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“THE ROLE OF TAX ADMINISTRATIONS IN THE GLOBAL CRISIS”

Topic 3.3:

**EFFECTIVE MECHANISMS FOR THE COLLECTION OF TAXES AND THE
RECOVERY OF DEBT IN TIMES OF CRISIS**

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Summary

Certainly, this last economic crisis found Latin American countries better prepared than in previous times.

Notwithstanding, in the looming crisis, all countries adopted the necessary cautions to lessen its effects.

As far as the fiscal policy is concerned, assuring the State's income stability constitutes a fundamental standard, for it allows financing dynamic active policies favoring economic activity and such social policies that are apt to mitigate the consequences in the most vulnerable sectors.

In Uruguay, a set of measures of diverse nature was displayed to that end.

For reasons of space, in this paper we will focus exclusively on one of these measures: the designation of liable taxpayers.

We will discuss the possible contributions of such designation to the stability of public revenues by assuring the effective collection of taxes.

In addition, some considerations will be made of the category of liable taxpayers and what aspects should be pondered and evaluated for their designation.

Lastly, we will list some cases of liable taxpayers appointed in Uruguay who are considered worth mentioning for a number of reasons.

1- BACKGROUNDS – THE INTERNATIONAL CRISIS

During the period between 2003 and 2008, Latin America recorded an unexpected sustained product growth by levels which averaged between 4% and 6% of the GDP, which was an absolutely exceptional situation in the last 40 years.

In this context, the international financial crisis bursts upon the scene and rapidly falls back into a global economic crisis.

The effects of the crisis plunged practically the totality of the continent's countries into recession.

Given the damaging effects that economic crisis infringe upon social bodies (mainly the sectors in the lowest income layers), the role of public policies is vital.

With the idea of a free interplay of market forces adjusting these situations automatically being left behind, the necessary public intervention is now widely recognized.

In particular, the fiscal policy is required to fulfill a relevant role in this scenario.

Avoiding the income fall is a challenge for governments when it comes to sustain the expenditure and allow the continuity of social policies, and finance anti-cyclical policies.

In this context, tax administrations are vital actors to assure the achievement of contemplated objectives.

2- URUGUAY AND THE CRISIS

Practically all countries in Latin America reacted to this global recessive scenario by announcing and implementing active policies targeted at mitigating the effects of the crisis.

The measures adopted by each country varied according to the possibilities and the realities of each of them and to how the crisis affected them particularly.

In Uruguay, the set of implemented measures was very extensive and encompassed diverse areas.

To begin with, some measures consisted simply in the strengthening of policies that were in line with the country's overall development strategic guidelines.

These instruments were aimed at maintaining the competitiveness of the national production and increasing investments.

Furthermore, a series of specific measures was implemented, targeted at addressing the sectors most damaged by the crisis while preserving the employment level.

In addition to the above cited economic policies, a series of mechanisms was established in the Tax Administration with a view to assisting in the overall proposed objectives.

Fortunately, Uruguay was able to overcome the effects of the international crisis with the result that, albeit a slowdown in growth levels, the country never entered a recessionary phase. As a matter of fact, it was one of the few countries which recorded product growth during the period under consideration.

This was attributable not only to the measures adopted when the crisis commenced, but also to the significant role played by other measures adopted in previous years.

In this brief presentation we will discuss one of the mechanisms structured around the Tax Administration with the objective of maintaining the level of tax revenues: the designation of liable taxpayers.

3. MECHANISMS ADOPTED BY THE TAX ADMINISTRATION

The Latin American tax administrations are used to performing amid crisis scenarios.

So there are in Uruguay a number of mechanisms typically applied during times of crisis which had been enforced in previous crisis.

In many cases the application of these mechanisms is provisional, with the option to renew them for as long as the crisis effects persist.

Particularly in the case of the current crisis, the following mechanisms were implemented:

- Designation of liable taxpayers
- Information exchange agreements
- Flexibilization of the banking secrecy
- Additional powers for the Tax Administration
- Payment facility systems

For reasons of time and space, we will focus only on the first of the mechanisms described above (the designation of liable taxpayers), and discuss the designations made in Uruguay.

3.1 – Designation of liable taxpayers

3.1.1 – The liable taxpayer in the Uruguayan law

Within the concept of taxable person we find the category of *liable taxpayer*, which has gained increasing importance over time.

On this regard, section 19 of the Uruguayan Tax Code (CTU, in Spanish) provides:

“Section 19.- (Liable taxpayer).- *A liable taxpayer is that person who, without assuming the capacity of taxpayer, must, by express provision of law, fulfill taxpayer’s payment obligations and formal duties, and is therefore vested in all cases with the right of repetition”.*

This rule is acknowledged to stem directly from Section 27 of the Tax Code Model for Latin America (MCTAL, in Spanish), which defines liable taxpayers as: *“those who, without having the capacity of taxpayers, must, by express provision of law, fulfill taxpayers’ obligations”.*

From the transcription of the definition it is therefore inferred that the liable taxpayer does not assume the capacity of taxpayer, with taxpayer¹ being the person in respect of whom the taxable event originating the tax obligation is verified.

It is therefore concerned with certain persons who, despite not being the ones in respect of whom the taxable event is verified, are anyway bound by law to pay and fulfill certain formal duties.

VALDÉS COSTA² explained that a taxpayer is that person bound by their own debt, whereas a liable taxpayer is that who responds for the debt of another; according to this author, the differentiating factor between both persons is the *ownership* or *lack of ownership* of the debt³.

PARLATO refers to *“another’s debt”*, by stating that it is a *“debt originating by reason of a taxable event imputable to another person”*⁴.

¹ Section 17 of the CTU: **“Section 17.- (Taxpayer).-** A taxpayer is that person in respect of whom the event originating the tax obligation is verified.”

² VALDES COSTA, Ramón, VALDES DE BLENGIO, Nelly and SAYAGUES ARECO, Eduardo, “Código Tributario de la República Oriental del Uruguay, Comentado y concordado” [*Tax Code of the Western Republic of Uruguay, commented and accorded*], FCU, Fifth edition, October 2002, p. 259.

³ Sections 24 (Bound by their own debt – Taxpayers-) and 27 (Bound by the debt of another – Liable taxpayers-) of the MCTAL provide likewise.

⁴ PARLATO, ANDREA: “Tratado de Derecho Tributario” [*Treatise on tax law*], directed by A. Amatucci, p.201.

DINO JARACH⁵ argues: “a taxpayer is the person bound to pay the tax in their own right and, if I am allowed the expression, the person bound by nature, because it is in respect of them that the juridical cause of the tax is verified”⁶.

The substitution factor deserves to be considered separately.

There is no doctrinal consensus regarding whether it is a particular case of taxpayer or liable taxpayer.

For the Uruguayan legislation, as for a great part of the Latin American doctrine, it is a particular case of liability.

Section 57^o of the Act N^o 18.083 provides:

“SECTION 57^o.- Substitute liable taxpayers.- *Substitute liable taxpayers are such persons who must liquidate and pay the whole tax obligation in substitution for the taxpayer.*

Once the liable taxpayer is designated, the taxpayer is released from any liability as to the tax collector for the relevant obligation. Such release does not prevent taxpayer from exercising all the rights vested in his condition as such, before both administrative and jurisdictional bodies.

The substitute liable taxpayers shall have the right of repetition in all cases, pursuant to the provisions in Section 19 of the Tax Code.”

Alternatively, there are other opinions that visualize substitution as a particular case of taxpayer.

This last thesis prevailed in the current wording of CIAT’s Tax Code Model, where the substitute is explicitly defined as “taxpayer”.

In particular, section 29 of the above cited model provides:

⁵ DINO, JARACH: “El hecho Imponible”, Abeledo Perrot, Buenos Aires 1971, p.168.

⁶As it would be excessive for the purposes of this presentation to expand on the analysis of the category of liable taxpayers, for more details on this analysis you may refer to the excellent work of BLANCO ANDRES, “Los Agentes de retención y de percepción en el Derecho uruguayo”, Revista Tributaria del Instituto Uruguayo de Estudios Tributarios N^o 166 (January – February 2002).

We also recommend the work presented by VICTORIA LARRAÑAGA and HÉCTOR LÓPEZ at the Tax Conferences of the DGI, “Sistema de responsabilidad tributaria en el derecho vigente” [*The tax liability system in the existing legislation*] (2008).

“Section 29. Substitute taxpayer.

1. *Substitute taxpayers are taxpayers who, by provision of law and in substitution for the direct taxpayer, are obliged to fulfill the tax obligations.*
2. *The substitute taxpayer may demand payment of the paid out obligations from the direct taxpayer”.*

The solution adopted by the model results in the differentiation of two classes of taxpayers: direct and substitute.

We will hereafter refer to substitutes as another case of liable taxpayers, a solution adopted by the current regulatory frame in Uruguay, which is the case discussed herein.

Going back to the category of liable taxpayer, another aspect that should characterize it is the requirement that its designation be made by law.

Some bodies of regulations provide in addition that liable taxpayers may be appointed by the Administration, provided that the legal power to do has been established⁷. This was the position adopted by CIAT’s Tax Code Model, which provides in section 31° the following:

“The Tax administration, through the issuance of general rules, may designate withholding or collecting agents who may intervene in acts or operations in which they may exercise the withholding or collection of the relevant tax, as well as withdraw or suspend such capacity where, in its judgment, payment of the withheld or collected values is not guaranteed”.

It is significant that the law should contain the hypotheses that shape the liability, and in addition establish the nature thereof.

In this sense, it should be mentioned that it is particularly important that the scope of the liability created by the law should be accurately delimited.

The liability’s characteristics are tied to the type of person that is being defined.

According to this, the liability may be classified into joint and several, accessory or substitute⁸.

⁷ Section 23 of the CTU states: *“The liable persons in their capacity of withholding or collecting agents are those appointed by law or by the Administration, being legally authorized previously, who by reason of their functions...”*

⁸ Due to space reasons we cannot expand on the analysis of these categories. For an in-depth analysis, you may refer to BORDOLLI, JOSÉ CARLOS and FAGET, ALBERTO: *“Sujeción pasiva y responsables tributarios” [Taxpayers and liable taxpayers]*, paper presented at the 17th Latin American Conference of Tax Law, Cartagena, Colombia, 1995.

The joint and several liability implies the possibility that the Tax Administration may claim the totality of the debt either from the elected joint taxpayer or the taxpayer themselves; in the eyes of the tax creditor, there are no differences between joint and several debtors. If the tax creditor holds the liable taxpayer liable, they will file a legal action for payment against the taxpayer for the totality of the amount paid.

The accessory liability establishes the right of discussion, which implies the tax creditor's need to firstly claim debt from taxpayer and, upon exhaustion of the latter's property, claim the unpaid portion of debt from the subsidiary liable taxpayer.

As to the substitute liability, the state treasury is precluded from claiming credit from the taxpayer, thus removing the latter from their capacity of "debtor", with the substitute taxpayer remaining as the single taxpayer on behalf of the substituted taxpayer, who acts exclusively as guarantor and may exercise the right of repetition against the taxpayer for the totality of the amount paid.

After making these general considerations regarding liable taxpayers, what remains to be analyzed is the reason for linking the tax obligation to a person other than the taxpayer themselves.

From the answer to this question we may infer the main characteristics that liable taxpayers should have.

Broadly speaking, the designation of liable taxpayers stems from the difficulties encountered in the management, collection or control of taxes under certain circumstances⁹.

In this same sense, the Uruguayan jurisdictional body, the Administrative Litigation Court (TCA, in Spanish), provides that the norm of liability should be applied as a last remedy once all the ordinary control possibilities of the Tax Administration have been exhausted¹⁰.

This line of argument in the national doctrine was developed by BORDOLLI¹¹ and incorporated into the resolutions of the 3rd River Plate Taxation Conference.

According to this, from the economic (non juridical) point of view, the liable taxpayers are considered a sort of "auxiliary agents" or "collaborators" of the Administration.

⁹ GIANNINI, ACHILLE DONATO: "Instituciones de Derecho Tributario" [*Tax law institutions*], Ed. De Derecho Financiero, Madrid, 1957, p. 133.

In the same line, SAINZ DE BUJANDA, FERNANDO: "La responsabilidad tributaria en régimen de solidaridad" [*The tax liability in the solidarity system*], "Hacienda y Derecho" [*Finance and law*], Volume V, Instituto de Estudios Políticos, Madrid, 1973, p. 242.

¹⁰ TCA's ruling N°61/97.

¹¹ BORDOLLI, JOSÉ CARLOS: "Los agentes de retención. Condiciones y límites para su designación" [*Withholding agents. Conditions and limitations on their designation*], Revista Tributaria of Instituto Uruguayo de Estudios Tributarios N° 85 (July - August 1988), p. 280.

The obligation of these persons is defined by the norm that designates them, which may consist in both payment and the provision of information.

In no case may the participation of a liable taxpayer release the Tax Administration from its supervising function.

So, the tax liability is based on the security and the assurance of the tax credit¹².

R.CALVO ORTEGA¹³ explains that, pursuant to this *security* purpose, the public nature of the tax liability leads the lawmaker to extend liability to other taxable persons other than taxpayer, insofar as they are related to them by some type of link or relationship.

As a consequence, in situations where due to business modalities, or the taxpayers' characteristics or any other circumstance, the control possibilities by the Tax Administration are reduced, or by any other reasons the tax credit is at risk, the possibility of designating liable taxpayers – among other strategies – could be contemplated.

In this hypothesis, if any person is identified as tied to the taxed operation or the taxpayer, and if such person exhibits further payment guaranties than does the taxpayer themselves, then the designation may prove effective.

In this context, the liable taxpayer is placed “*next to*” or “*in place of*” the taxpayer (depending on the type of defined liability), in order that the obligation be assumed by the liable taxpayer and the State should assure the collection of the tax.

The 4th Recommendation of the 17th Latin American Conference of Tax Law – Cartagena, Colombia, 1995, Topic 1, “Taxpayers and liable taxpayers”, summarized it as follows: “... *the liable taxpayer category stems from the need to consolidate or enhance tax collection... Both the taxpayer and the liable taxpayer are subject to the tax obligation. The former is that in respect of whom the taxable event is verified, whereas the latter is the person that is bound to fulfill the tax obligation, not upon verification of the taxable event but by provision of law*”.

The major protection of the state treasury's interest “...*is attained by the introduction of two rules: the primary rule which provides for the taxable event typical of the tax and the imputation of the juridical effect related to the main obligee; and the secondary rule, which presupposes the effect of the first rule and in contemplating, in addition, a specific assumption, extends the obligation as to the liable person.*”¹⁴

¹² VICTORIA LARRAÑAGA AND HÉCTOR LÓPEZ: “Sistema de responsabilidad (...)” [*Liability system*]; in the work cited. p. 9.

¹³ R. CALVO ORTEGA: “Curso de Derecho Financiero I” [*Course on Financial Law*]; p. 177.

¹⁴ PARLATO, ANDREA: “Tratado de Derecho (...)”; p. 209.

It is important to point out that the mere fact that a certain activity or business should entail control difficulties is not sufficient reason for the designation of liable taxpayers.

While such circumstance may be a first hypothesis, in order to advance towards the designation it is essential that other aspects be verified; it is – as it is usually stated in mathematical terms- a “*necessary but not sufficient*” condition.

It is therefore important to underline that liable taxpayers should not be appointed for any reason.

The decision to appoint a liable taxpayer should be the result of a careful analysis of the circumstances, after concluding that the negative externalities brought about by the designation are largely exceeded by the advantages that motivate it.

In all, there must be a positive balance between the costs saved by the state treasury and the costs transferred to the liable taxpayers, or other type of negative effects that the designation may bring forth.

What additional aspects should be verified?

Firstly, it is obvious that the potential liable taxpayer must be identified, that is, an individual or corporate must exist who is tied to the operation or the taxpayer, and who may be held liable.

Secondly, special attention should be paid to the fact that the designation of a liable taxpayer should not introduce distorting elements into the market, which may lead to an inefficient allocation of factors, or may reward the non-performance of tax obligations.

This calls for a comprehensive analysis of the market of the good or service into which the liability will be introduced prior to the designation, and the identification of how such liability may impact from an economic perspective.

Special attention should be paid to designated liable taxpayers who show bad tax behavior, for if any of the possible liable taxpayers markets the good in question informally, the gap that differentiates such good from other goods in the formal circuit could be widened.

In effect, in this case the difference between a product in the formal market and one in the informal market will not only be the VAT (and possibly any excise tax), but also the addition of the withholding or collection.

Here is an easy example of a practical application of this problem.

Let us assume a good that is marketed in the retail circuit and shows serious problems of VAT evasion.

If in any of the previous stages (for example, during manufacture) all the agents show an acceptable tax behavior, they could be appointed collecting agents for the VAT corresponding to the stage where problems are detected (in this case, the retail circuit).

Now, well, if serious control problems were also found on the manufacture level, then the appointment would not be advisable because we would be increasing the “award” for the informal sector upon introducing collection.

Finally, it should be analyzed if the potential liable taxpayer is qualified for such appointment.

In effect, the fact that there exists a person tied to the operation is not enough; the prospect appointment requires that the person should have certain attributes in order that the tax collection activity of the Administration is facilitated, and provides the system with a higher degree of certainty regarding the expected collection of taxes.

3.1.2 – Recommended attributes for the designation of liable taxpayers

Some of the attributes or characteristics that are recommended for the designation of liable taxpayers are:

- **Solvency**

One quality that seems important for the election of a liable taxpayer is that such person should have the necessary solvency to meet the possible obligations that may arise from their designation.

If the reason for the designation is the assurance of the tax collection by the State, it is not necessary to overstate that the designee should be able to meet their emerging debts in full.

However, under certain circumstances the designation may fall upon certain persons who are less solvent than the taxpayers themselves, but who under specific situations may still offer further assurance to the State.

This is the situation, for example, of residents who hold relationships with non-residents who earn income from a Uruguayan source; in this case, the resident is held liable to the obligation of the non-resident taxpayer, in absolute disregard to the solvency analysis of the resident.

In effect, in the above described situation the simple fact that it is a resident person clearly makes it easier to supervise and manage than in the case of a non-resident.

The designation of a liable taxpayer implies in addition the imposition of a series of formal obligations tied mainly to the provision of relevant information to the Tax

Administration, the filing of tax returns and the issuance of supporting documentation of possible withholdings.

This is the reason that the designees should have a suitable administrative infrastructure in order to be able to meet efficiently the formal obligations imposed on them.

So, the liable person must be qualified to meet all the obligations imposed on them.

This transfer of administrative tasks to the liable taxpayer may achieve highly significant levels, so the impact this may have on the potential designees should be considered.

A reasonable balance should be stricken between the obligations transferred to the liable taxpayer and the possible benefits obtained from such designation.

It should also be noted that in the case of withholdings and collection, a financial benefit is gained as a result of holding the amount withheld or collected during a certain time (until it is deposited with the state treasury).

- **Reliability**

Another relevant aspect that should be considered is the degree of reliability that could be attributed to the designees.

It usually happens that in marketing or distribution channels where compliance problems are detected, there is some participant in one of the stages of the economic circuit who exhibits a greater degree of reliability than the rest do. In this case, such person may be appointed if they also meet the other required attributes.

Reliability is also relevant because in the case of withholdings or collection, the liable taxpayer can manage considerable amounts, with the result of a significant concentration of the risk.

The definition of these liability systems should be accompanied by the design of a more burdensome penalty system than the ordinary system.

As regards withholding and collecting agents, the penalty for not paying timely withheld or collected amounts is 100% of the unpaid amount, whereas the penalty for any other case is 20%.

Furthermore, letter H) of section 96^o of the Tax Code provides a simple assumption of fraud intent when the version of the withheld amount is omitted.

In line with this, section 47^o of the Decree-Law 14,948 of November 7 of 1979 establishes:

“Unless proven otherwise, failure by the collecting agents to timely pay the taxes collected by the General Revenue Office shall be presumed as an intention to evade taxes.

The tax fraud shall be penalized with fines from 5 to 15 times as much the tax amount that was evaded or attempted to be evaded”.

Lastly, section 19^o of the Decree-Law 15,294 of June 23 of 1982 categorizes the crime of misappropriation in the case the withholding and collecting agents fail to pay the withheld or collected tax within the terms provided for such purposes¹⁵.

- Control facility

One factor that could be decisive in making the decision to appoint a liable taxpayer is the greater possibility of control that the Tax Administration may achieve with such appointment.

The greater possibility of control may result from the modality of connection between the liable taxpayer and the taxable event, as well as from the different specific circumstances that may condition their participation in the activity in question.

In general terms, when it comes to businesses or activities that exhibit control difficulties in the retail stages, where there is a reduced group of suppliers having a reasonable degree of credibility, these may constitute eligible candidates to be bound by the tax obligations of those who are in the subsequent stages of the economic circuit.

In certain situations, the simple fact that the prospect liable taxpayers may constitute a significantly smaller group than the group of taxpayers is a reason that motivates their designation, provided that all the other requirements are verified.

- Possibility of compensation

One element that should be considered in the design of a policy for the identification and designation of liable taxpayers is that the designees should be tied to either the activity or the taxpayer, in order that they may be allowed to receive economic compensation once they have fulfilled their duty to pay the tax obligation, and so that they should not respond exclusively with their own property.

Given that the liable taxpayer is a debtor for the account of another, they should be able to receive compensation for the tax burden. The relationship between the liable

¹⁵ “Section 19^o.- The agents responsible for withholding and collecting the taxes collected by the General Revenue Office who fail to pay the withheld or collected tax within the term provided by the effective regulations, will be presumed as having committed misappropriation.”

taxpayer and the taxpayer will be governed by the private law, whereas the obligation of taxpayer is governed by the tax law.

This possibility of reimbursement, or compensation, may be verified (“*ex ante*”) prior to paying out the obligation, or else the liable taxpayer may recover the funds used in paying the obligation after (“*ex post*”) making such payment.

With this compensation, the economic impact of the tax would fall upon the person that the law has identified as owning a certain taxable capacity, that is, the taxpayer.

- **Simplicity**

In some occasions the designation of a liable taxpayer may simplify the system.

The concern for migrating to simplified tax systems is shared by everyone; however, this objective is increasingly difficult in an environment where due to multiple factors the economic activities are ever more complex.

And this is because it is extremely complicated to move forward to simplified tax systems without jeopardizing equity.

In this continued attempt to strike a balance between simplicity and equity, certain types of withholdings (definitive in some cases) may be considered a suitable tool for such purpose.

We will come back later to this issue when we discuss a specific case of a liable taxpayer, but we may cite as an example the case of banking institutions.

As a matter of fact, in Uruguay the banks were appointed withholding agents for the Tax on Individuals’ Income (IRPF, in Spanish) and the Tax on Non-residents’ Income (IRNR, in Spanish), corresponding to the interest on bank deposits.

Such designation was intended to give taxpayers the option to render such withholding definitive, thus releasing them from having to declare the relevant income¹⁶.

- **More information**

Information management has become a fundamental goal of the management of contemporary tax administrations.

Having reliable information is an objective to which more and more administrations allocate additional resources.

¹⁶ This was possible because the IRPF in Uruguay has a “dual” structure, with two clearly differentiated categories, where the income included in one of them (that including financial income) is assessed with a flat rate. In the context of a traditional or synthetical IRPF, this measure would have no simplification effects.

In this context, the participation of a liable taxpayer may contribute to the provision of relevant information for the administration.

3.2 – Some assumptions of liability in Uruguay

Over the last years, the designation of liable taxpayers in our country has increased significantly.

From the vast case law existing in our Tax System, we will comment on some cases that are believed to have some interest in the light of the good results shown by some designations.

3.2.1 – Payers of non-resident taxpayers

This is maybe one of the most common cases of liable taxpayer appointment, a category that is likely to exist in the body of regulations of nearly all countries.

As previously noted, the reason is that the control and follow-up of entities doing business in the country on a non-permanent basis is very complex; hence, the suitability of appointing the resident taxpayer who pays or credits the relevant income.

This assertion may be played down in the light of section 27 of the OECD's Model Tax Convention on Income and Property, relative to the assistance in Tax Collection, but such relativization is only applicable to countries holding an effective Convention which in addition includes this clause, where a designation is absolutely pertinent.

As we said before, within the frame of this designation, there may be cases of liable taxpayers offering insufficient reliability, given that the only link that led to their designation is that they are a non-resident's payer.

This risk is increased if the resident taxpayer is not engaged in activities on a permanent basis.

An example of this, which has deserved a special treatment in our legislation, is given by the organizers of public shows where non-resident taxpayers take part.

In these cases, the resident corporation (the show's organizer) would be legally incorporated only for the purposes of the show, and was absolutely insolvent, with the result that it provided little assurance to the Tax Administration as a liable taxpayer, and it was very difficult to collect from the organizer.

In view of this "*scenario*", the owner of the site where the show was staged was also held liable to the Tax on Non-residents' Income (IRNR) and the Value-added Tax (VAT).

In this way, the owner of the site makes sure that payment of the relevant taxes is made even before the show takes place.

This allowed having a designee with backup assets and who, by virtue of their relationship with the business, had the possibility of claiming payment of the tax.

3.2.2 – Employers

The case of the designation of employers as liable to the IRPF of their employees is also a case that may be observed in nearly all countries, so we will not expand largely on it.

It is worth mentioning only that in Uruguay the withholding was designed in such a way that if the worker earns only that income, what the employer withholds during the whole year coincides with the generated IRPF, so they are released from having to prepare and file the tax return.

This is possible because the employer must adjust the withholding pertaining to the month of December so that on adding it to the total withholdings accumulated during the year, it coincides with the tax that such worker generated for that income.

In this case, the withholding releases a great number of workers from having to file the tax return, with a resulting impact both on the administration and the taxpayers themselves.

3.2.3 – Credit and debit cards

The use of credit and debit cards as a means of payment is being increasingly spread as a consumption practice.

On the other hand, the entities that administer these payment systems are few and have a sufficient infrastructure to take on all the tasks inherent in a fully solvent liable taxpayer.

In the light of these circumstances, it was considered suitable to hold them liable to the taxes originating from the operations financed by them.

Through this mechanism, the State Treasury is certain to collect a highly significant percentage of the generated taxes¹⁷.

In addition, the engagement of these liable taxpayers also stands as a highly valuable source of information to the administration on account of the increasing participation of these financial instruments in consumers' habits.

¹⁷ The credit administrating entities detract 5% of the total price of the operation. Currently, 1.58% of the total revenues are collected thereby.

3.2.4 – Notaries in the sale of real property

In Uruguay the sale of real property is required to undergo a series of formalities in order to be perfected.

In effect, the sale agreements must be filed with the public registry and a certified notary must intervene perceptively.

Because the participation of the certified notary is mandatory in this type of business, and since it configures the event that originates the IRPF (where the seller is an individual), it was considered suitable to hold them liable to the tax originating in the purchase and sale of real property.

The certified notary, without whose signature the business cannot be transacted, is entitled to demand the amount of the tax originated from the operation and deposit it later with the state treasury.

The withholding thus made may be considered definitive, so the taxpayer may be released from having to declare such operation¹⁸, with the resulting relief implied both for the taxpayer and the General Revenue Office.

3.2.5 – State

In Uruguay the public sector has a significant participation in the economy.

It is a very relevant purchaser of goods and services, so it was considered suitable to hold it liable when performing its purchases.

Hence, any state entity purchasing goods or services was appointed VAT-withholding agent, subject to withhold 60% (sixty percent) of the billed tax.

In this particular case, the State is a 100% reliable agent, which poses no risk of evasion.

3.2.6 – Large taxpayers

Given the great success of the withholding explained in the previous paragraphs, it was considered suitable to extend the group of taxpayers subject to the tax withholding when purchasing inventories.

In this sense, all taxpayers categorized as “*large taxpayers*” by the Tax Administration were appointed liable taxpayers.

¹⁸ The “dual” structure of the IRPF allows considering the withholding final and avoiding the inclusion of this income in the tax return, given that it has no impact on the progressive nature of the tax by reason of being income assessed by a proportional rate.

Even though these taxpayers do not have the same high degree of reliability as the State has, they are very well-known and serious companies which can be absolutely relied upon.

On the other hand, they obviously have the administrative infrastructure required to meet reasonably the system's requirements.

3.2.7 – Uruguay's Soccer Association

As it is publicly known, soccer in Uruguay is a business with a relatively high importance.

The remunerations of soccer players are well above the average of the rest of the country's workers.

In addition, they are public celebrities, so it was very important that the Tax Administration should verify perfect tax compliance by this activity sector given its public repercussions.

When the Tax on Individuals' Income (IRPF) was reestablished, a system was structured intended to assure the effective collection of the football players' IRPF.

Because the money that is collected from television rights firstly enters the Uruguayan Soccer Association (who is knowledgeable of all football players' contracts) and is then distributed to all clubs, the Association was held liable to the IRPF of the football players.

This appointment has proven very effective.

3.2.8 – Cold-storage stores

The meat market presented some control difficulties in the retail circuit.

Alternatively, on the other end of the marketing chain, at the level of the industrial stage, there was a reduced group of cold-storage stores with sufficient structure to bear the obligations arising from a liable taxpayer designation.

In this case, the category of collecting agent was opted, holding the cold-storage stores liable to the VAT corresponding to the subsequent phases of the industrial stage.

3.2.9 – Health

For a great many years the health sector in Uruguay had been wholly exempted from taxes.

With the Tax Reform occurred in 2008, the sector came to be taxed like any other sector in the economy.

Hence, self-employed service providers (health providers) came to be taxed with the IRPF and the VAT overnightly.

It was a highly heterogeneous and populated group that had never had any kind of contact with the Tax Administration, so it was understood that designating the entities paying for these services as liable taxpayers could be a suitable instrument apt to contribute to the proper collection of the relevant taxes.

Therefore, healthcare service providers contracting services with healthcare professionals were held liable to the IRPF and the VAT corresponding to the persons billing services to them.

In this opportunity, the withholding was determined considering the fact that the taxpayers practically lacked an administrative infrastructure and any experience of relationship with the tax authority, therefore, effective voluntary compliance would be highly unlikely.

CONCLUSIONS

Overall, the category of liable taxpayers stems from the need to assure the State Treasury's interests.

Such need arises from certain difficulties in controlling certain activities.

Nevertheless, the designation of liable taxpayers cannot and should not be the first tested solution upon the emergence of such difficulties; such a decision should be the result of a careful and comprehensive analysis of the circumstances characterizing the relevant operations and markets, and after ruling out other actions that the Tax Administration itself may adopt.

The designation of liable taxpayers should abide by the neutrality principle, in order to avoid any distortions in the operation of the markets likely to “reward” the activity of certain economic agents.

Furthermore, the identification of liable taxpayers should see to it that the same meet a series of attributes.

The solvency and reliability of the prospect liable taxpayer are two characteristics that appear to be very important when considering its designation.

The designation should fall upon persons whose links with the tax obligation may facilitate control largely, whether by reducing the universe of units for examination or transferring the risk of tax defaults to more reliable persons, like the State, for example.

The design of a system of liabilities should see to it that the designee may recover the cost of the tax obligation.

Finally, the designation should be established by law, or else by the Tax Administration provided that the law stipulates the same.