Agosto, 2018
Newsletter 21

International Legal Partners

Actualidad Legal / Legal News

Chile • Ecuador • Germany • Mexico • Peru • Spain

Chile:

Modernization of the Voluntary Administrative Reconsideration Appeal

The Internal Revenue Service (Servicio de Impuestos Internos - SII) has been making progress in improving its relationship with taxpayers and, according to the 2018 – 2022 Strategic Plan of the Institution, the Service seeks to place emphasis on an outlook in which the taxpayer becomes the focus of its institutional management.

Read more | 4,5 minutes

Chile:

Modernización al recurso de Reposición Administrativa Voluntaria

El Servicio de Impuestos Internos (SII) ha ido avanzando en mejorar su relación con los contribuyentes y, según da cuenta el Plan Estratégico de la Institución 2018 – 2022, el Servicio busca poner énfasis en una mirada en donde el contribuyente pasa a ser el centro de su gestión institucional.

Leer más | 4,5 minutos

Spain:

How does Habeas Corpus work? Practical questions about Illegal Detention and Habeas Corpus

Read more | 5,5 minutes

España:

¿Cómo funciona el Habeas Corpus? Cuestiones prácticas sobre la Detención Ilegal y el Habeas Corpus

Leer más | 5,5 minutos

Peru:

Good news for Peru within a climate of change

Read more | 2 minutes

Perú:

Buenas noticias para el Perú dentro de un clima de cambios

Leer más | 2 minutos

Modernization of the Voluntary Administrative Reconsideration Appeal in Chile

Estudio Jurídico Otero

Chile

The Internal Revenue Service (Servicio de Impuestos Internos - SII) has been making progress in improving its relationship with taxpayers and, according to the 2018 – 2022 Strategic Plan of the Institution, the Service seeks to place emphasis on an outlook in which the taxpayer becomes the focus of its institutional management.

In this line of action, through Circular N° 34 of June 27, 2018, the SII gave instructions for the application of the procedure of Voluntary Administrative Reconsideration (VAR), enshrined in Art. 123 bis of the Tax Code, an instance that allows the taxpayer to request the review of the control acts associated with:

- Settlements, all or any of its items or elements
- Transfers
- Payments
- Resolutions that affect the payment of a tax or the elements that serve as a basis to determine it or that deny requests for reimbursement referred to in Article 126 of the Tax Code.

This Circular reinforces the changes made to the administrative reconsideration appeal through the amendment of Art. 123 Bis of the Tax Code contained in Law N° 21.039 of October 20, 2017. By repealing the instructions given in Circular N° 13 of 2010 and introducing the necessary modifications to ensure a procedure that implies fair treatment for taxpayers, it proceeded to:

√ Increase the period for filing the administrative reconsideration appeal from 15 to 30 administrative working days (understanding as administrative working days from Monday to Friday and non-working days Saturdays, Sundays and holidays).

√ Modify the period within which the appeal is to be deemed rejected if its resolution has not been notified from 50 to 90 administrative working days (administrative silence). The resolution must be validly notified within that period, and not just its ruling .

Notwithstanding the foregoing, in accordance with the new guidelines of the SII, the obligation of the Tax Administration to process the procedure speedily is stressed, and administrative silence should be avoided.

√ Add that the filing of the Voluntary Administrative Reconsideration Appeal produces the effect of suspending the period so that the Taxpayer may file the corresponding legal claim according to the general claims procedure of Art. 124 of the Tax Code. Once the Administrative Reconsideration Appeal has been resolved, the period for claiming before Tax and Customs Courts resumes.

The Circular also informs about the incorporation of a series of elements that aim to strengthen a horizontal relationship between the SII and the taxpayers, safeguarding the rights of the latter and promoting good faith, impartiality, justice and equality, collaboration,

speed in the processes and the institutional responsibility of the SII, among other things. Some elements that need highlighting are the following:

- √ The possibility of requesting a preliminary hearing to clarify or analyze aspects that favor the correct knowledge and understanding of the filed appeal, a request which the SII is obliged to accept and carry out.
- √ The correction ex oficio by the SII of defects or manifest errors that could distort the contested examination is considered, even if they have not been claimed by the taxpayer. This seeks to favor those taxpayers who do not have tax advice.
- √ It will be accepted that taxpayers include all the information they consider relevant to support their appeal, even if they have been required on previous occasions by the Service and have not been submitted.
- √ The figure of the closure hearing is included, during which the final proposals of the taxpayer will be heard and the position of the SII will be communicated. The SII must provide the technical and legal reasons that lead it to pronounce itself in favor or against the appeal.
- √ It is instructed that the resolutions that put an end to this reviewing procedure will be issued with respect of each and every argument of the taxpayer, either to consider or to dismiss them, clearly stating the technical and legal reasons on which they are based. Generic rejections or rejections without a detailed substantiation will not be admitted.

  It must be taken into account that the resolution ruling an administrative reconsideration appeal cannot be challenged by a replacement or hierarchical appeal.

With the issuance of the aforementioned Circular, the SII has sought to delimit the scope of the new regulations and regulate its sphere of application, introducing changes in the existing procedure in order to strengthen this stage and transform it into a real tool for solving controversies and an independent reviewing instance, without prejudice, and with sufficient power to resolve the matters submitted to its knowledge, in a context of mutual collaboration and trust, which allows providing the taxpayer with certainties and ensuring tax compliance.

We believe that the aforementioned changes are positive since they force the SII to provide grounds for its resolutions, extends deadlines and improves processes, so that the VAR may become an instance of collaboration with the taxpayer and in which his basic rights are protected from the actions of the Administration. It also seeks to strengthen the use of the VAR without reaching the complexity of judicial litigation procedures, thus reducing the workload of the Customs Tax Courts.

Spain: How does Habeas Corpus work? Practical questions about Illegal Detention and Habeas Corpus

ILP Abogados

Spain

How does Habeas Corpus work? The following are practical questions about Illegal Detention and Habeas Corpus. Personal freedom, as a fundamental right, is rigorously protected by the Habeas Corpus Institute.

How is Habeas Corpus alleged? As simple as raising your hand to invoke the magic word?

I'm sure some readers will have heard about this legal figure. Some people think they know it fairly well. But in general, we are completely unaware of it, and consequently it is not accorded the true value and importance it deserves.

This legal form is regulated in *article 17.4 of the Spanish Constitution, and in Organic Law 6/1984 regulating the procedure of "Habeas Corpus".*

Recently, the *Constitutional Court Judgment 13/2017* was published, which explains some of the most relevant aspects related to this legal figure.

That is why, taking into account the current regulations and the recent ruling of the Constitutional Court, we propose below the 9 practical questions that you should know about Habeas Corpus.

1 What is meant by Habeas Corpus?

Habeas Corpus is a procedure aimed at quickly remedying the illegal detention of a citizen. To this end, it is configured as a right of the detainee, who may request the Court, from the moment of his detention, to determine, within a maximum period of 24 hours, whether his detention has been carried out under the legally established conditions.

2 How does a Habeas Corpus present itself? Is it a magic word?

Proceedings shall be initiated, if not ex officio (usually not usually ex officio), in writing or by appearance. Three fundamental aspects should be identified within this paper:

1. *Name of the applicant of Habeas Corpus.*
2. *The reason for Habeas Corpus*
3. *The place of the deprivation of liberty and personal circumstances.*

It should be added that Habeas Corpus may be filed by the detainee himself or by the spouse or person with an analogous relationship, descendants, ascendants, siblings and legal representatives.

3 To whom is it presented?

The competence to decide on the application of Habeas Corpus, rests in the hands of the Pre-Trial Judge in the location in which the person was deprived of liberty. If this is not stated, the competent judge shall decide the place of detention. And in the absence of the latter two, it will be the place where the most recent news about the whereabouts of the detainee has been kept.

In exceptional cases (terrorism, armed gang...), it will be the National High Court, which will resolve the case.

4 When can Habeas Corpus be presented?

The Constitutional Court establishes that it may be filed both at the time of arrest and subsequently, at any time deemed to have violated any of the legally established guarantees.

5 What should the police do when Habeas Corpus has been requested?

Where appropriate, the governmental authority, public servant or civil servant is obliged to inform the competent judge immediately of this request.

6 Does Habeas Corpus fit although the detention has cause?

It is vitally important to know that, in order to present Habeas Corpus, it is not necessary for the detention to have taken place without cause, but even though there is cause or reason for the detention, if the rights of the detainee are not respected, an illegal detention would also be taking place. An example in which the rights of the detainee are not respected would be the refusal to grant an interpreter.

7 What is the right to file information? Does counsel have the right to review the police record?

As regards the concept of "right to information on file", it is laid down in the *EU Directive 2012/13, Article 7, and in Article 520 of the Criminal Procedure Code (LeCrim).*

In turn, the Constitutional Court understands that the right to information in the file covers all material that is held from the detainee's file (complaints, documentation of the records made at the time of arrest...), either in physical form or by computer.

Therefore, any relevant information that has served the purpose of detention and is fundamental to effectively challenge the legality of detention is included within the right to information in the file.

With the foregoing, counsel has the right to review the police record and to request relevant information regarding detention.

8 Doctrine applicable even when there is no rule that regulates it.

As regards the implementation of the Directives and the primacy of European law, *the Constitutional Court's ruling 13/2017* sets out two key points:

First of all, the Court states that although there is no national law covering the provisions of the Directives, the latter and the rights and guarantees set out therein are directly applicable in our legislation if the mandatory deadline for their transposition has expired. Therefore, Directive 2012/13 EU (link to the Directive), at the time was the source of the right.

Secondly, directives that have been insufficiently or inadequately transposed, or directives that have omitted obligations in favor of citizens, will always be directly applicable by direct vertical effect.

Therefore, taking into account the foregoing, in the face of any violation of the rights and guarantees of the detainee, even if they are not established in domestic legislation but in European directives that have direct effect for the reasons explained, the institution of Habeas Corpus must be consulted.

9 What if Habeas Corpus is denied by the judge?

If Habeas Corpus is admitted to the proceeding, but rejected, it is necessary to file an appeal for protection, alleging the violation of *Article 17.3 EC.*

However, if Habeas Corpus is inadmissible, an action for annulment must be filed in order to exhaust all possible legal avenues before resorting to the Appeal for Protection in which the violation of *Article 17.3 and 17.4 EC* will be alleged.

References

1 Judgment of the Constitutional Court 13/2017 of 30 January 2007

2 Organic Law 6/1984, of 24 May 1984, regulating the procedure of “Habeas Corpus”.

3 Directive 2012/13 EU

4 Spanish Constitution

Good news for Peru within a climate of change

Estudio Laos, Aguilar, Limas & Asociados

Peru

The proposal of modifications to the Political Constitution of Peru, presented to the Congress of the Republic by President Martín Vizcarra in his speech of last July 28th implies changing on its composition through the creation of two congressional chambers: one of senators and the other of deputies.

This proposal has received the broad support of the population, so it is expected that this new structure of the Congress will substantially improve the legislative production and propitiate clear rules of the game both for market agents and investors.

Likewise, President Vizcarra has presented another reform proposal that has the support of the population and refers to the modification of the Constitution, regarding the composition and election of the members of the National Judicial Council, an entity that plays an important role in the election of judges and prosecutors of both The Judicial Branch and The Public Prosecutor's Office. The intention is to improve the administration of justice that serves to provide predictability and legal security to the population and to private investment.

Additionally, it has been reported in the last week of July that Canadian mining company

"Plateau Energy" has discovered a deposit of lithium in rock of great purity with reserves of 4.7 million MT

located in its Falchani deposit in the Macusani area of Puno Region- about 1,200 km from Lima. As is known, lithium is a metal that has been demanded by the automotive industry in the manufacture of electric cars which has contributed to the TM of the product to increase its quotation exceeding USD $ 13,000.00. According to the operator, this deposit would be the fifth or sixth largest project of its kind in the world, with the potential to increase reserves with greater exploration. The Ministry of Energy and Mines has announced that it will soon submit modifications to the mining legislation to regulate the exploitation and production of lithium.

The Canadian company plans to start lithium production in 2020, which would generate new and huge revenues for the country´s economy. Also, if the implementation of a lithium refinery can be specified, this could constitute a great step for its industrialization, which is being evaluated by both the Executive and the Congress of the Republic.

On the other hand, the National Institute of Statistics and Informatics (INEI) announced that the national economy grew 4.29% in the first half of the year. Total exports grew by 11.2% in relation to the previous year, which reversed the slight fall suffered in the last semester of 2017. Both for the Central Reserve Bank of Peru (BCRP) and the INEI, the outlook for the Second semester are equally positive with a tendency to continue improving in 2019.