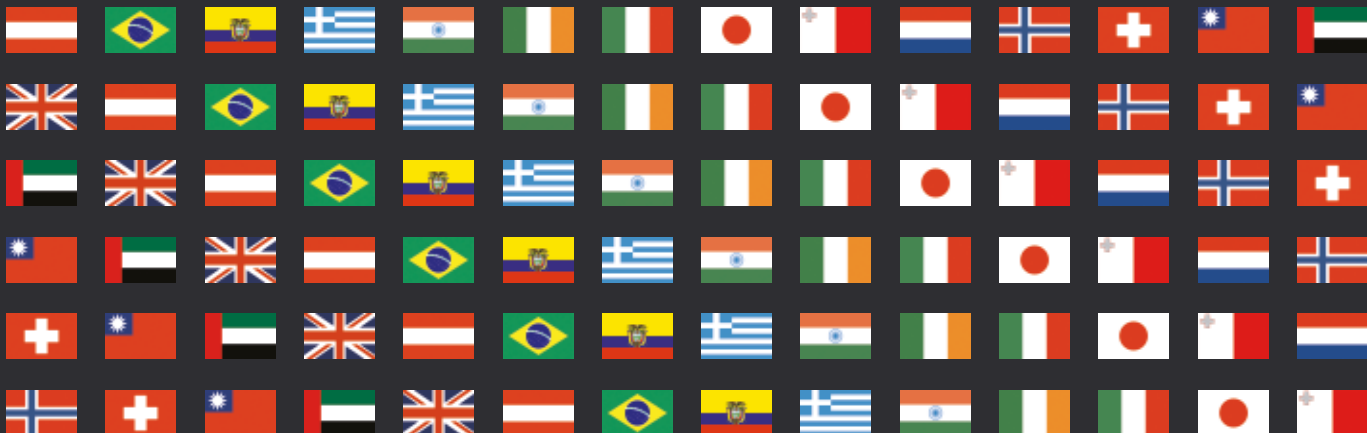


Tax Controversy 2021

Contributing editor
Richard Jeens



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent

adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between August and September 2020. Be advised that this is a developing area.

© Law Business Research Ltd 2020

No photocopying without a CLA licence.

First published 2013

Eighth edition

ISBN 978-1-83862-410-1

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Tax Controversy

2021

Contributing editor**Richard Jeens****Slaughter and May**

Lexology Getting The Deal Through is delighted to publish the eighth edition of *Tax Controversy*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ecuador and Taiwan.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Richard Jeens of Slaughter and May, for his continued assistance with this volume.



London

September 2020

Reproduced with permission from Law Business Research Ltd

This article was first published in September 2020

For further information please contact editorial@gettingthedealthrough.com

Contents

Global overview	3	Japan	58
Richard Jeens Slaughter and May		Eiichiro Nakatani and Yutaka Shimoo Anderson Mōri & Tomotsune	
Austria	6	Malta	65
Gerald Schachner, Kornelia Wittmann, Nicolas D Wolski and Lucas Hora bpv Hügel Rechtsanwälte GmbH		Donald Vella and Kirsten Debono Huskinson Camilleri Preziosi	
Brazil	13	Netherlands	73
Luciana Rosanova Galhardo, Felipe Cerrutti Balsimelli and Pedro Augusto A Asseis Pinheiro Neto Advogados		Frank Pötgens, Ingrid Mensing and Sophia van Straalen De Brauw Blackstone Westbroek	
Ecuador	19	Norway	80
Andrea Moya and Francisco Rosales CorralRosales		Anne Kristin Meyer, Ola Mæle and Sindre Kleive KPMG	
Greece	25	Switzerland	88
John Papadakis Dryllerakis & Associates		Ruth Bloch-Riemer Bär & Karrer	
India	32	Taiwan	96
Lokesh Shah, Ajinkya Gunjan Mishra, Devashish Poddar and Avani Tewari L&L Partners		Michael C H Wang Chien Yeh Law Offices	
Ireland	42	United Arab Emirates	103
Greg Lockhart, Joe Duffy and Kathryn Stapleton Matheson		Mahmoud Abuwassel Wassel & Wasel Ltd	
Italy	50	United Kingdom	110
Massimo Antonini, Irene Pellecchia and Giovanni Monte Chiomenti		Charles Osborne, Dominic Robertson and Richard Jeens Slaughter and May	

Ecuador

Andrea Moya and Francisco Rosales

CorralRosales

OVERVIEW

Legislation

- 1 | What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The relevant legislation governing tax administration (including non-judicial tax-assessment procedures) as well as material tax law includes the Ecuadorian Constitution, the Tax Code, the Production, Commerce and Investment Code, the Internal Tax Regime Law (ITRL), the Reformatory Law for Tax Equity, the Law for the Promotion of Production and Attraction of Investment and municipal ordinances. Further legislation relating to tax administration matters can be found in regulations issued by the President of the Republic and by the Tax Authority, such as the ITRL Regulations.

Legislation governing tax judicial controversies includes the Ecuadorian Constitution, the Tax Code, the General Code of Processes and the Law of Jurisdictional Guarantees and Constitutional Control.

Additionally, Ecuador has entered into 20 double taxation treaties and is part of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Relevant authority

- 2 | What is the relevant tax authority and how is it organised?

The relevant tax authority in Ecuador is the Internal Revenue Service (SRI), which is responsible for executing the tax policy approved by the President of the Republic, the assessment and collection of national taxes, imposing sanctions and penalties, issuing regulations and tax rulings, and solving claims filed by taxpayers, including administrative appeals filed against tax assessments, among others.

The SRI has national jurisdiction and its head is the General Director. It has nine district or zonal directors and 15 provincial directors. The district and provincial directors' functions are those delegated by the General Director and include handling claims filed by taxpayers.

The relevant customs authority in Ecuador is the Ecuadorian Customs National Service (SENAE), which is responsible for the assessment and collection of international trade taxes, imposing sanctions and penalties, issuing regulations and tax rulings, and handling claims filed by taxpayers, including administrative appeals filed against customs tax assessments, among others.

The SENAE has national jurisdiction and its head is the General Director. It has 10 district directors, whose functions are those delegated by the General Director and include handling claims filed by taxpayers.

Each municipal authority is in charge of the assessment and collection of municipal taxes and is also responsible for handling claims filed by taxpayers, including administrative appeals filed against tax assessments regarding municipal taxes.

ENFORCEMENT

Compliance with tax laws

- 3 | How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

In general, taxes such as income tax, capital gains tax, value added tax and foreign exchange tax are self-assessed by the taxpayer and filed through the tax authority website with the forms available on the website. If the tax is not paid within the deadlines established by law, the delay will be shown automatically in the tax authority system and the taxpayer will be registered as non-compliant. A certificate of compliance from the tax authority is needed for certain activities, such as importing goods or entering into contracts with the government.

There are two typical procedures that the tax authority applies to review a tax return: a difference notice and a tax assessment procedure.

The difference notice is a fast-track assessment procedure by which the tax authority notifies the taxpayer of any differences found in the tax return compared with information available to the tax authority and gathered from third parties. The taxpayer may either pay the amount established by the tax authority or provide sufficient evidence to challenge the differences noted by the tax authority within 20 working days. If the tax is not paid or if the tax authority considers that the differences have not been duly justified it will issue a formal difference notice. This procedure generally takes from three to six months.

The tax assessment procedure is initiated with a formal notice issued by the tax authority by which it requires information from the taxpayer and from third parties and issues a draft of the tax assessment. Likewise, the taxpayer may either pay the amount established by the authority or provide sufficient evidence to challenge the differences noted by the tax authority within 20 working days. If the tax is not paid or if the tax authority considers that the differences have not been duly justified it will issue a formal tax assessment. This procedure generally takes from six to 12 months.

Types of taxpayer

- 4 | Are different types of taxpayers subject to different reporting requirements? Can they be subjected to different types of review?

Yes, there are two types of taxpayers: individuals and business entities. In turn individuals are classified as either individuals required to keep accounting books or individuals not required to keep accounting books. Individuals are required to keep accounting books if their equity (assets minus liabilities) is higher than US\$180,000, or if their annual income is higher than US\$300,000, or if their annual business expenses are higher than US\$240,000.

All taxpayers are required to file an annual income tax return and a monthly VAT return. Business entities and individuals required to keep accounting books are subject to additional reporting requirements, such as filing monthly withholding tax returns and the corresponding annexes detailing their monthly transactions.

Furthermore, business entities are subject to different reporting requirements according to their nature or activity. For example, all entities are required to file a shareholder annex disclosing their beneficial owners and financial institutions are required to file a Common Reporting Standard annex to comply with that standard.

Usually, business entities and individuals required to keep accounting books are subject to tax reviews; however, taxpayers that have transactions with related parties or with third parties located in tax havens will be subject to more detailed tax reviews.

Requesting information

5 | What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

The tax authority can require all information that the taxpayer holds regarding itself or third parties. This information includes business books, accounting records, financial information, transfer pricing reports, transaction documents such as invoices, withholding certificates, tax residence certificates, contracts and any information it may deem necessary to perform a tax assessment.

Legally, the tax authority may interview the taxpayer and the taxpayer's accountant; however, this is not common within tax assessment procedures. The tax authority usually requires the taxpayer to provide a written explanation of certain accounting practices or expenses.

The tax authority and the tax courts have ruled that it is the taxpayer's obligation to keep all the information needed to prove the amount of their income and the validity of their expenses. Therefore, it is recommended that taxpayers implement checklists or standards for keeping information regarding tax matters.

Additionally, the taxpayer has the obligation to obtain, update and keep information related to its customers, suppliers, related parties, shareholders, beneficial owners, employees, managers, board members, accountants and representatives.

Available agency action

6 | What actions may the agencies take if the taxpayer does not provide the required information?

Usually the tax authority will issue a written notice requiring the taxpayer to provide the required information. If the taxpayer does not comply, the tax authority usually issues a second notice warning the taxpayer that the authority may impose a penalty or close the business temporarily.

If the taxpayer does not provide the required information or if the tax authority considers that the information provided by the taxpayer is incomplete or inaccurate, it will initiate a tax assessment procedure. Furthermore, if the taxpayer does not provide information within the assessment procedure, the tax authority is able to issue a presumptive assessment.

Protecting commercial information

7 | How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

All information provided by the taxpayer to the tax authority is considered as reserved information and may only be used for complying with the tax authority's purposes; therefore, tax authority officials have a duty to maintain the confidentiality of such information.

However, this confidentiality obligation does not apply to information regarding transactions with third parties located in tax havens, aggressive tax planning practices and advisors or consultants that design these strategies.

Furthermore, the tax authority is not able to require information from members of the clergy, professionals bound to professional secrecy and close relatives of the taxpayer.

Within a judicial proceeding, the judges will require the taxpayer to inform the court whether the information to be filed within the process is confidential information so that it can treat the information as such.

Limitation period for reviews

8 | What limitation period applies to the review of tax returns?

The limitation period applicable to reviewing tax assessments is three years from the date on which the tax return was filed, and six years if the taxpayer did not file a tax return or if the tax return is deemed incomplete. The tax authority has one additional year to review a tax assessment from the date on which the assessment was notified to the taxpayer.

In this regard, the National Court has ruled that a corporate income tax return is deemed incomplete if the taxpayer has not included the total amount of its income.

Alternative dispute resolution

9 | Describe any alternative dispute resolution (ADR) or settlement options available.

Ecuadorian tax law does not provide for ADR procedures; therefore, disputes cannot be settled or solved through ADR methods.

However, taxpayers may file a claim against tax assessments before the tax authority within 20 working days from the date on which the taxpayer was notified of the tax assessment. Within this procedure, the tax authority must give the taxpayer the opportunity to provide any evidence and it must issue a response within 120 working days.

The resolution issued by the tax authority in response to this claim may be challenged before the highest tax administration authority (the General Director of the Internal Revenue Service) through an extraordinary review recourse or before the tax court through a judicial challenge.

The extraordinary review recourse is not an appeal and may only be filed based on specific grounds permitted by law. This recourse must be filed within three years following the date on which the taxpayer was notified of the resolution.

Collecting overdue payments

10 | How may the tax authority collect overdue tax payments following a tax review?

The tax authority can collect overdue tax payments through a debt enforcement procedure. The tax authority will issue a collection notice requiring the taxpayer to pay any overdue taxes in the following three days. If the taxpayer does not comply, the tax authority can order liens over property, assets seizures, deduction of payments to be received from private parties or government entities, etc.

The taxpayer may file objections to the debt-enforcement procedure; however, these objections may only be filed based on specific grounds permitted by law, such as the procedure being invalid.

Penalties

11 | In what circumstances may the tax authority impose penalties?

Penalties may be imposed in cases of tax evasion and tax fraud. The tax authority will impose penalties if the taxpayer fails to comply with its legal tax obligations, such as filing its tax returns within the deadlines or not providing the information required by the tax authority. Additionally, the tax authority can impose surcharges within tax assessment procedures.

12 | How are penalties calculated?

The amount of the penalty will depend on the nature of the infringement. Fines for the breach of procedural obligations may amount up to US\$1,500. However, certain breaches have higher penalties: for example, failing to comply with filing the transfer pricing reports may be sanctioned with a penalty of up to US\$15,000.

A delay in filing a tax return is sanctioned with a penalty equal to 3 per cent of the amount of the tax for each month of delay. The amount of the penalty cannot exceed the amount of the tax. However, a delay in filing certain tax returns is sanctioned with a higher penalty. For example, failing to comply with filing a capital gains tax return on the transfer of shares is sanctioned with a penalty amounting to 5 per cent of the amount of the transaction.

Within a tax assessment procedure, the tax authority can impose a 20 per cent surcharge over the amount of the tax that was assessed by the authority.

13 | What defences are available if penalties are imposed?

If penalties are imposed, the taxpayer may file an administrative claim before the tax authority or a judicial claim before the tax court. Within these procedures, the taxpayer will have to argue that the offence or breach did not occur. Reliance on an attorney or an accountant will not serve as a justification for the offender.

Collecting interest

14 | In what circumstances may the tax authority collect interest and how is it calculated?

The tax authority can collect interest in two circumstances: if the taxpayer fails to file a tax return within the deadline, and within a tax assessment procedure.

In the first case the taxpayer will be required to pay an interest rate equal to the 90-day reference lending rate established by the Central Bank of Ecuador. This rate is published by the tax authority every three months.

In the case of tax obligations established after a tax assessment, the taxpayer is required to pay an interest rate equal to 1.3 times the 90-day reference lending rate established by the Central Bank of Ecuador. The interest must be calculated from the date on which the tax should have been paid until the date of payment.

Criminal consequences

15 | Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

If a tax review leads to an enforceable decision or judgment on tax fraud, criminal consequences may arise. According to the type of offence, the punishment may range from one to 10 years of imprisonment.

If the taxpayer is an entity, it will be subject to a penalty that ranges from 50 to 100 basic salaries (for the year 2020 the basic salary is equal to US\$400) and the entity will be declared as extinct. Additionally, the prison punishment described above will be applied to the legal representative (president or general manager) and the accountant who filed the tax return. Other individuals, such as shareholders or employees, may be responsible if they deliberately participated in the tax fraud.

Enforcement record

16 | What is the recent enforcement record of the authorities?

No official figures are published regarding enforcement records of the authorities.

THIRD PARTIES AND OTHER AUTHORITIES

Cooperation with other authorities

17 | Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

The tax authority can investigate third parties as part of the review of a taxpayer's returns without the taxpayer's consent.

The tax authority may require information from third parties such as banks or counter parties. If these parties fail to provide the information required by the tax authority, they may be subject to sanctions.

The tax authority may not require information from members of the clergy, professionals bound to professional secrecy and close relatives of the taxpayer (specifically, the spouse, partner or relatives up to the fourth degree of consanguinity and second degree of kinship).

18 | Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

The tax authority cooperates with other authorities within the country such as the customs authority, local tax authorities and other government regulatory agencies. These entities provide the tax authority with the necessary information to perform assessment procedures upon request.

Ecuador is part of the Global Forum on Transparency and Exchange of Tax Information for Tax Purposes. It entered into the Multilateral Convention on Administrative Assistance in Tax Matters in 2019 and has entered into 20 double taxation treaties, which include exchange of information provisions. Furthermore, the tax authority has issued a guideline on a standard for the automatic exchange of information on financial accounts.

SPECIAL PROCEDURES

Voluntary disclosure and amnesties

19 | Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

If a taxpayer is not able to pay its taxes, the tax authority may grant payment facilities upon request from the taxpayer. If the payment facilities are granted, the taxpayer will be required to make a down payment

of 20 per cent of the amount of the tax and the balance in monthly instalments. If the period of the payment facilities exceeds 24 months, the tax authority may require reasonable securitisation.

20 | Are there any voluntary disclosure or amnesty programmes?

There are no voluntary disclosure or amnesty programmes in place. However, taxpayers can file substitute tax returns at any time, provided that the amount of the tax to be paid is higher than the amount paid on the original return.

Within a tax assessment procedure, if the taxpayer agrees with the assessment and pays the amount established by the authority, the 20 per cent surcharge will not be applied.

In the past five years there have been three amnesty programmes, allowing taxpayers to pay just the principal and not any applicable interest, penalties or surcharges.

RIGHTS OF TAXPAYERS

Rules protecting taxpayers

21 | What rules are in place to protect taxpayers?

The taxpayer is protected by the principles and rights established in the Constitution, the Tax Code and the Administrative Code.

The rights provided in the Constitution include equality; to be treated with fairness and non-discrimination; legal certainty; non-confiscation; to be heard; to file requests, administrative and judicial claims; and to receive a reasoned and timely response.

The Tax Code establishes the taxpayer 'bill of rights', which includes the rights to be informed and assisted by the tax authority; to file requests, inquiries and receive a timely response; to access the taxpayer's information; to be informed when a tax assessment is initiated; and to challenge such assessments.

Additionally, all public servants are subject to a code of conduct and the tax authority has a specific code of conduct applicable to their officials. Among other obligations, the code of conduct establishes that all information to which the officials have access shall remain confidential.

Requesting information

22 | How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Taxpayers have the right to access all public information kept on government records and to access all information kept by the tax authority regarding the taxpayer and its assets. To obtain this information, the taxpayer must submit a formal request, and if the authority does not provide such information, the taxpayer may request a court order.

Information such as taxes paid, pending tax obligations and the balance sheets of business entities are accessible through the Internal Revenue Service (SRI) and the Superintendence of Companies websites.

Additionally, taxpayers can request the tax authority to issue binding or non-binding tax rulings. With these rulings the tax authority establishes its criteria for the tax treatment of the described fact patterns according to the applicable legislation.

Tax authority governance

23 | Is the tax authority subject to non-judicial oversight?

The SRI is supervised by the Presidency of the Republic and, in administrative matters, by the Ministry of Finance and the Tax Policy Committee.

The municipal tax authorities are supervised by the mayor.

In Ecuador, there are no taxpayer advocates or internal appeal boards.

COURT ACTIONS

Competent courts

24 | Which courts have jurisdiction to hear tax disputes?

The tax court ruling may be subject to cassation before the National Court. The cassation may only be filed based on specific grounds established by law.

The National Court ruling may be subject to an extraordinary constitutional claim before the Constitutional Court. This claim may only be filed based on the violation of a constitutional guarantee within the administrative or judicial process.

Lodging a claim

25 | How can tax disputes be brought before the courts?

The taxpayer may raise a judicial claim before the tax court against any tax assessment, sanctioning resolutions, reimbursement decisions or any other administrative acts issued by the tax authority.

The claim must be filed in writing within 60 working days after the taxpayer was notified by the tax authority. The claim must be accompanied by all the necessary evidence, such as accounting books, transactional documents and experts' reports.

The taxpayer may file a judicial claim on the grounds that the administrative act is illegal or invalid. Therefore, the taxpayer can seek for the administrative act to be revoked or annulled. The taxpayer is also able to seek the reimbursement of taxes paid.

The taxpayer and other individuals who have a legitimate interest in the annulment of the administrative act are entitled to file a judicial claim. There is no minimum threshold amount for filing judicial claims.

Combination of claims

26 | Can tax claims affecting multiple tax returns or taxpayers be brought together?

Tax claims affecting multiple tax returns may be brought together, provided the basis for their challenge is the same.

Tax claims affecting multiple taxpayers may not be brought together.

Pre-claim payments

27 | Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Taxpayers are not required to pay the amounts in dispute before bringing a claim. However, the taxpayer will need to post a bond for an amount equal to 10 per cent of the amount of the claim to suspend the enforcement of the administrative act that is being challenged. If the taxpayer does not post this bond, the administrative act may be enforced by the tax authority.

The taxpayer may choose to pay the amounts in dispute to the tax authority while the judicial process is pending. If so, the judicial challenge will continue as a reimbursement claim and, if the ruling is favourable to the taxpayer, the amount will be reimbursed to the taxpayer by the tax authority.

Cost recovery

28 | To what extent can the costs of a dispute be recovered?

Procedural costs cannot be recovered by taxpayers. According to the law, the government cannot be ordered to pay costs.

Procedural costs may be recovered from the taxpayer if the claim is withdrawn or if the taxpayer fails to attend a hearing.

Third-party funding

29 | Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

There are no rules related to third-party funding or insurance for the cost of a tax dispute for bringing a tax claim to court.

Court decision maker

30 | Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

Tax courts are made up of a panel of three judges who rule by majority vote. Ecuadorian legislation does not provide for jury trials.

Time frames

31 | What are the usual time frames for tax trials?

A trial before the tax court usually takes one year, depending on the workload of the court.

The cassation recourse to be heard by the National Court has an initial admission phase, in which it may or may not be accepted to process based on the existing grounds. If admitted to process, the National Court will issue its ruling approximately one year after the recourse is admitted.

An extraordinary constitutional claim to be heard before the Constitutional Court may take approximately 18 months.

Disclosure requirements

32 | What are the requirements concerning disclosure or a duty to present information for trial?

There is no specific discovery process to initiate a tax trial. However, a judicial claim must be filed accompanied by all the necessary evidence such as accounting books, transactional documents and experts' reports.

If the taxpayer or the tax authority needs to obtain evidence from the other party or from third parties, and the information has not been provided, the plaintiff can require the tax court to request information from third parties. This request shall be included in the claim.

Permitted evidence

33 | What evidence is permitted in a tax trial?

All evidence is permitted in a tax trial except for tax authority officials' testimonies.

Documentary evidence is preferred, such as accounting books, transactional documents and experts' reports. If an expert report is included in the evidence, the expert is required to testify. Taxpayers are permitted to testify but are not required to do so.

Any evidence that is not in Spanish must be translated.

Permitted representation

34 | Who can represent taxpayers in a tax trial? Who represents the tax authority?

The law provides that taxpayers must be represented by an attorney admitted to the Ecuadorian bar.

The Public Attorney's Office may only represent individuals – never business entities – in criminal matters if they cannot afford legal representation.

The tax authority must also be represented by an attorney.

Publicity of proceedings

35 | Are tax trial proceedings public?

Tax assessment procedures are non-public procedures.

Tax trial proceedings are public; however, if the evidence to be filed before the court includes confidential information, the taxpayer can request the tax court to treat the information as such.

Burden of proof

36 | Who has the burden of proof in a tax trial?

The plaintiff must prove the facts alleged in their complaint. It is the taxpayer's burden to prove the facts alleged in their claim. The tax authority bears the burden of proof regarding any facts that lead to the assessment of the tax and its value.

Case management process

37 | Describe the case management process for a tax trial.

A tax trial is initiated by filing the judicial claim before the tax court. The claim must be filed within 60 days from the notice of the tax authority with the tax assessment or the decision of the administrative claim. The claim must be accompanied by the necessary evidence.

The taxpayer will need to post a bond for an amount equal to 10 per cent of the amount of the claim to suspend the enforcement of the administrative act that is being challenged. If the taxpayer requests a suspension of the enforcement, the tax court will grant the taxpayer 25 working days to post the bond. If the taxpayer fails to do so, the claim will be regarded as not filed and the administrative act may be enforced by the authority.

If the claim complies with all requirements established by law, the court will admit the claim to process; otherwise, the court will require the plaintiff to complete the claim within five days. Once the claim is admitted, the defendant will be summoned with the claim and will be required to file a response within 30 days.

Once the response is filed, the court will set a date for a preliminary hearing, at which the parties will explain their allegations and detail the evidence. Each party will have the opportunity to challenge the other party's evidence.

Upon the conclusion of the preliminary hearing the court will set a date for a trial hearing, where the parties will demonstrate their evidence and give their closing arguments. The court may issue the ruling orally at the trial hearing or after a maximum of 10 working days upon its conclusion. In both cases, the parties shall be provided with the written ruling within a period of 10 working days.

Appeal

38 | Can a court decision be appealed? If so, on what basis?

The court decision cannot be appealed. It is subject to a cassation recourse before the National Court only. The cassation recourse may only be filed based on the following specific grounds permitted by law: improper application, lack of application or erroneous interpretation of procedural rules, which have vitiated the process of insurmountable nullity or caused defencelessness; if the ruling lacks reasoning or the reasoning is contradictory or incompatible with the ruling; if the court has ruled over a matter that was not subject to litigation; and if the court has not applied or has wrongly interpreted the legal provisions applicable to the case.

The cassation recourse must be filed within 30 days following notification of the written court ruling. If the cassation recourse is filed by the taxpayer to suspend the enforcement of the tax court ruling, the taxpayer will need to post a bond for an amount to be determined by the

tax court considering the potential effects of postponing the enforcement of the ruling. If the recourse is rejected, the bond is delivered to the counter party in addition to any amounts determined in the ruling.

The cassation recourse has an initial admission phase, in which it may or may not be accepted to process based on the existing grounds. If admitted to process, the National Court will issue its ruling approximately one year after the recourse is admitted.

Such a ruling will be then subject to an extraordinary constitutional claim, but only on the specific grounds of a constitutional guarantee being violated within the process. This extraordinary claim must be filed within 20 days from service of the cassation written ruling. If admitted, a ruling under the extraordinary claim would be obtained in approximately 18 months.

An extraordinary constitutional claim cannot suspend the enforcement of the ruling against a taxpayer.

UPDATE AND TRENDS

Key developments of the past year

- 39 | What are the current trends in enforcement of tax controversies? What are the current concerns of the authorities and taxpayers in relation to the enforcement and handling of tax controversies and are these likely to change? Are there proposals to change the relevant legislation or other rules?

In 2019, the tax authority increasingly applied fast-track assessment procedures or difference notices. This practice raises several concerns, as it does not allow the taxpayer to prepare its defence in a timely and proper manner. Therefore, administrative and judicial claims against these assessments will increase.

There are no proposals for changing the relevant legislation governing tax administration and judicial proceedings. However, the material tax law has changed many times since 2008, which makes keeping track of the applicable law and complying with tax obligations harder for taxpayers, therefore raising issues between taxpayers and the tax authority.

Coronavirus

- 40 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The government has deferred the deadlines for complying with certain tax obligations and has deferred the payment of 2019 corporate tax for certain taxpayers affected by the pandemic, such as micro, small and medium-sized business; airlines, agricultural activities, hotels and restaurants; and exporters of goods.

Additionally, a Law for Humanitarian Support has been issued that establishes certain tax rules, such as reducing the tax burden on the tourism sector; giving certain tax benefits to financial institutions that grant credits for the productive sector; suspending any government coercive proceedings to collect taxes and other debts.



Andrea Moya

amoya@corralrosales.com

Francisco Rosales

frosales@corralrosales.com

Robles E4-136 and Amazonas Avenue
Building Proinco Calisto
12th floor
Quito
Ecuador

Francisco de Orellana 234
Building Blue Tower
13th floor
Guayaquil
Ecuador

Tel: +593 2 2544 144
www.corralrosales.com

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)