

COLLECTION AGENCIES AND SYSTEMS IN PERU

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BACKGROUND

Up to the year 1896, the collection of dues in Peru was in the hands of auctioneers, an unsatisfactory system as those who were entrusted with this task only sought to obtain the greatest profits therefrom, and, to this end; resorted to all kinds of extortions. This gave rise to a law issued on December 13, 1896, authorizing the Executive Power to adopt the necessary provisions for collecting government taxes on opium, tobacco, alcohol and stamps, an authorization that served as the basis for instituting the first Tax Collecting Society. As may be observed, at the time there was no direct taxation, government income being derived solely from indirect taxation.

This first society was followed by the National Collection Company and the Tax Collecting Company, up to March 14, 1927.

The Deposit and Payment Fund Corporation had been established by Law No. 53 of February 11, 1905, for the purpose of undertaking "the free custody of securities whose deposit was to be ordered or accepted by the Judiciary or by the various

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Administration offices of the Republic".

The same law contained a provision stipulating that for the establishment of the Deposit and Payment Fund the government should get the credit institutions offering the most solid guarantees to contribute with the capital each had agreed to provide, being responsible with the funds deposited therein for the operations carried out by the Institution.

Law No. 5746 of March 14, 1927, authorized the Executive Power to contract for the Deposit and Payment Fund, the Tobacco and Opium Stores Administration, as well as the collection of income tax, levies and duties on alcohol, national defense and others entrusted to the National Collection Administration, and those to be entrusted to it at a later date. That is how the Deposit and Payment Fund came to incorporate the so-called Collecting Department which, in time, came to acquire great importance and increased volume, as the government successively entrusted it with new collecting and administrative tasks, to the extent that in 1963 it had more than 5,000 employees and offices throughout the length and breadth of Peru.

The system of entrusting the collection of taxes to private entities adopted by the

Peruvian Government, had its origin—as we said before—in the intention to eliminate the “auctioneers” and to improve and establish a permanent system of tax collection. The Peruvian Government furthermore wanted the commission of administering stores and collecting public revenue to serve as a specific guarantee for the implementation of the Foreign Debt Service.

One of the first concerns of the administration of President Belaúnde Terry was to regain for the government the collection of its revenue, as it considered the recovery of this right, as well as that of the custody of legal and administrative deposits, to be a substantial contribution to the necessary tax reform, as the direct collection of its own income and availability of funds would allow the country to make better use of its revenue. This led to the Supreme Decree issued on August 9, 1963, ordering the expropriation of the stock of the Deposit and Payment Fund Corporation, whose property was distributed among different commercial banking institutions in the country. This decree stated that the collection and custody of public revenue and legal deposits are functions of the government and an expression of national sovereignty.

The nationalized Deposit and Payment Fund Corporation continued its activities, among which was the collection of taxes, until the issuance of Law No. 16000, dated January 27, 1966, which established the Bank of the Nation, a public entity that came to replace the former, which then disappeared. The Bank of the Nation has, as its terms of reference, to provide all the agencies of the National Public Sector with the banking services they require for the fulfillment of their functions, and to collect the revenue of the central government and of the independent public sector in a preclusive and exclusive manner.

ANNOTATING AGENCY

With the introduction of direct taxation, it became necessary to have a tax annotating and administering agency.

The first direct taxes in Peru date from the twenties of the present century, and they were given organic structure through Law 7904, issued on July 26, 1934. The Tax Administration—later to become the National Revenue Board—was specially established within the Ministry of the Treasury and Commerce for the administration of direct taxes. Pursuant to the provisions of the Law, this agency is the only one competent to administer the taxes, except for customs duties and special services rates. It is therefore responsible for the reception of taxpayers' income-tax returns, their control, the collection of unpaid taxes, auditing and, in general, the assessment of all taxable income. On the other hand, the law establishes that the Bank of the Nation is competent to collect the taxes of the central government, of the independent public sub-sector and of the departmental and municipal councils, in the case of agreements therewith.

These, therefore, are the two clearly differentiated agencies that, in Peru, are entrusted with the administration and annotation of taxes and their collection. We shall later consider whether this dual system existing in Peru is or is not advantageous in the specific case of Peru.

TAX LAWS

In Peru, the Tax Code, an organic law containing the general principles of tax annotation and collection, has been in force since October 17, 1966, and establishes the taxpayers' rights and those of the nation. It also defines, for the first time in Peru, the tax delinquent.

Regarding tax debts, it lays down the following principles:

It establishes priorities in the enforcement of payment, according to the order of maturity in the case of several debts owed by a single taxpayer; in the first place of the tax, and then of the surcharges and penalties, when the debt cannot be recovered in its entirety.

It establishes that the payment of a tax debt having a later expiry date does not extinguish the right to demand previous payments that have not prescribed.

It understands by tax debt that which arises from a taxable action and any surcharges and penalties produces in the development of the tax relationship.

Debts arising from tax infringements, because of their personal nature, are not transferable.

Tax debts are privileged over all the properties of the debtor, with certain exceptions.

The Administration may request attachment in a sufficient amount to meet the tax obligation.

Assessment agencies will send to the collection agency, under responsibility, the pertinent receipt or receipts, within the time-periods established in the law or in the pertinent regulations.

COLLECTION SYSTEM

The normal action of collection, designed to obtain the voluntary payment of taxes by taxpayers, was formerly carried out by the agencies that preceded the Bank of the Nation, by the system of external collection action; that is, certain authorized agents were responsible for the task of going to the taxpayers' addresses to demand payment. This system has gradually been abandoned, in the majority of cases a procedure having established whereby the taxpayer himself goes to the collection agency to pay his tax obligations, filling out the pertinent forms to this end.

This system reflects the tax philosophy that it should be the taxpayer who assesses his debt and not the assessment agency, so that it will be the taxpayer's own return that makes the tax demandable by the State, subject, of course, to correction by the assessment agency.

If the normal collection procedure does not produce results, the collection agency is empowered, in accordance with the Tax Code, to bring "compulsion proceedings", as they are called in Peru. Such proceedings establish that the obligor be previously granted a term of 15 days in which to pay his tax debt, being notified in writing thereof. If upon expiry of this term the debt has not been cancelled, the Bank of the Nation or the Municipal Council, as

appropriate, will enjoin the delinquent debtor, by a personal note, to pay within the third day under penalty of attachment. Should payment not be made upon expiry of this term, the debtor's income or property will be attached in a sufficient amount to cover the sum owed. Once the attachment has been made, the proceedings are transmitted to the pertinent Judge, depending on the amount of the debt, who will proceed forthwith to the appraisal and auction of the property attached. These proceedings cannot be stayed by any authority, under responsibility, except the tax assessment agency, which may only do so in the following cases:

- (a) That the debt has been fully paid;
- (b) That the obligation has prescribed;
- (c) That the proceedings have been filed against a person other than the one who is obliged to pay;
- (d) That evidence is provided that the pertinent claim has been filed within the legal terms and that it is pending; and
- (e) That evidence is provided, in case of attachment, in the form of title deed registered in the Public Register or of reliable documents, in the judgment of the tax administration, that the property attached belongs to a person other than the debtor.

PROBLEMS AND SOLUTIONS ARISING FROM THE FOREGOING

Three questions should be given special emphasis with a view to an examination of the solutions possible:

1. The advisability of having two tax administrations — one for assessment and the other for collection purposes.
2. The practical measures that might be adopted in order to improve ordinary collection activities, and
3. The amendments to the law granting powers of compulsion required to make procedures more flexible and effective.

With reference to the first question, there is no practical or doctrinary justifi-

cation for the existence of two agencies, one responsible for assessment and the other for collection. The ideal solution would be that the tax administration agency should also act as collection agency thus ensuring a most beneficial continuity of action in the field of tax administration. However, in the case of Peru, as has been explained already, historical reasons dictated the establishment of the two agencies and at present the Bank of the Nation, in charge of the collection of public revenues, has such a vast organization and so much specialization and experience in this field that it is now practically impossible to replace it. Moreover, by reason of its specific banking functions, such as the centralization of all State deposits and providing all banking services demanded by the State, the fact that it acts as collection agency offers the advantage of expediting those activities. Besides, the Bank of the National not only collects direct taxes, but also administers and collects many other indirect taxes, levied on consumption, such as excise duties on spirits, motor vehicles, tobacco, gasoline, etc., which make up an important part of the total fiscal resources of Peru. In conclusion, the advisability of keeping collection functions in the hands of an autonomous agency has been practically demonstrated in Peru.

As regards ordinary collection activities, many plans for their technification and increasing efficiency are underway. The present trend is to obtain the maximum possible voluntary compliance with tax obligations on the part of taxpayers, avoiding compulsion or coercive measures insofar as possible. Evidently, for this it is necessary to promote a "tax mindedness", that is, instill the conviction that the payment of taxes is a fundamental civic

duty in compensation for the services furnished by the State. For this purpose, the first measures have been adopted to create a team of "Collection Agents" so as to get in touch with the taxpayer, before resorting to compulsion, to point out to him his duties, the facilities granted by the laws and the penalties he may incur through failure to pay. Further, the system of payment by mail is being tried and the latest tax regulations already permit fractioning of the tax debt, upon determination of the debtor's financial position. Negotiations are under way to entrust implementation of this system to the collection agency, that is, the Bank of the Nation. It is hoped that these facilities will contribute to increase voluntary compliance with tax obligations.

Finally, an amendment to the Law on Powers of Compulsion is now required, as although it establishes summary proceedings of notification and attachment, the attached property has to be remitted to the Lower Courts for assessment and auction. This stage, which has to be effected in accordance with the rules of the Civil Code of Procedure encumbers the liquidation of the property as the Lower Courts cannot proceed with the necessary celerity in expediting the numerous dossiers it receives. There is already a proposal afoot for the Bank of the Nation itself to become the agency empowered to take all the necessary legal steps for coercive collection, leading to the auction of the attached property. This will, undoubtedly, activate the coercive procedure, making it more effective and obviating the interrogation of taxpayers, which tends to delay the collection by the government in order to cash the dues.