Mexican Taxpayers' Ombudsman – Mediator empowerment

Mexico has incorporated an independent public organisation – *Procuraduría de la Defensa del Contribuyente* (PRODECON) – which acts as a taxpayers' ombudsman, with a mandate to guarantee and protect the constitutional and human rights of taxpayers. René Meza and César De la Parra of Chevez, Ruiz, Zamarripa y Cía outline the salient features of the dispute resolution mechanisms under PRODECON.

The Mexican Taxpayers' Ombudsman was established as part of an effort from the Mexican Government to provide relief and support to taxpayers who must contend with a complex tax system with excessive formal requirements, which undergoes periodical amendments, which imply challenges to follow-up and comply with the applicable updates.

The main objectives behind the implementation of the PRODECON is granting free access to justice to taxpayers against arbitrary acts of the Tax Revenue Service, and assure that the principle of equality between parties (government and taxpayer) prevails, providing legal certainty to taxpayers.

PRODECON began to act in September 2011, although its impact on public life has increased recently due to its active involvement in the issuance of recommendations for the correction of systemic tax issues detected, its promotion of amendments to the tax legislation and, particularly, as a result of the 2014 tax reform package, which included a new alternative means of dispute resolution between taxpayers and Mexican tax authorities (arbitrage), in which the PRODECON participates as mediator between the parties.

The PRODECON is an organisation specialised in tax matters and forms part of the Mexican state in that it is a public agency of the Mexican government, but with functional and operational autonomy and patrimony of its own, which allows it to act independently.

It fulfills its mandate by upholding taxpayers' rights and providing an independent and impartial review of unresolved complaints from taxpayers about the service or treatment they receive from the tax authorities. The Ombudsman also makes recommendations directly to the Tax Revenue Service to correct any systemic or endemic problem of the fiscal system, and acts as a spokesperson for taxpayers before the Mexican Congress when it comes to dealing with tax reform proposals.

The role of PRODECON includes raising awareness of taxpayer service rights, promoting a tax culture in Mexico through campaigns and social marketing, as well as providing counseling and consultation, legal representation and defence of taxpayers, attention to complaints, proposing amendments to tax regulations and granting assistance in the interpretation of tax provisions, at the request of the Mexican tax authorities.

For instance, when a complaint is received by PRODECON from a taxpayer, such organism is required to analyse the particular case and, if applicable, issue a public recommendation to the corresponding authority establishing the wrongdoings detected and the manner in which it should proceed. The recommendations are public but not binding upon the tax authorities, although they should observe such recommendations under ethical principles.

The PRODECON is also empowered to impose penalties on federal tax authorities in specific cases in which the tax authorities (i) fail to provide supporting evidence in a complaint procedure;

The role of PRODECON in mediation and tax dispute resolution continues to increase

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(ii) do not state their position regarding recommendations issued by PRODECON; (iii) refuse to achieve a recommendation addressed by PRODECON on an act declared void by complete lack of legal basis, among others. The penalties are mainly economical and could also cause administrative liabilities.

The services rendered by PRODECON are free of any consideration. Several services are provided at the taxpayer's request, for instance when it participates as a taxpayer representative before the tax authorities or the courts.

Identifying systemic problems and issuance of recommendations

One of the most significant roles of the Mexican taxpayers' ombudsman since its creation has been identifying systemic problems within the Mexican tax system, derived from specific complaints made by taxpayers, as well as from the internal analysis the organism makes to the tax legislation.

For instance, during 2014 PRODECON, after analysing several complaints made by taxpayers in connection to the tax authorities' actions regarding VAT refunds filed by taxpayers, issued a public recommendation urging the tax authorities to avoid dilatory practices in refunds, to make public the status of the requests, and to avoid making unnecessary and unjustifiable information and documentation requirements to delay such refunds. In fact, based on different actions taken by PRODECON, the Mexican Revenue Service issued administrative rules to expedite the VAT refund process in infrastructure driven projects.

Recently the PRODECON issued public recommendations to diminish the burden of taxpayers regarding the information that has to be filed on a monthly basis to the Tax Revenue Service as part of the new obligation to submit the accounting books and records through the Tax Administration Service on a monthly basis. Additionally, it has addressed different issues regarding the obligation of issuance of digital invoices by taxpayers.

Several recommendations and actions taken by PRODECON have promoted the simplification of taxes in Mexico and avoided excessive procedural formalities, which have translated into a relief of taxpayers' obligations and an overall improvement in the country's tax situation.

Conclusive agreement

Without a doubt, the impact of the Taxpayers' Ombudsman was strengthened with the 2014 tax reform package, whereby the 'conclusive agreement' (arbitrage procedure) was introduced into our tax system, under which the PRODECON plays a major role.

The conclusive agreement is the first alternative means of tax dispute resolution procedure in the Mexican tax system, and is intended to cause the tax authority and the taxpayers to reach agreements on the classification of acts or omissions identified by the tax authorities within an audit procedure, before a tax assessment is imposed.

The conclusive agreement is not considered to be a judicial nor an administrative instance, but rather allows a negotiation between taxpayers and the Tax Revenue Service, assisted by the PRODECON as mediator, in which mutual benefits may arise for the parties, without having to resort to a legal confrontation. As described by the PRODECON itself, the implementation of an agreement of this nature allows "win-win" situations for both parties: taxpayer and government.

This new alternative procedure for tax dispute resolution is a useful tool with which taxpayers can reach agreement with the Tax Revenue Service to correct a tax situation or to resolve disputes that arise from tax audit or inspection procedures, in an expedited manner which provides legal certainty for all parties.

It is important to mention that when initiating a conclusive agreement, the audit or inspection procedure is suspended and the issuance of a conclusive agreement is binding on the parties and cannot be challenged. The introduction of the conclusive agreement in our tax system enhances the role of PRODECON, in its character of mediator in this process.