

OPINION ON FINANCIAL STATEMENTS FOR TAX PURPOSES: LEGAL NATURE, EVOLUTION AND INCONSISTENCIES

Mohammed K. Salih, Amman University, Jordan

Abstract

The opinion of financial statements for tax purposes has become mandatory for certain taxpayers in Mexico since the 1990s; As of 2014, it is established as an option, recognizing that it implies a cost for the governed subjects . This work analyzes the figure of the opinion for tax purposes as part of the powers of verification, in addition to the legal and pragmatic scope of the change from its mandatory to optional nature; Likewise , certain assumptions are addressed from which the Tax Administration Service was created that contradict the indirect inspection mechanism that constitutes the opinion for tax purposes ; In addition, the impact of said opinion on the figure of the independent adjudicator is studied. pending, this within the business regulatory environment, considering that information technologies provide the exacting authority with greater oversight elements . All of the above raises questions about the practical viability of the tax ruling within the Mexican tax framework , which is not alien to the recommendations that international organizations provide based on successful tax experiences.

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Introduction

The financial statements disclose the financial situation of an economic entity to , extending this information to third parties interested in the development of such entity. Thus, these states seek to satisfy a need for information, which is required by internal and external stakeholders in an entity, since they are not an end, but a useful means for making economic decisions (CINIF , 2013 : 43,49) . . Within the dissymbols _ Interested in the financial statements are the tax authorities, so, like any other user of financial information , they must keep in mind that said information is true, representative, objective and verifiable ^b .

According to the Royal Spanish Academy , opinion is the opinion and judgment that is formed or issued about something ^c . In recent years, due in part to the specialization of work, the concept of opinion is taken as the opinion of an expert in a particular area of human knowledge , giving it a high degree of certainty, especially all because it is generally issued by a third party, who, being unrelated to the situation or problem,

^a The balance sheet presents the financial position at the end of the year (or at any given time), while the income statement reflects the financial situation of the entity's annual cycle.

^b Characteristics associated with the reliability of the financial statements, in accordance with the Financial Reporting Standard (NIF) A-4, in its paragraphs 8 to 15.

^c See at: <http://lema.rae.es/drae/?val=dictamen> [accessed 3 Oct 2013].

ruled can issue a more objective specialized opinion without a biased vision . Precisely

one of the professional fields in which the figure of the opinion exists is public accounting and particularly in relation to the financial statements issued by any economic entity obliged to generate financial information ; in practice to this type of professional opinion is called a financial statement opinion . It should be noted that the public accountant who issues the opinion must observe the provisions of the International Auditing Standards (ISAs) , ^{to} do so, he must plan the audit so that it is carried out correctly . effectively (Auditing and Assurance Standards Commission , 2011 :3040-3,3170-7) . In this sense, the auditor 's responsibility is to issue an opinion on the financial statements prepared by management , obtaining reasonable assurance that they are free of material errors.

On the other hand , the opinion of financial statements for tax purposes (hereinafter, fiscal opinion) arises in light of the presidential decree published in the Official Gazette of the Federation (DOF) on April 21 , 1959 ^f . However , it was not until the reforms to the Federal Tax Code (CFF) of 1990 when article 32-A was added, in which it was established that it was mandatory for some taxpayers. In fact , the mandatory nature of the tax opinion was maintained in the CFF from 1990 until 2013, since as of 2014 it is optional for certain taxpayers ^g . The tax opinion is the opinion issued by a public accountant registered as an auditor (CPR) on compliance with the tax obligations of a specific taxpayer ^h . For a CPR to obtain registration with the tax authorities , it must meet the requirements contained in articles 52 section I of the CFF and 60 of the CFF ⁱ Regulation (RCFF) . There are two advantages of obtaining such a record: a presumption of truth is granted to the facts that the CPR stated as

^d Since April 2008, the National Executive Committee of the Mexican Institute of Public Accountants (IMCP) made the decision to adopt in Mexico the International Auditing Standards (ISAs) to annul the Generally Accepted Auditing Standards in Mexico (NAGAs). To make this change, it was determined that a convergence of both would take place for three years . provisions to finally adopt the ISAs from the

January 1 , 2012. See : http://imcp.org.mx/areas-de-knowledge/auditoria/principales-cambios-entre-las-normas-de-auditoria-generalmente-aceptadas-en-mexico-antes- _ of the-convergence-process-and- international-auditing-standards#.UYKnshSI7Mw [cited 3 Oct 2013].

^e Bulletin 4010 of Auditing Standards contains the regulations applicable to the opinion for financial purposes.

^f Through this decree, the Federal Tax Audit Directorate (currently the General Administration of Federal Tax Audit) was created , as well as the Registry of Public Accountants (IMCP Representative Commission before the General Supervision Administrations of the SAT, 2010:27).

^g Specifically for natural persons with business activities and legal entities, who in the immediately preceding fiscal year have obtained cumulative income greater than \$100,000,000.00, whose asset value is greater than \$79,000,000.00 or who have received at least three hundred of their workers. services in each of the months of the immediately preceding fiscal year (first paragraph of article 32-A of the CFF).

^h In fact, the opinion must be accompanied by the report on the review of the taxpayer's tax situation.

ⁱ The registration is renewed in fiscal year 2014 in accordance with article Second section VIII of the transitional provisions published in the DOF on December 9, 2013.

part of the financial statement opinion ^j and the obligation to present the informative declaration on its tax situation referred to in article 32 - H of the CFF ^k is considered fulfilled . Despite this , the tax opinion is not a document that grants public faith , since that this is only conferred on notaries and public brokers (López, 2011).

In tax matters , there are also opinions for the Social Security Law and for tax legislation at the state level ; However , this work focuses only on the opinion of financial statements for tax purposes .

Currently, there is an inconsistency regarding ^{the} process for certain taxpayers to audit their financial statements, even if it is optional, since in accordance with the provisions of Article 16 of the Political Constitution of the United Mexican States (CPEUM) only The administrative authority can review the essential books and papers (accounting) to verify that The tax provisions have been complied with , and it is incorrect to grant that power to individuals, as continues to happen in the case of the optional tax ruling . As is known, the power to review and supervise taxpayers' compliance with their tax obligations, which is known as the State 's supervisory authority , is exclusive to the tax authority and, through the modality of authorizing the taxpayer exercise the option to audit its financial statements , turns it into an act of command that delegates an exclusive power of the State to individuals. It is enough to remember that the Mexican tax system is based on the self-determination of taxes, which implies that each taxpayer is responsible for the correct determination of the tax burden to which he or she is entitled , according to the facts imposed in the that is

located . For its part, the active subject ^m is responsible for collecting the contributions , as well as verifying their correct and timely determination . The option to audit the financial statements for tax purposes supersedes the main obligation, which is none other than to contribute to public spending . as point As a starting point, the questions regarding the opinion for tax purposes are:

- r As part of the tax legal framework and business context, is the permanence of the option for certain taxpayers to audit their financial statements for tax purposes justified?
- r What legal certainty and pragmatic recognitions do presidential decrees such as that of June 30, 2010, in addition to the 2014 tax reforms, bring to the issue of the tax ruling?
- j As can be seen from the first paragraph of article 52 of the CFF.
- k Last paragraph of article 32-A of the CFF.

^l Incongruity (from lat. *incongruentia*) 1. f. Lack of congruence. 2. f. Said or done lacking sense or logic . _ 3. f. Right. Vice or defect of the sentences due to lack of consistency. Twenty-second edition, Royal Spanish Academy.

^m The two parts of the tax relationship are: active subject (the one in whose favor the credit or duty to give, do or lend the obligation that entails is established), which is the State and the passive or individual subject, also called governed or administered subject (the one in charge of fulfilling the obligation, or the duty to give, do or lend) (Arrioja, 2010:138,139).

- r To what extent does the tax authority limit the independence and professional judgment of the CPR with so many provisions relating to the issuance of tax rulings ?

The initial hypothesis is that the tax ruling as an indirect control mechanism does not contribute to a simple business regulatory framework, violates certain objectives of the Tax Administration Service (SAT), does not provide legal certainty to the ruled taxpayers, in addition to condition and hinder the free exercise of the independent adjudicator.

This work is structured as follows: in order to contextualize the problem, the tax ruling is addressed as part of the verification powers of the tax authorities, in addition to the facilities granted in the respective presidential decree. As part of the proposal presented, the presumption of veracity conferred on the tax ruling is analyzed from the perspective of the duties that the SAT has . in its capacity as a supervisory body, as well as the effects that the existence of the tax ruling causes on the accounting profession. The following section reflects on the role that the tax ruling plays on the business regulatory framework and the way in which information technologies transform the verification powers of the tax authorities and, therefore, the tax ruling.

The tax opinion within the powers of verification _

The power to verify the tax obligations of taxpayers that the Constitution recognizes in favor of the administrative authority is the home visit, so why is such power delegated to individuals ? ⁿ , as happens in the case of subjects who choose to be ruled for tax purposes. The home visit comes primarily from the constitutional precepts that, in accordance with the well - known supremacy enjoyed by this organization it is necessary to contemplate it, first of all , to analyze the origin of the faculty in question. Article 16 of the Constitution constitutes the basis on which home visits are carried out, which among other things provides in its penultimate paragraph:

[...] *The administrative authority may carry out home visits only to ensure that [...] have been complied with ; [...] and demand the exhibition of the books and papers essential to verify that the tax provisions have been complied with, subjecting in these cases to the respective laws and the formalities prescribed for searches.*

Furthermore, the CFF, which is the general tax system in its article 42 , establishes that within the powers enjoyed by the tax authorities , is the practice of visitation .

ⁿ The fact that as of 2014 the tax ruling is optional for certain taxpayers does not prevent it from continuing to be an indirect inspection mechanism that will be updated for those taxpayers who exercise the aforementioned option.

home care ; For this reason , section 45 of the same Code determines the obligations of those visited (Juárez, 2005). The above concatenated, leads to the fact that the administrative authorities in general and of course the fiscal ones, enjoy the powers to visit the governed to purposes of verifying compliance with their obligations . As can be seen, both (the tax ruling and the home visit) serve or have the primary objective of verifying compliance and compliance with the tax provisions of the governed (taxpayer). Even so, it must be recognized that the tax ruling is an act between individuals (on the one hand the CPR who is legally authorized and on the other the taxpayer who exercises an option); Therefore, it is not an act of direct supervision because it does not intervene in no authority in this process, but it is also true that there is an act of indirect supervision , by virtue of the fact that all the information derived from the opinion is sent by electronic means to the tax authorities (as can be seen from the fraction IV of article 52 of the CFF) and

It is presumed that said authorities review its content.

Therefore , in accordance with article 42 of the CFF , it is the responsibility of the SAT to verify compliance with the tax provisions with respect to the taxpayers of the legal tax relationship. This faculty in Mexico has two meanings, since in reality the function of the authority is not limited only to verifying compliance , but to investigate the taxable events that were not declared by the individual or .

Even with the optional nature of the tax ruling as of 2014, it is clear that for the Ministry of Finance and Public Credit (SHCP) it will continue to constitute a useful inspection instrument, because it allows it to indirectly audit, with low operating cost , the taxpayers who exercise such option with the undeniable benefits that the authority obtains. The oversight function is a public power that must be exercised only by the administrative authority , since it is conferred such power, in that sense it is incorrect to delegate it to individuals, even if it is in an optional context.

Starting in fiscal year 2014 , a new verification power was created in favor of the tax authorities, electronic reviews P , in addition to the figure of the tax mailbox q , with which, taking advantage of information technologies, the Treasury will be able to obtain data and information by digital means and thereby supervise in real time and with greater economic efficiency and operational at a significantly higher number of The aspect called “verify” is focused on corroborating whether the information contained in the accounting matches what is declared by the company; while the “investigate” aspect is focused on the determination by the authority itself of the bases that the individual did not declare ; That is, the investigation seeks to discover both the taxable event and the amount of the base on which it must be the rate be calculated ; while the verification only makes sure that the declared tax base matches the accounting information .

P In accordance with section IX of article 42 of the CFF .

Q Article 17-K of the CFF was added to establish that every physical and legal person will be assigned a tax mailbox, which is an electronic communication system through which the tax authority will notify the taxpayer of any administrative act or resolution and the taxpayer must respond by the same means.

taxpayers. The more verification powers the tax authority has, the greater the voluntary and even coercive compliance with the fiscal obligations of the governed; This should not be allowed is the existence of indirect inspection mechanisms such as the tax ruling, even if it is covered by an optional nature.

In another order of ideas, Mexicans are obliged to contribute by constitutional mandate to public spending in the proportional and equitable manner provided by the laws (article 31 section IV of the CPEUM) and contribute ^r ; This means giving or paying each one's share for a tax or distribution, while spending means expending or using the money for something; In other words, taxpayers are obliged to pay taxes and other contributions, and not to spend money , as updated When the tax ruling is made and even though the ruling is optional, the exercise of the option invariably entails the expense of certain amounts that the taxpayer would not have to face . It is clear that in the CPEUM, in effect , there is an explicit obligation to pay contributions, which is very different from spending, which is what the State intends for the taxpayer to do . to accept (even voluntarily) the questioned action of presenting the tax opinion. However, it is important to point out

—even though the legal contributions have already been paid and it was spent on keeping accounts and complying with a series of formal obligations— that it is

intended, once again, that another expense be incurred, such as paying an independent public accountant who also It is not just any accountant, but someone who is authorized by the SHCP to review compliance with your tax obligations .

Emilio Margain Manautou expresses that

this is an obligation that unjustifiably deprives affected companies of economic resources that have never hired the services of a public accountant to audit their financial statements, considering this an unnecessary expense when correctly complying with their tax obligations , especially that the annual tax returns that they have been presenting have the same legal value as the financial statement report .

(Margain, 2008:2,3) ^t

^r The term contribution is defined as the economic contribution that members of the State and foreigners residing in its territory are obliged to pay , in accordance with tax legislation , for the provision of public services and national charges (De Pina, 2008 :194).

^s Public spending should be understood as all that is necessary for public entities to carry out their duties; that is, for the development of its legal activity and the Supreme Court of Justice has asserted that: “ Public expenses are provided for in the expenditure budget and taxes to cover those expenses , in the of income, so that the proof that a contribution is not intended to cover expenses must necessarily be found either in the law that establishes them or in the expenditure budget” (Legal Dictionary, 2000. Legal Development, DJ2K-675).

^t Although the conclusions reached by the aforementioned author were given in the context of the mandatory opinion, the same validity can be attributed to his words in the figure of the optional opinion, since the expense faced by the taxpayer is the same, whether mandatory or the opinion is optional.

That is, what is stated by the taxpayer in their declarations, as well as the facts stated in the tax opinions, are assumed to be undoubted, unless the authority proves otherwise . So what case and pragmatic sense does it make to exercise the option of presenting the tax ruling?

Other questions also arise: why, if the company is operating with a modest profit, due to the economic situation it suffers, is it given the option of getting rid of it to cover the fees of whoever issues the opinion of its financial statements ? financial? (Perez, 1998); Why is it optional to issue financial statements for tax purposes only for certain taxpayers and not for others?

The reference framework would remain unfinished if other types of powers conferred on the tax authorities, which consist of issuing decrees of administrative facilities, are not opposed to the verification powers.

Critical analysis of the presidential decree of June 30 , 2010

In relation to the previous reasoning and taking into consideration that on June 30 , 2010 , the “Decree granting administrative facilities in matters of tax simplification” was published in the DOF – of which the facility related to the ruling is highlighted . fiscal in the sense that maintaining its obligation (until 2013) –, the alternative was offered that some taxpayers They could choose not to present it for the fiscal year 2010 and later (Ávila, 2010), as long as they presented certain information. The

aforementioned decree, as well as the one published in the DOF on March 30, 2012 (also related to the ease of not submitting the tax opinion) are still in force as of the date of this work, but it is necessary take into account that such facility remains applicable exclusively with respect to opinions from 2010 to 2013 ^u . _ Although the application of the decree is limited to the aforementioned period, the reasoning it offers allows us to understand the process of modifications that the ruling has undergone in recent years; Thus , the decree _ Alluded to in the part leading to the fiscal opinion , it emphasizes certain particular points around which the analysis focuses :

1. In the initial part of the recital, the Executive stated: *“That the current structure of our tax system is, in some cases, complex and onerous, both for the taxpayer and for the tax authority;”* It is recognized that the tax system is complex and also costly.
2. Derived from the sole ninth paragraph , two essential things are accepted : that the tax opinion is a control instrument and that it has a substantial cost for the taxpayer . This constitutes a confession ^v by pointing out that the opinion has a cost

^u Based on the first and second transitional articles of the “Decree that reforms, adds and repeals various provisions of the Federal Tax Code”, published in the DOF on December 9, 2013.

^v Recognition of the reality about the existence of a fact or act with unfavorable legal consequences for the person who does it (De Pina, 2008:180).

important for taxpayers , in addition to the normal cost of their accounting records and compliance with various tax obligations . So that the cost involved in complying with the obligation and that led to the substitution of the government administration in its public oversight function _ _ It would even lead to compensation or reparation for the damage (Chávez, 2005).

3. The recital under study in its tenth paragraph establishes the presentation of the opinion as an option, recognizing that this would allow taxpayers to redirect the resources they use to comply with that obligation (in force until 2013) to cover other needs .
4. In its thirteenth paragraph, the executive determined that the ruling is conditioned in exchange for the presentation of various information . It was conditioned, but it did not disappear, it changed its form; and the apparent savings in the cost of the auditor's services was transferred to the way in which the information is presented , still requiring an expert in this, again implying an additional cost for the taxpayer. Essentially, the regulatory power of the President of the Republic ^W is limited by two principles, namely : that of reservation of law ^X and that of hierarchical subordination ^Y . But this exercise of decreeing must be carried out solely and exclusively within the sphere of the powers of the empowered body, since the provision is issued by explicit powers provided for in the law or derived from it, being precisely that area where decrees can and should be issued . The decree develops the obligatory nature of a principle already defined by the law and, therefore, it cannot go further, nor extend it to different cases, much less contradict it, as happened in the case when issuing a decree that eliminates obligations imposed by the legislator. . Thus , the Legislative Branch creates a law through an entire process , which the Executive with a determination, call it a decree, eliminates; That is, it legislates indirectly in contravention of its powers clearly limited in the Constitution .

5. From the content of the wording of the tenth, twelfth and thirteenth paragraphs of the recital, it is clear that the opinion did not disappear *de facto*, on the contrary it subsisted in a mandatory manner in cases of merger or division of companies, and in the case of entities of the Parastatal Public Administration (Ávila, 2010). In

^W The exercise of the power to promulgate decrees by the Federal Executive finds its basis in articles 89 section I of the CPEUM, 31 of the Organic Law of the Federal Public Administration and 39 section II of the CFF.

^X Which prohibits a regulation from addressing matters reserved exclusively to the laws of Congress, for example that relating to the determination of the qualitative elements of taxes.

and Requires that to issue a determination, decree or regulation it be preceded by a law whose provisions develop, complement or detail and in which it finds its justification and measurement.

^Z In order to determine: what, who, where and when of a general, hypothetical and abstract legal situation, the decree will consequently be responsible for the how of those same legal assumptions.

^{aa} Article 89: The powers and obligations of the President are the following: I. Promulgate and execute the laws issued by the Congress of the Union, providing for their exact observance in the administrative sphere. ... and XX. The others expressly conferred by this Constitution.

The first case states that the obligation is not recurring, it is understood to be periodic or continuous; In the case of parastatal entities , it is also mandatory because the opinion serves as a prior control mechanism in the management of the resources of this sector of public administration, then, the regulations and provisions related to the opinion and the complexity that they contain, like It has been pointed out, they did not disappear, consequently, even with the multi-cited decree, the inconsistency of the ruling for tax purposes persisted.

As can be seen, there was a clear contravention between what was established in the CFF in force until 2013 and what was reflected in the aforementioned decree , which prevented the taxpayer from facing a dilemma regarding the fulfillment of his obligations ; the central thing is highlight that the wording of article 32-A of the CFF in force until 2013 obliged certain taxpayers to audit their financial statements; On the other hand, the decree that gave rise to the option to rule was in turn strengthened with another decree dating from March 30 , 2012. Once again , with a decree it was intended to ignore , modify , adjust or ultimately of accounts to legislate what is contained in a federal law (CFF in this case). The question is what prevails, a Federal Code or a Presidential Decree? Following what is established in the CPEUM in article 133, the answer is obvious: the Code, in its capacity as a Law emanating from the Congress of the Union ^{ab} ; However , the implications of non-observance of the decrees would entail the determination of credits by the supervisory authority.

Presumption of veracity of the tax report against powers of verification

Starting from the analyzed context , a fundamental question arises that subjects who

choose to have their financial statements audited by CPR ask themselves: what are the advantages that this situation entails ? In this sense, article 52-A of the CFF contains the sequential order to which the tax authorities must submit when they exercise their powers of verification and review the tax opinion : first they must request the public accountant who formulated the opinion; in case If, in the opinion of the tax authorities , the information and documentation provided to them by the CPR was not sufficient , they may exercise their verification powers directly with the taxpayer; These tax authorities are even empowered to request, at any time, information and documentation from third parties . related to the taxpayer, or to their jointly responsible parties . Furthermore, it is common in this type of reviews that, while respecting the sequential order of review, they request original documents from the CPR for comparison or tax returns for im-

ab Article 133 of the CPEUM: *This Constitution, the laws of the Congress of the Union that emanate from it and all the Treaties that are in accordance with it , celebrated and to be celebrated by the President of the Republic, with approval of the Senate, will be the Supreme Law of the entire Union. The judges of each State will abide by said Constitution, laws and treaties, despite any provisions to the contrary that may exist in the Constitutions or laws of the States .*

positions pending payment , which only the ruled taxpayer has (López, 2011), so, to satisfy this requirement, the CPR will have to request it from the taxpayer, so even in this case they will have to endure such an act of inconvenience .

In addition, article 47 of the CFF establishes the duty of tax authorities to conclude home visits early when the taxpayer visited has chosen to issue a ruling for tax purposes; Unfortunately, this provision, which could provide so much legal certainty

to the taxpayer, is left to the discretionary criteria of the tax authorities; Therefore, it is established , among other assumptions, that the early conclusion does not apply in the event that, in the opinion of said authorities, the information provided to them by the CPR that ruled on the visited taxpayer is not sufficient to know the fiscal situation of the latter. The early conclusion also does not apply when the opinion has been issued with an abstention of opinion, a negative opinion or qualifications that have tax implications . In fact , in practice a ruling issued with this last circumstance implies direct (non-sequential) review of the ruled taxpayer; This situation, in addition to leaving him in a state of defenselessness, undermines the presumption of certainty that is granted in the already mentioned article 52 of the CFF to the tax ruling . In addition, the Section IV of article 42 of the CFF contains , as one more of the verification powers that the tax authorities can exercise, precisely the review of the opinions formulated by the CPR. The Representative Commission of the IMCP before the General Supervision Administrations of the SAT (2010:23) recognizes that the fiscal opinion does not prevent the possibility of receiving a direct review, since this is an exclusive power of the ac authorities .

Faced with these two contradictory norms, there are a couple of apparent solutions: a) maintain the presumption of certainty of article 52 of the CFF and eliminate as a verification power the review of the facts on which the CPR has already issued an opinion or b) If the tax authorities consider it essential to safeguard their power to review those facts on which an expert has already given an opinion, it would be necessary to eliminate the presumption of certainty. It is considered that the position of paragraph *a* The above would restore the tax opinion to its essence: to consist of a form of indirect inspection carried out by a CPR , given the impossibility of the tax

authorities to review all taxpayers , but giving them the certainty that the reviews They will conclude with the opinion; Furthermore, the authority would under no circumstances be empowered to review again. However , it is clear that in order to guarantee that all Mexicans contribute to public spending, the fiscal authority must preserve its power of discretion . review such compliance;

ac Based on a request for information made under the terms of the Federal Law on Transparency and Access to Government Public Information, the Ministry of Finance and Public Credit responded on May 14 , 2013 with page number 0610100088513 that the General Audit Administration The Federal Prosecutor and the General Administration of Large Taxpayers exercised verification powers on 4,333 taxpayers required to issue a ruling for the fiscal year 2011 (latest figures available). Likewise, he reported in the same response to the request for information, that the General Administration of Federal Tax Audit exercised verification powers to 988 taxpayers who chose to also rule for the 2011 fiscal year.

but recognizing that it does not have the capacity to supervise one hundred percent of the taxpayers ; The legislator established in his favor the obligation for a third party, an expert, to audit the financial statements and prepare a report on the fiscal situation of certain taxpayers ; Even so , the authority intends to leave its review powers regarding the content of the opinion, which reflects little respect for the tax norm, which by following the legislative process of creating laws ad is, at the end of the day, the will of the governed .

Another supposed advantage of choosing to rule for tax purposes arises from the

reforms for 2014, in which a last paragraph was added to article 32-A of the CFF, stating that those who choose to rule have fulfilled the obligation to present the informative declaration on your tax situation referred to in article 32-H of the CFF. This article was added in 2014 and precisely what is sought with such a provision is that the tax authority has certain information on certain taxpayers and said information is required precisely because it already you will not get it from the mandatory tax ruling that was in effect until 2013; Therefore , starting with the 2014 tax reforms, there will be taxpayers who, by not exercising the option of obtaining a tax ruling , will still have to submit , no later than June 30 of each year, the informative return on their tax situation for the previous year. ; so that by not taking the opinion option, the taxpayer in question must still invest resources and time in the correct completion and timely presentation of such declaration. Doesn't this imply more than an advantage, an indirect way of conditioning the exercise of the option to rule to avoid the presentation of the aforementioned information?

The legitimacy of the tax ruling is also controversial as it requires the CPR to report whether the taxpayer: carried out what for the SAT are improper tax practices (represented in the so-called non- binding criteria ^{ae}), or operates cooperative companies or in the name of collective (IMCP Representative Commission before the General Supervision Administrations of the SAT 2010:169,171) . Although it is understandable that the aim is to limit and discourage abuse In the management of these ^{AF} figures , why force the CPR to reveal aspects that in its professional judgment are not necessarily contrary to tax provisions ?

The situation becomes more complex if we take into consideration that, since the end of 2008, agreements have been published in the DOF by which the federal entities

and the Federal District are empowered to review federal tax rulings , without uniform policies of review (López, 2011), which surely complicates the review that the ruled taxpayer must endure.

ad Articles 71 and 72 of the CPEUM.

ae Annex 3 of the Miscellaneous Fiscal Resolution for 2014 contains the non-binding criteria of the tax and customs provisions.

af In most cases they represent tax deductions that in the opinion of the authority would not be deductible for ISR.

Duties of the Tax Administration Service as a supervisory body

The SAT is a deconcentrated body of the SHCP that emerged on July 1, 1997 as a tax authority; Among its powers are: determination, settlement and collection of taxes and other contributions and their accessories, as well as monitoring the correct compliance with tax obligations. This last point is the one that directly affects this article, since the SAT has within its powers to monitor the correct compliance with tax obligations , thus becoming the supervisory instrument of the SHCP .

In this sense, it is article 2 of the SAT Law that establishes in its first paragraph that this body has the responsibility of supervising taxpayers so that they comply with tax and customs provisions. *In addition, the second paragraph indicates that the SAT will implement programs and projects to reduce its operating cost per peso collected and the cost of compliance with obligations by taxpayers .* Consequently , since its creation in mid - 1997, the SAT It should detect those aspects that make compliance with taxpayers' obligations more expensive and eliminate them, in order to reduce costs for

them and what better example of this than the tax ruling . However , since the same objective first states that the operating cost of the SAT itself must be reduced , it gives the impression that priority is given to for the SAT to reduce its costs rather than for the taxpayer himself to do so , which in turn is harmonious with the push to reduce the size of the State (Sevilla and Bernaldo, 2011), so that since the tax ruling is an inspection mechanism indirect that does not imply costs for the public administration, the effort of the exacting authority to reduce the cost for taxpayers of complying with this particular option takes second place. From which it follows that it is the SAT that has, not only the attribution, but the responsibility of monitor that tax obligations are met ; Consequently, *it* can be stated that if within the structure of the federal public administration there is a body created *expressly* to carry out acts of oversight against the governed subjects, the provisions that grant the option for a CPR to carry out acts of indirect inspection towards certain taxpayers through the tax ruling have no reason to exist. The optional nature of the tax ruling as of 2014 does not eliminate the expense that will be incurred by anyone who takes that course.

Since the Age of Enlightenment , Adam Smith pointed out that each tribute should respect four maxims, the fourth being the one that establishes that every contribution must be received in such a way that there is the minimum difference between the amounts disbursed by the governed subject and those that enter the Public Treasury . A factor that contributes to this _ difference increases is when the governed are subjected to frequent inspections , which entail

ag Among the elements that strengthen the SAT's capacity to carry out inspection acts are : it enjoys management and budgetary autonomy to achieve its objectives ; has technical autonomy to dictate its resolutions; It has qualified and permanently trained

personnel; The Internal Comptroller's Office evaluates the SAT quarterly, in order to corroborate due compliance with the approved objectives .

indignities and although these do not necessarily translate into an expense, they do amount to a burden that we would seek to redeem if possible . The situation becomes more unsustainable when the acts of supervision are transferred to the governed subjects and the pecuniary burden that they must bear becomes appreciable . In this way , according to Adam Smith (2004), taxes frequently become much more burdensome for the people than advantageous for the State.

Risks of the tax ruling on the accounting profession

In companies where the tax report was mandatory , it used to be common for the CPR to become an obligatory cost each year , hindering it from providing any underlying added value , as it can do in the financial statement report , since the most important for the subjects ruled was that the tax ruling be issued without qualifications, knowing that this could make its image before the Treasury more transparent.

There is no criticism of the fact that the tax ruling obviously focuses on a third expert validating the correct and timely compliance with the tax obligations of the subjects being ruled ; However , since it means a form of indirect supervision , it causes the two parties involved in its integration to worry above all about the fiscal part, leaving in the background the accounting and financial advantages that it can bring; Thus, the ruled subject assumes the position of demonstrating strict compliance with the tax obligations under his responsibility, while the ruling CPR guides his analysis and professional opinion to validate that this has indeed been the case . The problem described in this paragraph prevails even with the character optional tax ruling as of 2014 because, although it is optional, when a taxpayer decides to take a

ruling for tax purposes they will still focus their attention on what is described in the previous lines , since they will in no way expect the ruling to contain qualifications .

To a certain extent, the tax ruling reduces productivity in the companies that are ruled, since the personnel of various departments or areas (accounting, taxes, finance, accounts receivable, purchasing, billing, fixed assets, travel expenses) allocate part of their time in filling out the forms requested by the external auditors , to then see with them the integration of said forms and, where appropriate , explain various situations regarding their integration .

Consequently, it is seen as a reductionist vision that presents the CPR ruling as the one who issues his opinion in the tax ruling , forgetting that his professional field as a ruling is broader. As an organized profession, new generations of public accountants should not be allowed to be trained with this approach; William F. Ezzell has already highlighted this when referring to the challenges that accounting must face, recognizing that many universities have failed to ensure that students

ah Former Chairman of the Board of Directors of the American Institute of Certified Public Accountants (AICPA).

dians have an adequate understanding of the accounting profession and the reasons why it has great value (Bonner, 2012). Although Ezzell's opinions focus on the academic field, his reflections can be extended to the business world, which would imply recognizing that in various economic entities the accounting professional is not allowed to develop his full potential as an independent auditor, which responds largely to the central concern of issuing the fiscal opinion in a timely manner .

The tax ruling evidently focuses on verifying compliance with tax obligations ; If even the option of ruling fiscally were eliminated, large taxpayers would surely

continue to rule ^{aj} , but without the need to focus attention primarily on fiscal matters, so that the CPR could dedicate more time and resources to the analysis of accounting and financial, thus avoiding cases such as Enron, whose debacle can be attributed to problems in the management of accounting and financial regulations (Bastidas, 2007).

Not focusing the concern exclusively on the fiscal aspect would allow the CPR to contribute to the strengthening of good corporate governance practices, understood as the set of principles, standards and laws applicable to corporations and, in general, to the measures and practices aimed at exercising the purpose of corporations and prolonging their development, among them, the prevention and reduction of risks (Arcudia, 2012); It must be kept in mind that the fiscal aspect, without undermining its importance, is subject to the financial and operational areas.

In close relation to the above, does the tax ruling really serve as a means of indirect supervision ? Since the organized accounting profession suggests to the CPR that it will rule for tax purposes, emphasize to its client that the purpose of the audit is not to detect irregularities or fraud (IMCP Representative Commission before the Administrations General Supervision of the SAT, 2010 :67,68), but rather to issue an opinion on compliance with tax obligations.

In no way is it disputed that thanks to the ethical work carried out for many years, the work of the public accountant as an auditor is widely respected and recognized; The auditor's opinion also adds confidence to the financial statements (IMCP Representative Commission before the General Supervision Administrations of the SAT, 2010:95,97) . It is considered that the tax authority compromises this reality with the figure of the tax ruling even though it is optional for certain taxpayers.

Data regarding the tax ruling are presented below in order to size the universe of

taxpayers and independent professionals involved in it (table 1) .

ai Although optional, the tax report must be submitted within certain established deadlines .

aj Due to the requirements of the parent company, to make its operations transparent, to validate the internal management of its administrative staff, among many other factors.

Table 1

Statistical data provided by Infomex (IEAI) in relation to the tax ruling

Information provided in 2009	Information provided in 2013
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Number of taxpayers registered with the Ministry of Finance and Public Credit (SHCP) (registered in the Federal Taxpayer Registry , RFC)	33,743,505	44,708,073
	SAT Folio	SAT Folio
	0610100168809	0610100088113

Number of individual and legal taxpayers registered in the RFC	required to audit their financial	statements for tax purposes
--	-----------------------------------	-----------------------------

33,423

81,662

SAT

Folio

SAT

Folio

0610100159909

06101000881

13

Number of individual
and legal taxpayers
who present an opinion
on financial statements
without being obliged

4,219

19,511

SAT

Folio

SAT

Folio

0610100159909

0610100088113

Percentage of the total
taxpayers required to
audit their financial
statements for tax
purposes, who do
comply with the
obligation in a timely
manner

79.57%

97.30%

SAT

Folio

SAT

Folio

0610100159909

0610100088113

Percentage of the total statements for comply with the
taxpayers required to tax purposes , obligation
audit their financial who do not

20.42%

2.70%

SAT

Folio

SAT

Folio

0610100159909

06101000881

13

Number of individual
and legal taxpayers
who present a
simplified tax report

N/A 4,291

SAT Folio 0610100088113

Number of Graduates
in Public Accounting,
authorized by the
SHCP to dictate
financial statements for
tax purposes

17,486

18,175

SAT

Folio

SAT

Folio

0610100170509

0610100088113

Number of citizens
who have a
Professional License in
Public Accounting as
of the date of this
application

263,749

professionals

SEP

Folio

0001100500109



Information denied

SEP Folio

0001100184013

It was challenged by filing
an appeal for review

with Folio 2013002913



Source: Infomex, responses issued by the Tax Administration Service (SAT) and the Secretary of Public Education (SEP) dated December 2009 and May 2013, in terms of the indicated application pages.

The tax ruling within the business regulatory framework

The *Doing Business* 2013 report records as one of its eleven areas of study the taxes that a medium-sized company must pay , as well as the administrative burden associated with the payment of contributions. Among the economic parameters on which it is based to frame companies of said size are : assets fixed, number of employees and annual billing, which coincide with the assumptions to determine if the option to rule for tax purposes can be exercised. This means that the value of the fixed assets and the number of employees do not exceed the assumptions of the tax ruling, but the annual billing amount that the report considers does exceed the income that a company must obtain to be able to exercise the option to rule. In turn, the administrative burden is measured based on the time required to prepare, present and pay the three main types of taxes , including performing additional calculations to the data that emanate from accounting, as well as the time to complete all tax return forms. Due to the parameters that *Doing Business* methodology uses should consider the time required for the company to comply with the obligation to prepare the tax report until 2013 , but focuses only on the formality necessary to comply with the pecuniary obligation that



derives from the three main taxes , thus leaving aside various formal or administrative obligations , among which the tax ruling stands out , which although as of 2014 is optional; This, without a doubt , entails a significant number of hours for the taxpayer to exercise such an option. Despite this , it should not be forgotten that international reports such as *Doing Business* offer policy makers in the countries concerned studies comparatives that can be useful for the debate of existing policies and, from there, undertake measures to improve business regulation (World Bank, 2013). In this context, the decision to make the tax ruling optional as of 2014 is considered appropriate , but not sufficient , since its previous Mandatory nature only made the economic development of companies more expensive and, to a certain extent, hindered the influx of foreign direct investment.

Indeed, Mexico must continue to strengthen tax collection to achieve a more efficient tax system; However , it is questionable whether the strength of the tax system is based on indirect inspection carried out through the tax ruling , even in its optional nature. Although Mexico has made significant progress in simplifying procedures for opening a business , the Organization for Economic Cooperation and Development (OECD , 2011) recommends further simplification of the

ak This report is jointly published by the World Bank and the International Finance Corporation. Certain assumptions are made for a medium-sized company; Details on the methodology used for this indicator are available at: <http://espanol.doingbusiness.org/methodology/paying-taxes> [accessed Oct 3, 2013].



al On income, on value added and labor taxes, including payroll and social security.

regulatory environment , since efforts to make the process of creating a company simpler are of little use , since when operating it will have to do so within a vast and complex regulatory framework , which currently continues to include the optional tax ruling . Mexico is part of a regulatory evaluation process called _ Zero Base , which is supported by the OECD, through which it seeks to identify and simplify onerous regulations . In tax matters , some procedures in tax returns have been simplified ; However, it is expected that following the recommendation of the OECD (2011) the Zero Base regulatory evaluation will be expanded to other obligations with a strong impact on business productivity . In the domestic sphere and as part of the Special Program for Improvement of Management in the Federal Public Administration 2008-2012, the corresponding decree was published in the DOF of September 10, 2008, which recognizes that there is excessive regulation and high transaction costs for individuals . In addition, the National Development Plan 2013-2018 highlights the democratization of the productivity, which requires a business environment that provides an effective regulatory framework, and precisely one of the points of improvement that stands out is simplifying the tax payment process , which would increase the number of businesses that would join formality (Government of the Republic , 2013). Therefore , the _ positive effects of the transition of the opinion from mandatory to optional, but the fact that Mexican legislation continues to consider the figure of the fiscal opinion, even if it is optional , does not contribute to the climate of administrative simplification that



It favors the creation of domestic companies and the attraction of foreign capital .

Incidence of information technologies in inspection processes _ _ _ _

The tax report is not the only, nor the most important, source of information provided to the SHCP, since every legal and natural person taxpayer with business activities is required to present, among other information, provisional payments each month, annual declaration , annual informative statements, Informative Declaration of Operations with Third Parties.

The presentation and payment of taxes by electronic means are factors that not only facilitate business development (World Bank, 2013), but also provide the tax authority with a greater amount of information in real time, thus strengthening its supervisory capacity, having Therefore, there is less justification for maintaining indirect oversight figures, such as the optional tax ruling. Thanks to the electronic platform that the SAT implemented in recent years, it manages to obtain better quality information for inspection purposes (López, 2011) than the collected through the tax report; In addition, said technological platform is used compulsorily by all legal entities and by those individuals who in 2011 have had income greater than \$250,000.00 am ; electronic developments , such as the _

SAT, provide this information on a universe larger than the tax ruling and also on a monthly basis. Thus, it is shown that smarter business regulation favors growth, since economies with better regulation of their companies manage to grow faster (World Bank, 2013).

Conclusions

In developing economies, it is estimated that 65% of economic activity is carried out in the informal sector , mainly due to excessive regulations (World Bank, 2013). According to the OECD (2009) study on the budget process in Mexico, among the elements that continue to inhibit higher growth rates is the high cost of doing business; undoubtedly, such costs They include the tax ruling , which , although it is an advance that it is optional, this figure should be totally eliminated so that it is not a factor for any company to increase its operating expenses . It is not valid to argue that the tax ruling is necessary as indirect inspection instrument due to the low levels of tax collection, since the Mexican tax authority maintains the lowest collection costs within the OECD (2009) ; In addition , it has been observed over a decade that low - income economies tend to have burdensome regulatory systems , while adequate _ _ _ Business regulation contributes to the development of the private sector (World Bank, 2013). Based on a growing *body* of research, it can be stated that simpler regulations to access and operate in the market encourage the creation of new companies and, therefore, the creation of jobs in the formal sector . To what degree does the opinion fiscal

Although it is optional, does it unnecessarily strengthen the Mexican tax framework ?

In addition, the figure of the opinion for tax purposes encourages the CPR to adopt a series of criteria for its integration, sometimes not coinciding with the point of view of the tax authorities . At the end of the day , the above only exacerbates the climate of uncertainty regarding the fiscal ruling , forgetting

that the development of the sector The private sector benefits greatly from clear and consistent standards, which must be designed so that they can be implemented at a reasonable cost (World Bank, 2013).

For an effective and expeditious evaluation of the progress of a company, as well as the degree of compliance with its essential obligations , the information contained in the basic financial statements and the correlative notes is sufficient (López, 2011). Derived from which the figure of the opinion of financial statements for tax purposes should be eliminated , regardless of the fact that as of 2014 it is optional, maintaining the verification powers of the tax authorities and promoting the culture of self-compliance of the tax obligations , which is an integral part (but not the central concern) of a financial statement opinion.

As part of the process of recognizing that the tax ruling is a means of indirect supervision and that it represents a cost that taxpayers do not have to face, the tax authorities attempted to make it optional through a pair of presidential decrees, which only managed to generate legal inconsistencies, all time when an attempt was made to modify an obligation contained in law through an administrative provision; Therefore , it was necessary to modify the CFF itself to give legal certainty to the optional nature of the tax ruling. In fact , in the explanatory statement that accompanied the tax reform initiative for 2014, the head of the executive power himself recognized that the tax ruling as a means of inspection at the service of the authority has not fulfilled the objective for which it was created . It is highly questionable that because the tax ruling is optional starting in 2014, it will now become an effective instrument for the benefit of the tax authorities.

Although the progress that the transformation of the nature of the tax ruling



from mandatory to optional is recognized, it is considered necessary to completely eliminate the figure of the tax ruling from the CFF based on the following premises: it would contribute to strengthening the rule of law by exclusively reserving to the administrative authorities (specifically the treasury authorities) the powers of review; the no The existence of indirect oversight figures contributes to the legal certainty of all those governed, knowing that it is only the tax authority that can review them and determine omissions; The tax authorities have various forms of inspection, such as home visits and the recently created electronic reviews , which should be fully used; The creation of the SAT in 1997 was due to the need for the SHCP to have an *expressly supervisory body*. ; As established, the assumptions established by the CFF as advantages of exercising the option to rule are not in reality , so there are no real and objective reasons to choose such an option ; The permanence of the tax ruling, even if it is optional, causes the CPR to focus its analysis on tax issues , relegating the benefits to a second term . imminent audit of financial statements without a fiscal nuance; At the international level there is consensus in the sense that the regulatory and operational framework around the creation and development of companies be, as far as possible, more simplified, contrary to what the indirect inspection mechanisms are as updated with the optional tax ruling; The exercise of verification powers by the tax authorities through electronic means makes it possible to cover a growing universe of taxpayers, in real time and with cost reduction, which should naturally lead to eliminating means of indirect inspection, such as the optional tax ruling.

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