

International Fiscal Association

2023

Cancun Congress

cahiers

de droit fiscal
international

VOLUME 107

B: Good faith in domestic
and international tax law



1938-2023

Summary and conclusions

The principle of good faith (“*Principio de Buena Fe*”) is present in different legal frameworks in the Panamanian legislation, including civil law, procedural law, administrative law and tax law. It is generally included with other relevant principles such as honesty, integrity, trust and confidence in the legal and tax systems.

In general, the principle of good faith is an important aspect of the Panama legal system. In other terms the courts will mention other relevant principles such as loyalty and honesty, encouraging honesty, integrity, and trust in most transactions and resolutions, and ensuring that parties act in a manner that is fair and reasonable on every aspect.

Panama is a signatory to the Vienna Convention² on the Law of Treaties of 1969, adopted by Law 17 of 31 October 1979, which states that in domestic law and in the observance of treaties, a party may not invoke provisions of domestic law to justify violations of an international treaty. In particular, it establishes the principles and rules that apply to the formation and interpretation of treaties, including the obligation of good faith and the principle of *pacta sunt servanda* (agreements must be kept). This principle helps to ensure that double taxation agreements are enforced fairly and consistently, and that disputes related to their interpretation and application are resolved in a timely and effective manner.

In addition to double taxation agreements, Panama also follows the guidelines and recommendations of the OECD and other international organizations related to taxation and financial regulation. In Panama, the Double Taxation Agreements (DTAs) are generally drafted based on the 2010 OECD Model with some variations in the permanent establishment clause, royalties, service clause, among others. In addition, DTAs have clauses from the UN Model to preserve taxation at source for certain types of income, given the territorial tax system that characterizes Panama.

In this sense, the tax administration must provide clear and precise information on tax obligations, as well as respect the deadlines and procedures established by law. In addition, the tax administration must avoid any type of arbitrariness or abuse in the exercise of its functions, guaranteeing respect for the fundamental rights of taxpayers. The DGI and especially the Comptroller Office that administers and manages the country’s revenue should act within the framework of legality, with transparency and through accountability, creating with the citizens the perception of a fair, trustworthy administration and, therefore, ethically influential; with the same responsibility and civic awareness.

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² Vienna Convention on the Law of Treaties of 1969, adopted by Law 17 of October 31, 1979. Art. 26.

Moreover, the Administrative Tax Courts of Panama, a second instance in administrative matters, should be governed by the principles of due process, procedural economy, promptness, impartiality and good faith.³

The principle of good faith has been adhered to in multiple situations and cases on our jurisprudence. It would be ideal to have a provision on the OECD Model and the UN Model that expressly requires that good faith is observed for treaty interpretation and performance. Also it is suggested that this principle be inserted in more of the domestic laws that guide the tax authority at the moment of making a decision on a particular request.

Part One: Introduction and defining the principle of good faith

The principle of good faith in taxation in Panama is established in the Tax Procedural Code, which establishes that taxpayers must act in good faith and comply with their tax obligations in a timely and truthful manner. This principle is based on honesty and transparency in the relationship between taxpayers and the tax administration.

In summary, the principle of good faith in taxation in Panama seeks to adopt a culture of voluntary compliance with tax obligations, based on honesty, transparency, and mutual trust between taxpayers and the tax administration.

1.1. General overview

Panama is a civil law jurisdiction and international agreements establish a hierarchy of norms based on a particular source from which the norms derive. Our Constitution establishes the superiority of international law over domestic law.⁴ Consequently, in a conflict between two laws, the law that contains an international agreement prevails, since Panama is obliged to comply with the rules of international law.⁵

Similarly, Panama is a signatory to the Vienna Convention⁶ on the Law of Treaties of 1969, adopted by Law 17 of 31 October 1979, which states that in domestic law and in the observance of treaties, a party may not invoke provisions of domestic law to justify violations of an international treaty. In particular, it establishes the principles and rules that apply to the formation and interpretation of treaties, including the obligation of good faith and the

³ The Plenary of the Court determines the organizational and functional structure, with the units administrative tasks that are necessary to achieve the objectives and institutional purposes. efficiency, transparency, accountability, good faith, procedural loyalty and adherence to the principle of strict legality. All public servants will observe in their actions the institutional values of loyalty, honesty, competitiveness, reliability, responsibility and professional ethics, and will be obliged to dedicate the maximum of their capacities to the assigned task. Chapters I and III of Agreement No. 6 of 2011, published in G. O. 26, 789 of 20 May 2011.

⁴ Benavides Pinilla, Víctor Leonel. Public Ethics, Education and Taxation, CIDT, TAT. Regarding this issue, it is important to keep in mind that there is an international responsibility of the state that violates an international treaty. In other words, in light of international law, if the state, directly or through a judicial ruling, applies an internal rule contrary to a treaty, it immediately incurs international responsibility for violation of the international obligation to comply in good faith with public treaties. (See, Vienna Convention on the Law of Treaties of 1969, arts. 26 and 27).

⁵ Political Constitution of the Republic of Panama, art. 4.

⁶ Art. 26 Vienna Convention on the Law of Treaties of 1969, adopted by Law 17 October 31, 1979. Art. 26.

principle of *pacta sunt servanda* (agreements must be kept). This principle helps to ensure that double taxation agreements are enforced fairly and consistently, and that disputes related to their interpretation and application are resolved in a timely and effective manner.

The principle of good faith ("*Principio de Buena Fe*") is present in different legal frameworks in the Panamanian legislation, including civil law, procedural law, administrative law and tax law. It is generally included with other relevant principles such as honesty, integrity, trust and confidence in the legal and tax systems.

1.2. Good faith under a different name

In practice, the principle of good faith can be applied in a range of contexts, such as tax law, administrative law, and procedural law when administering justice. For example, when administering justice, the principle of good faith is in most cases mentioned as it is and not by a different name or concept, and if not the court of justice will try to include similar conceptions, in a way to demonstrate honesty, fairness, and loyalty from a civil law perspective.

In general, the principle of good faith is an important aspect of the Panama legal system, in other terms the courts will mention other relevant principles such as loyalty and honesty, encouraging honesty, integrity, and trust in most transactions and resolutions, and ensure that parties act in a manner that is fair and reasonable on every aspect.

Part Two: Good faith in domestic law

2.1. General overview

The Panama tax system in force finds its foundation in the provisions on the Political Constitution of the Republic,⁷ which indicate that the law will ensure that all taxes levied on the taxpayer are in direct proportion to their economic capacity on a progressive basis.

Although it is from article 1109⁸ of the Panamanian Civil Code that this principle emerges, in the civil sphere, with respect to contractual obligations, it applies both to what was agreed, and to the consequences that arise as a result of the agreement of wills that are in accordance with this principle.

In terms of jurisprudence issued by the Panamanian Courts the principle of good faith emerged in the administrative jurisdiction for the first time, by Doctor Arturo Hoyos, former Supreme Court judge of the Court of Justice, when he addressed it through a Judgment of 13 June 1991, stating that 'the court doctrine applied in cases similar to this regarding the principle of good faith, in administrative actions with emphasis on that unavoidable relationship that exists between the Public Administration and individuals'.

It is thus how, since decades, jurisprudence accepts this principle applicable to

⁷ Art. 264 Political Constitution of the Republic of Panama.

⁸ Art. 1109 Panama Civil Code. "Contracts are perfected by mere consent and since then are binding, not only to comply with what was expressly agreed, but also to all the consequences that are in accordance with good faith, usage and the law."

Administrative Law.⁹ The Third Chamber at the Supreme Court has issued extensive jurisprudence based on the violation of the principle of good faith, which had an impact on the fact that public servants, when exercising their functions, must act with the elements of probity, ethics, transparency, and loyalty, among others. The Courts have dedicated efforts in the analysis of the general principle of good faith, applied to the legal relations between the Administration and the taxpayers.

The principle of good faith in taxation in Panama is established in the Panama Tax Code,¹⁰ which establishes that taxpayers and tax authorities must act in good faith and comply with their tax obligations in a timely and truthful manner. This principle is based on honesty and transparency in the relationship between taxpayers and the tax administration.

When verifying non-compliance with tax obligations, the authority must take into account the substantial and procedural rights and guarantees of the taxpayer and unrestricted compliance with the fiscal administrative procedure contemplated on the Judicial Code, and additionally the general administrative procedure,¹¹ which is intended to serve as a channel for the processing of claims and requests from the companies and is applicable to the Revenue Tax Authority (DGI) and the Tax Administrative Court (TAT).

The principle of good faith in taxation in Panama implies that taxpayers must provide true and complete information on their tax returns and must not hide any income or assets to evade taxes. In addition, this implies that taxpayers comply with all tax obligations in a timely manner, such as filing returns, paying taxes, and keeping clear and accurate accounting records.

On the other hand, the DGI also has the obligation to act in good faith in its relationship with taxpayers, providing clear and precise information on tax obligations and respecting the rights and constitutional guarantees of taxpayers.

Finally, the Code of Ethics for public servants outlines a set of general and specific principles that include probity, prudence, justice, temperance, suitability, responsibility, transparency, equality, respect, leadership, training, legality, evaluation, veracity, discretion, affidavit of assets, independence of criteria, fairness, equal treatment, proper exercise of office, proper use of state assets, proper use of working time, collaboration, use of information, obligation to report, dignity, decorum, honor, and tolerance. These principles are critical because a transparent, responsible, efficient, and effective tax administration requires tax officials to adhere to legal and ethical guidelines. In other words, the legitimacy of an administration depends on its servants' adherence to standards of legality and public ethics with the objective of providing a framework for incorporating recommended ethical guidelines for effective tax administration into the legal systems of member states.¹²

⁹ The principle of good faith, which is one of the general principles that serve as the foundation of the legal system and which is provided for in art. 1109 of the Civil Code, is applicable in this case, since in accordance with the provisions of art. 15 of Law 56 of 1995, the actions of those involved in public procurement are governed, among others, by the general principles of law and particularly administrative law, which has recognized the validity of the principle of good faith in relations with the Administration public. Judgment of 21 May 2003. Case: *Suministros Los Andes, S.A. vs. Panama Maritime Authority*, <https://juris.procuraduria-admon.gob.pa/6697?hilite=caja+ahorros>

¹⁰ Art. 21 Panama Procedural Tax Code. Approved by Law 76 of 2019. Most of its articles will enter in force in January 2024 by Law 337 of 2022.

¹¹ Art. 1194 Panama Fiscal Code.

¹² Inter-American Center of Tax Administrations (CIAT). Declaration on the Promotion of Ethics in Tax Administration, 2005.

2.2. Good faith in the enactment of law

Based on the principle of good faith, which means acting in accordance with the interpretation and understanding expressed in the normative that regulates the relationship with individuals, without granting individuals an opportunity to adjust their behavior to a new legal situation, much less, take actions to the detriment of the individual, when the tax administration acted in accordance with the understanding of the regulations.¹³

In addition, the Panama Tax Procedural Code inserts the relevance of the principle of good faith in the resolution of cases, the innocence of the taxpayer and the presumption of legality from the acts from the Tax Administration.¹⁴ Other decrees reveal the presumption of good faith in all activities with regards to custom taxes¹⁵ and good faith on the segregation of properties when the owner wishes to do so for restructuring purposes or for the same economic group.¹⁶

(i) *The interpretation of domestic tax legislation*

In general terms, the tax administration must act in good faith in its relationship with taxpayers and respect their rights and constitutional guarantees. This principle is based on transparency and mutual trust between the tax administration and taxpayers.

In this sense, the tax administration must provide clear and precise information on tax obligations, as well as respect the deadlines and procedures established by law. In addition, the tax administration must avoid any type of arbitrariness or abuse in the exercise of its functions, guaranteeing respect for the fundamental rights of taxpayers. The DGI and especially the Comptroller Office that administers and manages the country's revenue should act within the framework of legality, with transparency and through accountability, creating with the citizens the perception of a fair, trustworthy administration and, therefore, ethically influential; to which he must respond with the same responsibility and civic awareness.

¹³ Tax Administration Court (29 August 2022). Resolution n.º TAT-RF-091. File 191-2021.

¹⁴ Presumption of legality and good faith. "The acts of the Tax Administration are presumed legal, unless proven otherwise. They have mandatory and immediate force and will be applied as long as their effects are not suspended or they are not declared contrary to the Political Constitution of the Republic, the law or the general regulations by the competent courts. In all processes initiated by the Tax Administration, the principle of good faith and innocence of the taxpayer or taxpayer will prevail". Art. 24 Panama Procedural Tax Code. Approved by Law 76 of 2019. Most of its articles will enter in force in January 2024 by Law 337 of 2022.

¹⁵ DG No. 12/2016 (4 April 2018). "Good faith is presumed in all activities directly or indirectly linked to foreign trade without prejudice to the integration, collection, prevention, control, investigation and inspection policies that, in terms of security and customs taxes, correspond to the governing entity of the national customs activity."

¹⁶ Fiscal Tax Code. Art. 763A. L. 49/2009, art. 8º. "Segregation of properties will be allowed in good faith for reasons of an administrative order of persons or companies of the same economic group, whose purpose is to make segregations to dispose of parts of the property or to give them as collateral. In the event that these subdivisions result in any of the assets being exempt from Property Tax due to its value, authorization from the National Land Authority will be required."

Moreover, the Administrative Tax Courts of Panama, a second instance in administrative matters, are governed by the principles of due process, impartiality, procedural economy, promptness, impartiality and good faith.¹⁷

It is important to mention that, even though the law grants broad powers to the administration with a view to obtaining income that finances public spending, the exercise of that power must be governed by the principles of tax law that delimit the exercise of power through guarantees and rights contemplated by law to the taxpayers. In other words, through the tax administrative procedure, the tax administration cannot be understood as absolute but limited in accordance with the provisions of the tax system, since the purpose of the tax regime is the collection of taxes and it is not possible to admit that the fiscal function is exercised through any type of means.¹⁸

For instance, the Customs Authority had a case that put them in a position to decide whether they should return tax payments that were paid in excess. In this case that went up to the Third Chamber of the Supreme Court, the Supreme Court judges decided to return the amounts paid in excess to the taxpayer.¹⁹

(ii) The policy approach towards retroactivity or retrospective domestic tax legislation

The Tax Procedural Code²⁰ outlines the principle of non-retroactivity, which applies in two ways:

Firstly, tax regulations should not have a retroactive effect in general.

Secondly, in penalty cases, the law that is most favorable to the liable person or taxpayer should be applied. This principle serves as a guarantee to prevent the Supreme Court of Justice from being excessively lenient in evaluating whether a fiscal reform has a retroactive nature.

¹⁷ The Plenary of the Court determines the organizational and functional structure, with the administrative tasks units that are necessary to achieve the objectives and institutional purposes, efficiency, transparency, accountability, good faith, procedural loyalty and adherence to the principle of strict legality. All public servants will observe in their actions the institutional values of loyalty, honesty, competitiveness, reliability, responsibility and professional ethics, and will be obliged to dedicate the maximum of their capacities to the assigned task. Chapters I and III of Agreement No. 6 of 2011, published in G. O. 26, 789 of 20 May 2011.

¹⁸ Benavides Pinilla, Víctor Leonel. Public Ethics, Education and Taxation, CIDT, TAT.

¹⁹ Regarding the return of the sums of money paid in excess by the National Customs Authority, the Third Chamber of the Supreme Court of Justice has been of the traditional criterion that the sums of money paid in excess by the Customs Authority Public Administration, should not be returned under the principle of good faith, as it is an error attributable to the State Administration and not the individual. In this sense, the judgment of 18 May 2001, provided in this regard that: "The Chamber has stated on other occasions that the principle of good faith must govern the relations of the State with its taxpayers, since it allows them to regain confidence in the Administration. The plaintiff is not obliged to return the sums paid in relation to the concepts of the thirteenth month and the two (2) days of wages paid in excess claimed by the National Customs Authority, for being a calculation error directly attributable to the nominating entity, due to not having taken the corresponding forecasts. Judgment of 8 March 2019. Case: Full Jurisdiction Administrative Lawsuit. Parties: AJGR vs National Customs Authority. <https://juris.procuraduria-admon.gob.pa/tag/principio-de-buena-fe/>

²⁰ Art. 13 Panama Procedural Tax Code. Approved by Law 76 of 2019. Most of its articles will enter in force in January 2024 by Law 337 of 2022.

(iii) The clarity and certainty of tax legislation

Regarding the obligations of behavior and action of the public servant, first, from the constitutional mandate contained in article 18, it is understood that public authorities can only do what the law allows them. This constitutional criterion is developed through the Administrative Career Law and other special legislation regarding the functions and obligations of public servants. However, beyond the legal precepts on the public function in our legal system we find a text that is in charge of defining the principles of behavior that must be preserved by state officials, in this case, in the tax field. This is Executive Decree 246 of 15 December 2004 through which the Uniform Code of Public Servants who work in Central Government entities, is issued.

(iv) General anti-avoidance rules

The Tax Procedural Code allows the tax authorities (DGI) to disregard legal forms, such as contracts, that are adopted solely to evade taxes or obtain tax benefits. Instead, the tax consequences of the actual actions taken will be attributed to the “simulated” acts.²¹

In such cases, the DGI is responsible for demonstrating the presence of tax law fraud and the lack of a simple and pure intention to save on taxes through the use of inappropriate legal forms.

This provision has been the subject of significant controversy in other countries due to the challenge of subjectively determining the initial or true motives for adopting a particular legal form, such as the establishment of a consortium rather than a legal entity.

2.3. Good faith in the administration of the tax system

(i) Information requests from tax authorities or taxpayers, and the binding or non-binding nature of the information obtained/requested

The Tax Administrative Tribunal serves as the final stage in the administrative process for tax matters, and taxpayers may appeal against the tax authority’s resolutions before this court. It is an independent body separate from the tax authority.

To appeal before the Tax Administrative Tribunal, taxpayers must file their appeal within fifteen (15) days of being notified by the tax authority of the resolution on the recourse for review. The judge presiding over the appeal will determine whether it meets the requirements for admissibility. This includes confirming that the appeal was filed properly and within the appropriate timeframe, that the appellant has legal standing, and that the Tribunal has jurisdiction over the matter. The decision on the appeal’s admissibility must be delivered in person to the taxpayer.

It is important to note that the TAT operates independently from the DGI, and its decisions are based on the merits of each case and in accordance with Panamanian tax

²¹ The Tax Administration must recognize the good faith of taxpayers. Good faith in tax matters means recognizing the effects that arise from legal acts or transactions or from a set or series of them, depending on the way in which they have been entered into by the taxpayers. Art. 20 Panama Procedural Tax Code. Approved by Law 76 of 2019. Most of its articles will enter in force in January 2024 by Law 337 of 2022.

laws and regulations. The TAT's objective is to ensure that taxpayers are treated fairly and that disputes are resolved in a timely and efficient manner.

Once an appeal is filed, the TAT will review the evidence and arguments presented by both parties and make a decision. The TAT's decisions are binding and final, and can only be challenged before the Supreme Court of Justice on legal grounds.

(ii) The issue and implementation of tax rulings or Advance Pricing Agreements (APAs)

There is no guidance on this subject. The Advance Pricing Agreements (APAs) are still part of a project in the process to be approved by the Panamanian authorities in the near future.

(iii) The conduct of tax audits and concluded/negotiated tax audit settlements

In Panama tax audits are carried on by the Panamanian tax authorities, specifically the DGI, to make sure that taxpayers are in compliance with their tax responsibilities. The audits may be initiated by various reasons, including random selection, specific concerns or complaints, or other information that suggests non-compliance issues.

The DGI will evaluate the taxpayer's accounting records and financial statements, and may request additional information or documentation to support the exactitude of reported revenue and expenses. In case the DGI identifies any discrepancies or inconsistencies, it may issue a tax assessment and start measures to collect the amount outstanding.

In some situations, taxpayers may choose to negotiate a payment settlement with the DGI to resolve any outstanding tax obligations. This can be done at any stage of the audit process, including before or after a tax assessment has been released. The terms of the settlement will depend on the specific circumstances of the case, including the amount of taxes owed, the taxpayer's willingness to cooperate, and any mitigating factors that may be taken into consideration. Normally, settlements will involve the payment of a negotiated amount of taxes, penalties, and interest, in exchange for the DGI's agreement to close the audit and waive any further enforcement action.

(iv) When a taxpayer or the tax authority has made a genuine error and wishes to correct it

A taxpayer has the right through its certified public accountant to amend a particular return or payment. The authority also has a department for them to correct any mistakes depending on the nature and extent of the error. In case the miscalculation is identified by the taxpayer, the taxpayer should notify the DGI and request or support with all the necessary documentation the amendment of the error. The DGI will assess the petition and determine whether the correction is justified or not.

If an involuntary mistake is identified by the DGI during a tax audit or inspection, the DGI may request the taxpayer to amend the error on a return or liquidation. The taxpayer will then have the opportunity to submit a claim or petition to the authority in case the request from DGI is not accurate.

Nevertheless, if the error was made in good faith and the taxpayer cooperates fully with the DGI, the DGI may exercise its discretion to waive or reduce penalties, if applicable. That is the case of a law firm that did not submit its income returns on time during several

years and since bad faith was not observed, the Supreme Court dismissed the fine for not submitting those tax returns, specially because the partners of the firm submitted their own personal tax returns and the court determined the defendants acted in good faith.²²

In a similar situation, a taxpayer submitted to DGI electronic versions of the Certificate of Tax Residency, and a request was rejected due to the lack of legalization with apostille. The taxpayer requested TAT to accept the Certificate of Tax Residency on those circumstances, pointing out in its appeal that DGI acted against the principle of good faith and legitimate trust by seeking to request in 2020 the apostilled tax residence certificates, when in recent years it has been accepting them without apostille or authentication.²³

(v) *Published statutory guidance*

In general terms published guidance, rulings and bulletins are not legally binding in the same way that statutes or regulations are, although they can contribute substantial value to the interpretation and application of the law.

Panama also follows the guidelines and recommendations of the OECD and other international organizations related to taxation. These guidelines are in some cases incorporated into Panamanian tax laws and regulations. Panama relies on the OECD Transfer Pricing Guidelines (OECD TPG) as a source for the interpretation of the arm's length principle.

Part Three: Good faith in international tax law

3.1. General overview

Panama is a signatory to the Vienna Convention²⁴ on the Law of Treaties of 1969, adopted by Law 17 of 31 October 1979, which states that in domestic law and in the observance of treaties, a party may not invoke provisions of domestic law to justify violations of an international treaty.

In particular, it establishes the principles and rules that apply to the formation and interpretation of treaties, including the obligation of good faith and the principle of *pacta sunt servanda* (agreements must be kept).

²² Supreme Court of Justice, Third Chamber, (21 July 1999). *Arosemena, Díaz & Molina vs. Regional Revenue Administration*.

²³ This Court must point out that the DGI acts against the principle of good faith and legitimate trust when trying to request -now in the year 2020- Apostilled Tax Residence Certificates, when in recent years it has been accepting them without apostille or authentication without any problem. For many years, and particularly during the time when the appeal for reconsideration against the initial Resolution was filed, that is, in 2016, the DGI accepted without any question the tax residence certificates issued electronically, particularly those corresponding to the Authority Spanish Tax without requiring apostilles or consular legalizations. Resolution No. TAT-API-017 of 18 October 2021. File 055/2020.

²⁴ Art. 26 Vienna Convention on the Law of Treaties of 1969, adopted by Law 17 of 31 October 1979..

This principle helps to ensure that double taxation agreements are enforced fairly and consistently, and that disputes related to their interpretation and application are resolved in a timely and effective manner.

In addition to double taxation agreements, Panama also follows the guidelines and recommendations of the OECD and other international organizations related to taxation and financial regulation. In Panama, the Double Taxation Agreements (DTAs) are generally drafted based on the 2010 OECD Model with some variations in the permanent establishment clause, royalties, service clause, among others. In addition, DTAs have clauses from the UN Model to preserve taxation at source for certain types of income, given the territorial tax system that characterizes Panama.

Panama has proactively signed bilateral treaties with 17 countries to avoid double taxation (Barbados, Czech Republic, France, Ireland, Italy, Republic of Korea, Luxembourg, Mexico, Netherlands, Portugal, Qatar, Singapore, Spain, United Arab Emirates, the UK and Vietnam). The OECD Commentaries are widely accepted as a source of interpretation and serve as a reference. However, they are not binding for Panama.

3.2. Good faith in treaty interpretation

The principle of good faith is a fundamental concept in international law and is of particular importance in the context of international tax treaties. The principle of good faith requires parties to act honestly and fairly towards each other in their interactions and dealings and is essential for the proper functioning of the international tax system.

In the context of international tax treaties, the principle of good faith requires parties to interpret and apply the provisions of the treaty in a manner that is consistent with its purposes and objectives, and in accordance with the ordinary meaning of the terms used in the treaty. It also requires parties to refrain from engaging in any conduct that would defeat the object and purpose of the treaty, and to act in a cooperative and collaborative manner to resolve any disputes that may arise.

The principle of good faith is explicitly recognized in article 26 of the Vienna Convention on the Law of Treaties, which provides that parties to a treaty must perform it in good faith. This principle has been further developed in the context of international tax treaties through the work of organizations such as the OECD, which has issued guidelines on the interpretation and application of tax treaties. Overall, the principle of good faith is a critical component of the international tax system, and helps to ensure that tax treaties are interpreted and applied in a manner that is consistent with their purposes and objectives, and that promotes international cooperation and collaboration.

Resolution No. TAT-API-014 of 23 August 2021 File: 229-17

This is a case against the Administrative Tax Court, where the plaintiff indicated that it provided the documents within its reach that could rationally support the request for accreditation of benefits established in the Agreement between the Republic of Panama and the Kingdom of the Netherlands, indicating that for reasons of force majeure, said documentation was presented in a simple copy, *acting in good faith*, so that the Tax Administration would have sufficient evidence at the time of evaluating its prior request, since at the time of the same, said documentation was not in the possession of the taxpayer,

therefore a reasonable period was needed to obtain the documentation in accordance with the provisions of the law.²⁵

In this sense, it is one of the guiding criteria of administrative actions, since actions between individuals and the Administration must be developed in accordance with the principles of objectivity and good faith. The notion of good faith as a guiding pattern for the conduct of the Administration and individuals has received and receives categorical recognition in the jurisprudence established by this Chamber, which has claimed its application when assessing the legal validity of administrative actions. Respect for these values that must guide the conduct of the administrative authorities at all times treatment, oblige them to stick their procedure to the rigorous observance of the imperatives of trust, probity, decorum and credibility, so that individuals can place their trust in that the Administration will not defraud them to their detriment either by means of sudden alteration of the conditions in which the relationship has developed, or issuing decisions that violate their own previous acts.

RESOLUTIVE PART Due to the foregoing, the TAX ADMINISTRATIVE COURT, in plenary session, in exercise of the powers conferred on it by law, resolves: FIRST: TO MODIFY the third clause of Evidence Resolution No. 201-0009 of 27 June 2017, so that it reads as follows: “ADMIT documentary evidence identified with numbers 7, 8, 11, 12 and 14”.

3.3. Potential treaty breaches of good faith

The principle of good faith has been adhered to in multiple situations and cases in our jurisprudence. It would be ideal to have a provision in the OECD Model and the UN Model that expressly requires that good faith is observed for treaty interpretation and performance. Also it is suggested that this principle be inserted in more of the domestic laws that guide the tax authority at the moment of making a decision on a particular request.

Panama legislation does not define the term “beneficial owner”. In a case to obtain benefits from the Tax Treaty between Panama and Luxembourg on dividends’ tax, the applicant had its request rejected by the Tax Authority (DGI), and made an appeal before the Administrative Tax Court (TAT). The Court, in the absence of a definition of beneficial owner, applied the Commentaries from the OECD Tax Treaty Model and therefore, by not having either the agreement nor the Panamanian tax regulations definition of beneficial owner, it was also necessary to invoke article 31 of the Vienna Convention, ratified by the Republic of Panama, through the Law 17 of 1979, from which it follows that the principle of beneficial owner must be made in “good faith in accordance with the ordinary meaning” of the terms.²⁶

The TAT took into consideration, that the applicant was the beneficial owner of the dividends received, and that it was not a conduit company. The applicant met the requirements to enjoy the tax benefits contained in article 10, numeral 2, literal a, of the

²⁵ “The Third Chamber of the Supreme Court of Justice has included the principle of good faith in countless Judgments, one of them being the Judgment of December 16, 2010, in which the following was stated: “On this point, the Chamber must refer to one of the principles that govern administrative actions: the principle of good faith. (Judgment of January 19, 2009). The principle of good faith, which represents the foundation of legal relations in all areas, also includes the protection of legitimate trust and respect for one’s own act.”

²⁶ Resolution No. TAT-RF-087 of 24 November 2017. FILE: 005-15.

Agreement signed between Panama and the Grand Duchy of Luxembourg, in accordance with article 762-ñ of the Tax Code.

Another case was the discussion whether or not to determine the applicability criteria of the benefits of the treaty between Panama and Singapore to avoid double taxation, compared to what is stipulated in the Tax Code, taking as a starting point, the proof of tax residence of the beneficiary of the remittances and in effect whether or not it proceeds to the requirement of the tax on the Income resulting from the alleged non-accreditation of fiscal residence for the application of the treaty benefit.²⁷ The tax authority (DGI) rejected the application for lack of proof in order to obtain the exemption on the 0% on the Income tax. The Administrative Tax Court on the appellant's request, reverted the decision from DGI and authorized the accreditation to qualify for the tax benefit of the Income Tax established within the Agreement between the Republic of Panama and the Republic Singapore to avoid double taxation and prevent tax evasion in matters of Income Tax, so the issuance of the liquidation would not proceed in addition of the tax not paid.

Part Four: Remedies for a breach of good faith between contracting states

4.1. General overview

For what we have seen in Panama the effectiveness of the remedies applied by the taxpayers have had good results in most cases when the Administrative Tax Court on an appeal granted a request based on good faith and in the application of the domestic legislation and the tax treaties.

Our domestic legislation on international taxation indicates that the benefits of the international double taxation treaties or agreements signed by the Republic of Panama and which have entered into force will only be applicable when it is demonstrated that the beneficiary is a tax resident of the relevant country and that the provisions of the respective treaty or agreement are complied with. To prove tax residency, certificates issued by foreign authorities will be valid, subject to official legislation and translation.

The benefits of the Double Taxation Agreements are exclusive to natural or legal persons who meet the legal requirements that are expressly detailed in the agreement itself. Most of the Double Taxation Agreements (DTAs) signed by Panama have adopted general anti-abuse clauses similar to the recommendations made by BEPS, which empower tax authorities to address cases that are considered to be abuse of the DTAs. This includes the limitation of benefits clause included in the DTAs between Panama and Mexico, the Republic of Korea, and France.

Some DTAs make specific reference to domestic legislation on anti-abuse clauses to ensure that the DTAs do not prevent their application (e.g. Israel, United Arab Emirates, Italy, the Netherlands, and Portugal). In the DTA between Panama and Spain, its Protocol contains several specific anti-abuse rules, for example (exclusion clause).

The Supreme Court of Justice has reiterated on several occasions the superiority of international law over domestic law, enshrined in the Political Constitution of Panama,

²⁷ Resolution No. TAT-RF-064 of 24 July 2018. File No. 121-2015.

which expressly states in article 4 that “the Republic of Panama complies with the norms of International Law”. This norm embodies the principle of public international law known as *pacta sunt servanda*, established in article 26 of the Vienna Convention on the Law of Treaties, of 23 May 1969. A law of the Republic of Panama that reads: “Every treaty in force is binding upon the parties and must be performed in good faith.”

Likewise, there have been pronouncements reflecting conflicts between what is agreed upon in international treaties (non-DTAs) and the rules of domestic law. The Court has pointed out the importance of article 27 of the Vienna Convention, which establishes that in domestic law and in the observance of treaties, a party may not invoke the provisions of its domestic law as justification for the breach of a treaty.

The Supreme Court of Justice has stated that international public law treaties, once ratified, must be fulfilled in good faith, based on the principle of *pacta sunt servanda*, and it is not given to the state to resort to its domestic legal order to disregard its international commitments.

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