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The Administrative Tax Enforcement Procedure and the possibilities of taxpayers to obtain a stay when the fiscal interest is guaranteed.

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# The Administrative Tax Enforcement Procedure and the possibilities of taxpayers to obtain a stay when the fiscal interest is guaranteed.

by Luis Butrón

**T**he Administrative Enforcement Procedure is the legal process which authorities may enforce against taxpayers to collect taxes, rights, fines or any other fiscal debt according to the Mexican Tax Laws.

*“While filing a legal process or claim against the tax authorities for the defense of taxpayer’s rights, the law provides the possibility to grant a stay order when the taxpayers guarantees the fiscal interest.”*

While filing a legal process or claim against the tax authorities for the defense of taxpayer’s rights, the law provides the possibility to grant a stay order when the taxpayers guarantees the fiscal interest.

This guarantee is the legal possibility by which taxpayers may assure the authorities the compliance of fiscal obligations, in case of an alleged Tax credit until it becomes legally due. The guarantees are meant to protect the taxpayers and the tax authority is forbidden to collect the alleged credit during the legal process or claim of the credit is resolved before, the Federal Court of Tax and Administrative Justice (*Tribunal Federal de Justicia Fiscal y Administrativa*) to determine the nullity of the credit.

Guarantee of the fiscal interest applies when the stay of the Administrative Enforcement Procedure is sought, even if the suspension is requested before the Federal Court of Tax and Administrative Justice, under the terms of the Federal Law of Administrative Procedure (*Ley Federal de Procedimiento Contencioso Administrativo*).

The taxpayer may request a stay of the Administrative Enforcement Procedure in the following cases:

- When a remedy of revocation is presented, in which case it has a period of 5 months to provide the guarantee. The remedy of revocation must be made within 45 days of time you have to pay the tax credit. If within 5 months to warrant it has not been resolved the remedy of revocation, it is not obliged to display the corresponding guarantee, but, if necessary, until the remedy of revocation is resolved.
- When you have filed an administrative claim.
- When you have submitted an application for authorization of payment in installments, after initiated by the Service Tax Administration, “SAT”.
- When you have submitted application for condonation of fines.

Taxpayers may guarantee fiscal interest in any of the following ways:<sup>1</sup>

- Deposit in cash, letter of credit or other forms of financial guarantee equivalent to establish the Ministry of Finance.

1.- Article 141 of the Tax Code of the Federation. (*Código Fiscal de la Federación*).

- Pledge or mortgage.
- Bond issued by authorized institution.
- Joint obligation assumed by third party check their suitability and solvency.
- Seizure in the administrative way.
- Titles value or credit portfolio of the taxpayer.

The amount of the guarantee must cover the updated value of the tax credit at the date of issuance of the guarantee plus any surcharges that are generated in a year. In case of claims issued by the Federal Court of Tax and Administrative Justice, the judge will be responsible for setting the amount of the guarantee.<sup>2</sup>

*“The guarantee is presented by the taxpayer before the “SAT”, for the qualifying, accept as appropriate and give the necessary formalities.”*

The guarantee must be given within thirty working days of the date it takes effect the notification issued by the tax authority of the resolution on which we should guarantee fiscal interest, or within the following three working days of the date that takes effect the notice through which the Judge of the Federal Court of Tax and Administrative Justice granted the final stay.

The guarantee is presented by the taxpayer before the “SAT”, for the qualifying, accept as appropriate and give the necessary formalities.

If the requirements are not met, the SAT require the taxpayer to within 15 working days from the day following the notification of that request, failed to comply with the requirement, otherwise no warranty will be accepted.

When the guarantee is insufficient to guarantee the full credit, the “SAT” can start the Administrative Enforcement Procedure in the amount not guaranteed.

It may be a combination of guarantees, so that among several the entire fiscal interest is covered.

Guarantees may be decreased or substituted by a lower guarantee to the extent that partial account of the debt payments are made, they may be proportionally reduced or replaced.

Cancellation of the guarantee of the fiscal interest proceeds in the following cases:<sup>3</sup>

- i) Substitution of guarantee;
- ii) By payment of the tax credit;
- iii) When it is ineffective in the resolution that gave rise the granting of the guarantee;
- iv) When the date of the guarantee period is met, and
- v) Otherwise it should be canceled in accordance with the tax provisions.

It is important to guarantee the fiscal interest in order to avoid enforcement problems by the authorities until the legal status of the credit is resolved by the Federal Court of Tax and Administrative Justice by a nullification claim.

2.- Article 28, section II, subsection d) of the Federal Law of Administrative Procedure. (Ley Federal de Procedimiento Contencioso Administrativo).

3.- Article 89 of the Regulation of the Tax Code of the Federation. (Código Fiscal de la Federación).

## **WTO to sanction US amidst Mexican and Canadian product discrimination.**

The World Trade Organization ruled on Monday that Canada and Mexico can slap more than \$1bn in tariffs on US goods in retaliation for meat labeling rules it says discriminated against Mexican and Canadian livestock. At issue were US labels on packaged steaks and other cuts of meat that say where the animals were born, raised and slaughtered. The WTO has previously found that the so-called "country of origin" labeling law put Canadian and Mexican livestock at a disadvantage. It ruled on Monday that Canada could impose \$780m in retaliatory tariffs and Mexico could impose \$228m. [www.theguardian.com](http://www.theguardian.com) 07/12/15.

## **Class action against British Petroleum's to reach Mexican court.**

BP is facing another potentially huge compensation bill from the Deepwater Horizon oil spill after a class action law suit was launched in Mexico for the environmental catastrophe caused in its territory by the fatal disaster. The company recently agreed a final settlement of \$20.8bn with US authorities over the damage caused by the 2010 oil spill in the Gulf of Mexico. The settlement – the biggest pollution penalty in US history – was reached after a federal court found the company guilty of gross negligence. BP now faces calls to pay for the clean-up in Mexican waters and compensate for the irreparable damage caused to marine life by the oil itself, and the toxic dispersant chemical subsequently used to solidify and sink the oil droplets. [www.theguardian.com](http://www.theguardian.com) 11/12/15.

## **EU reaches agreement on uniform data protection regulations.**

The European Commission on Tuesday reached an agreement on data protection regulations concerning how digital information is to be collected and managed across the EU. The EU Data Protection Reform was initiated in 2012 and was approved following final negotiations by both the European Parliament and the Council. The reform was in response to calls from over 90 percent of Europeans for "the same data protection rights across the EU." The so-called Digital Single Market seeks to enable people to better control their personal data and is expected to result in decreased costs to businesses. As part of the European Agenda on Security the reform also seeks to ensure that the data of victims, witnesses, and suspects of crimes, are duly protected, and to facilitate cross-border cooperation of police or prosecutors to combat crime and terrorism more effectively across Europe. [www.jurist.org](http://www.jurist.org) 17/12/2015.

## **China passes new technological anti-terrorism law.**

China passed a new anti-terrorism law on Sunday which requires technology companies to provide information to the government obtained from their products and make information systems "secure and controllable." The law also restricts media organizations from reporting on terrorist activity. Critics of the law, including western organizations and the US Department of State, suggest that the law may not effectively target terrorism and could restrict citizens' freedoms of expression and association because it is so broad in nature. The law also raises issues for companies such as Apple who do not hold encryption keys on individual devices. [www.jurist.org](http://www.jurist.org) 28/12/2015.

## **Venezuela Socialist Party challenges election results.**

Members of Venezuela's Socialist Party who lost legislative seats in elections earlier this month filed challenges [BBC report] on Tuesday disputing the election of eight opposition candidates. The opposition, Democratic Unity Roundtable (MUD) won 99 legislative seats on December 6, giving the party legislative power for the first time in 16 years. The win for the opposition party will give them a super majority in the legislature, allowing them to challenge the President Nicolas Maduro. If one appeal is upheld, however, the opposition party will lose their status as a super majority and powers that come along with it. [www.jurist.org](http://www.jurist.org) 28/12/2015.

*In this month extract was prepared by Vera García, Miguel Ruelas, Carla Espinosa and Andres Remis.*

## **Rwanda genocide tribunal formally closes.**

The International Criminal Tribunal for Rwanda (ICTR) formally closed Thursday [UN News Centre report] after issuing 45 judgments. The ICTR, established in 1994, was the first international tribunal to deliver verdicts against those guilty of committing genocide. Within its 21 years, the ICTR sentenced 61 extremists to terms of up to life imprisonment for their roles in the Rwanda massacres. There were 14 acquittals, and 10 accused were transferred to national courts. An International Residual Mechanism for Criminal Tribunals has been established and eight fugitives remain at large. [www.jurist.org](http://www.jurist.org) 03/01/2016.

## **Obama Ready to Act Alone on Gun Control.**

President Barack Obama, who has bypassed a reluctant Congress on issues ranging from immigration to climate change, is preparing to take executive action on gun control, including expanding background checks on buyers. [www.wsj.com](http://www.wsj.com) 03/01/16.

## **Bahrain, Sudan and UAE follow Saudis in diplomatic action against Iran.**

Bahrain and Sudan have quickly followed Saudi Arabia in severing diplomatic relations with Iran in the wake of a row over the execution of a leading Shia cleric by the Saudi authorities, which has provoked wide international condemnation. Sudan also says it has cut diplomatic links, while the United Arab Emirates has also downgraded ties with Tehran. Saudi Arabia also said that it was halting all air traffic to and from Iran, and would ban its citizens from visiting. Iranians, however, would be still be able to visit the kingdom for pilgrimages to Mecca. The Gulf island state Bahrain, Saudi Arabia's closest Gulf ally, said on Monday that Iranian diplomats had 48 hours to leave Manama, and its own diplomats would be leaving Tehran. [www.theguardian.com](http://www.theguardian.com) 04/01/2016.

## **VW Sued by U.S. in Diesel Emissions Scandal.**

The Justice Department challenged the German automaker Volkswagen in federal court Monday, saying that the company installed illegal devices in nearly 600,000 diesel engine systems to impair emissions controls, that way increasing harmful air pollution. But at least for now, federal prosecutors have stopped short of criminal charges and did not single out individual executives. The civil complaint, filed in Detroit, comes after Volkswagen admitted in September that it had installed software designed to cheat on emissions tests in 11 million of its diesel vehicles worldwide, setting off one of the largest corporate scandals in the auto industry's history. [www.nytimes.com](http://www.nytimes.com) 04/01/2016.

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