up to) 2 years	✓	80	✓	50
(+) 2 years (up to) 3 years	✓	70	✓	40
(+) 3 years (up to) 4 years	✓	60	✓	30
(+) 4 years (up to) 5 years	✓	50	✓	20
(+) 5 years	✓	40	✓	10

c) Due to non-compliance other than the payment obligation for taxpayers of Title II, III and IV of the Income Tax Law, as well as Foreign Trade

<b>III. Fines imposed due to non-compliance with obligations other than those of payment obligation (Internal Taxes)</b>	<b>%</b>
Up to 1 year	100
(+) 1 year (up to) 2 years	90
(+) 2 years (up to) 3 years	80
(+) 3 years (up to) 4 years	70
(+) 4 years (up to) 5 years	60
(+) 5 years	50
<b>IV. Fines imposed due to non-compliance with obligations other than payment obligations (in foreign trade taxes)</b>	<b>%</b>
Up to 1 year	70
(+) 1 year (up to) 2 years	60
(+) 2 years (up to) 3 years	50
(+) 3 years (up to) 4 years	40
(+) 4 years (up to) 5 years	60
(+) 5 years	50



## What other option do I have if the fines are not 100% condoned?

Pursuant to the provisions of rule 2.16.9 of the Miscellaneous Tax Resolution in force, in the event that the authority has not authorized the condoned of 100% of the fines imposed, the taxpayer may request that the portion not condoned, may be paid in installments or deferred, provided that the taxpayer comply with the following:

I) File a request in accordance with processing form 103/CFF "Request for authorization to pay debts in partial or deferred installments", contained in Annex 1-A of the Miscellaneous Tax Resolution (RMF, for its acronym in Spanish);

II) Cover at least 20% of the total of the omitted contributions updated along with their accessories and/or Current Charges, which have been requested authorization in payments;

III) The partial amount may not be greater than 12 months in deferred payments and greater than 36 months in the case of installments (installments refer when it is established by months; deferred when a payment deadline is established).

## Examples of Fine Waiver Requests

### a) Final fines due to own and withheld taxes

The taxpayer requested the condoned of substantive fines determined for General Import Tax (tax determined in the amount of \$131,412.00 updated) and Value Added Tax (tax determined in the amount of \$63,077.00 updated), as well as a formal fine (according to article 176, section II of the Customs Law in the amount of \$5,150.00 updated), as follows:

Concept	Updated Omitted Tax	Updated fine	Percentage to be condoned	Amount Condoned	Amount Payable
Due to total or partial omission of foreign trade taxes	\$131,412	\$169,876	90%	\$152,888	\$16,988
Due to Value Added Tax omission	\$63,077	\$28,030	60%	\$16,818	\$11,212
Due to violation provided for in Article 176, Section II of the Customs Law		\$5,150	60%	\$3,090	\$2,090
Total Amount Condoned					\$172,796
Total Amount of Fines Payable					\$30,290
Updated Amount of IGI omitted					\$131,412
Updated Amount of VAT omitted					\$63,077
Amount to be paid after Condoned Fines					<b>\$224,779</b>

Now, as we can see, for the forgiveness of fines to proceed, the taxpayer paid the amount of **\$224,779.00**, which includes the amount of the fines not condoned, as well as the updated omitted taxes, within the maximum term of 10 business days following the date of notification of the favorable resolution, benefiting from condoned of fines in the amount of **\$172,796.00**. Thus, instead of having paid a total of **\$397,575.00**, he ended up paying only **\$224,779.00**.

#### **b) Fines due to the omission of contributions as a direct subject of Income Tax and VAT within the exercise of inspection fiscal faculties (substantive fines)**

The taxpayer was subject to the exercise of fiscal inspection faculties by the tax authority through a desk review, detecting omissions for Income Tax, Income Tax withholdings for wages and salaries, assimilated to salaries and for business and professional activities, Value Added Tax, as well as Value Added Tax withholdings, totaling omitted taxes for an amount of **\$4'053,250.00**, which the taxpayer acknowledged, within the tax authority's fiscal inspection faculty, and within the Conclusive Agreement Procedure.

However, due to the fact that this was the second occasion in which the taxpayer was requesting the adoption of a Conclusive Agreement, and in the first one, he enjoyed the benefit of the 100% of condoned fines, indicated in article 69-G of the FTC, it requested in writing to the Reviewing Authority, the fines to be applied (in this case, it only proceeded on the taxes in charge as a direct taxpayer, and not on the indicated withholdings taxes), to the amount of fines determined for the omission of taxes as Direct Taxpayer of both, income tax and VAT, proceeding with the forgiveness of 100% of those fines, amount that totaled **\$1'100,484.00**.



### c) Fines due to not complying with tax obligations other than the payment of contributions (formal fines)

The taxpayer that pays taxes under the terms of Title III of the Income Tax Law, was located within the assumption of having omitted the obligation to provide information regarding the authorization to receive donations, the use, and destination that has been given to the donations received in the fiscal years 2017, 2018 and 2019, therefore through two final resolutions, the tax authority determined the following fines of form:

TAX YEAR	FORMAL FINES (HISTORICAL AMOUNTS)
2017	\$ 80,000
2017	\$ 89,330
2018	\$ 89,330
2019	\$ 89,330

Therefore, when requesting the forgiveness of such fines, it was in the assumption of rule 2.16.13. of the tax miscellaneous resolution in force, being the amounts to be remitted as follows:

TAX YEAR	FORMAL FINES (HISTORICAL AMOUNTS)	ACTUALIZED AMOUNT	PERCENTAGE TO BE FORGIVEN	AMOUNT FORGIVEN	AMOUNT PAYABLE
2017	\$ 80,000	\$81,776	70%	\$57,243	\$24,533
2017	\$ 89,330	\$ 91,313	60%	\$54,788	\$36,525
2018	\$ 89,330	\$ 91,313	50%	\$45,657	\$45,656
2019	\$ 89,330	\$ 90,286	70%	\$63,200	\$27,086
<b>TOTAL</b>	<b>\$ 347,990</b>	<b>\$354,688</b>		<b>\$220,888</b>	<b>\$133,800</b>
COLLECTION EXPENSES (AMOUNT NOT ELIGIBLE FOR REMISSION)					\$5,173
TOTAL AMOUNT PAYABLE					\$138,973

As we can see, in this example, the taxpayer enjoyed a total amount condoned of **\$220,888.00**, having the obligation only to cover the remainder within a maximum period of 10 business days from the notification of the resolution through which the taxpayer was favorably resolved. **Therefore, the taxpayer, instead of paying \$354,688.00, ended up paying only \$138,973.00.**

In that sense, for any questions about these two procedures, or for any other in tax matters, **PRODECON** offers you its free services of Advice, Legal Consultation, Complaints Procedure, Representation and Legal Defense, and

Conclusive Agreements Procedure, in any of its 30 delegations all around the country, as well as in its central offices located in Mexico City. For more information, you can call 55 12 05 90 00 or toll-free at 800 611 0190 or use the chat service available on the website [www.prodecon.gob.mx](http://www.prodecon.gob.mx) and email [atencionalcontribuyente@prodecon.gob.mx](mailto:atencionalcontribuyente@prodecon.gob.mx).

[\(Check here the tax provisions referred in this article\)](#)



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# *Successful Case, derived from the Conclusive Agreement Procedure*

**PRODECON** is a witness to the signing of a Conclusive Agreement, in which a salaried individual taxpayer, who also paid taxes under the Tax Incorporation Regime (TIR or RIF, for its acronym in Spanish), regularized her tax situation with respect to her income from salaries with the recognition of the withholdings made by her Employer and, likewise, with respect to her income from TIR business activities, with the recognition of the application of the corresponding Income Tax reduction, established in article 111 of the Income Tax Law and with the benefit of the 100% remission of fines, in terms of article 69-G of the Federal Tax Code.

During the audit of the fiscal years from January 1 to December 31, 2018 and 2019, the Coordinated Review Authority observed that the taxpayer had obtained income from salaries and business activities under the Tax Incorporation Regime, for which it had not filed the corresponding returns and, as a result, had omitted to pay the Income Tax payable.

In her conclusive agreement request, the taxpayer argued that, although it is true that she had been omissive in the filing of her returns, it was also true that for her income received from salaries, she had been subject to the corresponding income tax withholding by her employer, and that, with respect to her income from TIR business activities, the income tax reduction established in Article 111 of the Income Tax Law in force during the fiscal years under review was applicable to her; Therefore, she requested those arguments and facts to be taken into account in the determination of the Income Tax payable by her and that the benefit of 100% remission of fines be applied to her in terms of article 69-G of the FTC, since this was the first time she requested the adoption of a Conclusive Agreement, in order to be able to regularize her tax situation.

## *Successful Case, derived from the Conclusive Agreement Procedure*

Consequently, based on the consultation made to the systems and institutional databases in terms of article 63, first and last paragraphs of the FTC, the Reviewing Tax Authority recognized that: i) effectively, the taxpayer's employer had withheld the corresponding Income Tax with respect to her income from wages, therefore, it was only in charge of the taxpayer the payment of the resulting difference after the application of the crediting of the aforementioned withholdings in each fiscal year; ii) the aforementioned taxpayer was registered in the Tax Incorporation Regime as of September 3, 2018, for which reason, with respect to her income from business activities, the Income Tax reduction was applied at 100% and 90%, during its first and second years of taxation, respectively, in terms of Article 111 of the Income Tax Law, for which reason, for the last two bimonthly periods of the 2018 fiscal year, as well as the first four bimonthly periods of the 2019 fiscal year, no Income Tax was payable, since it was the first year under the TIR and, likewise, for the last two bimonthly periods of the 2019 fiscal year, only the tax resulting after the application of said reduction to 90% was payable, since it was the second year under the TIR; and, iii) in the event of regularizing the aforementioned differences, since it was the first time that the taxpayer would signed a conclusive agreement, it was entitled to the remission of fines at 100% in terms of Article 69-G of the FTC.

Therefore, the taxpayer regularized her tax situation by filing the corresponding tax returns and by paying the Income Tax determined by the aforementioned differences.

In this way, the taxpayer and the Reviewing Authority signed a Conclusive Agreement in which it was acknowledged that the aforementioned taxpayer regularized her tax situation completely with respect to her income from Wages, as well as with respect to her income from business activities under the Tax Incorporation Regime, for the fiscal years from January 1 to December 31, 2018 and 2019.

# Tax regime applicable to “other” income from digital platforms

(FACEBOOK, INSTAGRAM, YOUTUBE, ONLYFANS, ETC.)

As a result of the Covid-19 pandemic, the process of economic digitalization and social interaction has accelerated, triggering new forms of entrepreneurship through technology platforms, that should not be considered digital services through technology platforms.

Given this scenario, several concerns have arisen from the economic agents involved in these activities; such as, persons who obtain income from the exploitation of audiovisual content through technological platforms, who seek guidance as to how should they tax the income they obtain from such activities.

**PRODECON** has not been oblivious to these questions and, to this end, has turned to make an analysis of the way in which new ventures operate through digital platforms to define the tax regime in which they should be taxed, as well as the tax obligations to be met in various cases of entrepreneurship of which it has known.

## **A. Do you know how should be taxed if you get income from the sale of cryptocurrencies?**

When an individual sells cryptocurrency, the income he earns has tax implications that needs to be considered:

### **What is a cryptocurrency?**

Cryptocurrencies are virtual assets that have the following characteristics: they are an information unit that does not represent the holding of any underlying asset at par, and that is uniquely identifiable, even fractionally, stored electronically, its issuance control is defined by

predetermined protocols and to which third parties can subscribe.

## **What income tax regime applies to these operations?**

Gains received by taxpayers from the sale of virtual assets are taxable by the property alienation regime, since it is considered that a movable asset is transferred. Legal basis: Article 126, fourth paragraph, of the Income Tax Law.

## **Provisional income tax payments**

Provisional income tax payments will be for the amount resulting from applying the 20% rate on the total amount of the transaction, which must be withheld by the acquirer, provided that he is a resident in the country (Mexico) or foreigner with a permanent establishment in Mexico; otherwise, it will be the seller who will pay the referred amount of tax through a tax return form to be filed to the authorized tax authority office within the fifteen days following the income was obtained. Legal basis: Article 126, paragraph five, of the Income Tax Law.

## **Income Accumulation**

The income from the alienation is considered obtained, even if it is obtained on credit, that is to say, it is not necessary the existence of cash flow to determine the tax income, therefore, the tax authority may require the taxpayer the corresponding tax pay, regardless of the fact that the deposit is not reflected in his bank account.



Legal basis: Article 119, third paragraph of the Income Tax Law.

### **B. Do you know how to declare the income earned from watching videos through digital platforms?**

The activity carried out by a person who has access to a digital platform that allows him/her to watch videos and, for that activity, obtain income, as well as commissions for inviting more people, generates tax obligations for such taxpayers.

#### **What is the tax regime and obligations in terms of income tax?**

It is important to identify that the income derives from two different activities, so it is mentioned below which will be the treatment for each one.

- Viewing videos. Since it is a personal service provision, it will be taxed by the rules of business and professional activities' chapter of the Income Tax Law, in which case this service provision could be taxed by the rules contained in any of the two sections that includes the referred income tax law chapter.

Legal basis: Section II of Article 100, of the Income Tax Law.

- The commission obtained by inviting more people to watch the videos configures a mercantile commission, therefore, the applicable tax regime would be the business and professional activity's regime, which is based on Article 100 of the Income Tax Law, mentioned above.

#### **If, in addition to the revenues from watching videos, I get earnings from commissions, can I be taxed under the Tax Incorporation Regime (TIR)?**

- Individuals who obtain commission earnings may not be taxed under the Tax Incorporation Regime, except for those individuals who

receive commission revenues that doesn't exceed 30% of their total income.

Legal basis: Article 111, fifth paragraph, section III of the Income Tax Law.

### **What are the obligations for Value Added Tax (VAT) purposes?**

By viewing videos, it is updated the provision of independent services, being obliged to do the following:

- The VAT will be calculated at the rate of 16%.
- The taxpayer shall transfer such tax, expressly and separately.
- The taxpayer shall pay at the authorized tax authorities' offices the difference between the tax payable by him and the tax that would have been transferred to him or that which he would have paid in the importation of goods or services.

Legal basis: Articles 1º and 14, section VI, of the VAT Law.

### **Can this service be exported abroad and tax the 0% VAT rate?**

- In the event that it is not possible to identify that the independent personal service is used by a foreigner, it is not feasible to apply the 0% VAT rate to exports, so it will be necessary to pay the entire amount of the tax at the rate general VAT.

### **C. Do you know how to declare the revenues obtained from subscribers of a digital platform where they are allowed to access to your audiovisual content or for the insertion of advertising in such contents?**

Taxpayers who create audiovisual content for a digital platform (intermediary), where third parties pay the latter for access to such content or for the insertion of advertising in such creations,

receive income that generates tax obligations, so they must comply with tax duties.

### What tax regime applies to these cases?

- Income received by individual taxpayers through digital platforms that originate from allowing access to the contents that they created or that includes advertising and generates revenue for his creator should be considered as royalties. Therefore, they must be taxed under the other income regime.

It can be considered as royalties, those payments made for the right to receive to broadcast visual images, sounds or both, or payments made for the right to allow access to the public to said images or sounds, when in both cases are transmitted by satellite, cable, fiber optic or other similar media.

Legal basis: Articles 15-B, third paragraph of the FTC; 142 section XVII and 145 of the Income Tax Law.

### What are the income tax obligations?

- Entering the tax: Royalty income, depending on its periodicity of payment, may be sporadic income or periodic income, depending on such periodicity will be the obligation to make the provisional payment. If the income is sporadic, the declaration of provisional payment on account of the annual tax shall be filed within 15 days after the income is obtained; if the payment is periodic, the provisional payment shall be monthly on account of the annual tax, and shall be filed on the 17th day of the month following the month to which the payment corresponds.

In addition, the following rules must be considered:

- In the case of a royalty payer resident in the national territory: A 35% withholding will be made on the amount of the payment made,

which may be credited against the provisional payment, and the withholder will have an obligation to issue the corresponding Digital Tax Receipt by Internet (CFDI, for its acronym in Spanish).

- In the case of a royalty payer resident abroad: A withholding may be applied in accordance with the tax legislation of the resident abroad or the international treaties that Mexico may have signed with his country of residence, which may be credited against the annual tax, since income from foreign is not considered in the provisional payments.

### What are the VAT obligations?

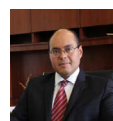
- Royalty payer resident in the national territory: The royalties received for allowing access to the content created by the taxpayer fall under the





provisions of articles 1º section II and 14, section VI, of the VAT Law, since it is an obligation of “allow.”

- Royaltypayerresidentabroad:Therereproduction of content or advertisements rendered abroad could be considered an export of services (rate 0% VAT), as long as the independent personal services are used in their entirety abroad by foreign residents without an establishment in the country.
- Legal basis: First and last paragraphs of Article 29 of the VAT Law.
- Entering the tax: Entering the tax at the time they collect the consideration. Legal Basis: Article 17 of the VAT Law.



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# Do you know what the “Transparency, Prevention and Fighting Improper Practices in Advertising Contracting’s Law” contemplates?

## When was it published?

On June 3rd, 2021, the ‘Transparency, Prevention and Fighting Improper Practices in Advertising Contracting’s Law’ was published in the Official Gazette of the Federation (Diario Oficial de la Federación or DOF, for its acronym in Spanish), which will enter into force on September 1st, 2021.

## What is the purpose of this Law?

The purpose of this Law is to promote transparency in the advertising market, as well as the prevention and combating of commercial practices that affect competition and consumers.

## What does this law regulate?

It regulates the acts, contracts, arrangements, agreements, or procedures celebrated by media agencies, advertisers, and the media. Therefore, it is intended to give traceability and transparency to the advertising services provided by this industry.

In order to achieve this objective, this Law establishes a series of guidelines to which

the provision of advertising services must be subject, such as the following:

- An agency can only acquire advertising space on behalf and order of an advertiser, and not on its own for resale to another advertiser.
- In the contract celebrated between an agency and an advertiser, the conditions of remuneration must be established so that the agency can only receive from the advertiser the considerations agreed in the contract.
- Any discount granted by the media (diffuser of advertising space) to the agency, must be transferred in full to the advertiser.
- The agency or third parties used by it to provide the service to the advertiser cannot receive any payment from the media.
- An agency may not simultaneously provide services to advertisers and the media, except in case that those services are provided by another company that belongs to the agency's economic group.
- The agency must inform to the advertiser about the financial relationships that it has with the media enterprise that intends to hire.

## What are the tax implications of this Law?

From a fiscal point of view, this Law has the following implications:

**1.** By establishing that the media enterprise must send the Invoice (Comprobante Fiscal Digital por Internet or CFDI, for its acronym in Spanish) for the sale of advertising spaces directly to the advertiser, even if the agency makes the payment on its behalf; and that the services provided must be broken down, as well as the dates and places of dissemination, this law obligates the referred media enterprise to segment each of the services provided in this industry and its payments, and also, the issuance of the invoices is regulated.

Also, separately the advertiser will have to pay to the agency for the advertising services provided.

This measure ensures transparency regarding the services provided by each of the participants in this industry.

### Payments made by third parties:

Regarding the payments made through third parties in tax matters, article 41 of the Executive Regulations to the Income Tax Law, indicates that when the taxpayer makes outlays through a third party, he must issue nominative checks payable to that third party or do the outlays through transfers from accounts opened in the name of the taxpayer in financial institutions or stock markets, to the account opened in the name of the third party; and when that third party makes payments on behalf of the taxpayer, those must be supported by an Invoice (CFDI) on behalf of the taxpayer.

We have two scenarios to consider about the referred article of the Executive Regulations to the Income Tax Law. The first, the outlays made by the taxpayer himself from his own assets to the third party, and the second, the payment made by a third party on behalf of the taxpayer, which will be







credited with the voucher issued in favor of the taxpayer, and that must comply with the requirements established in article 27, section III, of the Income Tax Law.

On that matter, this provision of the mentioned Law combines with what is indicated by the tax laws, by establishing that, when advertising agencies (third parties) acts on behalf of the advertiser (taxpayer) by making the payment to the media enterprises for the sale of the advertisement space, these advertising agencies cannot be recipients of the invoice (CFDI), it must be issued by the media enterprise directly to the advertiser, as the latter made the outlay.

**2.** By establishing that the agency and the media enterprise should be independent parties, it ensures that there is no collusion between participants and encourages competition in the industry.

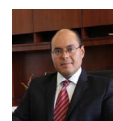
**3.** The provisions of the Law shall apply when the advertiser is a resident in Mexico and the advertisement is broadcast in national territory, regardless of the place where the agency is established.

## Note

A relevant aspect is that, for contracting advertising, two treatments will be applied, depending on who the contractor is: i) if it is a private person or company, it will be regulated by the aforementioned Law; and, ii) if it is a public entity, it must attend to the criteria, principles, and provisions provided for in the General Social Communication Law.<sup>1</sup>

## Entry into force

Following the above, the economic agents involved in this industry must observe these provisions and make the changes in their way of operating their business, so that on September 1st, they are prepared to apply the provisions of this new Law.



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<sup>1</sup> This Law, which entered into force on January 1st, 2019, aims to establish the rules to which Public Entities are subject, in order to guarantee that spending on Social Communication meets the criteria of efficiency, effectiveness, economy, transparency and honesty, and respect the budget ceilings, limits and exercise conditions established by the respective expenditure budgets.

## *Successful case, derived from a Systemic Analysis*

**PRODECON**, through a Systemic Analysis, opined that the Income tax withholding applied to taxpayers engaged in the collection of materials destined for the recycling industry for the sale of products and materials for recycling, is not proportional to their ability to pay, nor does it pay attention to the fact that it is a highly vulnerable sector, which is why it was proposed to set a withholding rate lower than the current one.

This Taxpayer Advocacy Agency, in a Systemic Analysis, analyzed the situation of the people who are dedicated to the collection of materials for the recycling, warning that it is a highly vulnerable sector due to the precarious conditions in which they live and work, to whom a retention rate is applied that is not commensurate with their contributory capacity nor does it consider their degree of vulnerability.

Because of that, it was suggested to the tax authority that through of the modification to Rule 2.7.3.5. of the Miscellaneous Tax Resolution, is granted to taxpayers dedicated to the collection of materials destined to the recycling industry, a tax treatment that complies with the principle of tax proportionality and consider the situation of vulnerability of this sector, in order to apply a retention rate for income tax of 1% over the total amount of the operation, which the acquirer withholds when purchasing the materials intended for the recycling industry. This is reinforced by the fact that the Income Tax Law contemplates other sectors that enjoy exemptions from income tax or that the pay rates are lower than those established for the mentioned collectors, without being in vulnerable conditions like the aforementioned collectors.





# Consignment Note Supplement

Do you transport goods or you are going to hire a transportation service to move them? **PRODECON** tells you what to keep in mind:

If you have the need to move your goods or merchandise, for example, from one warehouse to another to get closer to your customers, or to take your goods to another one of your branches because you are expanding your business, or, if you are going to hire a service of transportation of goods either by land, sea, plane, or rail because you have to make a delivery at the address indicated by the buyer, or you are the one who provides the transportation service; you must know that, in addition to considering the characteristics of the type of transport you need, the staff that will assist you in the transfer, the insurance that you must acquire to protect your assets against any contingency, among other issues, you must have a tax invoice that accredits its transportation, when the transfer is made within the national territory.

Yes, that tax invoice to which we refer is the one denominated “Digital Tax Receipt by Internet” (Comprobante Fiscal Digital por Internet or CFDI, for its acronym in Spanish) and its Consignment Note Supplement (Complemento Carta Porte, in Spanish), a document that must accompany at all times the merchandise or goods that are being transferred from one place to another, with which

you can prove, in addition to the transportation, its legal permanence in Mexican territory or its possession.

The use of the Digital Tax Receipt by Internet (CFDI) that covers the transport of goods is not a new obligation, as it was established since the publication of the Miscellaneous Tax Resolution for 2014 (Resolución Miscelánea Fiscal or RMF, for its acronym in Spanish), in the Official Gazette of the Federation (Diario Oficial de la Federación or DOF, for its acronym in Spanish) of December 30, 2013, the requirements that must be contained in the Digital Tax Receipt by Internet that accompanied the transport were indicated, with subsequent modifications such as, for example, in 2017 where reference is made to the “Transfer” type of Invoice or receipt, in 2019 adding some requirements to the Invoice and in the Third Resolution of Modifications to the Miscellaneous Tax Resolution for 2020, where the obligation to incorporate the “Consignment Note” Supplement (Complemento Carta Porte, in Spanish) was added, indicating that this incorporation would enter into force once the aforementioned supplement was published on the website of the Tax Administration Service

(Servicio de Administración Tributaria or SAT, for its acronym in Spanish).

For the year 2021, we can tell you that there is a new modality for these Digital Tax Receipt by Internet, Transfer and Income types, being this the incorporation of the “Consignment Note Supplement”. On May 1st, the information corresponding to this Supplement was published on the internet website of the tax authority, which entered into force on June 1st, 2021, being optional its use from June 2nd to September 29th, 2021, and will be mandatory starting on September 30th, 2021; in accordance with the Eleventh Transitory Article contained in the First Resolution of Amendments to the RMF for 2021, published in the Official Gazette of the Federation on May 3rd, 2021, and the amendment to rule 2.7.1.9., contained in the Second Resolution of Modifications to the Miscellaneous Tax Resolution for 2021, which you can find in its sixth advance version, which was published on the SAT’s website on July 26th, 2021.

Therefore, if you are going to move goods or merchandise, some of the questions you most likely ask yourself are: should I issue an Invoice with its Consignment Note Supplement? What type of receipt should I issue if the goods are my property? Who issues the receipt when the goods are moved through a transport company or when an intermediary is hired? If I am only the transporter, should I issue a receipt? What consequences can be had if the Invoice is not issued or carried with its Consignment Note Supplement?

Do not worry, in this [Prodecon.tigo](#) article, we will solve these doubts so that you can transport your goods and merchandise in accordance with what the tax provisions established in the Law and avoid tax contingencies.

### **Who must issue a Digital Tax Receipt by Internet (CFDI) with its Consignment Note Supplement and what type of receipt is issued?**

#### **Owner:**

If you are going to carry out the transfer of your own goods, whether by land, train, sea, air or river, you will be able to prove or accredit their transportation, only by means of the printed

representation or in digital format of the “Transfer” type of Digital Tax Receipt by Internet with its Consignment Note Supplement that you issued yourself, with a generic Federal Taxpayer Registry code (Registro Federal de Contribuyentes or RFC, for its acronym in Spanish): XAXX010101000, the object of the transportation and with an amount of “zero”; why no amount? Because you are not providing a transportation service, you are only transferring goods of your property.

#### **Intermediary or transport agent:**

If you are either a legal or a natural person who acts as a third party between the user and the carrier, you must issue the “Transfer” type of Digital Tax Receipt by Internet and its Consignment Note Supplement and use its printed or digital representation to prove the merchandise’s transportation.

#### **Freight transport service:**

If you provide this type of service, you must issue the “Income” type of Digital Tax Receipt by Internet to cover the provision of the cargo transport service and certify the merchandise transportation with its printed or digital representation and, to your “Income” Receipt, you must add the Consignment Note Supplement.

#### **Carrier:**

With the invoice (CFDI) provided to you, that includes its Consignment Note Supplement, you comply with the obligation to accompany the merchandise that you transport with the documentation that accredits its legal permanence in the case of foreign merchandise and/or its possession, in the case of national merchandise.

In any of the aforementioned cases, we remind you that when you transfer imported goods that correspond to acquisitions from first-hand sales (first sale that is made after the importation of the goods), the invoice (CFDI) that is issued for its sale must contain the number and date of the Import Customs Manifest.





## What could be the consequences if the invoice (CFDI) is not issued or carried with its Consignment Note Supplement?

It is important to consider that when you don't comply with the issuance of the Transfer or Income type of Digital Tax Receipt by Internet, depending on the case, with its Consignment Note Supplement, which is mandatory as of September 30th, 2021, you may face various tax contingencies that could affect your fiscal situation, for example, that the tax authority may impose a fine for not issuing or delivering the invoice (CFDI), or for not accompanying the merchandise with this Consignment Note Supplement to protect its transportation through the national territory, not being able to prove its origin and destination considering the merchandise possibility as illegal; in addition to the fact that you cannot deduct the expense you made for the transportation service for income tax purposes and, therefore, you also won't be able to accredit the corresponding Value Added Tax.

If you have doubts regarding the obligation to issue the Transfer or Income Digital Invoices (CFDI), depending on the case, as well as the incorporation of its Consignment Note Supplement, don't worry, at the Taxpayer Advocacy Agency (in Spanish Procuraduría de la Defensa del Contribuyente, **PRODECON**) you can clarify them; contact us through our various service channels where we will provide you with our free remote consulting services by email: [atencionalcontribuyente@prodecon.gob.mx](mailto:atencionalcontribuyente@prodecon.gob.mx); by calling (+52) 55 12 05 9000 or 800 611 0190 Lada toll-free within Mexico; through our online chat by entering through our internet website at [www.prodecon.gob.mx](http://www.prodecon.gob.mx), through remote personalized advice via zoom, requesting your appointment at: <https://www.prodecon.gob.mx/index.php/home/citas>, or on the phone numbers of our Delegations throughout the country, which you can consult at: <https://www.prodecon.gob.mx/index.php/home/delegaciones>.



**Bernardo Núñez Salazar**

Deputy Proctor in Charge of Taxpayer  
Advisory and Defense

# Success Cases

## *derived from the Advisory area*

Through the free Legal Representation and Defense service in **PRODECON**, it was possible to recognize a retired taxpayer her right to the devolution of Income Tax she had in favor, as she received revenue from a retroactive pension, as well as a retirement bonus, even though the information she declared in her annual tax return did not match with those declared by her withholders.

A retired taxpayer came to request the services of **PRODECON**, because when she requested to the tax authority the balance in favor of Income Tax (ISR) in the amount of MXN \$73,792.00 that was reflected in her annual tax return for the year 2017, it was denied by the Tax Administration Service (SAT) under the argument that the payments made to her by both the Institute of Security and Social Services of State Workers (ISSSTE) for retroactive pension, and the National Pedagogical University (UPN) for her retirement gratification, differed from those declared by such withholders, so that when making the corresponding tax calculation, the result was not an amount in her favor as she requested it, but a tax to be paid in the amount of MXN \$47,212.00.

In defense of the taxpayer's rights, an Contentious Administrative Trial was promoted by **PRODECON**, in which the Chamber of the Federal Administrative Justice Court in charge of the trial, determined that it was illegal to deny the devolution of the balance in favor income tax of the taxpayer under the sole argument that the information declared by her withholders is differed from what was stated by her in her annual tax return, since the payments received by the taxpayer were for her retirement, pensions or retroactive retirement, and had to be calculated according to articles 93, section IV, and 95 of the Income Tax Law valid in 2017, to tax this type of revenue or other payments that are obtained by separation from the employment, taking into account the nature of the income; also recognizing the temporality in which she had obtained these, as the way it was stated by the petitioner in her annual tax return, for which the Court ordered the tax authority to issue a new resolution in which it would have to consider the correct calculation mechanisms and proceed to return the corresponding balance in favor of the income tax to taxpayer, along with its respective interests.



# Success Cases

## *derived from the Advisory area*

With the free **PRODECON's** Legal Representation and Defense service, it was possible to declare the illegality of the compensation applied to a taxpayer when resolving their request of devolution of the balance in favor of ISR of 2019, when demonstrating that the compensated tax credit had already been paid almost in full.

A taxpayer came to request the services of **PRODECON** because, derived from the request for devolution of the balance in favor for Income Tax (ISR) for the year 2019, the SAT authorized him in full the return of the amount of MXN \$33,376.00; however, he only got deposited the amount of MXN \$27,424.00, under the argument that the tax authority had applied a compensation ex officio provided for in article 23, fifth paragraph, of the Federal Tax Code, as the taxpayer had a debt for an updated amount of MXN \$5,952.00; which he considered illegal because the aforementioned amount owed was incorrect.

Derived from the foregoing, a lawsuit was promoted by this tax *Ombudsperson*, presented in favor of the aforementioned taxpayer, in which the Jurisdictional Organ considered that the ex officio compensation applied by the tax authority was illegal, as it was demonstrated that the taxpayer, although he had a tax debt originated by his 2016 tax return, the truth is that in the trial it was shown that he had already paid 5 of the 6 installments in which he was authorized to cover such tax debt, therefore that the proceeding action was that the authority could collect through the compensation the amount corresponding to the only payment not covered (MXN \$505.00) with its corresponding updates and surcharges, ordering that the refund of the updated remainder and its corresponding interests would be made.

# Success Cases

## *derived from the Advisory area*

With the free Legal Representation and Defense service, **PRODECON** managed to declare the nullity of a resolution by which the tax authority denied a taxpayer the right to obtain the return of merchandise that was illegally seized through an Administrative Procedure in Customs Subject (Procedimiento Administrativo en Materia Aduanera or PAMA, for its acronym in Spanish), under the argument that the invoices exhibited to prove the property of the merchandise had already been previously valued in an unfavorable way to taxpayer's interests.

A taxpayer who had a clothing and accessories store for the general public, came to request the services of **PRODECON**, in response to the fact that the tax authority unfavorably resolved his request for a return and visual inspection of the merchandise that was seized by means of an Administrative Procedure in Customs Subject, the foregoing, under the argument that the exhibited invoices, with which he tried to prove the ownership of the merchandise, had already been previously analyzed in the decisive resolution of the tax debt, in which it was resolved that they did not comply with the legal requirements to prove such property, since the description they contained was not coincident with the seized merchandise, which is why it was also determined that the inspection requested in order to corroborate that the merchandise corresponded to the described in the invoices exhibited, was not applicable either, what the taxpayer considered illegal.

It should be noted that the Administrative Procedure in Customs Subject was attended at the taxpayer's store by an employee of the latter, to whom the tax debt was determined by being considered by the tax authority as the owner of the seized merchandise, despite the fact that the taxpayer appeared in person at the procedure as the owner of the merchandise and exhibited the invoices with which he demonstrated that situation, as well as his legitimate stay in national territory.

Therefore, **PRODECON** filed a lawsuit in favor of the taxpayer's worker, in which by a judgment, the determining resolution of the tax debt was nullified and was ordered that the authority would have to return the merchandise to whoever proved to be its legitimate owner.

Therefore, due to the refusal of the Authority to return the merchandise to the taxpayer, it was promoted in his favor a new lawsuit before the Federal Administrative Justice Court, in which it was asserted that such refusal was illegal because the Authority wasn't taking account that, although in the resolution of the tax debt it had already ruled on the exhibited invoices, the fact was that such determination had already been nullified in the previous lawsuit filed by the petitioner's worker; likewise, once the inspection report offered in the lawsuit as evidence had been unburdened, the Court confirmed that the description and the barcode of the seized merchandise did match with that contained in the exhibited invoices, for which it ordered their return to the taxpayer.

# Success Cases

## *derived from the Advisory area*

**PRODECON assisted a taxpayer to present a request for forgiveness of fines, in terms of article 74 of the Federal Tax Code.**

The taxpayer was notified a fine for a historical amount of MXN \$8,224.25 derived from the omission in the payment of foreign trade taxes when importing a vehicle of foreign origin. In that way, through a free Advisory service, she was helped in the preparation of a document requesting the tax authority to cancel the aforementioned fine, based on article 74 of the Federal Tax Code, in relation to the provisions of Rules 2.16.5, 2.16.8, and 2.16.12 of the Miscellaneous Tax Resolution valid at the time of the request, achieving a 70% cancellation of the initial fine, resulting the amount to be paid of MXN \$2,467.20.

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**PRODECON supported a taxpayer to obtain a devolution of the Income tax for the year 2020, from the tax withheld from his Retirement Fund Administrator (AFORE) subaccounts, which were delivered to him as a beneficiary.**

This Tax *Ombudsman*, through his Advisory service, assisted the taxpayer to recover a balance in favor of Income Tax that had been wrongfully withheld when he received the resources from the AFORE subaccounts as a beneficiary of his deceased brother, which according to the strategy implemented by this Institution, those revenues had the same nature of income obtained from salaries, and therefore, being the sole and legitimate beneficiary of said resources, they must've had the same tax treatment as those received as inheritance or legacy; in consequence, the tax authority acceded to the return the balance requested in the amount of MXN \$5,480.00.

# Success Cases

## *derived from the Advisory area*

**PRODECON** helped a taxpayer to correctly file his Annual Income Tax Return for the year 2020, derived from their retirement income.

**PRODECON**, through its Advisory service, helped the taxpayer to correctly file his annual Income Tax Return for the year 2020, since the withholder had not issued an invoice of his retirement income corresponding to one month of the fiscal year, therefore, with the help of this Institution's Complaints and Claims area, the missing invoice was issued.

As a result of the foregoing, he was helped to file the aforementioned annual Income Tax Return, accumulating all the income received from his retirement and those obtained from his retirement subaccounts (AFORE) and interests, resulting in a balance in favor of Income Tax for the amount of MXN \$9,921.00, which was authorized and deposited to his account automatically.

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**PRODECON** advised a taxpayer on how to obtain the devolution of his balance in favor of the income tax corresponding to the 2019 fiscal year, derived from the refusal of the Authority to return it, under the argument that the taxpayer supposedly did not accumulate the income of a withholder that he did not know.

The tax authority (Tax Administration Service or SAT, for its acronym in Spanish) denied a taxpayer the refund of his balance in favor of income tax for the year 2019, under the argument that he had omitted to accumulate income from a withholder from whom he unknown the employment relationship. With the support of the Advisory area of this Fiscal *Ombudsperson*, he was helped in the filing of a complaint through the SAT's website against the withholding agent who declared him to be withheld and, thereby, he presented a supplementary annual tax return eliminating the data of the withholding agent that he didn't know, sending a manual request for a refund of his balance in favor, accompanying the supporting documentation, thereby achieving that the tax authority returned him an approximate amount of MXN \$3,000.00.



# The legal reforms applicable to authorized donees in 2021 and the principle of non-retroactivity

Title III of the Income Tax Law, called “The Regime of Legal Persons for Non-Profit Purposes” describes to legal entities that are not taxpayers of Income Tax, which are described in sections I to XXVI of article 79.

This catalog includes, among others, the so-called authorized donees, that are, non-profit civil organizations and trusts authorized to receive income tax deductible donations, and which may carry out activities in different areas, such as healthcare, education, scientific or technological research, culture, scholarships, activities related to ecology, on the reproduction of species under protection and in danger of extinction, and in matters of social development. The rules applicable to the fiscal regime of authorized donees are found in articles 80 to 89 of the Income Tax Law, highlighting as one of its essential requirements, defining from its articles of incorporation or trust contract the way in which its patrimony is integrated; in addition to specifying guidelines for their liquidation and documenting the activities they carry out, among other requirements derived from article 82 of the Income Tax Law and Rule 3.10.5 of the Miscellaneous Tax Resolution for 2021.

It is worth mentioning that within the Initiative with the Draft Decree that reforms, adds, and repeals various provisions of the Income Tax Law, the Value Added Tax Law, the Production and Services Special Tax Law, and the Federal Tax Code, that was part of the 2021 economic package, several proposals related to the fiscal regime applicable to authorized donees were included.

In the explanatory memorandum of this initiative, the need to incorporate rules that guaranteed transparency regarding the income of authorized donees and that their activities are effectively related to the purpose for which they were created was highlighted, based on a diagnosis that reflected that currently most of the income they obtain comes from activities not related to their corporate purpose, so an addition to article 78 of the aforementioned Law was proposed with the purpose of contemplating as a requirement that at least 50% of the income of the donee had to be derivate from its social purpose, providing as a legal consequence, in the event of non-compliance, the loss of such authorization.

Likewise, the need to establish an effective control mechanism for donations was raised, providing for the obligation to allocate all the assets to the purpose for which they were created and that in cases of revocation of the authorization or when its validity expired, all their assets would be destined to other entities authorized to receive income tax deductible donations, also contemplating that in this case, the taxpayer would be forced to pay taxes in accordance with the fiscal general tax regime and would not be able to carry out the activities that it had been developing, considering that, previously, the tax law left loopholes that allowed a taxpayer to continue taxing in the fiscal regime of Legal Persons for Non-Profit Purposes, despite losing their authorization or changing their corporate purpose, in addition to using their assets for activities other than those that originally formed part of their social object.

Therefore, it was established as a requirement for this type of organizations, that in order to access to the fiscal regime of legal entities for non-profit purposes, they must to have the authorization to receive donations.

Regarding the provisions that were repealed, we have the elimination of the School-Company Programs as authorized donees and the certification for donees, about compliance with tax obligations, transparency and social impact assessment.

Similarly, new procedures to revoke the authorizations were incorporated, as well as the figure of the cancellation of the authorization to receive income tax deductible donations in the case that it was requested by the person holding the legal representation of the taxpayer.

These provisions came into force as of January 1st, 2021, therefore, in the opinion of this *Ombudsperson*, its application began as of that date, without the new obligations generated and their legal consequences having a retroactive effect on detriment to the taxpayers.

On this topic, **PRODECON** issued Recommendation number 9/2021, which motivated the issuance of substantive criteria 10/2021/CTN/CS-SPDC under the heading “AUTHORIZED DONEES. IT IS IMPROPER FOR THE TAX AUTHORITY TO RETROACTIVELY APPLY THE CONTENT OF THE PROVISIONS IN FORCE STARTING IN THE YEAR 2021 THAT REGULATE THE PROCEDURE FOR CANCELLING THE AUTHORIZATION TO RECEIVE INCOME TAX DEDUCTIBLE DONATIONS THAT WERE FILED DURING 2020, REQUESTING THE NON-RENEWAL OF THE AUTHORIZATIONS THAT WERE ISSUED FOR THAT PERIOD”; and 11/2021/CTN/CS-SPDC, under the heading “AUTHORIZED DONEES. IT IS IMPROPER FOR THE TAX AUTHORITY TO PUBLISH THE DATA OF THE TAXPAYER IN THE LIST OF AUTHORIZED ASSOCIATIONS CONTAINED IN ANNEX 14 OF THE MISCELLANEOUS TAX RESOLUTION FOR 2021, UNDER THE ARGUMENT THAT AT THE TIME OF SUBMITTING THEIR REQUEST THAT THE AUTHORIZATION GRANTED IN 2020 WOULD NOT BE RENEWED, THERE WAS NO LINE OF ACTION FOR THIS PROCEDURE”.



This Recommendation was derived from eight Complaints filed by various taxpayers under similar precedents, which were accumulated for processing in the Complaint procedure before **PRODECON**; all of them derived because the authority retroactively applied the procedure to cancel an authorization due to the non-renewal requests presented by the petitioners. during 2020, that is, before January 1st, 2021, when the new provisions applicable to donees came into force.

In these Complaints, “the donees” stated that during November and December 2020, they requested to the tax authority that their authorizations to receive income tax deductible donations would not be renewed for 2021 and subsequent years; However, even without receiving a response, they were included in the list of Authorized Associations of Annex 14 of the Miscellaneous Tax Resolution for 2021, published in the Official Gazette of the Federation (Diario Oficial de la Federación o DOF, for its acronym in Spanish) on January 12th, 2021.

Subsequently, the Authority required them to state whether they ratified their request for cancellation of the authorization they had (fiscal year 2020), under the warning that if they didn’t, their request would appear as not been filed.

To **PRODECON**’s consideration, the recommended tax authority violated various rights of “the donees”. In the first place, the petition right, since it had failed to issue a response to the promotions presented by the taxpayers, violation exposed, in accordance with the second paragraph of Article 8 of the Federal Constitution, that imposes to the authorities the obligation to respond requests submitted by individuals in a “short term”; this term being understood as a rational and justified period to study and agree on the petition, according to its complexity, the specific circumstances of the case and the workloads of the authority.

Besides, the Authority made an improper interpretation of Article 37, last paragraph, of the

Federal Tax Code, maintaining that when a request is formulated, the three-month term begins to run from when it was attended for them, for which reason they didn’t applying the *pro personae* principle, in accordance with Article 1 of the Federal Constitution, since the authority did not consider that before requesting the petitioners to ratify, that period had already elapsed in excess.

Likewise, it was considered that the Authority violated the taxpayers’ right to legal certainty, by including their data within the list of Authorized Associations of Annex 14 of the Miscellaneous Tax Resolution for 2021, published in the Official Gazette of the Federation on January 12th, 2021, even though they had requested the non-renewal of their authorizations for the fiscal year 2021 and subsequent years, ignoring that article 36-Bis of the Federal Tax Code and rule 3.10.4 of the Miscellaneous Tax Resolution for 2020, provided that the authorization to receive deductible donations from income tax has an annual validity, that is to say, until December 31st of the corresponding year.

Finally, it was considered that the rights of legality and non-retroactivity of the law, in accordance with Articles 14 and 17 of the Constitution, were violated, since the tax authority processed the petitioners’ requests applying the provisions of Article 82, section V, last paragraph of the Income Tax Law in force as of January 1st, 2021, and following the cancellation procedure provided in rule 3.10.29 of the First Resolution of Modifications to the Miscellaneous Tax Resolution for 2021, published in the Official Gazette of the Federation on May 3rd, 2021, ignoring that these were submitted in 2020, which would impose on “the donees” the obligation to allocate all their assets to another donee authorized to receive income tax deductible donations, in addition to being taxed according to the fiscal regime provided in Title II of the Income Tax Law.



Alejandro Ibarra Dávila

Deputy Proctor of the Taxpayer's Rights Protection

# Success Cases

## *obtained from the complaint procedures*

Due to the Complaint procedure, **PRODECON** achieves that the SAT has announced and presented the evidence related to an Appeal for Revocation promoted by a taxpayer, which it carried out through writings entered through the Tax Mailbox (Buzón Tributario, in Spanish), given its inability to do so within the category correspondent.

A Legal Person Taxpayer filed a Complaint requesting that the tax authority (Tax Administration Service or SAT, for its acronym in Spanish) would consider the evidence listed in its Revocation Appeal as announced, since it had to do so through a written document with the heading “Online Revocation Appeal” since the corresponding tab/category was not enabled in his Tax Mailbox (buzón tributario) so that it could be done in the normal way.

In its report, the Tax Authority stated that it considered the evidence indicated by the complainant in her letter to be announced, specifying that it had even already been exhibited through a different promotion, which it would take into consideration at the time of resolving said Appeal for Revocation.

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**PRODECON**, through the Complaint procedure, achieves that the Mexican Social Security Institute (IMSS) cancels some Tax assessments, due to differences in the determination and payment of social security fees and, consequently, orders the release of the bank deposits that were seized, when it was demonstrated that the taxpayer had spontaneously complied with the payment of their worker-employer social security fees.

A Legal Person filed a Complaint procedure, as it realized that the Mexican Social Security Institute (IMSS), immobilized its bank accounts due to various tax debts derived from the alleged omission in the payment of its worker-employer social security fees; however, those tax debts had been covered spontaneously, that is, prior to the Authority notifying him the corresponding Tax assessments, for which reason, he submitted a clarifying letter to such Authority, exhibiting the respective payment vouchers; however he hadn't gotten any response. Derived from the intervention of **PRODECON**, the Mexican Social Security Institute issued a response to the clarification, in which it ordered the cancellation of the Tax assessments, as well as the release of the bank deposits of the complainant.



# Success Cases

## *obtained through Complaints*

**PRODECON** achieves, through the Complaint procedure, that the tax authority (SAT) updates, with effects from the year 2019, the Fiscal Regime of a taxpayer, due to the Notice to stop paying taxes under the Optional Regime for Groups of Companies, that the taxpayer had submitted in the referred year.

A Legal Person filed a Complaint procedure stating that in December 2019, it had submitted before the tax authority (Tax Administration Service or SAT, for its acronym in Spanish) a Notice to stop paying taxes in the Optional Regime for Groups of Companies, in its capacity as Integrator company and on behalf of the companies that it grouped.

However, the complainant indicated that its information had not been updated before the Federal Taxpayers Registry (RFC, for its acronym in Spanish), a situation that prevented it from submitting in time and his annual Income Tax return for the year 2020 in the General Regime of Law, since the website of the tax authority only enabled it the option to present the annual Income Tax return under the Optional Regime for Group of Companies. According to it, the taxpayer had submitted a Clarification case, in which it requested that its tax regime would be updated; but stated that at the time it filed the complaint procedure in **PRODECON**, it had not yet received a response to said Clarification case nor the reason why on the presentation day of the Complaint, the Notice it had filed had not produced any effects yet.

Due to the above, the tax authority was requested to inform about it; so when issuing its report, it indicated that from the consultation made to the databases it has, it noticed that the taxpayer did not request the withdraw of its Federal Taxpayer Registry code from the referred regime, since it only been submitted with the Federal Taxpayer Registry codes of other companies and did not include its own. As a result of this, and since the taxpayer already knew the reason why its regime was not updated in the Federal Taxpayer Registry, this Agency suggested that the taxpayer presented the Notice again, which at the end turned out to produce effects retroactively to the date on which it submitted its first notice.

# **Success Cases**

## *obtained through Complaints*

Thanks to the Complaint procedure, **PRODECON** succeeds in making the Mexican Social Security Institute (Instituto Mexicano del Seguro Social or IMSS, for its acronym in Spanish) nullify the resolution of tax debts that were issued in alleged compliance with a judgment issued in a Contentious Administrative Trial in which the nullity of various debts for the same periods was declared.

The taxpayer filed a Complaint procedure, by virtue of the fact that it had promoted a Contentious Administrative Lawsuit against various tax credits determined by the Mexican Social Security Institute (IMSS), obtaining a judgment that declared their nullity, however, the Authority replaced the controverted resolution by issuing a new one for the same periods and same amounts, since it considered that the judgment had given it the possibility of issuing a new resolution.

As a result of the foregoing, various investigation actions and meetings with the fiscal authority were carried out in order to exhaustively analyze the problem raised in the Complaint, who finally indicated that from a new legal assessment it reached the conclusion that, in order to avoid violating the rights of the complainant, it was appropriate to nullify the new resolution it had issued, without the possibility of issuing a new one, which was notified in writing to the taxpayer.

# Success Cases

## *obtained through Complaints*

**PRODECON** achieves through the Complaint procedure, that the tax authority (Tax Administration Service or SAT, for its acronym in Spanish) disassociates the Unique Population Registry Code (Clave Única de Registro de Población or CURP, for its acronym in Spanish) of a person, with a duplicated Federal Taxpayer Registry Code (RFC, for its acronym in Spanish) of a Taxpayer, when it was proven that said CURP was assigned to the complainant first.

A taxpayer filed a Complaint procedure against the tax authority (SAT), so that it would to the reasons why it decided to deny his request for a tax refund for the year 2019, under the argument that he had failed to declare income from wages and salaries from a withholder, from whom the complainant stated he did work for. Derived from the processing of the Complaint, it was learned that the taxpayer shared his Federal Taxpayer Registry Code with a homonymous person, updating the figure of duplicity. Therefore, the corresponding steps were taken with the tax authority so that the Federal Taxpayer Registry Code that had been assigned to the complainant was dissociated to this other person, exhibiting for this purpose the “Acknowledgment of Registration to Federal Taxpayer Registry” in which it was established that the code or “homoclave” in question was assigned to the taxpayer since 1996, this date being prior to the moment in which the other person with the same name was registered with said code. In response, the authority updated its institutional database, associating the taxpayer’s CURP with the Federal Taxpayer Registry code that belonged to him. Finally, with said information and with the help of the Taxpayer Advisory and Defense Attorney in **PRODECON**, the complainant will carry out the procedure of “Reconciliation of complaints for billing”, contemplated in Rule 2.7.1.49 of the current Miscellaneous Tax Resolution, to request the withholding agent, with whom he had no employment relationship, to cancel the Invoices that he had issued in his favor.

# *Success Cases*

## *obtained through Complaints*

Due to the Complaint procedure, **PRODECON** succeeds in having the SAT order the unblocking of the Digital Seal Certificate (Certificado de Sello Digital or CSD, for its acronym in Spanish) of a Legal Person, since it was demonstrated that it did not incur in omission in the payment of contributions, since it was not obliged to pay Income Tax for the dividends paid to one of its partners.

When exposing the precedents of its Complaint, a Legal person stated that the tax authority (Tax Administration Service or SAT, for its acronym in Spanish) determined to nullify its Digital Seal Certificate (CSD, for its acronym in Spanish), under the argument that they did not pay the contributions to which they were obliged, because due to the exercise of its verification powers initiated by the tax authority to one of its partners' for the operations made in the year 2013, it was known that he received profits from the complainant for dividends, for which the respective income tax payment had not been made.

When the authority issued its report, it pointed out that the taxpayer had not demonstrated that, of the dividends distributed to her partners, she had paid the corresponding income tax.

Due to the foregoing, this Institution deemed it necessary to issue an Investigation Action through which it was proved to the tax authority that, contrary to its appreciation, the dividends received by the shareholders and/or partners of the complainant came from its Net Tax Profit Account (Cuenta de Utilidad Fiscal Neta or CUFIN, for its acronym in Spanish) and therefore, no additional income tax had to be paid to the federal treasury, which is why it was asked that the authority would take into consideration that the fourth paragraph of article 11 of the Income Tax Law in force in 2013, expressly states that taxpayers will not be obliged to pay the Income Tax when the dividends or profits come from the aforementioned account, a situation that was accredited with the integration of the taxpayer's Net Tax Profit Account, which was produced as evidence and exhibited to the authority.

In response, the SAT indicated that considering the elements provided through the Complaint procedure, it was appropriate to order the unblocking of the Taxpayer's Digital Seal Certificate (CSD, for its acronym in Spanish).



# Tax Administration Service's Deep Surveillance Program:

## *What you need to know*

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One of the guiding principles of the 2021's fiscal reform is related to tax management, according to which the exercise of management faculties (assistance, control, and surveillance) is privileged over fiscalization faculties (inspection, verification, determination, and settlement). Thus, as a result of the mentioned tax reform, the content of article 33 of the Federal Tax Code was modified, overseeing the possibility for the tax authorities to provide free assistance to taxpayers, inviting them to come to their offices (currently it is done electronically) in order to guide them to the correct fulfillment of its fiscal obligations.

The foregoing occurs with the so-called "deep surveillance program", which helps to guide taxpayers to rectify omissions, differences, and inconsistencies detected between the data expressed in their tax return forms (or declarations) and the information contained in the institutional databases, including the tax authority's as well as other authorities' databases (Digital Tax Receipt by Internet, Monthly tax return forms, annual tax return forms, payments, among other sources).<sup>1</sup>

To execute the aforementioned program, the competent Tax Collection Administration in accordance with the taxpayer's tax domicile, sends to the taxpayer, through their official tax mailbox (buzón tributario, in Spanish), an invitation letter in which informs that the tax authority detected omissions or alleged

inconsistencies in the fulfillment of the taxpayer's tax obligations, within a specific period or fiscal year, in which the tax authority also encourages the taxpayer to carry out an interview in a business day and hour, through the Microsoft Teams application.

The taxpayer may be accompanied by his advisor and, if deemed necessary, request the appointment of a **PRODECON** observer (which is recommended), who will draw up a detailed record stating the facts that arise in the diligence, as well as the inconsistencies detected by the authority, which might be mainly the following:

- Differences between the issued against the income declared in the annual tax return form.
- Differences between the Digital Tax Receipt by Internet received against the deductions for expenses and purchases stated in the annual tax return form.
  - Exchange fluctuations.
  - Expenditures made abroad.
  - Items in the fiscal accounting reconciliation, mainly the inflation's annual adjustment and the investment's deductions.
  - Among others, all those operations that do not have a Digital Tax Receipt by Internet.
- Differences in the income declared in provisional payments against the income invoiced in the month.

<sup>1</sup> <https://www.sat.gob.mx/consulta/26217/informate-sobre-el-programa-de-vigilancia-profunda>

- Differences in the withholding of wages and salaries, determined based on the payroll invoice against what is found in provisional payments.
- Differences in the withholdings made to third parties, determined based on the invoice received with tax withholdings, against what was withheld in the provisional payments.
- Payments made to suppliers that fell under the assumption provided by Article 69-B of the Federal Tax Code.
- Invoices that got canceled by any of the parties involved and that are still valid on the tax authority's digital platform, these can be issued or received, from payroll or their supplements.

Before ending the interview, the tax authority grants a period of 10 days to the taxpayer so that, through email, they may clarify the alleged inconsistencies detected and/or correct his tax situation; to which the authority must issue a response, stating whether or not with the elements provided, the taxpayer managed to clarify them.

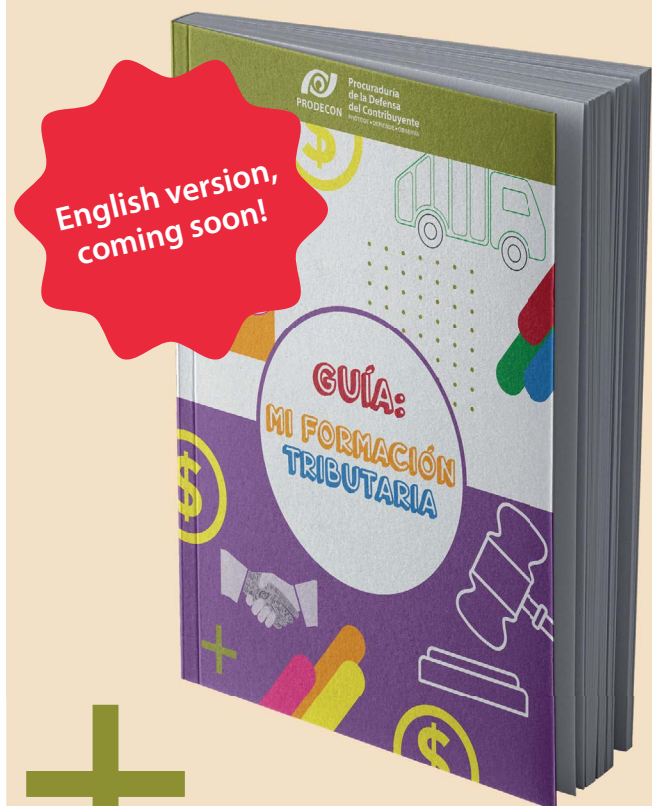
In conclusion, the deep surveillance program is only intended to suggest to the taxpayer the clarification and/or correction of their tax situation, it is not an act of fiscalization, therefore, the lack of attention to the invitation letter cannot have any consequence, such as the determination of a tax debt or the imposition of a sanction, on the contrary, the approach of the taxpayer with the authority can prevent this from happening, because if his fiscal situation is corrected (if it proceeds), it would be considered as a spontaneous compliance, with the confidence that **PRODECON**, as a public agency that protects the taxpayer's rights, will assist him in this and any other act of federal fiscal authority.



Mariana Clemente Nava

Delegate of Campeche and  
Coordinator of the South Zone  
Delegations

Explore, know and have fun  
with the new publication:  
“Guide: My tax training”,  
created by PRODECON so  
that you learn the importance  
of contributing.



# The Customs Verifier's Identification during the Administrative Procedure in Customs Subject

The article 150 of the Customs Law provides for the issuance of the Administrative Procedure in Customs Subject (APCS, the procedure known in Mexico as Procedimiento Administrativo en Materia Aduanera, PAMA for its acronym in Spanish), which must contain, among other requirements, the identification of the customs authority that performs the diligence.

The commented requirement is intended to provide legal security to taxpayers and avoid a discretionary action from customs verifiers, therefore, in the initiation's act of the Administrative Procedure in Customs Subject, which could derive from the customs recognition or verification of goods in transport, if there is a precautionary seizure of goods, the proper identification of the customs verifier must be detailed recorded in the aforementioned act.

On the matter of the identification of the authority that performs the diligence named act of initiation of the Administrative Procedure in Customs Subject, there is a Jurisprudence of the Second Chamber of Mexico's Supreme Court of Justice (Suprema Corte de Justicia de la Nación, SCJN, for its acronym in Spanish) 2ª./J. 62/2006-SS, whose heading is: "ACT OF INITIATION OF THE ADMINISTRATIVE PROCEDURE IN CUSTOMS SUBJECT. IDENTIFICATION REQUIREMENTS OF THE AUTHORITY THAT PRACTICES THE RELATIVE DILIGENCE".

The referred Jurisprudence derived from the Thesis' Contradiction number 43/2006-SS. In addition, from the executive sentence, the Court Ministers determined that the authority that issues the act of initiation of the Administrative Procedure in Customs Subject must state its proper identification, clearly describing the document by which it is identified and the

official document that authorized them to practice the referred diligence, for which the issuance and expiration dates of the credential must be entered, the name of the government institution that issued it, the name and position of the public servant that issued it, as well as the person in whose favor the identification document is granted, their Federal Taxpayer Registry code and the official plate number; likewise, the date of issuance of the official letter or verification order, the corresponding number, the official institution and the officer in charge of the government institution and the name of the authorized person; or, if applicable, add to the initial act and to the copy of it that would be given to the taxpayer, a copy of the documents that contain these data, to be sure that whoever is going to carry out the custom verification, is licensed and authorized by the authority that issues the order and empowered to perform that diligence.

Therefore, if any of the above requirements are not cited in the act relating to the initiation of the Administrative Procedure in Customs Subject, it is evident that it becomes illegal, as it contravenes the provisions of article 150, section I, of the Customs Law, since the aforementioned requirement is intended to safeguard the legal security of the individuals, as they can know all the data related to the identification of the acting personnel and their representation, a circumstance by which the taxpayer can defend himself through a Revocation Appeal and/or a Contentious Administrative Trial - contemplated in Law.



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# BE CAREFUL!

## Is the tax authority collecting you a debt and you know that you didn't generate it?... It may be a case of homonymy

The Royal Spanish Academy defines the term homonymy, as the person or thing that with respect to another, has the same name; that is why, when different people have the same or similar names, the acts carried out by one of them may directly or indirectly affect the daily life of the others, without the latter having intervened in the production of such events and their corresponding results. Homonymy can be a real headache for taxpayers.

The undue and incorrect individualization of the conducts provided for in the laws by the authorities of any kind, can drag important legal consequences that could affect the freedom, honor, or property of the people, it is in tax matters that we put the context of these legal implications and their consequences, derived from a homonymy.

One of the main effects in tax matters is that, when the tax authorities take control of a tax debt from a person, they have the faculty to carry out a coercive collection procedure (Administrative Enforcement Procedure), that is, they have full authority to require the payment of the tax debt and, if it is not made at the time required, they may proceed to seize assets on behalf of the debtor; however, in the event of a homonymy, this is where there is a risk that the tax authority would seize assets belonging to the person who actually doesn't have the status of debtor before the Treasury.

### So, what can you do if you are in this situation?

A taxpayer should consider that, in the event of an affectation derived from a case of homonymy,

he must demonstrate to the tax authority that the debt intended to impute to him is actually attributable to another person, but for this, he must access to the administration of justice through the corresponding instances. The Mexican legal system provides for two mechanisms for the administration of justice:

#### a) Traditional Justice

It is dispensed by competent, impartial Courts or competent public Institutions, unrelated to the conflict or the parties; conformed by regulated procedures with deadlines and formalities, which, once the claims and evidence are provided by the parts in conflict, the claimant and the tax authority, they are analyzed, and then, the judge or Court declares which of the parties involved in the dispute has the right, through a judgment or sentence (jurisdictional bodies) or a resolution (administrative appeal), in both cases its ruling has binding consequences, that is, it obligates the parties to abide by what is resolved in it.

The foreseen instances:

- **Revocation Appeal:** It is the administrative remedy by which the taxpayer requests the tax authority to leave without effect, through the legal status of revocation, the acts that cause an obvious damage to its rights.

For the Federal Tax Code (CFF, for its acronym in Spanish), homonymy is not an alien or unknown element, since it provides for this assumption and contemplates the figure called Interpleader, which consists of going to the administrative instance to claim ownership



of the seized items and prove that you are the rightful owner and that you don't have a tax debt. You can promote this instance at any time until before the seized items are sold, the auction is concluded, or the goods are adjudicated. (Art. 128 of the Federal Tax Code).

- **Contentious Administrative Trial:** The taxpayer must present his lawsuit, before the Competent Regional Chamber of the Federal Administrative Justice Court, which may be in the traditional way (in writing) or online (through the Online Justice System).
- **Indirect Amparo Lawsuit:** In the event that we are facing an act that is not final, the taxpayer may present their Amparo lawsuit (Constitutional claim), which, in accordance with article 108 of the Amparo Law, it can be promoted electronically or physically, before the District Court, this in accordance with the provisions of article 35 of the aforementioned legal order.

The traditional way, as we can see, implies legal technical knowledge to exercise the actions that may apply in a timely manner, therefore it might be necessary to have the service of a specialized tax lawyer and, incidentally, it will be onerous for people to hire such professional services.

## b) Alternative Justice

Principle adopted by our Federal Constitution in its article 17, as an alternative mechanism for access to justice. This route allows individuals to resolve their problems without having to go before a judge, since it gives the parties the opportunity to resolve their conflicts through various mechanisms and presupposes the willingness, cooperation, communication, and good faith of the parties.

In this order of ideas, it is convenient to highlight that **PRODECON** provides the services of alternative disputes resolutions, such as:

- **Complaint and Claims Procedure against Tax Authorities' actions:** It is a prompt and

expeditious procedure, that does not require any formalities; it's flexible, it does not have a deadline for its filing, it is filed at any time that the taxpayer considers their rights violated, it is not considered to be an instance and it does not suspend any legal terms.

- Through the Complaint, **PRODECON** in its role as a Fiscal *Ombudsperson*, intervenes in the safeguarding of the taxpayers' rights, investigating and collecting the elements of evidence that show the violation of rights, so that the fiscal authority restores those violations to the complainant.

The resolutions issued by the Fiscal *Ombudsperson* are not binding, however, by their nature it is a successful formula to solve various problems, including homonymy, because based on experience, this Taxpayer Advocacy Agency has had cases resolved favorably for taxpayers.

It is important to point out that **PRODECON** also has its Legal Representation and Defense service, to support taxpayers through traditional justice, as it makes available the services of an expert lawyer in tax matters to represent them FREE of charge in the corresponding instances and expose before the jurisdictional courts such issues.

## What documents are required to clarify the situation of homonymy?

It is of utmost importance to note that the taxpayer who is intended to carry out the collection of a tax credit controlled by a fiscal authority (SAT, IMSS, INFONAVIT), must consider the following elements, in order to back up his statement:

1. **To prove personality:** Birth certificate, ID, address, Federal Taxpayers Registry, Employer Registry Number, Unique Population Registry Code, Social Security Number, among others, and in case of being a Legal Person, suitable document that demonstrates the personality of the legal representative.

2. **To prove an action:** Documentary evidence that supports what the taxpayer is stating, documents that reliably identify their identity, their economic activity, their business line, compliance with their tax obligations or, where appropriate, the exception of complying with a certain obligation, including biometric data collected by any authorities and thereby prove the error or confusion of the authority.

As we are faced with a globalist trend such as the current one, the existence of homonymies is increasingly noticed, so it is important that all taxpayers know the defense mechanisms they have so that they are not left defenseless in case a tax authority intends to notify them an alleged debt, or worse, requires the payment of that debt through the coercive procedure, when that injurious act was triggered from a case of homonymy; as well as, that they bear in mind that in Mexico there is the Taxpayer Defense Attorney, the *Ombudsperson* in tax matters by excellence, whose mission is to ensure full respect for taxpayers' tax rights.



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what are the contributions;  
tax information to comply  
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In addition, you will know  
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