CIAT Tax Procedure Code Model

THE IBERO-AMERICAN APPROACH

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CIAT TAX PROCEDURE CODE MODEL:
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PROLOGUE

Well into the 21st century, no dispute exists on the advantages of coding and systematizing general tax norms. Such advantages include enhanced tax system stability, legal certainty and legitimate taxpayer trust, and greater efficacy and efficiency of the Tax Administration System, understood as all the institutions summoned to enforce different taxes, that is to say, the different (national and subnational) Tax Administration authorities, Treasury offices, Administrative Courts and Courts of Law, among others.

On the other hand, the argument may be largely centered on the appropriateness of having converged general tax norms at the national level and, if so, the approach to be adopted. The nature of our globalized times prompts all forms of convergence of norms and large-scale cooperation of government branches. The growing internationalization of taxpayers' economic transactions call for more coordination and convergence among tax administrations' efforts internationally.

In line with these trends, the CIAT Tax Procedure Code Model is a useful, almost vital, tool to channel the enforcement efforts of tax administration-taxpayer relations to favor the coordinated operation of the tax systems. Therefore, making this tool available to countries entails two benefits: relying on a code of norms and coordinated and converged norms.

Thus, I am greatly pleased to present to all CIAT-member countries, in particular, and to the international tax administration community, in general, the updated version of the CIAT Tax Procedure Code Model. I firmly believe this is the best version of our tool since it was first published in 1997.

The Model has inspired numerous reforms in the Tax Codes of the countries of Ibero-America. Countless scholarly documents have cited the notions defined therein. Thus, I believe this new update shall be a source of even greater satisfaction to our administration. Although it has not been published yet, the Model is already being used as a benchmark for the initiatives to create codes in Ecuador, Honduras and Panama.

Undoubtedly, the best products created by our agency have been enabled by the cooperation and exchange of experiences among its member countries. This occasion has been no different. I wish to express my deepest gratitude to the Directors of the tax administrations whose delegates formed the working group that undertook the Model's update for having authorized their participation in this project.

Although the Model will continue to be titled CIAT Tax Procedure Code Model, sensu stricto, as from 2015 the Model is also attributable to the IDB and GIZ for the technical and financial support both

institutions have provided to our agency in this update effort. In such respect, the Model could also be called CIAT, IDB and GIZ Tax Procedure Code Model.

Upon the publication of the updated Model comes a greater challenge – its enforcement in the region. This entails a comprehensive communication and technical assistance effort. From the start, we have decided to make available a new course on the creation of codes based on the Model. Course feedback shall facilitate improvement towards the future. Likewise, in light of our integration with agencies similar to CIAT in Africa, Asia and Eastern Europe, we have decided to translate the Model into English.

Finally, I must commend the work of Eco. Miguel Pecho Trigueros, CIAT Director of Studies and Research, who has coordinated the Model update project, as well as that of the working group. Mr. Pecho's drive and commitment have been critical to the fulfillment of the objectives set forth. Without his dedication, this updated version of the Model would have been impossible to achieve.

Márcio F. Verdi
Executive Secretary
CIAT

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We wish to thank the members of the working group that undertook the Model update for their dedication. In their capacity as rapporteurs, Liliana Chipoco and Adrián Torrealba. In their capacity as specialists in the field, and for their individual participation, Messrs. Eduardo Gabriel de Góes Vieira Ferreira Fogaça (RFB - Brazil), Sully Fonseca (DGI -Uruguay), Juan Antonio López Vega (SAT - Mexico), Miguel Pecho Trigueros (CIAT), Nora Quintana Flores (SUNAT - Peru), Juan F. -Redondo Sánchez (AEAT - Spain) and Fernando Velayos (IDB). -Likewise, we wish to thank the contributions by Luis Cremades Ugarte (at the time Head of the Spanish Mission to CIAT).

We wish to thank the scholars who revised the preliminary version written by the working group, since their comments and suggestions enabled them to improve the final version. We are referring to professors Leonardo Costa (Uruguay), Carlos María Folco (Argentina) and Heleno Taveira Torres (Brazil).

We wish to thank the participants in the First CIAT Meeting of Juridical Areas, on August 5 to 7 2013, which resulted in the Model update project. They are Messrs. Fabián Hugo Fuertes (AFIP - Argentina), Enrique Martín Trujillo Velasquez (SIN - Bolivia), Eduardo Gabriel de Góes Vieira Ferreira Fogaça (RFB - Brazil), Jorge Gonzalo Torres Zúñiga (SII - Chile), Jenny Patricia Jiménez Vargas (DGT - Costa Rica), Carlos Alberto Vallejo Burneo (SRI - Ecuador), Juan F. Redondo Sánchez (AEAT - Spain), Zulma Maité Ávila Herrera (SAT - Guatemala), Alberto Castelló Baquedano (SAT - Mexico), Henry Antonio Dávila Palacios (DGI - Nicaragua), Roxana Iveth Castillo Ortiz (DGI - Panama), Roberto Leonel Rodríguez Estrella (DGII - Dominican Republic), Sully Fonseca Altez (DGI - Uruguay), Verónica Isabel Gonzales Francis (SENIAT - Venezuela), Carlos Rubinstein (AFIP - Argentina), María Eugenia Caller (EY - Peru), Luis Durán (PUCP - Peru) and Regina Fernandes Barroso (CIAT Consultant).

Our gratitude goes further to all CIAT-member countries that provided their suggestions and proposals to include, amend, modify, remove and/or reorganize articles and/or comments from the Model.

Finally, a word of thanks to CIAT contributors who provided assistance to working group activities, especially Zoraya Miranda.

WORKING GROUP

Liliana Chipoco is an Attorney. Born in Peru, she holds a degree from the University of Lima (Peru). She holds a Master's Degree in Corporate Law and a Degree in Tax Law, both from the University of Lima. She has held positions as tax advisor and tax consultant, in the fields of tax policy and tax administration in her country, as Attorney in charge of the Tax Law Department in the firm *Duany & Kresalja Abogados*. Consultant to the Central Management Office of the Social Security Administration Office of Peru; Consultant to the Ministry of Economy and Finance of Peru; Court Counsel and subsequently Advisor to the Chief Judge of the Peruvian Tax Court. She was Director General of Public Revenue Policy of the Ministry of Economy and Finance of Peru and National Legal Comptroller of the National Superintendence of Customs and Tax Administration of Peru. Presently, she is a tax advisor in the Inter-American Center of Tax Administrations (CIAT) and in *Assistance Technique France* – Adetef.

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Juan Antonio López Vega is currently Central Administrator of Domestic Taxation Regulation in the Tax Administration Service (Mexico). He is a Mexican national and holds a Degree in Law and Law Science from the Autonomous University of Nuevo León. He obtained a Master's Degree in Tax Administration and Public Finance from the Institute for Tax Studies (Spain); Mr. López Vega also holds a Graduate Degree as Expert in Constitutional Justice, Fundamental Rights and the "*Amparo*" Proceedings from the University of Castilla-La Mancha, in Toledo, Spain, as well as numerous other degrees; International Taxation (ITAM /HARVARD) and the Virtual Taxation Course (ITAM), among others. Since 1993, he has held different positions in the

Mexican Federal Revenue Administration, as Head of Department of the Finance and Public Credit Secretariat and Deputy Administrator and Administrator of the General Legal Administration Office of the Tax Administration Service. In the academic sphere, Juan Antonio has been professor at the Autonomous University of Nuevo León, since due to his professional expertise he specializes in tax affairs and is directly involved in tax reform planning initiatives for Mexican legislation.

Miguel Pecho Trigueros, CIAT Director of Studies and Research. Miguel was born in Peru. He holds a Degree in Economics from the University of Lima (Peru), a Master's Degree in Economics from the University College of London (England, United Kingdom) and a Degree in Taxation from the Pontifical Catholic University of Peru (PUCP). He has sat in different technical and executive positions in the national tax administration of Peru (SUNAT) as Manager of Tax Studies, National Director General of Tax Studies and Planning and Head of the Center for Research of the Institute for Tax and Customs Administration. Prior to his role in CIAT, he was advisor to the Directorate General of Revenue Policy of the Ministry of Economy and Finance of Peru. He has been university professor in under-graduate and post-graduate courses and consultant to the IDB, the Andean Community, the IMF and GIZ. He is a member of the Panel of Experts of the IMF Fiscal Affairs' Department, member of the Subcommittee on Extractive Industries' Taxation Issues for Developing Countries of the UN Committee of Experts on International Cooperation in Tax Matters and member of the Technical Advisory Group of RA-FIT and TADAT. Mr. Trigueros is a member of the International Fiscal Association (IFA).

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from Complutense University of Madrid and a degree as financial and tax law specialist from the University of Pisa and in constitutional law and political sciences from the Center for Constitutional Studies of Madrid. Adrián is Financial and Tax Law professor in the Public Law Graduate Program at the University of Costa Rica Law School, and director and professor of the course for Tax Counselors at FUNDEPOS University. From July 2000 until June 2003, he sat as Director of the Directorate General of Taxation of the Finance Ministry of Costa Rica. He has been a regular speaker at national as well as international conferences. Additionally, Adrián has sat on an international board of experts in four calls for the position of Tenured Professor in the School of Law of the University of Buenos Aires (August 2009) and since 2014 he has been Coordinator of the Tax Committee of the Bar Association of Costa Rica. He has worked as legal consultant for the Inter-American Development Bank in the role of advisor to the Ministry of Economy and Finance of Peru, the Ministry of Finance of Honduras and the Ministry of Finance of Costa Rica, in tax reform processes. Dr. Torrealba has published numerous books and articles on tax matters, among which we may mention: "*Los Hechos Ilícitos Tributarios en el Derecho Costarricense*" (1997), "*El Nuevo Régimen Sancionador Tributario*" (2001), "*Principios de Aplicación de los Tributos*" (2001), "*Reforma Tributaria y Fiscalidad Internacional*" (2003), "*Administración Tributaria*" (2003), "*La Imposición sobre la Renta en Costa Rica*" (2003), with a second edition in 2009 and edited by the Law School, "*La Hacienda Municipal en Costa Rica: reflexiones para una reforma*" (University of Costa Rica Publishers-2004); "*Derecho Tributario. Parte General. Tomo I: Principios Generales y Derecho Tributario Material*" *(Editorial Jurídica Intercontinental, 2009), Volumen II: "Derecho tributario formal" and Volumen III: "Derecho tributario sancionador", "Manual de Derecho Tributario Internacional", Primera Edición Costarricense*, co-authored with V. UCKMAR, G. CORASANITI and P. DE'CAPITANI DI VIMERCATE, (2014).

Fernando Velayos is an international tax policy consultant, and provides technical assistance services in tax reforms, especially in the areas of VAT, Income Tax, Tax Codes, and international taxation, to the Inter-American Development Bank, the International Monetary Fund, the World Bank, the United Nations, CIAT, and a number of Latin American Government Administrations (Guatemala, Haiti, Panama, the Dominican Republic, among others). He holds a degree in Law and Economics from Universidad Complutense de Madrid. In 1992, he joined the Office of Tax and Customs Auditors of the Spanish Administration (Tax Auditors). In the course of his first 5 years of professional practice, he worked for the State Agency of Tax Administration of Spain. He held different roles in the Collection and Taxpayer Information and Assistance areas. In 1997, he became advisor to the Secretary of Finance on matters of bilateral international tax policy (European Union, OECD). In 2000, he was designated Assistant Director of International Taxation. From that position, he undertook international tax policy initiatives in the Ministry of Finance of Spain and prepared the Personal Income Tax and Nonresident Income Tax reform in 2002. He was also chief specialist in the Fiscal and Municipal Management Division of the Inter-American Development Bank. He is and has been guest speaker in numerous international fora. He is also co-author of the

"International Taxation Manual" published by the Institute for Fiscal Studies of Spain and numerous publications, among which we may mention the "International Taxation Manual for Customs Inspectors", the book entitled "Taxation and Latin-American Integration", coordinated by Vito Tanzi (Harvard University Press) and co-authored "*Recaudar no basta*" (*Ed.Palgrave* and FCE). He has published numerous articles on international taxation, VAT and service charges and utility fees.

REVIEWING ACADEMICIANS

Leonardo Costa has a Master's Degree in Taxation from the International Tax Program. Harvard Law School. Harvard University, Cambridge MA, USA (1998). Attorney-at-Law. International Taxation and Financial Law Professor at the Catholic University of Uruguay. Professor of Taxation Principles in the Taxation Specialization and Master's Course from University of the Republic (UDELAR). Partner in *Brum Costa Abogados.* Consultant to the Inter-American Development Bank in the Development of tax reforms in Uruguay, Paraguay, Bolivia, Guatemala, Costa Rica and El Salvador. Consultant in the International Bank for Reconstruction and Development, in a supporting role to the Ministry of Economy and Finance, in drafting the Securities' Exchange Bill of Uruguay. He was Assistant Secretary in the Office of the President of Uruguay (2000-2005). Leonardo was the head representative of Uruguay with FATF and OECD. President of GAFISUD (2003). Representative of Uruguay in the Global OECD Forum 2003-2004. Author of numerous bills on asset laundering prevention in Uruguay. Consultant to the Association of Supervisors of Banks of the Americas. Author of numerous academic papers on taxation matters.

Carlos María Folco is Federal Tax Enforcement Judge. Carlos was born in Argentina. He holds a Law Degree and a PhD in Law and Social Science from the National Littoral University of Argentina. He sat in different technical and executive positions in the national tax administration of Argentina (AFIP) from 1978 to 2006, when he was admitted to the Federal Judiciary. He is the Academic Director of the Graduate Specialization Course in Tax Law of the School of Law and Social Science of the National Littoral University of Argentina and Tenured Professor (Regular) of the "Financial, Tax and Customs Law" Course in said university. Carlos is Associate Professor in the undergraduate school at Belgrano University (UB) and Tenured Professor at CAECE University-Mar del Plata. Additionally, he is Professor in the Graduate School of the National University of Salta, the National University of Tucumán, the National University of Catamarca, Belgrano University, San Juan Bosco University in Patagonia, the Institute of Studies on Argentine Public Finance (IEFPA) and the School for Judicial Education of the Magistrates' Council of the Federal Judiciary of Argentina. He has authored and co-authored numerous books and articles on taxation. He is a speaker in local and international universities.

Heleno Taveira Torres is Tenured Professor of Financial Law in the Department of Economic, Financial and Tax Law at the University of San Pablo Law School (USP) in Brazil, a free-lance Professor at University of San Pablo, a PhD from the Pontifical Catholic University of San Pablo (PUC-SP) and holds a Master's Degree from the Federal University of Pernambuco (UFPE). He further holds a Tax Law Specialist Degree from the University of Rome. He has been a Tax Law Professor from USP Law School since 2002. He was Vice-president and Member of the Executive Committee of the International

Fiscal Association (IFA) from 2008 to 2013, Member of the Executive Council of the Latin American Tax Law Institute (ILADT), and other important associations from Brazil and other countries, in addition to being a Member of the Editorial Board of the World Tax Journal, of the International Bureau of Fiscal Documentation – IBFD (Amsterdam), of the Editorial Board of the International Tax Law and Tax Practice Journal, published by CEDAM. He is also a member of the Editorial Board of the International Tax Law Journal, published by the Department of State Theory of the School of Political Science of the University of Rome– La Sapienza, of the Public Finance and Tax Law Review, published by Almedina, in Portugal, and other foreign and national publications. He has authored numerous books and articles published locally and internationally. Heleno is also Attorney-at-Law.

INTRODUCTION

The first edition of the CIAT Tax Procedure Code Model was published in 1997 because it was believed that in order to adequately implement tax reforms, it is necessary to ensure the effectiveness of the Tax Administration System. Thus, strengthening tax administrations institutionally and improving the performance of all their entities became the purpose of many tax reform processes started in Latin American countries in the mid-eighties.

The deep changes that tax administrations experienced in a short period exceeded the regulations in Tax Codes regarding Tax Administration-taxpayer relations. Although numerous countries had adopted them in the sixties, the codes failed to ensure a contribution to the Tax Administrations' enforcement efforts within a framework of legal certainty.

In other words, the efforts to improve the performance of tax administrations were impaired by serious flaws in the regulatory frameworks applicable to the administrations.

A poor logical structure in many Tax Codes failed to provide the measures required to undertake the administrative processes applicable from the time the tax obligation is created through its ultimate compliance or expiration. The lack of a logical structure resulted in undue complexity that caused uncertainty for both the tax administrations and taxpayers, impairing seamless tax administration-taxpayer relations.

Additionally, tax rules had to be adapted to the state-of-the-art technologies that the tax administrations were in the process of deploying as part of their modernization processes so that they could benefit from enhanced levels of institutional efficiency and efficacy and facilitated taxpayer compliance.

Furthermore, the role of the tax administrations was redefined at that time. Superseding the views of the tax administration as a collection entity was a new approach which incorporated the notion of taxpayer service and assistance as its essential component. This implied that the Tax Administration was called to take the role of a compliance champion by facilitating voluntary tax compliance for taxpayers instead of penalizing noncompliance,

In view of these circumstances, in the mid-nineties, and sponsored by the German Mission to CIAT, the Center proposed the drafting of a CIAT Tax Procedure Code Model. To this end, a Working Group was appointed, which initially prepared a draft Tax Procedure Code Model with the cooperation of the Head of the German Mission, Mr. Hans Fuchs. This Working Group was made up by Ruben Aguirre Pangburn (Mexico), Carlos Dentone (Uruguay), Carlos Esparza (Argentina), Bernardo Lara Berrios (Chile) and Claudino Pita (CIAT), the latter acting as project coordinator in his capacity as CIAT Director of Tax Studies.

Once the CIAT Tax Procedure Code Model was completed, it was brought to the consideration of renowned tax experts who contributed valuable comments and observations aimed at improving it. These tax experts were Margarita Lomelí Cerezo (Mexico), Alba Lucía Orozco (Colombia), Javier Paramio Fernández (Spain), Nikolaus Raub (Germany), Jaime Ross Bravo (Chile) and Ramón Valdés Costa (Uruguay). The Working Group discussed the numerous observations of these experts and amended the preliminary version of the draft accordingly.

Furthermore, Mr. Rafael Salinas, Head of the Spanish Mission to CIAT, also assisted in the final review of this CIAT Tax Procedure Code Model.

One decade later, the need to adjust regulations to the changes that ensued, technological evolution, the globalization of economic relations, as well as the desire to adopt new regulations in terms of tax compliance oversight, among other reasons, called for a review of the CIAT Tax Procedure Code Model.

To that end, a new Working Group was appointed. This time, the group was sponsored by Spain and its members were Roberto Sericano (Argentina), Maria das Graças Patrocinio Oliveira (Brazil), Bernardo Lara (Chile), Carmen Teresa de Rodríguez (Colombia), Javier Paramio Fernández and Juan Francisco Redondo Sánchez (Spain), and Pablo Ruíz Herrera and Jesús Rojas (Mexico). Márcio Verdi, CIAT Director of Tax Studies at the time, participated in representation of CIAT's Executive Secretary. The work was marked by an ongoing consensus building effort, and relied on the highly valuable collaboration and contribution of professors Victor Uckmar (Italy) and Eugenio Simón Acosta (Spain), who added an academic view that improved the outcome of the initiative.

In the framework of these efforts, the structure and system of the previous Model were reviewed with the goal of making it more educational.

The group completed its work in 2006, with the publication of the new edition of the CIAT Tax Procedure Code Model, which was presented at the Technical Conference of Madrid, Spain.

The context of tax law has again changed over the twenty years from the first edition of the Model, posing new challenges that require consideration in any attempt at defining regulations currently, in addition to other topics that were not addressed in prior editions for different reasons.

Worth highlighting among them are (for a lack of a better term) parafiscal charges. Parafiscal charges are a set of monetary considerations managed from the sphere of the Financial Administration of the State, which are neither integrated in Overall Government Budgets nor allocated to specific expenses. They are similar to taxes in many ways, but they cannot be regarded as taxes under the classic definition. Consequently, the enforcement of tax regulations thereupon has been a source of ongoing concern, particularly regarding general principles and rules.

Additionally, it is necessary to consider the new proposals for tax dispute resolution such as compromise, settlement or arbitration, which have been incorporated in international tax law.

Furthermore, the extent of the globalization of taxpayers' financial transactions has given rise to a genuinely global taxpayer, calling for enhanced coordination and convergence in the efforts of tax administrations internationally.

Also worth pointing out is the fact that multiple tax entities that had been briefly addressed in previous editions of the Model required improvement, clarification or definition. They include responsible parties and withholding parties, the automatic assessment procedure, the penalty system or tax auditing procedures, among others.

In this regard, CIAT's Executive Secretary promoted a new Model update. The Executive Council decided to set up a Working Group, sponsored by GIZ and the IDB, made up by Mr. Eduardo Gabriel de Góes Vieira Ferreira Fogaça (RFB-Brazil), Sully Fonseca (DGI-Uruguay), Juan Antonio López Vega (SAT-Mexico), Miguel Pecho (CIAT), Nora Quintana Flores (SUNAT-Peru), Juan F. -Redondo Sánchez (AEAT-Spain) and Fernando Velayos (IDB). Luis Cremades (Head of the Spanish Mission to CIAT) was also a contributor.

Professors Leonardo Costa (Uruguay), Carlos María Folco (Argentina) and Heleno Taveira Torres (Brazil) monitored the CIAT Tax Procedure Code Model update process. The final edition of the Model update presented herein includes numerous suggested improvements.

The new Model edition was published in 2015 and presented to CIAT member countries and the entire international tax community at the General Assembly in Lima, Peru.

STRUCTURE OF THE MODEL AND CONTENTS

The structure of the new Model resembles the one published in 2006. It is divided into five general titles: Title 1 on preliminary provisions, Title II on taxes and substantive tax relations, Title III defining tax enforcement processes and procedures and conventions on mutual administrative assistance in tax matters, Title IV regarding tax violations and penalties and lastly, the new Title V that incorporates the rules on the procedures to review the decisions of the Tax Administration.

The newest elements in its structure are, undoubtedly, the extended comments for every article, which include not only more examples and in-depth explanations, but also an alternative text for some of the articles.

Title I contains rules regarding its scope, general tax principles and tax rules. The definition of the notion of charges and special levies has been improved and it includes the rule of immediate enforcement of procedural and formal rules regardless of the date on which the taxable event occurs. Similarly, parafiscal charges have been incorporated in the scope of the new Model, not only by providing a definition, but also by subordinating them to the constitutional tax principles and granting them a complete suppletory legal framework.

Title II regulates the substantive and formal aspects common to all taxes, whose backbone is the main tax obligation that seeks an economic consideration: payment.

The Model incorporates a more updated approach to formal and substantive tax obligations. It clarifies the non-subordination notion. It further defines the relations between liable parties, and removes the articles regarding the party subject to taxation and substitute taxpayer and incorporates the relations between the taxpayer and liable parties who facilitate or guarantee the payment of the principal obligation, the parties who shall fulfill formal obligations and those who enjoy tax benefits. It improves the notion of jointly liable taxpayer and the legal system of tax liability, in line with the provisions of most tax laws. The Model standardizes the order of allocation of payments by the Tax Administration to avoid discretional decisions; and it includes, in addition to the habitual forms of offsetting (by the liable party and officially by the Tax Administration), automatic offsetting in cases expressly provided for by law, thus expediting the allocation of tax balances against debits. Important changes have been incorporated in the entity of the Statute of Limitations.

In order to strengthen the assets' guaranty of the tax creditor, the Model incorporates a rule to extend joint liability to the members of an economic group and another one for withholding and collection agents. Furthermore, it defines that the abuse or fraudulent use of the legal personality of corporations as a means to perpetrate tax avoidance or evasion renders the corporation jointly liable. It bridges a regulatory gap, including a chapter on the tax competence as well as the regulations

on taxpayer capacity and representation (voluntary, individuals and entities without legal personality, and of foreign residents). The Model allows for deferrals or installments on debts from tax withholdings or collections on an exceptional basis and subject to special conditions according to the existing economic difficulties of the withholding or collection agent that prevent the payment of withheld or collected taxes.

Title III addresses the tax enforcement processes and procedures, and mutual administrative assistance in tax matters.

It defines the scope of the Model and suppletory rules, pointing out that they are applicable in processes and procedures in relation to taxes of the relevant country and processes and procedures aimed at promoting mutual administrative assistance in tax matters provided for in International Tax Law Conventions. Likewise, it acknowledges the specialty principle of the tax procedure and accepts more general procedures for subsidiary application, such as the administrative or jurisdictional procedures that correlate best to the nature and purposes of the matter.

It sets forth different notions regarding notification, such as calculation of terms, individuals authorized to receive them, the return receipt information, among others. The notions and classes of automatic assessment by the Tax Administration (final and preliminary) have been distinguished in order to clarify the scopes of Tax Administration assessments, thus providing legal certainty. It adopts a more protective assessment procedure, which grants the liable party a hearing prior to the assessment procedure. Aware of the fact that notification procedures have been automated, it authorizes the use of the e-mailbox to allow reception or sending of requests, documents and communications in relation to procedures and formalities due to the Tax Administration.

The entity of the tax inquiry has been addressed in depth, providing for its scope (inquiries regarding present or past situations, tax obligations already in effect, assessed and settled), its binding nature for the Tax Administration (the answer covers the specific case subject to inquiry not only of the inquirer but also of other liable parties; it does not impair taxable events occurring after changes in Tax Administration criteria) and the assumptions to render it inadmissible.

Rules regarding mutual administrative assistance in tax matters have been improved, particularly information exchange and simultaneous audits. It broadens the assumptions regarding non-confidential tax information, when said information is requested by or refers to the Election Board, Office of the Comptroller or Court of Auditors, foreign tax administrations, and to assessed tax credits that remain outstanding, or secured or payable on installment.

Improvements have been included regarding the audit procedure, providing an applicable framework of rules that determine functions, powers, rights and duties of the auditor and of the audited party. This seeks to promote the regulated nature of the procedure upon issuing decisions, adopting terms and drafting a final audit report that protects taxpayer guaranties. Likewise, it incorporates the development of onsite tax auditing procedures, in line with the trend and evolution towards more extensive audits based on the use of state of the art information technology.

In terms of cooperation and information obligations, the duties of private and official entities are set forth with regard to the delivery of tax-relevant information. All forms of refusal on the basis of bank, exchange, insurance and pension secrecy have been excluded, as well as the one arising from statutory law or internal rules of the entities that are required to deliver information. It defines the cooperation obligations with collection or audit procedures by the Tax Administration. The description comprises specific modalities for registration and maintenance of information in computer systems and authorization for the use of auditing tools of proprietary Tax Administration systems.

Regarding the procedures for reimbursing erroneous and due payments, the Model established a seamless procedure, subject to deadlines, protective of the taxpayers' right to being reimbursed, which acknowledged the right of the Tax Administration to decide, at its own discretion, the performance of a tax verification, summary examination, or audit, on which basis the refund amount shall be determined.

The conclusive agreement has been defined as an alternative dispute resolution mechanism. It establishes the agreement between the creditor and the debtor to define the materialization of taxable events and tax bases, without disregarding the principle of legality [principle of *"indisponibilidad de las obligaciones"* or inalterability of the tax claim]. It provides for the potential intervention of a government institution, such as the Defender of the Liable Party. It defines the obligation to secure the debt prior to entering into the agreement. For purposes of transparency, the agreement should be published.

Title IV features a series of new notions. This Title discusses rules in relation to tax violations and penalties: general rules on liability, penalties, and criminalization of tax offences that include tax violations and penalties.

It defines provisions to avoid double criminal and administrative prosecution and concurrence [according to the principle of *"concurso aparente"* defined as "The unit of law, also called apparent or imperfect concurrence, considers the assumption by which, although the act is covered by two or more criminal types considered independently, upon being considered jointly –in their relations- it becomes evident that one of the concurrent laws interferes in the operation of the others, by which its application to the matter is excluded, even when the latter applies because such law includes the damages of the remaining ones". E. R. Zaffaroni, *"Derecho Penal, Parte General"*] of violations. Overall, it seeks to avoid the proliferation of penalties in line with the *ne bis in idem* principle. The scope of the *pro libertatis* principle has been extended from the criminal to the tax sphere upon establishing the retroactive nature of the tax rules that define shorter terms for the operation of the statute of limitations regarding the violation or penalty. It has defined various assumptions to provide for exceptional cases where tax noncompliance before the rigorous objective liability is warranted.

Types of penalties (principal and ancillary) have been defined in further detail. According to the principle of proportionality of penalties, the Model defines a procedure and criteria for the enforcement of degrees of penalties, governed by objective parameters. The Model describes in strict

terms criteria to increase the penalty, excluding the circumstances that eliminate or mitigate the penalty, deemed causes that exempt from liability or circumstances to reduce penalties. The notion of tax misdemeanors has been improved, by emphasizing that it comprises the failure to comply with substantive as well as formal obligations, and one shall not prevail over the other. It classifies violations as misdemeanors, material or gross according to the existence of concurrent circumstances in the behavior of the offender, such as data concealment or material accounting irregularities. Based on their degree of involvement in the violation, parties have been classified as either offenders and authors or contributors.

The Model defines enhanced fairness in the enforcement of tax violation penalties; it excludes strict liability in tax crimes, and requires a certain degree of intent by the subject. Willful misconduct or negligence is required to be held accountable for tax violations. Furthermore, the Model introduces strict assumptions of joint liability of the subjects involved in the perpetration of violations, which facilitates the Tax Administration's collection function, contributing to a balance in the liability based on breach of duty in criminal matters. Finally, it redefines the reduction of penalties in furtherance of voluntary or enforced compliance within certain terms. Penalties shall be reduced by the decreasing percentages established, provided they are fulfilled at three different moments: i) without Tax Administration intervention and voluntarily, ii) upon initiating the tax audit and within a reasonable time following audit initiation; and iii) upon the lapse of the initiation of the audit process and within the term to seek remedies, without actually bringing such remedies before a court.

One of the new features in the CIAT Tax Procedure Code Model published in 2006 was the creation of Title V with the purpose of setting forth a complete set of rules on the procedures to review the decisions of the administration. This new Model especially strengthens the latter notion that frequently constitutes a closure phase in the tax process, and is aimed at adequately protecting taxpayers' rights in the face of Tax Administration measures.

Rules were reviewed to include a complete list of gross or material defects affecting the validity of the measure. They give way to the nullity of actions that stand contrary to Constitutional principles, which may have been set forth without due regard to the legal procedure in effect and provided they cause loss of protection or were handed down by openly incompetent authorities. The Model also establishes an exception to the rule of the irrevocable nature of the decisions of the administration, enabling the Tax Administration itself to declare the nullity thereof, whether automatically or upon request of the stakeholder.

It sets forth that the administrative tax decisions may be subject to review by means of administrative remedies, or that contentious-administrative remedies may be sought directly from Courts of Law. This stance has been adopted (effectiveness of the administrative proceeding by decision of the taxpayer) in the understanding that administrative remedies constitute a right for the individual and not a privilege for the State to delay access to a process of law.

Provisions have been included that define the terms according to which evidence shall be offered and examined as well as the content of decisions, seeking to ensure that the reconsideration proceeding is

conducted by way of stages of limitation of procedural rights at law, with due regard to the principle of material truth, and to protect the validity of administrative decisions by duly grounded decisions. Likewise, the Model provides for the right of the appellant to obtain a decision within a given term, suspending the application of late interest until a final decision is issued regarding the procedure. This prevents an undue delay from resulting in economic damage to the appellant, which damage is greater than the damage produced should the latter have decided to forgo remedies. Finally, in order to reduce litigation in courts of law, the Model has established the inadmissibility of seeking remedies from the decision of an Administrative Court in the administrative proceeding, except in the case of requests to correct material or calculation errors, elaboration of the decision on omitted items or clarification of the decision with respect to any questionable notion therein.

CIAT TAX PROCEDURE CODE MODEL

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TITLE I
PRELIMINARY PROVISIONS

CHAPTER I
Scope

Article 1. Scope.
The provisions herein establish the basic principles and the fundamental rules that constitute the legal framework of a tax system, and are deemed applicable to all taxes.

COMMENTS:
1. This provision defines the scope of the subject matter of the Model, considering that it will govern all kinds of taxes, pursuant to the definition of the term in Article 2, including customs duties, except as otherwise expressly provided by general laws governing such matter or in supranational treaties or agreements. Regarding the levels of government authority to which the rules of this Model would apply, it shall depend on the constitutional structure of government administration adopted by different countries, and the allocation of authority to legislate in tax matters relevant to such levels.
2. It is worth pointing out that the provisions herein are supplemental in their scope, provided they do not conflict with the provisions in International Tax Law Conventions that set forth mutual administrative assistance among tax administrations to conduct processes such as serving notices, audits or coercive collection.

Article 2. Notion and classification of taxes.
1. Taxes are the pecuniary considerations that the State demands by virtue of its tax enforcement power, which arises from the occurrence of the taxable event as set forth by law, and such law binds said taxable event to the duty of paying taxes aimed at meeting public needs.
   Parafiscal charges are deemed the ones established by Law, when they fail to fit in any of the categories in item 2. Such charges shall be governed by the provisions contained in this Code.
2. Taxes are classified as:
   a) Taxes.
   b) Charges.
   c) Special Assesments. (e.g. Extension of the water network, sewerage or road network for a new housing development located in an area previously not reached by these services).

COMMENTS:
1. The definition of tax adopted corresponds to the one traditionally embodied in doctrine and different Tax Codes of Ibero-America. It gathers the elements that characterize taxes – pecuniary consideration, mandatory nature, enforceability by law – and further explains their purpose of meeting public needs.
2. As to the "pecuniary" feature of the tax, the definition set forth seeks to underline its monetary quality upon rendering taxes the chief source of financing of government activities. Along such lines, it provides that the main role of the tax is to enable government spending, and this differentiates them from the penalties arising from an illegal act.
3. Notwithstanding, the fiscal purpose of taxes does not hinder their use with non-fiscal or economic policy purposes,

in which the collection purpose is not the most relevant but rather seeks to promote or discourage a specific behavior, making a given activity of individuals more or less burdensome. Such is the case for environmental taxes, which serve the purpose of protecting the environment by promoting less harmful practices among individuals with respect to the environment.

4. Conversely, although the definition of taxes defined herein does not expressly state so, it excludes the penalty for an illegal act (fine), to the extent that it asserts that the tax arises from the materialization of the "taxable event", the latter notion being different from the violation that warrants the penalty.
5. It refers to parafiscal charges as those that constitute considerations enforced coercively and fail to fulfill the overall features that define the different types of taxes, whether based on their specific purpose of meeting public needs, or because they are resources that are not allocated to the general Government budget, or because they are established to benefit a specific group of individuals; or, overall, because they depart from the general framework governing taxes.
6. The option of incorporating parafiscal charges in the Model is based on the need to expressly subject them to the constitutional tax principles (legality, equality, taxpaying capacity, etc.) and provide a complete supplementary legal framework for entities that frequently rely on insufficient or incomplete regulations.
7. Even when different tax codes of Ibero-America and several case law decisions deem parafiscal charges included under "Special Levies", based on certain opinions in the doctrine, the Model equates them to taxes, since depending on the structure of the taxable event, they may be assimilated into any of the three tax classifications.
8. It also provides for the classification of taxes into taxes, charges and special levies, in line with the prevailing classification in substantive law and in doctrine. It is worth indicating that, in certain countries, the legislation adds social security contributions to the foregoing classification based on three categories, and their specific features prevent their direct assimilation into any of the three foregoing types.

Article 3. Taxes.
A tax is a levy whose obligation is generated by and is legally grounded on a situation that is independent from any government activity in relation to the taxpayer that expresses a specific taxpaying capacity.

COMMENTS:
1. The definition of tax adopted corresponds to the one set forth in the OAS/IDB Model Tax Code and with the vast majority of tax codes of Ibero-America.
2. Its definition incorporates two intrinsic features of the tax; firstly, the reference to the economic capacity as the fundamental index on which basis the taxable event shall be structured and that constitutes the limit to the duty to pay taxes; and secondly, the reference to its non-binding nature. In other words, a tax whose enforceability is not bound to the undertaking of a government activity in favor of taxpayers, but solely to raising the tax income enabling to satisfy government spending.

Article 4. Charges.
A charge is a levy whose obligation is generated by the effective or potential delivery of a service under the public law system or the use of a public asset, individualized or referring to, affecting or benefiting the liable party in particular, when the service or use are not subject to voluntary request or reception by the liable

parties or are not delivered or undertaken by the private sector, and whose amount shall correspond to the service cost or maintenance.

COMMENTS:

1. The definition of charge adopted is based on the one set forth in the OAS/ IDB Model Tax Code and other tax codes from Ibero-America, asserting the distinctive feature of charges, that is to say, their related nature: government service or use of a public asset (state involvement) that is individualized or referred to a liable party.
2. In order to emphasize that the payment of the charge is effective by the sole existence of a relation between the government activity performed and the liable party, the text includes the notion that government service or use of the public asset "refers to, affects or benefits" the liable party directly, insofar as it covers the different assumptions under which such relation may arise. It also indicates as a differentiating element from utility fees that the will of the requesting party shall not be involved in the services or use of the public asset.
3. The wording set forth states that the generating event of the charge (relation between the government activity performed and the liable party) may be grounded on an effective or potential service, the latter understood as the mandatory service the taxpayer receives by which it is inadmissible, as a means of exemption from the payment of the charge, to contend that the service is not wanted (for example: the use of a private garbage collection service by arguing that the individual does not receive the public service to release him/her from paying the charge). It is worth noting that the mandatory feature of the service (no intervention of the will of the requesting party), constitutes the distinctive element of utility fees.
4. In order to set them apart from utility fees, the amounts applicable as charges shall not exceed, respectively, the following magnitudes: the cost of the service for every user, the cost of maintenance of the public asset, the latter prorated by the habitual mean or expected number of users thereof, and, if applicable, the cost of damage. Overall, any charge established shall require an underlying financial-economic report for its price or amount.
5. Finally, even when from the financial standpoint a similarity may exist between charges and utility fees, to the extent both cover a government expense, from the juridical standpoint, they constitute different items. Consequently, should the payment for the government process derive from the power of the State as such rather than an economic market agent, it shall be deemed a public service whose pecuniary consideration borne by the direct liable party shall constitute a charge and not a fee. The latter shall operate when the service delivered by a government entity originates from an exchange-based relation.
6. A similar situation arises when the payment of the service is originated by the use of a public asset, understood as available for public benefit and use, in which case it shall constitute a charge and not a fee. On the other hand, a fee applies when the assets are intended for private use.

Article 5. Special Assesments.

A special assesment is a tax generated by special benefits derived from the execution of public works, or expansion of public services. The proceeds thereof shall serve the sole purpose of financing the works or activities that constitute the basis for the obligation.

COMMENTS:

1. The definition adopted is in line with the more broadly accepted notion of Special Assessment based on the benefits, or more specifically the allocation, derived from the execution of works or the establishment or expansion of services delivered by the State in favor of a specific group of individuals, who are the recipients of the benefits from the works completed or the activity carried out. It is worth considering that, contrary to charges collected from the delivery of a service, a special assessment finances the establishment or expansion of the service (the infrastructure required in its delivery).
2. As to the quantification of the assessment, the proceeds of the amounts collected shall be employed in financing the works or activities, making it clear that according to the Model, the quantification parameter for the contribution is the cost of the works or activities originating it, while for the distribution of the cost among the beneficiaries of the execution of the works or the delivery or expansion of services, the tax base as well as the tax rate shall consider reasonable criteria to enable cost allocation.
3. Finally, it is worth considering that the special assessment shall not fund the total cost of the works, but the portion of the work attributable to the special benefits, since the work shall also widely benefit the overall community.

CHAPTER II
General principles of taxation

Article 6. Regulation and enforcement of taxes.

1. The regulation and enforcement of taxes shall be conducted in compliance with the constitutional principles in effect.
2. It is the role of administrative bodies or entities of public law integrated in the Tax Administration to exercise the powers and develop the functions set forth under Titles III, IV and V herein.

COMMENTS:

1. This article defines the constitutional principles that lay the framework for the regulation and enforcement of taxes. Firstly, taxes are structured according to the principles of taxpaying capacity, justice, equality, equity in the distribution of the tax burden and non-confiscation. On the other hand, the principles of proportionality, efficacy and limitation of indirect costs that stem from compliance with formal obligations shall be considered in the enforcement of taxes.
2. Likewise, the bodies of the Tax Administration in each country shall enforce the powers and functions of management, auditing, collection and reconsideration defined in the Model.

Article 7. Principle of legality.

Only the law shall:

a) Establish, modify or eliminate taxes; define the taxable event that originates the tax obligation; define the party deemed liable; set the basis for calculation and rates, and determine accrual.
   The Executive Branch shall suspend the enforcement of taxes of any kind, totally or partially, temporarily deferring their payment throughout the entire national territory or designated areas thereof, notwithstanding the provisions of the first paragraph herein, in cases of a formally declared national emergency.
b) Grant tax exemptions, reductions or benefits.
c) Establish and modify surcharges and the obligation to pay interest.
d) Define the reconsideration proceedings of administrative tax decisions.
e) Establish the obligation to file tax

statements and self-assessments in relation to the principal tax obligation, to make payments on account or advance payments and the obligation to withhold or collect.

f) Define violations and establish applicable penalties.
g) Establish privileges, preferences and guaranties concerning the tax claims.
h) Define the forms by which tax obligations are extinguished by means other than payment.
i) Establish and modify the period of limitations.

COMMENTS:

1. The Principle of Legality is embodied with the purpose of covering the matters defined herein.
2. Considering that the constitutional rules in certain countries vest taxation powers upon the Executive Branch as well as other government entities (as in certain countries where the Executive Branch is empowered by the Legislative Branch to issue rules with the force of law, or in the case of the municipalities or city councils that have the legislative power to issue rules with the force of law without prior delegation or authorization), the principle of legality shall be deemed fulfilled to the extent the essential elements of the tax have been expressly defined and predetermined in a rule with the force of law.
3. Nevertheless, based on a certain degree of flexibility of the Principle of Legality, different legislative bodies set forth that conditions for the designation of withholding or collection agents shall remain a prerogative of statutory law and that, within such limitations or conditions, the Executive Branch or even the Tax Administration, by way of general rules, shall designate said liable parties. Notwithstanding, since the designation of withholding or collection agents entails identifying effective liable parties, the Model establishes that tax withholding or collection agents shall be determined by law.
4. The second paragraph of subsection a) establishes the extraordinary power of the Executive Branch to suspend the enforcement of taxation under specific emergency circumstances; such suspension shall be subject to the terms of statutory laws passed by the Legislative Branch of the countries, and it may operate as the exemption or deferral of payments.
5. On the other hand, the Model sets forth the Principle of Legality to establish the obligation to submit tax statements and self-assessments, considering that such principle of legality shall be relative and only govern the statements in relation to the principal tax obligation of making payments on account or advance payments and withholding or collecting amounts. The exception is the obligation to file informative statements, whose legality is covered by the general obligation to inform, addressed hereinafter, and shall consequently be established by rules of lesser hierarchy in order to facilitate information gathering by the Tax Administration.

Article 8. Effectiveness of the tax rule.

1. Tax rules shall become effective as of the date set forth therein. If such date is not established, they shall be effective on the day following their official publication.
2. The rules governing recurrent taxes shall apply to the periods starting on their effective date, unless otherwise stated therein.
3. Tax rules that establish or increase taxes shall not be effective prior to... days from the date of publication of the law that established or increased them.
4. Formal and procedural tax provisions shall apply, in all cases, to the procedures

underway and those initiated during their effectiveness, regardless of the date on which the taxable event occurred. This provision shall apply in the absence of express rules on the matter.

5. Tax rules shall not have retroactive effect. Excluding, the rules governing violations, penalties, and surcharges shall have retroactive effects when their enforcement is deemed more favorable for the stakeholder, except for final decisions.
6. The repeal of a tax rule does not preclude its application on the events occurred during the effectiveness thereof.

COMMENTS:

1. The article establishes the general rule regarding the entry into force of tax rules, whether statutory or substantive in nature. The application of the rule within a given time period is based on the existence or not of a fiscal year for the relevant tax.
2. Likewise, it incorporates the rule by which taxes are deemed unenforceable prior to the lapsing of a certain number of days from the date of publication of the law that defined or increased them, and allows every Legislative Branch the option to determine the term for vacatio legis. The purpose of said rule is to strengthen the principle of legal certainty, granting the liable parties further guaranties in the timely knowledge of the tax changes that influence their tax obligations, such as those that establish or increase taxes, so they are not overtaken by an unexpected tax requirement.
3. As a rule, it sets forth the non-retroactive effect of tax rules, as the materialization of the legal certainty that shall prevail in the tax legislation, except for rules that define violations, penalties or surcharges the application of which is more favorable than the one established in the provision that is amended. On the latter assumption, it shall apply retroactively. In this respect, although it recognizes that certain countries enjoy constitutional provisions establishing non-retroactivity of laws, it deems appropriate to admit such possibility in case of benign retroactivity in relation to administrative violations and penalties, thus embracing the principle of retroactivity of the most favorable criminal law.
4. Likewise, it provides for the rule of immediate enforcement of procedural and statutory laws, which is based on the assumptions that every rule shall prevail as from its effective date and said effectiveness shall be sustained until the rule is repealed or amended. Legislation in different countries apply the rule of retroactivity of procedural laws and allow, even after having been formally repealed, their enforcement on the tax procedure that was initiated so that the rule prevails until the procedure is concluded.

   Nevertheless, the Model favors immediate enforcement because the process constitutes a progression of procedural interrelated events. It does not stand on its own as a consolidated situation but rather as a juridical sequence admitting the enforcement of new instrumental provisions as soon as they are effective, without detriment to the processes that have been completed pursuant to the previous law in effect, which shall be respected and deemed conclusive. Notwithstanding, in order to provide countries with an alternative to the option defined herein, the following wording is suggested:

   "The tax procedures initiated prior to the effectiveness of formal and procedural tax provisions, shall be governed by the regulations in effect prior to the latter, until their conclusion, except as otherwise expressly provided by law."

Article 9. Interpretation of tax rules.

1. Tax rules shall be construed in accordance with the methods authorized by law.
2. To the extent the terms employed in the rules are not defined by tax regulations, they shall be construed in accordance with their juridical, technical or common usage, as applicable.
3. The scope of the taxable event, tax exemptions, or tax violations shall not be expanded by means of analogy beyond their strict terms.

COMMENTS:

1. The analogy between the tax rules and other rules of law is expressly acknowledged in connection with the acceptable rules of construction, except for any criteria based on obsolete doctrines, such as those that recommend decisions in favor of the liable party in case of doubt.
2. The Model introduces a practical rule, regarding the sense that shall be attached to the terms employed in tax laws, since it is common that certain tax norms, particularly the ones that define very extensive provisions on a given matter or set forth a tax system, incorporate an initial provision to define the general provisions that certain terms or expressions employed in the norm shall have therein, in order to facilitate the effort of the party who interprets the law. To the extent the terms employed in the rules are not expressly defined by tax regulations, they shall be construed in accordance with their juridical, technical or common usage, as applicable.
3. Furthermore, and according to the Principle of Legality provided for in the preceding article, it dismisses the application of analogy, to the extent it entails the creation or exemption of taxes, or the extension of tax violations beyond the scope strictly set forth by law.

Article 10. Description of facts and fraud.

1. The tax relevant events shall be qualified according to the same criteria -formal or substantive- applied by regulations to define or limit them.
2. In the event of fraudulent transactions or fraudulent business activities, the tax shall apply based on the transactions or business activities effectively conducted.

COMMENTS:

1. A rule is included on the qualification of the taxable event according to the legal nature of the transaction, event or business activity performed considering to such end the relevant legal criteria that define them.
2. Likewise, it includes a provision regarding fraudulent business activities in order to facilitate tax enforcement based on the actual business activity performed.

Article 11. General anti-avoidance provision.

1. In the event of transactions that are individually or jointly deemed fictitious or inappropriate to achieve the result, the tax consequences applicable to the participating parties in said transactions shall be those applicable to the common or inherent transactions to achieve the result.
2. The above definition shall solely apply when such fictitious transactions fail to produce material economic or legal effects, except for tax savings.

COMMENTS:

1. The Model incorporates a general anti-avoidance provision. The latter seeks to avoid using transactions or business activities with a purpose other than the one provided by law, or without any other ground than pursuing a reduction in the tax amounts' payable by the offender, including obtaining undue tax credits or, overall, a tax benefit.

2. Faced with countless assumptions involving efforts to avoid the enforcement of tax regulations by adopting descriptions or structures of artificial, inappropriate or fictitious legal entities, different international legislation react by incorporating in their laws anti-tax avoidance provisions like the foregoing, which constitutes a tool that enables tax administrations to counter tax avoidance and tax fraud practices.
3. Numerous forms and procedures to counter tax avoidance exist (harmonization of domestic regulations, establishing specific anti-tax avoidance provisions, adopting conventional rules aimed at specific aggressive tax planning modalities). One is the adoption of a broad anti-avoidance rule incorporated in a tax code or other general body of law, in order to cover the largest number of practices whose sole purpose is to reduce or eliminate the tax burden.
4. Furthermore, this type of measure is based on the OECD Action Plan on Base Erosion and Profit Shifting (BEPS). Said Plan establishes, in particular, the need to design domestic rules to prevent granting a benefit arising from an International Double Taxation Agreement in inapplicable circumstances.
5. It is worth mentioning that, except for express provisions to the contrary by International Tax Law Conventions, the general anti-tax avoidance provisions defined in the Model shall be deemed applicable to transactions that fall under the scope of said Conventions.
6. It is worth pointing out that the adoption of general anti-tax avoidance provisions in legislations, as the Model sets forth, does not entail openness to arbitrariness; to the contrary, the tax administrations shall be called to prove the undue, inappropriate or fictitious nature of the transactions undertaken by liable parties with the elements of evidence set forth by law, as well as the absence of a purpose other than pure and simple tax savings. In such respect, once the tax administrations determine that such punishable transactions have been materialized and, consequently, prove their illegal nature on the grounds they were premeditated acts designed with the sole purpose of avoiding the payment of taxes or obtaining any type of tax advantage, -violating with full intent and awareness the duty of paying taxes-, not only shall they enforce collection of the tax that was avoided or reduce or eliminate the tax advantage, but also enforce the applicable penalty.
7. Finally, the Model recommends that tax administrations adopt internal measures to disclose the transactions or cases considered avoidance practices, to serve as guidelines on the criteria adopted thereby in such cases. It is clear that said report or record shall protect the identity of the subjects involved, by which the information to be disclosed shall refer to, among others, the types of schemes employed, the form of detection, and the transaction patterns and the laws that were breached.

Article 12. Validity of transactions.
The tax obligation shall not be affected by circumstances pertaining to the validity of transactions, or the nature of the purpose sought by the parties, or by the consequences that the taxable events or transactions may have in other branches of Law.

COMMENTS:
1. This article detaches the validity, legality or morality of events or transactions that fall within the notion of taxable event, so that the tax consequences may

apply. Once said transaction has been verified, the corresponding tax shall be enforceable, regardless of any other feature thereof.

2. This provision seeks to prevent avoidance of tax obligations based on a transaction marked by a substantial or procedural error, which may result in its nullity when the tax becomes enforceable. Therefore, when a transaction or business activity has been conducted and is effective, it is understood that the economic capacity has been expressed and, therefore, it shall be subject to the levy.
3. Notwithstanding, the assumptions of nullity, termination or resolution of legal acts that originate the tax obligation are inevitably excluded from the rule established regarding the tax consequence of the transactions.
4. Also, income from illegal transactions are excluded from said rule, when a criminal sentence has been handed down which incorporates the tax crime upon ordering the attachment of the proceeds obtained from the perpetration of the crime or the ruling that requires they be returned as a matter of civil liability. Should the return of illegal income not be performed according to the foregoing provision, the wealth increases arising therefrom shall be reported, by operation of the Principle of Equality that precludes a more favorable tax treatment for an offender versus a compliant one.

Article 13. Calculation of due dates.

The legal and regulatory due dates shall be calculated as follows:

a) The due dates calculated in years or months shall be continuous and expire on the same date of the respective year or month.
b) The due dates established by days are understood as calendar or business days, in agreement with the laws of each country.
c) In all cases, the expiration of due dates and periods on a non-business day for the Tax Administration shall be understood to be extended to the next business day.

COMMENTS:

1. The rules that govern due dates establish that in order to calculate the due dates in years and months, they shall be counted from date to date, expiring on the same date of the month or year on which they started running.
2. On the other hand, in case of the due dates calculated in days, they may be understood as calendar days or business days according to the laws of each country.

Article 14. Presumption of legality.

The proceedings and decisions of the Tax Administration shall be deemed legal and enforceable without prior intervention of the Judiciary, without detriment to the remedies provided by law in favor of liable parties to challenge and, if applicable, suspend the effectiveness of such proceedings or decisions.

COMMENTS:

1. The presumption of validity or legality of the proceedings or decisions of the Tax Administration is the essence of the administrative decisions. This rule grants efficacy to the efforts of the Tax Administration and is broadly incorporated in countries' tax legislation.
2. In this sense, it is not necessary for the Judiciary to rule on the legality of the administrative decision as a precondition for collection of the tax debt.
3. Notwithstanding, it is not an absolute presumption, since it admits the rights of liable parties to challenge said legality by way of the remedies provided for under Title V herein.

CHAPTER III
Tax rules

Article 15. Sources of tax law.
Taxes, of all natures and types, shall be governed by:
a) Constitutional provisions.
b) International conventions.
c) This Code.
d) The specific laws applicable to each tax.
e) Other laws that include provisions on tax matters.
f) The regulations issued in furtherance of this Code and by those that deal specifically with each tax.
g) Other general provisions established by duly authorized administrative bodies.

COMMENTS:
1. The rules that govern taxes, considered as sources of Tax Law, are essentially those that constitute the juridical pyramid, according to Doctrine, set forth in order of priority, which are in turn embodied in the majority of Tax Codes of Ibero-America.
2. An express provision is worth highlighting, which refers to ... "other general provisions of established by administrative bodies that are duly authorized", meaning that aside from the governmental exercise of regulatory power, the Tax Administration itself, within the terms and conditions established by law, may issue general mandatory rules for liable parties meant to implement the legal principles and, especially, the provisions deemed necessary for the exercise of its tax audit, assessment and collection functions.

Article 16. Suppletory laws.
Other suppletory tax laws governing similar matters shall be applied, as well as the general principles of tax law, and in their absence, the administrative provisions and the principles of administrative law and other branches of law governing matters of similar nature and purpose.

COMMENTS:
Suppletory Laws, by reason of the autonomy of Tax Law, shall firstly consist of the provisions of other tax laws that apply to similar or comparable matters, of administrative provisions, of general principles of said Law and, to the extent that a situation remains unresolved, reference shall be made to the provisions of other branches of Law governing matters of similar nature and functions. Consequently, in matters of Substantive Tax Law, the suppletory law applicable, among others, is Private Law. For example, in matters of Procedural Tax Law, the suppletory laws applicable, in particular, stem from Administrative Law, for example, the provisions referred to the delegation of powers, concurrence of proceedings, among others.

Article 17. Approval of general rules.
The Head of the Tax Administration shall have the power to issue general rules for the development and application of tax laws.

COMMENTS:
1. This provision establishes the power of supplementation and refers to the issuance of rules that laws and regulations confer upon the administrative authorities, or which are required in facilitating the implementation of tax rule principles.
2. Clearly, the supplemental rules that the Tax Administration issues shall be compliant with the Principle of Legality, by which provisions shall not breach or exceed the laws and rules they seek to supplement.
3. As a formal rule, the power of supplementation is vested on the Head of the Tax Administration, which confers legal certainty upon the regulatory

supplementation process and prevents any branch of the Tax Administration from directly issuing rules that seek to regulate tax laws or rules.

Article 18. Approval of interpretation criteria and effects of their publication.

1. By virtue of official publication, the Head of the Tax Administration shall communicate the general interpretative rules for the provisions of this Code and those that govern taxes.
2. Said general interpretative criteria thus published shall be mandatory for the Tax Administration but not for the subjects under the authority thereof.
3. When the Head of the Tax Administration modifies a criterion that was published, he shall reveal it in the same manner and the new criterion shall not be applicable in the situations arising during the time the former one was in effect.

COMMENTS:

1. The article defines a relevant and clearly useful practice for liable parties, in relation to the publication of interpretative criteria for Tax Administration regulations. Hand in hand with tax inquiries, the interpretative criteria grant legal certainty to taxpayers regarding the administrative rationale and serve as guidelines for self-assessment by liable parties.
2. Contrary to tax inquiries, the criteria adopted correspond to the general interpretations of tax provisions, that is to say, the ones defining the spirit and scope of tax rules and, consequently, are applicable not only in the case for which they were established, but in any other similar one.
3. This provision establishes that general interpretative criteria are not binding for individuals and, upon publication in the applicable government office, they shall protect the standing of compliant liable parties, to the extent such criteria are not modified.
4. Because the interpretative criteria of the rules are governed by the Tax Administration obligation to provide information and assistance, the latter shall keep the publication of said criteria duly updated, grouping them in a manner that facilitates access to the liable parties.

TITLE II
TAXES AND SUBSTANTIVE TAX RELATIONS

CHAPTER I
General provisions

Article 19. Notion of legal tax relation.
The legal tax relation constitutes a set of obligations and duties, rights and powers arising from the enforcement of taxes between the State and the liable parties.

COMMENTS:
1. The enforcement of the legal tax regulations set forth multiple bonds and relations between the State and the liable parties and such plurality of bonds and relations is referred to as the legal tax relation.
2. The definition herein underlines the fact that the legal tax relation arising between the State (the authority) and the liable parties originates reciprocal rights and obligations between said parties, as explained in the following article. Consequently, it constitutes a relation established by law.

Article 20. Tax obligations.
The legal tax relation gives rise to substantive and formal tax obligations for the State and the liable parties. Substantive tax obligations are the principal obligations such as making payments on account or advance payments and withholding and collecting taxes, as well as any other with the purpose of fulfilling the duty of turning over a certain sum.

COMMENTS:
1. The Model maintains the traditional classification of obligations that may arise from the legal tax relation as formal and material or substantive obligations. Said obligations may be such for the liable party (for example, the obligation to file self-assessments and pay taxes), as well as for the State (for example, the obligation to refund the erroneous payments received or the obligation to pay interest for late refunds). Additionally, formal obligations apply that are enforceable on third parties excluded from the legal tax relation (for example, the obligation of notaries public to report on the private or commercial transactions in which they called to participate).
2. Regarding substantive tax obligations of the liable parties, they are grounded on the duty of contributing to Government expenditure enforceable on citizens, while formal obligations arise from the duty to collaborate with the Tax Administration in the correct assessment of substantive tax obligations.
3. On the other hand, substantive tax obligations, commonly defined as obligations to turn over, highlights -by virtue of its importance- the principal obligation of pursuing the payment of taxes, making payments on account, withholding, collecting, and any other of economic nature.
4. Additionally, formal obligations include such obligations that are ancillary to substantive obligations, applicable to individuals deemed tax debtors or otherwise, and contribute to their compliance. They entail affirmative duties (for example, presenting accounting books or records or self-assessments or informative statements), negative duties (for example, not hindering the

Tax Administration processes), or duty to tolerate (for example, accepting audits or seizures of documents).

Article 21. Notion of taxable event, non-subordination and exemption.

1. The taxable event is the transaction established by law to characterize the tax, whose occurrence originates the tax obligation.
2. The law shall circumscribe the taxable event upon setting forth assumptions of non-subordination to taxes.
3. The non-subordination assumption arises when the taxable event originated by the liable party is not included in the legal provision that originates the tax obligation.
4. With respect to tax exemptions, although the taxable event is materialized, the law releases the liable party from the obligation to fulfill the principal tax obligation.

COMMENTS:

1. The taxable event is defined in line with the legislation of most countries in Ibero-America and with prevailing Doctrine, such as the description of a material taxable event by the law, which includes the assessment of the objective, subjective, spatial and temporal elements, which, upon verified in practice, originate the tax obligation. All such events that are not covered by the regulatory provisions (subsuming), shall be automatically excluded from the scope of the tax, and consequently, shall not originate the obligation.
2. Notwithstanding the foregoing, countries commonly include the assumptions of non-subordination to the tax obligation when circumscribing the taxable event; that is to say, the description of situations in which the taxable event is not originated, as a means to provide a clearer definition of the taxable event. Therefore, the Model sets forth that it is possible to circumscribe the taxable event upon including non-subordination assumptions.
3. Likewise, and relevant to the circumscription of the taxable event and contrary to the non-subordination assumptions, it provides for tax exemptions, by virtue of which the law releases the liable party from the obligation of paying the tax, even when the taxable event is materialized in practice.

Article 22. Tax period and accrual.

1. In recurrent taxes, every period determines the existence of an autonomous tax obligation.
2. Accrual is the time at which the taxable event is deemed legally occurred and shall determine the applicable rule. The tax obligation shall be enforceable at a time other than its creation or accrual.

COMMENTS:

1. The article provides certain notions in relation to the temporal aspect of the taxable event. Firstly, it explains that for recurrent taxes, every period entails an inherent obligation that gives rise to substantive and formal obligations.
2. Accrual is defined according to the prevailing Doctrine that identifies it with the creation of the tax obligation due to the materialization of the taxable event.
3. On the other hand, it sets forth that the enforceability of the tax obligation may arise after the accrual and constitutes the opportunity on which liable parties shall fulfill their substantive and formal obligations. The decision on the enforceability of the tax obligation shall depend on whether taxes shall be assessed by the liable parties, in which case they are enforceable upon expiry of the term defined by law to file the self-

assessments; or whether taxes shall be determined by the Tax Administration, which shall be enforceable upon the expiry of the term the latter points out on the assessment procedure.

Article 23. Agreements between taxpayers. Agreements between taxpayers regarding the status of the liable party and other elements of the tax obligation are not enforceable upon the Tax Administration, regardless of their private legal consequences.

COMMENTS:

1. The provision arises from the legal nature of the tax obligation. It establishes that the agreements on tax matters entered into by taxpayers regardless of the validity between them, are not enforceable upon the Tax Administration. For example, the taxpayer shall always be the party designated as such by the applicable law.
2. It is worth explaining that agreements or contracts between taxpayers as mentioned herein, shall be referred to the liable party status with the Tax Administration (for example, that a property rental contract establishes that the party liable for income tax with the Tax Administration shall be the tenant and not the owner, when the law provides that the owner shall is the effective taxpayer) and to the elements of the tax obligation, (for example, an agreement that for tax purposes, the partial payments entered prior to the delivery of the assets shall not be deemed income), to the extent the purpose of the provision is to preclude taxpayers from modifying the provisions of tax regulations by virtue of their agreement. Notwithstanding, said preclusion shall not be understood broadly and deemed to apply to any aspect that may entail a tax consequence, such as the agreement over a loan by which the parties agree not to pay interest and said interest is duly reported on the accounting records of the debtor, since although such agreement generates an evident tax effect, it shall not be denied by the Tax Administration by virtue of the provisions herein.

CHAPTER II
Taxpayer and liable parties

Section 1. Notions

Article 24. Tax authority. The tax authority in the legal tax relation is the government entity vested with the administrative power to regulate and enforce taxation.

COMMENTS:

The power of taxation shall be always inherent in the State. However, the latter shall entrust the execution of all the administration and collection procedures to a specific government entity, in which case, such entity shall be regarded as the tax authority or in other words, the tax creditor. On the latter assumption, the tax authority shall be the government entity vested with the administrative powers of regulation and collection of taxes, whether it holds the tax enforcement power or not. Such is the case for the tax administrations, who perform the role of administrative and collection bodies of taxes or of Municipalities, the authorities that combine tax enforcement, as well as administration and collection powers.

Article 25. Liable parties. The following are deemed liable parties:

a) Taxpayers.
b) Parties liable for payments on account or advance payments.
c) Withholding agents and parties liable for payments on account.
d) Collection agents.

e) Parties who are required to transfer obligations to third parties.
f) Successors.
g) Responsible third parties.
h) Parties subject to tax exemptions or tax benefits.
i) Parties who shall fulfill formal obligations, including liable parties pursuant to the regulations on mutual administrative assistance in tax matters.

COMMENTS:

1. For didactic purposes, the article enumerates different types of liable parties who are required by regulations to fulfill substantive and formal obligations, which shall be defined in the subsequent articles of the Model.
2. Said enumeration includes the taxpayer, the principal debtor in the tax-payment obligation, and liable parties other than the taxpayer, with the common feature that both facilitate or secure the payment of the principal obligation. Furthermore, since the Model incorporates the notion of tax obligation in its broadest sense, which includes formal obligations, it also includes as liable parties the subjects that are required to fulfill such obligations.
3. It is worth pointing out that this version of the Model has removed the articles on party subject to taxation and substitute taxpayer. Firstly, because in Doctrine as well as substantive law, the classification and designation of parties subject to taxation are the two less consistent notions (some, based on a more conservative approach only consider the taxpayer as the party subject to taxation, and others consider taxpayers and liable parties as the parties subject to taxation -the most widely adopted theory in the Tax Codes of Ibero-America-, and a third group identifies the taxpayer and the substitute taxpayer as the parties subject to taxation; a fourth approach states that the party subject to taxation is the party who effectively pays the tax to the Tax Administration, and the fifth broad approach considers the parties subject to taxation to be the liable parties for tax obligations). Considering that the classification of responsible party has greater relevance in theory than in practice, none of the above definitions of parties subject to taxation have been adopted, leaving it to the legislation of every country to decide over such matter and, instead, define each type of liable party individually.
4. With respect to the substitute taxpayer, the suppression of the notion is based on the fact that two antagonistic approaches apply, with the most widely adopted approach considering it a responsible party, while the other approach considers it the principal debtor of the tax payment obligation. A second reason for its removal is that this entity is very rarely applied in legislation from different countries.

Article 26. Taxpayer.

1. A taxpayer is the liable party designated by tax laws, with respect to whom the event that generated the tax obligation is verified.
2. The term taxpayer, as defined in tax laws, shall also include inheritance (neither accepted nor refused), joint ownerships and other entities that, although lacking legal personality, constitute a separate economic unit or asset subject to taxation.
3. The taxpayer shall be required to:
   a) Pay taxes to the Tax Administration.
   b) Reimburse the tax amount, or bear the tax withholding or tax collection, in the case of payments by responsible parties, the withholding or collection agent, or, in general, a third party as provided by law.
4. Taxpayers who perform, or with respect

to whom the same taxable event is substantiated, shall be held jointly liable.

COMMENTS:

1. Taxpayers are defined as the liable parties with respect to whom the taxable event is substantiated. They are, as designated in certain laws, "the inherently liable parties" and assume the condition of principal debtors of the tax obligation.
2. The law shall designate them and assess their obligations.
3. Furthermore, in line with the provisions in the majority of tax laws, the Model adopts the assumption of jointly liable taxpayers, a condition by which several liable parties perform the same taxable event. On this assumption, joint liability arises automatically and does not require an express rule that provides for it.

Article 27. Parties liable for payments on account or advance payments.

The liable party is required to make partial payments when the law governing each tax imposes thereupon the duty of entering amounts on account of the principal tax obligation prior to its enforceability.

COMMENTS:

It establishes the obligation of certain individuals or corporations to make advance payments and payments on account of the principal tax obligation. They constitute obligations different from the substantive tax obligation, which is still unenforceable, and therefore, said parties are not yet deemed taxpayers but liable parties.

Article 28. Withholding agent and parties liable for payments on account.

1. A withholding agent is the individual or entity upon which the relevant tax law, pursuant to their activity, function or status in an agreement, imposes the obligation to withhold taxes or the amounts on account of taxes from other liable parties and deliver them to the tax creditor.
2. The party liable for payments on account is the individual or entity that makes payments in kind, who is subject by law to the obligation of entering payments on account of any tax. The liable party shall be entitled to transfer the payment amount to the collecting agent.

COMMENTS:

1. The Model follows the general trend in Ibero-America that incorporates the entity of collection agents on the grounds of their effectiveness in collecting taxes.
2. In the case of withholding agents, they are parties who participate in levied transactions or operations, to whom the law attributes the duty of withholding from the payments they are required to make, a percentage equal to the tax amount applicable to the transaction, or to satisfy an amount on account of the tax that shall be determined once the taxable event occurs. Consequently, they are required to enter said taxes or amounts on account of taxes with the Tax Administration. A typical example of a withholding agent is the employer with respect to income tax on the salary paid to his employee. Consequently, the employer shall pay a 1,000.00 salary to his employee, and assuming such amount is subject to income tax payable by the latter and to a 10% withholding, the employer is required to withhold 100 from the 1,000.00 due and enter the amount with the Tax Administration; the employer shall pay his employee the remaining 900,00 amount. Another example may be the 17% VAT rate on the disposal of personal property that includes 6% withholding on the transactions carried out by the purchasing parties, in their capacity of withholding agents. Therefore, if A sells

to B (the withholding agent) a piece of personal property worth 100, 00, B shall pay 117, 00, but shall be required to withhold 6% of said amount and enter it with the Tax Administration, by which he shall pay A only 110, 00.

3. Another modality of withholding agents is the party liable for payments on account. It establishes the obligation of certain parties who are required to make payments in kind to make advance payments and payments on account of the principal tax obligation. The paying party thus constitutes a liable party, who shall be entitled to recover the amount entered with the Tax Administration by transferring it to the collection agent.

Article 29. Collection agent.
A collection agent is the individual or entity upon which the relevant tax law, pursuant to their activity, function or status in an agreement, imposes the obligation to collect and enter with the Tax Administration, the additional amount collected as taxes or payments on account from other liable parties and deliver them to the tax creditor.

COMMENTS:
The Model also provides for the entity of collection agents. Collection agents are the parties who receive an amount of money from the taxpayer, in exchange for the delivery of a service or the transfer or delivery of an asset, to which and they are required to add the tax amount or the amount on account of the tax they shall enter with the Tax Administration. An example of collection agent is the case of a 17% VAT rate on the disposal of personal property, which establishes that future sales transactions carried out by the purchasing parties of the personal property shall be subject to a 2% rate. To such purpose, certain types of sellers are designated collection agents. Hence, on the assumption that A (the collection agent) sells to B a piece of personal property worth 100,00, the latter shall pay 119,00: 100,00 (for the value of personal property) plus 17,00 (VAT) plus 2,00 (2% collection amount) to the extent A shall collect and enter with the Tax Administration the 2% rate in his capacity of collection agent.

Article 30. Parties who are required to transfer tax obligations to third parties.
The law establishes that certain parties shall transfer tax obligations to third parties. The third party to whom the tax obligation has been transferred is required to pay the tax amount for the liable party.

COMMENTS:
The Model provides for the notion of transfer of tax obligations to third parties. It highlights that the liable party shall transfer the tax obligation and the transferee shall bear the obligation transferred. The party required to transfer the tax obligation generates the taxable event, and is deemed a taxpayer.

Article 31. Successor *mortis causa*.
The rights and obligations of a deceased taxpayer shall be performed, or otherwise satisfied by the universal successor, pursuant to applicable civil law and without detriment to the rights of estate inventory.

COMMENTS:
The Model adopts a solution in accordance with the nature of the universal successor in the event of death, establishing the transfer thereupon of the rights and duties of the decedent, protecting the rights of estate inventory governed by the applicable civil law.

Article 32. Responsible third parties.

1. Responsible third parties, either jointly or subsidiarily liable, are the individuals who are required by law to make payments

when the liable parties defined in subsections a) to f) of Article 25 cease to fulfill their tax obligation.
2. Responsible third parties are entitled to initiate a proceeding for payment against the liable parties.

COMMENTS:
1. Responsible third parties are individuals who, by legal or administrative provisions defined by law, are required to fulfill the outstanding tax obligations of the principal taxpayers. Likewise, the article defines proceedings to claim payment against the principal liable party.
2. The Model incorporates two types of tax liability, indirect and joint, the former being the rule and the latter the exception that must be expressly stated in order to apply.

Article 33. Jointly liable parties.
1. The following individuals or entities shall be deemed jointly liable for the tax debt:
   a) The ones originating or contributing in the perpetration of a tax violation. Their liability also extends to the penalty.
   b) Parents, guardians and curators of the legally incapable.
   c) Donees and beneficiaries for the tax applicable to the levied transaction.
   d) The parties who acquire going concerns and other successors in the assets and liabilities of corporations or collective entities with or without legal personality. In this regard, partners and shareholders of liquidated companies are deemed successors.
2. The liability set forth in subsections c) and d) above is limited to the value of the assets received, unless successors have acted wrongfully or with negligence. The liability defined in subsection d) shall cease after... months after the transfer takes place, provided that advance notice thereof has been given to the authority of jurisdiction within at least...days.
3. The law may establish other joint liability assumptions different from the ones defined in the foregoing subsections.

COMMENTS:
1. The Model defines a number of assumptions for joint liability. Due to its importance, it highlights the assumption in relation to the authors or contributors in the perpetration of the tax violation.
2. Joint liability in the case of donees, beneficiaries and parties who acquire a going concern and other successors in the assets and liabilities is limited to the value of the assets received, unless the representative acted wrongfully or with negligence, in which case the assumption shall not be applicable and they shall account for the tax debt in full.
3. Other assumptions, different from the ones defined herein, shall be set forth by law. Said assumptions shall require a legal or economic relation with the principal liable party in order to guarantee the debt payment. For example, said assumptions shall include agents, administrators, business managers and executors, who shall incur joint liability when on the grounds of wrongful intent, gross negligence or abuse of powers, default on the tax debts of their principals; also, trustees, auditors or trustees in bankruptcy who incur liability for breach of the obligations of their principal, should such breach arise from actions or omissions thereby.

Article 34. Joint liability of the partners with respect to corporate taxes.
The partners, participants, associates, cooperative members, joint property owners and co-proprietors of a condominium, shall be held jointly liable for taxes and interest of the legal entity or collective entity without legal personality in which they are members, partners, participants, associates, cooperative members, joint

property owners and co-proprietors of a condominium, proportionately to the full value of their contributions or equity ownership, on the assumption of limited liability of their stakeholders, and to the term relevant thereto in the applicable tax period.

COMMENTS:

1. This article establishes a material joint liability assumption applicable to the different stakeholders in a corporation or entities without legal personality.
2. The Model defines a number of rules for joint liability:

a) proportionately to the contributions or equity ownership and the terms relevant thereto in the applicable tax period.
b) unlimited, for corporations or entities without legal personality that do not limit the financial liability of their stakeholders;
c) to the limit of contributions or equity ownership of the stakeholders in corporations or entities without legal personality that limit the financial liability of their stakeholders;

Article 35. Joint liability of the members of an economic group.

1. The individuals, corporations or entities that constitute an economic group are jointly liable for the tax debts incurred by every party individually.
2. An economic group shall exist, unless evidence to the contrary is presented, when an individual, corporation or entity participates, directly or indirectly, in the management, equity, control or administration of other individuals, corporations or entities.
3. The rules shall define the assumptions in which the economic group shall be created.

COMMENTS:

1. This is a specific rule of extension of liability, which seeks to obtain better assurance for the tax credit in case of splitting equity among different businesses, by virtue of the undeniable proliferation of independent business organizations operating under the umbrella of the same economic group, which are strongly related. It is common for some of these businesses to occasionally incur violations of their tax obligations and in such cases, according to the rules on liable parties, the only means to fulfill the payment of the liability is through the taxpaying business, since there is no legal relation among the members of the group (they are not accountable for the same taxable event). Notwithstanding, strong links exist among the businesses, which if detected by tax regulations, would enable the expansion and strengthening of the financial guaranties of the Tax Administration, since it would be able to act against the assets of the other members of the group.
2. In order for this rule not to impair legal certainty, the wording set forth includes a series of presumptions that admit evidence to the contrary, which require verifying strong relations among the stakeholders in the economic group for its enforceability, for example: domicile, equity, common control or administration among said stakeholders.
3. On the other hand, the introduction of presumptions facilitates the enforcement of this notion on certain taxable events; without detriment to the possibility of liable parties of self-defense, to the extent provisions admit evidence to the contrary.
4. The Model provides an alternative wording to this article in order to grant more accuracy or circumscription of the economic group notion: "Upon verifying the existence of an economic group among independent parties, their stakeholders shall be deemed jointly liable for the tax debts individually

incurred, and a consolidated balance sheet shall not be required to such end."

The existence of the economic group shall be determined according to the specific circumstances.

The rules shall consider that an economic group exists in the following assumptions:

a) Operation of a management or joint coordination unit for the economic activity of different parties, materialized by the identity of individuals with decision-making authority to guide or define the activities of each party individually or by the evidence of kinship among the heads or members of their decision-making bodies.

b) Reciprocal equity ownership among different parties or mutual transfer of profits or losses.

c) The economic activity of different parties is organized jointly, whether on the grounds that each one undertakes a stage of the same production chain or that their business is similar or they jointly employ capital or labor or share a commercial or industrial structure.

Article 36. Joint liability for interfering with garnishments.

The following parties shall be jointly liable for payment of the outstanding tax debt for an amount equivalent to the value of the property and rights that may have been attached:

a) Authors or contributors in the malicious concealment of property or rights of the debtor in order to prevent their garnishment.
b) The parties who willfully or negligently fail to comply with the garnishment order.
c) The parties who contribute in or accept the disposal of assets, in spite being notified of the garnishment order.

COMMENTS:

1. Irrespective of the criminal liabilities that may apply, this article provides that the parties who fraudulently or out of wrongful intent or negligence, interfere with, hinder or collaborate in obstructing the rights of the Tax Administration are deemed jointly liable for outstanding tax debts. Such parties are third parties unrelated to the generation of the tax debt who adopt a behavior prior, during or after the garnishment procedure that impairs the right of collection of the Tax Administration.
2. The scope of the liability shall be limited by the value of the assets or rights subject to garnishment, and the value considered for the assets or rights is the value at the time of interfering, hindering or obstructing the garnishment procedure.

Article 37. Joint liability of the withholding or collection agent.

1. The withholding or collection agents shall be held jointly liable with the taxpayer, upon failure to comply with the withholding or collection they are required to perform, provided they are materially capable of performing them.
2. To the extent that withholding or collection is performed, the agent shall be the sole party responsible before the Tax Administration.
3. When the agent, by virtue of the principle of joint liability, pays the tax, he shall be entitled to claim from the taxpayer the amount entered with the Tax Administration.

COMMENTS:

1. As a rule broadly accepted by doctrine and legislation, the article establishes that joint liability between the agent (collection or withholding) and the taxpayer shall exist when the former failed to collect or withhold as required by law, since in such case the taxpayer is not released from his obligation. To the contrary, when the agent collects or

withholds the tax amount, he releases the taxpayer from his obligation and stands as the only responsible party with the Tax Administration.

2. The article clarifies that in certain situations, the collection or withholding agent may be materially unable to withhold or collect, as in the assumption of the rule by which the withholding rate is higher for non-resident taxpayers and lower for resident taxpayers, and the agent lacks the means to determine whether the relevant party is a resident or not. In such cases, since the withholding or collection agent is unable to determine the withholding rate applicable, the obligation for said agent shall be defined according to the lowest rate, and they shall not be held jointly liable for the difference with the highest rate, since it would be excessive to hold the agent liable for the difference.
3. It also establishes the reimbursement procedure in favor of the agent, who is required to pay the debt that was not timely collected or withheld from the taxpayer, by virtue of the principle of joint liability.

Article 38. Indirectly liable parties.

1. The following individuals or entities shall be deemed indirectly liable parties for the tax debt:
   a) Administrators or administrators by law of the legal entities that perpetrated tax violations, when the former failed to undertake the procedures required by virtue of their capacity for the latter to fulfill their tax obligations and duties, gave their consent to the violation by the parties under their administration, or entered into agreements to enable the violations. Their liability shall be also extended to the penalties. This liability is incompatible with the one defined in item 1 in Article 33 herein, but shall not hinder the application of this notion to the administrators who incur the assumption defined therein.
   b) Administrators or administrators by law of the legal entities who ceased their activities, for the tax obligations derived therefrom that remain outstanding at the time of cessation, provided they did not perform any action required for the payment thereof or entered into agreements or adopted measures that caused the lack of payment.
   c) The trustees in bankruptcy and liquidators and entities in general that failed to perform the necessary procedures to fully settle the tax obligations accrued prior to such situations attributable to the relevant liable parties. They shall be answerable as administrators for the tax obligations and penalties derived from said assumptions, upon having been vested with administration functions.
2. The law may establish other indirect liability assumptions different from the ones defined in the foregoing provision.

COMMENTS:

1. This article establishes indirect liability assumptions applicable to the administrators or administrators by law of the legal entities and to the trustees in bankruptcy or liquidators.
2. The law establishes two clearly distinct principles for the operation of indirect liability for administrators or administrators by law:
   a) violations by the entities under their administration, with respect to which the administrators or administrators by law failed to carry out the procedures required to avoid the perpetration of violations (negligence); consenting said violation by their dependents

(wrongful intent); or entering into agreements that facilitate said violations (fraud); and,

b) outstanding tax obligations at the time of business cessation of the entities under administration and regarding which they failed to adopt the measures required for their payment (negligence) or entered into agreements that enabled the non-payment (fraud).

3. The first assumption refers to administrators' noncompliance with the duty of oversight, which warrants the attribution of responsibility. Notwithstanding, it is not material responsibility, but each case shall require determining that the decisions fell under the scope of the administrators, or that they knew or were required to know about the noncompliance from the entities under their administration, or in the case of agreements, that they participated in the decision making process and failed to refrain from voting. Given the severity of the decisions attributable to the administrator, it establishes the exception that indirect liability shall also extend to penalties.
4. The second assumption is more objective and only requires determining the discontinuance of business, the existence of outstanding tax liabilities prior to the discontinuance agreement and the absence of decisions that prove that administrators have adopted the necessary measures for their payment, for example: by requesting payment facilities.
5. The indirect liability for liquidators and trustees in bankruptcy stems from the tax obligations accrued prior to filing for the bankruptcy or liquidation proceeding, with respect to which they failed to adopt the measures required for their fulfillment (negligence).
6. The article considers that other assumptions different from the ones defined herein may be set forth by law.

Article 39. Indirect liability of the corporation over the partners' tax debt.

The corporations formed by such parties holding material control, either total, partial direct or indirect, or in which a common authority converges, shall be held liable for the tax debts of the partners, associates, members or participants, upon determining that the corporations have been created or used abusively or fraudulently to avoid the equity financial liability with the Tax Administration.

COMMENTS:

1. The article provides for the notion of piercing the corporate veil or disregarding the separate legal personality, as defined in doctrine. Furthermore, it sets forth that the abusive or fraudulent use of the legal personality of corporations as a means to avoid or evade taxes, shall make the corporation indirectly liable for the debts of the partners who have the effective control of the corporation, employ it in committing tax fraud.
2. The provision seeks to abandon the general rule by which a corporation is a different and separate entity from its partners, upon verifying the abusive or fraudulent use of the corporate legal personality to the detriment of fiscal interests. This would be the assumption in which a partner who is in control of the corporation files for fraudulent insolvency proceedings and transfers his assets to the corporation to avoid attachments by the Tax Administration.
3. Notwithstanding, due to the risks in terms of the legal validity of this entity, the disregard of the legal personality is admitted in exceptional situations. It requires proving the control by the corporate partner or shareholder and a

situation of abuse or fraud with respect to the legal entity, since in such cases the corporation shall be held indirectly liable.

Section 2. The legal system of tax liabilities.
Article 40. Scope of tax liability.
Tax liability, except for the provision in subsection a) item 1 of Article 33 herein, shall be only extensive to the principal or substantive obligation, and shall not govern penalties, regardless of the ancillary liabilities the liable party may incur from such noncompliance.

COMMENTS:
The article defines the scope of the liability and adopts the majority opinion set forth by legislation that it is extensive only to the principal or substantive obligation to pay taxes and not the penalties, excluding the parties who actively cause or contribute in the perpetration of a tax violation, for whom the liability shall extend to the penalty. Notwithstanding, it is worth noting that the non-liability for penalties does not involve or imply the ones arising from the inherent noncompliance by the party with tax obligations.

Article 41. Declaration of the tax liability.
1. Tax liability shall be declared by a procedure of the administration, upon granting a hearing to the stakeholder, in which the cause of the attribution is set forth as well as the debt amount originating the liability, without detriment to the precautionary measures that may have been previously adopted.
2. The challenge of the procedure by which liability is attributed may refer to the legal assumption that originates said liability, as well as the tax debt for which the party is liable, and the decision that addresses the challenge shall not review the tax debt determined by a final administrative decision.

COMMENTS:
1. The article defines the general guidelines of the procedure for the attribution of liability and states that, in line with the principle of due process, in order for tax liability to be effective, a hearing is required to notify the alleged liable party by virtue of an administrative proceeding. The latter shall at least indicate the grounds for the attribution of liability and the debt amount claimed.
2. Regarding the possibility of challenging the administrative proceeding by which the tax liability is attributed, the Model accepts the assumptions of attribution of liability proper, which is quite clear, as well as the attribution of the debt amount. The latter is defined on the understanding of basic fairness. Upon claiming the tax debt of the liable party from the responsible third party, the latter shall be entitled to challenge the claim as if he were the liable party. In other words, he shall challenge the matters of substance (for example, that the taxable event has occurred, that the assessment by the Tax Administration is correct, and that the effective assessment is appropriate) and deliver the pertinent evidence.
3. Notwithstanding, the Model excludes the foregoing possibility to challenge, on the assumption that the attributed tax debt stems from the final decision of an administrative proceeding; by virtue of the principle that final decisions shall not be subject to reconsideration, as it would indirectly apply should the responsible third party be enabled to challenge the tax debt.

Article 42. Types of tax liability.
1. The tax liability may be joint or indirect.
2. Unless otherwise provided for by law, liability shall be always indirect and requires, in such case, prior determination of insolvency of the principal liable party.

COMMENTS:

1. The Model defines the classification of joint and indirect liability. By virtue of joint liability, the tax creditor shall simultaneously pursue the principal liable parties [understood as the liable parties set forth in subsections a) to f) of Article 25] and responsible third parties for the total or partial tax debt. In cases of indirect liability, the tax creditor shall only pursue the responsible third party after exhausting the proceedings against the principal liable parties and obtaining their determination of insolvency.
2. It also embodies the general rule that joint liability shall apply except as otherwise expressly provided by law.

Article 43. Joint liability.

Joint liability shall be established expressly by law, except on the assumption of joint liability for the taxable event set forth in item 4 of Article 26, by which joint liability shall operate automatically.

COMMENTS:

Joint liability shall be defined by law, and not assumed, except on the assumption of automatic joint liability arising from the operation of the taxable event.

Article 44. Effects of joint liability.

The following are the effects of joint liability:

a) The principal liability shall be claimed in part or in full from any of the liable parties.
b) The payment made by one of the liable parties shall release the others.
c) In the case of joint liability applicable to the liable parties, compliance with a formal obligation by one of said parties releases the others, except in the case of duties that shall be fulfilled individually.
d) Exemption or remission from the obligation releases all the liable parties, except for a benefit that has been extended to a specific person. In this case, the enforcement authority shall demand compliance from the others.
e) The proceedings of tolling or suspension of the statute of limitations established by the Tax Administration shall be collectively enforceable upon all liable parties.

COMMENTS:

1. As to the effects of joint liability, they may be summarized as follows: regarding the tax creditor, joint liability enables the tax creditor to seek collection of the tax debt from the principal liable party or the responsible third party, indistinctly, and for the total or partial debt amount. As regards the jointly liable parties, the payment of the debt by any of them shall release the others, and any exemption, release, tolling or suspension of the statute of limitations shall also bear a collective effect.
2. As regards compliance with the formal obligation defined in subsection c) of the relevant article, the Model considers that, in general, compliance with a formal obligation by one of said parties shall release the others. This applies to the extent formal obligations are indivisible, except in the case of duties that shall be fulfilled individually by the parties, in which case the release of one of the liable parties shall be applicable to the others.

Chapter III
Tax capacity to act

Article 45. Tax capacity.

The following are deemed to have tax capacity: individuals or corporations, joint ownerships, inheritance (neither accepted nor refused), partnerships, community property or other collective entities, even when limited or lacking capacity or legal personality pursuant to

private or public law, provided they are legally considered subjects to tax rights and obligations.

COMMENTS:
The article defines the operation of tax rights and obligations, even when the party lacks civil capacity to act or legal personality, as provided by law.

Article 46. Voluntary representation.

1. Liable parties with capacity to act shall do so through a representative. The use of representation shall not hinder the intervention by the liable party proper as deemed relevant, or the noncompliance thereby with the obligation to appear.
2. Representation shall be formalized by any valid Legal means that gives truthful evidence or by a statement in a personal appearance of the stakeholder before the competent administrative body. To such ends, the representation forms approved by the Tax Administration shall be valid for certain proceedings.
3. Representation shall be deemed granted for purely formal proceedings.
4. When in the framework of social collaboration in tax procedures, or upon a formal requirement, any document is submitted to the Tax Administration in electronic format, the party who presents such documents shall act with the representation authority required in each case.
   The Tax Administration shall require, at any time, the validation of said representation authority, according to the definition in item 2 herein.
5. The lack or deficiency of the power of representation shall not imply that the party failed to perform the act, provided the power of representation is submitted or the deficiency overcome within a term of... days.

COMMENTS:

1. The Model incorporates the article that governs the voluntary compliance of liable parties through their representatives. This designation shall be extended to any subject by decision of the liable party. It defines the intervention of a third party on behalf and in the interest of the principal.
2. The article establishes that the participation of the representative shall not hinder the direct intervention of the liable party proper when deemed appropriate and such intervention shall be mandatory when the Tax Administration orders him to appear.
3. In order to simplify the designation and intervention of the representative, representation shall be validated by any material means that effectively determines the power of representation extended and even by personal appearance of the stakeholder to provide information before the relevant administration body. Representation in purely formal processes shall not require validation of the power of representation, such as filing statements or submitting documents in the Tax Administration offices.

Article 47. Representation of individuals and entities without legal personality.

1. In the case of individuals without legal capacity, their legal or court-appointed representatives shall act on their behalf, as established in civil law.
2. Representation of entities without legal personality shall firstly correspond to the designated party, and secondly, to the administrator or any of their members, indistinctly.

COMMENTS:

1. The article defines the institute of representation, by virtue of which an individual, as the immediate or direct

consequence of the legal act executed on their behalf by a legally designated third party or conventionally to such end, assumes an obligation or a right.
2. Firstly, it establishes that individuals deemed legally incapable or unable to exercise a legal right, whether totally or partially, shall act by means of their legal or court-appointed representatives.
3. On the other hand, the party designated to such end shall preferably represent the entities without legal personality, such as joint ventures, non-registered businesses, joint ownerships, etc., and if none exists, by the administrator or members thereof, indistinctly.

Article 48. Representation of foreign individuals or entities.
For the purpose of their interaction with the Tax Administration, the liable parties domiciled in foreign jurisdictions but owning assets, income, transactions or agreements subject to taxation, shall designate a representative domiciled in the territory of the relevant country, unless the Tax Administration releases them from such obligations by way of a general decision. The designation of the representative shall be communicated to the Tax Administration according to the provisions in the tax regulation.

COMMENTS:
1. The article provides for the assumption of liable parties who are not domiciled in the country (the rules for domicile are normally defined in the Income Tax Regulations, but the case may be that a type of tax incorporates specific rules, in which case, such rules apply for the purpose of said tax). In such assumptions, it defines the obligation to designate a representative domiciled in the country, in order to facilitate the Tax Administration procedures.
2. It is worth underlining that in this specific case, the domicile of the representative who is appointed to the foreign liable party serves the sole purpose of the relation with the Tax Administration and the processes it shall undertake to enforce the tax obligations of the foreign party, and by no means hinders his condition of foreign resident for the purpose of the tax (taxes) applicable.
3. Furthermore, based on the broad wording adopted in defining the obligation to appoint a representative (ownership of assets, income, acts or agreements subject to taxation), the provision allows the Tax Administration to release the party from this obligation, by application of a rule to such end (not in individual assumptions), for example in very fast markets like organized financial markets, or simply because of the small magnitude of the transactions.

Chapter IV
Tax domicile

Article 49. Domicile of individuals.
1. Individuals' domicile in the country shall be defined as:
   a) Their place of residence.
   b) The place where they carry out their regular private or business activities, in case the domicile is unknown or difficulties exist in determining it.
   c) The one decided by the Tax Administration, on the assumption that more than one domicile exists for the purpose of this article.
   d) The place where the taxable event occurs, when no domicile exists.
2. Nevertheless, in all cases in which business activities are carried out, the Tax Administration shall consider as domicile the venue of administration and business management.

COMMENTS:
1. The definition of tax domicile of individuals

follows the criteria adopted by the vast majority of tax laws, prioritizing objective criteria, such as residence, the place of undertaking of private or commercial activities. The article sets forth that in case of convergence of more than one domicile, the liable party shall be entitled to decide on the tax domicile, and in such cases designate a specific address, and if no domicile exists in the foregoing assumptions, the tax domicile shall be the place where the taxable event occurs.

2. The second item includes specific criteria for individuals who carry out economic activities similar to the criteria established for corporations.

Article 50. Domicile of corporations.
For all tax purposes in the country, the domicile of corporations and economic units lacking legal personality is considered to be:

a) The corporate domicile.
b) The venue of corporate management or effective administration.
c) The principal place of business, when said place of management or administration is unknown.
d) The one decided by the Tax Administration, on the assumption that more than one domicile exists for the purpose of this article.
e) The place where the taxable event occurs, when no domicile exists.

COMMENTS:
Similarly to domicile of individuals, in order to determine the domicile of corporations and entities without legal personality, the Model considers the objective criteria adopted by the majority of Latin American laws such as corporate venue, effective management or administration, or the place where the economic activity is carried out, and in such cases, the precise domicile shall be provided. It also includes two additional venues to overcome the situation in which more than one domicile exists, in the terms defined by the provision, such as the absence of domicile in said terms.

Article 51. Persons domiciled in foreign jurisdictions.
Individuals' domicile in a foreign jurisdiction shall be defined as:

a) The ones set forth in articles 49 and 50 herein, when they hold a fixed place of business or permanent establishment in the country.
b) In all other cases, the domicile shall be that of their representative in the country.
c) In the absence of a representative domiciled in the country, the domicile shall be the place where the taxable event occurs.

COMMENTS:
The rules established for the assumption of domicile of individuals and corporations apply. The article also defines that individuals domiciled in a foreign jurisdiction who have not appointed a representative in the country, the tax domicile shall be the place where the taxable event occurs.

Article 52. Notification and change of domicile.

1. Liable parties shall be required to give notice of their tax domicile and any change thereof, according to the terms and procedures established by the Tax Administration.
2. The reported domicile shall be considered effective until notice is delivered of any change, according to the provisions that the Tax Administration may establish.
3. The Tax Administration shall automatically correct the tax domicile of the liable

parties upon the relevant verification thereof.

COMMENTS:

1. This article embodies the duty of liable parties to give notice of their tax domicile and any change thereof to the Tax Administration, and vests upon the latter the authority to determine the time and manner by which such notices shall be effectively served.
2. Moreover, the Tax Administration shall automatically correct the tax domicile that liable parties' report, when upon conducting an examination, it determines said domicile fails to comply with legal provisions.

CHAPTER V
Assessment of the tax obligation.

Article 53. Quantification and assessment of the tax obligation.

1. The principal tax obligation of making payments on account or advance payments, as well as other obligations that pursue an economic consideration, shall be assessed according to the tax bases, tax rates and other elements provided for in this chapter, as set forth in the specific tax law.
2. Unless as otherwise provided for in this Code or by specific laws regarding procedure, the tax obligation shall be assessed in accordance with the tax statements filed by liable parties and responsible third parties on the dates and under the conditions that the administrative authority establishes.
   Although presumed correct, the Tax Administration shall be entitled to verify the accuracy of said statements.
3. Notwithstanding, the Tax Administration shall carry out automatic assessments, on a certain or presumptive basis in agreement with the definitions in Article 54.

COMMENTS:

1. The article sets forth that the quantification of the tax obligation shall be made in agreement with the elements defined in the specific tax law.
2. In principle, the assessment of the tax obligation shall be performed based on the tax statements of the liable party. The Tax Administration shall have the power to automatically assess the tax obligation even in self-assessments.

Article 54. Methods of assessment.

The Tax Administration shall perform assessments based on the following methods:

a) According to a certain basis, considering the information that enables it to directly know the taxable events;
b) According to a presumptive basis, by operation of any of the following measures:
   i. Applying the available data and background relevant to such purpose.
   ii. Using the information that indirectly proves the existence of assets and income as well as receipts, sales, costs and profits deemed normal in the respective economic sector, with due regard to the size of production or household units comparable for taxation purposes.
   iii. Appraisals based on the evidence, indices or brackets applicable to the respective liable parties, according to the data or background available in similar or equivalent assumptions.

COMMENTS:

1. The article provides for the methods of assessment of the tax obligation: on a certain basis and on a presumptive basis.
2. Generally, the Tax Administration shall prioritize assessments on a certain basis and exceptionally, in the absence of the information required to establish the

tax bases, it shall conduct an indirect or presumptive assessment.

3. The assessment on a certain basis constitutes a direct determination method, which uses the information arising from the tax statements or documents filed by the liable parties, the data entered in books and records and other documents relevant to the elements of the tax obligation.
4. On the other hand, the tax assessment on a certain basis is not discretionary to the Tax Administration; rather, it is ancillary to the existence of any of the grounds that enable its application, as defined in the following article.
5. Upon establishing the operation of any of said causes, the Tax Administration shall determine the tax obligation amount, by resorting to any of the following means: data and background information that the Tax Administration holds, statement of expenses and profits of similar activities in the respective economic sector, appraisal of the brackets that apply to liable parties in similar assumptions, etc.

Article 55. Assessment on a presumptive basis.

1. The Tax Administration shall assess taxes on a presumptive basis on the assumption that liable parties or responsible third parties:
   a) Oppose or obstruct the commencement or development of the Tax Administration auditing powers.
   b) Fail to submit accounting books and tax records, documents of evidence or do not submit the reports required by tax rules.
   c) Fail to file tax statements, within the term required by the Tax Administration.
   d) Should any of the following irregularities arise:
      i. Omission of the record of transactions, receipts or sales as well as manipulation of costs.
      ii. Recording of sales, expenses or services not performed or received.
      iii. Omission or manipulation of the stock record that shall be entered on inventories or the recording of said stock at prices other than cost.
2. Once the Tax Administration performs the assessment on a presumptive basis, the responsibility remains for additional differences applicable, derived from a subsequent assessment on a certain basis carried out at the appropriate time.

COMMENTS:

1. This article defines the underlying circumstances that allow the Tax Administration to estimate or presume the tax obligation. The notion establishes as underlying circumstances the ones that prevent the Tax Administration from establishing directly, completely and on a certain basis the occurrence of the taxable events and the quantification of the calculation bases.
   For example, liable parties that oppose or obstruct tax audits, failure to carry accounting books or tax records, omission of transaction records in said books or records.
2. It also establishes a rule that seeks to prevent liable parties from forcing the application of assessments on presumptive bases, in order to avoid the assessment on a certain basis that would determine a larger amount for the relevant tax obligation.
   To such end, the rule defines that in such cases the obligation to pay the additional difference between the tax amount assessed on a presumptive basis and the tax amount assessed on a certain basis shall remain.

CHAPTER VI
The tax debt

Section 1. General provisions.
Article 56. Definition of tax debt.
The tax debt shall be comprised of the tax due, advance payments, partial payments, amounts withheld or required to be withheld, amounts collected or required to be collected, surcharges legally enforceable, late interest and monetary penalties.

COMMENTS:
1. The notion of tax debt is intended to expressly establish the items enforceable on liable parties, which shall be canceled by any of the means for extinguishing the tax obligations provided for in this chapter of the Code.
2. It is a broad notion that involves the principal tax obligation as well as the ancillary tax obligations, which shall be enforceable by the Tax Administration pursuant to the collection rights and privileges defined in this Code.

Article 57. Forms of extinguishment of the tax obligation.
The following shall extinguish the tax obligation:
a) Payment.
b) Offsetting.
c) Forgiveness or release.
d) The Statute of limitations.

COMMENTS:
This article lists the forms of extinguishment of the tax obligation. The number of forms of extinguishment have been limited to four: payment, offsetting, release or remission and tolling of the statute of limitations, which are the broadest forms, and it has been left to each Tax Administration to include other means such as consolidation or merger, among others.

Section 2. Payment.
Article 58. Liable parties.
1. The liable parties defined in Article 25 of this Code shall pay taxes.
2. Third parties unrelated to the tax obligation shall be also enabled to make payments.

COMMENTS:
The article ratifies the responsibility of liable parties for the payment of taxes. It also sets forth that third parties unrelated to the tax obligation shall make said payment.

Article 59. Means of payment.
The payment of taxes, withholdings, collections, advance payments, partial payments, payments on account, monetary penalties, and other charges shall be made by way of the means that the Tax Administration defines in general rules.

COMMENTS:
1. This article expressly vests upon the Tax Administration the regulatory authority for several procedural aspects of tax collection, in order to adjust requirements to the most efficient forms of collection procedures, for the Tax Administration as well as the liable parties.
2. In line with new technologies, the Tax Administration shall implement electronic, computer or on line payment means, as broadly adopted by tax administrations today.

Article 60. Term for payment.
1. Payment shall be made within the terms required by the tax regulations.
2. Unreported taxes that the Tax Administration determines through audits, as well as any penalties and other tax debts, shall be satisfied in addition to the related charges, within... days of notification of the audit.

COMMENTS:

Since the terms for compliance with substantive tax obligations do not follow a standard rule in different countries, but are established on the basis of whether the payment by the liable party applies to self-assessed taxes or others, or the frequency of the tax payable, or whether the tax affect immediate taxable events, or whether the payments are advances or on account, the Model allows payment terms for each tax to be defined by specific regulations.

Article 61. Late payment interest and surcharges.

1. Failure to timely pay the tax amounts due shall generate a late interest rate of... percent, without any further process by the Tax Administration, which shall be calculated for each month or fraction elapsed until the obligation is extinguished. Furthermore, the same interest rate shall be charged in the event of suspension of enforcement proceedings and for any kind of deferral, partial payments or extensions.
2. Late interest shall be determined by... and shall not be greater than... times or lesser than... times the rate...
3. Payments of statements filed beyond the due date without prior requirement, as well as the assessments pertaining to tax statements filed beyond the due date without prior requirement, shall be subject to a surcharge of ... percent, except for penalties that would have otherwise been imposed, but not for interest set forth in the first paragraph of this article. However, should the payment be made or the tax statement filed within three, six or twelve months following the end of the voluntary filing and payment term, a single surcharge of ... percent shall apply, ... percent, or... percent, respectively, except for penalties that would have otherwise been imposed, but not over late interest.

COMMENTS:

1. The article establishes the automatic operation of late interest for late payments under any circumstance. It is worth noting that in order to avoid financial arbitration of the liable parties' late payment of tax obligations, the Model recommends enforcing an interest rate that strongly deters any financial calculation by the liable party to delay the tax payment to obtain a financial advantage.
2. Furthermore, the article defines the conditions for payments and assessments from tax statements that liable parties file voluntarily and the surcharges applicable as set forth therein, and excludes the penalties that the Model establishes for tax statements filed after the term applicable and for late payment, which shall only apply in the event of a prior requirement by the Tax Administration.
3. At the same time, it gradually increases the surcharge amount based on the time elapsed until the date the party files the tax statements, as a means to encourage prompt voluntary compliance. Consequently, a clear economic advantage is generated for liable parties who adhere to voluntary compliance of their outstanding debt, since the penalty amount -which is generally high as a means to deter noncompliance- adjusted according to the applicable late interest, is replaced with a lower surcharge percentage than the penalty interest on the debt amount and varies according to the time of compliance.
4. Finally, it is worth indicating that the late interest and surcharge percentages applicable have been left blank, to allow different countries to determine them according to their circumstances. Additionally, item 2 enables countries to determine the government authority that shall define late interest rates: the Tax

Administration, the Ministry of Economy or Finance or the relevant government agency, which shall also determine the type of rate applicable.

Article 62. Attribution of payments.

1. Liable parties shall indicate the taxes and the periods to which their payments are attributable, when said payments are not made by way of receipts issued by the Tax Administration.
2. When the amount paid is insufficient to settle the outstanding debts, and such debts include taxes, interest, surcharges and penalties, the payments shall be attributed in the following order: interest, surcharges, taxes, and lastly, penalties. According to this order of attribution, the payment shall be applied to the most senior debt when more than one debt is outstanding. On the assumption that debts are of identical seniority, the Tax Administration shall determine the order of attribution.
3. The Tax Administration shall determine the order of the attribution of payments as defined in item 2, when the liable parties do not report the debts to which the voluntary payment amounts shall be attributed, or when the payment is obtained through administrative enforced collection procedures and the amounts collected are insufficient to extinguish all the tax debts that originated the enforced collection procedures or execution of liens.
4. Collection of a debt with a later due date does not extinguish the right of the Tax Administration to collect the debts from earlier periods that remain outstanding.

COMMENTS:

1. This article provides the order of attribution of partial payments made by liable parties, in relation to the items as well as the period to which the Tax Administration shall apply said payments, in an effort to protect internal revenue to the greatest possible extent.
2. It establishes that the Tax Administration shall follow the same payment attribution order in the case of voluntary payments that do not indicate the debt to which the payments shall be applied or in the case of enforced collection when the amount obtained is insufficient to extinguish the enforced debt.

Article 63. Deferral of payments and partial payments.

1. Tax debts in the voluntary or enforced collection period shall be subject to deferral or partial payments in the terms set forth by the Tax Administration and prior request by the liable party, when his economic-financial situation prevents him, temporarily, from making the payments in the terms defined thereby. The amounts deferred or subject to partial payments shall accrue interest as defined in Article 61 of this Code.
2. In order to secure tax debt deferrals and partial payments, the Tax Administration shall require the liable party to set up guaranties in its favor.
3. The Tax Administration shall defer or determine partial payments of the amounts corresponding to taxes, advance payments and payments on account, monetary penalties and other surcharges for up to... months.
4. Exceptionally, the Tax Administration shall extend partial payments and/or deferrals for the payment of taxes withheld or collected. The law shall define the cases and conditions in which such payment facilities apply.

COMMENTS:

1. The temporary financial difficulty is the element that determines the benefit of deferrals or partial payments in the voluntary compliance as well as enforced collection period.

2. Deferrals or partial payments applicable to debts shall, in general, require guaranties, and in all cases, accrue late interest.
3. The article allows the Tax Administrations to adopt criteria to define the terms for extending deferrals or partial payments.
4. It is worth highlighting that in terms of deferrals and partial payments of debts, most laws in member countries do not admit payment facilities for debts arising from tax withholding or collection amounts, since such debts have no economic incidence on the liable party required to enter the amounts withheld or collected. Rather, they are amounts withheld or collected from taxpayers; hence, the eventual financial difficulty that may affect withholding or collection agents shall not be mistaken for or affect the debt arising from said obligations.
5. In this respect, the Model allows the exceptional deferral or partial payment of withholding or collection debts, by assuming that the financial difficulties of the withholding or collection agent may impair compliance with such obligations. Law shall define the cases and conditions that warrant such payment facilities. Thus, regulations shall establish special guaranties or the application of interest rates for partial payments or deferrals higher than the ones applicable to other tax debts, or extending fewer partial payments for the payment or deferral of the debt arising from withholdings or collections, than the ones applicable to other tax debts.

Section 3. Offsetting
Article 64. Offsetting.

1. Tax debts may be offset either in part or in full with tax credits, their related charges and penalties, in cash, payable and not expired, provided they fall under the authority of the same Tax Administration according to the conditions defined by law.
2. Offsetting shall operate according to the following assumptions:
   a) Automatically by the liable parties, only in the cases expressly defined by law.
   b) By voluntary compliance of the liable party.
   c) Automatically, by the Tax Administration.
3. Liable parties shall request the offsetting of their credit balances as set forth in a final administrative decision for debts arising from taxes, advance payments, payments on account, withholdings, interest and monetary penalties they may hold with the Tax Administration.
4. The credit balances set forth in a final administrative decision, without the relevant parties' express request for offsetting, shall be automatically attributed by the Tax Administration, starting with the most senior debts from unexpired periods and in the order of priority for items established in Article 62 of this Code.

COMMENTS:

1. The article addresses the offsetting of tax debits with tax credits and provides for automatic offsetting by the liable parties, upon request of the Tax Administration and automatically thereby, which constitute the three legally defined practices in legislation of member countries and in doctrine.
2. As to the characteristics of the debits and credits to be offset, they shall be in cash, payable and not expired, and fall under the authority of the same Tax Administration.

Section 4. Forgiveness or release.
Article 65. Forgiveness or release.

The obligation to pay taxes shall only be forgiven or released by law.

COMMENTS:

1. The entity of forgiveness or release, as a means to extinguish the tax obligation is reserved exclusively for cases in which it is formally established by a law or regulation.
2. Contrary to debt forgiveness in private matters by which a creditor may waive his right to demand payment from his debtor, on the assumption of forgiveness of tax debts, the creditor (the Tax Administration), shall not decide on its own to waive the enforcement of tax obligations, on the grounds of the principle of legality [principle of "indisponibilidad de las obligaciones" or inalterability of tax obligations] that binds the Tax Administration.
3. On the assumption that tax authorities shall partially forgive the tax debts pertaining to bankruptcy proceedings, said forgiveness shall be set forth and authorized by the applicable bankruptcy law.

Section 5. Statute of limitations.

Article 66. General term of the period of limitations.

The following rights shall expire after... years:

a) The right of the Administration to assess the tax obligation with its surcharges and interest.
b) The right of the Administration to impose tax penalties.
c) The right of the Administration to enforce payment of assessed and self-assessed tax debts and the penalties imposed.
d) The right of reimbursement of erroneous payments or balances to liable parties.
e) The right to request corrections on self-assessments.

COMMENTS:

1. The article establishes a uniform term for the expiration of the period of limitations of the Tax Administration right to assess tax obligations, impose penalties, demand payment of the tax debt and the right to refunds and reimbursements of liable parties for erroneous payments or credits made on account of liable parties, as well as the right to request corrections on self-assessments. The establishment of the same term for all these assumptions seeks to instill uniformity in different situations in which the statute of limitations shall apply.
2. The Model sets forth that the statute of limitations affects the right or the power of the Tax Administration or of liable parties to assess tax obligations, impose penalties, demand payment of tax debts or request refunds for erroneous payments or credits made on account of liable parties, or request corrections on self-assessments, respectively, and hence constituting an inherent means to extinguish the tax obligation.

Article 67. Extension of the term of limitations.

1. The term in Article 66 of this Code, in the assumptions defined in subsections a), b) and c), shall be extended to..... years in the following assumptions:
   a) The liable party, registered in the applicable records, fails to fulfill the obligation to report the taxable event or to file the tax statements for two taxable periods.
   b) The Tax Administration conducts the tax assessment, when the latter lacked information of the taxable event on account of the concealment thereof.
   c) The liable party removes from the country the assets that guarantee the payment of the tax debt or of taxable events arising from foreign transactions or assets.
   d) The liable party fails to keep accounting books or tax records, or fails to maintain the records for the mandatory legal term, or by creative accounting practices or fraudulent tax records.

2. For liable parties who are not registered in the applicable registries, the term shall be twice the term defined in Article 66 of this Code, in the assumptions defined in subsections a), b) and c).

COMMENTS:

1. This provision includes the different situations by which it is necessary that the general period for the operation of the statute of limitations concerning rights of the Tax Administration, be extended in the case of situations entailing greater difficulties in enforcing such rights.
2. They are specific assumptions that prevent the Tax Administration from applying them extensively in similar situations, in order to protect the rights of liable parties to the correct enforcement of the statute of limitations.
3. As in the general term, the Model allows the tax administrations to define criteria regarding the years during which the general periods of limitations shall extend, without detriment to the adoption of the same extended periods of limitations applicable in the assumptions under subsection 1. This seeks to simplify the calculation of the periods of limitation, except for liable parties not registered with the Tax Administration, for which the article sets forth duplicating the term of limitation based on the severity of the case.

Article 68. Calculation of terms.

Pursuant to Article 66 of this Code, the statute of limitations shall begin to run:

a) In the case defined in subsection a), as from the day following the date of expiry of the period to file the applicable statement.
b) In the case defined in subsection b), as from the date on which the punishable violation was committed.
c) In the case defined in subsection c), as from the day following the day of expiry of the term for voluntary compliance or the term established in item 2 of Article 60 of this Code, as applicable.
d) In the case defined in subsection d), as from the day following the day on which the erroneous payment was made or the credit was created.
e) In the case defined in subsection e), as from the day following the date on which the term to file the self-assessment expires.

COMMENTS:

1. The calculation of the operation of the statute of limitations is generally established on the day following the day on which the events that may give rise to the realization of a right or action occur, by the Tax Administration as well as liable parties, in order to establish equal treatment for both.
2. It is worth highlighting that certain countries calculate the term of limitations as starting on 1 January of the year following the year of occurrence of the events that originate the limitations. Although said rule inherently defines an extension of the term of limitations, it facilitates the calculation thereof and allows the Tax Administration to adopt criteria on the benefits of its application.

Article 69. Tolling of the statute of limitations.

1. Tolling of the statute of limitations is interrupted, as applicable:
   a) By any administrative action, upon formal notification of the liable party, leading to the recognition, regularization, audit, guaranty (surety), examination, verification, assessment, and collection of the tax accrued for every taxable event.
   b) By any action of the liable party aimed at paying or extinguishing the tax debt.
   c) By request for extension or other payment facilities.

d) By any administrative proceeding, upon formal notification of the liable party, in order to determine tax violations committed by the liable parties.
e) By any effective procedure of the liable party seeking to enforce the right of reimbursement with the Tax Administration, or by any procedure that acknowledges the existence of the erroneous payment or the credit balance.
f) By submitting the request for corrections on self-assessments.

2. In the event of tolling of the statute of limitations, the calculation of the term of limitations shall start again. Notwithstanding, the term of limitations that tolls by virtue of the enforcement of the right to assess the tax obligation, impose penalties and enforce payment of the tax debt defined in subsections a), b) and c) in Article 66, in line with the new term started as from the occurrence of the circumstances underlying the tolling of the statute of limitations, shall not exceed... years.

COMMENTS:

1. The article governs the tolling of the statute of limitations, which constitutes one of the two assumptions by which the statute of limitations is modified in time, jointly with the suspension explained in the following article.
2. The cases foreseen for tolling of the statute of limitations refer to processes by the Tax Administration or of the liable party, which seek to reverse the inaction of the entitled party. They are affirmative acts, defined by law, which unequivocally express the will of the Tax Administration or of liable parties to refrain from waiving or impairing their right, or acknowledge the existence of the tax obligation. In such cases, upon the operation of a circumstance underlying the tolling of the statute of limitations, a new period for the statute of limitations shall start, and the time elapsed before said period shall be invalidated.
3. The Model deems it appropriate to establish a limit upon the total periods of limitations applicable, by virtue of the principle of legal certainty that prevents successive and unlimited tolling of the periods of limitations.

Article 70. Suspension of the running of the statute of limitations.

1. The calculation of the term of limitations is suspended by a request for reversal of court decisions.
2. Upon bringing a request for reversal of court decisions before administrative or law courts, the calculation of the periods of limitations shall be suspended, provided the tax debt has been secured. In such cases, the calculation of the statute of limitations shall start again... days following notification of the final decision on the remedies brought before the court.

COMMENTS:

1. The article sets forth the assumption of suspension of the statute of limitations, based on the request for reversal of court decisions brought before a court, on the grounds that said request suspends the enforcement of the administrative decision that is being challenged, as defined in Article 195. Consequently, the period of limitations shall be also suspended, since the Tax Administration is legally restrained from undertaking actions to recover the outstanding debt.
2. The article considers the remedies brought before Administrative or Law courts as exceptional circumstances for suspension, provided the debt has been secured or on the assumption the Administrative Court orders the suspension of the

execution of the administrative proceeding even when the debt is unsecured, since in such cases, the tax debt is unenforceable by the Tax Administration, and the period of the statute of limitations shall be suspended in the same manner applicable to the request for reversal.

3. When the period of limitations starts running again, the period elapsed until the date on which the circumstance for suspension occurred shall be added to the new calculation of the period of limitation that shall run as of the number of days defined by legislation in each country, subsequently to the notification of the decision regarding the challenged procedure.

Article 71. Scope of the period of limitations.

1. The period of limitations regarding the right of the Tax Administration to assess and enforce payment of the tax obligation extinguishes the right to claim interest and surcharges.
2. The statute of limitations in effect shall equally govern all parties liable for payment, unless the running of the period of limitations was interrupted for any of them.
3. The period of limitations regarding the right of the Tax Administration to asses and enforce payment of the tax obligation for a given tax period, does not preclude obtaining or using information of events or situations occurred in said period to assess tax obligations of periods not covered by the statute of limitations.

COMMENTS:

The article sets forth three assumptions arising from the operation of the statute of limitations and defines its scope:

a) Firstly, the period of limitations regarding the right of the Tax Administration to assess and enforce payment of the tax obligation also extinguishes the right to claim payment of accrued interest and surcharges.
b) Secondly, the period of limitations ruled in favor of one of the liable parties benefits the remaining liable parties, on the grounds of the rule of joint liability before the Tax Administration.
c) Lastly, it refers to the review of the number of years elapsed under the term of limitations in order to assess the tax obligation from years that were not subject to the statute of limitations, to the extent the period of limitations hinders the Tax Administration power to assess and collect the tax obligations from a given period, but does not impair its power to audit and attribute the results obtained to periods not affected by the terms of limitations.

Article 72. Application of the statute of limitations.

The statute of limitations shall be ruled automatically or upon request of the liable party, either by way of an action or remedy, and its effects shall be retroactive to the time the period of limitations elapsed.

COMMENTS:

1. The Model incorporates this provision in order to define the manner by which the statute of limitations applies.
2. It establishes that upon lapsing of the time period defined by law, the Tax Administration, upon request of the liable party shall automatically rule the statute of limitations, whether by way of action or remedy in any proceeding and/or stage thereof. In principle, it sets forth that the Tax Administration shall apply the statute of limitations without intervention of the liable party, since it constitutes a means to extinguish the tax debt. Nevertheless, it allows the liable party to request the application of the statute of limitations, in such

cases in which the Tax Administration failed to admit it.

3. Furthermore, it establishes that the lapsing of the time period does not automatically generate the tolling of the statute of limitations, but only the lapsing or the conditions for its application, and upon the latter, the effects are retroactive to the time period elapsed.

Article 73. Payment of obligations subject to the statute of limitations.

The payment of the obligation subject to the statute of limitations shall not imply waiving the latter and shall warrant the request for reimbursement of the amount paid.

COMMENTS:

The article states the consequence of the effect by which the statute of limitations extinguishes the tax debt: the payment of an expired debt shall constitute an erroneous payment. Additionally, on the grounds the limitation is an objective proceeding, which admits automatic application that results in the extinguishment of the tax obligation, it shall not admit the waiver of the statute of limitations applicable.

Section 6. Priority of the tax debt.

Article 74. Order of priority.

The tax debt prevails over all other assets of the liable parties and shall have priority over all other credits, except for:

a) Creditors of title of assets, liens, mortgages or other right in rem, provided such rights have been created and registered as required by law prior to the assessment of the tax debt.
b) Alimony and compensation. For alimony and compensation corresponding to board members and partners, the priority of the tax debt shall only amount to the equivalent of... minimum salaries as defined by law.

COMMENTS:

1. The article provides for the privilege and priority of the tax debt, adopting the criteria accepted in the majority of Tax Codes of Ibero-America. It attaches priority to the tax debt to the extent it concurs with general creditors. Notwithstanding, the tax debt shall lose priority when it concurs with creditors of debts secured with a security interest in personal property (to the extent such security interests have been created prior to the assessment of the tax debt) or creditors in respect of alimony or compensation. On the assumption of compensation and alimony of board members and partners, the article limits the minimum compensation in order to avoid schemes by senior executives of the corporation who hold liabilities with the Tax Administration, with the purpose of avoiding the payment of the tax debt. It is worth mentioning that as an alternative to the maximum amount based on minimum compensation defined by law, other parameters shall be considered, for example, the Tax Reference Units.
2. Furthermore, the rights of privilege shall be invoked and applied at any time.

Chapter VII
Rights of the liable parties

Article 75. Rights and guaranties of the liable parties.

The following are deemed rights of the liable parties, among others defined by law:

a) The right to receive fair and ethical treatment by the Tax Administration officials.
b) The right to confidentiality of tax relevant data, reports and background, in the terms set forth by law.

c) The right to receive information and assistance by the Tax Administration in the exercise of their rights and compliance with their tax obligations.
d) The right to make inquiries and obtain timely responses, in agreement with the terms defined by law.
e) The right to obtain copies of the documents that constitute records.
f) The right to refrain from filing the documents already submitted and held by the Tax Administration.
g) The right to reimbursement and refund of erroneous payments, as applicable.
h) The right to non-enforcement of interest, surcharges or penalties in the assumption defined in item 3 of Article 18 of this Code.
i) The right to the application of the statute of limitations on the Tax Administration procedures to assess tax obligations, impose penalties and demand payment of the tax debt in the assumptions set forth herein.
j) The right to access the administrative processes and receive information on the status of the procedures in which the party is involved.
k) The right to receive information of the identity of the Tax Administration officials who are responsible for the procedures in which the party is involved.
l) The right to receive information at the beginning of the examination or audit processes, regarding their nature and scope, as well as their rights and obligations in the course of said processes and that they be carried out within the terms defined by law.
m) The right to amend tax statements.
n) The right to challenge the decisions of the Tax Administration that affect them according to the terms defined in this Code and to obtain a formal decision from the Tax Administration.
o) The right to a due process and the right of self-defense.
p) The right to present allegations and evidence that require a formal decision by the administrative or court authorities that resolve disputes.

COMMENTS:

1. Given the didactic purpose of the Model, this notion was included with an extensive list of the rights and guaranties of liable parties, which are similar to those granted by constitutional rules or charters of fundamental rights or the Model itself to citizens and constitute a limit to the taxation powers thereof.
2. It is worth acknowledging that the exclusion of said enumeration of rights from the Model would not have impaired its effectiveness, and it has been deemed appropriate to enumerate them expressly as a form of reassurance to liable parties as to the balance required between the powers of the Tax Administration and their own rights.
3. The foregoing rights refer to the different forms in which the rights of the liable parties are embodied, and they shall be grouped as follows:
   a) Rights of treatment and confidentiality [subsection a) and b)],
   b) Rights of assistance or collaboration [subsections c) to f)],
   c) Economic rights [subsections g) to i)],
   d) Right to information [subsections j) to l)] and,
   e) Right of self-defense [subsections m) to p)].

Article 76. Defender of the Liable Party.

The entity of Defender of the Liable Party shall be created in the form of a public entity independent from the Tax Administration, in order to guarantee the timely assistance, respect for the rights of the liable parties and customs users and fair assistance and processes in Tax Administration performance of their legal functions.

COMMENTS:

1. The Model incorporates the entity of Defender of the Liable Party, defined in different bodies of law of Ibero-America, which is aligned with the role of the State of protecting the rights of their citizens in tax and customs matters, and allows each country to determine the hierarchy of the rule that provides for its creation, pursuant to their legislation.
2. In order to promote independent and impartial proceedings, the article establishes that it shall not form part of the Tax Administration, but rather, it shall be an independent government office.
3. Its central role shall be to oversee compliance with the rights of the liable parties in the processes they undertake with the Tax Administration. Therefore, successful practices shall be required in order to guarantee the efficiency of the functions of the Defender of the Liable Party. Among said functions is the ongoing dissemination of the services that the Office of the Defender delivers, information through different channels regarding the rights of the liable parties, access to services by way of simplified procedures and removal of unnecessary requirements, expeditious processes, quality service on the basis of highly qualified professionals, ongoing coordination with the tax administrations enabling to identify and address the key complaints of liable parties.

TITLE III
TAX ENFORCEMENT PROCESSES AND PROCEDURES AND MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

Chapter I
General provisions

Section 1. Preliminary provisions.

Article 77. Scope and suppletory rules.

These rules shall be applicable to the tax processes and procedures aimed at enforcing taxes, as well the furtherance of mutual administrative assistance by virtue of International Tax Law Conventions. In case of situations that may not be resolved by the provisions of this chapter, the suppletory rules of administrative or jurisdictional procedure shall apply according to the relevant nature and purpose thereof. In case of conflict between the procedures established herein and the provisions in an International Tax Law Convention, the latter shall prevail.

COMMENTS:

1. The article describes the content of this Title regarding the enforcement of taxes. Firstly, it marks a distinction between "processes" and "procedures". Processes may be part of a procedure or foreign thereto. For example, the party liable for submitting tax statements and preparing self-assessments only completes a form and enters the resulting payment, without any administrative intervention involved; that is, without initiating a process.

   Therefore, Section 9 in Chapter 1, and Section 3 in Chapter II, set forth the rules governing the duties of reporting and registration in order to submit information that may give way to processes in such respect.
2. Secondly, it defines that the enforcement of taxes is not only aimed at the taxes of the relevant country, but also the processes and procedures implied in furthering mutual administrative assistance in tax matters as set forth in International Tax Law Conventions, of different nature and scope such as Information Exchange Agreements or Double Taxation Agreements. Said processes and procedures comprise information exchange efforts by way of notifications, audits and collection of foreign taxes.
3. Thirdly, the article seeks to acknowledge the principle of specialty of the tax procedure. It is flexible, since it enables to apply, in a suppletory manner, more general procedures. In other words, the administrative or jurisdictional procedures in line with the nature and purposes of the case.
4. Finally, it clarifies that in case of conflict between the provisions established herein and the provisions in an International Tax Law Convention, the latter shall prevail, on the grounds that it is common to implement them by way of international treaties, which shall prevail over domestic legislation. It is worth considering, as defined in Article 101, that the Model enables the implementation of International Tax Law Conventions by way of International Agreements among Institutions (or Memoranda of Understanding), which shall also prevail

over the provisions herein, since they are grounded on the convention itself.

Article 78. Access to processes.
The stakeholders or their representatives shall have access to administrative processes and shall consult and obtain, on their own, the documents in the records carried by the administration with no requirement other than proof of identity and a legitimate interest, except for examination, audit or investigation processes underway. In such case, they shall be allowed access to their record upon completion of said examination processes and after notifying them of the claim, in order to exercise their right of self-defense or collaborate in the enforcement of taxes, as appropriate.

COMMENTS:
The article adopts the premise that knowledge of the processes by stakeholders and agents or representatives shall guarantee the right of self-defense and avoid arbitrary deviations on the part of the Tax Administration. This principle shall be aligned with the principle of expeditious processes. Therefore, the individual, without detriment to the right of being informed of the relevant processes, shall not hereby obstruct the appropriate course of administrative audit or examination processes. Notwithstanding, the stakeholder shall be allowed access to the records once the processes reach the point at which he shall be notified of the results in order to exercise the right of self-defense, or rather, to facilitate the application of mechanism by which a process is agreed, as defined in Article 133 and the comments thereto.

Article 79. Measures to facilitate proceedings.
The administrative authority shall pursue proceedings automatically. At any stage of the proceeding, the administrative authority shall adopt measures to facilitate it, and in such assumption, the calculation of the administrative terms to conclude the proceedings established herein shall be suspended.

COMMENTS:
Naturally, if the Tax Administration is mandated to resolve matters arising under the scope of its powers, it shall be also authorized to carry out proceedings on its own, including measures to facilitate proceedings that shall constitute the necessary material fundamentals for such matters. It clarifies that the adoption of these measures shall suspend the calculation of the administrative terms applicable for the completion thereof, according to the procedures provided for in this Model. As deemed reasonable, this rule shall be interpreted to the extent there is no delay attributable to the Tax Administration.

Section 2. Notices.
Article 80. Notices.
1. Stakeholders shall be notified of the administrative decisions and proceedings that affect their rights and interests.
2. All notices shall contain the full text of the decision or proceeding, indicating whether it is conclusive or not in the administrative sphere, the enumeration of the applicable remedies, the authority before which they shall appear and the term to bring such remedies before a court, without detriment to the right of stakeholders to resort to any other remedies deemed applicable.
3. Notices that contain the full text of the proceedings and omit any of the other requirements provided for in the foregoing item shall be effective as from the date on which the stakeholder carries out processes that entail knowledge of the content and scope of the decision or proceeding that is being notified or decided, or as from the date on which

the stakeholder brings any applicable remedy before a court.
4. Notices shall be served by any means enabling to obtain proof of reception by the stakeholder or representative thereof, as well as the date, identity and content of the proceeding being notified.
5. The terms shall start running as from the day following the day on which the notice has been served, regardless of the means employed.

COMMENTS:
1. Articles 80 to 87 have been grouped in a separate section and systematically enumerate the system to serve notices. Tax systems in place in the majority of countries in Ibero-America have alternatively adopted flexible practices to facilitate proceedings, even at the risk of the rights of individuals and rigid trends related to stricter guaranties for notices of decisions affecting the rights of taxpayers.
2. Recently, this situation has become complicated due to the rise of new communication technologies (private courier, faxes, electronic, etc.), which are not identical in all countries of the area, hurdling any attempt at establishing universally applicable systems.
3. The article requires serving notice upon stakeholders regarding the proceedings that affect their rights and interests and provides for the requirements applicable to notices in similar terms to the requirements of notices of general administrative proceedings.
4. It also defines the means, venue and individuals who shall receive notices, and highlights the use of new technologies in this respect.
5. In doing so, not only is the system made flexible and clear, but it also establishes in advance the valid forms, possible modes and venue thereof, in order to meet the guaranty and security requirements.
6. Finally, it clarifies that the notion of "notice" not only encompasses the cover sheet or letter of notification that present general data such as the notified party, the time and place of notification, the description of the proceeding being notified and the notifying official, but also the text of the proceeding being notified. This explains the requirement to notify the full content of the proceeding or decision. In fact, this distinction disappears on electronic notices, which is relevant in order to adopt this broad "notification" notion.

Article 81. Forms of serving notice.
Notices shall be served in any of the following forms, regardless of the order of priority established in Article 85:
a) In person.
b) By public or private post, in the tax domicile or the place expressly set forth to receive notices.
c) By official notice, in the circumstances defined in item 3 of Article 83.
d) By appearance and administrative certification, according to the procedure defined in Article 85.
e) By electronic or facsimile communication systems, provided the recipient receives it as appropriate.
f) By onsite and electronic notices in the premises of the relevant authority.

COMMENTS:
1. The article enumerates the different forms of serving notice, which are discussed in the following articles, according to an order of priority. Therefore, the order defined in this article does not impair the rules of the following articles on the interaction among the different forms of notification. Additionally, certain forms are defined from general to specific. For example, notice served in person may apply in any place, but on the

assumption the relevant party appears before the Tax Administration, the notice shall also be served in person, but it shall be determined by the appearance. The same applies for delivery in the domicile of the relevant party, which may also be personal, but not necessarily.

2. As to official notices, it is clarified hereunder that they imply the exhibition of the document being notified at the place of notification. Hence, this article is simply a reference.
3. The "e-mailbox for tax purposes" is among the most widely adopted electronic media by modern tax administrations today.
4. Onsite notices are understood as those served in a site open to the public within the offices of the authority serving notice and the document to be served carries a specific term; electronic notices are the Web pages established by the tax authorities to serve notices of documents.
5. Onsite notices may be considered an ancillary form of notice by appearance, as defined by the procedure in Article 85, or an independent form of notification mechanism for certain census taxes, such as real estate taxes.

Article 82. Place or domicile for serving notice.

1. Notices that are not served by way of facsimile or electronic means shall be served at the domicile of the liable party, pursuant to the rules defined in this Code. For notices in person, the place of notification shall be the offices of the Tax Administration or any other place where they may be located. In the case of facsimile or electronic notices, they shall be served to the telephone number or electronic mailbox registered with the Tax Administration or defined specifically by the stakeholder or his representative for the notification purposes.
2. On the assumption that stakeholders do not have a tax domicile registered with the Tax Administration, they shall state so in the first written document or appearance.
3. Liable parties shall establish a special domicile, including the electronic mailbox derived from or created by the Tax Administration when they are not mandatory, in the procedures initiated upon their request or by the Tax Administration. Said domicile shall be the only valid domicile for the notices of the decisions in relation to the procedures for which purpose the special domicile was set, unless notices may not be served therein for reasons not attributable to the Tax Administration, in which case the latter shall serve notices in the tax domicile.

COMMENTS:

1. The registered tax domicile pursuant to the rules in this Model is the natural place to serve notices upon the liable party. Notwithstanding, in the procedures initiated upon request of the liable party as well as the automatic proceedings already underway, the former is entitled to designate a place of notification different from the tax domicile. Therefore, in order to provide for the possibility that liable parties may request to set a domicile other than their tax domicile to receive notices should they initiate a tax proceeding (for example, the offices of their accounting auditors, the offices of their legal counsel, etc.), the article allows the designation of a special domicile, expressly defining the exclusive scope of the proceeding. The article also provides for dilatory schemes or obstructions by the liable parties, rendering it impossible for the Tax Administration to serve notices in the special domicile by the

responsibility of the liable party, and establishes that in said assumption, notices shall be served in the tax domicile.

2. The notion of "place" of notice refers to a physical location, by which these rules are inapplicable to facsimile or electronic notices. The notion of "address" is deemed to refer to the mechanisms inherent in the specific modern technology tools. It is worth mentioning that the possibility of an electronic mail address has not been included deliberately to promote the use of the electronic mailbox, a more secure tool, which contrary to the former, operates under the Tax Administration platform. In this respect, the electronic mailbox may be also designated as a special domicile.
3. It also clarifies that for notices in person, the place is not relevant. On the assumption the liable parties fail to register a tax domicile or communicate a telephone or electronic mailbox to the Tax Administration, they shall indicate a place or address for subsequent notices. Although a number of regulations require a place where notices shall be served in specific proceedings, even when a registered domicile is available -since otherwise the subsequent decisions are deemed automatically served-, the Model has decided to leave such specific requirement as an option when a registered domicile is available, or as an obligation only in the absence of a tax domicile.

Article 83. Individuals authorized to receive notices in the place of notification.

1. Notices shall be served upon the stakeholder, his representative or expressly authorized party. Otherwise, notices served in the place designated by the stakeholder to such end or in his tax domicile, shall be served upon the principal or party in charge of the establishment where the tax domicile has been constituted or place of notification for tax purposes or upon any other individual of age and legally competent related to the stakeholder, his representative or expressly authorized party.
2. The return receipt of the notice shall include, at least, the identity of the notifying party, the day, hour and description of the place where the notice is served, the identity of the party receiving the relevant document, his relation with the stakeholder and his signature.
3. If none of the persons defined in item 1 above is available or if they refuse to sign the receipt notice, official notice shall be served in the place of notification and the documents shall be delivered in a sealed envelope.
4. The return receipt of the official notice shall include, at least, the identity of the notified party, the decision being notified, the date and address of notification, the official notice number, the underlying reason for such form of serving notice and the express indication that the official notice was decided and the relevant documents delivered.

COMMENTS:

1. Firstly, the article identifies three parties subject to notification: the stakeholder who is the liable party subject of the proceeding or decision being notified; the legal representative or the representative defined by the liable party; a third party expressly authorized to receive notices, such as the legal counsel.
2. Subsequently, on the basis of notices served in a physical place, as defined in the previous article, the article adds other possibilities to the three types of parties defined above: the principal or

party in authority of the establishment and, in general, any individual of age and legally competent who is present at the place, provided a reasonable "relation" exists between said individual and any of the three subjects defined previously, and such relation is determined by professional or friendship ties or because the parties are neighbors or relatives.

This relation shall be informed by the notified party and noted on the notification record. Otherwise, in a public establishment, it would be unreasonable to serve notice upon any individual present in the capacity of customer, for example. However, in the event none of the parties that may subject to notification is available, or of refusal to sign or acknowledge receipt, the Model sets forth the official notice in order to protect their rights, as defined in the comments to Article 81.

Article 84. Notices served in person and by mail.

1. The personal notice shall be effective upon personally delivering to the notified party a complete copy of the relevant decision or document, and the delivering official shall note in writing that the notice was served, and the date, time and place of delivery.
2. The personal notice may also require the appearance of the stakeholder by the means set forth in subsection b 2) of Article 81 of this Code, at the offices of the Tax Administration within... days, under penalty of considering him notified pursuant to the foregoing provision.
3. Notices served by mail shall be served at the registered domicile with the Tax Administration and require return receipt. In the procedures started upon request of the stakeholder, the latter shall select this notification option in the applicable proceeding.

COMMENTS:

See comments to Article 80 of the Model.

Article 85. Notice by appearance and administrative record.

1. If the stakeholder lacks a known domicile in the country or if the notice was not served in any of the places defined in Article 82 of this Code, he shall be required to appear before the Tax Administration by legal notice published in the Official Gazette... consecutive times, at intervals of... days, or otherwise, by onsite or electronic notices, as defined in the following article.
2. The stakeholder shall appear within a term of... days from publication of the last legal notice or the lapsing of the term of onsite publications.
3. Failure to appear within the foregoing term shall result in a note in the administrative record. The latter notice shall be effective from the day following the note entered in the administrative record.

COMMENTS:

1. Two common methods, legal notice published in the Official Gazette and onsite notice, are combined with notice by appearance. Hence, this does not imply that notice is directly served by publication in the Official Gazette and onsite notice, but rather, that the obligation to appear is notified so that the stakeholder may be served notice upon appearing.
2. As defined in the following article, the classic system of onsite notice implies that the documents to be served are posted during a certain period in a public area within the premises of the relevant authority and on the Web page that tax authorities define for such purpose. In this case, the notice to appear is posted, and upon appearance the relevant documentation shall be delivered.

3. Finally, upon failure to appear, a note shall be entered in the record, and the notice shall be deemed served on the day after said note is entered.
4. Clearly, the Model refers to two notices: the first one, for the purpose of appearance, by way of onsite notices; the second one is the notice served personally on the day of appearance or by a note entered in the record.

Article 86. Onsite and electronic notices.
For the purposes of the provisions in item f) of Article 81 and on the assumption that specific tax regulations establish this system, onsite notifications shall be carried out by posting for...days the document intended to be served in a public area in the offices of the notifying authority and said document shall be also posted on the Website of the Tax Authority, if applicable. Said term shall be counted as from the day following the last day on which the document was posted or published, as applicable. The authority shall enter a note of said procedure on the respective record.

In such cases, the notification date shall be deemed effective on the date of the day following the expiry of the term established.

COMMENTS:
This method of serving notice is inherent in the system of notice by appearance defined in Article 85, but it is also deemed a distinct method of serving notice in the assumptions established by a specific tax regulation. This system is commonly applied to census taxes like real estate taxes or other municipal taxes.

Article 87. Notice by electronic and online channels.
1. The Tax Administration shall serve notices in the electronic mailbox defined in Article 98, provided the sender and recipient of the notice are identified by effective means.
2. The notices served in said mailbox shall have the same effects as the ones served in the registered tax domicile.
3. Without detriment to the provisions in item 4 hereunder, electronic notices shall be served only when the stakeholder has expressly selected or accepted such notification method. In such case, notice shall be deemed served to all legal effects on the fifth business day following the day on which the document was introduced in the electronic mailbox.
4. The Tax Administration shall establish the obligation of keeping a permanent electronic mailbox, which shall substitute the tax domicile as the place to receive notices and, moreover, prevent the registration of another special domicile as defined in item 3 of Article 82. In this case, the Tax Administration shall implement a reasonable system of notice alerts.
5. In the event of noncompliance by the liable party with any obligation relevant to the allocation of an electronic mailbox, the penalty defined in Article 175 shall apply and notice shall be served by way of the means other than electronic established in the foregoing articles.
6. The notification system shall certify the delivery, the dates and time at which the notice is deposited in the electronic mailbox assigned to the stakeholder, access thereby to the content of the notification message for the assumption in item 3 and the statement that the full content of the notification has been made available.

COMMENTS:
1. This article seeks to incorporate a principle of priority of the electronic notice, based on the mandatory establishment of a permanent electronic

mailbox, as applied in different countries by law.

2. The Model defines that when the allocation procedure of the electronic mailbox sets forth obligations for the liable party, noncompliance with such obligations shall be subject to administrative penalties. This shall not imply notices served for procedures or resorting to general means such as legal notices published in the Official Gazette, when other more secure means are available pursuant to the options described in the foregoing articles.

Section 3. Evidence, presumptions and grounds for processes.

Article 88. Evidence.

1. In tax proceedings, the party who claims a right shall provide evidence of the facts underlying such right. The obligation to provide evidence is fulfilled upon effectively presenting the elements of proof before the Tax Administration.
2. All the means of proof set forth by Law shall be admissible.
3. The documents, accounting books and records constitute elements of proof, provided they are carried as appropriate, and faithfully represent the financial status. Notwithstanding, the Tax Administration shall prioritize elements of proof other than accounting records.
4. Upon determining that accounting records misrepresent the economic and financial status of the liable party, the Tax Administration shall disown them and, if applicable, enforce the presumptive assessment method defined in subsection b) of Article 54.
5. Inconclusive evidence shall not be admissible and shall be rejected based on a duly substantiated decision. The liable party shall be entitled to formally express disagreement, which shall be considered upon the resolution of the relevant remedy.
6. Evidence shall be considered in the light of reasonable analysis.
7. The means of proof required by the Tax Administration in the course of verification or audit processes, or in requests for reconsideration that the liable party failed to submit shall not be admissible as evidence, unless the latter proves that such noncompliance was due to reasons other than his responsibility or presents proof of payment or guaranty of the claimed amount.

COMMENTS:

1. The article defines the basic principle that the party stating a claim in order to substantiate his right shall be required to provide evidence, and admits all means of proof, which shall be considered in agreement with the rules of reasonable analysis. Such notion entails that the party who shall consider such evidence is bound by the principles of equity and justice, unbiased and without circumstantial issues or events that are unrelated to the underlying facts and elements of evidence produced in administrative processes.
2. Specifically, it refers to the scope of accounting records as evidence to the extent they represent the economic and financial status of the liable party and allows the Tax Administration to disregard them in favor of external elements of evidence and even completely disown them. In such case, the latter shall enforce the evidence based on presumptive assessment, in line with the assumptions defined in Article 55 of the Model.
3. Furthermore, it admits that in many cases the elements of evidence are not easily or legally accessible to the liable party given his lack of enforcement powers, which are inherent in the Tax Administration. In this respect, for example, the presumptions applied by

the Tax Administration normally admit evidence to the contrary, which may be direct or indirect, in other words, circumstantial. In such case, the liable party shall be entitled to request comparison with the financial status of other liable parties to determine whether the presumptive assessment by the Tax Administration stands within reasonable parameters, and request information from the Tax Administration, in order to obtain appropriate data for comparison to correctly apply the presumptive method.

4. On the other hand, with respect to inconclusive evidence, it adopts the solution defined by the majority of comparative legal systems, since it avoids delays and facilitates controlling the applicability or convenience of the evidence dismissed.

   The Model deems inadmissible evidence the one specifically required by the Tax Administration that liable parties failed to submit on a timely basis. In such cases, the Model suggests that said means of proof be dismissed on the grounds of the wrongful intent of the liable parties, except in the cases in which the liable party proves that noncompliance was due to foreign causes (for example, a certificate issued by a foreign authority regarding income generated and paid in a foreign jurisdiction that was overdue), on the grounds of reasonable tolerance for untimely submitting the means of proof required.

Article 89. Presumptions.
The presumptions established by tax laws shall be overridden by evidence to the contrary, except in the cases expressly banned thereby.

COMMENTS:
The Model establishes as the general principle for presumptions adopted in tax rules that they shall be understood as presumptions admitting evidence to the contrary, except in such cases that expressly set forth a conclusive presumption by law in which, consequently, evidence to the contrary is inadmissible.

Article 90. Grounds for processes.
The events discovered upon Tax Administration performance of extensive tax examinations and audits as provided for in this Code or in other tax laws, or which appear on records or documents held by the Tax Administration, shall serve as the ground for its decisions and those of any other tax authority or competent agency in tax matters.

COMMENTS:
This provision enables to provide grounds for Tax Administration decisions or those of any other competent agency in tax matters, in the record pertaining to the administrative proceedings or in different records or documents under the authority of the Tax Administration.

Section 4. Automatic tax assessments and requirements of the Tax Administration decision.

Article 91. Notion and types of automatic tax assessments.

1. Automatic assessment is the decision by which the Tax Administration verifies the existence of a taxable event and quantifies and determines the tax debt amount, confirming or correcting, as applicable, the self-assessment by the liable party, and determining an amount payable or an amount refundable or subject to offsetting as defined in tax regulations.

   Likewise, the assessment shall establish the existence of the circumstance that warrants attribution of joint or indirect liability, and in such case, the liable party shall be specifically identified as well

as the amount of the debt subject to liability.

2. Automatic assessments shall be preliminary or conclusive.
3. Conclusive assessments shall be the ones carried out based on audits by examination and investigation of the overall elements inherent in the tax obligation, except for those set forth in item 4 herein.
4. In all other cases, assessments shall be deemed preliminary. Particularly, the following shall be considered preliminary assessments:
   a) The assessment with partial scope, and this condition shall be expressly noted on the decision or letter of acceptance or agreement, as applicable, based on the elements that have been subject to audit.
   b) The assessments carried out based on the information held by the Tax Administration or required from the liable party without having conducted an audit, including the one developed based on mere differences of legal interpretation or aimed at correcting material or mathematical errors on the statement.
5. The elements of the tax obligation subject to examination and investigation in the course of a procedure that concluded with a preliminary partial assessment as defined in subsection a) of the foregoing item shall not be subject to a subsequent new audit. In such assessments, the only modifications allowed are those in relation to the elements of the self-assessment that were not expressly considered in the previous assessment.
6. The elements of the tax obligation that have not been subject to examination and investigation proceedings shall be subject to a subsequent examination or investigation process, unless the audit has been formally declared an extensive or comprehensive audit. The terms of limitations shall not be deemed interrupted by the processes not relevant to such elements.

COMMENTS:

1. Automatic assessment is defined as the decision by which the Tax Administration verifies the existence of a taxable event, quantifies and determines the tax debt amount, or the refundable balance and if applicable, defines the tax liability, establishing the circumstances, the liable party and the amount due, which may differ from the tax debt amount. Hence, for example, the tax debt amount attributed to the indirectly liable party, who is not subject to the penalty imposed upon the principal liable party, shall not match the tax debt amount of the latter. The article makes a distinction between preliminary and conclusive automatic assessments. Certain laws employ the designation "provisional assessments" in lieu of "preliminary". Nevertheless, the article adopts this term, which also appears in legislation of certain countries, in order to avoid mistaking it for the "provisional" assessment defined in Article 93.
2. Conclusive assessments imply that, upon completion, the taxes subject to examination, according to their respective tax periods for regular taxes, shall not be subject to review by the Tax Administration. Therefore, such assessments are preceded by a tax audit that examined all the elements of the tax obligation, including the examination of the accounting records of the liable parties. When any of such requirements is not met, the assessment shall be deemed a preliminary assessment. The latter applies in two cases: the first one is defined in subsection a), in which an

audit procedure is admitted but the absence of a given element renders it impossible to consider it an extensive or comprehensive examination of all the elements inherent in the tax obligation. Hence, when an audit procedure has a partial scope, the assessment is a preliminary assessment, and the Tax Administration shall be entitled to carry out a new audit to review the elements it was unable to audit previously.

3. The second assumption refers to cases in which no audits are conducted as a previous step to the assessment, and the Tax Administration carries out extensive tax examination procedures based on the information under its authority and without analyzing the accounting records of the liable party. This assumption also applies when the assessment is carried out as a matter of law, and does not require an audit or to correct mathematical errors.
4. The article sets forth two final rules aimed at defining the effects and scopes of preliminary assessments. The first one establishes that when an element was subject to a preliminary assessment, it shall not be subject to a subsequent audit, as a consequence of a partial audit [subsection a)]. The other rule is the opposite of the foregoing: any element of the tax obligation that has not been subject to examination shall be reviewed in a subsequent examination proceeding.
5. For the purposes of legal certainty, the extensive or comprehensive definition of audit has precluding effects, in order to prevent claims that a concrete element of the tax obligation has been excluded from the examination.
6. It is also worth clarifying that preliminary unrelated processes with respect to a specific element of the tax obligation do not toll the statute of limitations thereof.

Article 92. Stages of the assessment procedure.

1. The assessment procedure by the Tax Administration of taxes subject to reporting or that are self-assessable by liable parties, starts with examination or audit processes, as defined in Chapter II and Chapter III of this Title.
2. Consequently, the Tax Administration shall issue a decision with a voluntary compliance proposal, which shall present the facts or omissions detected that may have implied violations to tax regulations by the liable party, and substantiate the grounds for the allegations or charges, or the erroneously self-assessed amounts in order to offset or reimburse them, or to offset against the additional adjusted amount defined by the Tax Administration.
3. The stakeholder shall be given a due date for every assessment procedure by audit or examination defined in this Code, counted from the day after the day of effective notification of the procedure defined above to express his acceptance, request a conclusive agreement as applicable, or formally present his arguments and submit the evidence to substantiate his case.
4. Upon expiry of the due date established in the foregoing paragraph, and should the stakeholder disagree, the Tax Administration shall issue a decision considering the arguments and evidence of the liable party, either to dismiss or confirm in part or in full the voluntary compliance proposal by assessing the unreported taxes and related charges and imposing the applicable penalties. The administrative assessment decision shall also report the existence of erroneously self-assessed amounts by the liable party in order to claim offsetting, reimbursement or reduction of the adjusted amount.
5. The stakeholder shall be informed of

the administrative assessment decision, which shall be issued within..., days counted from the day after the due date referred to in the foregoing item expires.

6. An administrative assessment decision shall not be required on the assumption that the liable party formally agrees to the allegations or charges, or with the erroneously self-assessed amounts. Such agreement shall have the same effects as a final assessment decision. In the event the stakeholder agrees only in part, the decision shall be issued with respect to the elements that were excluded from said agreement.
7. The administrative assessment decision shall not be required if a conclusive agreement has been reached, pursuant to the provisions in Article 133 of this Code, which shall operate as an automatic assessment.
8. The automatic assessment shall render the tax obligation enforceable, even by way of enforced collection procedures, unless a request for reconsideration is brought, according to the terms set forth in Title V of this Code.

COMMENTS:

1. The model assessment procedure underlying this article is based on the notion of providing a preliminary hearing to the liable party before the effective assessment. Furthermore, certain countries apply models that apply assessments directly, and admit the right of self-defense in the remedy stage. This model adopts a more protective approach on the basis that the Model follows the notion that the assessment is effective and enforceable in spite of the remedies brought other than the request for reconsideration.
2. Hence, the tax-assessment procedure set forth in this Model features two phases. One is the variable phase, depending on whether the assessment procedures are conducted by the administration or an audit. Such procedures are separately established in Chapter II and Chapter III in this Title. The second is the common phase, applicable in all assessment procedures. The article explains the common procedure applicable in tax assessments, which is carried out as a conclusion and continuation of examination processes in the administrative or audit phase. It highlights that upon conclusion of said processes, the Tax Administration extends a voluntary compliance proposal, which allows the liable party to express agreement or provide material or legal elements that guarantee his right of self-defense or, if the conditions defined in Article 133 prevail, enable his participation in reaching a conclusive agreement with the Tax Administration. It sets forth that in the case of acceptance or a conclusive agreement, a decision is not required, and the effects shall be the same. In the event the stakeholder agrees only in part, the assessment or preliminary assessment decision shall be issued with respect to the elements that were excluded from said acceptance or agreement.
3. The article defines that the decision shall also admit adjustments to the beneficial self-assessment of the liable party, generating a favorable situation that shall be the basis for offsetting or refund, or simply a reduction in the additional adjustment of the tax obligation established in the decision. For example, if subject A did not apply a legitimate deductible expense, the latter shall be entered in the assessment procedure, and result in either a refund or offsetting. However, if at the same time an assessment is applied on income that the liable party failed to report, the over-assessed tax amount shall be offset with the under-assessed tax amount.

4. It is worth clarifying that although penalties shall be imposed in the assessment decision, the inherent elements of penalty require specific grounds, since they inform on the system of administrative violations and penalties, as defined in Title IV in this Model.
5. Finally, the article adopts the principle of enforceability of the administrative decision for the purpose of the assessment decision, acceptance of voluntary compliance and conclusive agreements, to render the debt enforceable and initiate enforced collection procedures. In the assessment decision, as provided for in Title V, the request for reconsideration interrupts enforceability of the decision, until a ruling is handed down in such respect.

Article 93. Provisional tax assessment.

1. In the event the parties who are required to file statements, information and other documents fail to do so within the terms defined in tax regulations, the Tax Administration shall require filing the respective document according to the following sequence of procedures:
   a) Requiring the liable party to file the respective document within a term of... days.
   b) In the case of the failure to file a regular statement for the payment of taxes, the liable party who incurred the omission shall be required to pay an amount equal to the one determined in the last or in any of the.... most recent statements applicable, or the one applicable to said periods from an assessment made by the Tax Administration. Such amount payable shall constitute a provisional payment and shall not release the liable parties from the obligation to file the relevant tax statement.
2. Should the liable party file the omitted statement before entering the amount defined in subsection b) above is entered, he shall be released from making the provisional payment. Should the statement be filed after the provisional payment required by the Tax Administration has been made, such payment shall be attributed to the amount payable resulting from the statement filed, pursuant to the criteria defined in Article 62 of this Code.

COMMENTS:

1. This article confers upon the Tax Administration the power to require liable parties to file tax statements as well as other documents as defined by tax laws or the Model itself. For taxes under the scope of the self-assessment system, the liable parties shall voluntarily file their statements in order to know their tax debt with the Tax Administration. The power to conduct provisional tax assessments is necessary in order to establish and enforce a tax credit expeditiously, even on a provisional basis, when liable parties fail to meet their filing and self-assessment obligations. The latter without detriment to the simultaneous or subsequent implementation of all the procedures required to determine the effective tax debt, on a certain or presumptive basis.
2. The tax statements filed by the liable party in previous tax periods shall serve as parameters to quantify such provisional assessment, as well as automatic assessments by the Tax Administration for said periods.
3. It is worth considering that the power vested upon the Tax Administration in subsection b) of demanding from the liable party an amount equal to the amount filed or assessed in previous periods, shall stand within certain reasonable parameters: that the statements required consider the seasonality of certain activities, or that the amount assessed by the

Tax Administration corresponds to assessments on a certain basis and not on a presumptive basis. Moreover, if the taxpayer features no previous payment or assessment, the Tax Administration shall consider a taxpayer of similar volume and business, with the purpose of adjusting the provisional assessment as much as possible to the condition of the liable party.

Article 94. Requirements of administrative decisions.

The administrative decision shall include the following requirements:

a) Name or corporate name of the liable party, including their Tax Identification Number.
b) The matters of fact and of law, stating the fundamentals and evaluation and consideration of the evidence submitted.
c) In the event of a tax determination, it shall indicate the tax, the tax period assessed, the amount payable or refundable and their material elements plus their interest and, if applicable, the corresponding penalty. In all other cases, it shall express the purpose of the decision.
d) The partial nature of the assessment, if applicable, indicating the elements of the tax obligation subject thereto.
e) Date, name, position and signature in print or electronic signature of the authorized official.
f) The remedies applicable against the administrative assessment decision and the terms to bring them. Omission of this requirement shall double the term.

COMMENTS:

This article specifically addresses the administrative assessment decision, establishing the basic requirements thereof. It is worth underlining that it establishes not only the requirements of the administrative assessment decision, but of any other decision in any other type of tax procedure. It also provides for the relevant remedies as guaranties for the liable party, and determines the duplication of the applicable term.

Article 95. Obligation to issue decisions.

1. The Tax Administration is required to address all petitions and matters arising from tax enforcement proceedings within the terms established in applicable regulations, or otherwise, within a due date not exceeding... months counted from the date the petition was submitted. Upon lapsing of such due date without a decision being announced, the liable party shall deem the petition dismissed and bring the remedies provided by law.
2. Without detriment to the foregoing, the liable party shall file with the Head of the Tax Administration the relevant complaint for the omission or delay by the competent authority to issue a decision. Likewise, the liable party shall be entitled to bring the legal remedies once the decision is handed down.
3. The Tax Administration shall not be bound to expressly resolve in proceedings arising from rights whose sole purpose is to be communicated and are subject to expiry, the subsequent loss of the purpose of the proceeding, or the abandonment or waiver by the stakeholders.

COMMENTS:

1. In the unlikely circumstance the Tax Administration fails to respond, the Model sets forth two remedies for the stakeholder:

a) The stakeholder may wait until an express decision is handed down in order to bring the remedies, or address a petition to the Head of the Tax Administration, and this solution may suffice in Tax Administrations that operate appropriately.
b) Denial, which implies opening other instances for the stakeholder to seek the redress deemed appropriate.

2. The last paragraph sets forth the assumptions in which there is no obligation to resolve expressly.

Section 5. Electronic Tax Administration.

Article 96. Use of electronic, computer and online technologies.

1. The Tax Administration shall promote as a general principle, the use of electronic, computer and online technologies and media required in carrying out their activity and furthering their competencies, within the limits provided by law. Such technologies shall be automated or otherwise, based on the need for human intervention in the respective process.
2. Procedures and processes that employ electronic, computer and online technologies and media guarantee the identification of liable parties and the officials or bodies of the Tax Administration.
3. Prior to implementation, the Tax Administration, as provided by law, shall approve the electronic, computer and online programs and applications to be used in the enforcement of their powers.
4. In automated processes, the competent body or bodies shall be previously defined, as applicable, in determining specifications, programming, maintenance, supervision and quality control of the information system. Furthermore, the competent bodies in charge of programming and supervision of the information system and the competent bodies that decide on the relevant remedies shall be identified as appropriate.

COMMENTS:

1. Articles 96 to 98 have been grouped in a separate section regarding the electronic Tax Administration on the grounds that such matter is subject to the changes from ever-evolving technologies, and consequently, shall not be subject to strict regulation hindering its adjustment to a changing environment. Additionally, the article deems it appropriate that the Model does not define regulations on this matter since other relevant general rules exist (electronic signature, personal data protection, etc.).
2. In such respect, the regulation set forth is based on the consolidated use of new technologies by the Tax Administration as well as the liable parties, and it establishes the validity of the electronic document as the template for the information. It makes an important distinction between automated and non-automated electronic processes. The automated process is carried out by software without human intervention. It defines a number of specific rules in this respect.
3. The article provides for the possibility of establishing electronic records within the Tax Administration enabling to receive the relevant documents every day of the year, twenty-four hours a day.
4. The implementation of online certificates and data communication seeks to eliminate, to the extent possible, printed certificates.

Article 97. Validity of supporting documents.

1. The documents that the Tax Administration issues, in whatever template, by electronic, computer or online media, or the copies of original documents issued by the same means, as well as the electronic images of the original documents or their copies, shall be as valid and effective as the original documents, provided the authenticity, integrity, preservation, and if applicable, reception by the stakeholder are guaranteed, as well as compliance with the legal guaranties and requirements.
2. The authenticity and integrity of the paper documents issued by electronic, computer or online means shall be

guaranteed by a secure verification code or digital signature, or both, generated electronically and linked to the owner, which shall enable comparing their contents by online access to the records of the issuing body or agency.

3. When the information system issues the printed document and at the same time generates a document with the same electronic content, both shall be valid as originals.
4. The Tax Administrations shall be entitled to obtain electronic images of documents, with the same validity and effectiveness, by way of digitalization processes that guarantee their authenticity, integrity and the preservation of the document image, and it shall certify their validity. In such case, the original document shall be destroyed, unless a law or regulation requires otherwise.
5. The Tax Administration shall issue printed copies of any class of electronic document, whether original, electronic image of the original or copy, and a government official shall certify them.
6. In tax procedures, the administrative records shall be wholly or partially electronic, provided the documents and files that constitute them meet all the conditions required for their validity and effectiveness. Files with recorded conversations authorized by participants or recorded images obtained by authorized means shall be incorporated in said records.
7. The administrative records, which incorporate tax processes and procedures, shall be stored in paper or electronic templates, and in the latter case, using the information or online technologies according to the conditions and limitations established by law. The remittance of records defined in tax laws shall be substituted with the authorization to access the electronic record.
8. The Tax Administration shall adopt any other technology-based method enabling to verify the authenticity and integrity of an electronic document as required by law.

COMMENTS:
See comments to Article 96 of the Model.

Article 98. Electronic mailbox.

1. The Tax Administration shall create an electronic mailbox system to receive or forward requirements, documents and communications to be transmitted by online means, subject to the same requirements as those established for all other administrative records.
2. The electronic mailbox shall be enabled to receive or forward requirements, documents and communications in relation to procedures and processes under the umbrella of the Tax Administration that created the mailbox and as defined in the rule that created it. The electronic mailbox shall meet the information availability, authenticity, integrity, confidentiality and preservation criteria that are also defined in said rule.
3. The electronic mailbox enables to submit requirements, documents and communications every day of the year, twenty-four hours a day. In order to calculate terms, the reception on a non-business day for the body or agency shall be deemed effective on the first subsequent business day.
4. Submittal of electronic documents in said mailbox shall have identical effects to the submittal through any other authorized means and shall be mandatory in agreement with the provisions in item 4 of Article 93.
5. The Tax Administration shall procure, manage and oversee the overall information process required by the electronic mailbox, pursuant to the scope and modalities defined by

regulations. The electronic mailbox shall be implemented according to the system of a proprietary domain.

COMMENTS:

1. According to the trend adopted by most Tax Administrations of Ibero-America, this article is incorporated to regulate the electronic mailbox, also designated "electronic tax domicile", which shall constitute the "place" where liable parties shall be found and in which they shall fulfill their tax obligations, as well as validly receive notices as set forth in Article 80. Hence, this is a two-way mechanism, not only to receive notices, but also to submit documents.
2. It is evident that the electronic mailbox presents advantages for the tax administrations in terms of time (visits by officials to the premises of liable parties), financial savings (no documents printed or sent by post), as well as errors in notices served or with material defects that require a new procedure. The greater the distance of liable parties with respect to the Tax Administration, the greater the advantages of this tool.
3. Furthermore, the advantages benefit the Tax Administration as well as the liable parties, who shall save significant amounts of time and money in fulfilling their tax obligations, by not having to carry out procedures personally.

Section 6. Information and assistance.

Article 99. Obligation to provide information and facilitate voluntary compliance.

1. The Tax Administration shall provide assistance to liable parties in the voluntary compliance with their obligations, by way of the means deemed applicable, mainly their electronic sites or other electronic mechanisms such as social media, and to such end it shall:

a) Facilitate liable parties the information software for assistance in preparing and filing statements, self-assessments and data communications, as well as compliance with other tax obligations.
b) Explain the tax rules using clear and understandable language where possible, and, in complex cases, produce and distribute explanatory brochures to liable parties.
c) Produce the tax statement forms in a friendly format for liable parties and distribute them in a timely manner, and inform the dates and venues for filing.
d) Clearly indicate the relevant documents on the requirements that set forth that liable parties shall file tax statements, communications and other mandatory documents.
e) Communicate and keep updated information in relation to instructions, assistance software, formalities, interpretation criteria, among others, on their Website. In particular, the Tax Administration shall keep updated and available interpretation criteria for their users on their Website, which shall be published without revealing the names of the liable parties involved or other identity-related data.
f) The decisions that the Tax Administration issues establishing general provisions shall be grouped in such a way to facilitate communication to the liable parties.
g) Communicate to liable parties the remedies and defense procedures that may be brought against the decision of the Tax Administration and the competent bodies where they shall be instituted.
h) Hold informative meetings in different parts of the country with liable parties, especially when tax regulations are modified and during tax filing season.
i) Pursue any other undertaking to fulfill the purposes defined.

2. The liable parties, as well as any other stakeholder, shall request information from the Tax Administration regarding

formalities, administrative requirements or criteria, even in the absence of the conditions admissible for the tax inquiry defined in the following article. In the latter assumption, the Tax Administration shall admit the request even when the requirements for tax inquiries defined in the following article are not met and in such case, the answer shall not generate the effects set forth therein.

Requests shall be made verbally, by telephone or electronic or printed media.

COMMENTS:

1. Tax systems are presently based on voluntary compliance with obligations and entail the correlative duty of the Tax Administration to duly inform and assist liable parties at no cost regarding compliance with their tax obligations.
2. This article sets forth the essential features of a modern Tax Administration, which requires analyzing, designing, developing and implementing a system that includes, at least, the following elements:

a) Design and implementation of assistance programs to perform the tax statements enabling liable parties to carry out their self-assessments and informative statements without mistakes. The system is required to execute validations, encrypt information and enable Internet-based access, with information exchange interfaces with the Tax Administration information system and with the electronic payment functionality implemented in each country. Effectively, in order to facilitate compliance for liable parties, the Tax Administration shall implement Internet-based electronic communication media, in order to file statements, for themselves as well as informative statements on other taxpayers, as well as to pay the tax amount due (in this case, as defined in the regulations in this Model on electronic or online payments).

b) Likewise, an assistance program for tax statements shall be available for liable parties. Hence, the following purposes are achieved: the liable party minimizes indirect compliance costs and tax enforcement is facilitated, since the information is entered without errors.

3. Furthermore, it establishes a general duty of communication of the relevant information for liable parties to meet their obligations voluntarily and correctly. Thus, it defines the obligation to disseminate by electronic means, among others, the general information on the Tax Administrations, by way of instructions, manuals and official communications, as well as the interpretation of laws. Specifically, a highly advisable way of achieving the latter shall be to disclose the body of administrative decisions. Access to this information shall be easy, complete and accurate.

   As a correlative right, it governs the right to obtain information from the Tax Administration upon an individual request by the liable party or, broadly, any stakeholder. Such requests shall be made more or less informally, and consequently, their responses shall not have the effect of the "tax inquiries" set forth in the following article.

Article 100. Tax inquiries.

1. Any stakeholder having a personal and direct interest shall be enabled to inquire the Tax Administration regarding the enforcement of the law upon a specific material situation. To such end, the stakeholder making an inquiry shall clearly and accurately state all the circumstances, background and other information relevant to the situation underlying the inquiry, and express his well-founded opinion. Hence, a material situation is specific when all

its distinctive individual features are presented.

2. The inquiry shall be inadmissible in the following cases:
   a) When the requesting party already received an opinion from the Tax Administration on the same matter.
   b) When the Tax Administration decided on the matter following an examination on the requesting party.
   c) When the requesting party is being subject to an examination of his tax statements or is informed of the initiation of the audit, and the matter subject to inquiry is part of the matters that shall be clarified in the course of said procedure.
3. Furthermore, professional associations, official chambers, employers' organizations, unions, consumer associations, disability advocacy associations and foundations, business associations and professional organizations, as well as the federations grouping any of the foregoing, are entitled to tax inquiries when they refer to issues affecting their members or associates in general.
4. The response shall be binding for the Tax Administration to the extent it is favorable to the interests of the inquiring party. In such respect, the tax obligations whose filing or payment term expired after the inquiry was responded and prior to the general publication or individual communication of a change in criterion, shall not be determined by applying a criterion contrary to the one set forth in the original decision, provided the latter is more favorable for the inquiring party than the new one.
5. Inquiries made based on inaccurate circumstances, background and data provided by the inquiring party shall be deemed non-binding. The binding effect shall also cease in the event of a change in such circumstances, background and data or an amendment to the applicable legislation.
6. The Tax Administration shall respond within...days. The effect of the response covers the case subject to inquiry and does not affect the taxable events occurring after the criterion that the Tax Administration adopts the contrary. Additionally, said effect is also extensive to other liable parties and the inquiring party proper regarding the tax obligations defined in item 4 of this article as well as the tax obligations prior to the inquiry on which no criterion to the contrary apply upon expiry of the term to file or pay said obligations and provided there is material coincidence in the events and circumstances underlying the query and that the same regulations apply. In such cases, the effect on the taxable events occurring after the publication of a change in administrative criterion shall cease.
7. Presenting an inquiry shall not suspend the duty of fulfilling the relevant tax obligations.
8. The decision issued in response to an inquiry shall not be subject to remedies or an administrative contentious procedure.

COMMENTS:

1. Stakeholders are authorized to enter inquiries concerning the tax treatment applicable to their own specific circumstances. Although certain laws require that the term to file and pay the tax obligation subject to inquiry be not expired, the Model adopted a broader criterion, which enables inquiries on past situations, referred to obligations that were already originated, assessed and paid.
2. The article defines restrictions to the possibility of making inquiries if a response was given on the same matter, or it was

or is presently subject to an examination proceeding, provided the matter under discussion is or has been substantially the same.

3. It also enables collective entities that represent specific groups of liable parties to present inquiries, regarding matters common to their members.
4. As to the effects of the inquiry, this article legally bans the Tax Administration from acting against its own decisions, by which the response to the inquiry is deemed generally binding for the Tax Administration, to the extent the criterion protects the interests of the inquiring party. Otherwise, nothing would prevent the change of criterion in the automatic assessment stage. Therefore, when the conditions set forth in this article apply, any change in criterion following the decision addressing the inquiry, whether communicated in general or individually to the inquiring party, shall be effective only with respect to the taxable events whose filing or payment terms have not expired. In other words, in any automatic assessment procedure the criterion applicable is the one stemming from the decision of the original inquiry, to the extent the generating event has been verified while said decision remained unaltered by a conclusive change in the administration criterion. Such effect also applies in past situations of the inquiring party, to the extent they are equivalent and no criterion to the contrary exists upon expiry of the voluntary filing and payment terms. The same effect is deemed applicable in the case of no response by the administration, when it is not provided within the time frame established by Law, which the Model decides not to adopt and leaves it to the discretion of member countries.
5. Furthermore, the inherent nature of the inquiry procedure precludes the requirement to present evidence. That is to say, the events, background and circumstances presented remain under the exclusive liability of the inquiring party. Therefore, if such information is proven false upon Tax Administration examination and investigation proceedings, on the grounds they always were or because they were modified in time, the binding effect ceases, to the extent inaccuracies are sufficiently relevant to imply a different criterion on its own. The same applies in the case of an amendment to a law that requires a different legal criterion for the situations affected by said amendment.
6. The specific effects of the inquiry procedure are not exclusive for the inquiring party. In compliance with the principle of equality in the enforcement of the law, the Model establishes that the binding effect for the Tax Administration not only applies to the inquiring party and the events and circumstances subject to inquiry, but also to the inquiring party and the previous events and circumstances thereof, as well as other liable parties. The condition for the operation of this effect is the material coincidence in the relevant legal aspects according to the matter under discussion, of the events and circumstances compared with those set forth in the inquiry. Consequently, the binding effect is also applicable in future situations of any other liable party in substantially equal conditions, and for past situations to the extent there is no prior criterion to the contrary at the time it was filed or paid. This implies that the response to an inquiry has consequences over past situations, which shall not be subject to a subsequent audit following a criterion contrary to that of the response to

an inquiry. Otherwise, a subsequent change of criterion would only affect events occurring after said change. This effect shall not apply in the situation in which said past events occurred, generating tax obligations and filing and payment duties, when a criterion exists that is contrary to the one set forth in an inquiry proceeding.

7. Since the binding effect applies only for the Tax Administration, the Model bans the inquiring party from appealing the decision on the inquiry, whether by administrative or court proceedings. That is to say, the Model does not admit the right of the inquiring party to subject the administrative criterion to review other than its enforcement in an assessment procedure, in order to avoid excessive litigation. Therefore, the entity is considered applicable only to enable the inquiring party to know the administrative criterion, protecting the party only when the criterion is favorable and said party acts accordingly.

Section 7. Mutual Administrative Assistance in Tax Matters.

Article 101. Forms of Mutual Administrative Assistance in Tax Matters.

1. The Tax Administration, in the framework of International Tax Law Conventions, shall require or request:
   a) automatic or spontaneous information exchanges;
   b) simultaneous audits with the presence of the administration officials in another signatory country in agreement with Article 107;
   c) assistance in collection of the tax debt; and,
   d) as many processes or initiatives as admitted or set forth in said Conventions.
2. Processes and procedures carried out in furtherance of mutual administrative assistance in tax matters shall be governed by the definitions in the applicable Convention and the provisions in this Code, to the extent deemed supplemental and not conflicting with the Convention.
3. The assistance processes shall not depend on the tax relevance of the party subject to said processes to the requested Tax Administration, sufficing such relevance exists for the requesting Tax Administration.
4. To the extent relevant, such forms of assistance are also applicable to domestic administrative cooperation between the Tax Administration and other tax administrations of the country and other Government offices, in particular in the cases defined in articles 104 and 105 in this Code.

COMMENTS:

1. The article includes modern forms of mutual administrative assistance in tax matters.
2. It clarifies that the basis for mutual administrative assistance may be the different International Tax Law Conventions. Therefore, when a Convention is in place (understood herein as an International Treaty according to their definition in the Vienna Convention on the Law of Treaties) by virtue of the principle of priority of international treaties, their rules shall prevail and the rules in this Code applied to the extent deemed supplemental and not conflicting therewith.
3. It introduces the principle that information exchanges are not dependent on the inherent tax interest of the requested Tax Administration.
4. Although the forms defined above have been gathered in international instruments like the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010 to enable accession of non-member countries of

the Council of Europe or the OECD, this section is applicable mutatis mutandi to domestic administrative cooperation with other tax administrations of the country and institutions like Customs, Social Security, Attorney General's Office or Tax Enforcement Police. This institutional exchange framework is understood without detriment to the obligation of every national government entity to deliver information to the Tax Administration in the specific case the latter requests it (refer to Article 114).

5. The domestic administrative cooperation expressly defined in this Model is based on the will of the working group to promote and develop it in the same way as the mutual administrative assistance in tax matters defined in International Tax Law Conventions.

Article 102. National and International Agreements among Institutions.

1. The Tax Administration shall enter into International Agreements among Institutions for the implementation of International Tax Law Conventions that set forth mutual administrative assistance in tax matters, within the term set forth thereby.
2. To the extent applicable, the Tax Administration shall enter into National Agreements among Institutions with other tax administrations of the country and other Government offices with a view to defining the scope of domestic administrative cooperation.

COMMENTS:

1. This notion enables the Tax Administration to enter International Agreements among Institutions (or Memorandum of Understanding) with foreign tax administrations in order to implement in further detail certain procedures to facilitate the enforcement of International Tax Law Conventions that provide for mutual administrative assistance in tax matters previously ratified according to the system of sources of Law in each country.
2. National Agreements among Institutions that govern domestic administrative cooperation, subscribed between the Tax Administration and other tax administrations of the country and other Government offices, shall be subject to the legal and constitutional framework in effect.

Article 103. Confidentiality of tax information.

1. The information that foreign tax administrations or other tax administrations of the country and other Government offices facilitate to the Tax Administration shall be confidential according to the terms defined in this Code, unless otherwise set forth in the International Tax Law Conventions or in National Agreements among Institutions.
2. The data, reports, or background obtained by the Tax Administration in the performance of their functions shall be delivered or communicated to foreign tax administrations or other tax administrations of the country, when said delivery seeks to collaborate therewith to achieve voluntary compliance with tax obligations in the sphere of their competencies and in the framework of International Tax Law Conventions or National Agreements among Institutions.

COMMENTS:

The information delivered to the Tax Administration may or may not be confidential, according to the provisions in International Tax Law Conventions or in National Agreements among Institutions.

According to the confidential nature of the tax relevant information obtained by the Tax Administration, the article defines that

the purpose of delivering said information to foreign tax administrations or other tax administrations in the country shall be compliance with tax obligations.

Article 104. Exchange of tax information upon request.
When, in the framework of mutual administrative assistance in tax matters set forth in an International Tax Law Convention, a foreign tax administration requests information from the Tax Administration and the latter lacks said information, the necessary processes shall be carried out to obtain it, even when the information requested is not necessary to assess taxes under its authority. The same shall apply when, in the framework of domestic administrative cooperation defined in a National Agreement among Institutions, the requesting party is another Tax Administration of the country.

For the purpose of the foregoing paragraph, the Tax Administration shall apply the powers and mechanisms defined in this Code to obtain the information.

COMMENTS:
1. The article defines exchange of information upon request-also called "rogatory" or "prior request"- set forth in International Tax Law Conventions. It applies when the competent authorities of a foreign Tax Administration approach the administration of another State to request data on a specific liable party subject to examination or investigation. They normally apply in the context of audit procedures within the requesting State.
2. This form of assistance is extensive to information exchange requests made by other Tax Administrations in the country, in the framework of domestic administrative cooperation defined in National Agreements among Institutions.

Article 105. Automatic and spontaneous information exchange.
1. International Agreements among Institutions defined in item 1 of Article 102 shall be aimed at procedures by which the Tax Administration shall automatically exchange information on specific categories of cases, income, payments or taxpayers, within the terms defined by International Tax Law Conventions. Furthermore, they shall be aimed at spontaneous information exchange procedures, in the circumstances foreseen by International Tax Law Conventions.
2. The Tax Administration shall exchange information automatically and spontaneously with other tax administrations of the country, in compliance with the procedures defined in National Agreements among Institutions in item 2 of Article 102.

COMMENTS:
1. This article clearly sets forth that the International Agreements among Institutions in effect referred to in Article 102 shall define the procedures for automatic and spontaneous information exchange. The first type of exchange is carried out "massively", normally based on a preliminary plan that shall be agreed with the competent authorities of the States. In general, the exchanges involve data in relation to passive income earned such as dividends, interest, royalties and pensions. Upon standardizing formats, it becomes a highly effective anti-fraud mechanism. Spontaneous exchange is more selective, and occurs when the authorities of a State consider that a liable party under investigation could be committing tax fraud in the other State with which an International Tax Law Convention is in effect.
2. Automatic and spontaneous information exchange is made extensive to the

domestic sphere, in the framework of domestic administrative cooperation between the Tax Administration and other tax administrations of the country.

Article 106. Simultaneous audits.

1. In the framework and pursuant to the provisions of International Tax Law Conventions or National Agreements among Institutions, simultaneous audits shall be carried out:

a) With another State or other States, and every Tax Administration shall operate in its sovereign territory, in the terms defined in a Convention.

b) With another Tax Administration or other tax administrations of the country, in the terms defined in a National Agreement among Institutions.

2. The Tax Administration shall participate jointly with the authorities of other States or officials of the other tax administrations of the country, in the simultaneous audits carried out, in agreement with the International Tax Law Conventions or National Agreements among Institutions.

COMMENTS:

1. Article 8 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (as amended in 2010 to enable accession of non-member countries of the Council of Europe or the OECD) defines the possibility of simultaneous audits. Every stakeholder shall decide whether to participate or not in a simultaneous audit. The article defines a simultaneous audit as an agreement between two or more Parties to examine simultaneously in their own territory, the tax status of an individual or individuals with a common or related interest, in order to exchange any relevant information. Internationally, it is even possible to consider a Model Agreement and Guidelines to carry out simultaneous audits. Except for the notions in relation to territorial sovereignty and other notions of procedure, a significant portion of this material is applicable to the simultaneous audits organized domestically.
2. Simultaneous audits contribute in discovering abuse of laws and procedures that facilitate international evasion. Likewise, they guarantee high levels of efficacy regarding information exchanges among tax jurisdictions and enable a general review of all relevant business activities. They also reduce taxpayer compliance burden upon coordinating the inquiries of the authorities from different States and avoid duplication of efforts. Finally, they contribute in avoiding double taxation, rendering Double Taxation Agreements unnecessary. In order to improve coordination of simultaneous audits, officials from one Tax Administration may participate in the auditing groups of the other/others. This is defined in item 2.
3. The entity of simultaneous audits is extended to the domestic sphere, in the framework of domestic administrative cooperation between the Tax Administration and other tax administrations of the country.

Article 107. Participation of officials from other Countries.

Under the scope of mutual administrative assistance in tax matters set forth in International Tax Law Conventions, the bodies of a foreign Tax Administration shall carry out audits upon request of the competent authorities of other States. Officers from other States shall participate in said audits, prior authorization from the authority of jurisdiction of both States.

COMMENTS:

The article establishes the possibility that officials from other States participate in the audits, under the scope of international conventions. In line with international

standards, the Model excludes the possibility that officials from the other country directly perform audits.

Article 108. Validity of information provided by foreign tax administrations.

The evidence or information delivered by other States or international or supranational entities in the framework of mutual administrative assistance in tax matters shall be incorporated with the relevant evidentiary value as defined in the rules of evidence in Article 88 of this Code.

COMMENTS:

According to this article, the evidence obtained from mutual administrative assistance in tax matters shall have the same values as any other type of evidence.

Article 109. International assistance in serving notices.

1. The Tax Administration, by virtue of the provisions in an International Tax Law Convention, shall request from the competent authority of another State the notifications regarding any tax-enforcement effort or penalties relative thereto.
2. The notices served in a State by virtue of the foregoing provision shall be determined by the communication of the notice in agreement with the specific regulations of the State of the authority serving it and shall generate, according to said communication, the same effects as if they had been carried out pursuant to the provisions in this Code.
3. When the Tax Administration receives a request to serve notices of documents from the authority of jurisdiction of the other State in the framework of mutual administrative assistance in tax matters, the system to serve notices defined in this Code shall apply.
4. Unless otherwise defined in the Convention, documents shall be notified in the language in which they are received.

COMMENTS:

The article establishes that the notices of proceedings by other countries shall be carried out according to the regulations of the country that effectively notifies, but their effects shall be the same as those applicable had they been carried out according to the regulations defined in this Model.

Article 110. Collection assistance.

1. The Tax Administration, by virtue of the provisions in International Tax Law Conventions, shall provide assistance in collection of tax debts of relevance for foreign tax administrations, pursuant to the voluntary or enforced collection mechanisms defined in this Code, and to the extent the respective Conventions do not provide otherwise.

   To the effects of the enforced collection procedure, the instrument of the requesting State enabling to carry out collection processes by the Tax Administration shall be considered for the collection order, as set forth in the applicable Convention.

   In enforced collection of a debt, as defined in this Code, the Tax Administration shall assist in collection according to the legislation governing the enforcement and collection of their own taxes. Any difference in foreign regulations with the ones defined in this Code shall not warrant nullity or invalidity of the collection process.
2. The Tax Administration, by virtue of the provisions in National Agreements among Institutions, shall also provide assistance in collection of the tax debts relevant to other tax administrations of the country, pursuant to the National Agreements among Institutions that define domestic administrative cooperation. The Tax

Administration shall be also authorized to request collection assistance from the other tax administrations of the country.

3. The Tax Administration shall request assistance from foreign tax administrations to collect their own tax debts or those of other tax administrations of the country.

COMMENTS:

1. The article defines the obligation of the Tax Administration to fulfill any assistance request to collect tax debts from foreign tax administrations, to the extent an International Tax Law Convention provides for said type of assistance.
2. It sets forth that collection assistance processes include voluntary compliance mechanisms, that is to say, the efforts prior to the enforced collection stage, which shall depend on the provisions of the International Tax Law Convention.
3. It is worth clarifying that a request shall be made for the debt to be collected according to the rules of the country effectively collecting, and the differences in foreign legislation shall not affect the validity of the collection process.
4. The entity of collection assistance is extended to the domestic context, in the framework of domestic administrative cooperation among the Tax Administration and other tax administrations of the country.
5. The article defines the possibility to request international collection assistance, not only for the tax debts of the requesting Tax Administration but also for those of other tax administrations of the country, to the extent an International Tax Law Convention provides for said type of assistance.

Section 8. Cooperation in tax enforcement.
Article 111. Cooperation.

1. Stakeholders shall cooperate in tax enforcement proceedings, by virtue of National Agreements among Institutions among the Tax Administration and other Government offices of the country, with other private institutions or entities or organizations representing social, labor, business or professional sectors or interests, among others, in the following areas:
   a) Simplification of compliance with tax obligations.
   b) Assistance in self-assessments, statements and communications.
   c) Filing any documentation relevant for tax purposes.
   d) Information campaigns.
   e) Request and obtain tax certificates.
   f) Studies or reports on the development and application of general provisions.
2. Cooperation efforts shall be carried out by employing electronic and information technologies and media in line with the conditions and requirements established.

COMMENTS:

1. The article deems it appropriate to include a specific article on cooperation efforts for tax enforcement, which is presently of utmost importance.
2. The article includes a non-conclusive list of the scope of cooperation areas and allows each country to define, according to their laws, the terms and conditions by which it shall be carried out.
3. It suggests specific areas, for example, simplification of compliance with tax obligations based on Agreements that provide for cooperation of different social groups in filing statements through representatives, and such statements are grouped and filed by third-party advisors or agents; adoption of measures to facilitate the use of different payment means (Internet, credit card, direct debit), online transmission of data to other Government administrations of the country to avoid the use of printed certificates as well as taxpayers visits

to the offices of the Tax Administration. Cooperation is made extensive to preparing general provisions, enabling the development of balanced provisions that do not promote excessive litigation.

4. Cooperation by the stakeholders (private entities, institutions or organizations representing social, labor, business or professional sectors or interests, the other tax administrations of the country) is implemented through National Agreements among Institutions with the tax administrations. In the last item, the article defines the use of new technologies for this purpose.

Article 112. Agreements with cooperating entities.

The Head of the Tax Administration is authorized to enter into agreements with public and private entities as deemed appropriate, to assist in direct collection proceedings, receive and process documents and transfer data, and to establish compensation for the performance of such services, ensuring that tax secrecy is strictly safeguarded in every case.

COMMENTS:

This article provides for the authority to contract collection services and for services to capture and process data, which grant the Tax Administration the possibility of overcoming internal operating limitations expeditious and efficiently.

Section 9. Duty of cooperation and reporting.

Article 113. General provisions.

1. The liable parties, whether subject to taxation or not, shall assume the following obligations, among others:
   a) Register in the Tax Administration registries, to which they shall report the necessary data and timely notify of any changes thereto.
   b) File tax statements, communications and self-assessments.
   c) Keep and maintain accounting books and tax records, as defined by the regulations in effect.
   d) Verify the electronic mailbox assigned by the Tax Administration according to the assumptions and forms established by applicable regulations.
   e) Substantiate the transactions of disposal or conveyance of goods and delivery of services, by issuing legal receipts.
   f) Report the information established as general information or by means of individual requirements in the manner and terms determined.
   g) Assist the Tax Administration and deliver the appropriate collaboration in their functions.
2. By general decision, the Tax Administration shall authorize for certain groups or categories of liable parties simplified compliance procedures in carrying, recording and maintaining accounting records as established by tax rules when said compliance is deemed excessively burdensome and taxation is not adversely affected.

COMMENTS:

1. Given the didactic purpose of the Model, it has been deemed appropriate to include this notion under this Title, since it includes an extensive list of the obligations of liable parties, in contrast to the rights established in Title II.
2. The last paragraph defines the possibility of simplifying specific obligations for certain groups of liable parties.

Article 114. Third-party reporting duty.

1. Liable parties, individuals or corporations and economic units or collective entities, under Private or Public Law, shall cooperate with the Tax Administration in its auditing efforts, and facilitate all types of

data, reports or background information relevant for tax purposes, inferred from their economic, professional or financial relations with other persons, as may be required by said administration.

According to the foregoing, and specifically:

a) Withholding and collection agents and parties who are required to make tax payments shall file a report of the amounts paid to other parties on account of labor, capital, and business or professional activities.
b) Corporations, associations, professional associations or other entities that, among other functions, collect on behalf of their partners, members or, associates, professional fees or other amounts derived from intellectual or industrial property rights or copyrights, shall carry records of such income and report them to the Tax Administration. Individuals or entities, including banking, credit or financial institutions at large, which by law, or statute or regularly participate in the procedures or efforts to collect professional fees or commissions, as a result of activities of securing, placing, assigning or brokering in capital markets shall be subject to the same obligation.
c) Individuals or entities that act as depositories of cash or accounts, securities or other assets of debtors of the Tax Administration that are subject to a tax enforcement process shall be required to report to the enforcement offices and agents and fulfill the requirements made by them by virtue of their legal functions.

2. The obligations referred to in the preceding paragraph shall be fulfilled, under a general scope, or at the specific requirement of the relevant offices of the Tax Administration, in the manner and terms defined by law.
3. The failure to comply with the obligations established herein shall not be grounded on principles of banking, securities, insurance, or pension secrecy or upon provisions such as internal regulations for the creation or operation of said institutions or of private or public entities, and compliance shall be required in the time and manner established by the Tax Administration. In this respect, financial entities shall be required to report on their transactions, operations and balance sheets, as well as different information on the transactions in their current and savings account, deposits, term certificates, loan and credit accounts, trusts, individual investments, joint portfolio investments, stock exchange transactions and other transactions, whether lending or borrowing, to the extent the information is relevant for tax purposes. The term "financial entity" shall include all the entities regulated, supervised or audited by superintendence bodies of the banking, financial, securities and pension institutions. Other non-regulated entities that carry out transactions that substantially qualify as financial transactions shall also be covered.
4. Specific requirements in relation to transactions in checking, savings or term deposit accounts, loan and credit accounts and other lending or borrowing transactions, including those reflected in temporary accounts that result in the issue of checks or other payment orders on account of the entity, Banks, Savings Funds, Credit Cooperatives, and other individuals or corporations engaged in banking or credit activities, shall be carried out prior authorization of the competent Tax Administration official. Specific requirements shall specify the identification details of checks or other payment orders involved, or the transactions under investigation, the liable parties involved and the time period covered.

   The investigation undertaken during

audits to correct the tax status, according to the procedure established in the foregoing paragraph, shall include the source and destination of the transactions involving checks or other payment orders, although in such cases, it shall not exceed the identification of the individuals or the accounts in which said source and destination have been identified.

5. The obligation of professionals to facilitate tax-related information to the Tax Administration shall not apply to private information unrelated to the financial status they may be aware of by reason of the exercise of their occupation, and the disclosure of which would damage the honor or the personal or family privacy of individuals.

   Professionals shall not invoke professional secrecy to avoid the examination of their own tax status.

COMMENTS:

1. The article sets forth the duties of private and official entities with regard to the delivery of information and background data. This article precludes any form of noncompliance based on principles of banking, securities, insurance, or pension secrecy or laws or internal regulations of the entities required to report information. Otherwise, the efforts against tax evasion would be futile, and the Tax Administration would be banned from approaching private organizations whose business is to provide commercial reports or the like, and enjoy access to information on economic and financial transactions and activities of individuals or corporations. If the specific legislation of any country provides for any other type of "secrecy", the latter shall not prevent the Tax Administration access to the information. In such respect, the article defines the information held by financial entities and its essential notion, and seeks to cover the overall sector under said definition, not only banking but also the securities, insurance or pension sectors. It suggests extending it as required according to the applicable law.
2. The article expressly protects the private information unrelated to the financial status that professionals hold about their clients, in agreement with the domestic legislation determining the professions covered by said secrecy entity.
3. Notwithstanding, it clarifies that professionals shall not invoke secrecy to avoid access to information required in examining their own tax status. This implies that the Tax Administration is entitled to know the amount paid for fees, without detriment to other data covered by the client-professional relation safeguarded by this professional secrecy limit.
4. Confidentiality of the financial information of individuals is guaranteed through the provisions defined in the Model, which establish the confidential nature of the information that is entered with the Tax Administration, as well as a system of penalties applicable to officials and entities that use it for purposes other than tax collection and audits.

Article 115. Duties in relation to cooperation in audits and collection.

1. Liable parties shall facilitate collection, audit, examination, investigation, and assessment procedures carried out by the Tax Administration as part of its functions, observing the obligations that laws, regulations, and the rules of the Tax Administration and the conventions on Mutual Administrative Assistance in Tax Matters and their implementation agreements may impose on them.
2. In particular, they shall:

a) Issue, maintain and substantiate every transaction of disposal, conveyance, and provision of goods and services,

by means of documentation issued in compliance with legal requirements.

b) Carry accounting books and tax records in relation to the activities and transactions relevant for tax purposes within the terms established by the Tax Administration. In order for records to have value as evidence, the transactions shall be substantiated with the documentation extended according to the foregoing item.

c) File tax statements and information as applicable.

d) Facilitate access to information on their financial status as it appears in banks and other financial institutions.

e) Carry, in an organized fashion, for a term of... years, the accounting books, special records, and all the documentation pertaining to operations and transactions that are taxable events or in connection therewith.

The data storage media used in computer systems that process information in relation to the tax base shall be kept for an equal term. The term shall be extended when the books, records and documentation serve to substantiate events that influence the assessment of tax obligations of periods subsequent to the period when they occurred. In such cases, the term shall be counted from the end of the last tax period in which said events are relevant.

f) Facilitate the activities of authorized tax officials wherever they are engaged in verification, investigation or audits.

g) Submit, disclose, and make available to Tax Administration offices or officials all the statements, reports, invoices, and all documents that substantiate operations and transactions constituting taxable events or that are connected therewith.

h) Furnish copies of all the storage media mentioned in the second paragraph of item e), and the Tax Administration shall be required to provide the applicable supplies.

Furthermore, all the information and documentation relating to computer equipment and software (or basic software) and application programs (or application software) used in the information systems in recording and accounting the transactions regarding the tax base shall be made available, whether said data processing is executed with proprietary or leased equipment, or the service is rendered by third parties.

i) Enable the use of tax auditing software and applications proprietary to the Tax Administration in its computer services or those of third parties, at times when it shall not interfere with the regular conduct of business by the taxpayer.

j) At all times, make the statements, books and accounting records, invoices and other supporting documentation of its activities available to the Tax Administration at the tax domicile or at the location where its business or professional activities take place, when they are not the same.

k) Appear in the Tax Administration offices upon a formal summons.

COMMENTS:

1. The article establishes the cooperation information in connection with Tax Administration collection and audit procedures in detail, i.e., register, maintain, and submit the supporting documentation for transactions related to taxable events, and substantiation of the accuracy of the self-assessed tax. The description comprises specific modalities to register and maintain information in computer systems and authorize the use of auditing tools of proprietary Tax Administration systems.
2. The term during which the records shall be kept, as set forth in item e) shall be longer

than the maximum term established for the running of the period of limitations, in order to ensure the availability of the records and background information required in an audit, from the first to the last year of the period that has not expired. In all cases, they shall be kept for the number of years required to meet transparency standards. The exception to said term is the documentation that substantiates events with effects that extend beyond the tax period in which they occur. For example, the documents from the acquisition of amortizable assets or those bearing the losses of a specific period. In such cases, the subsequent periods shall be affected by these events, whether due to the applicable depreciation or amortization amount, or by the application of losses from prior periods as deductible expenses. Hence, it establishes that the term to maintain information shall be counted as from the last period in which the event is relevant.

Article 116. Duties of cooperation by public sector and other officials.

1. The authorities in all the levels of the State organization, regardless of their nature, the heads or persons in charge of civil or military offices, and other territorial public entities, autonomous bodies and government-owned companies; chambers and corporations, professional associations, Mutual Social Security entities and other public entities, including Social Security management organizations and those who, in general, serve in public office, shall be required to provide to the Tax Administration the tax-relevant data and background information that the administration collects by way of general provisions or through specific requirements, and to support, collaborate, assist and protect the Tax Administration and its agents in their undertakings.

   Likewise, they shall report to the Tax Administration any tax violations they may become aware of in the course of their undertakings.
2. The same obligations apply to political parties, labor unions and business associations.
3. The Courts shall facilitate the Tax Administration, automatically or upon request of the latter, the tax-relevant information derived from court proceedings that they might hear, protecting the secrecy of the proceedings at all times.
4. The transfer of personal information, subject to automated processing, to the Tax Administration as established in the provisions of the foregoing article or by law, shall not require the consent of the relevant party.

COMMENTS:

This article provides for a similar obligation for government officials, in all branches and levels of government, and for the directors of intermediary organizations and labor unions or political associations, by which they are required to report any tax violation they may detect in their undertakings.

Article 117. Obligation to protect the secrecy of tax information.

1. Officials who participate in the different procedures relevant to the enforcement of tax provisions and the owners and employees of collaborating entities under a contract shall be bound by absolute secrecy concerning statements and information that taxpayers, responsible third parties or third parties may submit, as well as information obtained from audits. Secrecy shall not apply in cases in which the Tax Administration is required to provide data to:

a) Judicial authorities in criminal proceedings or in the enforcement of final court rulings.

b) Judicial authorities in custody of minors and legally incapable individuals as well as those with jurisdiction in alimony cases.
c) Law enforcement offices that counter tax crimes, fraud in obtaining or collecting aid or subsidies and combat fraud in the determination and collection of social security payments, as well as in obtaining and receiving the services provided by said systems, without detriment to the cooperation agreements among administrations in effect.
d) Law enforcement offices that prevent money laundering, financial crimes and terrorism financing.
e) Electoral authorities.
f) All other institutions involved in the administration of taxes, provided the information is strictly related to the audit and collection of taxes in their respective jurisdiction and without detriment to the effective cooperation agreements among administrations.
g) The Comptroller's Office or Government Accountability Office in their control of the functions of the Tax Administration.
h) Congressional investigative committees.
i) The tax administrations of other countries in agreement with mutual administrative assistance in tax matters as defined in International Tax Law Conventions.

2. Secrecy shall be waived over the information on final tax credits of the liable parties that remain outstanding, are not secured or are subject to a partial payment agreement in effect. To such purposes, a credit shall not be deemed "final" if it is still under review by the administration, regardless of the collection powers already available to the Tax Administration. Likewise, a credit shall not be deemed "final" when a Court of Law has handed down a precautionary measure that suspends collection. The liable parties, who disagree with the disclosure of their information, shall conduct the clarification procedure that the Tax Administration determines by general rules, enabling them to provide the evidence required in substantiating their right. The Tax Administration shall decide on the proceeding within a term not exceeding... days and, should the decision be favorable to the petitioner, the Tax Administration shall remove the information disclosed, as applicable.
3. The duty of secrecy shall not impair the duty to publish administrative decisions, but the names of the parties involved shall be omitted.
4. The authorities or officials who may be aware of the statements, data and information shall be bound to the strictest and utmost secrecy in respect thereof, except for the foregoing exceptions. Regardless of the criminal or civil liabilities incurred, noncompliance with this specific duty of secrecy shall constitute a gross breach of discipline.

   In the event the Tax Administration detects a potential crime, it shall file a report with the Attorney General's Office, regarding the circumstance of the events deemed material to the crime. The administration shall also initiate court proceedings directly.
5. Withholding and collection agents and parties liable for payments on account shall only use statements, data and reports referred to other liable parties in order to fulfill correctly and effectively their obligation to withhold, collect and enter the final payment or the payment on account, or provide the information to the Tax Administration. Said data shall be communicated to the Tax Administration in the cases set forth in the specific tax law.

   The data, statements and reports are confidential. Withholding or collection agents and parties liable for payments on account shall be subject to the strictest and utmost secrecy in such respect.
6. In every case, the liable party to

whom the information refers shall give his consent to share or disclose said information.

COMMENTS:

1. The Model does not admit the enforceability of different forms of secrecy defined in other branches of law such as trade, banking and professional secrecy. Notwithstanding, it guarantees that the information that the Tax Administration obtains in the exercise of its powers shall be used solely for tax purposes and adopts the strictest tax confidentiality or secrecy to such end. It establishes a list of specific assumptions that enable the Tax Administration to disclose information. This specific list shall be determined by every country. Hence, the list included herein is non-conclusive and every country shall adapt it to their circumstances. The information shall always pursue the protection of a higher legal right and prevent its dissemination beyond the extent required in meeting the needs of the relevant entities.
2. Congressional investigative committees deserve a special comment, since access to information shall be strictly relevant to the matter under investigation.
3. The article also excludes from the scope of secrecy the publication of the names of debtors, with due caution not to interfere with the right to self-defense at the administrative and even judicial levels. Thus, should the tax credit, although enforceable, remain under administrative review, or if the party obtained a precautionary measure from a Court against collection, the debt shall not be published as outstanding. The same shall apply for payment agreements, partial payments, or secured credits. Although deemed a source of controversy, it has been included for those who undertake any commercial transaction, exercising their right to access information, to rely on elements to distinguish compliant and non-compliant taxpayers.
4. On the other hand, in agreement with the provisions in Article 99, secrecy shall not prevent the publication of the decisions of the administration, provided the names of the parties are not disclosed.
5. The definition of the duty of secrecy for all Tax Administration officials is also worth underscoring, and the violation thereof constitutes a gross disciplinary breach and even a crime. Countries are advised to verify whether the disclosure of data protected by secrecy laws has been criminalized in order to avoid a loophole in this regard.
6. The duty of secrecy is generally extended to the parties accessing the information protected thereby in the capacity of liable parties collaborating in collection, including the exceptional cases. This is deemed necessary to define clearly, for example, that withholding agents shall be bound by secrecy with respect to the information of the parties from whom they withhold income.

   Furthermore, in exceptional cases, access to information shall serve specific purposes, by which the party holding the information shall be banned from using or providing it in cases other than those originating the facilitation thereof, which are mainly limited to the duty to report or make payments to the Tax Administration itself.
7. Finally, it enables the liable party to whom the information refers to authorize the disclosure or transfer to specific institutions.

Section 10. Reporting.

Article 118. Reporting.

1. Reports are deemed independent from the duty of cooperation with the Tax

Administration pursuant to the provisions of this Code, and shall be made by individuals or corporations with tax capacity to act, in relation to events or situations of which they are aware and are deemed to constitute tax crimes or are otherwise relevant in administration procedures.

2. Upon receiving a report, it shall be conveyed to the competent agencies in order to conduct the applicable processes. Unsubstantiated reports shall be dismissed without further formalities.
3. The reporting party shall not be deemed a party or a stakeholder in the administrative process initiated as a result of the report. Furthermore, the stakeholder shall not hold a legitimate right to bring remedies or file complaints in relation to the outcomes thereof.

COMMENTS:

1. This article differentiates between filing a report, that is to say, the act of communicating to a Competent Authority the existence of potential tax crimes or omissions, from the duty to cooperate with the Tax Administration, two entities with different conceptual and legal implications. In this respect, the report shall be made by any individual or entity with tax capacity to act, that is to say, subject to tax rights and obligations.
2. Reports shall not only be filed with respect to tax crimes, but also any material event for tax administration activities. In order to avoid reports that are unsubstantiated or serve illegitimate purposes, the article provides for the legal and economic exclusion of the reporting party from the administrative process stemming from the report and the outcomes thereof.

Chapter II
Tax administration procedure.

Section 1. Reimbursement and refund procedure.

Article 119. Right to reimbursement and refund.

1. Liable parties are entitled to claim the reimbursement of amounts incorrectly paid as taxes, penalties and interest, as well as payments on account and other payments due by virtue of the substantive regulations of the different taxes that generate a credit balance, even when at the time of payment they held no objection regarding said payment.
2. In the event the liable parties hold obligations, they shall also request the refund of credit balances claimed by the Tax Administration that exceed the offsetting amount established in Article 64 of this Code.
3. The erroneous payments of amounts due that originate the right of reimbursement shall accrue interest at a rate equal to the one established in Article 61 of this Code, after... days from the date of their request, except in the following cases: a) a reimbursement of a payment due that carries an automatic reimbursement term, in which case, interest shall be calculated from the date said term starts running; b) an erroneous payment that the Tax Administrations requires, induces or enforces, in which case, interest shall be calculated from the date of payment entry. For payments due, liable parties shall not request their reimbursement until the terms to file the self-assessment that originates the credit balance expire.

COMMENTS:

1. The article establishes the right to reimbursement and refund of amounts erroneously or duly paid by virtue of the substantive regulations of specific taxes.

In such regard, the difference between an erroneous and a due payment is that the former constitutes an excessive payment with respect to the payment applicable defined in the tax regulations in effect. It is an erroneous, incorrect payment. On the other hand, the payment due arises from the inherent mechanism in certain taxes, it constitutes a divergence between the amounts due and the amounts paid for ancillary obligations (such as withholdings) and the amounts payable for principal tax obligations. Hence, it originates a credit balance for the taxpayer.

2. The rule establishes a compensation system that benefits taxpayers and responsible third parties with interest amounting to the interest claimed for late payments. Notwithstanding, a distinction is made between the erroneous payments made that the Tax Administration induces or enforces through assessment and collection procedures, and those that have not been made under such circumstances. In the first case, they are entitled to interest from the moment the payment was made. In the second case, they shall be entitled to interest only from the time the request for refund is submitted and the Tax Administration fails to decide within a specific term. The article also establishes the exception of the obligation to make automatic reimbursements within a specific term, according to the modern trend in taxes such as income tax. In such case, interest is calculated from the moment said term starts to lapse.
3. For payments due, liable parties shall not request advance reimbursement in order to secure interest; rather, they shall wait until the terms to file the self-assessment of the principal tax obligations expire, since the credit balance in favor of the liable party arises thereafter.

Article 120. Reimbursement procedure for erroneous payments in favor of taxpayers.

1. The procedure to recognize the right to reimbursement of erroneous payments shall be initiated automatically or upon request of the stakeholder, in the following cases:

a) In the event of duplicated payments of tax debts or penalties.
b) When the amount paid exceeded the amount due as determined by the administration or a self-assessment.
c) When amounts for tax debts or penalties are entered after the terms for limitations elapsed.
d) By requirement in tax regulations.

2. When the stakeholder initiates the procedure, he shall file a request that sets forth in detail all the facts and fundamentals to substantiate the relevant circumstances, supported with the pertinent documents and evidence. According to regulations, the procedure defined herein shall be conducted, but the final decision, which may be automatically generated, shall be notified with a term of... months from the date of request, unless new documentation was required from the petitioner, in which case the calculation of the term is suspended. Should no decision be issued within the term set forth, the proceeding that was initiated automatically shall expire, without detriment to the possibility of resuming it. Initiation of proceedings upon request of the party shall be deemed denied in order to admit the applicable remedies, including contentious-administrative proceedings.
3. When the right to reimbursement was admitted on the grounds of the procedure defined in item 1 of this article or by virtue of an administrative decision or in agreement with compliance procedures or a final agreement, or by an administrative or court decision, the

reimbursement shall be made effective in the terms established by law and without detriment to prior offsetting as defined in Article 64 of this Code.

4. When a liable party considers that a self-assessment originated an erroneous payment and seeks reimbursement, he shall request the correction of the self-assessment pursuant to the provisions in item 3 of Article 124 of this Code. Once the correction is authorized, the reimbursement shall be made in the terms established by law and without detriment to the offsetting procedure defined in Article 64 of this Code.
5. The foregoing provisions shall not impair the Tax Administration from exercising its examination powers and enforcing the provisions in item 3 of Article 121, as applicable.

COMMENTS:

1. Reimbursements have always spurred certain degree of suspicion in the tax administrations, but frequently, due to the lack of clarity regarding the assumptions that warrant a reimbursement. In such respect, a reimbursement procedure shall be always carried out based on circumstances that are easy to confirm, or administrative or court decisions under which the existence or nonexistence of an erroneous payment was confirmed, which frequently implies in-depth factual and legal analyses.
2. The article sets forth the reimbursement procedure for erroneous payments, with an accurate enumeration of the assumptions underlying the reimbursement procedure. Firstly, it defines a series of circumstances typical in erroneous payments, such as duplicate payments, which simply entails paying in excess of the amounts resulting from self-assessments or assessments by the Tax Administration, or the payment of an expired debt. In such case, the Model sets forth a procedure that may be initiated automatically -a feature of a modern Tax Administration- or upon request. In the latter case, the stakeholder shall prove the occurrence of one of the circumstances enumerated in item 1.
3. Furthermore, it recognizes rights to reimbursement stemming from an administrative decision (for example, a decision that states the invalidity of an automatic assessment) or to a compliance procedure accepted by the liable party that determines the amount to be reimbursed or, otherwise, from a final agreement. The other hypothesis is a court decision. In all cases, the amount reimbursable is supported by a decision of the administration or a court ruling. Hence, the amount reimbursable shall be enforced, whether on the grounds of the circumstances defined in item 1 that may even be automatic, for example, in case of payment duplication, or by other decisions of the administration or court rulings.
4. Finally, the right to reimbursement may arise from the correction of a self-assessment that determines a smaller tax amount payable or a greater credit balance, in which case, the first step is to request the correction in the terms set forth in Article 124 of this Model. Upon accepting said correction, the stakeholder shall be entitled to reimbursement arising from an administrative decision, which shall be enforced. Since the procedure by which the administration accepts the correction to a reimbursement lacks the features of an examination procedure, it is worth clarifying that, in spite of accepting the correction, the Tax Administration shall always be entitled to initiate a procedure of this kind, even if it is contrary to the decision that accepted the correction.

Article 121. Reimbursement procedure for due payments

1. The Tax Administration shall reimburse the amounts applicable in agreement with the specific tax regulations. Therefore, on the assumption that a liable party files a self-assessment and a reimbursable amount arises for due payments, said reimbursement shall be made within a term not exceeding...days. If the self-assessment is filed after the applicable term, said term shall lapse as from the date on which the self-assessment is filed.
2. When the Tax Administration fails to carry out the automatic reimbursement established by a specific tax regulation or when the liable parties are not required to file the self-assessment, the reimbursement procedure shall be initiated upon request of the liable party. In such cases, the term for reimbursement defined in the foregoing item shall be counted from the date on which the request was filed. Subsequently, it shall be deemed denied for the purpose of bringing the applicable remedies, including contentious-administrative proceedings. Interest in favor of the petitioner shall be calculated upon expiry of the term to hand down a decision, unless it entails the failure to make an automatic reimbursement within the term defined in the foregoing item. Consequently, interest shall be calculated once said term has expired.
3. The Tax Administration shall suspend the reimbursement procedure to initiate a formal or summary examination or audit. Once the latter proceeding is completed and the amount reimbursable remains unaltered, the reimbursement procedure shall be resumed and the administrative decision shall be issued. In every case, the suspension term shall not interrupt the calculation of interest in favor of the petitioner.

COMMENTS:

1. The credit balances that, in agreement with the mechanisms of certain taxes, arise from due payments, shall normally originate from the self-assessments of liable parties.
2. The rationale that it shall be the basis for modern tax regulations and respectful of taxpayer right to reimbursement, is that the Tax Administration reimburses the amount automatically within a specific term. This article has set forth said principle. It shall not prevent the Tax Administration, at its own discretion, from deciding on the verification of data already in their records, conducting a limited or summary examination or even an audit, which shall result in a preliminary or final assessment that may eliminate the existence of a reimbursable amount. Upon making this decision, the reimbursement procedure shall be suspended until the outcome of any of the foregoing proceedings is available. Only on the assumption the credit balance remains applicable, the reimbursement procedure shall be resumed to agree upon and enforce the decision. The former shall apply without interrupting the calculation of interest in favor of the liable party.
3. The article also provides for the hypothesis that the Tax Administration fails to fulfill its duty to make automatic reimbursements and based on the regulation of a specific tax, the self-assessment obligation is not defined. In such case, the reimbursement procedure shall be initiated upon request of the stakeholder, and the term to decide shall be counted as from the date of the request. Should the term not be fulfilled, the petitioner shall be entitled to bring remedies, without detriment to interest accruing in his favor after the expiry of the term to decide. An exception is made on the assumption of noncompliance by the

Tax Administration of its obligation to automatically make reimbursements, to the extent this new term does not impair the generation of interest in favor of the liable party, which shall be calculated after the expiry of the term to make automatic reimbursements.

4. Finally, it is worth pointing out that the suspension of data verification processes, limited or summary examinations or audits also applies in the procedure requested by the party.

Article 122. Reimbursement of withheld or collected taxes.

When a reimbursement procedure entails specific and final taxes erroneously withheld or collected by the withholding or collection agents, it shall be carried out by the respective withholding or collection agents or by the taxpayer, according to the following rules:

a) When the withholding or collection agents carry out the procedure, they shall submit a list of taxpayers to whom, if applicable, the payments of the amounts claimed shall be made, unless said agents formally substantiate the authorization to collect extended by said taxpayers.
b) When the taxpayer carries out the procedure, he shall formally substantiate that the respective agent carried out the withholding or collection. In such case, the Tax Administration shall only verify whether said agent entered the amounts withheld or collected in the administration within the term defined.
c) Regulations shall also provide for assumptions that allow offsetting against obligations for withholdings assessed in the future.

COMMENTS:

1. This article incorporates the withholding or collection agents into the reimbursement system, provided said agents submit the list of taxpayers to whom, if applicable, the payments shall be made and that the taxpayer (upon enforcing this right) substantiates that the withholding or collection was effectively made. The fact that any of the two parties may request the reimbursement helps avoid the issues that exist in the system implemented in certain countries, which grants the agent the right to request the reimbursement prior to or simultaneously with taxpayer reimbursement. This system, which the Model avoids, sets forth the problem that in case of discrepancy as to whether the withholding or collection was erroneous or not, the taxpayer would be helpless, since the agent shall neither request nor make the reimbursement effective.
2. Additionally, since the principle of legality in tax matters prevents the Tax Administration from withholding amounts that are not applicable by law, the latter shall not legitimately deny the reimbursement to the withholding or collection agent under the argument that he did not suffer a financial impact on his wealth. Furthermore, it does not require the taxpayer to substantiate the prior reimbursement before he is entitled to obtain the reimbursement.
3. Finally, it sets forth that regulations shall provide for assumptions by which the withholding agent, instead of obtaining a reimbursement, may offset the amount against future withholdings it shall apply and enter. In such cases, the withholding agent ceases to withhold or enter the amounts applicable from subsequent transactions for an amount equal to his credit balance.

Section 2. Administrative assessment procedures.

Article 123. Duty of initiative.

Upon the occurrence of the events set forth

by law that originate the tax obligation, liable parties shall fulfill said obligation on their own by way of a self-assessment when the intervention by the Tax Administration is not required. If such intervention is required, the liable party shall file the events and provide the information that the Tax Administration requires to make assessments.

COMMENTS:
The article establishes the duty of initiative of the liable parties, who shall be required to pay the tax upon self-assessment or furnish the necessary information when the applicable tax is assessed through a combined or administrative assessment. In the first case, in addition to communicating the data required in determining the tax to the Tax Administration, the liable parties shall individually conduct the classification and calculation procedures required in assessing and entering the amount due, or otherwise, determine the amount that shall be reimbursed or offset. In the second case, the Tax Administration shall perform the latter procedure.

Article 124. The right to amend tax statements.

1. Liable parties shall amend their tax statements without being subject to the fine established in Article 178 of this Code, prior to being notified of any special requirement, in connection with the tax statement subject to amendment.
2. When liable parties amend their tax statements, they shall file a new statement as appropriate in the places authorized to such end, assess, and pay the monetary penalty defined in Article 178 of this Code, if applicable, and the greater tax amount due, as well as the related charges: interest, surcharges, and monetary penalties, established for late payment.
3. In order to amend the tax statements that reduce the tax payable or increase the credit balance for the taxpayer, the latter shall submit a request to the Tax Administration setting forth in detail all the facts and fundamentals regarding the right of the stakeholder, and the documents and evidence required by regulations.
4. The amendment of statements referred to in the previous paragraphs shall not hinder the subsequent enforcement of audits or verifications, carrying out the relevant assessments of mathematical corrections or, in general, the power of reconsideration vested upon the Tax Administration.

COMMENTS:

1. The parties under the authority of the Tax Administration enjoy a practical solution to correct errors on their tax statements, in the form of an exemption from the fine for noncompliance with the obligation to file tax statements, embodied in Article 178 of the Model, provided they are not filed subsequently to any Tax Administration decision or observation. It establishes the need for prior intervention of the Tax Administration if the amendment reduces the tax payable or increases the credit balance in favor of the taxpayer, which constitutes a prior safeguard to a reimbursement, as set forth in the Comments to Article 121. It protects the power of the Tax Administration to review the accuracy of the data contained in the amended statement.
2. Notwithstanding, it is worth mentioning that another option worth considering is an alternative wording enabling to amend the statements that reduce the tax payable or increase the credit balance, which is in line with the principle of self-assessment that seeks to render the taxpayer responsible for his processes and allow the Tax Administration to focus on tax enforcement activities. Said wording shall be the one presented in

item 3 and adds item 4, as follows

"3. Amendment of tax statements shall be also used to reduce the tax payable or increase the credit balance for the liable party.

4. Notwithstanding the foregoing comments, upon initiating a proceeding to examine and assess the substantive tax obligation, any correction shall be requested within the proceeding, in order for the Tax Administration to issue a decision in such respect in the proposal for voluntary compliance or the applicable assessment decision."

Article 125. Tax Administration assessment procedure.

1. Upon filing the statement with the data required to perform an administrative assessment, the Tax Administration shall notify the determination within the terms established in the Law of every specific tax or otherwise, within a term not exceeding... months.
2. The Tax Administration shall use the data reported on the statements or other data it may hold to carry out the assessment, and require the liable party to clarify or substantiate the data presented, or otherwise, carry out examinations of the relevant amounts. In such cases, the term defined in item 1 shall run from the time the liable party fulfills the requirement or upon initiating the examination of the amounts presented.
3. Should the data or amounts that the Tax Administration considers applicable in the assessment not match the amounts filed by the liable party, the administration shall provide the latter a preliminary assessment with the facts and rights applicable, prior notification, and the liable party shall be granted a time period of... days to present his allegations.
4. Once the time period to present allegations lapses, the Tax Administration shall carry out the assessment prior to the expiry of the terms indicated in items 1 and 2. Otherwise, the procedure shall be deemed expired, without detriment to the right of the petitioner to initiate a new one within the time period of limitations.
5. The assessment shall be deemed preliminary.
6. From the time the statement is filed until the expiry of the time period to make the payment once the assessment noticed is presented, the liable party shall not be liable for interest.

COMMENTS

1. Article 123 provides for the possibility of combined assessments. Hence, this article defines a simple procedure for its application. The Tax Administration is imposed a time period to make the assessment; it shall compare the data filed against the data it holds, request clarification and substantiation from the liable party, or according to the tax, undertake examinations to determine the amounts.
2. The Tax Administration shall perform a preliminary assessment to allow the liable party the right to present allegations. The time periods are adjusted to the circumstances according to which the additional processes or requirements shall take place, since noncompliance therewith entails the expiry of the procedure, without detriment to the right of the petitioner to initiate a new one within the time period of limitations.
3. Finally, should the taxpayer file his statement within the time period in effect without prior assessment, no interest shall be charged thereto, as deemed reasonable.

Article 126. Formal or summary examination procedure.

1. When the liable party files a self-

assessment with formal errors, calculation errors, discrepancies with data from previous statements, or legal errors that stem from the statement itself, the administration shall undertake formal examinations.

2. Furthermore, the Tax Administration shall verify the accuracy of the self-assessments by way of summary examinations, understood as the ones carried out using the data and elements of proof that the Tax Administration already holds, requests from third parties or from the liable party proper. Said examination shall not comprise financial or trade accounting auditing relevant to business or professional activities or the examination of supporting invoices or documents for the transactions included in said accounting records. Examinations shall be initiated automatically according to the preliminary assessment described in item 4 herein, or as applicable, upon request of the liable party for clarification of the discrepancies detected, data or substantiation or, otherwise, by way of third-party information requests. The administration shall undertake accounting examinations upon the latter in order to confirm the information.
3. The Tax Administration, whether by making a requirement to the liable party or otherwise, shall issue the proposal for voluntary compliance referred to in Article 92 of this Code, granting the liable party a time period of ... days to present his allegations.
4. The procedure shall continue and conclude according to the definitions in Article 92 of this Code.
5. The assessment shall be deemed preliminary.

COMMENTS:

1. One of the most relevant signs of evolution in modern tax enforcement practices is the supplementation of classic intensive tax controls with extensive material tax controls, which allows coverage of a larger number of liable parties, although without the depth that an audit procedure implies.
2. On the one hand, this article addresses the most basic level of this type of extensive tax control, which enables to correct substantial errors, discrepancies on the tax statements-self-assessments of liable parties or very elementary errors of Law.
3. On the other hand, it also considers another modality of extensive material control in greater depth, which implies the use of information already held by the Tax Administration, normally obtained by way of informative third-party statements. Furthermore, it admits the possibility of requesting "new" information from the liable party or third parties. In this case, the limit shall be the examination of business or professional accounting, since that would entail a full-scale audit. This does not preclude examining records and other documents required by tax regulations and any other book, record or document deemed official.
4. The article describes the limits and steps to be undertaken in this procedure, guaranteeing the right of the liable party of self-defense and highlighting the preliminary nature of the resulting assessment. It is important to refer to Article 92 of the Model, which unifies the procedure based on the different types of examination and audit procedures.

Section 3. Registration and verification of compliance with formal duties.

Article 127. Duties and formalities for registration, assessment and delivery of information.

1. Every individual, corporation, and entities and associations without legal

personality, which on account of their activities or status are deemed potentially subject to tax obligations, shall register with the National Tax Registry or other relevant registries, and provide and maintain all the relevant information updated. They shall be required to communicate any status change that affects their tax liability, changes or closure of business, transfer or assignment of assets, transformation of corporations and other similar events, in the forms and conditions established by the Tax Administration.

2. Incorporating and communicating subsequent information to the National Tax Registry, and the tax assessments by liable parties shall be made by way of statements they shall prepare and file, in the format, time periods, and locations the Tax Administration may require. The same conditions shall apply to third parties who are required to file information regularly.

   Likewise, the Tax Administration shall incorporate and communicate the information automatically, pursuant to their examination functions.

COMMENTS:

1. This article provides for the obligation to register with the National Tax Registry or other relevant registries. It establishes the obligation in a specific provision, with the understanding that the knowledge of personal or corporate information and the activities carried out by taxpayers is essential to generate the universe of liable parties required to file tax statements and gather and compile the data furnished by taxpayers and third parties.
2. Furthermore, the article establishes the obligation to keep updated information. It defines the formalities for incorporating in the National Tax Registry and for tax assessments and delivery of information of any nature. This article provides for the general obligation to observe the requirements established by the Tax Administration, for the latter to enjoy maximum flexibility in adjusting the procedures to file tax statements to the technology available, and considering the features of the outsourced reception and processing services. The article recommends that the rules governing the incorporation in the National Tax Registry shall provide for the obligation to file a statement to inform on the opening of a business with all the data required to generate the list of taxpayer obligations.
3. The article expressly sets forth that the Tax Administration shall automatically perform subsequent incorporations and modifications.

Article 128. Verification of formal obligations.

1. The Tax Administration shall verify compliance by liable parties with formal obligations according to the following mechanisms:

a) Onsite processes in public establishments, which may result in the formal verification of noncompliance that shall warrant the enforcement of penalties.
b) Verification of data stored in the information systems of the Tax Administration, which enable to detect concealed liable parties who failed to register and non-compliant liable parties who failed to file their tax statements.

2. Upon detecting a case of noncompliance, the Tax Administration shall compel the liable party to repair it or initiate automatic processes to enforce compliance, without detriment to the enforcement of the applicable penalty.

COMMENTS:

1. This rule makes a distinction between two forms of controlling compliance with formal duties: onsite and the so-called

virtual, since it is based on information technology.

2. The first form seeks to ensure that the Tax Administration, in spite of enjoying free access to taxpayer commercial venues and establishments, shall abide by strict rules to determine their identity and other formalities in order to guarantee transparency in the procedure and safeguard taxpayer rights.
3. The second form enables to detect liable parties who have remained in the informal system. In other words, those who failed to register in the National Taxpayer Registry as appropriate, and those who are registered but failed to fulfill their filing obligations correctly. In such cases, the Tax Administration shall generally summon parties to remedy their noncompliance, or, according to the nature of the obligation they have failed to fulfill, automatically enforce the obligation (for example, automatic registration in the National Taxpayer Registry). The foregoing provisions do not preclude initiating the applicable proceedings to apply penalties.

Chapter III
Audit procedure.

Article 129. Auditing powers.

1. In order to determine that liable parties have complied with tax rules and, if relevant, assess omitted taxes, conduct an administrative investigation of tax crimes and impose applicable penalties, as well as undertake the proceedings established in International Tax Law Conventions on mutual administrative assistance in tax matters, the Tax Administration shall have the power to:

a) Require liable parties to appear in its offices to answer inquiries or identify signatures, documents or assets.

b) Require liable parties to produce in their domicile, establishments or in the offices of the Tax Administration, the accounting books and records, and documents that substantiate or refer to events related to the generation of tax obligations, as well commercial documents and correspondence of events that are likely to generate tax obligations.

Furthermore, it shall require liable parties to submit reports and analyses about events likely to generate tax obligations in the form and conditions that the Tax Administration determines, according to a minimum number of ... days.

Additionally, the Tax Administration shall also require copies of the storage media, or all the information and documentation from computer equipment and software (or basic software) and application programs (or application software) used in the information systems for recording and accounting taxation transactions, whether said data processing is executed with equipment owned or leased by the administration or the service is provided by third parties.

c) Conduct audits at the domicile of the taxpayers, responsible third parties or third parties related thereto, and review their accounting records and assets.

d) Execute or order the execution of processes to assess assets, income, proceeds, rights and capital, in general, of individuals as well as public and private entities. Such processes shall seek the valuation or determination of the reported value, by any of the methods established in the regulations in effect.

e) Conduct an inventory of any type of asset, also during transportation thereof.

f) Obtain from government officials and employees on all levels of the State organization, the reports and data they possess by virtue of their duties.

g) Take custody of documents that are subject to examination and adopt measures for their safekeeping.

2. The Tax Administration shall exercise these powers jointly, separately or successively and require the assistance of law enforcement officers to such end. Such assistance shall be granted without further formalities, and it shall carry out searches and seize assets and documents pursuant to the laws in effect.

COMMENTS:
This article establishes the auditing powers to carry out this procedure that entails a complete and in-depth examination. It seeks to assess omitted taxes and impose penalties, deeming them a set of powers applicable in the same procedure. Moreover, the principle enumerates the most common auditing procedures, including the power to obtain information concerning a liable party or a group of liable parties, or even non-liable parties. Thus, the article adopts the general expression "liable party". The article emphasizes that such powers shall constitute the basis for compliance with International Tax Law Conventions on mutual administrative assistance in tax matters.

Article 130. Development of the Audit Procedure.

1. The audit procedure shall be initiated upon notifying a document stating the initiation of processes, which shall be based on an order from a competent authority of the Tax Administration. It shall inform the overall or partial scope, listing the taxes and, if applicable, the tax periods comprised, the location where the audit shall be conducted, and the identity of the official or officials involved.
2. On the assumption the tenant responsible for the premise or office denies access to auditors, they shall request assistance from law enforcement officers in order to conduct the audit.

A court order shall be required when the audit is carried out in the place of residence of the taxpayer or responsible third party, unless the latter agrees to the procedure.

3. The processes carried out during an audit shall be documented on records that substantiate the facts and omissions that auditors identified. The facts or omissions the latter identify, unless the audited party denies them, shall be deemed evidence of said facts or omissions for the purpose of any taxes due by the audited party in the audited period, even if said purposes are not expressly stated.
4. In the course of the audit and in order to preserve accounting records, correspondence or assets that are not included in accounting records, auditors may alternatively seal or place tags on said documents, assets or furniture, filing cabinets or offices in the place where they are found, or leave them in custody of the audited party or a person designated for such procedure after performing the relevant inventory. Should any document found in the sealed furniture, filing cabinets or offices be required by the audited party to perform his activities, he shall be allowed to take it in the presence of the auditors, who shall make a copy thereof, and write a record of such procedure.
5. Audit processes shall be completed within a time period not exceeding ...months. Notwithstanding, it shall be extended for an additional... months when the following circumstances apply:

a) When the processes are particularly complex.
b) When, in the course of the processes auditors discover that the liable party concealed from the Tax Administration any of his business or professional activities.

In all circumstances, the authorization to extend the legal time period defined shall be grounded on legal facts and principles.

6. Likewise, audit processes shall not be suspended for more than... months by causes not attributable to the liable party. To such purpose, the time period shall be interrupted, among others, by the visits to the premise where the processes are carried out, the hearings at the Tax Administration offices and information requirements to the liable party and third parties.
7. On the assumption that audits are not completed within the time period defined, or are suspended for a time period exceeding the one defined above, the foregoing processes shall not toll the period of limitations. Furthermore, in the period exceeding the maximum audit time period defined in item 5, including its extension, or, during the suspension that extends beyond the time period defined in item 6, interest from the additional tax obligation eventually determined shall not accrue.
8. When the intervening officials deem they have gathered the data and evidence required to substantiate the applicable decisions, they shall draft the final report of the audit that concludes the audit processes. Should the audited party or his representative be absent at the time the final report of the audit is issued, they shall be formally summoned to attend at a specific time on the following day. Upon failure to appear, the final report shall be issued before whoever may be present at the audited premise. At that time, any of the auditors who participated in the audit and the audited party or person designated for such procedure shall sign the record and a copy shall be left for the audited party. If the audited party or the person designated for such procedure fails to appear to sign the record, or refuses to sign it, or if the audited party or person designated for such procedure refuses to accept a copy of the record, said circumstance shall be noted on the record without affecting its validity and evidentiary value.
9. Upon completing the audit processes, the officials involved shall issue a preliminary voluntary compliance proposal listing the adjustments or amendments to the self-assessment or tax statement of the audited party, or the determination deemed applicable in the event a statement was not filed. Furthermore, they shall set forth the relevant penalty, indicating the facts, evidence and legal grounds, according to a time period of... days to express total or partial agreement or present the relevant allegations. The time period to complete the processes set forth in item 5 herein, shall be deemed to lapse upon issuing said proposal.
10. In case of total or partial disagreement, the liable party shall be entitled to a final hearing in which he shall be informed of the opinion of the officials involved regarding the arguments presented, and he shall be called to comply on the assumption the total or partial voluntary compliance proposal is sustained. If the audited party is a corporation, the legal representative and the shareholders shall be called to the hearing.
11. Upon failure to appear in the hearing or upon confirming total or partial disagreement therein, the Tax Administration shall continue with the procedure defined in Article 92 of this Code.
12. Once the voluntary compliance proposal has been accepted, no modifications shall be made, except in the case of an evident mistake of fact.
13. The assessment decision shall be preliminary or final according to the definition in Article 91 of this Code.

COMMENTS:

1. This article, which is correlative to the

articles on tax audits as a means of determining taxes, seeks to align the procedure to the recent changes in tax audits.

2. This requires structuring the audit procedure according to clear rules that define functions, powers, rights and duties of the auditor and audited party and, at the same time, as a procedure aligned with the structured nature of the audit, which implies procedures, methods to secure the documentation reviewed and a final report of the audit that closes the procedure and safeguards taxpayer rights.
3. The procedure is structured according to a formal act to initiate the processes that define the scope. Subsequently, the processes shall be conducted without interruption and within the time period defined, stating the conditions to consider them exceeded. In particularly complex cases, countries are suggested to define the specific assumptions by which such condition occurs, according to the specificities of individual legislation.
4. Exceeding the time periods shall not imply the procedure expires. Contrarily, it shall have two relevant effects: a) the period of limitations shall not toll by virtue of the processes carried out before the time periods are exceeded, without detriment to the fact that resumptions repeat such interruptive effect; b) interruption of the calculation of interest borne by the audited party, which is justified by the inertia or administrative delay that promotes more interest accrual should the final obligation assessed be greater than the self-assessed obligation.
5. It also sets forth the formal process closure in the venue. Subsequently, the article sets forth a preliminary voluntary compliance proposal, by which the liable party shall be heard, whether to express agreement, make allegations and present evidence to challenge the proposal and its fundamentals. In case of disagreement, a final oral hearing shall be held, in which the officials involved shall communicate their opinion regarding allegations, admitting them totally or partially, or dismissing them. The purpose is that legal representatives attend this hearing -with power of attorney or unlimited power of attorney- not only for the specific procedure, as well as the owners of the entity, who shall be more likely to reach a reasonable agreement and forgo unnecessary litigation. Experiences in different countries have proven this an effective practice. Should the audited party remain in disagreement, the ordinary assessment procedure shall be resumed according to Article 92 of this Model.

Article 131. Precautionary measures in the audit procedure.

1. In order to preserve the documentation required under the provisions of this Code and any other element of proof relevant in the determination of the tax debt, precautionary measures shall be adopted as required to prevent their disappearance, destruction or alteration.
2. The measures adopted shall be proportionate to the end pursued. In no case shall measures be adopted that cause damage that is difficult or impossible to repair. The measures shall consist of, as applicable, safeguarding by use of a seal, storage or seizure of merchandise or products subject to taxation, as well as of files, books and documents, premises or electronic equipment to process data that may contain the relevant information.
3. The precautionary measures thus adopted shall be lifted if the

circumstances warranting their adoption cease to exist.
4. The measures referred to in Article 151 shall also be adopted.

COMMENTS:
1. This article authorizes the Tax Administration to adopt precautionary measures related to documentation and elements of proof. Methods shall consist of safeguarding by use of a seal, storage or seizure of merchandise, documents, files or premises.
2. Likewise, it enables adopting the measures inherent in the enforcement proceeding, as defined in Article 151.

Article 132. Venue for audits.
1. Audits shall be conducted in the venues that the relevant agencies determine:
a) The location the liable party reported as the tax domicile or in the domicile of the representative appointed in such capacity.
b) On the premises where the activities subject to taxation are carried out in part or in full.
c) Wherever evidence exists of the taxable event, even if said evidence is partial.
d) In public offices.
2. Tax auditors shall access the premises, places of business and other establishments or locations where the activities or enterprises are carried out in order to undertake the functions set forth Article 129 of this Code, provided they meet the requirements established in Article 130.

COMMENTS:
This principle defines the locations in which auditing procedures shall be performed, and highlights that they shall not be limited to the tax domicile. Finally, the principle refers to the requirements set forth in Article 130 of the Model, which enable auditors to carry out their duties.

Article 133. Conclusive agreement.
1. When the application of undefined legal principles is required to prepare the voluntary compliance proposal, or when the underlying facts shall be determined in order to correctly enforce the law upon the specific case, or in the event it becomes necessary to calculate estimates, appraisals or data measurements, elements or features relevant to the tax obligation not quantifiable on a certain basis, the Tax Administration, prior to assessing the tax debt, shall carry out such application, determination of said facts or estimates, appraisals or measurements by way of an agreement with the liable party within the terms defined in this article.
2. Based on such circumstances, the officials involved shall issue a notice in such respect, including instructions to the liable party to make a proposal in furtherance of an agreement, within a time period of... days to such end. If deemed appropriate, the Tax Administration shall schedule hearings aimed at analyzing the data, evidence and arguments provided by the parties, in order to reach said agreement. The audited party shall also promote the initiative, and request the agreement at any time during the audit procedure upon foreseeing a discussion on the issues defined in item 1, or request that this procedure be initiated in the first third of the time period to present arguements regarding the preliminary proposal to request this procedure. At the time the request is made, the time period for allegations shall be suspended until the efforts to pursue an agreement cease. In the circumstances defined in item 1, the Tax Administration shall grant the liable party the time period to make the agreement proposal.
3. The Tax Administration, upon request, shall meet the taxpayer in order to

analyze the possibility of initiating the procedure. Should the Tax Administration refuse to do so, the liable party shall resort to the mediator set forth in the following paragraph to agree on said meeting. In the meeting, the Tax Administration may decide to refuse to initiate the proceeding, and said decision shall be final.

4. Any of the parties shall be entitled to the intervention of a public institutional mediator, who shall intervene in the procedure according to the terms defined by the rules in effect.
5. This procedure shall be interrupted, if applicable, according to the terms defined in items 5 and 6 of Article 130.
6. A joint body or committee of the Tax Administration and the audited party shall sign a conclusive agreement, with the effects defined in Article 92 of this Code. Furthermore, the agreement shall be published.
7. In order to enter into the agreement, the stakeholder shall set up a deposit, such as a joint guaranty from a credit entity or reciprocal guaranty companies or guaranty insurance policy, in a sufficient amount to secure the payment of the amounts that may arise from the agreement. Immediate payment of the agreed amount shall not be mandatory for the validity of the agreement.

COMMENTS:

1. The article sets forth alternative dispute resolution mechanisms between the Tax Administration and the liable parties, which specific legislation in Ibero-America has introduced and/or applied recently. These mechanisms seek to establish a relation between the Tax Administration and the liable party based on greater equality (powers-rights of the taxpayer), promote fairness of the administration, reduce litigation and improve legal certainty. Furthermore, they follow the principle of good faith in Tax Administration-taxpayer relations. Based on the premise that the tax credit is strictly bound by the principle of legality (inalterability of the tax credit), the article provides for the intervention of the will of the creditor and the debtor in certain aspects thereof.

   Thus, the article sets forth that compliance and quantification of the tax obligation shall not be univocal, admitting different interpretations and solutions: the will of the parties shall produce effects to clarify uncertainties. For example, the quantification of an element of the tax base against the market value.
2. Additionally, the article introduces the role of a public body as mediator, with the attributions of taxpayer protection (such as the Defender of the Liable Party defined in Article 76 of the Model), without detriment to countries' incorporation of other taxpayer protection entities, or, generally, citizen protection entities or ombudsmen.
3. The article also defines the obligation to set up a guaranty prior to entering into the agreement, upon determining the amount payable by the taxpayer; notwithstanding, the requirement of non-immediate payment does not impair the validity of the agreement. On the assumption that guaranties fail in part or in full, or should they be insufficient to cover the debt, the Tax Administration initiate collection enforcement, if necessary.

   Likewise, the article defines the obligation to publish the agreements, for the sake of transparency. Notwithstanding, it clarifies that this approach implies disadvantages, such as the inapplicability of tax secrecy regulations in this type of tax determinations. This may lead to

suspicion of anomalous practices that restrict its adoption and undermine the purpose of reducing tax litigation.

Chapter IV
Collection procedure.

Article 134. Collection power.
The Tax Administration shall demand payment of the tax debts assessed by any of the methods set forth in this Code, which were not collected or secured within the legal terms, by way of the administrative enforcement procedure.

COMMENTS:
The Model defines administrative collection authority over all tax credits stemming from the self-assessment by liable parties or determined by the Tax Administration, by an assessment decision, or voluntary compliance proposal or conclusive agreement, to the extent they were not extinguished or secured.

Article 135. Beginning of the enforced collection period.
1. Taxes shall be collected by way of the enforced collection procedure upon failure to make the voluntary payment according to the terms and effects defined in this Code.
2. The period to initiate enforced collection procedures shall start:

a) On the day after the period established to enter payment expires, as defined in Article 60 of this Code for liabilities assessed by the Tax Administration.
b) When the legal period established to enter payments expires, or, if the latter lapses, at the time the statement is filed, for debts payable upon filing the tax statement or self-assessment without making payment.

3. Notwithstanding, prior to initiating the enforced collection procedure, the Tax Administration shall grant a reasonable time for the debtor to comply.

COMMENTS:
1. The article establishes the time to initiate the administrative collection procedure. The terms set forth duly consider the principle of legality in demanding debt payment.
2. Furthermore, in line with the most recent trends in many countries, it seeks to provide a preliminary persuasive or amicable instance to obtain payment, without being called to enforce collection.

Article 136. Beginning of the enforced collection procedure.
1. The enforced collection procedure shall start upon serving the demand for payment to the debtor. It shall feature the outstanding liability and the surcharges applicable thereto.
2. The foregoing demand for payment issued by the competent body is sufficient ground to initiate the collection procedure against all the assets that the liable party owns, with the same force and effect as a court ruling to enforce against the property and entitlements of the liable parties.
3. Jointly with said demand, the Tax Administration shall issue an attachment order on the property of the debtor or demand a surety bond for an amount sufficient to cover the amount due, related charges and expenses. Should the debtor fail to fulfill payment within the period of... days, or constitute a guaranty, his property shall be attached. On the assumption that the debtor owns no property or has failed to report it, a restraining order to prevent disposal of property shall be ordered and remain in force until the debt is satisfied or until adequate guaranty is offered or sufficient property for attachment is identified.

4. The debtor shall bear the expenses arising from the enforced collection procedure.

COMMENTS:
This provision defines that the initial step of the procedure is to notify the debt to the debtor and the noncompliance therewith as the condition to initiate the attachment procedures. It also provides for the possibility of avoiding said attachment by constituting the appropriate surety bond, or paying the amount claimed. On the assumption the debt is not paid or a surety bond is not set up and the attachment is unenforceable, the article establishes the restraining order to prevent disposal of property upon the debtor, until the debt is satisfied or until enforced collection may be initiated.

Article 137. Objections to the enforced collection procedure.
The following shall be the only admissible objections to the enforced collection procedure:
a) Payment, deferral or partial payment of the debt.
b) Statute of limitations.
c) Failure by the Tax Administration to serve notice of the assessed debts.
d) Suspension of the assessment.
e) Annulment or reversal of the assessment.

COMMENTS:
1. Once the administrative collection procedure is initiated by serving notice of the demand for payment upon the debtor, the latter shall file a counterclaim against the decision of the administration, as defined in the article. Similarly to other legislation, including the ones that provide for enforced collection procedures, objections are limited to circumstances of a substantial nature, related to the nonexistence of the debt (payment), or unenforceable nature (extension) or the extinguishment of the right to collect (statute of limitations) or failure to serve notice of the debt that the Tax Administration assessed (no legal terms defined).
2. Furthermore, the article includes the suspension, annulment and reversal of the assessment as grounds for objections. In the latter case, it refers to the provisions in Article 186 of the Model, which allows reversal in favor of the liable parties.

Article 138. Nature and non-concurrence of the enforced collection procedure.
1. The collection procedure shall be enforced solely by the administration. The Tax Administration has the exclusive jurisdiction to hear and decide upon all the relevant matters thereto.
2. Said procedure shall not be concurrent with court or other enforcement proceedings. Its commencement or continuation shall not be suspended by initiating the above, except in the cases set forth in the rules in the following paragraph.
3. Without detriment to the order of priority established by law for the collection of credits according to their nature, in the event that the enforcement procedure for the collection of taxes concurs with other enforcement proceedings on the attached property, the following rules shall apply:

a) When it concurs with other specific enforcement processes or procedures, the collection procedure shall prevail when the attachment in the course of said procedure was conducted earlier.
b) When the enforced collection procedure concurs with bankruptcy processes or proceedings or universal liquidation proceedings, the former procedure shall have priority in the foreclosure of property or rights that were subject to attachment in the course thereof, provided said attachment was made prior to the date on which the bankruptcy proceeding was initiated.

COMMENTS:
The article establishes the exclusive administrative collection system. In line with this notion, it establishes the non-concurrent nature of judicial or other enforcement proceedings, setting forth the autonomy of procedures, except for the cases defined in the Model. The third paragraph establishes rules of priority when concurrency affects property attached in such concurrent proceedings.

Article 139. Enforcement of guaranties.
If the debt is secured by a guaranty, pledge, mortgage, or any guaranty secured by a security interest in real or personal property, or personal guaranty, it shall be foreclosed first, and in all cases, the appropriate collection bodies shall enforce said foreclosure through an administrative collection procedure.

COMMENTS:
The article establishes the obligation to prioritize foreclosure on the guaranties in effect, by means of an administrative collection procedure carried out by the offices of the Tax Administration.

Article 140. Garnishment procedure.
1. On the assumption the guaranty for the tax debt and its related charges is insufficient, the administration shall initiate the garnishment procedure of the property of the debtor by an amount sufficient to satisfy the total tax debt.
2. The attachment procedure shall follow the order defined hereunder:

a) Cash or accounts with financial institutions.
b) Accounts receivable, negotiable instruments, securities and rights, payable immediately or in the short term.
c) Wages, salaries and pensions.
d) Real property.
e) Business or industrial establishments.
f) Precious metals, gems, jewelry, fine art and antiques.
g) Products and income of any type.
h) Personal property and livestock.
i) Long term accounts receivable, rights and securities.

3. Based on the foregoing order, the Tax Administration shall garnish the property and rights that have been reported thereto, until the tax debt has been satisfied. A court order shall be required to foreclose on property entailing access to the residence of the debtor, and it shall be last in priority.
4. The order of garnishment shall be changed at the request of the debtor when the property offered secures the recovery of the debt as effectively and promptly as the one to be garnished according to priority, and to the extent no damage is caused to third parties.
5. The administration shall not garnish property or rights deemed generally non-attachable by law, or property the disposal of which is deemed to generate insufficient proceeds to cover the cost of enforcement.
6. On the assumption the garnished property consists of perishable goods or other property whose nature requires incurring maintenance or preservation costs, such costs shall be borne exclusively by the debtor. The Tax Administration shall be exempted from all liability for any resulting loss or deterioration of the garnished assets when the debtor fails to provide sufficient and timely resources for their maintenance or preservation.

COMMENTS:
The order of priority set forth for the garnishment procedure when guaranties are insufficient, is similar to the provisions in most of the laws considered and seeks to simplify the administrative collection procedure by enforcing the property with

better prospect or that is easier to sell in the first place.

Article 141. Property in custody of depository entities.

1. On the assumption the Tax Administration is aware of the existence of funds, negotiable instruments, securities or other property delivered or entrusted to a specific office of a credit institution or other depository individual or entity, it shall order their garnishment in the amount applicable. The garnishment procedure shall require identifying the asset or right known to the Tax Administration, but it shall be extended, without prior identification, to the remaining property or rights available on said premises.
   The garnishment defined in the foregoing paragraph shall be enforced by way of information technology. To such purpose, the Tax Administration shall establish, by general rules, the liable parties who are required to use said system as well as the procedure, period and conditions governing the garnishment procedure.
2. Should the information provided by the depository individual or institution at the time of the attachment indicate that the funds, negotiable instruments, securities or other assets available are not of the same kind or that their value exceeds the amount set forth in Article 136 of this Code, the administration shall determine the ones to be garnished.
3. Whenever the funds or securities are deposited in accounts in the name of several holders, only the portion belonging to the liable party shall be garnished, unless material ownership is determined to be otherwise.

COMMENTS:

The purpose of the article is to secure the collection of the debt by preventing the debtor from concealing or shifting property ownership by way of deposits or transfers to depositories. This article, as well as the subsequent one, are based on the undisputed principle that all property of the debtor, whatever the location or status, shall be subject to the claim of the creditor, except those deemed non-attachable by law.

Article 142. Extension of the garnishment process.

The garnishment process shall be extended at any time during the collection procedure, when the enforcement office deems the garnished property is insufficient to satisfy the debt.

COMMENTS:

See comments to Article 136 of the Model.

Article 143. Bodies with enforcement jurisdiction and general powers.

1. Collection offices shall conduct all the material processes required in enforcing the relevant measures during the collection procedure.
2. The documents that officials of the collection offices deliver upon executing collection functions in the course of the enforcement procedure shall be deemed official documents and serve to substantiate the events that generate them, unless otherwise determined.
3. Officials of the collection offices shall be deemed agents of the authority when they carry out their collection duties and shall have the same powers and attributions as the ones vested on the auditing bodies.
4. The Public Authorities shall facilitate the protection and assistance required in furthering the collection procedure.

COMMENTS:

With due regard for the internal organization in effect in each country, reference is made to "collection offices" as the competent administrative divisions for

collection enforcement. As a contribution to the provisions of the competent body, their functions shall be defined, including the participation of ancillary agents, as set forth in the article. Collection offices are vested with the same powers and attributions as the ones in effect for auditing bodies.

Article 144. Interference with processes.

1. On the assumption that, during the attachment process, the person subject to enforcement refuses to allow access to the establishments, buildings or residences eligible for attachment, or in which the administration assumes there is personal property eligible for attachment, the enforcement agent, prior agreement with the head of the enforcement office, shall adopt the measures required for the depository to take possession of said real property or to continue with the process.
2. The enforcement agent shall proceed similarly when the person subject to the process hinders access to personal property the former considers contain money, jewelry, art objects or other attachable assets. When it is not feasible to break or force the locks open, the enforcement agent shall impound the personal property and the contents therein, and seal and dispatch them under custody to the enforcement office, where the debtor or his legal representative or, otherwise, an expert designated by the office itself shall open them within a period of... days.
3. When it is not feasible to break or force the locks open of safes or other objects affixed to real property or deemed difficult to transport, the enforcement agent shall impound and seal them as well as their contents. The procedure set forth in the preceding paragraph shall be applied to open them.

COMMENTS:

The rule set forth is consistent with the expeditious nature of the administrative collection procedure. Objections or practical interferences with the process of administrative collection shall be avoided and substantial objections are limited.

The foregoing shall apply without prejudice to the right of the debtor to be informed and control the transparency and fairness of the procedure.

Article 145. Documents resulting from attachments.

1. Every attachment process shall be documented on a record, and the person subject to the process shall be served notice thereof.
2. Once the attachment is completed, the debtor and, if applicable, the co-tenant, owner or depository of the property shall be notified, had they not been present during the process, as well as the co-owners.
3. Should the property attached be subject to registration with a Public Registry, the Tax Administration shall be entitled to a precautionary attachment order with the applicable Public Registry, pursuant to the order issued by an official of the competent body, with the same force and effect of a court-ordered attachment.
4. When garnishing personal property, the Tax Administration shall order their impounding according to its determination.
5. For a garnishment order against a commercial or industrial establishment or, in general, of the business assets and rights, and upon determining that sustaining the business operation shall cause irreparable damage to the creditworthiness of the debtor, the competent Tax Administration authority -after holding a meeting with the

business owner or management- shall agree to appoint an official to intervene in the administration of the business in the manner set forth by law.

COMMENTS:

1. This article establishes the methods to record and serve notice of the garnishment and the right of the Tax Administration to issue public notices of such measure with the competent bodies, when the garnishment involves property subject to registration.
2. Furthermore, in the event of garnishment of industrial and commercial establishments, it authorizes the Tax Administration to appoint a tax administrator to manage the business, in order to avoid irreparable damages to the creditworthiness of the debtor, which may impair collection of the debt.

Article 146. Third-party intervention.

1. When a third party attempts to lift the garnishment order on the grounds said party claims ownership or rights over the garnished property, or whenever a third party deems his claim is subject to a preemptive right over the administration, he shall file a third-party intervention claim with the competent administrative office.
2. With regard to a third-party claim of ownership, the enforcement proceeding over the property subject to dispute shall be suspended, once the applicable measures to secure the property have been adopted, without detriment to the continuation of the proceeding over the remaining property or rights of the liable party that may be subject to garnishment until the debt is satisfied. In such case, the garnishment of the property subject to dispute shall be deemed ineffective, without any implication of determination of claimant title thereto.
3. Should the third party hold a preemptive claim, the procedure shall continue until the property is sold, and the proceeds thereof shall be held in deposit until the third-party claim is resolved.
4. Regulations shall determine the procedure to conduct and resolve third-party claims.

COMMENTS:

The purpose of this article is to safeguard the rights of third parties relevant to the garnished property or preemptive claims with respect to tax claims. The rule adopts the same solution to the one in effect in countries that apply enforced or administrative collection systems and, in such respect, it is generally accepted as a protection for third parties with preemptive claims or title. The article suggests that the third party may be given the opportunity to substantiate title with sufficient documentary evidence, which shall be subsequently evaluated by the competent authority.

Article 147. Disposal of garnished property.

1. Garnished property shall be disposed of by means of an auction, by public bid or direct award, in the circumstances and conditions set forth by law.
2. The garnishment of money shall be considered the payment by the debtor.
3. The enforced collection procedure shall conclude with the award to the administration of the garnished property, in the event they are not transferred of by way of the procedure established by law.
4. The amount for which said property shall be awarded shall be equal to the outstanding debt, but shall not exceed ... percent of the valuation amount that was the initial basis for the disposal procedure.
5. At any time prior to the award of the property, the garnished property shall be released by paying the tax debt,

fees and expenses and interest accrued subsequently during the proceeding.

COMMENTS:
The procedure defined as the final step for the administrative collection procedure is also set forth in the vast majority of laws: disposal by auction, bid or direct award. The award to the Administration is only set forth to the extent property is not transferred by way of any of the foregoing procedures. The exception to the latter being that the debtor, or even a third party, pays the tax debt and its related charges in full prior to the time of award.

Article 148. Stay on disposal of property.
1. Until the assessment enforced by the Tax Administration is final, the disposal of property shall be stayed, and the garnishment on the property of the stakeholder shall be limited to an amount sufficient to cover the amount claimed, related charges and fees, or to the restraining order to prevent disposal of property when said amount is not covered. In any case, the stakeholder shall offer alternative assurances to these measures, which shall require formal acceptance by the Tax Administration.
2. The disposal of property shall not be stayed when property risks losing value or when the stakeholder formally requests the disposal.

COMMENTS:
1. This article describes the assumption by which the disposal proceeding is stayed until the enforced debt-assessment procedure is final, unless risks exist of loss of value or upon formal request by the stakeholder.
2. This provision enables reaching a balance, since although the claim of the administration is protected by the garnishment or restraining order to prevent disposal of property, it also takes into consideration the liable party, by avoiding the disposal of his property, when the decision on the remedies filed may order the annulment or amendment of the administrative decision that originated such claim.

Article 149. Restraint to acquire garnished property.
All parties who may have participated in the collection proceeding on behalf of the Tax Administration are banned from acquiring property disposed of after the garnishment procedure, either directly or through an intermediary. Any disposal made in violation of this rule shall be void and offenders shall be penalized according to this Code.

COMMENTS:
The purpose of this rule is to safeguard transparency in the functions of the Tax Administration and its officials in the administrative collection procedure. The severity of the penalty may even lead to the enforcement of fraud penalties, or the penalties enforceable upon government officials.

Article 150. Power to dismiss processes due to lack of tax interest or inability to collect.
1. The head of the Tax Administration is authorized establish the general grounds to order the dismissal of tax credits in favor of the Tax Administration due to the small amounts involved or their uncollectible nature.
2. Upon dismissing the case on the grounds the amount is uncollectible and identifying property of sufficient value against which collection may be enforced, the head of the Tax Administration shall issue a decision to revalidate the debt.

COMMENTS:
This power enables to dismiss audit and tax

debt cases, by virtue of their small amount or uncollectible nature. Uncollectible debts by no means imply extinguishment of the tax obligation, since the same provision allows for the possibility of revalidating the debt.

Article 151. Power to impose precautionary measures.

1. The Tax Administration shall enforce precautionary garnishment of the property of the liable party, for the amount presumably owed thereby or by joint debtors; or otherwise, a restraining order to prevent disposal of property, prior to the date on which the tax credit is assessed or enforceable in the course of any procedure, when it deems there is risk that the liable party may be absent or transfers or conceals his property. Should the corresponding payment be made within the legal time frame, the taxpayer shall not bear the expenses that the proceeding originated and the injunction proceeding shall be abandoned.
2. At the latest, upon enforcing the precautionary attachment or imposing the restraining order to prevent disposal of property, the Tax Administration shall inform the taxpayer or responsible third party of the presumed debt amount. The garnishment shall be required to determine the actual enforceable amount within a time frame not exceeding ... months, counted from the date on which the precautionary measure is enforced or imposed. The attachment or restraining order shall be ineffective when the administration fails to decide within the time period defined; upon issuing said decision, the precautionary garnishment shall become final in order to secure payment of the assessed debt.
3. Compliance with the outstanding obligations or establishment of guaranties with the consent of the Tax Administration shall warrant immediate abandonment of precautionary measures.
4. The measures adopted shall be proportional to the damage the administration seeks to avoid and, other than the restraining order to prevent disposal of property defined in item 1 herein, they shall follow the order of priority established for the garnishment procedure. In no case shall measures be adopted that cause damage that is difficult or impossible to repair.

COMMENTS:

1. The precautionary garnishment proceeding enables to guarantee the interest of the tax authority in the assumption defined by the provision; however, it requires a peremptory time period to issue the decision. Furthermore, the taxpayer shall be in the position to substitute the garnishment with another form of guaranty.
2. The article also provides for the restraining order to prevent disposal of property or garnishment of the property of the debtor, which shall be abandoned when the debtor offers sufficient property or establishes another guaranty. In all cases warranting precautionary garnishment, and should it be impossible to enforce it due to lack of reported assets or difficulties in calculating unpaid taxes, the administration shall enforce a restraining order to prevent disposal of property.

TITLE IV
TAX VIOLATIONS AND TAX PENALTIES

Chapter I
General provisions

Section 1. Preliminary provisions.

Article 152. Notion and classification of tax violation.

1. A tax violation has been defined as the noncompliance with substantive or formal tax rules, by action or omission, described and subject to penalty by virtue of this Code or a law. Tax violations shall be classified as misdemeanors, material and gross, as set forth specifically in articles 170 to 180 of this Code.
2. Every tax violation shall be classified individually as misdemeanor, material or gross, and in the case of proportional fines, the relevant penalty shall apply on the overall base of the penalty applicable in each case.

COMMENTS:

1. This article broadly defines tax violations based on noncompliance with substantive as well as formal obligations, in order to encompass the different forms or types of noncompliance with tax regulations.
2. It clarifies that plain noncompliance with a substantive or formal obligation shall not imply perpetration of a tax "crime", since it shall depend on whether it is considered as such by the Criminal Law.
3. Although prior editions of this Model made a distinction between "administrative violation" and "misdemeanor", in order to apply the former classification to violations of substantive tax obligations and the latter to violations of formal tax obligations, in practice, no differences are evident in the legal framework applicable for both types of crimes. In particular, by doing away with the distinction, the Model clarifies the idea that penalties due to violations of formal obligations are automatic or based on strict liability systems.
4. Therefore, the classification "administrative tax violation" includes, on the one hand, violations of substantive obligations, which refer to compliance with the obligations to pay an amount of money for a tax (principal obligation) or as a payment on account. By committing this type of administrative tax violation, liable parties cause a direct pecuniary damage to the Tax Administration, since the protected legal right vested upon them is the wealth of the State. Furthermore, the article also includes violations of provisions regarding formal tax obligations, which do not entail direct economic damage and the protected right of which is the taxation authority (procedures, tax control, collection).
5. The classification of violations as misdemeanors, material or gross stems from the existence of concurrent circumstances in the behavior of the offender, which shall be defined in the description of types of offenders. It is evident that concealment and fraud constitute the basic criteria to distinguish misdemeanors, material or gross tax violations.
6. Under this Title, the Model excludes the entity of tax crime, which shall be defined in the Criminal Code of Law of each member country, although certain countries have adopted tax crime provisions in their Tax Codes.
7. The differences in the legal provisions

for administrative violations and tax crimes are clearly marked. In other words, a substantial difference exists as to the nature of the violation in Criminal Tax Law and Tax Criminal Law. Thus, consensus has been reached in doctrine that the tax crime is different from the administrative violation based on the enforcing authority (the Judge or the Criminal Court of Law, in the first case; the Tax Administration in the second one), the procedure applicable (criminal procedure law, in the first case; administrative or court-administrative, in the second), and the type of penalty (in the first case, imprisonment is admitted; in the second case, imprisonment is banned). As a form of protecting the rights of the party involved, only courts of general jurisdiction shall enforce imprisonment. However, in spite of such ontological differences, this Title assumes the similarity of principles that shall govern tax crimes as well as administrative violations, which are no other than the principles on criminal matters.

8. Although the text of the Model excludes the entity of tax fraud as a crime, it puts forward the following wording for Criminal Law Codes:

"*1. Whoever, by action or omission, commits fraud against the State by way of simulation, concealment, scheming or any other form of deceit seeking to mislead the Tax Administration with the purpose of obtaining, for themselves or for a third party, an economic benefit, evading the payment of taxes, amounts withheld or that should have been withheld, or payments on account of payments in kind or unduly obtaining refunds or tax benefits, provided the evaded amount, the unpaid withholding amount or the payments on account, or the unduly obtained refunds or unduly enjoyed tax benefits in excess of..., shall be subject to imprisonment for a term ranging from... to... years.*

2. For the purpose of the provisions in the foregoing item, it shall be understood that:

a) The amount of... shall be deemed the intrinsic condition for penalty.

b) The amount shall not include interest, fines or surcharges applicable as penalty.

c) In order to determine the foregoing amount, in the case of taxes, withholdings, payments on account or refunds, regular or requiring regular reporting, the amounts implied in the fraud shall be calculated for every tax period or reporting period and, should they be under twelve months, the amounts implied in the fraud shall be calculated according to the calendar year. In the other assumptions, the amount shall be understood as calculated according to every individual items originating a taxable event subject to assessment.

3. The excuse that results in exoneration from criminal punishment shall be deemed effective when the liable party remedies the noncompliance before the Tax Administration or the Competent Authorities initiate auditing or investigation processes."

The crime of tax fraud that the Model suggests to member countries may be described as follows:

a) The objective criminal conduct is firstly marked by evasion of substantive tax obligations, principal obligations by nature, and ancillary obligations or obligations borne by withholding or collection agents, or withholding agents of payments on account, for the amounts effectively withheld as well as the amounts they failed to withhold. Likewise, it includes tax benefits unduly obtained and enjoyed. The provisions are also extensive to undue refunds obtained.

b) The entity requires a fraudulent

procedure, based on deceit or scheming, in line with the extensive doctrine tradition and comparative Law for this entity.

c) The article admits perpetration by omission.

d) The crime shall be also committed in the collection phase; in other words, by carrying out schemes seeking to conceal the assets that the Tax Administration shall enforce upon.

e) The subjective type is based on wrongful intent; that is to say, it involves the intent to cause damage, carrying out a willful act or concealing any tax-relevant circumstance, with the deliberate purpose of evading a tax obligation in part or in full.

f) It provides for a quantitative penalty threshold, described as an "objective condition for punishment". This implies that such minimum threshold determines whether a tax crime exists. Consequently, the amount is excluded from the scope of the wrongful intent of the offender, and the intent to adopt fraudulent behavior suffices to such end.

g) It is a result crime, and not a crime of endangerment, according to the protective approach on this matter adopted in by most doctrines.

h) It defines the so-called "excuse that results in exoneration from criminal punishment", known in doctrine as a self-incrimination that warrants the dismissal of the penalty and operates as an incentive to promote spontaneous remediation of criminal noncompliance. This entity requires positive and negative circumstances. Positive circumstances imply remediation of noncompliance, which includes two elements: correction and payment. The negative circumstances consist of the so-called standstill effect, which means that the Tax Administration shall not have initiated auditing or investigation processes.

9. It also suggests defining the forms of fraud in a supplementary article, as follows:

"Without detriment to the criminalization, the following shall be deemed fraud:

a) Reporting false figures or data or deliberately omitting circumstances relevant in determining the tax obligation.

b) Using goods, products or property that benefit from exemptions for purposes other than the ones applicable under the exemption.

c) Covertly developing or marketing goods subject to taxation. This rule is deemed to include evasion or avoidance of tax controls, the illegitimate use of seals, stamps, restraints and other methods of control, or the destruction or tampering thereof; tampering with the characteristics of goods, concealment, change of destination or false indication of their origin.

d) Concealing merchandise, items, or income-producing assets subject to taxation.

e) Filing statements that feature non-existing events or transactions or with false amounts, or which totally or partially omit transactions, income, yields, proceeds, assets or any other information relevant in assessing the tax debt.

f) Undertaking creative accounting practices that, for the same business and financial period, conceal the actual business status; recording false entries, records or amounts.

g) Employing invoices, receipts or other false or forged documents, provided the amounts involved in said documents or false or forged forms account for a percentage in excess of... percent of the penalty base.

h) Using third-party individuals or entities when the offender, in order to conceal his identity, has designated a third party, with or without their consent, to assume ownership of the assets or rights, obtain

income or capital gains or carry out the transactions relevant for tax purposes from which the tax obligation arises, the noncompliance of which constitutes the violation subject to penalty."

The article describes several fraud assumptions. They are acts that upon being carried out constitute fraud per se; that is to say, fraud is inherent in them. It is a general elaboration or specification, enabling to stand up to the criticism of doctrine of the entities limited to general descriptions, owing to their general scope, which fails to define specific behaviors in which the idea of a scheme or deceit against the Tax Administration may be implicit or included.

Article 153. Applicable rules and principles.

1. The provisions under this Title apply to all tax violations.
2. In the absence of specific tax rules, the general principles and rules of criminal law shall apply as ancillary provisions. Particularly, the principles of legality, criminalization and liability based on breach of duty, proportionality and non-concurrence shall apply.

COMMENTS:

1. The purpose of item 1 is to resolve the doubt that may arise regarding the provisions of law applicable to the violations not defined in the Model. In this regard, it sets forth that, in principle, the Model shall apply unless otherwise defined by law, which may be the case when the specific law governing every tax defines the applicable system of violations and penalties.
2. Item 2 defines the ancillary application of the general principles of criminal tax law. Legislation has broadly accepted the notion that the underlying principles of the right to enforce punishment in criminal matters shall apply to the tax sphere with certain nuances. Said nuances shall not entail that certain principles apply and others do not, rather, that they be adjusted or adapted to the features inherent in tax matters.
3. It expressly enumerates the fundamental principles of Criminal Law: criminalization, liability based on breach of duty or principle of guilt, proportionality, which features an objective approach -the most serious crimes shall require the most severe penalties and vice versa-, as well as the subjective approach implying that the penalty shall be adjusted to the subjective conditions of the offender (degree criteria, and non-concurrence, which embodies the principle of ne bis in idem that bans being prosecuted twice for the same offense).

Article 154. Types of tax violations.

The action or omission that constitute the tax violation shall be expressly criminalized by law. Notwithstanding, within the limits established thereby, regulations and administrative rules shall define the behavior whose violation embodies the tax violation.

COMMENTS:

1. The principle of criminalization is inherent in any crime. It is worth noting that normally, legal practice requires defining the violation assumptions with respect to the tax duties and obligations set forth in regulations other than the one embodying the violation. Therefore, the key notion is that it refers to non-punitive tax regulations. The principle of relative legality prevails in this matter. This implies that the Law shall establish the essential elements of taxes and the basic rules of procedure for their application, without detriment to the fact that the regulations or other general administrative norms define or complete certain aspects of said essential elements. For example, the duties of liable parties to facilitate and cooperate with the audits carried out by the Tax Administration.

2. The law may simply define the general duty of taxpayers to facilitate and cooperate with Tax Administration audits, and allows regulations to define specific notions regarding the duty of cooperation to a regulation. Tax doctrine and comparative law have generally accepted this. Consequently, when a regulation characterizes the noncompliance with the duty set forth as a violation, it is clearly involving the regulation or other rules of lesser hierarchy, such as general resolutions, in said criminalization.

Article 155. Principle of non-concurrence.

1. Should the conducts be deemed to constitute tax crimes, the Tax Administration shall submit the case to the Attorney's Office, and refrain from pursuing the administrative proceeding, until the judicial authority hands down a final decision, dismisses the case or closes proceedings or the Attorney's office refers the proceedings. The penalty imposed by a court of law as a result of a final judgment shall not preclude the enforcement of an administrative penalty, unless the criminal sentence includes a pecuniary component.
   Should the court of law find no crime, the Tax Administration shall resume the administrative proceedings on the grounds of the facts proven by the Court of Law, and the terms of limitation shall be resumed, counted from the time of suspension. The administrative processes carried out during the period of suspension shall be void.
2. In the cases in which the Tax Administration initiated auditing or investigation processes and determines the existence of the legal excuse that results in exoneration from criminal punishment referred to in Article... of the Criminal Law Code, it shall continue with said proceedings without submitting the case to the Attorney's Office and impose the administrative sanctions applicable.
3. Should the Tax Administration already have established a penalty, it shall not impair initiating and pursuing criminal proceedings. Nevertheless, should the latter result in a penalty enforceable upon the liable party, the violations in line with the conditions defined in item 5 herein, related to the criminalization, shall be deemed included therein solely with respect to the pecuniary non-compensatory component that the criminal penalty may impose. In the latter hypothesis, the pecuniary administrative penalties imposed shall be revoked, returned or offset against the amount assessed in the criminal proceeding, and acknowledged as an erroneous payment induced or enforced by the Tax Administration. Such rules shall be also applicable upon enforcing an administrative penalty on a corporation or collective entity without legal personality in agreement with item 2 of Article 161 of this Code and the violations attributed thereto pertain to the facts attributed to specific individuals for the purposes of criminalizing tax offences.
4. The same action or omission applicable as a criterion to determine the degree of a violation or as a circumstance that determines the qualification of a violation as material or gross shall not be punished as an independent violation.
5. The perpetration of several actions or omissions underlying several violations shall enable the enforcement of penalties applicable to all. In such respect, the Model considers seperate violations the persistence of formal noncompliance upon different administrative requirements. Notwithstanding, should actions or omissions constituting the type of violation be deemed preliminary to or included in another type, the penalty shall be enforced solely on the latter, except

when the penalty for the subsumed violation is more severe, in which case the latter shall be enforceable.

6. Should the same violation breach more than one type without the application of one type excluding the application of the other, the most severe penalty shall be enforced, and increases of up to... percent of the less severe penalty amounts shall apply.
7. The penalties arising from the perpetration of tax violations shall be compatible with the interest claim defined in Article 169.

COMMENTS:

1. Due to their punitive nature, the determination of tax crimes and their penalties shall be in line with the principle of ne bis in idem, by which a person shall not be prosecuted twice for the same offense.
2. The principle of non-concurrence implies avoiding double prosecution upon identifying the liable party, the facts and grounds, regarding the relation between administrative violations and crimes, as well as specifically with respect to administrative violations. This article regulates such relations fully.
3. The provision defines the ne bis in idem principle according to a dual notion. Firstly, it substantially bans enforcing a criminal and an administrative fine for the same offenses, which entails the possibility of combining imprisonment and a pecuniary fine. Secondly, from the procedural standpoint, it prioritizes criminal proceedings over administrative enforcement proceedings, and freezes the proceedings that may have been initiated or prevents any subsequent one. Nevertheless, upon determining that circumstances converge for the operation of the excuse that results in exoneration from criminal punishment, based on the recommendation of including it in tax crime regulations set forth in the Criminal Law Code, it shall not be necessary to suspend the administrative proceeding or refrain from enforcing administrative penalties.
4. Hence, the provision sets forth the principle that the fine imposed by a Court of Law shall preclude the enforcement of an administrative penalty for the same offenses. It clarifies that when the court of law finds no crime, the Tax Administration shall resume the administrative proceedings on the grounds of the facts proven by the Court of Law. This is reasonable to the extent that the crime requires elements which are not inherent in the administrative violation and that the absence thereof warranted the dismissal or acquittal. Consequently, although a crime may not apply in practice, a violation may be admitted. For example, if the crime was not determined due to the lack of a subjective element of wrongful intent, it shall not preclude criminalizing a violation, which only requires a subjective element of negligence.
5. When the Tax Administration already established a penalty, it shall not preclude initiating and pursuing criminal proceedings. Nevertheless, should the latter result in a penalty enforceable upon the liable party, the violations deemed preliminary stages of the crime -whether actions or omissions included in the crime- shall be considered included therein. Therefore, the administrative penalties imposed shall be revoked only when the criminal penalty includes a pecuniary component, and are paid upon satisfying the amount assessed by the Courts of Law as a fine, and if applicable, returned.
6. The case may be that the administrative violation whose facts are subsumed in the crime has been subject to a penalty imposed upon a corporation or collective entity without legal personality. In such

case, it shall be understood that said violations shall be revoked in order to satisfy the fine enforced upon the individual by virtue of a decision from a Criminal Court of Law, should the foregoing conditions that determine that violations are subsumed in the crime apply.

7. Items 4 and 5 refer to the situations of concurrence of administrative violations [according to the principle of "concurso aparente"], similar to the hypothesis of subsumed violation and crime defined in item 3. This type of concurrence arises when the same action is included in different types of crime, protecting the same legal right or when several criminal actions are included in several crimes that protect different legal rights, which shall be interrelated from lesser to greater severity. Therefore, only one legally recognized injury exists, and only one crime, and one provision shall exclude the other. Hence, an action determining an aggravating circumstance of one type, or a criterion of degree of the penalty, shall not warrant an independent penalty. Likewise, a violation for not reporting the self-assessments shall be or included in the violation arising from incorrectly filing self-assessments. The article defines the case in which the subsumed violation warrants a more severe penalty than the one in effect, in which case, the penalty of the subsumed violation shall be enforceable.
8. Items 5 and 6 set forth two types of concurrence that are not injurious to the non-concurrence principle. Hence, item 5 also sets forth the hypothesis of "concurso material o real de ilícitos" [combination of series of related criminal acts resulting in a penalty less severe than the mere summation of penalties of the independent crimes], defined as several independent actions or omissions, perpetrated by the same individual, which shall be tried in the same proceeding and that have caused multiple legal injuries. Particularly, it defines the case of the repeated failure to comply with requirements regarding the same information, which would result in unrelated violations and penalties.
9. Finally, item 6 governs the hypothesis of "concurso ideal o formal de ilícitos" [plurality of applicable criminal code provisions to a given set of facts]: defined as one single action (or omission) that injures several legal provisions (not mutually exclusive). Under this assumption, the two penalties shall not be enforced, but rather the most severe penalty and a specific percentage of the less severe one. Although the Model sets forth that in the event of repeated failure to issue invoices, the administration enforces business closure rather than a fine, a case of "concurso ideal" would apply, in the hypothesis that legislation sets forth the enforcement of both.

Article 156. Non-retroactive nature of tax violation rules.

Tax rules that enforce penalties shall only be effective as of the date set forth therein. Notwithstanding, rules that revoke tax crimes, provide for more lenient penalties or shorter terms for the statute of limitations, or for the penalty, shall have retroactive effect.

COMMENTS:

The article refers to a rule that is common to the criminal laws of different member countries: negative retroactive enforcement may stand contrary to constitutional principles; notwithstanding, in criminal matters, positive retroactive enforcement is admissible, by virtue of the pro libertatis principle.

Article 157. Extinguishment of penalties.

Penalties for tax violations shall be extinguished upon:

a) Payment or compliance with the penalty.
b) Death of the offender, without implying the extinguishment of the action to impose the penalty and of the penalty itself against other offenders or jointly liable accessories or authors.
c) By amnesty granted by law.
d) By the statute of limitations.

COMMENTS:
The article defines the forms of extinguishment of penalties, including the power to impose the penalty as well as collecting or enforcing the penalty already established. Following the principle of individual liability, the Model incorporates the solution by which the death of the offender extinguishes the penalties, and consequently, they are not conveyed upon heirs or beneficiaries.

Section 2. Liability.
Article 158. Tax offenders.
1. Tax offenders shall be deemed the individuals or corporations, as well as the collective entities or economic units defined in item 2 of Article 26 that carry out actions or omissions characterized as violations to the law. The following shall be tax offenders:

a) Taxpayers.
b) Withholding and collection agents and parties liable for payments on account.
c) Parties liable for compliance with formal tax obligations.
d) The legal representative of the liable parties who lack tax capacity to act.
e) The liable parties pursuant to regulations on mutual administrative assistance in tax matters.

Concurrence of several offenders in the perpetration of a tax violation shall determine their joint liability with the Tax Administration for the payment of a penalty, in the event it is a fine. In order to enforce said liability, the liable party shall be notified of the proceeding enforcing the penalty. The penalty of business closure shall be borne only by the liable party who owns the establishment.

COMMENTS:
1. The article defines the parties who may commit violations, which in criminal law terms entails the parties who shall be deemed "authors" or "perpetrators" of the violation. A traditional doctrinal discussion, especially in relation to the tax crime, dwells on the special or non-special nature of tax crimes. This article adopts the notion that tax violations constitute special tax crimes. Hence, it enumerates the different liable parties deemed perpetrators of violations, providing a non-conclusive but encompassing list of the different modalities of liable party.
2. When several perpetrators concur in the commission of the same violation (for example, the taxpayer and the withholding agent), the article adopts a joint liability system for offenders, by deeming it disproportionate to establish a system of individual penalties that simply accumulates them in the face of only one violation.
3. The sole exception to the joint liability system being the business closure penalty for violations, on which the principle of joint liability is unenforceable, implying that the penalty shall only be borne by the liable party who owns the business subject to closure.

Article 159. Perpetrarors or contributors.
1. Perpetrarors or contributors of a tax violation shall be any individual not included in the foregoing article who is direct originator or contributor in the perpetration of a tax violation, specifically:

a) Accessories and abettors, considered

as those who finance, aid or assist the author in any form, as applicable.

b) The party who, for his personal benefit or that of a third party, acquires or holds, conceals, sells or collaborates in selling or trading goods, products or objects against which he knows or should know, pursuant to the circumstances, that a violation has been committed.

c) Third parties who are not liable for tax obligations but facilitate a violation, based on wrongful intent or negligence, whether they obtain a personal benefit or not.

2. Accessories shall be held jointly liable with the tax offenders for the penalties.

COMMENTS:

The article establishes the entity of the perpetrators or contributors, who are also held jointly liable for the penalty applicable to the perpetrator. In order to involve the perpetrator or contributor, the existence of the author shall also be determined, in line with the adoption of the special nature of the tax crime. Therefore, although their liability is the same as the one applicable to concurrence of perpetrators, the difference is that it would not be possible to attribute the perpetration of a violation solely to one offender. In the case of a legal or economic entity, the Tax Administration shall determine the perpetration of a violation by the entity as such and, at the same time, attribute the participation of an individual with management or decision-making power therein, pursuant to the rules of joint liability defined in Article 158, which requires involving the responsible party in the proceeding in which the penalty shall be imposed.

Article 160. Participation of professionals in the commission of tax crimes.

1. A supplementary penalty of... shall be enforced on professionals who participate in tax crimes in any of the forms defined in Article 159 of this Code, in addition to the liability in relation to the penalties defined therein.
2. On the assumption said participation occurs in the design, planning or implementation of the procedures, contracts or businesses, which constitute abuse or fraud, as defined in Article 10 of this Code, the fine shall be the one of greater value between the fees of the Counsel and ... percent of the fine imposed for the violation of the client.
3. For the purposes of this article, professionals shall include the lawyers, accountants, bookkeepers, notaries, customs agents and other persons who due to their degree, profession or regular activity have specialized skills in accounting and tax matters.

COMMENTS:

1. This provision has been inspired by the OAS/IDB Model Tax Code and statutory law, which also set forth the liability of professionals who intervene in tax matters. This article refers to the individuals who due to their special knowledge or skills, are in a position to appreciate the consequences or scope of the procedures in which they have participated. As deemed reasonable, said participation shall be in line with the subjective liability defined in the following article, by which, for example, when the relevant professional acts according to a reasonable interpretation of the rule and to the legal characterization of the facts, any form of liability shall be excluded.
2. In particular, it establishes a specific penalty for the assumption in which counsels participate in the design and implementation of abusive schemes, which shall be related to the general anti-tax avoidance clause defined in Article 11 of the Model. In this respect, recent trends of comparative law adopt the provisions that bind the penalty to

the professional fees, a daily fine from the time the abusive tax-planning scheme is implemented until it is discovered, or the amount of the tax debt evaded by the client or the fine applicable thereupon. The Model establishes the penalty as the greater one between the sum of the professional fees and a percentage of the fine applicable to the client. It is worth highlighting that this penalty shall be supported with a general policy of communication with tax counsels, which promotes reporting schemes ex ante and other forms of communication and inquiry.

Article 161. Liability based on breach of duty.

1. Tax violations are committed, and consequently warrant penalties, only if they are perpetrated with wrongful intent or negligence, even by the simple negligence in fulfilling the duty of care implicit in compliance with tax obligations and tax duties.
2. For corporations and collective entities or economic units, liability based on breach of duty shall be characterized to the extent it is determined that in their internal organization, the duty of care that would have prevented the violation has been breached, without need to determine the material liability of their administrators, directors, executors, curators, trustees and other individuals involved, and without detriment thereto.
3. Entities or collective entities and owners are generally liable for the fines enforceable upon tax crimes perpetrated by their dependents in the performance of their duties, to the extent evidence is found of their breach of the duty to oversee the latter, which would have prevented the violation, without detriment to the personal liability of the individuals defined as accessories.

COMMENTS:

1. Item 1 refers to the principle of liability based on breach of duty or negligence, which excludes strict liability in tax crimes; they are only perpetrated on the grounds of wrongful intent or negligence, and mere negligence in the duty of care required in compliance with tax obligations and tax duties shall suffice. In such respect, in the case of accessories, who are not liable for duties of care in compliance on the grounds they are not liable parties, a subjective element of negligence should be enforceable.
2. Item 2 defines the enforcement of the general rule of liability based on breach of duty upon corporations or collective entities without legal personality, which constitutes a typical nuance in the application of classic principles of criminal law. This is a result of the definitions in the foregoing article that the violation shall be perpetrated by the corporation or collective entity as such (liable not only for the penalty). This item establishes the liability based on breach of duty of corporations and comparable entities, without the need to attribute the penalty to a given individual, which is a generally applied principle in contemporary Tax Law. Hence, it sets forth that it shall suffice to determine that, within their internal organization, the duty of care that would have prevented the violation has been breached, without the need to determine the specific personal liability of their administrators, directors, executors, trustees, and other individuals involved. It also adds the wording "without detriment to" determining said liability from individuals for their personal behavior in said crimes.
3. Finally, item 3 also establishes the liability for negligence by *culpa in vigilando* [breach of a duty of supervision] or *culpa in eligendo* [breach of a duty of choosing adequate personnel for assigned tasks]

of the owners with respect to their dependents.

Article 162. Exemptions from liability.

1. The actions or omissions characterized by law shall not generate liability for tax violations in the following assumptions:

a) When parties who lack tax capacity to act perpetrate them.
b) In the event of concurrent acts of God or force majeure.
c) When they derive from a collective decision, for those who refrained from voting or failed to attend the meeting in which it was adopted.
d) When they arise from actions carried out by subordination to hierarchy, provided the order does not clearly constitute a flagrant tax violation.
e) When due diligence existed in compliance with tax obligations. Among other assumptions, due diligence shall exist when the liable party behaved according to a reasonable interpretation of the rule, or when the liable party adopted a behavior in line with the criteria set forth by the competent Tax Administration. Due diligence shall also exist when the elements of the taxable event or the tax base have been assessed or determined on sufficient technical grounds, notwithstanding errors detected subsequently.
f) When they are attributable to a technical defect of computer software for tax assistance implemented by the Tax Administration to facilitate compliance with tax obligations.

2. Liable parties who voluntarily, without any process by the Tax Administration, comply with their tax obligation or correct their tax statements, self-assessments, or requests for tax benefits or requests for refunds or offsetting previously filed incorrectly, shall not incur liability for the tax violations committed upon filing the them.

The foregoing provisions shall not preclude the potential violations that may be committed as a consequence of incorrectly filing the new tax statements, self-assessments, or requests.

COMMENTS

1. As a reasonable consequence of the principle of liability based on breach of duty, the article defines a number of assumptions to exempt the liable party from liability, although noncompliance occurred from the strict liability approach.
2. In addition to the assumptions of necessity, force majeure and acts of God, one of the most widely admitted reasons for exemption is the mistake of law, also known as "mistake based on the misunderstanding of the illegitimate nature of the action undertaken". This type of error has been traditionally linked to the assumptions in which the taxpayer behaved according to a reasonable interpretation of the rules, even when they differ from the one adopted by the Tax Administration or the one finally enforced by a court of law. It is worth highlighting that this ground for exculpation applies specifically in the cases in which a discrepancy exists between the administrative or judicial interpretation and the one sustained by the taxpayer. That is to say, the applicable assumption is, precisely, the existence of two conflicting interpretations: that of the Tax Administration, on the one hand, and the liable party, on the other. Said situation requires analyzing whether, in spite of the conflict, the interpretation of the taxpayer is reasonable and informed. This ground for exculpation is closely related to the self-assessment principle, which imposes upon the liable party the duty to undertake the legal determination of facts and the interpretation of the rules, which shall also entail his right to disagree with the Tax

Administration. The article links this type of situations, although not exclusively, to all such cases in which the liable party acts on the basis of criteria adopted by the Tax Administration, which would require addressing all the similar situations provided for in this Model.

3. It also provides for the mistake of type (or factual), which comprises the mistake on any of the essential elements of type that excludes the appropriate knowledge thereof. This type of mistake is of great relevance in Tax Law in all the assumptions in which the liable party incurs mistakes upon determining and/or assessing elements of the taxable event, by causes not attributable thereto. For example, when the law establishes a criterion of "fair value" or "market price or value" as the rule to assess certain transactions, it is feasible that a reasonable assessment discrepancy arises in the specific case of said value or price.
4. It is also highly relevant to provide for the situations that may arise from the incorrect operation of computer systems, which may cause duly grounded taxpayer noncompliance.
5. Finally, it defines an incentive to voluntary compliance after the due date, exempting the liable party from penalties for the inaccuracies on a modified self-assessment or tax statement, which does not exclude the enforcement of penalties in relation to the inaccuracies on the new self-assessments or tax statements. It is worth highlighting that in such cases no late penalty applies, but rather a surcharge.

Article 163. Joint liability of subjects involved in the perpetration of the tax violation.

1. The individuals or entities who are covered by the assumption set forth in subsection a) of item 1 in Article 33 shall be deemed jointly liable for the payment of tax penalties, whether arising from a tax debt or otherwise, in agreement with the same procedure established for the assessment of the joint liability defined therein.
2. The following individuals or entities shall also be held jointly liable for tax penalties, for an amount equivalent to the value of the property or rights that the Tax Administration shall have attached or transferred:

a) Perpetrators or contributors in the concealment or transfer of property or rights of the debtor in order to prevent Tax Administration enforcement.
b) Those who by wrongful intent or negligence fail to comply with the garnishment order.
c) Those who, upon being notified of the garnishment order, the precautionary measure or the implementation of the guaranty, contribute or accept to conceal garnished property or rights, or such property or rights on which the precautionary measure or guaranty has been applied.
d) Individuals or entities who are depositories of the property of the debtor, who upon receiving the garnishment notice, contribute or accept to conceal them.

COMMENTS:

1. The article establishes the assumption of liability relevant to the principle of liability based on breach of duty, as defined in subsection a) of item 1 in Article 33, in relation to the authors or active participants in a tax violation, who, according to said principle, shall be held jointly liable for the tax obligation. Said liability extends to the applicable tax penalty.
2. Joint liability for the penalties imposed upon other subjects shall be attributable to the parties called to cooperate in the garnishment procedures and the adoption of precautionary measures that seek collection of the liabilities of

such other subjects. In this case, the attribution of responsibility operates as a penalty that is connected with the principle of liability based on breach of duty, upon defining the existence of fraudulent or negligent actions in the performance of said collaboration tasks.

Article 164. Liability in the penalty of closure of subjects who are not involved in the perpetration of the tax violation.

The beneficiaries defined in subsection d) of item 1 in Article 33 shall bear the closure of the establishment decided as the penalty for the violations perpetrated by the transferors. Nevertheless, the party acquiring a business or establishment shall request from the Tax Administration a certification on the existence of an open closure proceeding, which shall be granted within a term of... days. In the event the Tax Administration denies it, or upon expiry of the term without issuing the certification, the penalty of closure shall not be enforced on the establishment acquired, unless the business is deemed fraudulent by virtue of Article 10 of this Code.

COMMENTS:

The article sets forth the enforcement of the penalty of closure in case of disposal or transfer of the establishment subject to closure. In the event of an actual transfer, the buyer, prior to the acquisition, shall request the Tax Administration all the information on the existence of any pending closure procedure. Should the answer be affirmative, the prospective buyer shall be notified regarding the closure procedure he shall bear. Upon a negative answer, or no answer (which shall be deemed negative), the buyer shall be able to buy without being required to bear the closure arising from a procedure initiated after the acquisition, due to prior events. An important exception shall be considered: the transfer shall not be fraudulent, in order to prevent the easy shift of ownership to avoid enforcement of the closure penalty.

Section 3. Penalties.

Article 165. Types of penalties.

The applicable penalties shall be:

1. Principal penalties:

a) Fine, which shall be proportional or a fixed amount. In the first case, the percentage shall not apply in relation to the interest accrued.

b) Seizure of material items subject of the violation or used in the perpetration thereof. If a seizure was not possible on the grounds of the inability to take possession of the merchandise or objects, a fine equal to their value shall apply.

c) Temporary closure of the establishment.

2. Ancillary penalties, applicable in addition to the corresponding fine:

a) Suspension from public office for a period of up to... months for perpetrators or contributors in a material violation and removal from public office, for perpetrators or contributors in a gross violation.

b) Disqualification from professional and trade practice, for a term of... months, for violators of the reporting duties defined in Article 114 of this Code, after failing to satisfy said obligation upon three requirements.

c) Ineligibility to obtain public assistance or government financing, disqualification from participating in public bids and loss of the right to obtain tax benefits or incentives for a period of... months, for material violations and of... years in the case of gross violations.

3. The decision imposing the ancillary penalties set forth shall be delivered to the competent bodies for them to order the suspension, removal from office, disqualification or loss of benefits, with a view to their enforcement.

COMMENTS:

1. The article enumerates the different penalties applicable to tax crimes, whatever their nature and they shall apply to the extent they are expressly set forth in the Code for a given type of offense. The article distinguishes three principal penalties- -fines, closure and seizure-, and ancillary penalties, which shall be applicable in addition to the principal ones. In this respect, three types of ancillary penalties are included: suspension or removal from public office, depending on whether the perpetrator or contributor participated in a material or gross violation; disqualification from professional or trade practice, regarding breach of reporting duties, after at least three requirements; loss of the benefit of public assistance, participating in public bids or enjoying tax benefits, for a certain term, depending on whether violations were material or gross.
2. Every specific type of violation shall be determined to be either material or gross. Ancillary penalties, owing to their nature, shall require the involvement of the competent enforcing authorities, other than the Tax Administration, by which they shall be notified of the penalty to be imposed to allow its enforcement.

Article 166. Degree of penalties: rules of determination.

Administrative penalties shall be enforced according to degrees, as applicable, based on the following determination procedure:

a) Determining the single or minimum penalty contained in the legal type.
b) Considering the circumstances of degree applicable to the case and determining the percentage increase in every criterion.
c) Adding the percentage points applicable in every criterion of degree, considering as the baseline the single penalty or the minimum penalty, as indicated in the following article.
d) When the penalty is structured according to a minimum and a maximum degree, the respective additions shall be made in line with the minimum and maximum limits foreseen for each type, applying the percentage increase on the difference between the maximum and minimum amounts or the difference between the maximum and minimum percentages.

COMMENTS:

1. The principle of proportionality features a subjective approach, which proposes adapting the penalty to certain conditions under which the violation was committed. An appropriate way of implementing this principle is to structure penalties according to a bracket that includes percentages or minimum and maximum fixed amounts, and determining the penalty requires selecting the applicable percentage or amount from said bracket. Although this is a typical role of criminal judges, since all criminal penalties are structured in this fashion, in the administrative sphere the decision regarding the degree within the bracket to define the penalty shall follow certain objective parameters rather than a discretional criterion. Therefore, this article defines the applicable methodology.
2. It also enables the lawmaker to structure certain penalties as a single percentage or a fixed amount. Whatever the option adopted, the methodology implies a number of steps, from identifying the specific criterion of degree applicable according to the definition in the following article, to the application of an increase that is quantified either in percentage points or in fixed amounts. Said increase applies according to two modalities: if the penalty is structured according to a minimum and maximum

amount, the increase shall apply to the minimum amount. If the penalty is structured according to a fixed percentage or amount, the increase shall apply on the latter.

3. The following examples are worth considering:

a) Penalty of a single 25% amount, which shall be subject to the criterion of degree of recurrence or repetition: upon assuming that the percentage increase for this specific criterion is set at 25% for material violations. When the adjusted tax amount in the course of an audit is 1,000,000.00, the initial penalty shall be 250,000.00 and the increased penalty 312,500.00 (250,000.00 plus 25% of 250,000.00).

b) Penalty of minimum and maximum percentages between 25% and 100%. The percentage over the 25% increase due to the severity of the penalty defined in the foregoing example would apply over the difference between the maximum and minimum percentages of the penalty (in other words, 75%). This entails that in order to define the penalty degree, it would be necessary to apply an 18.75% increase (25% times 75%) starting from the minimum percentage. Considering the adjusted tax amount from the foregoing example at 1,000,000.00, the minimum 25% penalty increases to 43.75% (25% plus 18.75%), by which the increased penalty amounts to 437,500.00.

c) Penalty of minimum and maximum percentages between 1,000.00 and 10,000.00. The 25% percent increase due to the severity of the penalty defined in the foregoing examples would apply over the difference between the maximum and minimum percentages of the penalty (in other words, 9,000.00). The result of this is 2,250.00. Considering that the minimum penalty is 1,000.00, the increased penalty amounts to 3,250.00.

4. The following article provides for specific criteria that determine a penalty increase. The circumstances that eliminate or attenuate the penalty are deemed to have been sufficiently considered in the causes that exempt from liability, in the definition of the structure of the types of violations and in the circumstances that attenuate penalties defined in Article 168.
5. The percentage increases shall be defined by the users of this Model, as appropriate.

Article 167. Criteria for adjustment of penalties.

1. If applicable, penalties shall be adjusted according to the following aggravating circumstances:

a) Recidivism and repetition of crimes. Recidivism shall apply whenever the individual subject to penalty imposed by a sentence or by a final judgment commits a new crime of the same type within a period of... months from the time he committed the first offense. Repetition of an offense shall apply when the offender commits a new offense of the same type again, without a sentence or final judgment having been imposed upon him, within the same term defined in the foregoing paragraph.

The adjustment shall be calculated as follows:

i. When the penalty imposed on the offender is for a misdemeanor, the applicable increase shall be... percent calculated either on the single percentage or on the percentage points in the respective bracket or, otherwise, on the single fixed amount or on the difference between the maximum and minimum fixed amount.

ii. When the penalty imposed on the offender is for a material violation, the applicable increase shall be... percent, calculated either on the single

percentage or on the percentage points in the respective bracket or, otherwise, on the single fixed amount or on the difference between the maximum and minimum fixed amount.

iii. When the penalty imposed on the offender is for a gross violation, the applicable increase shall be... percent, calculated either on the single percentage or on the percentage points in the respective bracket or, otherwise, on the single fixed amount or on the difference between the maximum and minimum fixed amount.

b) The tax loss degree of shall be adjusted as follows:

i. When the financial loss accounts for more than... percent of the tax amount payable or the amounts due, the fixed or minimum fine shall be increased by... percent, calculated either on the single percentage or on the percentage points in the respective bracket or, otherwise, on the single fixed amount or on the difference between the maximum and minimum fixed amount.

ii. When the financial loss accounts for more than... percent, the increase of the minimum fine shall be... percent of the parameters set forth, respectively.

iii. When the financial loss results from unduly obtained refunds, the percentages established in the foregoing paragraphs shall be determined by the application of the formula (1-AR/UR), where AR is the applicable refund and UR is the unduly obtained refund.

iv. When the financial loss results from both the unduly obtained refunds and the unpaid tax debt or amounts payable, the minimum fine increase shall be determined according to every individual item and according to the rules of the foregoing subsections.

c) Noncompliance with the substantive obligation to issue invoices or documentation. This circumstance shall apply when said noncompliance accounts for more than... percent of the amount from transactions subject to the duty of invoicing in relation to the tax or tax obligation and the period subject to examination or investigation; or when as a consequence of said noncompliance, the Tax Administration is unable to verify the amounts from transactions subject to the duty of issuing invoices. In such assumption, the single or minimum fine shall be increased by... percent calculated either on the single percentage or on the percentage points in the respective bracket or, otherwise, on the single fixed amount or on the difference between the maximum and minimum fixed amount.

2. The foregoing criteria shall not apply concurrently.

COMMENTS:

1. The article establishes different criteria for adjustment of penalties.
2. On the one hand, recidivism and repetition of crimes. In such case, the article defines that the new offense shall be of the same type as the first offense, since they are circumstances relevant in calculating the degree of the penalty and it would be contrary to the principle of equity that a misdemeanor, such as noncompliance with formalities, determines the penalty applicable to a more serious crime.
3. On the other hand, it defines the financial loss criterion.
4. The following example may be used to clarify the calculation method set forth for unduly obtained refunds: a 5, 00 refund and another one for 4, 00, the applicable refund on both being 1, 00. Upon applying the formula (1-AR/UR) defined in the article, in the first case the penalty percentage increase amounts to 80% (1-1/5), while in the second case it is 75% (1-1/4). Therefore, the penalty

increase is greater for the individual who obtained a higher undue refund.

5. When the financial loss is the result of an undue refund and a smaller amount paid, a more lenient treatment than the one applicable upon the author of only one of such losses shall be avoided. In order to provide a simplified approach, the Model has adopted the option to consider each one of the losses individually and proposes calculating the aggravated penalty for each one.

Article 168. Reduction of penalties.

1. When the offender voluntarily complies with his tax obligations, without any Tax Administration intervention to obtain such compliance, the penalty shall be reduced by...percent. The offender shall be allowed to file a self-assessment and enter the penalty payment at the time of voluntary compliance; in such case, the reduction shall be... percent. This reduction shall not apply, since it is unnecessary, in the case defined in item 2 of Article 162 of this Code, except in the case of the penalty for inaccuracies on the new statements, self-assessments and payments.
2. When the offender repairs his noncompliance, as a result of a Tax Administration audit and within a period of... days thereafter, the penalties enforceable in the course of auditing procedures shall be reduced by... percent. The offender shall be allowed to file a self-assessment and enter the penalty payment upon repairing his noncompliance; in such case the reduction shall be... percent. In order to determine the type of assessment, upon completing the audit after the liable party repairs his noncompliance, the audit shall be deemed a preliminary audit.
3. When the period to initiate the foregoing administrative process expires and within the period to bring remedies against the assessment decision, and in the case of penalties enforceable in the course of assessment procedures, should the offender waive the appeal and repair his noncompliance, the penalty shall be reduced by ... percent. The offender shall be allowed to file a self-assessment and enter the penalty payment at the time he repairs his noncompliance; in such case, the reduction shall be... percent.

   To such purposes, a Tax Administration process shall be any process carried out upon notifying the liable party, seeking to examine or investigate compliance with tax obligations relevant to the tax and the fiscal year applicable, whether by an administrative process or an audit.

COMMENTS:

1. The article adopts the trend of modern tax legislation that rewards the compliant behavior of the offender. Firstly, it attaches relevance to the entity of voluntary compliance with overdue obligations, marked by a favorable treatment towards the liable party who seeks to overcome noncompliance without intervention of the Tax Administration. Not only does it seek voluntary compliance within the applicable time period, but also that the party who failed to comply within said time period finds an incentive to repair such circumstance before the Tax Administration initiates the relevant enforcement proceedings. Such behavior, defined in item 1 of the Article, deserves the greatest reduction, even with an additional amount for filing a self-assessment of the penalty; in other words, voluntary assessment on a regular form and payment thereof. The self-assessment of the penalty shall imply a greater reduction. It is worth clarifying that such reduction is inapplicable in the case defined in item 2 of Article 162, which refers to a corrected self-assessment

that increases the tax amount payable or reduces the credit balance, in which case the penalty for filing incorrect self-assessments in relation to the original self-assessment is inapplicable, and the late payment surcharge shall apply.

2. Secondly, in order to facilitate enforced non-voluntary compliance, the article includes other assumptions by which administrative penalties are reduced by virtue of the fact that the offender has been notified of the Tax Administration claim before exhausting all the administrative litigation instances. Hence, a higher percentage reduction applies to the administrative penalty- and that is the form in which member countries adopting this Model shall interpret the blank spaces provided herein- The earlier the liable party accepts the voluntary compliance proposal the Tax Administration makes in the administrative proceeding, the greater the likelihood of reaching final agreement therewith. It is worth highlighting that this criterion does not breach constitutional principles relevant to the due process of law, to the extent it does not constitute a mechanism to enforce more severe penalties- that is to say, not admitting compliance and repair- but rather an attenuating mechanism.
3. The Model reserves the deduction system for the penalties applicable in the course of the assessment procedure, although certain bodies of law also apply the reduction system to formal violations.
4. Finally, it is important to mention that certain laws adopt the entity of "surcharges", which constitutes an intermediate approach between late interest and penalty, adopted in this Model in Article 61. In such respect, it is normal to apply the surcharge for corrections and voluntary payment of overdue amounts based on the basic principle that the amount payable shall be less than the reduced penalty amount, in order to encourage voluntary repair and payment of the surcharge by the liable party and thus, avoid the penalty. It is also common that the surcharge increases according to the time elapsed after the expiry of the voluntary compliance period and the payment after the period expires.

Article 169. Interest over penalties.
The fines shall be subject to the interest rate calculated upon the expiry of the time period established in Article 60 of this Code, which shall be counted from the notification of the decision that imposes them. The remedies that may be brought against the administration shall not suspend the calculation of interest.

COMMENTS:
Contrarily to the principal tax obligation, which generates interest from the time it should have been paid exactly and in full, the fines shall accrue interest from the time they are imposed by decision, and not from the time they were committed. This is based on the fact that interest constitutes a means to compensate the administration for the overdue payment of the tax obligation and the penalty constitutes a punishment. Adding interest also on penalties that have not been enforced is deemed disproportionate. Nevertheless, an administrative decision is not required for said interest to accrue.

Chapter II
Special provisions.

Section 1. Material violations.
Article 170. Material violations.
Material violations are those related to the omission of taxes, and requesting and obtaining undue offsetting or refunds.

COMMENTS:
The article defines the assumption by which the material violation occurs. The relevance of such circumstances is that they cause a financial loss, whether by failure to pay taxes on a timely and accurate basis, or by requesting or obtaining refunds and, therefore, an impairment on the revenue of the State. It is worth noting that the Model has not adopted a penalty for late payment of the assessed tax debt, since it has included a surcharge in Article 61. In such respect, it is worth noting that criminal tax laws in different countries have adopted an approach that seeks to impose the penalty on noncompliance in the assessment stage, since at that point the liable party, who is required to assess the tax obligation accurately, fails to do so and conceals from the Tax Administration the creation of a tax obligation, unless the latter deploys its limited auditing resources. Such breach requires a penalty; otherwise, after conducting the assessment, the punishment of the failure to pay may be waived, since by that time the tax obligation is tantamount to a civil obligation: the amount due is known, property may be attached and the enforcement proceeding may be initiated, as with any ordinary debtor. Hence, the Model adopts this approach to consider noncompliance with the payment of assessed obligations as genuine intentional tort and not punitive crimes, which call for an inherent and specific form of repair: enforced collection with a late payment surcharge.

Article 171. Material violations due to omission, inaccuracy or unduly obtaining or applying refunds or offsetting.
Material tax violations due to omission, inaccuracy or unduly obtaining or applying refunds or offsetting shall be defined as follows:

a) Failure to file self-assessments or tax statements required for the administrative assessment. This violation applies when the liable parties cease to enter, within the legal terms, the applicable tax payments, by virtue of omissions of the self-assessments they are required to enter, or failure to file tax statements with the complete information required for the Tax Administration to assess the obligation that gives rise to the tax amount payable. The penalty base shall be the amount determined by the administration.

b) Filing inaccurate self-assessments or tax statements, which are required for the administrative assessment. This violation is materialized when the liable parties cease to enter, within the legally defined terms, the tax amounts due by filing inaccurate self-assessments, or by filing inaccurate tax statements, and such tax statements are required in the administrative assessment procedure.
In this context, inaccuracy shall be defined as:

i. The use of false or incomplete information, which result in a smaller tax amount, a smaller balance payable or a greater credit balance for the taxpayer or liable party.
ii. The mathematical differences contained in the statements filed by liable parties. Such differences arise when an incorrect value results from any mathematical operation, or the rates applied are other than the legally defined rates that imply, in any case, lower tax amounts or higher credit balances than the ones applicable.
iii. In the case of withholding or collection statements, failure to apply any or all withholdings or collection amounts, the ones applied and not filed, or the ones filed with under-reported amounts.
The penalty base shall be the difference between the amount assessed in the automatic assessment and the self-assessed amount on the statement

of the liable party, as applicable; or the difference between the amount resulting from the correct tax assessment and the one applicable according to the information filed.

c) Unduly obtaining refunds or applying offsetting. This violation occurs when the liable party unduly obtained or applied a refund or offsetting of taxes over inexistent amounts or for amounts that exceed the applicable ones. In such case, the penalty base shall be the amount unduly refunded or offset.

COMMENTS:
See comments to Article 173 of the Model.

Article 172. Description of tax violations.
Every tax violation established herein shall be described individually, in agreement with the provisions in Article 173. The resulting fine shall be applied over the total penalty base applicable in every case.

Without detriment to the foregoing, when the automatic assessment results in amounts not subject to penalties due to the absence of subjective elements or by existence of an exemption from liability, the proportion of the amounts not subject to penalty shall be excluded from the penalty base, so that such amounts are not impaired by the penalty sought to be enforced.

To such end, the penalty base shall be the result of multiplying the amount payable by the ratio, which shall be established by multiplying by one-hundred the result of a fraction featuring:

a) In the numerator, the sum of the result of the multiplication of the increases subject to penalty in the tax base times the tax rate defined in subsection c) hereunder, plus the increases subject to penalty directly calculated on the tax amount or amount payable.

b) In the denominator, the sum of the result of the multiplication of all the increases, whether subject to penalty or not, in the tax base times the tax rate defined in subsection c) hereunder, plus the increases subject to penalty or not, directly calculated on the tax amount or amount payable.

c) To the effects of subsections a) and b) above, should the increases subject to penalty be generated in the portion of the tax base by a proportional rate, this rate shall be applied. When increases are generated in the portion of the tax base levied by a tax rate scale, the average tax rate resulting from the application of said scale shall apply. The ratio shall be expressed by rounding off with two decimals and its calculation shall not include the amounts assessed that reduce the tax base, the tax amount or the amount payable.

COMMENTS:
See comments to Article 173 of the Model.

Article 173. Applicable penalties.

1. The material violations described in Article 171 shall be penalized with a fine of... percent over the applicable penalty base.
2. For all the violations defined above that qualify as material or gross violations, as described hereunder, the penalties established individually shall apply:

a) Material violations are the violations committed by concealing information from the Tax Administration, provided the amount of the tax payment resulting from such concealment exceeds ... percent of the penalty base.
Information shall be deemed to have been concealed upon:

i. Failure to file tax statements.
ii. Filing statements that feature non-existing events or transactions or with false amounts, or which totally or partially omit

transactions, income, yields, proceeds, assets or any other information relevant in assessing the tax debt.

Should the violation be deemed a material violation, a penalty of ... percent shall apply over the total penalty base applicable.

b) Gross violations are the violations in which fraudulent means were employed, understood as:

i. Substantial anomalies in accounting books and records or the records required by tax laws. Substantial anomalies are defined as: absolute noncompliance with the obligation to carry accounting books or records or the records required by tax laws; undertaking creative accounting practices that, for the same business and financial period, conceal the actual business status; carrying accounting books or records incorrectly or the records required by tax laws, by recording false entries, records or amounts, or allocation in incorrect accounts in order to shift the focus for taxation purposes. The application of the latter circumstance shall require that the incidence of incorrectly carrying books or records be greater than ... percent of the penalty base.

ii. Employing invoices, receipts or other false documents, provided the amounts involved in said documents or false or forged forms account for a percentage greater than... percent of the penalty base.

iii. Using third-party individuals or entities when the offender, in order to conceal his identity, has designated a third party, with or without their consent, to assume ownership of the assets or rights, obtain income or capital gains or carry out the transactions relevant for tax purposes from which the tax obligation arises, the noncompliance of which constitutes the violation subject to penalty.

Should the violation be deemed a material violation, a penalty of ... percent shall apply over the total penalty base applicable.

COMMENTS:

1. Articles 171 to 173 characterize different violation assumptions that apply in the tax assessment stage. Hence, the article considers the failure to file the tax or self-assessment statement resulting in an unpaid tax obligation or filing inaccurate tax statements or self-assessments. Likewise, it characterizes the noncompliance with tax statements or filing inaccurate statements when they are required for the Tax Administration to assess taxes, causing a material outcome by not entering the tax obligation correctly. It further criminalizes unduly obtaining or applying refunds or offsetting.
2. The amounts that are not entered, or offset or refunded in excess of the amounts applicable, constitute, in principle, the penalty base upon which punitive interest shall apply. Nevertheless, the portion of said amounts that are not subject to penalty shall be subtracted therefrom, even when exemptions from liability apply. In order to exclude the amount not subject to penalty, a ratio shall be applied, which accounts for the proportion of the amount payable that is subject to penalty over the total amount payable.

   Examples follow with increases subject to penalty in the 72,000.00 base, other increases not subject to penalty in the 12,000.00 base, and the average 23.07% Individual Income Tax rate and a 150% penalty.

a) In order to calculate the ratio referred to in article 172, the numerator is the result of multiplying the increases subject to penalty in the base (72,000.00) times the average tax rate (23.07%); and the denominator (result of multiplying the

sum of the increases, whether subject to penalty or not, in the base (72,000.00 plus 12,000.00, that is 84,000.00) times the average tax rate (23.07%). The rounded-off ratio by two decimals is 85.71% (16,610.40 out of 19,378.80).

b) In order to calculate the penalty base, the ratio obtained (85.71%) is multiplied by the amount payable, which results from multiplying the average tax rate (23.07%) times the sum of the increases, whether subject to penalty or not, in the base (84,000.00). Therefore, this amount payable (19,378.80) multiplied by the foregoing ratio, results in the penalty base minus the amount not subject to penalty (16,609.60).

c) Hence, the penalty amount is 24,914.4 (16,609.60 times 150%).

3. The percentages to be determined for penalties, although they shall be left to the discretion of the users of the Model, follow a three-tier structure: a lower one, for misdemeanors; an intermediate one for material violations; and the highest one for gross violations.
4. Two criteria are applied to define material and gross violations. The positive criterion involves the description of certain types of behavior that aggravate the baseline behavior. The negative criterion indicates that the behaviors described shall constitute the crime of tax fraud, as in the case in which the behaviors described exceed the quantitative threshold set forth for said crime.
5. Material violations are characterized based on the notion of data concealment, which is materialized by omitting to file tax statements, including inexistent transactions or omitting transactions, to the extent they affect or impair a specific percentage of the penalty base. Said percentage may be, for example, 10% or 5% of the penalty base.
6. Gross violations are characterized based on material accounting irregularities, failure to carry accounting books or adopting creative accounting practices, making false entries or inaccurate accounts or using third parties, to the extent they affect or impair a specific percentage of the penalty base. Said percentage may be, for example, 40% or 50%.
7. In order to calculate the impact of the circumstances that determine that a violation is material or gross, the sum of the result of multiplying the tax base increases in relation to either circumstance shall be divided by the proportional or average tax rate (progressive scale), plus the increases applied directly on the tax amount payable (for example, by reducing VAT credits); by the sum of the result of multiplying all the increases subject to penalty or not that were determined in the tax base by the proportional tax rate or by the average tax rate (progressive scale), plus the increases subject to penalty or not directly applied to the tax amount payable. Hence, for example, a tax amount payable from false purchases for 9,000.00 -obtained by multiplying the false purchases deducted (30,000.00) by the tax rate (30%) -. If the total debt or penalty base is 45,000.00, 9,000.00 should be divided by 45,000.00, and the incidence obtained is 20%. If the percentage established by Law were 20% for a gross violation, the maximum penalty percentage would apply to the example.
8. Once the violation is defined as material or gross, the principle of individual characterization of the violation shall apply, by which the higher percentage shall apply over the overall penalty base, even when a portion is not a consequence of material or gross violations. The foregoing shall

apply regardless of the adjustment circumstances defined in Article 167, which shall determine increases based on the penalty applicable according to the severity of the behavior.

Section 2. Formal violations.

Article 174. Types of formal violations.

Formal violations arise from the failure to comply with the following formal obligations:

a) Registration.
b) Issuing and requiring invoices.
c) Keeping accounting books and records as appropriate.
d) Filing tax statements and information.
e) Facilitating Tax Administration proceedings.
f) Providing information and appearing before the administration.

COMMENTS:

This article sets forth the different specific misdemeanors related to the noncompliance by the liable party with formal obligations stemming from the tax obligation. The article defines general types that consider the ability of penalizing specific instances of noncompliance.

Article 175. Formal violations arising from the obligation to register.

1. The following are misdemeanors in relation to the obligation to register with the Tax Administration National Tax Registry:

a) Failure to register with the Tax Administration National Tax Registry.
b) Filing or communicating partial, insufficient or erroneous information concerning background or data required for initial registration or updating with the National Tax Registry.
c) Failure to provide or communicate to the Tax Administration, background information or data required for registration, change of domicile or updating with the National Tax Registry, within the terms established.

2. The violation defined in this article shall be deemed a misdemeanor, unless the data presented are false, in which case, it shall be considered a gross violation.
3. The applicable fine in such cases shall range from... to...

COMMENTS:

The article establishes the situations in relation to the ancillary obligation to register with the National Tax Registry, which constitute formal violations, and they do not produce an immediate tax loss. The fine shall be set by each country, and the Model recommends a variable penalty with a maximum and minimum amount.

Article 176. Formal violations arising from the obligation to issue and carry or keep invoices.

1. The following are formal violations related to the obligation to issue and require invoices:

a) Failure to issue invoices and other mandatory documents, or issuing them without meeting the requirements and characteristics established by tax rules, including issuing invoices by mechanical means that are partially or totally illegible or by means of cash registers or electronic registers that are not compliant with Tax Administration requirements.
b) Transporting merchandise without the documentation required by tax rules.

2. The violation defined in item 1 herein shall be deemed a material violation in the following assumptions:

a) Upon noncompliance with the requirements set forth in regulations on the obligation to issue invoices, except as defined in the following subsection herein and in item 3 of this article. This subsection shall include, among others, noncompliance in relation to issuing, submitting, correcting and maintaining the invoices or alternate documents.

The penalty applicable shall be a fine ranging from... to...

b) In the event the noncompliance involves failure to issue or maintain invoices, receipts or alternate documents.
The penalty applicable shall be a fine ranging from... to...

3. The violation defined in item 1 herein shall be deemed a gross violation when the noncompliance involves issuing invoices or alternate documents with false information.
The penalty applicable shall be a proportional fine ranging from... percent of the return on sales of all the transactions originating the violation.
4. In the case of repeated offenses, for which the term defined in Article 167 of this Code shall not apply, a closure penalty of up to..., days shall apply for the office or establishment in which the violation was committed.

COMMENTS:

1. The criminalization of formal violations in relation to noncompliance with the obligation to issue documentation and that they fully meet the legal requirements is of paramount importance, especially due to the general application of the Value Added Tax in countries of Ibero-America, in which documentation serves to support tax credits and debits.
2. This type of violation is not a misdemeanor. Contrarily, it is deemed a material or gross violation, depending on whether it entails noncompliance with formal requirements or falsifications or failure to submit documentation. While fixed amount fines are suggested for material violations, a percentage of the gross margin is suggested for transactions involving false invoices.
3. It is worth mentioning that the Model recommends a principal penalty for repeated offenses, in the form of temporary closure of the premises where the violation is committed, since this economic sanction has proven to be an effective mechanism to improve compliance. The Model recommends that tax administrations monitor internally and in detail the legitimacy of the enforcement of penalties herein, particularly with a view to avoiding the enforcement of penalties on actions that have not been correctly characterized or typified or regarding which evidence exists that generates doubts about the violation.

Article 177. Formal violations arising from the obligation to keep accounting and tax books and records.

1. The following are formal violations related to the obligation to keep accounting and tax books and records, including electronic records:

a) Failure to keep accounting books or records required by laws and regulations, in the form and under the conditions established by the applicable rules.

b) Keeping accounting and other records required by tax rules beyond the terms set forth by tax rules.

c) Failure to maintain books, records, copies of payment receipts or other documents, as well as electronic accounting systems or software and the electronic media for the term set forth by laws and regulations.

2. The violation defined in item 1 herein shall be deemed a material violation.
3. The applicable fine in such assumptions shall range from... to...

COMMENTS:

1. With regard to the ancillary obligation to keep accounting books and records in different formats, such as documentary, magnetic media, etc., the failure to do so is penalized because of the relevance of the information that it contains and the need to assure that the same is accurate.

2. A variable range is recommended for the fine, and the adjustment criterion shall be applied in the event of substantial noncompliance with the obligations to keep documentation.

Article 178. Formal violations related to the obligation to file tax statements.

1. The following are violations in relation to the obligation to file statements and documents:

a) Failure to file statements that contain the tax determination.
b) Failure to file other statements or documents.
c) Filing statements containing an incomplete tax assessment, or filing beyond the legal term established.
d) Filing other statements or communications incompletely or beyond the legal term established.
e) Filing the amended statements after the due date set forth in Article 124.
f) Filing the tax statements in forms or places not authorized by the Tax Administration.

2. This violation shall be deemed a material violation and shall be penalized with a fine of....

COMMENTS:

The article characterizes and defines the fines applicable in the different assumptions of the obligation to file tax statements and related documents. This violation shall be understood to refer to such cases in which there is no financial loss, since otherwise the material violation is subsumed concurrently under the formal violation [according to the principle of "concurso aparente"].

Article 179. Formal violations related to the obligation of facilitating audits.

1. The following are violations related to the obligation of facilitating proceedings by the Tax Administration:

a) Failure to disclose books, records or other documents that the administration may request.
b) Producing, distributing or marketing products or merchandise subject to taxation without the visible control stamp required by tax rules or without the payment receipts certifying their acquisition.
c) Failure to maintain in good operating condition the devices that store recorded microfilm and the magnetic media used in applications that process data in relation to the tax base, when records are created on microfilms or computer systems.
d) Failure to facilitate access by the Tax Administration to the electronic equipment and systems that process tax-relevant information at taxpayer premises.
e) Failure to facilitate documents, records, receipts, computer programs and files or other tax-relevant data.
f) Noncompliance with a duly notified requirement.
g) Denying or preventing access or permanence of officials on the premises and establishments relevant to tax obligations.
h) Any other form of resistance or obstruction of tax control processes.

2. Such violation shall be deemed a material violation.
3. It shall be penalized with a fine amounting to... upon failure to comply with the first Tax Administration requirement, ... upon failure to comply with a second requirement, and... percent over gross income, with a minimum of ... and a maximum of... upon noncompliance with the third administrative requirement. Additionally, assets shall be seized if warranted by the nature of the violation.

COMMENTS:

The article establishes that for violations in relation to controls or audits conducted by the tax authority, the applicable penalty

shall be a fine and property seizure, when appropriate, in the different assumptions defined in this provision. The article adopts the criterion of penalty increases based on the number of administrative requirements needed for the liable party to refrain from resisting and obstructing proceedings.

Article 180. Formal violations related to the obligation to report and appear.

1. The following are violations to the obligation to report and appear before the Tax Administration:

a) Failure to comply with the reporting obligations defined in Article 114, by either submitting information or by a Tax Administration requirement regarding the activities of the liable party or of related third parties, within the terms defined.
b) Submitting partial, insufficient or erroneous information to the Tax Administration.
c) Failure to appear before the Tax Administration, upon request thereof.

2. Such violation shall be deemed a material violation.
3. The applicable penalty shall be a ... fine for late filing or failure to meet the individual requirement, ... upon failure to comply with a second requirement, and ... percent over gross margin, with a minimum of ... and a maximum of... upon noncompliance with the third administrative requirement. Upon determining errors on the information submitted, a ... fine shall apply for every inaccurate record.

COMMENTS:

1. Violations in relation to noncompliance with the reporting obligation and failure to appear before the Tax Administration, in the different assumptions provided for herein, shall be penalized with a fine that increases according to the extent of the noncompliance, ranging from fixed amounts in the first and second requirement by the administration, to a percentage over the return on sales, with minimum and maximum amounts, in the event of noncompliance with the third requirement. Should inaccurate information be filed, a fixed amount criterion is applied for every inaccurate record of tax relevance or priority.
2. It is worth highlighting that the application of a percentage over the return on sales seeks to attach to the penalty a deterrent effect, according to taxpayer business volume. Nevertheless, it is worth noting that the penalty is not necessarily linked to the importance of the information for the Tax Administration, by which the Model recommends classifying the relevance of the information in order to apply proportional penalties.

Section 3. Procedure for the determination and application of penalties.

Article 181. Procedure for the application of penalties.

The penalties for material violations in relation to the assessment of tax obligations shall be enforced in the tax assessment procedures, as applicable. In such case, the penalty shall not be enforceable until the administrative proceedings have been exhausted. In all other cases, they shall be enforced by independent decisions by way of the procedure defined in Article 182.

COMMENTS:

1. It enables the enforcement of penalties jointly with the tax assessment procedure, which shall be the regular procedure for the violation described in Article 171.
2. In all other cases, they shall be enforced by independent decisions. The following article provides for the specific procedure for the application of penalties over formal violations and late payment, in order to guarantee the right to self-defense and the principle that

the penalty is unenforceable until the administrative proceedings have been exhausted.

Article 182. Procedure for the application of penalties for administrative tax violations. Without detriment to the provisions in the foregoing article, penalties shall be directly enforced by way of an administrative decision. The liable party shall exercise the right to self-defense against said decision by bringing the remedies defined in Title V of this Code, and the enforcement of the penalty shall be suspended until the administrative proceedings have been exhausted.

COMMENTS:
The article establishes a procedure that is directly initiated with the decision that imposes a penalty for all such formal violations. Notwithstanding, the right to self-defense is not impaired, since it allows the liable party to bring remedies, and consequently, the penalty is deemed unenforceable until the administrative proceedings are exhausted. These provisions seek to facilitate the automatic enforcement of this type of penalties, without depriving the liable party of the right to self-defense.

TITLE V
PROCEDURES TO REVIEW ADMINISTRATIVE DECISIONS

Article 183. General provisions.

1. The decisions of the administration relevant to tax matters, and particularly, the decisions that determine taxes and their related charges, the decisions in relation to collection procedures, the decisions imposing penalties or denying the refund or return of taxes shall be reviewed by way of:

a) Special reconsideration proceedings.
b) Proceedings by way of administrative remedies.

2. The decisions of the administration defined above shall only be subject to reconsideration upon determining rights or establishing obligations.

COMMENTS:

1. This Model defines the regulations for all reconsideration proceedings applicable to the decisions of the administration.
2. It sets forth that due consideration is required of what frequently constitutes the closure phase in the tax enforcement cycle, in order to adequately safeguard the rights of the liable parties before the decisions of the Tax Administration.
3. This Title has been structured according to three chapters and four sections, with the following contents:
   a) Chapter I, in relation to Special Reconsideration Proceedings.
   b) Chapter II refers to Proceedings by way of Administrative Remedies admissible for the liable parties. In turn, it includes:
      i. a section on General Provisions,
      ii. another section regarding Administrative Courts,
      iii. the third one regarding the Request for reversal of court decisions; and,
      iv. a section on Remedies brought in Administrative Courts.
   c) Lastly, Chapter III governs the Remedies brought in Courts of Law.

Chapter I
Special reconsideration proceedings.

Article 184. Absolute nullity.

1. The decisions of the Tax Administration shall be of absolute nullity, notwithstanding they were deemed final decisions in the administrative phase, in the following cases:

a) When they are contrary to the Constitution.
b) When they were issued through a proceeding other than the legally established one, provided they render the liable party defenseless.
c) When flagrantly incompetent authorities issued them.

2. The administration shall establish nullity or it shall be inferred by the liable party, in agreement with the applicable procedure established by law.
3. The decisions addressing inferred nullity assumptions shall not be subject to challenge by the liable parties.

COMMENTS:

1. Regarding special reconsideration proceedings, they include the assumption of reconsideration by operation of absolute nullity.
2. The Model sets forth gross or material defects, recognized as such in the vast majority of laws, and consequently, impair the validity of the decision. Hence, it establishes as a ground for nullity that

the administrative decision breaches constitutional principles; or that it violates the legal procedure in effect and in doing so, renders the liable party defenseless; or that an incompetent authority issues it.

3. On the other hand, it refers to general legislation in effect in every country on the procedure applicable in declaring nullity, the term in which it shall be declared, the competent administrative authority, among other notions that shall be defined, based on the specificities in the procedures applied in every country, which would prevent their standardization in this respect. Without detriment to the foregoing, the article deems it appropriate that the administrative authority deciding and resolving on the nullity be of higher rank than the authority who issued the allegedly null decision, in order to duly safeguard the reconsideration thereof.
4. Furthermore, it recommends that the legislation of the different countries establish summary proceedings for the notification and decision of nullity assumptions, in order to ensure a decision with the expediency required by the grounds for nullity. On the other hand, it is also important to provide for the effect and scope of the declaration of nullity. Their effect shall be retroactive to the date of the decision declared null, since the severity of the grounds shall prevent the operation of the effects of the administrative decision deemed null, and it shall only affect the subsequent decisions of the procedure relative thereto.
5. Finally, it includes the exception to the rule of the irrevocable nature of the decisions of the Tax Administration, broadly accepted in the legislation of member countries, and establishes that nullity shall be inferred by the liable party or declared automatically by the Tax Administration, since the decision that addresses the nullity assumption shall not be challenged by any means whatsoever.

Article 185. Correction of errors.

1. The Tax Administration shall correct, at any time, the material, mathematical or practical errors provided the term of limitations has not elapsed.
2. The correction shall be adopted automatically or upon request of the liable party; in the latter case, the express or implied dismissal shall be challenged by the remedies defined in chapters II and III of this Title.

COMMENTS:

1. Another reconsideration proceeding the Model defines is the correction of material errors, such as in wording or calculation, in the decisions of the administration.
2. It establishes that said errors should be corrected at any time provided the term of limitations has not elapsed. They shall be adopted automatically or upon request of the stakeholders.
3. It is worth indicating that in no case shall the correction of errors alter the substance of the content of the decision, or the sense of the decision adopted.

Article 186. Reversal.

1. The Tax Administration shall, exceptionally, reverse its own decisions to benefit the stakeholders in the following assumptions:

a) When deemed to manifestly breach the law.
b) Upon detecting that circumstances arose to prove their inadmissibility subsequently upon being issued.

2. The procedure shall be initiated by the administration or upon request of the stakeholder, to the extent the period of limitations has not elapsed and even when the decision has been challenged in an Administrative court or in a Court

of Law and the stakeholders shall be summoned to such end.
3. The legislation in effect in every member country shall determine the competent authority to order the reversal of decisions, and the latter shall be different from the authority that handed down the decision.
4. The effects of the reversal shall depend on the nature of every decision.
5. The decisions handed down in this procedure shall not be subject to challenge by the liable parties.

COMMENTS:

1. The reversal procedure constitutes an exceptional procedure enabling the Tax Administration, either automatically or upon request of the stakeholders, to render its own decisions void, provided said reversal benefits the latter and upon application of one of the following two assumptions:

a) the Tax Administration deems its decision manifestly breaches the law; or,
b) the circumstances occurring after the decision is handed down render it inadmissible.

2. A Tax Administration decision is deemed to manifestly breach the law when it clearly evidences a severe disruption between the legal provisions and the decision adopted thereby, which is determined by simply comparing the decision and the rule or rules applicable to the case, excluding the reasonable interpretation of the rule. It is worth indicating that the assumption under discussion does not apply with respect to a rule of lesser hierarchy or an interpretation criterion.
3. It establishes that the reversal applies upon final decisions of the Tax Administration, even when said decisions have been challenged by an Administrative Court or the relevant Court of Law, provided they have not been ordered by said authorities. Although this option may be understood as standing contrary to the competence requirement, it is grounded on the principle of procedural economy that enables, with evident reduction in the length of proceedings, a correction by the Tax Administration to benefit the liable party.
4. Given the extraordinary nature of the reversal procedure, the Model sets forth it shall only be decided by an authority other than the one handing down the decision. It is worth mentioning that certain administrative regulations delegate upon the highest authority of the competent agency the power to declare the reversal of decisions.
5. Likewise, and as a form of safeguarding the rights of the stakeholders, the article provides for a hearing enabling them to set forth their allegations.

Article 187. Declaration of injury.

1. Except as otherwise defined in the exceptions established in Article 190, when an administrative decision, either express or implied, created or modified a legal situation of specific and concrete nature and acknowledged a right to identical hierarchy in favor of a liable party and it stands contrary to the laws in effect, the Tax Administration that issued said decision shall not revise it automatically and shall require its nullity in the contentious-administrative jurisdiction, prior declaring it injurious to public interests.
2. The declaration of injury shall not be dictated once the period of limitations expires and stakeholders shall be granted a hearing to present the relevant allegations.

COMMENTS:

1. Contrary to the forms of reconsideration defined in the foregoing articles, whose common feature is that the

Tax Administration adopts measures automatically to nullify or modify their decisions, this section defines an assumption of reconsideration of tax decisions requiring the Tax Administration to initiate court proceedings, in order to obtain the reversal of said decisions, since the rule in effect in the administrative sphere is that the final administrative decisions shall not be revoked, modified or replaced to the detriment of the liable parties in the administrative instance.

2. Notwithstanding, express or implied decisions may exist, the latter due to the existence of constructive authorizations defined in special laws, which are injurious to the public interest and contrary -at least apparently- to the laws in effect, which shall not be reversed by the Tax Administration on its own, by virtue that its legal effects create rights in favor of a subject of the administration. In such case, the article establishes the declaration of injury, so that such decisions are not precluded from a judicial review.
3. In order for the Tax Administration to institute proceedings in the applicable courts of law in relation to any of their decisions by reasons of legality, it shall first declare that said decision is injurious to public interests. This declaration shall be made by way of a new administrative decision, which shall not be challenged on the grounds that its substance shall be heard in the relevant courts of law.
4. Consequently, the declaration of injury shall be the basis on which the administrative authority shall initiate the injury proceedings in the Courts of Law, to claim the reversal of the relevant administrative decision.
5. The declaration of injury and the subsequent Court proceedings shall only be pursued within the period of limitations.
6. On the other hand, the article has not provided for procedural notions such as the competent administrative authority to declare the injury, or the periods applicable from the time the declaration of injury is issued and the initiation of a contentious injury proceeding, since it deems it more appropriate that the laws in every country establish such notions according to the organizational structures of their tax administrations and the proceedings applicable to issue said declaration. The article suggests that the decision declaring the injury shall be issued by the highest administrative authority of the body to which the Tax Administration belongs and a brief period shall lapse between the declaration of injury and the initiation of the contentious proceeding.

Chapter II
Proceedings by way of Administrative Remedies.

Section 1. General provisions.
Article 188. Types of remedies.

1. The administrative decisions of the Tax Administration, and particularly, the decisions that determine taxes and their related charges, the decisions in relation to collection procedures, the decisions imposing penalties or denying the refund, return or offsetting of taxes shall be reconsidered by way of administrative remedies or by directly instituting a contentious-administrative remedy in the Courts of Law.
2. Should the stakeholder decide to pursue administrative proceedings, the decisions and decisions defined in the foregoing item shall be challenged by way of:

a) Request for reversal of court decisions.
b) Remedies brought in Administrative Courts.

3. The decisions of the administration

defined in item 1 shall only be subject to reconsideration upon determining rights or establishing obligations, as well as the administrative proceedings that directly or indirectly resolve the matter.

4. Administrative remedies shall be brought only once in every administrative proceeding and never concurrently.
5. The error in the qualification of the remedy by the petitioner shall not impair its continuation, providing its actual nature arises from the petition.

COMMENTS:

1. This chapter addresses the administrative remedies that may be brought by the subjects of the administration to challenge the Tax Administration decisions.
2. It incorporates a section that groups general provisions applicable to the two administrative remedies defined: reconsideration and appeal in the Administrative Courts.
3. Firstly, it establishes the option to choose between the administrative court and a court of law. In such respect, a controversial doctrinal debate exists on whether the rule that requires exhausting the administrative proceedings shall continue in effect. The opinion favorable to its continuity is based on the assertion that administrative remedies constitute a right of the Tax Administration, by granting it the possibility of rectifying its errors or defending the public interest more emphatically, upon considering their decisions appropriate. The advantage for the liable parties is that, by pursuing administrative remedies, they shall enjoy a preliminary contentious or reconciliation instance, which is grounded on the obligation of the liable party to collaborate in the protection of the principle of legality, avoiding the propagation of litigation and further releasing them from the obligation to engage in court proceedings that are normally expensive and time-consuming. On the other hand, those who stand for discontinuing prior administrative proceedings argue that given their mandatory nature, they constitute a restriction to the access to justice, and impair a fundamental right of the subjects of the Tax Administration.

   The Model has developed an intermediate stance: the administrative proceedings shall remain, but they shall be optional for the subject of the Tax Administration. The fundamentals for this third stance are that administrative remedies constitute a right for the individual and not a privilege of the State to delay access to a process of law.

   In such regard, the Model deems it convenient to incorporate the intermediate proposal that allows the liable parties the option to pursue administrative proceedings prior to petitioning the challenge of the decisions in a court of law, by virtue of the fundamentals that promote expeditious access to justice, granting them complete freedom to protect their rights and also considering the growing trend in the Tax Administration to dispense with prior administrative proceedings, without detriment to the fact that in some countries of Ibero-America it is a constitutional mandate to pursue administrative proceedings prior to petitioning in a court of law.
4. Likewise, and in the understanding that administrative proceedings constitute a previous step to proceedings in a court of law, the majority of laws in Ibero-America define a system to challenge decisions that vests upon the Tax Administration the power to "re-view" their decisions by a reconsideration proceeding, through which the same entity handing down the decision being subject to challenge shall be in charge of issuing a new decision in

the light of the arguments and evidence provided by the petitioner.

5. On the other hand, the article incorporates two rules of procedure that seek, on the one hand, to provide clarity to the liable parties regarding the use of the instruments of defense by defining that administrative remedies shall only be brought once per every proceeding and in no case, concurrently. And on the other, to guarantee the furtherance of the proceeding by establishing the obligation for the body that shall hand down the decision to substantiate the remedy according to its actual nature, regardless of the error that the liable party may have incurred at the time of qualifying his remedy.

Article 189. Evidence Procedure.

1. The time period to present and prepare the evidence shall be ... days counted from the date the reconsideration proceedings were instituted, as defined in item 2 of Article 188.
2. The authority required to hand down a decision shall, for better consideration of the matters subject to dispute, at any stage in the proceeding, officially request the evidence deemed necessary and require the relevant reports to facilitate the decision over the matter.

COMMENTS:

1. Since the entity of evidence constitutes a fundamental element of the reconsideration proceeding for the decisions of the Tax Administration, this Model incorporates this article with a view to defining general provisions in the use of defense mechanisms.
2. As a method to organize the proceeding, the rule requires determining terms to present and prepare evidence, in order to ensure that the proceeding is carried out in preclusive stages enabling to attain the ultimate purpose of handing down the decision. Otherwise, allowing evidence to be presented in the course of the proceeding would generate unnecessary and counterproductive delays in reaching the core purpose of solving the dispute. Nevertheless, it acknowledges that terms shall be determined according to the specificities of the internal proceedings in every country, and allows individual domestic laws to define the time period to present evidence, but suggests adopting short terms.
3. It expressly defines the power of the decision-making body to order that appropriate evidence be filed for better clarification of the facts that shall substantiate their decision, including the evidence that the Tax Administration requested specifically and the liable parties failed to present. The latter are considered late elements of evidence for the liable parties, as per item 7 of Article 88, but by no means prevent the relevant authority from requesting them if deemed relevant, by virtue of the principle of material truth.

Article 190. Decisions.

1. The bodies or agencies who shall resolve the matter shall not refrain from handing down a decision due to a legal vacuum.
2. The body or agency resolving the dispute shall duly ground the decisions of the remedies and they shall decide on all matters set forth by the petitioner and those arising from the proceeding, as well as the evidence produced or the elements considered.
3. The decisions of remedies shall admit, either in full or in part, or dismiss the claims set forth therein or declare their inadmissibility.

COMMENTS:

1. The article establishes rules in relation to decisions. Firstly, it defines that a dispute

shall always be resolved, and the bodies who shall issue the decision shall not refrain from doing so by virtue of a legal vacuum; in such cases, they shall apply suppletory laws pursuant to the provisions in Article 16 of this Model.

2. It also defines a rule for the validity of administrative decisions, as by providing due grounds for the decisions. It defines the obligation to issue decisions in respect of all the challenged matters, on the evidence presented and on every other aspect arising in the course of the proceeding, indicating the material and legal grounds underlying the decision adopted. In this respect, it is worth noting that although the "due grounds" shall be examined in every specific case, the Model shall not admit the decisions based on general formulas or lacking grounds for the specific case or such formulas that, due to their ambiguity, contradiction or inadequacy fail to specifically clarify the fundamentals of the decision adopted.
3. Lastly, it includes the types of solutions that may be adopted upon issuing the decisions. It distinguishes the decisions issued on the substance of the dispute (thus, the agencies issuing the decision shall declare it (a) fully warranted, (b) partially warranted, (c) dismiss the petition) and the decision on a matter of procedure, to declare the remedy inadmissible.

Section 2. Administrative Courts.
Article 191. Structure.

1. Administrative Courts shall be created to resolve the remedies brought against the administrative decisions defined in Article 183 or against the decision from the request for reconsideration, when the liable party decided to initiate it.
2. Administrative Courts shall be structured as one-person bodies or as a division, and the latter shall be made up by a President and the number of alternate members defined in each case. The President and the alternate members shall be designated among officials or professionals specialized in tax matters who fulfill the requirements established in the applicable regulations.
3. Administrative Courts constitute administrative bodies independent from the tax administrations in their organization, operation and competence and their decisions exhaust the administrative proceedings.
4. The role of President or Alternate Member of the Administrative Court shall be incompatible with any other professional activity, whether public or private.

COMMENTS:

1. Section 2 features the regulations of the Administrative Courts, and this article defines their structure.
2. It provides for the possibility of creating the Administrative Courts, and determines that they shall be adopted or dismissed according to the legislation of every country.
3. It also considers the possibility to create Administrative Courts with one-person bodies or as a division, according to the complexity of the matter subject to dispute, the existing circumstances, the characteristics of every state and the resources that may be allocated to the organization of this instance, among other criteria.
4. It highlights that Administrative Courts are not part of the Tax Administration, but constitute an independent body that stands as the body of higher hierarchy for dispute resolution, seeking the fairness and independence required in the resolution function.
5. In order to vest upon the members of the Administrative Courts the independence required, it establishes that their members in office shall be banned from carrying

out any other professional activity, whether public or private.

6. Likewise, and even when the notion is excluded from the matters discussed in this Model, the legislation of member countries shall consider the adoption of regulations that guarantee the appropriate independence and transparency in the conduct of the alternate members of the Administrative Courts. Hence, it suggests establishing a minimum term of office, specific grounds on which they shall be removed from office, based on the skills, competence and morality in the performance of their duty, and defines a number of abstention assumptions for the alternate members to ensure impartial decisions.

Article 192. Jurisdiction.

The Administrative Courts shall decide in a single proceeding, according to the criteria of distribution of competence applicable, the remedies brought against the decisions of the administration handed down by the applicable bodies of the Tax Administration. The criteria to distribute competencies shall be, among others, the territorial sphere, the subject-matter, the tax, or any other general criterion.

COMMENTS:

By reasons of organizational and functional simplification, the Model adheres to the operation of Administrative Courts that decide in a single proceeding, according to the competencies assigned to each one with criteria of territorial nature or any other, such as subject-matter, the tax, or any other general criterion. Notwithstanding the foregoing, domestic legislation shall introduce variations of this model regulation. An example would be establishing two proceedings within these Courts, by creating a Central Administrative Court and Territorial Administrative Courts.

Section 3. Request for reversal of court decisions.

Article 193. Purpose and nature of remedies.

1. The decisions and proceedings defined in Article 183 shall be subject to a request for reversal.
2. The liable party shall be granted the option to request the reversal of decisions.
3. Upon initiating this proceeding, remedies shall not be brought before the Administrative Courts until the request for reconsideration has been decided expressly or by administrative silence.

COMMENTS:

1. Section 3 governs the request for reversal in relation to the purpose and nature of the remedy, the institution of the proceeding arising therefrom, stay on the enforcement of the decision by virtue of the remedy brought against the administration, and finally, the decision with respect to the remedy.
2. As to the purpose and nature of the request for reversal, it is an optional remedy for the stakeholder, and the latter may decide not to pursue it and directly resort to the Administrative Courts, if any, or otherwise a Court of Law.
3. Should the request for reversal be instituted, the Model sets forth that the petitioner shall not initiate proceedings in the Administrative Court, until the former is not resolved either expressly or implicitly. This provision that is in line with the prohibition to bring remedies concurrently.

Article 194. Initiation.

1. The request for reversal shall be initiated by the liable parties directly affected by the decisions of the Tax Administration.
2. The remedy shall be brought before the same body that issued the proceeding or decision that is subject to challenge, within a period of.... days counted from

the day after the challenged decision is notified.

COMMENTS:

1. The article defines the party entitled to initiate the request for reversal as well as the authority of jurisdiction. Hence, it considers the parties who shall bring the remedy against the administration as all the liable parties directly affected by the decisions of the Tax Administration. They are the parties who hold a legitimate right or interest against the administrative decision that is presumed to breach their rights.
2. The remedy shall be brought before the same body that issued the decision that is subject to challenge. As mentioned in a previous comment, the request for reversal is the mechanism available to the Tax Administration to review a decision, to ratify it or amend it in the light of the evidence submitted.
3. The Model allows every member country to establish the time period to bring the remedy according to their legislation, to the extent it constitutes a specific legal principle that may not be subject to standardization.

Article 195. Suspension of enforced collection.

1. Upon filing the request for reversal, enforced collection by the administration shall be suspended until the decision of the remedy is notified or until the time period defined in Article 196 expires, by which it shall be deemed inadmissible, without detriment to the precautionary measures adopted or to be adopted.
2. Should the remedy not affect the overall tax debt, the suspension shall apply to the disputed portion thereof.

COMMENTS:

1. This article defines the effect of filing a request for reversal of the enforced collection procedure by the Tax Administration.
   In such regard, although the rule in the sphere of administrative proceedings indicates that filing remedies does not warrant suspension of the enforcement of the decision subject to challenge, in this assumption, it has decided to the contrary. The article sets forth suspending the enforced collection, to the extent it is a proceeding not ratified by the Tax Administration body that issued such decision and is subject to reconsideration; hence, in order to avoid any potential unwarranted damage to the petitioner, it admits the suspension of the enforced collection procedure arising from the decision subject to challenge.
2. It explains that suspension shall apply to the disputed debt amount, which constitutes a fair measure, to the extent that, should the petitioner challenge only a part of the Tax Administration decision, meaning he partially accepts the debt assessment, the Tax Administration shall collect said debt.

Article 196. Decisions.

1. The decision for the remedy shall be the responsibility of the body that issued the administrative decision challenged.
2. The decision shall be notified within a period of... days, counted from the date of the request for reversal. Upon lapsing of the time period without notifying the decision, the application of late interest shall be suspended until the decision that concludes the reversal proceeding against the Tax Administration is issued, provided the lapsing of the time period is attributable thereto.
3. Upon lapsing of the time period defined in the foregoing item, the stakeholder shall deem the remedy dismissed for the purpose of filing other applicable remedies, and the calculation of late interest shall be resumed.

COMMENTS:

1. This article includes provisions referred to the final decision on the dispute, which establishes the reversal.
2. The first relevant notion that characterizes the remedy is the authority that resolves it, by which the body that issued the decision shall hand down the decision within the term defined to such end. The Model sets forth that the legislation in effect in every country shall define this aspect, and points out that since the aim is to rely on the most expeditious proceeding achievable -by virtue of the fact that the same body that made the decision is given the opportunity to confirm or rectify it- the time period in which a decision shall be handed down shall be limited.
3. The following provision addresses the situation that arises when the Tax Administration does not issue a decision in the established time period. In this case, the petitioner shall deem the request for reversal dismissed and bring the remedy in the Administrative Court or the Courts of Law. It is worth highlighting that the petitioner is entitled to deem the remedy dismissed, by which the Tax Administration shall issue a decision even after the legal time period to issue the decision expires, if the former decided against bringing the remedy in the foregoing Courts. Likewise, should the Tax Administration fail to notify its decision within the legal time periods, and in the absence of cause to warrant the delay in the resolution of the dispute, the calculation of late interest shall be suspended, in order to avoid that the excessive duration of the reversal proceeding causes an economic damage to the petitioner who requested the safeguarding of his right, greater than the one he would have endured had he waived the reversal proceeding.

Section 4. Remedies brought in Administrative Courts.

Article 197. Purpose of remedies.

The liable party shall bring a remedy in the Administrative Court against the decision of the request for reversal, if applicable, or the decisions and decisions defined in Article 183, when the request for reversal was not initiated.

COMMENTS:

The article sets forth that the remedies brought in the Administrative Courts shall be an option prior to initiating proceedings in the Courts of Law to challenge the decision arising from the request for reversal proceeding, if the liable party decided to initiate it, or directly appeal the enforced collection decision.

Article 198. Initiation.

1. The liable party shall be entitled to bring remedies in the Administrative Courts.
2. The remedy shall be brought against the same body that issued the administrative proceeding or decision or the request for reversal subject to challenge, which shall submit it to the Administrative Court together with the allegations on the matter, if applicable, and the administrative record that substantiates the remedy.
3. The time period to bring remedies shall be of... days, counted from the date of notification of the administrative decision or the request for reversal subject to challenge.

COMMENTS:

1. The Model follows the same rule as the one applicable to the request for reversal regarding the parties entitled to initiate a remedy proceeding.
2. On the other hand, the article defines that remedies shall be pursued in the Tax Administration body that issued the administrative proceeding or decision on

the reversal, which shall submit it to the Administrative Court together with all the proceedings in the case record subject to challenge, within the final time period defined to such end.

3. Generally, the Tax Administration body receives the remedy proceeding and verifies compliance with assumptions of admissibility; in other words, filing within legal time periods, capacity of the party who signs the remedy, filing the appropriate documentation (formats of documents, payment receipts for the portion that is not subject to challenge, powers of attorney, etc.), since in the event of nonconformity with any admissibility requirement, the Tax Administration body shall issue a decision of noncompliance. Notwithstanding, the Model does not include a rule in such respect in order to allow the member countries to individually decide the adoption of the foregoing proceeding, or whether they prefer to assign the decision on the admissibility of the remedy to the Administrative Courts.

Article 199. Suspension of enforced collection.

1. Enforced collection shall be suspended until a decision is handed down on the remedy, provided the stakeholder secures the amount of the tax debt subject to challenge, except for penalties, plus the interest that, upon dismissing the remedy, shall be payable for the delay in entering the amounts due.
2. The types of guaranties required shall be determined by law as well as the administrative office before which they shall be presented and the life of the guaranty.
3. Exceptionally, the Administrative Court shall agree to suspend enforced collection, without requiring the petitioner to set up a guaranty in the time periods defined above, when it considers that said enforcement originates damages that are impossible or difficult to repair thereby, without detriment to the adoption of the precautionary measures deemed appropriate, as applicable.

COMMENTS:

1. In general, the suspension of enforced collection shall be applicable only in the case the stakeholder sets up a guaranty, to avoid resorting to remedies as a means to impair or delay compliance with the tax obligation; notwithstanding, the suspension of penalties shall apply without requiring a guaranty, by virtue of its nature.
2. The Model admits the suspension of the enforcement of guaranties by decision of the Administrative Court, as an exception, when said enforcement causes damages that are difficult or impossible to repair, rendering the possibility of filing a remedy impracticable.

Article 200. Decisions.

1. The decision issued by the Administrative Court is deemed final. The Model has established the inadmissibility of seeking remedies from the decision of an Administrative Court in the administrative proceeding, except in the case of requests to correct material or calculation errors, extension of the decision on omitted matters or clarification of the decision with respect to any questionable notion therein. The Administrative Court shall proceed officially in such cases.
2. The decision shall be notified within a period of... days, counted from the date on which the remedies were brought. Upon lapsing of said time period without the Administrative Court notifying the decision expressly, the application of late interest shall be suspended until the relevant decision is issued, provided the

lapsing of the time period is attributable thereto.
3. Upon lapsing of the period defined in the foregoing item, the stakeholder shall deem the remedy dismissed in order to file other remedies he considers applicable, and the calculation of late interest shall be resumed.
4. In the event the stakeholder refrains from bringing the remedies defined in the foregoing item, the Administrative Court shall be required to hand down a decision, and the calculation of the term to file appeals of the Administrative Court shall be resumed as from the notification thereof.

COMMENTS:

1. The proceeding concludes with the final decision of the remedy brought forth, similarly to the request for reversal. In this case, the decision issued by the Administrative Court concludes the administrative proceedings, and precludes bringing any other remedy to challenge the decision of the administration. The exception to the foregoing being the remedies that seek an extension, clarification or amendment of the decision handed down, due to any omitted matter or in the event of unclear or ambiguous decisions, or material or calculation errors, which by no means shall entail the request for a new decision on any matter already concluded upon, or a modification to the spirit of the decision issued.
2. Upon failure to issue the decision in the legally established time period, the petitioner shall be entitled to deem his claim dismissed and initiate a contentious-administrative proceeding in the Courts of Law; similarly, in the request for reversal, should the petitioner not deem it dismissed, the Administrative Court shall be required to hand down the decision, even when the legal period expired. In the latter case, the term to bring the contentious-administrative remedies shall be counted from the date of notification of the decision.
3. Lastly, the article incorporates the rule of suspension of late interest calculation in the event the Administrative Court fails to hand down a decision within the legal term.

Chapter III
Remedies brought in Courts of Law.

Article 201. Contentious-administrative remedies.

1. The contentious-administrative remedies shall be brought in the Courts of Law of jurisdiction in agreement with the applicable legislation, against the decisions handed down by the Administrative Courts, when the stakeholder decided to pursue administrative proceedings, or against the proceedings and decisions defined in Article 183.
2. Pursuing contentious-administrative remedies shall not preclude the enforcement of the proceedings or decisions of the Tax Administration, unless the enforced tax debt is secured, and the provisions in items 1 and 2 of Article 199 shall apply to this end.

COMMENTS:

1. The article refers to the contentious-administrative remedies admissible in Courts of Law, and to the legislation in effect in every country that governs this proceeding to review decisions.
2. It also sets forth that similarly to the remedies brought in Administrative Courts, the suspension of enforced collection shall only apply when the stakeholder sets up a guaranty, so that remedies are not pursued as a means to avoid or delay compliance with the tax obligation.

ANNEX

MOST RELEVANT PROVISIONS IN THE NEW EDITION OF THE CIAT TAX PROCEDURE CODE MODEL

ORDER NUMBER	TOPIC	ARTICLE	CORRESPON-DENCE WITH THE 2006 TAX CODE	UPDATE
1.	Scope.	Comment to 1	1	Supplementary application of the Tax Code to Mutual Administrative Assistance Conventions.
2.	Notion and classification of taxes.	2 and its comments	2	Express reference to parafiscal charges. Emphasis on the suppletory application of the Tax Code upon these entities.
3.	Rate.	4 and its comments	4	New definition of rate. Includes the use of a public asset and the limitation of its amount to the cost of service.
4.	Special levies.	Comment to 5	5	Technical description. Distinguishes in further detail the rate and its quantification criteria.
5.	Principle of legality.	Comment to 7	7	More flexible definition of the principle of legality in certain assumptions. For example, informative statements required by a rule of lesser hierarchy than a Statute.
6.	Effectiveness of the tax rule.	8 and its comments	8	Application of the new rules of procedure. The new rules of procedure shall apply on the procedures underway.
7.	Interpretation of tax rules.	Comment to 9	9	Explanation of the notion “technical legal sense or common usage, as applicable”.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
8.	General anti-avoidance provision.	11 and its comments.	11	General overview of this notion in line with the new trends in countering aggressive tax planning and BEPS (OECD).
9.	Validity of decisions	Comment to 12	12	The Model defines two specific cases in which the decisions are not valid or fail to prevail (nullity and extinction).
10.	Suppletory laws	Comment to 16	16	The Model enumerates examples of suppletory rules (for example, Civil Law for liability assumptions).
11.	Power to delegate	Inapplicable	17	Provision removed (Not relevant to taxation).
12.	Formal and substantive tax obligations	20 and its comments.	21	Defines both notions more accurately. It also acknowledges the obligations for the administration (The State).
13.	Notion of taxable event, non-subordination and exemption	21 and its comments.	22	Negatively defined. (Non-subordination)
14.	Liable parties	25 and its comments.	26	Complete revision of the notion and the type of liable parties. By virtue of the performance of a legal transaction other than the taxable event, other liable parties different from the party subject to taxation shall be identified. (Refer to subsequent articles)
15.	Party subject to taxation	26 and its comments.	27	The party subject to taxation shall be the party executing the taxable event as the principal debtor.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
16.	Substitute taxpayer	Inapplicable	29	Removal of the entity of substitute taxpayer. Essentially subsumed in the entity of the withholding agent and/or the party liable for payments on account.
17.	Parties liable for payments on account or advance payments	28 and its comments.	30	The Model introduces the party liable for a monetary payment as the one making payments in kind to third-party individuals. (Payments on account)
18.	Withholding agent and parties liable for payments on account	28 and its comments.	30 and 31	More accurate definition and the Model establishes their designation by Law.
19.	Collection agents	29 and its comments.	31	Summary and detailed definition, including the example in the comment.
20.	Parties who are required to transfer tax obligations to third parties	30 and its comments.	Inapplicable	The Model expressly introduces the duty to transfer tax obligations to third parties and the obligation to bear the transfer.
21.	Joint liability of the partners with respect to corporate taxes	34 and its comments.	35	The liability includes, proportionally to their contribution or share, the partners in corporations.
22.	Joint liability of the members of an economic group	35 and its comments.	Inapplicable	Extension of liability to the economic group to which the liable corporation belongs.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
23.	Joint liability of the withholding or collection agent	37 and its comments.	Inapplicable	Express joint liability of these liable parties.
24.	Indirect liability of the corporation over the partners' tax debt	39 and its comments.	Inapplicable	Corporations are liable for the debts of their partners in certain cases in which they were created with the purpose of avoiding taxes. (It is the opposite of piercing the corporate veil.)
25.	The legal system of tax liabilities	40 to 44 and their comments.	33	Systematization and details on the procedure (scope and application, powers of the liable party to challenge the principal debt), joint liability of aiders, and effects of joint liability.
26.	Tax capacity	46 and its comments.	26.3	Introduction of the general notion of tax capacity, not related to the liable parties.
27.	Representation	47 and 48 and their comments	70	It provides rules in further detail on the voluntary representation of those lacking legal personality and non-residents. Specifically for online processes.
28.	Methods of assessment (of the tax base)	Comment to 54	44	The article provides a detail of the general principles that shall be used before the dilemma of adopting assessments on a certain and presumptive basis.
29.	Forms of extinguishment of the tax obligation	57 and its comments.	47	It includes the statute of limitations as a form of extinguishment.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
30.	Means of payment	59 and its comments.	49	The comment expressly mentions the electronic payment means.
31.	Interest and surcharges for late payment	Comment to 61	51	It describes the financial rationale of the surcharges' policy.
32.	Deferral of payments and partial payments	63 and its comments.	53	Deferral only by exception of withheld or collected debts, excluding interest or penalties.
33.	Offsetting	64 and its comments.	55	-It limits offsetting of debts and credits within the same Tax Administration. -It establishes three forms of offsetting: automatic, officially or upon request of the taxpayer.
34.	Forgiveness or release	Comment to 65	56	The article explains the rationale by which they are strictly bound by the principle of legality (inalterability of the tax credit) and mentions the concurrence assumption.
35.	Tolling of the statute of limitations	69 and its comments.	60	-The article adds the cause to determine violations. -It establishes a final maximum term for the period of limitations.
36.	Scope of the term of limitations	71 and its comments.	62	The administration shall obtain and use the information from an expired term of limitations to audit a non-expired period.
37.	Application of the statute of limitations	72 and its comments.	Inapplicable	It shall be adopted automatically or upon request of the party.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
38.	Payment of an obligation subject to the statute of limitations	73 and its comments.	Inapplicable	The payment of the obligation subject to the statute of limitations warrants the request for reimbursement of the amount paid (no "natural obligation" exists).
39.	Rights and guaranties	75 and its comments.	64	Substantial extension of the enumeration of taxpayer rights.
40.	Defender of the liable party	76 and its comments.	65	It substitutes the Committee of Guaranties with the introduction of the entity of Defender of the liable party.
41.	Scope and suppletory rules	77 and its comments.	69	-Distinction between "processes" and "procedures". -Interaction between the Tax Code and International Treaties.
42.	Forms of serving notice	81 and its comments.	74	The article defines the scope of certain forms of notification.
43.	Place or domicile for serving notice	82 and its comments.	75 and 41	Comments on the possibility for the taxpayer of designating a special domicile (specific cases).
44.	Individuals authorized to receive notices in the place of notification	83 and its comments.	76	-The liable party, his representative or a person "related to" the liable party are authorized to receive notifications. -In case of refusal the article provides for the notice by order.
45.	Onsite and electronic notices	86 and its comments.	79	-The article regulates this type of notice, independently, particularly applicable to census taxes.
46.	Notice by electronic and online channels	87 and its comments.	79	It provides for the electronic mailbox that may be established as a mandatory system to serve notice (also refer to Item 54 hereunder).

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
47.	Evidence	88 and its comments.	80	-Definitions as to the scope of the accounting evidence (books and records). -General inadmissibility of evidence after the applicable time period.
48.	Notion and types of automatic tax assessments	91 and its comments.	84	The article extensively defines the notion, classes and legal system of preliminary and final automatic assessments.
49.	Stages of the assessment procedure	92 and its comments.	83	The article defines numerous technical specificities, such as the entity of conclusive agreements or its distinctive enforceable feature.
50.	Provisional tax assessment	Comment to 93	85	Recommendation of caution in the calculation.
51.	Requirements of administrative decisions	94 and its comments.	86	Additional requirements are specified; the omission of the remedy does not invalidate the act, but duplicates the time period to appeal.
52.	Use of electronic, computer and online technologies	96 and its comments.	88	Distinction between automatic electronic and non-automatic processes, with certain rules for the former (for example, powers of oversight or control of these processes in the Tax Administration).
53.	Validity of supporting documents	97	90	The Model simplifies this regulation, because this matter is presently adopted in the Tax Administration more extensively.
54.	Electronic mailbox	98 and its comments.	91	It changes the designation for a more common one (electronic mailbox) and details the legal provisions governing the electronic features thereof. Hereinafter, it enables using this mailbox to receive and forward notices (refer to Item 46 above).

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
55.	Obligation to provide information and assist in voluntary compliance	99 and its comments.	97	-Accuracy of the obligation of the administration, including computer-assistance software. -Right to be informed, even in writing, in lieu of the inquiry (non-binding).
56.	Tax inquiries	100 and its comments.	96	-Scope (present or past situations). -Extension of its binding nature and limitations. -Details on the consequences of changes in criterion. -Unappealable nature.
57.	Forms of Mutual or Reciprocal Administrative Assistance in Tax Matters	101 and its comments.	Inapplicable	General listing of the forms of administrative cooperation (detailed in subsequent articles). Comprises international cooperation as well as domestic, with other tax administrations of the country and other Government offices.
58.	Exchange of tax information	102-106 and their comments.	98-99	-It defines the confidential nature of the data exchanged, except for specific assumptions. -It elaborates on the three common formulas for information exchange: upon request, as well as automatic and spontaneous.
59.	Simultaneous audits	106 and its comments.	Inapplicable	It introduces the rules for simultaneous audits.
60.	Participation of officials	Comment to 107 from other Countries	100	Explicit ban for foreign officials to conduct an audit in the country.
61.	International assistance in serving notices and collection	109 and 110 and their comments.	102 and 103	Technical description (mainly introducing flexibility).

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
62.	Cooperation	111 and 112 and their comments.	104	-Explicit inclusion in the regulatory text of private institutions or entities or organizations representing social, labor, business or professional sectors or interests. -Agreements with the Tax Administration.
63.	Duty of cooperation and reporting. General provision.	113	67, 68 and 114 (duty to register)	The general listing of these obligations is essentially identical, but all obligations are grouped in this article.
64.	Duty to inform	114 and its comments.	105	Further details (and restrictions) to banking secrecy.
65.	Duties related to cooperation in the audit and collection process	115 and its comments.	121	The provision is given new priority.
66.	Obligation to protect the secrecy of tax information	117 and its comments.	107	-The general anonymous decisions and the outstanding credits are no longer safeguarded by the duty of secrecy. -Details regarding the consequences of breaching this duty for officials and withholding and collection officials and agents.
67.	Reimbursement and refund procedure	119 to 122 and their comments.	109 to 112	-Technical details regarding the regulations that govern refunds in the case of due and erroneous payments, particularly for taxable events.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
				-Very thorough description of the refund procedure, differentiating erroneous and due payments and amounts withheld or collected. -Right of the administration to decide on the type of examination it shall conduct prior to refunding amounts.
68.	Amendment of tax statements	Comment to 124	115	The Model suggests a wording that allows the amendment of a self-assessment favorable to the taxpayer (tax reduction or increase in the credit balance) without the intervention of the Tax Administration.
69.	Tax Administration assessment procedures	125 and its comments.	Inapplicable	Regulations regarding the tax-assessment procedure (when the liable party simply files a statement, without conducting the self-assessment).
70.	Formal or summary examination procedure	126 and its comments.	Inapplicable	Regulations on a formal, summary or extensive examination procedure.
71.	Verification of formal obligations	128 and its comments.	117 (partially)	Regulations on both procedures for these types of verifications, onsite and virtual.
72.	Development of the audit procedure	130 and its comments.	118	-Changes in the duration and suspension of an audit and the effects thereof. -details regarding the procedure and hearings.
73.	Conclusive agreement	133	Inapplicable	New agreement on the form of concluding audits in cases where the taxable event shall be materialized (indeterminate legal notion, assessment, etc.).

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
74.	Beginning of enforced collection period	135 and its comments.	123	Introduction to enforced collection.
75.	Property in custody of depository entities	141	129	Explicit possibility of automatic or computerized attachments.
76.	Authority to forgive penalties and surcharges	Inapplicable	139	This power has been deleted.
77.	Power to impose precautionary measures	151	141	Principle of proportionality in attachments. Priority of precautionary measures in parallel with the attachment priority.
78.	Notion and classification of tax violation	152 and its comments.	144-146, 173 and subsequent articles	-New, single and broad definition of tax violation (formal and material). -3 categories, misdemeanor, material and gross. -Requires negligence or wrongful intent -Eliminates the tax crime (incorporates comments with a new definition and further details).
79.	Types of tax violations	154 and its comments.	Inapplicable	Definition of type, in particular the notion of relative type (in comments).
80.	Principle of non-concurrence	155 and its comments.	Inapplicable	-Procedural and material details in concurrency of crimes and misdemeanors. -Consequences of the existence of "concurso ideal", "concurso real", etc. (forms of concurrency), etc.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
81.	Extinguishment of penalties	157 and its comments.	148	-The final decision shall be annulled upon death. -It establishes the difference between criminal period of limitations and administrative period of limitations.
82.	Tax offenders	158 and its comments.	Inapplicable	-Technical details: enumeration of liable parties and concurrency of liabilities.
83.	Authors and contributors	159 and its comments.	151	Definition of the notion of author as opposed to contributor. Corporations and administrators as co-offenders (comments).
84.	Participation of professionals in the perpetration of tax violations	160 and its comments.	152	The penalty may be calculated as a given percentage of the fine imposed on the party (in line with the most modern trends -OECD-).
85.	Liability based on breach of duty	161 and its comments	Inapplicable	Introduction of the notion of liability based on breach of duty (penalties shall apply only upon wrongful intent or negligence), for individuals and corporations.
86.	Exemptions from liability	162 and its comments.	150 and 154 to 156 (partially)	A number of assumptions are added, such as refraining from voting in collective decisions, hierarchy, and error of law or software errors.
87.	Joint liability of subjects involved in the perpetration of the tax violation	163 and its comments.	151	The Model adds assumptions: business trusts, donees and beneficiaries in relation to the donation or legacy, and the parties who shall cooperate in attachment proceedings.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
88.	Liability in the penalty involving closure of subjects who are not involved in the perpetration of the tax violation	164 and its comments.	Inapplicable	Regulations on the closure of the establishment (and the possibility of limitations thereto) upon being acquired by a third party.
89.	Types of penalties	165 and its comments.	158	The Model defines principal and ancillary penalties. As to the latter, it admits (in the comments) the need for cooperation from other Government Agencies for their enforcement.
90.	Degree of penalties: rules of determination	166 and its comments.	Inapplicable	It establishes a specific procedure to calculate increases in the penalties based on a minimum amount.
91.	Criteria for adjustment of penalties	167 and its comments.	159	-General review of these criteria according to modern theory. -Further technical accuracy in their articulation, including examples (in the comments).
92.	Reduction of penalties its comments.	168 and	Inapplicable	Introduction of a penalty-reduction system, recognizing the voluntary compliance of the taxpayer.
93.	Interest over penalties	169 and its comments.	Inapplicable	The Model defines specific criteria to calculate interest for unpaid penalties.
94.	Material violations	170 and its comments.	146	Definition of material violation and explanation of its fundamentals.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
95.	The legal system of material violations (it is not a separate title)	171-173 and their comments.	Inapplicable	Description of the types, certification of the calculation to determine whether the violation is material or gross and method to calculate penalties.
96.	Formal violations arising from the obligation to issue and carry or keep invoices	176 and its comments.	164	Accurate description of the conditions by which violations are deemed material or gross.
97.	Formal violations related to the obligation of facilitating proceedings and reporting and appearing	179 and 180 and their comments.	167 and 168	-Further technical details. -More severe penalties upon recurrent noncompliance.
98.	Procedure for the application of penalties	181 and 182 and their comments.	179 and 181	Unenforceable penalties.
99.	Absolute nullity	184 and its comments.	183	Technical description of the applicable regulations and effects.
100.	Correction of errors	Comment to 185	184	New comment; explanation of the principle.
101.	Reversal of decisions	Comment to 186	185	New comment; explanation of the principle.
102.	Declaration of injury	187 and its comments.	186	Technical details.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
103.	Types of remedies	188 and its comments.	187	-General regulations on remedies brought in administrative (partially) courts and in courts of law. -Optional nature of administrative remedies (reconsideration or Tax Courts).
104.	Evidence Procedure	189 and its comments.	194	The Model defines the regulatory framework for evidence in reconsideration proceedings by way of remedies.
105.	Decisions	190 and its comments.	190	-The Model provides further details on the regulatory framework of decisions (obligation to provide grounds). -Enumeration (in the comments) of the four types of decisions (3 regarding the substance, or inadmissibility).
106.	Administrative Courts	Comments to 191 and 192.	191 and 192	New comments. Previously encompassed under "Comments to Title V". Procedures to review administrative decisions".
107.	Request for reversal of court decisions	Comments to 193 up to 196.	187 a 190	New comments. Previously encompassed under "Comments to Title V. Procedures to review administrative decisions".
108.	Purpose of the remedies brought in Administrative Courts	197 and its comment.	Inapplicable	Technical description of the purpose of this remedy.

ORDER NUMBER	TOPIC	ARTICLE	CORRESPONDENCE WITH THE 2006 TAX CODE	UPDATE
109.	Remedies brought in Administrative Courts.	Comments to 198 up to 200.	193-197	New comments. Previously encompassed under "Comments to Title V. Procedures to review administrative decisions".
110.	Contentious-administrative remedy	201and its comments.	198	Technical details, particularly regarding the non-interruption of the enforcement of decisions. New comment. Previously encompassed under "Comments to Title V. Procedures to review administrative decisions".

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