



Contextualization of the Audit Benefit for Tax Returns

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ABSTRACT

It is essential to analyze the benefit of auditing in Colombia, review from when it began to be governed to date in order to contextualize and consolidate the information contained in the standard, giving the opportunity to understand in a simpler way the mechanism that is being used in tax returns., for which it is intended to reduce the firmness times, the study is carried out in a toric way, asking about the edges that can be presented in various ways, the objective is to show and identify how and when it can be used in an appropriate way, to reach the conclusions the subject is structured in cases that occur in real life in which you can observe different scenarios that allow suggesting a correct use complying with the standard,At the end of all this analysis, a general panorama can be observed of how the benefit is being contributed at the country level

INTRODUCTION

It is important to carefully address the issues that can bring benefits or that due to ignorance or misinterpretation can lead to some sanction, the audit benefit is an important point to touch on because it contains certain guidelines but at the same time has benefits that can be included In tax planning, it is a subject that must be known in depth because it can become a headache or a tool. The most important thing regarding this subject is to be clear about the requirements to access it, because otherwise it would be to trust a benefit that would be zero, If you are a taxpayer who has information to organize in your accounting or that is not clear, it is not recommended that you seek access and if you are a candidate to enter the benefit, it is important that you are clear about many aspects that will be dealt with in each part of this work. The necessary information that is needed to be clear about each point of this topic was synthesized so that it can be easily interpreted, cases are exposed in which the taxpayer and tax department will be involved, where it demonstrates what is achieved by anticipating the firmness of the tax returns, the terms and increases for the audit benefit will also be put in context, and in conclusion it will be possible to see the general panorama on the impact generated by the audit benefit. The necessary information that is needed to be clear about each point of this topic was synthesized so that it can be easily interpreted, cases are exposed in which the taxpayer and tax department will be involved, where it demonstrates what is achieved by anticipating the firmness of the tax returns, the terms and increases for the audit benefit will also be put in context, and in conclusion it will be possible to see the general panorama on the impact generated by the audit benefit. The necessary information that is needed to be clear about each point of this topic was synthesized so that it can be easily interpreted, cases are exposed in which the taxpayer and tax department will be involved, where it demonstrates what is achieved by anticipating the firmness of the tax returns, the terms and increases for the audit benefit will also be put in context, and in conclusion it will be possible to see the general panorama on the impact generated by the audit benefit. The terms and increases for the benefit of auditing will also be put in context, and in conclusion it will be possible to see the general panorama on the impact generated by the benefit of auditing. The terms and increases for the benefit of auditing will also be put in context, and in conclusion it will be possible to see the general panorama on the impact generated by the benefit of auditing.

Objective of Audit Benefit

In order to stimulate voluntary compliance with tax obligations, the National Government will indicate, through regulations, the conditions and percentages by virtue of which taxpayers who increase their taxation are guaranteed that the investigation that gives rise to the liquidation of review comes from a selection based on computer programs. (Art 689 ET, 2020)

The idea on which article 689 is based is that the taxpayer can reduce the firmness of the declarations, but with some criteria, mainly based on the increase in the net income tax payable, on the other hand, it has the objective of having a greater collection.

Does the Audit Benefit Only Apply to Income Tax Returns?

The terms of finality provided for in this article will not be applicable in relation to private declarations of sales tax and withholding at source for the periods included in the years 2019 and 2020, which will be governed in this matter by the provisions in articles 705 and 714 of the Tax Statute.(law 1943 art 105, 2018)

For greater clarity, it was made clear that the effects of VAT and withholding at source are not stipulated for this benefit, it is expressly stated that it is only applicable to income and complementary taxes.

How Long Does the Audit Benefit Extend?

"For the taxable periods 2019 and 2020, the private liquidation of taxpayers of income and complementary taxes that increase their net income tax"(Law 2155 art 51, 2020).

"Extend for taxable years 2020, 202 and 2026 the audit benefit enshrined in Article 51 of Law 2155 of 2020"(Law 2294 of 2020 art 69, 2020).

The benefit has been thought to take until the year 2026, for which there is still nothing in the tax statute.

Firmness Variation in Relation to the Percentage of the Net Tax Increase

Income taxpayers and complementary taxpayers who increase their net tax by at least a minimum percentage of thirty-five percent (35%), in relation to the net income tax of the immediately preceding year, will remain firm if within of the six (6) months following the date of its presentation, no summons to correct or special requirement or special summons or provisional liquidation has been notified, provided that the declaration is duly presented in a timely manner and full payment is made within the deadlines established by the national Government for this purpose, if the increase in the net income tax is at least a minimum percentage of twenty-five percent (25%), in relation to the net income tax of the immediately preceding year,The income statement will be firm if within twelve (12) months from the date of its presentation.(Law 2155 art 51, 2020)

The provisions of this law indicate that depending on the percentage of variation or increase, one of the two firmnesses can be accepted: 6 months or 12 months, and the 35% guarantee a 6-month firmness while the 25% firmness of 12 months.

Since When Does the Firmness of the Declarations with the Benefit of Auditing Begin to be Counted?

The terms of finality provided for in this article will not be applicable in relation to the private declarations of sales tax and withholding at source for the periods included in the years 2019 and 2020, which will be governed in this matter by the provisions in articles 705 and 714 of the Tax Statute(Law 2155 art 51, 2020)

The tax declaration will be firm if, within three (3) years following the expiration date of the term to declare, no special requirement has been notified. When the initial statement has been filed extemporaneously, the three (3) years will be counted from the date of filing.(Art 714 ET, 2020)

It is clarified from when the signatures begin, in order to avoid this confusion, it is looked at from the expiration date or the last day that it had to declare and if it passes 5 days or the days that exceed the date, it is counted from the date that it was presented. past the submission date.

Request for Balances in Favor of Returns with the Benefit of Auditing

"In the case of declarations that register a balance in favor, the term to request the return and/or compensation will be the one provided in this article, for the firmness of the declaration"(Art 689-3 ET, 2020).

The request for balances in favor is an advantage that the taxpayer has because the term of firmness gives him the opportunity to expedite the request for these balances as long as no requirements arise from the Dian, if errors are detected in the declaration Before the firmness and even correcting the errors, there is still a balance in favor if the general firmness counts for tax returns without enjoying the benefit.

When There are Tax Losses, What Happens with the Compensation?

When the return subject to audit benefit shows a tax loss, the Tax Administration may exercise the powers of examination to determine the origin or inadmissibility of this and, therefore, its compensation in subsequent years. This power will be held notwithstanding the expiration of the period covered by this article.(Art 689-3 ET, 2020)

Logically, tax losses can only be compensated in the next return, so they do not have the same treatment that could be given to favorable balances.

Can Statements that Are Submitted Untimely Enjoy the Benefit of Auditing?

In the case of taxpayers who, in the years prior to the period in which they intend to qualify for the benefit of auditing, have not submitted income and complementary returns, and comply with said obligation within the terms indicated by the national government to submit the corresponding returns. to the taxable period 2019, the final terms of the settlement provided for in this article will be applicable, for which they must increase the net income tax payable for said periods in the percentages referred to in this article.(Art 689-3 ET PARAGRAPH 3, 2020)

Article 683, in none of its numerals, limits the declarations that are presented in an extemporaneous manner, as long as the sanctions and their interests are correctly settled, which would otherwise have a negative effect for the taxpayer, also if they are complying with the requirement in the increase of the patrimony as dictated by the norm, in this case it is good to remember that the objective of the administration is to increase collection and encourage taxpayers to pay more.

Can the Tax Returns that Apply the Audit Benefit be Corrected?

The correction declarations and correction requests that are presented before the term of firmness that this article deals with, will not affect the validity of the audit benefit, as long as in the initial declaration the taxpayer complies with the requirements of timely presentation, increase of the net income tax, total payment, and in the corrections said requirements are maintained.(Art 689-3 ET PARAGRAPH 1, 2020)

This shows that the tax office only has as parameters the limits that must be met to access the audit benefit.

Who Does Not Apply for the Audit Benefit?

"This rule is not applicable to taxpayers who enjoy tax benefits due to their location in a specific geographical area"(Art 689 ET, 2020)

When the net income tax of the declaration corresponding to the taxable year against which the increase requirement must be met is less than 71 UVT, the application of the audit benefit will not proceed.(Art 683 ET PARAGRAPH 2, 2020)

As has been seen throughout each article in conclusion with paragraph 2 of article 689-3 and as stated in article 689-3 that taxpayers will only have two exceptions to access and that is that they comply with the 71 UVT and do not enjoy no tax benefit.

Background

Case in Which the Dian Issues Official Settlement in the Income Statement with the Benefit of an Audit, Involving the Term of Finality of the Statement This Section considers that the certificate issued by the withholding agent is an ideal document to prove the withholdings at source made in a certain taxable period, as long as it complies with the formal requirements of article 381 of the Tax Code. The regulation establishes that the withholding at source certificate must contain the following information: i) taxable year and city where the withholding was recorded, ii) surname and name or business name and NIT of the withholding agent, iii) address of the withholding agent, iv) surnames and name or business name and NIT of the person to whom the withholding was made, v) total amount and concept of the payment subject to withholding, vi) concept and amount of the withholding made and vii) the signature of the payer or agent retainer. (...) Nevertheless, none of these objections is based on article 381 of the Tax Statute, so they are not sufficient to subtract probative value from the certificate of March 18, 2011. (...) Thus, the certificate of July 8, 2015 provided with the application leaves without foundation the objections formulated by the DIAN in the answer to the application and in the appeal against the certificate of March 18, 2011. (...) This Chamber indicated that, by virtue of article 743 of the Tax Code, the probative suitability of exogenous information depends on its study in accordance with the rules of sound criticism and the degree of conviction it generates. (...) Based on the foregoing, the appeal charge related to the proof of withholding at source practiced by Capital Dinámico SA is unsuccessful. (Ruling 2905, 2020)

Case Where the Dian Gave a Statement of How Not Presented Because of the Term of Firmness

The actor in the exercise of the action for annulment and restoration of the right requested the annulment of the Tax Inspection, the Special Requirement, the Review Settlement and the Resolution that decided the appeal governmental. By way of restoration of the right, the benefit is declared of audit and firm the income statement and complementary of the year taxable from 1998.

He invoked as violated norms articles 6, 29, 95 numerals 1 and 7 of the Political Constitution, 35 and 36 of the Contentious Administrative Code, 580 and 779 of the Tax Statute.

LITERATURE REVIEW

The Concept of Violation is Summarized as Follows:

During the course of the investigation, the plaintiff always stated that was immersed in the audit benefit, since the declaration valid was the one presented on May 26, 1999, with compliance with all the requirements demanded by Law 488 of 1998, and that later corrected on July 23, 1999 solely to correct the code of the economic activity that in the initial was informed the 8060 that corresponds to "non-formal education" being the correct one 8519 referring to "other human health activities", which included the accountant firm despite of not having the obligation to do so, as it is a service activity related to human health. The exercise of work related to health was ratified by the same Division of Inspection of the Tax Administration of Natural Persons through File Order No. 320632003002725 of September 16, 2003.

The Flat Administration determined that the declaration was considered as not presented contrary to the doctrine and the repetitive jurisprudence that indicates that for the application of article 580 of the Tax Statute, it is required in all cases of an administrative action that guarantees due process, since it does not operate by operation of law. (Filing number 25000-23-27000-2003-01843-01(16213), 2008)

METHODOLOGY

The study is carried out in a toric way, asking about the edges that can be presented in various ways, the objective is to show and identify how and when it can be used in an appropriate

RESULT

The audit benefit in tax returns is understood as a benefit that the taxpayer enjoys as long as the established characteristics and parameters dictated by the norm are met, this benefit can be considered as a guarantee according to the function that the taxpayer fulfills. reduce the firmness times of tax returns, when speaking of firmness and audit benefit is a conjugation, it refers to the fact that the tax department, after the term of firmness, may not impose sanctions on said statements, after 6 months after The declaration has been presented, taking into account that the term of finality begins to count from the date on which the declaration expires or, failing that, for declarations that are late, from the date that the declaration is settled,It should be clarified that the audit benefit only

applies to income statements, that is, VAT returns and withholding at source do not enter.

This audit benefit has two percentage limits related to the firm term: 6 months and twelve months.

For the years 2019, 2020, the audit benefit will be extended, preserving some characteristics and bringing some changes in the ceilings that are requested as requirements in the value of the net income tax.

Table 1. Variation in Firmness and Periods

Article	Percentage	Firmness	periods
Article 689-2	(30%), in relation to the net income tax of the immediately preceding year	will remain firm if within six (6) months	Year 2019 and 2020
Article 689-2	(20%), in relation to the net income tax of the immediately preceding year	will remain firm if within six (12) months	Year 2019 and 2020
Article 689-3	(35%), in relation to the net income tax of the immediately preceding year	will remain firm if within six (6) months	Year 2019 and 2020
Article 689-3	(25%), in relation to the net income tax of the immediately preceding year	will remain firm if within six (12) months	Year 2019 and 2020

According to the comparison of the previous table, there is a variation between the years 2018,2019 and 2020,2020 where the net income tax must have an increase of 5% for both firm periods.

It is expected that the audit benefit will be extended until 2026, keeping the same parameters that are established for the periods 2019 and 2020.

In the cases in which the declarations present balances in favor, the taxpayers must request the balance before the terms of finality of the declaration prescribe as long as the tax department does not issue an official liquidation or summons, if it is not requested within the terms finality would be resolved to the normal terms for the return of balances, in this sense the taxpayer who enjoys this benefit may request the balances in favor in a shorter time due to the reduction of time but in the case of compensation for tax losses compensation will be made in subsequent years in the next statement.

It should be noted that the Dian will carry out investigations when these tax losses occur or in the event that balances are presented in favor and when patrimonial increases are detected or non-existent liabilities are demonstrated, the tax department among its faculties can advance a claim before the prosecutor's office that brings sanctions economic and intramural bone jail.

Declarations that are submitted untimely also enjoy the benefit of auditing as long as they meet the requirements in article 689-3 of the ET, only that the firmness period, as previously mentioned, will count from the date the declaration is presented. .

The corrections that are made in the declarations before the firmness time expires will not lose their benefit as long as the terms of 35% and 25% of the increase continue to be met, that is, if the net income tax preserves these percentages it may access thus make corrections in the declaration in the finality period provided

When taxpayers have tax benefits in relation to income tax such as ZOMAC, or simple tax regime, they will not be able to enjoy said benefit.

In the event that the income statement of the previous year of which is being taken as a reference for the increase of 25% or 35% if this is below 71 UVT, you will not be able to access the audit benefit.

When the tax department makes a request for correction, generates an official settlement after the firmness terms, there is no room for any correction, nor will any effect arise in the declaration, nor will the taxpayer be able to make modifications.

From the statistical point of view of collection, it must be borne in mind that the audit benefit can have effects that result in variations. The following table can provide an interpretation of how the collection has been from 2019 to 2020.

It can be seen that the year 2020 in relation to 2019 has a downward variation of 1% in relation to the previous year, it can be deduced that this year was affected by COVID 19, but in 2020 an increase in the 1.94%, for that year there was an increase of almost 2% in collection, several factors could be given, such as the relief of the COVID situation and in relation to the audit benefit, there were more taxpayers who could take advantage to the norm in view of the fact that the net income tax could fall significantly by 2020, this took effect in the year 2020 and there brought great incidence to article 689-2 paragraph 2 where it mentions the limit of 72 UVT in relation to the previous year. For the year 2020 there is an increase of 6.35% in relation to the year 2020.

Table 2. Annual Collection Statistics of Taxes Administered by the Dian 1970-2020

Year	Figures in millions of current pesos	Percentage	Variation
2016	71,065,759,000	18%	
2017	69,741,280,000	17%	-0.33%
2018	77,581,293,000	19%	1.94%
2019	103,189,811,000	26%	6.35%
2020	81,653,572	twenty%	-5.34%
	403,231,716	100%	

(Subdirectorate of Economic Studies, 2020)

On the other hand, studies carried out in relation to the effects confirm what has been deduced

On the other hand, the OECD projections on average GDP growth for countries like Colombia estimate a range between 4% and 5%, which will obviously have an effect on increasing the income tax base for many companies, except that the uncertainty of the election year significantly affects these estimates. In any case, according to our calculations, the increase in net taxable income (corporate profits) by approximately 10%, combined with the effect of the tariff increase, under normal circumstances, leads to the fulfillment of the condition established in the Law for access the 12-month audit benefit.

It is important that Dian officials are aware that many taxpayers will be covered by the benefit of auditing by the year 2020 due to the effect of the combination of these two factors, and therefore the inspection actions on this type of returns. they should not be oriented on suppositions or conjectures of an undue tax determination for the simple fact of enjoying a term of finality shorter than the general one.(Rodriguez, 2020)

From the above it is clear that it will not be easy for the Dian, the times for the administration to act are affected, on the other hand, the collection of these taxes is giving positive results, which is what the reform seeks.

In this same sense, the director of the National Planning Department, Alejandra Botero, said about the macroeconomic impacts that are already stipulated with the tax reform project approved in Colombia, and mentioned that one of the most important updates has to do with the fact that, after having approved the tax reform, there is a change in the country's economic growth forecast for 2020 and 2020.(The new century, 2020)

The state, with these reform changes and specifically with article 689-3, has obtained results in collection, but beyond that, Dian has information that demonstrates the capacity of taxpayers in terms of generating income and shows an overview in the declarations. of income that exposes the taxpayer because in many cases the exceptions or tax benefits called discounts that arise by subtracting the tax payable are not included, the state can say that the exceptions or

percentages can be perfectly removed in favor of the taxpayer and increase others in favor of the state of this it could be thought that this measures the ability to collect without tax benefits.

CONCLUSION AND RECOMMENDATION

The benefit of auditing is a stimulus to voluntary compliance in the declarations in order to have a greater collection. VAT and withholding tax returns are not included in this benefit.

The rule is extended for the periods 2019 and 2020 with an increase in their percentages. The audit benefit has two validity periods depending on the percentage increase in relation to the net income tax.

The signatures count from the expiration date of the declaration or if it is presented extemporaneously from the date of its presentation.

Firms are not counted from the date of presentation of the declaration if the taxpayer decides to present it early.

For the request of favorable balances, one must act within the final terms if the objective is that they are recognized in the shortest possible time, otherwise it must wait under the terms that are not under the benefit of auditing.

Fiscal losses will be recognized the year following the next declaration. Untimely declarations enjoy the benefit of auditing as long as they comply with the pots or percentages indicated.

Declarations that must be made a change within the term of firmness may be corrected as long as it does not affect the net tax payable that acts as a requirement. Companies that enjoy some income tax benefit will not be able to enjoy the audit benefit.

If the previous year does not exceed 71 UVT, that is, if in 2020 I do not exceed this limit, thus increasing the net income tax in relation to the previous year, there will be no audit benefit for the next year 2020

It is expected that the benefit of auditing will be extended until the year 2026, keeping the same characteristics mentioned throughout the complete article 689-3 standard.

The audit benefit has had a positive impact on the results of the gross domestic product and contributes to the increase in income tax collection, but on the other hand it also makes the administration consider how to review tax returns more quickly due to the special firmness that statements enjoy.

FURTHER STUDY

This research still has limitations, so it is necessary to carry out further research related to the topic of Contextualization of the Audit Benefit for Tax Returns in order to perfect this research and increase the reader's insight.

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