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The practical protection
of taxpayers'
fundamental rights



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Summary and conclusions

Even though Argentina has not adopted a taxpayer's bill of rights, its Constitution provides fundamental guarantees for the protection of taxpayers. These rights are expressly enumerated in many cases; otherwise, they are established by implication because the Constitution states that the enumeration of certain rights is not to be construed to deny others which are not enumerated therein but are inherent to the rule of law.

Unlike other countries, constitutional control in Argentina is diffuse, that is, it is in the hands of all judges and courts in the judiciary.

As good practice in the defense of taxpayers' rights, the following are identified. During a tax procedure:

- the right to take notice of administrative proceedings and to appeal administrative decisions to the judiciary;
- the right to be represented by legal counsel;
- the right to offer and submit evidence;
- the right to a grounded decision.

The e-government system has become an effective tool. The widespread use of new technologies has benefited taxpayers by allowing them to better comply with their fiscal obligations and to control the information held by the tax authority.

There are a series of actions that may be efficiently completed over the internet, i.e. the Argentine tax authority (AFIP) has implemented for taxpayers, at their option, the possibility of establishing an electronic address for notifying "news" and several administrative decisions.

In order to access the AFIP's website and use the services provided therein (i.e. filing of tax returns, enrollment in payment plans, queries, etc.), the taxpayer needs to use an e-tax password. Although regulations make the user liable in respect of safeguarding the e-tax password, certain limits to this liability have been imposed by case law.

The implementation of a highly secure IT system to access the AFIP's data center (the network operations center (NOC)) has been a significant improvement in the protection of taxpayers' personal and sensitive information. In order to access the NOC, the authorized tax agent must enter his ID number and fingerprint. By

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doing so, he is granted access only to specific information according to his seniority and responsibility within the agency.

The electronic auditing mechanism prevents discretion in the selection of taxpayers to be audited, thus permitting objective auditing parameters to be set by cross-referencing data held by the tax authority (e.g. level of expenses vs. income, bank deposits vs. income, standard gross income ratios by type of activity).

Although still exceptionally granted by judges, the use of *habeas data* has proved to be an efficient tool in order to compel the disclosure of taxpayers' information held by the tax authority and its rectification if inaccurate.

The praetorian figure of *amicus curiae* created by the Supreme Court allows the involvement of citizens in the administration of justice and in cases where matters of institutional significance or public interest are discussed.

The tax advisory committees encourage institutional dialog among the tax authority, professional entities and organizations representing different sectors of the community. General tax proposals and recommendations are received by the tax authority and their conclusions are used as guidance by taxpayers.

Despite the above, in Argentina there is still a significant gap that separates theoretical guarantees from their practical efficacy. Indeed, while many appropriate legal and administrative tools have been incorporated in order to guarantee the protection of taxpayers' rights, they still depend upon improvement and the creation of other tools. In this sense, it should be noted that:

- The rule known as *solve et repete* entails the impossibility of challenging a tax authority's decision without first paying the tax. Thus, the taxpayer is compelled to pay the contested tax before having access to the courts. The *solve et repete* rule does not, however, apply to access to certain jurisdictional bodies, as is the case with the claims filed in the Federal Tax Court.
- There is still a long way to go in the efficient protection of taxpayers' sensitive information. In fact, communications between taxpayers and tax advisors are not protected by professional secrecy if the tax authority gains access to them on a regular basis.

In addition, although the implementation of the Data Fiscal system has been shown to be useful for the tax authority in the identification of irregularities among retailers, the reasonableness of this system may be questioned as it seems to collide with the right to privacy. Therefore, there is still a need for case law construction in order to generate the proper tools to protect confidentiality of information.

- Taxpayers often face long delays in administrative procedures that hinder the defense of their rights. While it is true that there is a remedy for these situations, in many cases the legal protection for delay becomes time barred.
- The right to no self-incrimination has been limited by case law. Indeed, the courts have held that taxpayers may not refuse the duty of cooperation – specifically, displaying accounting books and documents – by taking refuge in the eventual use of such information to support administrative or criminal penalties.
- Under certain circumstances, the tax authority is empowered to monitor the issuance and delivery by taxpayers of mandatory documentation (invoices) through undercover agents. Despite having been strongly questioned by doctrine, case law has ratified this auditing mechanism on condition that certain requirements are satisfied.

Consequently, beyond the positive practices mentioned above, there is a need to explore the new possibilities offered by the new technologies that it is believed will potentially provide a breeding ground for improving the Argentine tax system so that it becomes more respectful of taxpayers' rights.

1. Preliminary warning

Reporters have been instructed to approach the subject from a practical perspective, for the purpose of identifying positive experiences that have been formalized in a block of legislation that all the world's legal systems have adopted in their regulations but which, for various reasons, has not been put into practice.

Argentina is no exception in the gap that separates theoretical guarantees from their practical efficacy.

This outline covers the instructions received, and highlights what is estimated as relevant as a positive practice. In the reporter's opinion it will be useful to note the appropriate tools for the protection of taxpayers' rights even though effective protection still depends upon the improvement in the use of these tools. The legal actions brought by taxpayers before administrative or court authorities and the exploration of new possibilities offered by the system potentially provide a breeding ground for such improvement.

2. Identifying taxpayers and issuing tax returns

2.1. E-government

Currently, most investigation and auditing operations involving the AFIP and taxpayers are conducted through digital media. Technological and computer tools have had an impact upon how the taxpayer's obligations are fulfilled, to a wide extent including, but not limited to, reporting requirements, invoicing, withholding and payment systems, advances, filing of tax returns and exchange of information with local tax authorities. The AFIP has a very good computer system available that supports a huge database.

The AFIP has a nationwide plan that provides for the strategic guidelines engaging the various entities of the tax administration for the purpose of developing technologies to offer an improved service to taxpayers, among other issues.¹

Within the AFIP's strategic plan is found so-called e-government, a global system for interaction with the taxpayer, i.e. a tax account system for the purpose of providing reliable, accurate and timely information concerning the data recorded in the computer systems on customs, tax and social security matters, thus facilitating voluntary compliance with the obligations and actions required from taxpayers.

¹ National Government Plan and Sectorial Plans created under Executive Order No. 378 dated 27 April 2005.

The widespread use of technological and computer tools provides taxpayers with an efficient guide for filing tax returns and permits them to control the information that is in the possession of the tax authority, timely compliance with their tax obligations as well as any tax withholdings made by third parties.

From this perspective, there is no doubt that e-government has become a tool for the protection of the taxpayer's rights notwithstanding, as outlined below, the new challenges that arise from the use of information.

2.2. Taxpayer's identification and the e-tax password

Taxpayers must file their tax returns for tax liabilities and social security contributions by electronic data interchange.

Taxpayers are identified by means of a numeric code referred to as *clave única de identificación tributaria* (taxpayer's identification number) (CUIT). Any citizen or company that starts to conduct any business activity must register with the AFIP, which will assign such a code.

On the other hand, once the CUIT has been obtained, taxpayers must log into the AFIP's website by means of the use of an e-tax password (*clave fiscal*), which grants taxpayers access, through the AFIP's web service, to their tax information and permits them to use the computer services enabled by the AFIP, such as the filing of tax returns, tax registration and deregistration, enrollment in payment plans, queries, etc.²

The use of the e-tax password may be delegated to individuals authorized by the taxpayer. However, this does not release the taxpayer from liability for the use of the password by such a representative, which causes taxpayers to carefully select such users.

It should be noted that the regulations impose liability upon the user of the e-tax password with respect to safeguarding and protecting it. As far as the AFIP is concerned, the only person who is liable for the fraudulent use of the e-tax password is the taxpayer.³

Notwithstanding the foregoing, case law has set certain limits to this liability imposed upon taxpayers in cases of fraudulent misappropriation (as decided by the Federal Court of Original Jurisdiction and Federal Court of Appeals for Administrative Litigation Matters).⁴ This solution is fair since an unauthorized person may cause serious damage to the taxpayer to the extent that the taxpayer may be penalized for the commission of tax violations and, in turn, this may disrupt the tax authority's normal performance in its auditing and investigation duties. The problem here is that it is not always easy to prove the fraudulent use of the e-tax password. In the case referred to above, for example, the court understood that the rectifying of tax returns filed through the AFIP's computer system by an unidenti-

² The e-tax password system was created under General Resolution No. 1345/02 (published in the Argentine Official Gazette on 1 October 2002), as subsequently amended by General Resolutions (AFIP) No. 1389/02, 1634/04, 2208/07, until the current wording thereof as arises from the most recent amendments and partial repeals under General Resolution (AFIP) No. 2292/07.

³ As provided for under General Resolution (AFIP) No. 2239/2007.

⁴ Federal Court of Original Jurisdiction No. 2 in and for San Martín in the case entitled *Fiestas y Eventos SA*, dated 8 January 2008; the decision was later confirmed by the Federal Court of Appeals for Administrative Litigation Matters in and for San Martín, Division I, on 29 April 2008.

fied person should be annulled on the basis of the fraudulent use of the taxpayer's e-tax password, to the extent that in just over half an hour, 51 rectifying tax returns had been prepared whereby the taxpayer was required to pay blatantly ridiculous amounts.

2.3. Taxpayers' services

The AFIP provides appropriate online support services to taxpayers, particularly in connection with the publication of rules (laws, executive orders and general resolutions), legal and administrative opinions and answers to questions issued in particular cases.

There are also a series of actions that may be efficiently completed over the internet. In fact, the AFIP also implemented for taxpayers, at their option, the possibility of establishing an electronic address for notifying "news" and several administrative decisions.⁵

The AFIP has an assistance program available which serves as a communication channel with taxpayers and the general public. This assistance program is serviced by specialized staff who are available for formal claims and suggestions.

There are three communication channels: (a) at tax agencies a so-called taxpayer advocate is available to taxpayers to receive and take note of concerns; (b) over the internet; (c) by telephone, by calling a toll-free number.

The complaints or claims that are received within the framework of this program generally refer to:

- claims against government officials who, either directly or indirectly, have committed actions that affected the taxpayer's rights;
- claims for failure to perform the appropriate actions or delays in the procedures;
- claims for inattention and/or anomalies in the operation of the AFIP's services.

The AFIP has services referred to as SMS (text messages), *mi celular* (my mobile phone) and *clave telefónica* (telephonic password) available to permit taxpayers to make certain inquiries and actions, as well as to receive information of interest.

Furthermore, since 2013, the AFIP has operated a mobile tax agency system, which is useful for approaching taxpayers residing in areas that are distant from urban centers. The purpose of these agencies is to facilitate compliance with the tax obligations by taxpayers, expediting those procedures that are often complicated and lengthy. For this reason, such agencies are also located in tourist resorts, such as at beaches. At mobile tax agencies, taxpayers may request and obtain an e-tax password, record biometric data, check debt balances and even enroll in payment plans.

Taxpayers are also supplied with handbooks providing the user with general guidelines and technical specifications about how to fill in the tax returns that are submitted electronically. Basically, they provide information about the technical and functional operations of application forms, general guidelines for proper assessment of taxes and the operating processes required to prepare and file tax returns.

⁵ Created under General Resolution No. 2109/2006.

3. Confidentiality

3.1. IT security

The security of the information that is in the possession of the AFIP is essential. Therefore, for access to the AFIP's data center (NOC), which consists of a biometric system where the ID number and fingerprint are entered, five access levels must be satisfied.

The NOC monitors all components related to the availability of the services of the data center (including, but not limited to, infrastructure, security, communications and applications).

The information stored therein is not available to the AFIP's staff in general but, instead, different access levels are assigned depending on the roles, tasks and duties of each AFIP agent. At the same time, the user and information displayed are recorded because staff have to use a password. This permits accurate monitoring of the information handled by tax agents.

This access system is the only limit on AFIP staff to access information that is in the AFIP's possession.

3.2. Limits on information requirements

The use of the tax authority's auditing powers involves, in the first place, checking whether or not the taxable event occurred and, in the second place, quantifying the tax liability. This entails a clear limit that may not be exceeded by the tax authority.

The use of these powers has one single purpose, and the AFIP is entirely limited to it: the tax authority's actions must be aimed at finding the truth with respect to the identification of the taxpayer and the exact amount of the obligation. Any information requirement that is not conducive to attaining such purposes will be unlawful. This has been held by the AFIP itself (Ruling (DAL) 9/03 dated 29 September 1993).

The AFIP has also stated that information may only be required from third parties as long as such information is necessary for the purpose of the investigation of the tax situation of taxpayers and always observing the limit that such information must be useful for such purposes (Memo 916/70).

It is widely known that the right to privacy is not absolute and, hence, the information requested by the AFIP may not be regarded as an infringement of this constitutional right (Supreme Court of Justice of the Republic of Argentina, in the case entitled *Colegio Público de Abogados de la Capital Federal*, decision dated 13 February 1996). However, the exercise of discretionary powers for investigation and auditing purposes may not justify the tax authority's arbitrariness. Thus, case law has held that it is the reasonableness in the exercise of these powers that validates the state's acts (Supreme Court of Justice, in the case entitled *Ducilo SA*, decision dated 27 February 1990).

3.3. Tax secrecy

Section 101 of the Argentine Law on Tax Procedures (Law No. 11,683) provides that tax returns, statements and reports submitted by taxpayers or third parties to

the AFIP as well as contested proceedings, to the extent that information is contained therein, are secret.

The obligation also applies to courts, officers, court employees or AFIP dependents, requiring them to maintain any information supplied to them during the course of their duties in absolute secrecy.

Any third party disclosing or reproducing such information will be committing a violation of secrecy and privacy crime, which provides as follows:

“Any government official who discloses facts, events, actions, documents or data that are of a secret nature as required by law shall be subject to one month to two years imprisonment and one to four years temporary disqualification.”⁶

On the other hand, under an executive order the following paragraph was incorporated into the section transcribed above:

“Tax secrecy does not apply to any information related to non-filing of tax returns, non-payment of obligations due and payable, the amounts resulting from final *ex officio* assessments and from approved adjustments, final penalties as a result of formal or material infringements or to a taxpayer’s name and any crime attributable to a taxpayer in criminal complaints; the Federal Administration of Public Revenue, dependant upon the Argentine Ministry of Economy, Works and Public Utilities is hereby empowered to disclose such information, when and as provided by the AFIP.”⁷

The foregoing amendment has permitted the AFIP to implement, under a general resolution, systems such as the Data Fiscal, an interactive form that permits consumers and the general public to immediately become aware of a retailer’s tax behavior.⁸

This system imposed upon retailers the obligation to conspicuously show a quick response (QR) code providing the public not only with data identifying the taxpayer but also informing the public whether the taxpayer is registered for income tax and/or VAT purposes or is tax exempt, has filed the relevant tax returns, is below the tax average paid by the business sector the taxpayer belongs to, has been removed or suspended from the Registry of Importers/Exporters, has been subject to any shut-down, has been entered on the fake invoice database (*base de facturas apócrifas*), has been subject to any tax audits that resulted in adjustments, has criminal actions filed against it, has tax enforcement proceedings that are pending and/or halted, is included in the BCRA debtors database (*central de deudores*), among other matters.

Consumers may report, via their cell phones, any irregularities detected at stores.

This tool has been shown to be useful for the AFIP, since it permits it to identify the taxpayers with the highest irregularity rates. This type of information allows the AFIP to wisely and objectively select the taxpayers to be investigated in tax audits.

⁶ S. 157, Argentine Criminal Code.

⁷ Paragraph incorporated by s. 1 of Executive Order No. 606/99, published in the Argentine Official Gazette on 9 June 1999.

⁸ General Resolution No. 3377, published in the Argentine Official Gazette on 29 August 2012, replaced Form No. 960 – *Exija su factura* (Demand your invoice) with a new interactive form (Form No. 960/NM – Data Fiscal).

Even though taxpayers have filed claims against this tool arguing its conflict with the tax secrecy principle, to date no jurisprudence has been recorded as to the legality of the Data Fiscal.

3.4. *Habeas data*

Another tool available to taxpayers to safeguard the confidentiality of their information is *habeas data*.⁹ This is defined as the right an individual has to request the courts to display records where an individual's or an individual's family's personal data are included in order to check whether such information is accurate, to request rectification, and to suppress inaccurate, obsolete or discriminatory information.

Any taxpayers who feel that their right to privacy has been affected by the arbitrary or indiscriminate use of their information may exercise this action for the purpose of gaining access to information that is in the possession of the AFIP and claiming both protection and rectification thereof, if inaccurate, outdated or if it infringes the individual's right to privacy.

Even though the tax authorities, both national and local, reject the admissibility of *habeas data* with respect to their records, the Argentine Supreme Court has admitted and confirmed that the rules on protection of personal data are applicable to the tax authorities, except in extraordinary cases.

So it was held in the case entitled *Empresa de Combustible Zona Común SA v. AFIP*,¹⁰ where the *habeas data* remedy was intended to be asserted in order to force the AFIP to report on the information it had about this company and, if the information was false or inaccurate, to suppress or rectify it. At the time, the Supreme Court held that the scope of this constitutional remedy was limited by the nature of the duties undertaken by the AFIP, since it was conducting an investigation designed to determine whether the taxpayer had fulfilled its tax obligations, a duty which had an underlying essential public interest, and the plaintiff was simply trying to anticipate the opportunity to exercise its right of defense, which may not be exercised until the commencement of the *ex officio* assessment procedure.

Even though the decision referred to above rejected, in that specific case, the application of *habeas data*, this Supreme Court decision has served as grounds to bring actions against national and local tax authorities. For example, in the case entitled *Materiales Sur S.A. v. ARBA* (decision dated 5 July 2010), the Federal Court of Original Jurisdiction in and for Rawson considered that *habeas data* was an "effective tool against the abuse of tax authorities" and sustained a complaint filed by a taxpayer who had received no answer to his request for explanations about whether he had been registered as a taxpayer on an *ex officio* basis.

3.5. Professional secrecy

The laws and codes of ethics that govern professions (e.g. attorneys, accountants) provide that professional secrecy is a duty towards clients as well as a right of the professional before public authorities that exempt such professionals from disclos-

⁹ S. 43 of the Argentine Constitution (as amended in 1994).

¹⁰ Argentine Supreme Court of Justice in the case entitled *Empresa de Combustible Zona Común S.A. v. Administración Federal de Ingresos Públicos*, decision dated 7 April 2009 (Decisions: 332: 770).

ure. In criminal matters, the professional may be relieved of professional secrecy based upon “reasonable cause”, which depends upon the professional’s judgment or the client’s own benefit.¹¹ Two conclusions may be drawn from this:

- (a) An attorney or accountant may not be forced to supply information about the advice given to the taxpayer on tax planning.
- (b) If such information is obtained by the AFIP voluntarily (e.g. because the client supplied the information when complying with his/her cooperation duties) or compulsorily (as a result of a search ordered by a court), there are no rules preventing the use of such information by the AFIP. To sum up, communications between taxpayers and tax advisors are not protected by professional secrecy if the AFIP gains access to them on a regular basis.

3.6. Right to no self-incrimination

It is widely known that there is tension between the duty to supply information to the AFIP for tax assessment purposes, where failure to do so is subject to a penalty, and the constitutional safeguard of no self-incrimination in criminal matters.¹²

Argentine case law has held that the AFIP may carry out its investigation and auditing duties but must refrain from requiring evidence related to criminal cases¹³ and it has rendered null a request for preliminary investigation filed in a case where documentation gathered within the framework of a tax audit had been reviewed.¹⁴

In Argentina, the courts have held that taxpayers may not refuse the duty of cooperation – specifically, displaying accounting books and documents – by taking refuge in the eventual use of such information to support administrative or criminal penalties.¹⁵

4. Tax audits

4.1. Tax auditing policies

As noted above, the use of technology permits the use of objective and selective criteria with respect to the targets of tax audits.

The AFIP’s huge database contains key information for the tax administration. The AFIP’s data center hosts data about the history and operations of taxpayers.

¹¹ S. 156 of the Argentine Criminal Code and s. 244 of the Argentine Code of Criminal Proceedings.

¹² S. 18 of the Argentine Constitution.

¹³ Argentine Court of Appeals in Criminal and Economic Matters, Division B, in the case entitled *Cargill SA*, decision dated 4 November 2005.

¹⁴ Federal Court of Appeals in and for Gral Roca – Río Negro, in the case entitled *Tappata, Daniel Antonio*, decision dated 21 March 2000.

¹⁵ See Federal Court of Appeals in Criminal and Economic Matters, Division A, in the case entitled *Seven Seas s/ley 24769* – decision dated 14 December 2003; Argentine Court of Appeals in Criminal Matters (*Cámara Nacional de Casación Penal*), Division I, in the case entitled *San Juan SA y MDQ Le Sport SA*, decision dated 24 November 2009, among others.

The AFIP knows “in real time” what happens, how much is collected, the number of taxpayers who registered for a payment plan in any one day, among other aspects permitting it to cross-reference information and issue payment demands automatically.

The data center is the backbone of tax intelligence and data stored therein permit it to define, on a year-on-year basis, its annual auditing plan. Actually, the AFIP cross-references data by connecting that recorded in the e-tax database and also filed from external sources. The system permits systematic and scheduled mass cross-references.

The annual auditing plan contains every year’s auditing plans and programs, the guidelines, standards, parameters required to conduct inspections and investigations, for the purposes of which prior tax intelligence tasks are necessary. Thus, every year, the tax authorities make the decision to set criteria and parameters and “browse” the system, tracking key information and performing searches pursuant to the defined criteria.

The 2014 annual auditing plan contains the operating guidelines for monitoring the tax obligations for the then current year, whether tax, customs or social security related, and consists of several tasks:

- investigative actions;
- *ex ante* actions: preliminary tax returns, tax operations, social security operations and operations involving the unified tax regime (*monotributo*), customs selectivity;
- simultaneous actions: online auditing of reporting requirements, customs controls, electronic auditing;
- *ex post* actions: comprehensive auditing, specific tax and/or social security audits, specific customs audits.

4.2. Risk profile systems

The risk profile system (SIPER)¹⁶ is a computer system which is designed to classify taxpayers, based upon their level of compliance with formal and/or material tax obligations, into five categories.

The AFIP performs an analysis of each taxpayer’s financial position by means of certain indicators, such as sales, number of employees, business activity, etc. and classifies the taxpayer within one of these five categories, from “low risk” to “high risk”.

As from 2005, this system was communicated to taxpayers, which permitted taxpayers to make observations and contest their categorization, and to request rectification if appropriate.

Taxpayers can contest their classification in the different categories through the AFIP’s website. For this purpose, taxpayers will have 15 days to do so following the end of each four-month period during which the assigned category will be effective. The administrative decision will be subject to review by the courts.

Once a claim has been made, the regulations provide nothing with respect to the possibility of appealing against the tax decision. Notwithstanding this, once the

¹⁶ Created under General Resolution (AFIP) No. 1974 (published in the Argentine Official Gazette on 12 December 2005) for the purpose of classifying and evaluating taxpayers on compliance with their formal and/or material tax obligations.

administrative decision has been rendered, it may always be appealed against as appropriate (Laws No. 19,549 and 11,683).

Only a few filings made by taxpayers for correction of their category have been subject to lengthy proceedings, the resolution of which was difficult.

The local tax authorities have a similar classification system.

4.3. The use of undercover agents

Under certain circumstances, the AFIP is empowered to monitor the issuance and delivery by taxpayers of mandatory documentation (invoices) through so-called undercover agents.¹⁷

For the tax audit to be valid, two or more officers must be appointed to act as undercover agents. The auditing order (*orden de intervención*) must be grounded by an administrative court on the basis of the taxpayer's recorded information (Federal Court in and for Cdo. Rivadavia, in the case entitled *Herrada S. y Vanni C. SH*, decision dated 6 October 2006). If appropriate, the officers must prepare a record acknowledging the infringement.

Case law is quite restrictive at the time of declaring the invalidity of a record supporting the existence of a tax infringement, as contained in Law No. 11,683, giving priority to the data recorded therein over certain formal requirements which, according to the courts, do not affect the taxpayer's right of defense, since they permit the taxpayer to be thoroughly aware of the accusation. Therefore, case law has ratified this auditing mechanism on condition that certain requirements are satisfied, particularly the existence of sufficient records as to the commission of a violation of the invoice issuance requirement.¹⁸

5. Fiscal audits

5.1. *Ex officio* assessments

If tax returns are not filed by the taxpayer or contain inconsistencies the AFIP must adjust the tax by a procedure that commences with a tax audit and gives rise to the *ex officio* assessment procedure.

During this procedure, the following taxpayers' rights are safeguarded by law:¹⁹

- the informal nature of the procedure: waiver of non-material formal requirements that may be subsequently satisfied;

¹⁷ See Argentine Court in Criminal and Economic Matters No. 7 in the case entitled *B SA s/infracción ley 11,683*, decision dated 5 November 2009; Argentine Court of Appeals in Criminal and Economic Matters, Division B, in the case entitled *Penibianc SRL*, decision dated 4 July 2007; Argentine Court in Criminal and Economic Matters No. 6, in the case entitled *El Parlamento SA s/infracción de la ley 11,683*, decision dated March 2006.

¹⁸ See Argentine Court of Appeals in Criminal and Economic Matters, Division B, in the case entitled *Mayro SA s/infracción ley 11,683*, decision dated 22 September 2008; and decisions entered by the same court in the cases entitled *Bogado*, *Stella Maris*, dated 9 March 2009, and *Cathelar SA s/infracción ley 11,683*, dated 22 November 2006.

¹⁹ Argentine Law on Administrative Procedures (Law No. 19,549).

- the right to be heard;
- the right to be represented by legal counsel;
- the right to offer and submit evidence;
- the right to a reasoned decision;
- the right to take notice of administrative proceedings: this entails the possibility of reviewing, at any stage of the proceedings, the case file prior to the decision and to obtain a copy of the documents therein entered.²⁰

The review of an *ex officio* assessment may be requested, at the taxpayer's option, by a motion for reconsideration filed with (a) the direct superior of the administrative agent, or (b) the Federal Tax Court (*Tribunal Fiscal de la Nación*).²¹

5.2. Traditional audits

Traditional investigation and auditing procedures are commenced upon communication to the taxpayer, by notifying the auditing order (*orden de intervención*). This order must temporally and substantially delimit the purpose of the tax investigation informing the taxpayer about what information may be required from him.

General Instruction (AFIP) No. 320/1997 orders the various tax agencies to duly notify the commencement of any investigation to the taxpayer, stating the date when the investigation was ordered, the division involved in the investigation and the agency to which the intervening officials belong; this notice must also be signed by the director of the division. In addition, the name of the tax inspector and supervisor must be provided with their dossier numbers, and details of the tax liabilities and periods subject to investigation.²²

The Federal Tax Court has invalidated a procedure where the taxpayer was not duly notified.²³ In that case, the AFIP never informed the taxpayer that he was subject to inspection and that this procedure might give rise to the commencement of an *ex officio* assessment. In the request for information sent to the taxpayer, which was understood by the AFIP as the commencement of the inspection, no identification was made of the tax and tax periods subject to audit.

The AFIP itself has stated that it is a material requirement that the taxpayer has been notified of the fact that he is under inspection, so that he may exercise his rights.

5.3. Electronic audits

As from 21 December 2012, an additional auditing mechanism was established in Argentina: electronic auditing.²⁴ This is, basically, a monitoring mechanism

²⁰ The exercise of this right is attained following the procedure described under s. 38 of Executive Order No. 1759/1972, referred to as *Review of Case File (Vista)*.

²¹ As provided for by s. 76 of Law No. 11,683.

²² See decision rendered by the Federal Tax Court in the case entitled *Banca de Junín*, dated 13 August 2011.

²³ Federal Tax Court, Division C, in the case entitled *Paravati, Norberto José*, decision dated 25 February 2005.

²⁴ General Resolution (AFIP) No. 3416/2012 (published in the Argentine Official Gazette on 20 December 2012).

designed to check compliance with tax obligations that is conducted by the AFIP electronically.

The commencement of the electronic auditing procedure must be notified to the taxpayer, who is given 10 business days, as from the date following the notice, to answer the requirement by means of the web service. If necessary, documentary evidence in PDF format may be attached. Once the submission of data is completed, the system will issue a certificate evidencing compliance with the electronic requirement.

This auditing mechanism removes discretion at the time of selecting the taxpayers to be audited, thus permitting objective auditing parameters to be set by cross-referencing data in the possession of the AFIP (e.g. level of expenses vs. income, bank deposits vs. income, standard gross income ratios by type of activity).

6. Tax assessments

Below is a brief description of specific safeguards within the assessment process.

6.1. Statute of limitations

The *ex officio* assessment must be conducted within a term of five years; otherwise it will be barred by the statute of limitations.

This term for exercising the tax authority's power to conduct an *ex officio* assessment also sets a limit to the length of administrative proceedings and may be considered as a safeguard of taxpayers' rights.

6.2. Burden of proof

Taxpayers draft their tax returns and are required to provide evidence as to the consistency of their tax returns with economic reality, by maintaining sufficient supporting documents.

This taxpayers' obligation does not release the AFIP from the obligation to give proof or evidence of any inconsistency between such tax returns and economic reality if this inconsistency is the basis of an *ex officio* assessment. Thereafter, during an *ex officio* assessment process, taxpayers will have to provide evidence to refute the tax authority's allegations.

6.3. Assessment process stability

After the *ex officio* assessment resolution is issued, the AFIP will be unable to review the same tax period again or the issue that was the subject of the resolution unless the AFIP expressly states that the assessment was solely limited to a specific matter, in which case it will be able to review other matters not previously considered in the assessment.²⁵

²⁵ S. 19, Law No. 11,683.

6.4. Free nature of administrative proceedings fee

Proceedings before national and local tax authorities are free of charge. That is to say, taxpayers need not pay any fee. This free nature ends when proceedings before the Federal Tax Court (2.5 per cent fee of the disputed amount) or ordinary courts (3 per cent fee) are commenced.

6.5. Remedies available and term

In *ex officio* assessments and other resolutions issued by the tax authorities that are subject to administrative or court review, it is mandatory to indicate what remedies are available to taxpayers and the term within which such remedies may be filed.²⁶

6.6. Symmetrical correction theory

The law provides that if, by reason of a tax audit, the AFIP imposes an obligation that gives rise to a claim in favor of a taxpayer in the same or another tax period, the AFIP must set off the credits and debits resulting from this action.²⁷

6.7. Interest

In *ex officio* assessments, the AFIP is required to calculate the interest due specifying the period during which the interest accrued and the applicable interest rate. This obligation is not provided under certain local legal systems.

Compensatory interest accrues during the term of such proceedings. The applicable interest rate currently amounts to 3 per cent per month. This high interest rate discourages the filing of objections to the tax authority's decisions, mainly taking into account the length of the proceedings, during which interest continues to accrue. On the other hand, taxpayers are only offered a 6 per cent rate per annum for their claims against the state (e.g. claims for reimbursement).

7. Review and appeals

7.1. The right to be tried within a reasonable time

The term for the AFIP to exercise its jurisdiction to demand payment of the tax is set by the statute of limitations (five years), the running of which is interrupted by the rendering of the *ex officio* assessment resolution. Since payment of the tax may only be demanded under an *ex officio* assessment, the statute of limitations is the maximum limit to the length of such procedure.

Following the *ex officio* assessment, where the statute of limitations referred to above no longer applies, the situation becomes less clear because in subsequent

²⁶ S. 40, Law No. 11,683.

²⁷ See s. 81, Law No. 11,683.

stages involving the filing of remedies before administrative or court authorities, there is no term setting a limit to the length of such proceedings.

The Supreme Court has held in the case entitled *Losicer, Jorge Alberto y otros v. BCRA*,²⁸ on the basis of the American Convention on Human Rights,²⁹ that the right to a speedy trial applies to all legal actions and administrative proceedings (whether criminal, tax-related, civil or administrative) as a need derived from the guarantees that afford all inhabitants of the Republic of Argentina the presumption of innocence, the right of defense in trial and the right of due process.³⁰

Perhaps the highlight of the decision is the guidelines to be taken into account by courts in order to establish what “reasonable time” means as to the length of the proceedings, which entitles taxpayers to resort to the courts so as to rectify any delay.

7.2. Use of presumptions

The Argentine Supreme Court of Justice has held that *iure et de iure* presumptions for tax assessments affect the constitutional guarantee of reasonableness and should always be treated as *iuris tantum* presumptions.³¹

7.3. The figure of *amicus curiae*

For the purpose of increasing participation by citizens in procedures before the Argentine Supreme Court of Justice, in 2005 the praetorian figure of *amicus curiae* or friend of the court was created, whereby individuals and institutions that are not a party to the proceedings but are qualified to give their opinion on the issue under consideration are permitted to make an appearance.

The possibility of participating as *amicus curiae* was upheld by the Supreme Court under Decree 28/2004.³² This decree establishes the requirements that must be satisfied by an individual or legal entity in order to participate, including:

- the appearance must be made solely for the purpose of expressing a grounded opinion about the disputed matter;
- the *amicus curiae* must be an individual or legal entity with vast knowledge and expertise about the contested issue. The *amicus curiae* must support its interest to participate in the case and report the existence of any type of relationship with the parties to the proceedings.

The opinions or suggestions of the *amicus curiae* are intended to enlighten the Supreme Court. They are not binding upon the Supreme Court but may be taken into account in the Court’s decision.

²⁸ Decision dated 26 June 2012 (Decisions: 335: 1126).

²⁹ S. 8(1).

³⁰ Ss. 5, 18 and 33 of the Argentine Constitution.

³¹ Argentine Supreme Court of Justice in the case entitled *Hermitage SA v. Ministerio de Economía y Obras y Servicios Públicos – artículo 5 – ley 25,063 s/ proceso de conocimiento*, decision dated 15 June 2010 (Decisions: 333: 993).

³² The approval of the appearance of the friends of the court in court proceedings was decided by the Argentine Supreme Court of Justice under Decree No. 28/2005 dated 14 July 2004.

In 2006, in a case where the application of a tax adjustment due to inflation was discussed,³³ for the purpose of gathering opinions or suggestions, the Supreme Court opened the case to the participation of third parties as *amici curiae*.

This was the first invitation made by the Supreme Court resorting to the figure of the *amicus curiae* and it did so in a case where the right to no confiscation in tax matters was being discussed. The significance of the case lies in the fact that the Supreme Court, before entering a ruling, decided to invite an *amicus curiae*, since this type of invitation is intended for “issues of institutional significance”.

At the time of rendering its decision, the Supreme Court held in its decision that the participation of the *amicus curiae* was a useful tool designed, among other things, to permit the involvement of citizens in the administration of justice and in cases where matters of institutional significance or public interest are discussed.³⁴

7.4. Tax ruling requests

7.4.1. Binding rulings

Binding ruling requests are optional mechanisms to obtain rulings related to technical and legal matters. They must deal with tax assessments or social security contributions applicable to a specific case, or to investment projects in which the applicants are directly interested.

The ruling request must be made prior to the occurrence of the taxable event or prior to the due date set for filing the tax return for the period in which the event must be reported and for which the ruling request is entered.

The ruling, duly argued, must be issued within 90 calendar days as from the date of notice to the taxpayer of the formal admissibility of the binding ruling request. The applicant may enter an administrative appeal against the ruling issued by the AFIP before the Ministry of the Economy.

The request and the ruling issued thereunder are binding upon the applicant and the AFIP in connection with the specific case discussed.

The tax authority’s rulings, once final, must be published in the *Argentine Tax Journal*, which will permit other taxpayers in similar circumstances to become familiar with the tax authority’s position.

7.4.2. Non-binding rulings

Rules provide for a non-binding ruling request system that does not have the legal effects as provided above. Because the AFIP is not obliged to render a decision, this is rarely used by taxpayers.

7.5. Investment protection agreements

Argentina has concluded investment protection agreements with certain countries which afford reciprocal protection to investments. Under these agreements, investors

³³ *Juplast SA v. Estado Nacional y AFIP s/amparo*.

³⁴ Argentine Supreme Court of Justice in the case entitled *Juplast S.A. v. Estado Nacional y AFIP s/amparo*, decision dated 31 October 2006.

in Argentina who are subject to discriminatory treatment may resort to arbitral tribunals to seek a remedy.

To date, Argentina has concluded about 56 such agreements, which were adopted by laws enacted by the Congress. Most of the agreements were concluded in the 1990s.

These agreements provide mechanisms for resolving disputes relating to “investments” by means of international arbitration conducted by ad hoc tribunals or by tribunals established under specific rules. Among the latter is the International Centre for the Settlement of Investment Disputes (ICSID).

At present, Argentina is a party to more than 30 concluded cases and to more than 20 cases that are officially pending, some of which relate to tax matters. Although one of the requirements for using the ICSID is that the dispute relate directly to an “investment”, there is nothing to prevent tax issues from being brought before the ICSID if a provision of an investment protection agreement has been violated.

In addition, Argentina is a member of the Multilateral Investment Guarantee Agency (MIGA), the overseas private investment corporation.

8. Criminal and administrative sanctions

8.1. Enforcement of the penalty jointly with the *ex officio* tax assessment

The Argentine Law on Tax Procedures ensures that the tax authority, in an *ex officio* assessment resolution, must necessarily decide upon the admissibility of administrative penalties; it further provides that, upon failure to do so, such penalties will be deemed not applicable.³⁵ Thus, taxpayers may be certain that an assessment will not leave the door open for potential future penalties.

8.2. Failure to act as a tax withholding or collecting agent

The AFIP is empowered to impose an obligation to act as a tax withholding or collection agent on certain economic players.³⁶ Failure to comply with this obligation will render such agents personally liable for any unpaid taxes and make them subject to a fine, unless they provide proof evidencing that the taxpayers have paid such taxes.³⁷

In the absence of a similar provision in local laws, case law has adopted a similar standard.³⁸

8.3. Voluntary filing as a tool to neutralize criminal complaints

Argentine tax criminal law provides for the possibility of releasing a person who has committed tax evasion from any liability if that person voluntarily rectifies his

³⁵ Law No. 11,683, s. 74.

³⁶ See s. 22, Law No. 11,683.

³⁷ See s. 8(c), Law No. 11,683.

³⁸ Argentine Federal Court of Appeals in Administrative Matters, Division I, in the case entitled *Apache SA*, decision dated 29 April 2008.

situation prior to the commencement of an investigation, inspection or report directly or indirectly related to such person.³⁹

8.4. Fine reduction mechanism

The Argentine Law on Tax Procedures provides for fines as a result of any failure to pay taxes or tax evasion, and authorizes the AFIP to calculate such fines within certain percentages on any unpaid taxes.

In turn, the rule provides for a fine reduction mechanism if the taxpayer concedes the tax authority's claim.⁴⁰ The earlier the taxpayer concedes the tax authority's claim the higher the reduction will be.

These reductions may be construed as a disincentive to institute legal proceedings against the tax authority.

8.5. Exemption from penalties

Consistent case law laid down by courts holds that penalties (basically, fines) are of a criminal nature and, as such, require the presence of guilt, understood as negligence or willful misconduct. Courts exempt taxpayers from such penalties when they have acted in good faith when dealing with ambiguous or unclear legal textbooks.

9. Enforcement of taxes

9.1. Provisional measures in tax matters

In certain cases, taxpayers may be faced with the possibility that the tax authorities are entitled to enforce collection of the tax claimed without a procedural channel being available to settle the issue unless the tax is first paid.⁴¹ In most instances, this occurs in cases which allow for the institution of tax enforcement proceedings.

One of the defenses that the taxpayer may have consists of seeking a provisional measure in the context of a lawsuit. Another is to file a petition for constitutional relief by means of an *amparo*.

Case law has generally been reluctant to grant this kind of remedy, but it may be asserted that there have been changes in the case law on the preservation of taxpayers' rights.

The Argentine Supreme Court of Justice has stated that the admissibility of provisional measures that have the effect of stay in tax matters must be examined very closely in order to prevent the normal collection of public revenues from being hampered.

³⁹ See s. 16, Law No. 24,769, replaced by s. 14 of Law No. 26,874, published in the Argentine Official Gazette on 28 December 2011.

⁴⁰ S. 49, Law No. 11,683.

⁴¹ For example, cases involving an unpaid balance on a tax return or a tax claim arising from the non-filing of a tax return. At the federal level, however, as stated above, there are procedural channels to avoid prior payment of the tax before challenging the decision in court.

Regarding provisional measures, an amendment was introduced in the Federal Code of Civil and Commercial Procedure whereby, at least in theory, provisional measures may not be granted in a court proceeding if they are intended to hinder or otherwise disrupt the resources that the state obtains in its own right.⁴² These hypothetical cases should include provisional measures that have the effect of a stay in tax matters.

Nonetheless, judicial reality shows that this amendment has not been operational because several rulings have declared it unconstitutional.

9.2. Legal protection for delay (*amparo por mora*)

In a series of decisions, the Federal Tax Court has sustained the *amparo* filed by different taxpayers – in various cases – when faced by the AFIP’s delay in reimbursing value added tax previously withheld.⁴³ In these cases, the Court granted the AFIP a term of 15 days to make a tax refund into the plaintiff’s bank account.

The Federal Tax Court first analyzed whether the following requirements or conditions were met: (a) delay in the action or procedure by the collecting agency; (b) the delay must be excessive and unreasonable; and (c) the delay must cause harm or disruption in the performance of an activity or exercise of a right.

This delay in reimbursing tax withholdings by the AFIP has often in the past few years been such that reimbursement terms have reached 12–18 months. This delay involves serious harm to taxpayers, who are unable to use their working capital without accruing interest, and suffer the corrosive effects of inflation and currency devaluation. Therefore, these decisions constitute an encouraging practical precedent in the defense of taxpayers’ rights.

9.3. Attachments and restraining orders

For tax enforcement purposes, the Argentine Law on Tax Procedures empowers the AFIP to levy attachments, restraining orders or any other injunctions on the debtor’s assets or accounts. The only requirement is that the AFIP must inform the court hearing the case.⁴⁴

This legal provision was declared unconstitutional by the Argentine Supreme Court of Justice.⁴⁵ The Supreme Court held that the legal provision reduced the

⁴² The third paragraph of s. 195 of the Federal Code of Civil and Commercial Procedure was amended to read: “The courts shall not issue any provisional measure which affects, hinders, jeopardizes, or alters the intended purpose of, or otherwise disrupts, the resources that the state obtains in its own right, nor shall they impose any pecuniary penalties personally upon government officials.”

⁴³ Under the terms of General Resolution (AFIP) No. 2300, which provided for a VAT withholding system that affects farmers. The withholding represents 76.19 per cent of the tax invoiced. This system provides that, once certain obligations have been satisfied by the taxpayers, the AFIP must make a “systematic reimbursement” of 87.50 per cent of the withheld amounts, within about 60 calendar days, as from the filing of the VAT tax return for the tax period in which the withholdings were made.

⁴⁴ See s. 92, Law No. 11,683 (replaced by s. 18(5) of Law No. 25,239, published in the Argentine Official Gazette on 31 December 1999).

⁴⁵ Argentine Supreme Court of Justice, in the case entitled *Administración Federal de Ingresos Públicos v. Intercomp SRL s/ ejecución fiscal*, decision dated 15 June 2010 (Decisions: 333: 935).

participation of courts in tax enforcement proceedings to an extent that was incompatible with the constitutional principles of separation of powers, effective legal protection and defense.⁴⁶ In addition, it also held that the authority delegated to the AFIP infringed the Argentine Constitution, to the extent that the latter provides for the principle of inviolability of property, whereas nobody can be deprived of their property without a legally grounded court decision.⁴⁷

During this process, since it is of general interest, the Argentine Supreme Court of Justice resorted to the figure of *amicus curiae*, which permits qualified entities (universities, professional associations, scientific entities) to voluntarily make an appearance in order to give their opinion on the issue to be decided.

9.4. Taxes not to be confiscatory

The Constitution places property rights in the highest rank and emphatically proclaims them to be inviolable. It declares that no one may be deprived of his property except by virtue of a decision rendered in accordance with the law. And it contemplates only two possible forms of deprivation: (a) confiscation, which must be for reasons of public utility provided by law and previously compensated for; and (b) taxes, which are exclusively those set out in section 4 and may only be established by law.⁴⁸

In this regard, the Supreme Court has long held that a tax is confiscatory if it takes up a substantial portion of income or assets.⁴⁹ A tax may also have a confiscatory nature when its amount is unreasonable.

10. Cross-border procedures

10.1. International exchange of information

In order to monitor all the relationships of these taxpayers with their international transactions it is essential for the tax authorities to have access to their financial, economic and accounting information that might be in the possession of foreign tax administrations. Therefore, the network of exchange agreements executed by Argentina has increased significantly in the past few years.

The exchange of information may occur within the framework of: (a) traditional double taxation agreements;⁵⁰ (b) special agreements on exchange of information executed by the AFIP substantially in the form of the model agreement supplied by the OECD.

The AFIP is empowered to request and provide collaboration directly to foreign tax authorities and international entities having jurisdiction on tax matters, as well as to conduct investigations abroad designed to gather the required

⁴⁶ Rights contained both in s. 18 of the Argentine Constitution and in international treaties incorporated as such in s. 75(22).

⁴⁷ See s. 17 of the Argentine Constitution.

⁴⁸ S. 99(3) of the Constitution.

⁴⁹ Argentine Supreme Court of Justice, Decisions: 199: 321, 205: 131, 211: 34, 235: 883, among others.

⁵⁰ Argentina has more than 18 effective agreements.

information.⁵¹ As an authority having jurisdiction on the matter, it may become directly involved in processing the exchange of information related to auditing and tax collection actions with other tax authorities and, on behalf of the Argentine government, it may execute intergovernmental agreements on international exchange of information.⁵²

The tax authority, for the purpose of specifying the scope of the intervention of the International Taxation Director (*Director de Fiscalidad Internacional*) – who is in charge of these duties – has laid down operating guidelines for the various exchange modalities provided for in international agreements: (a) specific exchange (upon request) and (b) voluntary exchange.⁵³

Today, Argentina is a member of the group of countries that will implement the new international standard encouraged by the G20 early: the automatic exchange of financial account information.

Argentina does not have sufficient experience on the matter yet to make a clear diagnosis about whether the behavior of the AFIP may affect taxpayers' rights.

Generally speaking, the following may be noted:

- (a) The taxpayer's participation in the exchange of information process is not considered. Therefore, the taxpayer will have to wait for the assessment process in order to be able to exercise a certain degree of control over the information supplied or requested by another state.
- (b) The confidentiality of the information supplied by foreign tax authorities is protected by the same international agreements that contain a confidentiality provision and by the tax secrecy figure provided for under the internal regulations mentioned above.⁵⁴
- (c) There is a possibility of lifting tax secrecy if information is required to be sent abroad within the framework of international agreements (section 101(d) of Law No. 11,683).
- (d) As soon as the AFIP receives requests for exchange of specific information, it must send them to the general auditing department (*subdirección general de fiscalización*) which, through the international taxation division (*dirección de fiscalidad internacional*), answers such requests, proceeding to registration thereof and analysis of the content in order to determine the treatment to be afforded to each request and, if appropriate, to send it to the relevant area for processing.

11. Legislation

11.1. Tax advisory committee

Upon the AFIP's initiative, four advisory committees have been created: (a) tax, (b) customs, (c) social security, and (d) small and medium-sized companies.

⁵¹ See s. 9, subss. (e) and (f), Executive Order No. 618/1997.

⁵² See Resolution No. 336/03 issued by the Argentine Ministry of Economy and Production.

⁵³ See General Instruction (DI PYNF) 894/2010.

⁵⁴ See s. 101, Law No. 11,683.

The advisory committees are forums for institutional dialog that enable participation from agencies, professional entities and organizations representing the various sectors of the community related to economy, social security and finance, for the purpose of receiving general proposals and recommendations.

Each advisory committee holds ordinary monthly meetings that are held alternately in the city of Buenos Aires and in cities of the Argentine provinces selected for the purpose. Upon the request of three or more entities that are members of the advisory committee, the chairman may call special meetings.

It should be noted that these meetings are appropriate due to the active role of the AFIP not only in the use of the regulatory power conferred upon it by law (e.g. issuing general resolutions) but also because the AFIP plays a key role in the drafting of specific bills that the executive submits to Congress for consideration.

The following evidences the practical significance of the communications issued by these advisory committees in guiding the behavior of taxpayers:

- Regarding the need to clarify the scope of the personal deductions admitted by the income tax law for individuals, the Professional Council of Economic Sciences of the City of Buenos Aires, through and with the support of the AFIP's tax advisory committee, prepared tables that helped taxpayers to estimate these deductions for fiscal period 2013.
- The position adopted by the AFIP in respect of the concept of voluntary filing provided for criminal matters was stated.
- In addition, regarding the effectiveness of the law that introduced the taxable nature of capital gains, in the September 2013 meeting, the AFIP's general tax director established the tax authority's position in that respect.

11.2. Participation in the law-making process

Taxpayers' participation in the law-making process occurs on an exceptional basis. Notwithstanding, the Budget and Tax Committee of the House of Representatives, where tax laws are originally discussed, has invited several entities representing collective interests, or entities qualified by their scientific or technical authority, to give their opinion about the laws under discussion.

11.3. Retroactive nature of the law

Well-established case law laid down by the Argentine Supreme Court prohibits the retroactive nature of tax laws but only where the retroactive nature affects taxpayers' vested rights. A right is deemed to have been vested when the taxpayer has paid the tax under the previously effective law.

11.4. Economic reality in favor of taxpayer

Procedural law contains a provision that is addressed to those who interpret the law by ordering them to consider the "economic reality" underlying the taxable events.

This rule is generally used to support reactions against tax avoidance. However, the Argentine Supreme Court of Justice has laid down case law upholding that such economic reality may also be alleged in favor of the taxpayer.⁵⁵

12. Institutional framework for protecting taxpayers' rights

An evaluation of the processes undertaken by the AFIP leads the reporter to confirm that, in general, the following rights are granted to taxpayers:

- to receive information and be advised on a clear and complete basis about the procedures and requirements to be satisfied in order to comply with the tax obligations;
- identification and access to the authorities and staff that are in charge of handling the procedures affecting taxpayers;
- the possibility of verifying the identity of inspectors. The AFIP's internet system may be used for this purpose;
- to know – if an inspection is commenced – the auditing order number, information about the taxpayer, supervisor and inspector, the period and tax subject to audit;
- to exercise the right of defense, offer evidence and obtain an argued resolution;
- to refuse to make statements against oneself (evidencing a taxpayer's liability for the commission of crimes);
- to request in writing an extension of the term granted (if justified) to comply with a requirement or summons;
- to act before the AFIP personally, by means of authorized third parties or by means of attorneys-in-fact.

⁵⁵ Argentine Supreme Court of Justice, in the case entitled *Kellogg Co. Arg. S.A.C.I. y F.* (Decisions: 307: 118).



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