



GETTING THE  
DEAL THROUGH 

# Tax Controversy 2019

*Contributing editor*  
**Richard Jeens**  
**Slaughter and May**

Reproduced with permission from Law Business Research Ltd  
This article was first published in September 2018  
For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

Publisher  
Tom Barnes  
[tom.barnes@lbresearch.com](mailto:tom.barnes@lbresearch.com)

Subscriptions  
James Spearing  
[subscriptions@gettingthedealthrough.com](mailto:subscriptions@gettingthedealthrough.com)

Senior business development managers  
Adam Sargent  
[adam.sargent@gettingthedealthrough.com](mailto:adam.sargent@gettingthedealthrough.com)

Dan White  
[dan.white@gettingthedealthrough.com](mailto:dan.white@gettingthedealthrough.com)

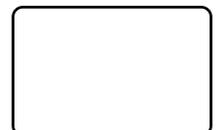
**Law**  
**Business**  
**Research**

Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 3780 4147  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2018  
No photocopying without a CLA licence.  
First published 2013  
Sixth edition  
ISBN 978-1-78915-074-2

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between July and August 2018. Be advised that this is a developing area.

Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



## CONTENTS

<b>Global overview</b>	<b>5</b>	<b>Malta</b>	<b>56</b>
Richard Jeens Slaughter and May		Donald Vella and Kirsten Cassar Camilleri Preziosi	
<b>Austria</b>	<b>7</b>	<b>Mexico</b>	<b>61</b>
Gerald Schachner and Walter Loukota bpy Hügel Rechtsanwälte GmbH		Christian Solís Martínez and Jorge Arturo Rodríguez Ruiz SMPS Legal	
<b>Belgium</b>	<b>12</b>	<b>Nigeria</b>	<b>68</b>
Thierry Afschrift and Pascale Hautfenne Afschrift Law Firm		Muhammad Dele Belgore (SAN) and Lateef Omoyemi Akangbe Sofunde, Osakwe, Ogundipe & Belgore	
<b>Brazil</b>	<b>17</b>	<b>Norway</b>	<b>73</b>
Ana Paula Schincariol Lui Barreto, Gabriela Silva de Lemos, Marcel Alcades Theodoro and Alessandra Gomensoro Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados		Ola Mæle, Sindre Kleive and Anne Kristin Meyer KPMG Law Advokatfirma AS	
<b>France</b>	<b>22</b>	<b>Panama</b>	<b>79</b>
Anne Robert and Victoire de Ménonville Bredin Prat		Ramón Anzola, Maricarmen Plata and Mariana Castillo Anzola Robles & Asociados	
<b>Greece</b>	<b>28</b>	<b>Portugal</b>	<b>85</b>
Sophia K Grigoriadou and John M Papadakis Dryllerakis and Associates		Diogo Ortigão Ramos, Pedro Vidal Matos, Fernando Lança Martins and Iara Marques Freitas Cuatrecasas	
<b>Ireland</b>	<b>33</b>	<b>Switzerland</b>	<b>90</b>
Joe Duffy, Greg Lockhart and Kathryn Stapleton Matheson		Ruth Bloch-Riemer Bär & Karrer Ltd	
<b>Italy</b>	<b>39</b>	<b>Ukraine</b>	<b>96</b>
Massimo Antonini, Raul-Angelo Papotti and Paolo Piantavigna Chiomenti		Anna Pogrebna and Andriy Sydorenko CMS Reich-Rohrwig Hainz	
<b>Japan</b>	<b>45</b>	<b>United Kingdom</b>	<b>103</b>
Eiichiro Nakatani and Kei Takada Anderson Mōri & Tomotsune		Dominic Robertson, Richard Jeens and Charles Osborne Slaughter and May	
<b>Korea</b>	<b>51</b>	<b>United States</b>	<b>109</b>
Byung-Moon Jung, Ji Soo Lee, Sim Seo and Woo Hyun Baik Kim & Chang		J Walker Johnson, Robert J Kovacev and Carina C Federico Steptoe & Johnson LLP	

# Preface

## Tax Controversy 2019

Sixth edition

**Getting the Deal Through** is delighted to publish the sixth edition of *Tax Controversy*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Belgium, Korea and Malta.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Richard Jeens of Slaughter and May, for his continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
August 2018

# Mexico

Christian Solís Martínez and Jorge Arturo Rodríguez Ruiz

SMPS Legal

## Overview

### 1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The regulatory framework of the relationship between taxpayers and the federal tax authorities is mainly provided by the Federal Tax Code (each state has its own set of rules).

The Tax Administration Service (TAS) can delegate part of its authority to federal entities in certain cases. The scope of the authority that can be exercised by the TAS is established by the Tax Administration Service Law and its regulations.

With regard to tax controversies, the Federal Administrative Litigation Law provides the legal framework whereby taxpayers can challenge illegal resolutions issued by the tax authorities before the tax court.

Besides the federal laws, the executive branch is entitled to issue a set of regulations for each federal tax law, as well as an additional body of rules entitled Miscellaneous Tax Resolutions, which is frequently updated during the year.

Finally, Mexico has an extensive network of tax treaties to avoid double taxation and to exchange information with other countries.

### 2 What is the relevant tax authority and how is it organised?

In general, the TAS is the Mexican authority in charge of enforcing federal tax laws (see question 1).

The TAS is headed by the TAS chief. Below that, the TAS is divided into the following general departments:

- collection;
- tax audit;
- customs;
- audit procedures involving foreign trade operations;
- relevant taxpayers (that has specific collection, audit and legal sub-departments);
- operations involving oil and gas;
- taxpayers' services;
- legal;
- planning;
- resources and services;
- examination; and
- communications and information technology.

Each department has several sub-departments. Besides the general departments, the TAS has several decentralised local departments distributed over the whole national territory.

## Enforcement

### 3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

The Federal Tax Code establishes different types of procedures to determine if a taxpayer is complying with the tax laws. The most commonly used are:

- automatic system reports generated as a result of differences between the tax returns and the information held by the federal tax authorities;
- audit procedures performed in the taxpayer's domicile;
- audit procedures performed in the tax authorities' office – in this case, the taxpayer receives an information request from the tax authorities and has a deadline to file the corresponding information;
- audit of the taxpayer's financial statements issued by a certified public accountant – for several years, having certified financial statements was an obligation for certain types of taxpayers. Also, according to our legislation, the facts recognised in such certified financial statements have the benefit that they are presumed to be true. Therefore, a special audit procedure that initiated with the public accountant that signed the financial statements was created; and
- electronic audits – for several years now, the tax authorities have been improving their electronic systems and have been pressuring taxpayers to migrate to an electronic invoicing and accounting system. As part of those efforts, taxpayers are required to upload to the tax authorities' portal part of their accounting information on a monthly basis. Such information is processed and, in certain cases, might result in preliminary tax assessments that will be notified to taxpayers via email.

However, audit procedures initiated in the taxpayer's domicile or in the tax authorities' office are by far the most common procedures used to verify if the taxpayers are complying with tax laws. We expect to see a significant increase in electronic audits in the next few years.

Typically, a tax audit starts with the notification of an official letter containing the list of taxes that are to be reviewed and over which period. Usually, the tax authorities have a 12-month period to review the documentation provided by the taxpayers and issue an official letter including the observations that could result in a tax assessment (certain exemptions apply). After being notified of such official letter, taxpayers have a deadline of 20 working days to provide additional information.

If the documentation provided by the taxpayer is considered insufficient by the tax authorities, they have six additional months to issue the corresponding tax assessment.

A tax audit usually lasts one year (not taking into account the six-month term the tax authorities have to issue the corresponding tax assessment). However, the following exceptions exist:

- audits initiated to financial institutions or business groups that consolidate for tax purposes can last 18 months;
- audits in which the tax authority requests information from foreign tax authorities can last two years; and
- audits related to transfer pricing issues or verification of the origin of goods can last two years.

### 4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Yes, the Mexican tax laws provide several differentiated reporting obligations depending on the type of taxpayers (as a matter of fact, such reporting obligations frequently transcend to other subjects dissociated from the tax relationship).

For instance, trustees have to submit a yearly report regarding income generated in the trusts in which they participate; Mexican companies with foreign investors have to submit a report during the three first months of the fiscal year; public notaries have to submit a report regarding the income tax and VAT paid in the operations in which they participate; entities authorised to receive deductible donations have to file a yearly report; and Mexican residents that generate income in low taxation regimes are required to file a yearly report (failure to file this report could even result in criminal charges).

Several reporting obligations are concentrated in the financial institutions (for instance, all financial institutions have to submit a yearly report identifying taxpayers' cash deposits that exceed 15,000 pesos).

Previously, the main reporting obligations for taxpayers were contained in the Multiple Information Report. Nevertheless, the TAS announced at the end of fiscal year 2016 that such a report would not be binding anymore. In that sense, the above-mentioned report would be replaced by the information contained in the annual tax return and with the information contained in the newest versions of electronic invoices.

Finally, in order to comply with the newest guidelines issued by the OECD in matter of base erosion and profit shifting (BEPS), Mexico has implemented the following annual reports:

- master reports of related parties for multinational corporations;
- local reports of related parties; and
- country-by-country reports.

#### **5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?**

Tax authorities are allowed to require a broad spectrum of documentation in order to verify that taxpayers are complying with the tax laws, provided that such documentation is related to the taxes and fiscal period under review.

Typically, in its first approach, the tax authority will request corporate documentation, accounting books, invoices related to the registered operations and the taxpayer's bank statements.

Depending on the information provided, the tax authorities may request supporting documentation related to the taxpayer's operations (agreements, wire transfers, work papers, etc).

As a result of bad corporate practice performed by certain companies, the tax authorities are focusing on the materiality and substance of the services received by the taxpayers in order to determine the deductibility of the corresponding payments. Basically, they request further documentation that they consider to be proof that the services were effectively rendered and, if such documentation is not provided, they reject the deduction. However, in many cases, taxpayers are not able to provide such documentation, since they were not required to have it even though the service was effectively rendered. For example, the tax authorities are requesting entry logs, call logs, call recordings, camera recordings, minutes of meetings, among others.

Unfortunately, our legal framework does not establish clear rules that define the documents the tax authority is entitled to request in order to verify the materiality or substance of a service. Even article 69-B of the Federal Tax Code, which establishes a procedure to generate a legal presumption regarding the nonexistence of a service, is unclear on this matter. Therefore, the most conservative strategy for companies is to record and preserve the largest amount of information and documentation involving any service received by the taxpayer that will be considered as a deductible expense.

The tax authorities have broad authority when conducting their audits and are entitled to request information from third parties to determine the tax situation of a taxpayer. Such third parties could even be the taxpayer's employees, but that is uncommon. Requesting information from a third party in connection with the taxpayer's operations has become very common practice that bears mixed results, since the information provided by the third party (even if it is not accurate) carries a lot of weight to the tax authorities if it does not coincide with the taxpayer's information.

It should be noted that, even though formal interviews can take place in certain cases, most audit procedures only include informal work meetings. In many cases, due to the tax authorities' workload, audit procedures are limited to the request, submission and review of the taxpayer's information and documentation, with minimal interaction between both parties. We recommend having as much interaction

with the tax authorities as possible, since many of the tax authorities' observations usually result from a lack of communication.

#### **6 What actions may the agencies take if the taxpayer does not provide the required information?**

The two most important measures that can be taken by the tax authorities if a taxpayer does not provide the requested documentation are: (i) impose a fine; and (ii) consider that taxes were omitted, since the lack of documentation has generated a legal presumption in prejudice of the audited taxpayer.

Regarding this second matter, there is broad understanding in our legal practice that the taxpayer has the burden of proof of the legality of their tax situation.

In that sense, according to the Federal Tax Code, a deposit registered in a taxpayer's bank account would be deemed taxable income if not clarified by the taxpayer with the corresponding documents. Similarly, in case of an enquiry by the tax authorities regarding a specific legal requirement for a deduction, the taxpayer must provide the necessary documents to demonstrate the fulfilment of such a requirement to avoid having that deduction rejected.

Finally, if the tax authorities consider that the taxpayer is obstructing the progress of the audit (which could happen if the taxpayer appears reluctant to provide the documentation requested), they can estimate the taxpayer's taxable profit based on any element they have (accounting books, tax returns, information provided by third parties, information contained in other tax authorities' cases or any other elements resulting from economic research).

#### **7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?**

In principle, taxpayers are compelled to provide all the documents requested by the tax authorities, provided that such documents are related to the audited taxes and period.

Consequently, according to article 69 of the Federal Tax Code, all public servants are required to keep information gathered in the course of their public functions confidential. However, certain exceptions apply (eg, in the case of criminal matters).

As a result, many taxpayers choose to hide their business secrets from the tax authorities, arguing that the details of such business secrets are not relevant for the purposes of the audit procedure. However, since the main consequence of failing to provide the requested information is the potential imposition of a tax assessment, taxpayers must be very careful when determining what information they will not disclose. If a tax assessment is imposed, taxpayers can try to prove the irrelevance of the undisclosed information for tax purposes and, if their arguments prevail, such tax assessment could be nullified.

Unfortunately, there is a lack of preventive mechanisms to avoid the disclosure of confidential information by public servants in office. Most of the mechanisms to avoid the disclosure of classified information held by public servants are punitive and do not mitigate the economic effects of the information leak.

#### **8 What limitation period applies to the review of tax returns?**

The general statute of limitations is five years following the date on which:

- the tax return from the respective period was filed (if the contribution is calculated by fiscal years), or shall have been filed (if the contribution is not calculated by fiscal years);
- the contribution was caused (if no tax return is filed for such particular tax);
- the infraction was committed; or
- the breach minute was issued (regarding guaranteed obligations).

A 10-year statute of limitations applies when the taxpayer:

- is not registered in the Federal Taxpayers Registry;
- does not have accounting records or does not keep them during the time required by law; and
- does not file an annual tax return or does not include in it the required information on the VAT and the special tax on production and services.

The statute of limitations can either be reset or suspended. The statute of limitations resets each time a corrective tax return is submitted by the taxpayer regarding the modified items. The statute of limitations is suspended by any audit procedure initiated by the tax authorities, by any administrative appeal or annulment lawsuit filed by the taxpayer, and in case of strike, demise of the taxpayer or if such taxpayer cannot be located in its designated tax domicile.

Criminal matters involving tax issues are not subject to the above-mentioned rules.

## **9 Describe any alternative dispute resolution (ADR) or settlement options available?**

The Federal Tax Code establishes the possibility of filing an administrative appeal before the tax authorities. Such an appeal is optional before filing an annulment lawsuit before the tax court.

In general terms, the administrative appeal must be filed within 30 working days following the day in which the tax resolution was notified.

According to the Federal Tax Code, the tax authorities must issue their resolution three months after the administrative appeal was filed (however, since no consequence results from their non-compliance, administrative appeals usually take longer to be resolved).

In May 2017, a special type of administrative appeal was introduced in the Federal Tax Code to settle high-value tax assessments. If the taxpayer chooses such special procedure and the requirements established in the Federal Tax Code are met, he or she can attack the legality of the tax assessment, disregarding the formal arguments contained in the tax resolution. In that sense, the referred modality allows the taxpayer to litigate the illegality of the tax resolution under a substance-over-form criterion. This new modality of appeal may become very popular in the future, as it allows the taxpayer to request a formal hearing in order to discuss the legality of the tax assessment.

In recent years, Congress has included an alternative dispute resolution procedure in the Federal Tax Code called 'conclusive agreement'. This is a non-controversial procedure in which the tax authorities and the taxpayer review and negotiate the items identified during the audit to try to reach an amicable settlement. This procedure is carried out with the mediation of the Mexican ombudsman in tax affairs (the Mexican Taxpayer's General Attorney).

In general terms, a conclusive agreement is initiated by a request filed by the audited taxpayer (such request can be submitted by the taxpayer at any time before the tax assessment is notified, provided that the tax authorities have already issued an opinion regarding the taxpayer's situation).

In its request, the taxpayer must address the observations identified in the audit, submitting any relevant documentation to support its position. Once the request is filed, any deadline relating to the audit procedure (including the issuance of the tax assessment) is suspended, so both parties can focus on reaching a settlement.

Once notified of the conclusive agreement, the tax authorities are granted a deadline of 20 working days to accept (either totally or partially) or reject the proposal.

Upon receiving the tax authorities' response, the Mexican Taxpayer's General Attorney can arrange meetings between the taxpayers and the tax authorities in order to analyse the outstanding observations, provide additional information and try to promote an agreement.

Even though a conclusive agreement is voluntary for both parties (any party can stop the procedure at any time, but if the party opting out of the conclusive agreement is the tax authority, it has to provide a valid reason to avoid a declaration of the Mexican Taxpayer's General Attorney stating that the tax authority's position is illegal or arbitrary), if a settlement is reached, it will be binding for them. The settlement cannot be appealed and does not constitute legal precedent.

Finally, reaching a conclusive agreement gives a one-time benefit to each taxpayer: all fines that could be imposed by the tax authorities in connection with the corresponding audit procedure are waived. The taxpayer can decide whether to use such a benefit.

## **10 How may the tax authority collect overdue tax payments following a tax review?**

If a tax assessment is not challenged or guaranteed (once notified of the tax assessment, taxpayers have 30 working days to provide a guarantee), the tax authorities are entitled to initiate the administrative collection procedure.

The administrative collection procedure begins with the notification of a payment request made in the taxpayer's tax domicile. If payment is not made, the tax authorities are entitled to seize all necessary assets to cover the amount of the tax assessment, even using police force, if necessary.

After the assets are seized, the tax authority values them before selling them through a public auction. Certain types of asset – mostly personal and indispensable for the taxpayer's activity – cannot be seized). Seized assets cannot be sold if the corresponding tax assessment has been challenged. Taxpayers can recover the seized assets at any time by paying the total amount of the tax assessment.

In recent years, the tax authorities have been taking a much more aggressive position and, instead of notifying the payment request and seizing tangible assets, they send a notice to the banking commission to seize the taxpayer's bank accounts. Such practice imposes a lot of pressure on taxpayers, compelling them to pay the tax assessment or reach a settlement with the tax authorities.

The administrative collection procedure can be suspended (even when assets have been seized) if the taxpayer files an administrative appeal on time or files an annulment lawsuit before the tax court on time and provides a guarantee. By providing a copy of the filed administrative appeal or of the filed annulment lawsuit, the guarantee is usually enough to stop any action related with the collection procedure. However, if a guarantee is used to suspend the administrative collection procedure, it must be filed with the tax authorities for validation. There are several types of guarantees that can be used to suspend the administrative collection procedure; however, not all are accepted by the tax authorities, a situation that we consider highly irregular (the tax authorities prefer bonds but, depending on the amount of the tax assessment, they can be very costly).

## **11 In what circumstances may the tax authority impose penalties?**

The Federal Tax Code provides a number of conducts or omissions that might result in fines. The most common penalties are those imposed for not paying taxes (ranging from 55 per cent to 75 per cent of the omitted tax), having calculation mistakes in a tax return (ranging from 20 per cent to 25 per cent of the omitted tax) and not complying with formal requirements (lack of registration in the Federal Taxpayers Registry, default in the submission of notices, designating a false tax domicile, default in the submission of a tax return, default in the fulfilment of provisional payments, accounting mistakes under the tax law, opposing to a tax audit, etc). The amount of the fine will depend on the formal requirement that was not fulfilled.

In general, no penalties will be imposed if the taxpayer fulfils the omitted obligation voluntarily.

If certain conditions are met, taxpayers may benefit from a reduction in fines (the reduction may even be of 100 per cent).

## **12 How are penalties calculated?**

Depending on the type of penalty and if the conduct is deemed as aggravated (recurrence, false documents, having two accounting systems, intentional destruction of the accounting systems, etc), the tax authorities can impose a minimum or a maximum penalty.

The minimum or maximum can either be an amount or a percentage, depending on the type of penalties. Penalties related to omitted taxes are usually based on a percentage of the omitted tax, while penalties related to formal obligations are usually an amount in pesos.

Fines are updated in accordance with inflation.

## **13 What defences are available if penalties are imposed?**

Taxpayers can challenge fines either by filing an administrative appeal before the tax authorities or by an annulment lawsuit before the tax court. In both cases, the deadline to file the means of defence is 30 working days after the date on which the resolution's notification came into force (roughly 30 plus one working days).

An administrative appeal is resolved by the tax authorities, while an annulment lawsuit is resolved by the tax court.

Even though an administrative appeal is not resolved by an impartial authority, it provides several benefits to the taxpayers (eg, the possibility of challenging the resolution without providing a guarantee, the possibility of filing additional evidence and the possibility of

filing simple copies as evidence instead of originals or certified copies). Filing an administrative appeal is optional before attending tax court.

On the other hand, an annulment lawsuit is resolved by the tax court, which is impartial. The details of the annulment lawsuit will be highlighted in subsequent responses.

#### **14 In what circumstances may the tax authority collect interest and how is it calculated?**

The tax authority can collect interest for any overdue payment under the tax laws. Such interest is calculated by applying a 1.13 per cent monthly rate to the amount of the updated omitted taxes. In general, interest can only be generated for a period of five years. However, such an obligation is linked to the tax authorities' statute of limitations; therefore, if the latter is extended, the interest-generating period can also be extended.

#### **15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?**

Yes. The Federal Tax Code provides a list of tax crimes, which are usually detected during the course of a tax review. Nevertheless, the criminal process must be initiated separately by the tax authorities by filing a grievance or an accusation before the Attorney General's Office.

Once the grievance or the accusation has been filed, the Attorney General's Office takes over the criminal prosecution. From there, the procedure follows the typical steps of any criminal process.

In general, only individuals can be responsible for a tax crime. Nevertheless, in recent years, the criminal law has been modified in order to consider economic consequences against legal entities that are used as a vehicle to commit a crime (although is not clear yet which kinds of crimes will result in consequences for legal entities).

#### **16 What is the recent enforcement record of the authorities?**

During recent years, tax authorities have hardened their audit practices in order to improve their enforcement record. Additionally, the constitutional courts have assumed a position in favour of the tax authorities in their recent rulings. As a consequence, the enforcement record of the tax authorities has improved significantly.

Unfortunately, such improvements have been achieved by sacrificing other important values, such as the strict application of the law and respecting taxpayers' human rights.

### **Third parties and other authorities**

#### **17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?**

The tax authorities are entitled to request information from third parties in order to verify certain facts related to a tax audit. In this regard, the audited taxpayer is not allowed to participate in any manner in the progress of the procedure with the third party.

Nevertheless, the taxpayer does have the right to be notified of the results of the procedure and to make legal allegations regarding such a result during the 20 working days following the corresponding notification.

The Federal Tax Code provides that the third parties can be fined if they do not provide the documents required by the tax authorities.

#### **18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?**

Yes. Tax authorities, both local and federal, are part of the National Tax Coordination System, which allows them to join efforts to audit or collect taxes throughout Mexican territory. Also, the tax authorities are entitled to request information from any other authority within the country.

Finally, Mexico has numerous conventions to avoid double taxation and to promote the exchange of tax information. Such agreements are the result of active interest in cooperating with other countries in connection with tax issues. At present, Mexico is very involved in the BEPS discussions and is aggressively pursuing the enactment of provisions that allow an automatic exchange of information (both locally and internationally).

### **Special procedures**

#### **19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?**

Yes. The Federal Tax Code provides two different scenarios: (i) deferred payment or payment in instalments; and (ii) debt write-off in cases of bankruptcy.

In both situations, several conditions must be met to obtain the corresponding authorisation.

#### **20 Are there any voluntary disclosure or amnesty programmes?**

Yes. Both the Federal Tax Code and the Federal Taxpayer's Rights Law regulate several hypothesis, in which interest and penalties can be condoned or reduced.

For example, in the case of voluntary disclosure (ie, cases in which the tax authorities have not detected the omission), no penalties will be imposed if the taxpayer pays the omitted taxes or fulfils his or her obligations.

Regarding audit procedures, the Federal Taxpayer's Rights Law establishes a reduced fine (20 per cent instead of the 55 per cent minimum fine established when taxes are omitted) if the taxpayer pays the owed tax after the beginning of the audit but before the final observations are notified.

If the tax is paid after the final observations but before the tax assessment is notified, the fine will be 30 per cent of the amount of the omitted taxes.

Also, the Federal Tax Code establishes some cases outside the audit procedures in which penalties can be written off.

For example, interest can be written off during a transfer pricing mutual agreement procedure (provided that there is a double taxation treaty with the other jurisdiction and that such a country does not refund to the corresponding taxpayer any amount referred to in interest).

Furthermore, if a taxpayer executes a conclusive agreement before the Mexican Taxpayer's General Attorney, they are entitled (as a one-off) to a 100 per cent write-off of the penalties that could be imposed.

Finally, in previous years, different decrees that provide benefits to taxpayers have been enacted (eg, in the matter of repatriation of capital and profits). Additionally, it is not uncommon to witness special amnesty decrees after a change of government in the executive branch, so depending on the circumstances and particular policies of the next administration, we may see a new amnesty programme anytime soon.

### **Rights of taxpayers**

#### **21 What rules are in place to protect taxpayers?**

The Mexican Federal Constitution establishes a set of human rights covering tax affairs.

In addition, the Federal Taxpayer's Rights Law contains some specific guarantees in favour of taxpayers (the right to submit evidence and testify during the administrative procedure; the right to rectify their tax situation; the right to a presumption of good faith regarding their acts; the right to offer as proof the administrative file of the tax audit, etc).

On the other hand, the Federal Tax Code provides several formalities that the tax authorities are required to follow during tax audits. If any of these formalities are infringed, the taxpayer can request before the tax court the nullity of the audit.

Finally, the Federal Administrative Litigation Law establishes the rules that taxpayers should follow in order to bring a lawsuit against an illegal tax assessment before the tax court.

#### **22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?**

According to the Federal Taxpayer's Rights Law, taxpayers are entitled to request any information regarding the status of their legal procedures. Therefore, any kind of information regarding such status can be requested directly from the tax authority.

On the other hand, statistical information or data related to other tax procedures can be requested through the Access to Public Information and Data Protection Federal Institute, provided that the corresponding disclosure does not violate the confidentiality provisions established in the Federal Tax Code.

Finally, in certain cases, the tax authorities will publish general information from taxpayers (eg, taxpayers who have received a

write-off, taxpayers who cannot be found in their tax domicile or taxpayers who are deemed to be carrying out non-existent transactions).

### 23 Is the tax authority subject to non-judicial oversight?

Not really. In fact, most of the supervision related to tax collection is carried out internally (even the administrative appeal is filed before a specific area of the TAS). Theoretically, the TAS is always under the supervision of the Mexican Ministry of Treasury and Public Credit (which ranks above it) and the Superior Audit Office of Mexico (in connection with the administering of its budget), but, in general terms, it enjoys wide autonomy in the development of its functions.

In that regard, the TAS Law clearly establishes that TAS will have management and budgetary autonomy and will have technical autonomy in issuing its resolutions.

### Court actions

#### 24 Which courts have jurisdiction to hear tax disputes?

Two different types of courts have jurisdiction to hear tax disputes: (i) the tax court; and (ii) the district and circuit courts.

Even though the tax court is part of the executive branch of government, it enjoys full autonomy regarding the issuance of its rulings. In that sense, such rulings are not subject to any kind of oversight by the executive branch.

The tax court is organised in several courtrooms across Mexico, headed by a superior courtroom (such courtroom only hears relevant disputes based on quantity or importance).

The tax court is mainly in charge of deciding whether an administrative resolution (usually resolutions imposing tax assessments) is valid.

The district and circuit courts are part of the judicial branch of the government and are headed by the Supreme Court of Justice.

District and circuit courts usually decide whether a tax provision or a resolution issued by a tax court complies with the principles established in the Mexican Constitution.

#### 25 How can tax disputes be brought before the courts?

Tax disputes can be brought before the tax courts' attention by filing an annulment lawsuit within 30 working days following the date on which the administrative resolution was notified to the taxpayer.

Through an annulment lawsuit, taxpayers can request that the tax resolution is declared invalid based on the following arguments: incompetence of the issuing authority; omission of a formal requirement; irregularities of procedure; misunderstanding of the facts; wrongful application of the tax law; or inappropriate use of discretionary faculties.

The annulment lawsuit should be submitted through a leaflet signed by the legal representative or through the digital system of the tax court's digital portal.

The annulment lawsuit should mention the name of the plaintiff, its tax domicile, the domicile to receive notifications, email, the challenged resolution, the issuing tax authority, the background, the evidence, the arguments, the requested course of action and the name and domicile of any relevant third party.

The plaintiff should attach to their annulment lawsuit the power of attorney of their legal representative; the challenged resolution with their notification minute; the questionnaire for the legal expert or witnesses, if any; all the relevant documents offered as evidence; and enough copies of the lawsuit for all the parties involved.

Any individual or legal entity affected by a tax resolution can file an annulment lawsuit. Also, in some cases, the tax authorities can file an annulment lawsuit in order to invalidate a previous favourable response given to a taxpayer.

There is no minimum threshold required to file a claim. However, the law provides a shorter procedure in case of low-quantity affairs.

A taxpayer who files a claim can also request the recognition of a subjective right affected by a negative ruling issued by the tax authorities. Also, tax authorities can request that previous resolutions granted to taxpayers are declared invalid if they demonstrate the illegality of such resolutions.

As in the Federal Tax Code, a special procedure has been established in the Federal Administrative Litigation Law to resolve certain tax disputes on a substance-over-form basis. Just as in the special type

### Update and trends

Currently, the efforts of the tax authorities are focused on implementing and improving the reporting framework in tax affairs in order to comply successfully with the latest base erosion and profit shifting policies. Some taxpayers have challenged the new reporting obligations implemented by the tax authorities and the legislator, but the stance of the constitutional courts (strongly in favour of the current tax administration) has made it almost impossible to nullify the new reporting obligations on constitutional grounds.

However, there has been a modest increase in favourable precedents regarding the evidential value of private documents. There have also been some new precedents limiting the presumption faculties of the tax authorities.

In that sense, while the constitutional courts seems to remain reluctant to assume a protective stance against the most aggressive policies implemented by the tax authorities in recent years, some tax courts seem to be willing to establish some legal padlocks to the almost unlimited faculties of the tax authorities regarding the presumption of taxable income.

Finally, in recent years, the Mexican Taxpayer's General Attorney has assumed a more reluctant stance against the tax authorities in the conclusive agreements and legal complaints filed before it. Therefore, it has gone from being one of the most revolutionary institutions in favour of taxpayer rights to a less useful tool - valuable only against clear and extreme transgressions of taxpayer rights.

of administrative appeal, quantity requirements should be met and a formal hearing takes place before the issuance of the final ruling.

Regarding district and circuit courts, taxpayers can file an amparo lawsuit within 15 working days following the date on which the tax provision has been applied for the first time (in certain specific cases, the amparo lawsuit can be filed within 30 working days following the date on which the tax provision is in force) or the tax court's resolution has been notified.

In this type of procedure, the claim can only be filed under constitutional grounds invoking a human right affected by the challenged resolution or provision.

The amparo lawsuit can be filed before the issuing authority (if the challenged resolution is a tax court ruling) or directly before the federal courts (if the challenged resolution is a general provision).

An amparo lawsuit can be filed through a written document or electronically (the law regulates the possibility of filing it verbally in some grave cases, but it is uncommon in tax affairs). The lawsuit must mention the name and domicile of the plaintiff and its legal representative, the name and domicile of any third party involved, the responsible authority, the challenged resolution, the background, the violated human rights and the pertinent legal arguments.

Any individual or entity can file an amparo lawsuit; however, authorities are not allowed to file such claims.

There is no minimum threshold to file an amparo lawsuit.

The legal effects are usually to make an unconstitutional resolution or the application of an unconstitutional rule void.

#### 26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Yes. The Federal Administrative Litigation Law regulates the accumulation of tax cases when the parties and the arguments are the same or when two or more administrative resolutions are causally connected. Under this scenario, one tax claim can affect multiple resolutions.

#### 27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Taxpayers are not required to pay the amounts in dispute before filing their claim. However, if the amount in dispute is not paid or guaranteed once the annulment lawsuit is filed, the tax authorities are entitled to initiate the administrative collection procedure to seize assets to guarantee the amount of the tax assessment.

If the taxpayer pays the amount in dispute and wins the case in tax court, the tax authorities are required to reimburse the updated amount plus interest.

**28 To what extent can the costs of a dispute be recovered?**

Expenses relating to the case can only be recovered by the tax authority if the taxpayer filed an annulment lawsuit with the sole intention of delaying a procedure.

However, taxpayers can request the payment of damages if the tax authorities committed a grave mistake when issuing their resolution (eg, the ruling of the tax authority does not take into consideration a binding legal precedent of the Mexican Supreme Court of Justice).

**29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?**

No. The taxpayer can cover his or her expenses through any means that he or she finds appropriate.

**30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?**

The ruling of the tax court is made by a judicial body comprising three judges (the decisions are taken by majority). A jury trial is not available in tax affairs.

**31 What are the usual time frames for tax trials?**

A regular annulment lawsuit before the tax court usually lasts from 12 to 18 months, depending on the evidence filed by both parties (eg, expert opinions usually delay the process). Nonetheless, special expedited procedures exist for controversies that involve small amounts (these procedures last from three to six months).

If the resolution issued in the annulment lawsuit is unfavourable for the taxpayer, he or she is entitled to file a constitutional trial (juicio de amparo). Depending on the complexity of the case, several successive constitutional trials may be filed. The tax authorities are also entitled to appeal the tax court's resolution. Therefore, depending on the complexity of the case, the whole process can last several years.

**32 What are the requirements concerning disclosure or a duty to present information for trial?**

There is no discovery process as an independent pre-trial procedure. When filing an annulment lawsuit, the taxpayer is required to offer all the evidence that supports his or her position. If the taxpayer does not submit the necessary evidence upon filing, the tax court will grant the taxpayer a five business day deadline to submit it. Evidence not submitted before the deadline will not be admissible.

Apart from evidence offered and submitted at the beginning of the tax trial, only supervening evidence (eg, evidence that did not exist when the annulment lawsuit was filed) and evidence requested by the tax court to have a better understanding of the case are admitted.

Once all the evidence has been offered and submitted, the vast majority does not require any special procedure.

In general, each party is responsible for presenting the information that supports its stance. However, the taxpayer is entitled to demand the disclosure of the administrative file of the tax audit or the issuance of any certified copy of the information from the taxpayer that may be in the possession of the tax authorities.

The authorities are required to issue, within an appropriate time, any certified copy requested by the parties. Therefore, the parties can request that the tax court issues a formal request to the neglecting authority in case of delay. If the requested authority fails to provide the information during the term granted by the tax court, a fine can be imposed.

If one of the documents requested cannot be provided for justified reasons, the corresponding authority can request an extension to implement extraordinary measures in order to provide the requested information. However, if the presentation of the information remains impossible, the tax court can determine that the omission is justified.

**33 What evidence is permitted in a tax trial?**

Theoretically, any kind of testimony is allowed in a tax trial, except for the tax authorities' confession obtained through questioning. However, in practice, regular tax trials are predominantly based on documentation and typically the only evidence that resembles a testimony is expert opinion. (However, we have witnessed that sometimes testimonies have proved to be quite useful to demonstrate the existence of some deductible services, especially when the service provided by the supplier does not generate significant documental background).

With regard to the translation of evidence, the Federal Administrative Litigation Law does not establish the translation of evidence as mandatory. However, in recent years, the tax court has been demanding that all documents in a foreign language must be duly translated according to the requirement from the provisions applicable to civil litigation affairs.

**34 Who can represent taxpayers in a tax trial? Who represents the tax authority?**

Taxpayers can be represented by any person in tax court, provided that they grant him or her an appropriate power of attorney (also, individuals can represent themselves before the tax courts). If the tax authority recognises the legitimacy of the legal representative's capacity, it is not necessary to submit a new power of attorney.

Legal advice from a tax lawyer is not mandatory, but is advisable. Lawyers can be authorised in trials to make arguments and submit proofs. The authorised attorney must have a law degree and needs to be registered before the tax court. If such requirements are not fulfilled, the authorised person will only be empowered to receive notifications and review the case file.

Finally, it is important to mention that the Mexican Taxpayer's Attorney General is entitled to act as the legal representative of taxpayers (if requested) in any tax trial or legal procedure. The services of the Mexican Taxpayer's Attorney General are free of charge.



**Christian Solís Martínez**  
**Jorge Arturo Rodríguez Ruiz**

**csolis@smps.com.mx**  
**jrodriguez@smps.com.mx**

Andrés Bello # 10  
Oficina 8A  
Col. Polanco  
11560 Mexico City  
Mexico

Tel: +52 (55) 5282 9063  
Fax: +52 (55) 5281 4952  
www.smpslegal.com

On the other hand, the tax authorities are represented in trials by their legal departments. They can also designate delegates to receive notifications and review the case file.

---

**35 Are tax trial proceedings public?**

No, only the parties and the authorised individuals can be informed of the status of the legal procedure.

Nevertheless, the tax court's final rulings are published. However, the parties are entitled to request that their personal data is not published.

---

**36 Who has the burden of proof in a tax trial?**

In general terms, the taxpayer (acting as plaintiff) has the burden of proof, as the administrative resolutions are deemed valid until proven wrong.

However, some legal tools can help the taxpayer to revert such burden of proof, such as the statements contained in a public accountant's opinion or the legal presumption of good faith regarding the taxpayer's acts.

Under special circumstances, tax authorities can act as plaintiff in the annulment lawsuit (eg, when the taxpayer has a favourable resolution issued by a tax authority and the tax authorities want to revoke the resolution). In those cases, the tax authority will have the burden of proof.

---

**37 Describe the case management process for a tax trial.**

In a tax trial, the plaintiff has 30 days to file the corresponding lawsuit. Once admitted, the lawsuit is notified to the tax authorities, granting them an equal period to produce their opposing arguments. The evidence of each party, or the questionnaire for the expert opinion, should be submitted attached to their initial writ.

Most evidence does not require further diligence, but if one of the parties offers an expert opinion, the process could be prolonged for one or two additional months, because each party has to select an expert to submit an opinion and, in case of dissimilar opinions, a third expert could be designed to settle the matter.

Five days after the discovery process has concluded, the tax court will grant a deadline of five working days to all parties to file their closing arguments. Once the deadline has passed, the tax court has 45 days to pass judgment. However, since there are no repercussions for not issuing a ruling within the 45 day-term, sometimes the ruling takes longer.

---

**38 Can a court decision be appealed? If so, on what basis?**

Yes. If certain conditions are met, the tax authorities can file a tax appeal within 15 working days from the date on which the tax court's resolution was notified. The tax appeal is resolved by a circuit court. On the other hand, the taxpayer can appeal the tax court's resolution through a constitutional trial (the period in which to file the constitutional trial is the same as that which the tax authorities have to file their appeal).

Both procedures are conceptually different, as only the tax appeal is an appeal in a strict sense, while the constitutional trial is an independent constitutional procedure. However, in most cases, the constitutional trial is only oriented to challenge the legality of the tax court's ruling, so both legal means are similar.

The applicable law also regulates the possibility of filing complaints against resolutions issued by the tax court within the process (rejection of the annulment lawsuit, rejection of evidence, etc).

## *Getting the Deal Through*

Acquisition Finance  
Advertising & Marketing  
Agribusiness  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Appeals  
Arbitration  
Art Law  
Asset Recovery  
Automotive  
Aviation Finance & Leasing  
Aviation Liability  
Banking Regulation  
Cartel Regulation  
Class Actions  
Cloud Computing  
Commercial Contracts  
Competition Compliance  
Complex Commercial Litigation  
Construction  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Reorganisations  
Cybersecurity  
Data Protection & Privacy  
Debt Capital Markets  
Dispute Resolution  
Distribution & Agency  
Domains & Domain Names  
Dominance  
e-Commerce  
Electricity Regulation  
Energy Disputes

Enforcement of Foreign Judgments  
Environment & Climate Regulation  
Equity Derivatives  
Executive Compensation & Employee Benefits  
Financial Services Compliance  
Financial Services Litigation  
Fintech  
Foreign Investment Review  
Franchise  
Fund Management  
Gaming  
Gas Regulation  
Government Investigations  
Government Relations  
Healthcare Enforcement & Litigation  
High-Yield Debt  
Initial Public Offerings  
Insurance & Reinsurance  
Insurance Litigation  
Intellectual Property & Antitrust  
Investment Treaty Arbitration  
Islamic Finance & Markets  
Joint Ventures  
Labour & Employment  
Legal Privilege & Professional Secrecy  
Licensing  
Life Sciences  
Loans & Secured Financing  
Mediation  
Merger Control  
Mining  
Oil Regulation  
Outsourcing  
Patents  
Pensions & Retirement Plans

Pharmaceutical Antitrust  
Ports & Terminals  
Private Antitrust Litigation  
Private Banking & Wealth Management  
Private Client  
Private Equity  
Private M&A  
Product Liability  
Product Recall  
Project Finance  
Public M&A  
Public-Private Partnerships  
Public Procurement  
Real Estate  
Real Estate M&A  
Renewable Energy  
Restructuring & Insolvency  
Right of Publicity  
Risk & Compliance Management  
Securities Finance  
Securities Litigation  
Shareholder Activism & Engagement  
Ship Finance  
Shipbuilding  
Shipping  
State Aid  
Structured Finance & Securitisation  
Tax Controversy  
Tax on Inbound Investment  
Telecoms & Media  
Trade & Customs  
Trademarks  
Transfer Pricing  
Vertical Agreements

*Also available digitally*

# Online

[www.gettingthedealthrough.com](http://www.gettingthedealthrough.com)