

Inter-American Center of Tax Administrations – CIAT

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“THE ROLE OF TAX ADMINISTRATIONS IN THE GLOBAL CRISIS”

Topic 3.3

**EFFECTIVE MECHANISMS FOR THE COLLECTION OF TAXE AND THE
RECOVERY OF DEBTS IN TIMES OF CRISIS**

**Directorate of Taxes and National Customs
Colombia**

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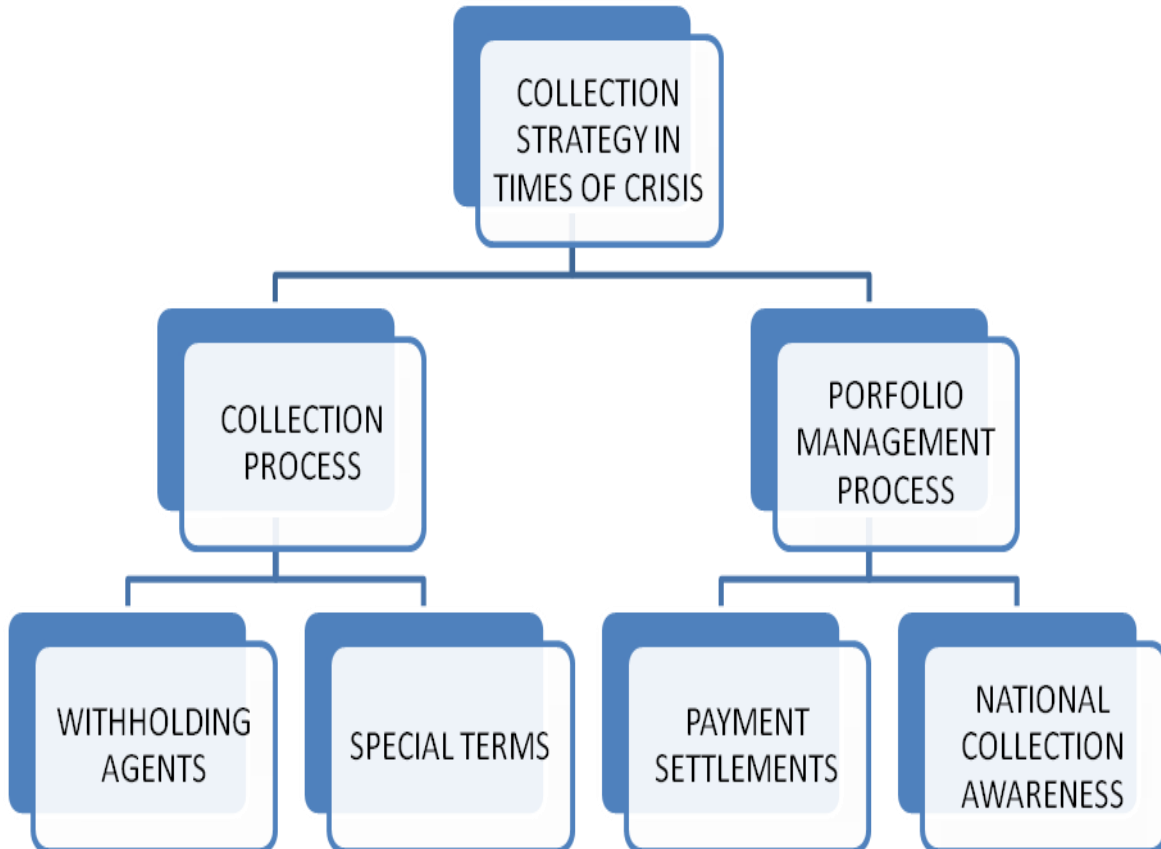
SUMMARY

In the development of its Strategic Management, the National Tax and Customs Directorate has been strengthening control actions in the last two years in order to assure the proper compliance with tax obligations by taxpayers and Customs Users, in response to the State's demands and the risks generated from the global economic crisis.

The tax administration has established collection tools through its tax legislation; the ongoing tax collection mechanisms evidence the core role played by withholding agents in the tax collection process, among which are the taxpayers classified as self-withholders, as well as special terms for filing returns of tax withholdings at source and the VAT.

A mass collection strategy was carried out throughout 2009 preceded by an advertising campaign, which included visits by a large number of officers targeted, in first, at achieving effective collection or payment commitments by means of a persuasive collection management, or exercising coercive jurisdiction where this was not possible (seizure, attachment, property auction and default penalization).

This has resulted in continued positive behavior observed in the collection of internal revenues and the achievement of the goals set, although external revenues have shown some erosion associated with the foreign exchange crisis both in exports and imports.



PRESENTATION

In the development of Strategic Management, the National Tax and Customs Directorate has been strengthening control actions in the last two years in order to assure the compliance with tax obligations by taxpayers and Customs Users, in response to the State's demands and the risks generated from the global economic crisis.

To overcome the crisis the country adopted the following strategies:

- Investment in infrastructure to generate employment and promote competitiveness – anti-cyclical policy
- Strengthen investors' confidence to sustain private investment dynamism
- Investment in social protection to sustain consumption by the most vulnerable population
- Assure access to financing

In furtherance of the annual strategic review, the DIAN has set the following objectives:

Maximizing tax revenue in accordance with the regulations
Enhancing tax collection coverage
Enhancing integral revenue per client

In 2009 the tax administration was able to steer its efforts towards bringing forward actions in different fronts, pursuing compliance with formal obligations and speeding up payment by taxpayers by way of an improved use of information through awareness campaigns on the importance of the VAT for the development of Colombians; and by bringing forward real-time presence campaigns with defaulting and delinquent taxpayers.

As a result, a good behavior has been recorded in the collection of internal taxes, thus achieving the set goal; although there has been some erosion in external revenues associated with the foreign trade crisis both in exports and imports.

	A. Attain excellence in operations	B. Re-direct the entity towards service	C. Consolidate autonomy and identity	D. Contribute towards the Country's competitiveness			
Financial	Maximize tax revenue pursuant to the regulatory framework						
	Optimize the Cost/Benefit ratio	Optimize tax collection	Optimize comprehensive entry by clients	Maximize the value of the DIAN brand	Maximize access income to national and international	Reduce costs Relating to compliance with obligations	Reduce client costs relating to
Client	Promotion actions to counter evasion, avoidance, contraband and exchange violations						
	Build trust, credibility and image improvement						
	Offer customers permanent assistance	Improve reaction times in regards to clients	Increase customer satisfaction	Mobilize the communication of the results on the use of state resources	Mobilize TAC Legislation simplification and harmonization	Provide juridical stability and certainty with a united criteria	
Processes	Strengthen intelligence and comprehensive control	Asegurar la confiabilidad de los	Orient, speed-up, make more flexible the entity's process towards knowledge on the client and deliver of value	Promote transparency and interact with the community	Generate a culture of voluntary compliance		
				Modify, align and shield process against subjectivity, corruption and the violation of values			
				Develop enabling strategic alliances	Strengthen the prevalence of the tax authority	Lead the development of national mass management and	Actively contribute in speeding-up the strategy and planning of the regulatory framework
	Speed-up, simplify and make processes more flexible		Facilitate and optimize customs operations	Prioritize service vocation in the official's career path plan	Make the administrative regulatory framework more flexible		
Learning and innovation	Generate organizational capacity to use the information	Transform internal culture towards customer service	Prioritize service vocation in the official's career path plan	Generate a culture of transparency, commitment and value generation	Innovate with effective control tools	Improve the capacity of the Corporate Intelligence process	Strengthen the entity's strategic skills
		Investigate and innovate in service models and means					
	Consolidate organizational capacity to accomplish the mission and achieve the						
	Strengthen and implement a system to attract, train, develop, assess, retain and continuously and adequately compensate						
	Assure the generation, management and dissemination of the required knowledge throughout the organization as well as its value chain						
	Have available reliable information and qualified and sustainable technological						

Table 1

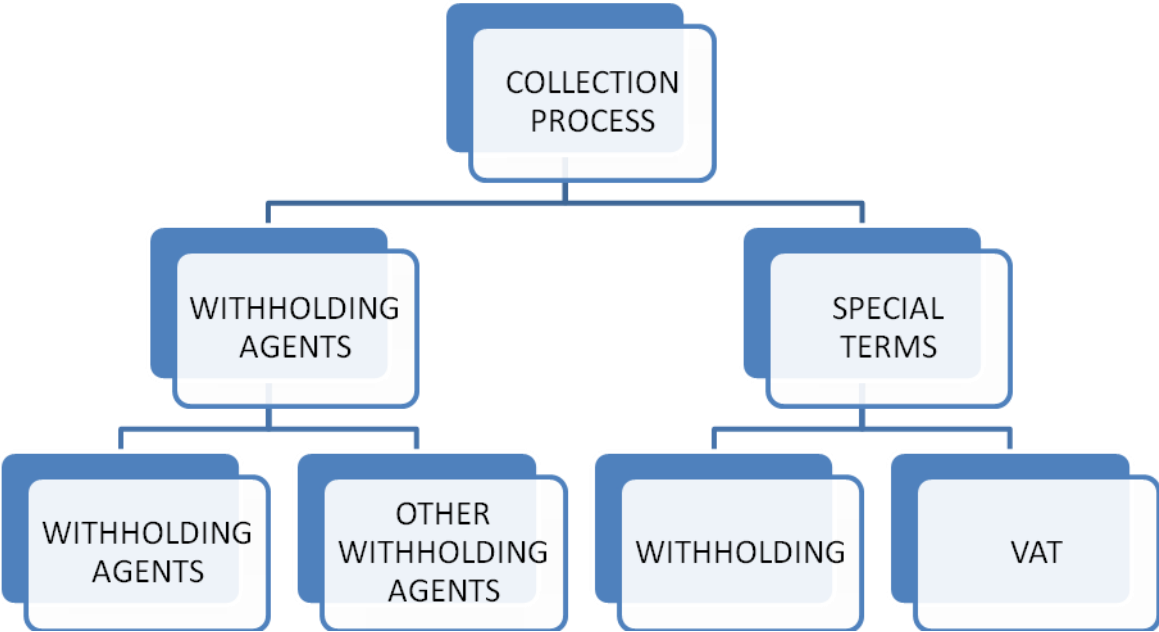
The Colombian tax administration has diverse technical and regulatory mechanisms for portfolio collection and management. These tools are part of two of the mission processes for portfolio collection and management developed by the National Tax and Customs Directorate (DIAN).

The mechanisms the DIAN uses to facilitate the collection of taxes administered by it are permanent and are independent of the provisional economic situation; they are an essential tool to collect taxes and reduce the portfolio resulting from the default in tax obligations.

They allow the administration to respond rapidly to the challenges posed by the worldwide economic crisis. These are:

1. Mechanisms implemented by the tax administration to collect taxes

The tax administration has set forth collection tools through its tax legislation. The ongoing collection mechanisms evidence the core role played by withholding agents in the tax collection process, among which are the taxpayers classified as self-withholders as well as the special terms provided for filing returns of tax withholding at source and the VAT.



Tax collection process

Withholding agents

Definition

To define the capacity of a withholding or collecting agent it is necessary to state that the withholding at source is intended to gradually attain the collection of taxes possibly within the same taxable fiscal year in which the tax was originated; i.e., that the collection of the tax is advanced in order to guarantee the payment thereof. Hence, withholding agents are a category of taxpayers defined by the international doctrine as: “the persons designated by the law or the Administration to be directly liable, in their capacity of withholding agents and upon obtaining a previous legal authorization, who by virtue of their public functions or their business, job or profession, are engaged in acts or operations in which the relevant tax withholding can be made”.

Who are withholding at source agents?

In light that the task of withholding agents consists in withholding from the amount of money owed to a taxpayer a certain legally established amount for tax and then forwarding it to the state treasury through the tax administration, withholding at source agents of the income tax under the Colombian tax regulations are: public-law entities, equity funds, securities funds, pension or disability funds, consortiums, joint ventures, organized communities and other individuals or corporations, undivided estate or *de facto* business associations, who are engaged in acts or operations in which they must, by express legal provision, withhold or collect the relevant tax.

Withholding agents of the VAT under the provisions in the Colombian Tax Bylaws are:

(...) “1. The following state entities:

The State, the departments, the capital district and special districts, the metropolitan areas, municipal associations and municipalities; the public divisions, the State’s industrial and business companies, partially government-owned corporations in which the State holds a >50% controlling interest, as well as indirect and direct decentralized entities and any other corporation, regardless of their denomination, where there is a majority of state-owned interest, at all levels and, in general, the State bodies or divisions authorized by the law to subscribe contracts.

2. Those classified as large taxpayers by the National Tax and Customs Directorate, whether liable to the VAT or not, and those who are designated by the DIAN as sales tax withholding agents.

3. Those contracting services taxed within the national territory with persons or entities having residence or domicile in the country, with relation to such services.

4. Taxpayers in the ordinary system, where they acquire personal tangible property or taxed services, from persons who belong in the simplified system.

5. Entities issuing credit and debit cards and their associations, at the time of making the relevant payment in the account of affiliated persons or shops. The tax value will not be part of the base to determine the commissions earned from the use of debit and credit cards. Where payments to the account of the persons or stores affiliated to credit or debit card systems are made through purchase or payment companies, the withholding at source shall be made by such entities.

6. The Civil Aeronautic Administrative Unit, for 100% of the tax on the sales originating from the sale of aerodynes. Paragraph 1°. The sale of goods or services made between sale tax withholding agents referred to in numbers 1, 2 and 5 of this section shall not be governed by the provisions in this section. Paragraph 2°. The National Tax and Customs Directorate may, by resolution, remove the sales tax withholding agent capacity from Large Taxpayers who are undergoing a debtor reorganization plan, mandatory liquidation, takeover or restructuring agreement negotiations, without affecting thereby their capacity of large taxpayers”.

Obligations

The essential obligations of withholding agents consist in performing the withholding, filing the withholding at source return, reporting the withheld value at the places and within the terms provided by the National Government and issuing the certificates of income and withholdings in the case withholding is applied to salaried workers.

Self-withholders

Definition:

In order to facilitate tax withholding at source as a mechanism of advanced collection from corporations whose economic stability allows and guarantees the payment of the withheld values, paragraph 1 of section 368 of the Colombian Tax Bylaws provides that “the Director at the National Tax and Customs Directorate shall be responsible for authorizing and designating the persons or entities which shall act as self-withholders, and suspending the authorization when in their judgment the payment of the self-withheld values is not guaranteed”. In furtherance of this section and with the aim of enforcing section 3° of the executive order 2509 of 1985, which establishes that “the National Tax and Customs Directorate shall indicate through a resolution the Corporate Name and the NIT¹ of the corporations which, in conformity with this section, are authorized to make the withholding at source on their income”, the Resolution No 04074 of 2005 was issued to indicate the authorization requirements, the diligence to obtain such authorization and the reasons for suspension of the self-withholder capacity.

Requirements

- Should be an artificial person (corporation)
- Should have recorded revenues in excess of six thousand (6,000) effective minimum monthly legal salaries for the gross sales of the year immediately before, or fraction of year, or as of the application date (for the year 2008 US\$ 1,350,000)
- If the applicant company credits gross sale revenues under number 2° of this section in excess of thirty thousand (30,000) effective minimum monthly legal salaries, it may be authorized to act as self-withholder without regard to the minimum number of clients required.
- If the applicant company has state investment and a net shareholders' equity in excess of ten billion pesos (\$10,000,000,000), it may be authorized as self-withholder, without regard to the revenues and the minimum number of clients required.
- If the applicant corporation has been declared a permanent Special Free-trade Zone, it may be authorized, without regard to the revenues and the minimum number of clients required.

¹ *Translator's note:* Taxpayer's identification number.

- Should have more than fifty (50) clients making withholdings, differentiated among corporations, *de facto* business associations and business individuals who meet the requirements of section 368-2 of the Tax Bylaws.
- Should be registered in the Single Taxpayer Registry – R.U.T.
- Should not be undergoing any liquidation process, debtor reorganization process or restructuring agreement.
- Should be up to date with its tax obligations.
- Should not have been penalized in the last year for default in invoicing and reporting duties, or for accountability misstatements, duly evidenced through a proper certification.

Control

Because it is a mechanism that facilitates the advanced collection of taxes, the tax administration must control that taxpayers who are thus categorized should assure the payment of self-withholdings. To this end, some reasons have been set forth which evidence the lack of assurance in the payment of withheld values, among them:

- a) Where the authorized corporation records overdue payments of tax, customs or exchange amounts which are late by more than one (1) month, as of the date such control is performed by the Sub-directorate of Collections;
- b) Where the authorized corporation has been taken over as a result of a merger;
- c) Where the authorized corporation has been split off, where the split-off results in dissolution;
- d) Where the authorized corporation is undergoing a liquidation process, debtor reorganization plan or restructuring agreement;
- e) Where the authorized corporation has been penalized for accountability misstatements or irregularities in invoicing or reporting duties, duly evidenced through a proper certification.

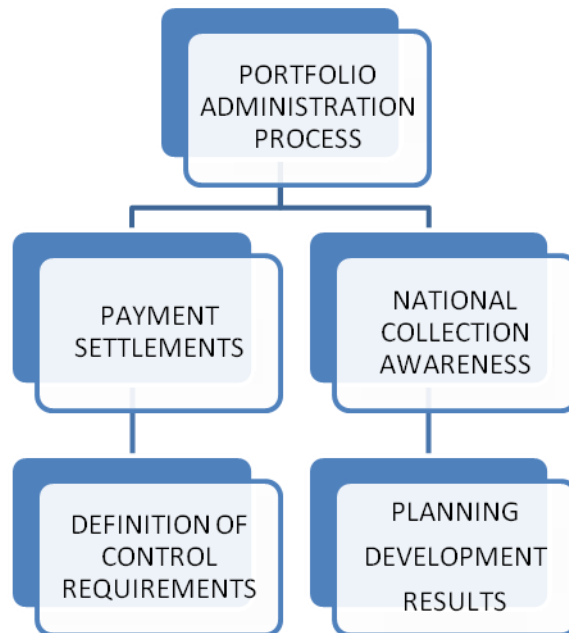
The control exercised by the tax administration may conclude with the suspension or the continuity of the self-withholder capacity.

Special terms

Another mechanism used by the tax administration to facilitate compliance with formal and material obligations consists in granting authority to file and pay withholding at source and VAT returns within special terms provided by the national government to certain taxpayers who, given their number of branches or shops, are required to consolidate the reportable information.

2. Mechanisms implemented to assure the recovery of tax debts

Portfolio management process



National Collection Days

Within the frame of the Strategic Management and the objective of maximizing tax revenues, the National Tax and Customs Directorate (DIAN) advanced three National Collection Days in 2009 with the purpose of intensifying the actions regularly executed in the Portfolio Management process, particularly regarding persuasive and coercive collection.

- As to persuasive collection, there were increased visits to taxpayers who were late in their payment of the taxes administered by the DIAN and persuasive notices were sent encouraging them to regularize their situation. Obligations in a coercive collection status were addressed by way of attachment and auction diligences, criminal complaints, lists of charges and closing-down of stores, thus encouraging the collection of delinquent taxes.

- Specific dates for the payment commitments of delinquent taxpayers; setoffs of credit balances or the subscription of payment facilities (except for the withholding at source); notices of lists of charges and closing-down of stores.
- The officers visited taxpayers at their domiciles according to the data recorded in the RUT, upon previously verifying that there was a clear, express and enforceable obligation; then located their property and persuaded them to pay off their debts as soon as possible.
- The move was mainly targeted at withholding at source debtors, in the consideration that these resources should have entered the National Treasury but were not paid by a third party who is the withholding agent in this case, a conduct that has been criminally categorized. Real property confiscations were carried out in order to execute injunction orders.
- Auction diligences.
- The criminal units of Divisional Directorates participated reporting delinquent taxpayers.
- The tax examination and liquidation divisions notified debt-related lists of charges.
- With the slogan “default in the payment of taxes with the DIAN hurts you and Colombians alike”, the entity will continue to raise taxpayers’ awareness on the payment of their tax obligations and the impact thereof on the State’s resources intended to assure tax sustainability, which is DIAN’s mission.

Electronic payment

Given that the adequate tools for the electronic filing of obligations are in place, the need arose to incorporate electronic payment as a tax collection alternative concurrent with the formal reporting duty, which would in turn facilitate the timely compliance by clients. Throughout 2009, nearly 2% of tax revenues were collected through electronic means through the entities authorized to collect, by way of services offered on the Internet, Audio-Responses, ATMs, Points of Payment or Self-service Kiosks, all of which assured complete, safe and satisfactory operations to the parties.

SECTION 5, EXECUTIVE ORDER 1791 OF MAY 23 OF 2007

“The payment transactions of tax, customs and exchange obligations administered by the National Tax and Customs Directorate will be performed by taxpayers, liable taxpayers, withholding agents, declarants, customs

users and the entity authorized to collect, and may be performed through personal or electronic channels at the option of the obligee.

a) PERSONAL CHANNELS. Assume the physical presentation of the payment document before the entities authorized to collect.

b) ELECTRONIC CHANNELS. Assume the presentation of payment-related electronic information through electronic means, which may be performed through the services offered on the Internet, audio-response, automatic teller machines (ATMs), points of payment or self-service kiosks, without the need to present the payment document physically, with assurance provided to the persons involved in the operation that the same is performed in full, safely and to everyone's satisfaction. An operation tracking number or user authorization must be given in all cases.

To make payment through electronic channels, the information provided by DIAN's electronic computer services will be used as related to the obligations fulfilled on-line before that entity.

Notwithstanding the safety rules that should protect present transactions, the transactions made through electronic channels should be subject to service, safety and validation conditions and rules defined for the financial sector, which must be previously communicated to the client by the entity authorized to collect, which in turn should allow the obligee making payment to debit from their account and credit in the account of the entity authorized to collect, so that payment may then be transferred to the General Public Credit and National Treasury Directorate."

Insolvency system for non-business individuals

Through the Act 1116 of 2006, known as Insolvency Act, the National Government established a procedure of Corporate Reorganization that contemplates the negotiation of obligations or the judicial liquidation by way of a fast and effective procedure. In light of the results thereof, it was important to develop a rule that would allow non-business individuals to resort to a legal procedure that contemplates the negotiation of their debts in an out-of-court conciliation hearing intended to agree on a payment schedule with creditors and thus be able to pay out their pending monetary obligations with disregard to their nature.

Act 1380 of January 25 of 2010

"The insolvency system is intended to allow the non-business individual debtor to resort to a legal procedure that may allow them to negotiate their debts in an out-of-court conciliation hearing and agree on a payment schedule with creditors, and thus be able to pay out their pending monetary obligations (excluding food)".

Publication of State's delinquent debtors (BDME, in Spanish)

It is a biannual publication of the National General Accountability Office which contains the names of natural and artificial persons that owe the public body and are late by a period in excess of six (6) months. The persons listed in the BDME cannot enter into contracts with state bodies, nor hold public office until they can provide evidence that they have paid out their obligations or produce proof of a payment agreement in force.

From August 1st of 2004, as established by

“the External Memo 057 of 2004, where an individual or corporate, in any capacity whatsoever, has as of any cutoff date a pending obligation with any public entity of any level, the amount of which exceeds five SMMLV and is late for over six months, shall appear listed in the Publication of State's Delinquent Debtors”.

Criminal accusation

Since 1997, the DIAN offers the possibility to file a criminal complaint against the responsible for Withholding at source and the VAT who fail to deposit the collected amounts timely. This criminal classification has served as a coercive tool enforceable on delinquent liable taxpayers, who may be sentenced to prison or punished by fine. In 2009, the Auditor's Office received 1,237 complaints denouncing omissions by withholding agents.

Payment facilities

There is a legal procedure and an internal regulation that define the general conditions for the diligence and obtention of payment facilities.

Although the rule contemplates as viable security any one which is apt to back debt sufficiently to the satisfaction of the Tax Administration, the internal regulation has listed them specifically: constitution of a guaranty trust; offering property for seizure and confiscation; personal guaranty, security interest, bank guarantees or insurance company guaranty.

A client with a debt less than US\$ 37,000 can apply for a less-than-a-year term, may obtain a non-collateralized payment facility by presenting a description of their property for its later seizure and confiscation.

Definition

This mechanism established in the Colombian Tax Bylaws allows taxpayers to be provided with a term for the payment of their tax obligations under a payment agreement; the tax administration may grant a term of up to five years for the payment of debt related to income taxes, VAT, stamp taxes, withholding at source, penalties and interest. To subscribe a payment

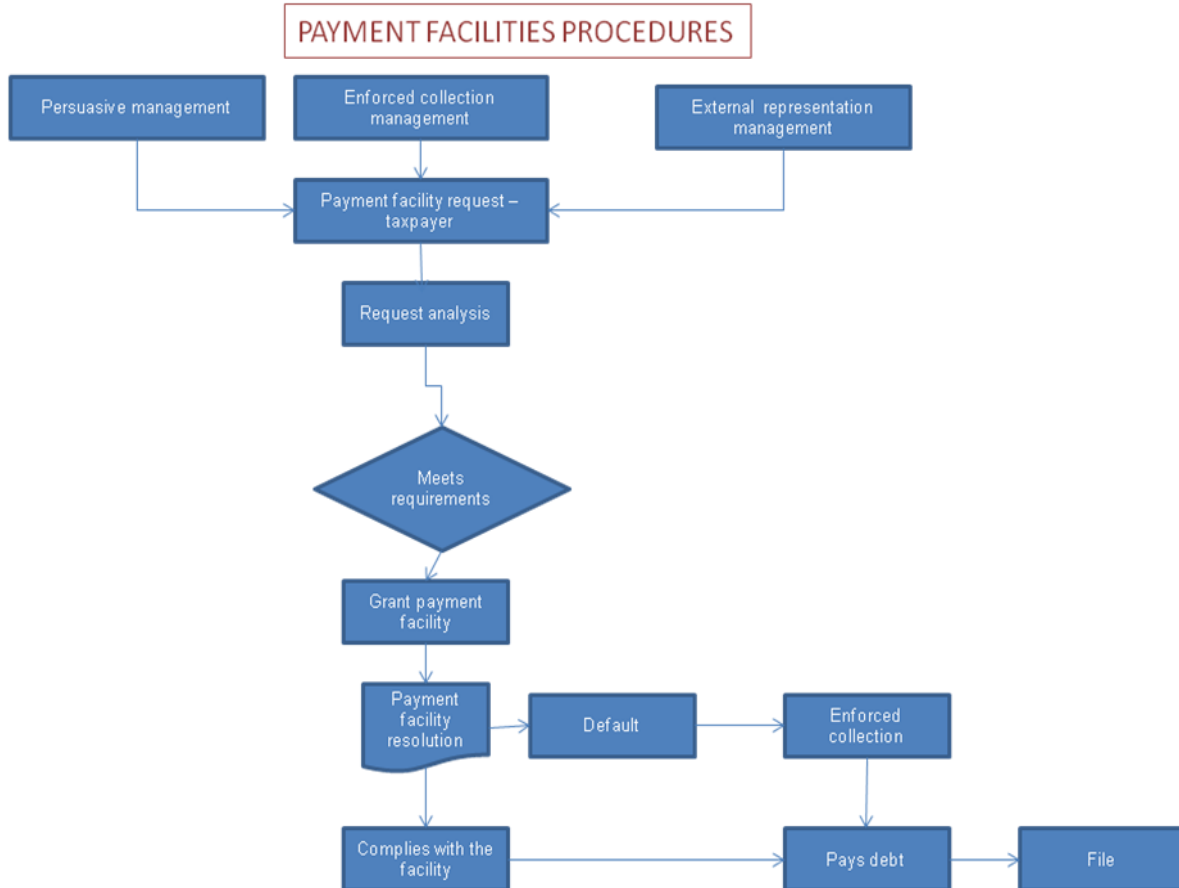
agreement, the taxpayer or a third party on their behalf must constitute a security interest, or personal or bank guarantee in order to back payment of the obligation, or may offer their property for seizure or confiscation. The administration may grant non-guaranty terms where such term is not in excess of one year and the debtor presents property for its subsequent seizure and confiscation.

Requirements

The following are the requirements provided by the Colombian Tax Bylaws to subscribe payment facilities:

- a) Cash payment of thirty percent (30%) of the total debt for tax and penalty for each period and item in respect of which taxpayer obtains the facility, with the following order of application: firstly taxes; secondly penalties, as updated; and lastly, interest.
- b) Request the payment facility in writing to the competent administration, by providing specifically the period of time requested and indicating the periods and items petitioned in the request, as well as the description of the guaranty supported by documents crediting its existence.

Procedure for awarding payment facilities



The internally regulated legal procedure defines the general conditions to obtain payment facilities through an administrative act, with a view to standardizing conditions and providing greater executory force to the parties' commitment.

The client (taxpayer, liable taxpayer, user) files a very specific request accompanied by all supporting documentation, indicating:

- ✓ Identification, representation and location data of both debtor and petitioner
- ✓ The amount of obligations
- ✓ The requested term, which may be up to five years; exceptionally, the Director may add two more years to that term
- ✓ The timing of installments required as per their economic situation
- ✓ Payment capacity
- ✓ Sufficient guaranties to back their obligation. Where the requested term is less than a year, guaranties may be dispensed with; in the rest of the cases, such guaranties may be:

- Constitution of a guaranty;
- Presentation of property for seizure and confiscation, which allows removing the business property avoiding the costs implied in a mortgage or pledge;
- Personal guarantees, security interest, bank or insurance company guarantees;
- Presentation of description of property where the debt is less than US \$37,000;

As a policy for the award of terms, the entity requests from client an initial installment of 30% of the obligation composed of by principal, penalties and late interest, but this value may vary according to each particular situation.

In the event of default, there is no specific penalty other than the internal policy of rejecting a new facility; however, as the request is filed through an administrative action subject to appeal, the client retains the opportunity to challenge the decision. Upon determination of the default, the entity proceeds to collect the guaranty and reinitiates the actions inherent in a coercive collection proceeding.

There have been no legal news on the subject, but the manner in which taxpayer is approached has changed, for in the last year the celebration of the National Collection Days allowed a direct approach and the possibility of reaching *in situ* agreements requiring only the formality of a signature of a short-term letter of commitment.

Control

In furtherance of the tax administration's self-control and quality management processes, the executive level exercises control over the procedures conducted on a local level. This task includes the continued monitoring of compliance with the payment of awarded payment facility's agreed installments. Should there be any default in the agreed conditions in the payment agreement, or in the payment of later generated tax obligations, the tax administration is entitled to terminate the facility and order the effective collection of the guaranty or adopt any necessary measures to obtain payment of the obligation out of debtor's offered collateral.