

The role of the National Tax and Customs Directorate (DIAN) in tax crime investigations in Colombia

Santiago Vargas Niño, Colombia



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Tax offences in Colombia

Tax offences	Customs offences	Crossover offences
Omission of the withholding or collection agent (CCC, Art. 402)	Fictitious export or import (CCC, Art. 310)	Breaches of Confidentiality, Integrity and Availability of Data and Computer Systems (CCC, Title VII Bis)
Omission of assets or inclusion of non-existent liabilities (CCC, Art. 434A)	Smuggling (CCC, Art. 319) and Facilitating Smuggling (CCC, Art. 320)	Falsification of Documents (CCC, Title IX, Chapter Three)
Tax fraud or avoidance (CCC, Art. 434B)	Smuggling of Hydrocarbons (CCC, Art. 319-1) and Facilitating Smuggling of Hydrocarbons (CCC, Art. 320-1)	Offences against Public Administration (CCC, Title XV)
	Customs Fraud (CCC, Art. 321))	Conspiracy to commit a crime (CCC, Art. 340)
	Facilitation by a Public Official (CCC, Art. 322)	Procedural Fraud (CCC, Title XVI, Chapter Eight)
		Money Laundering (CCC, Art. 323)



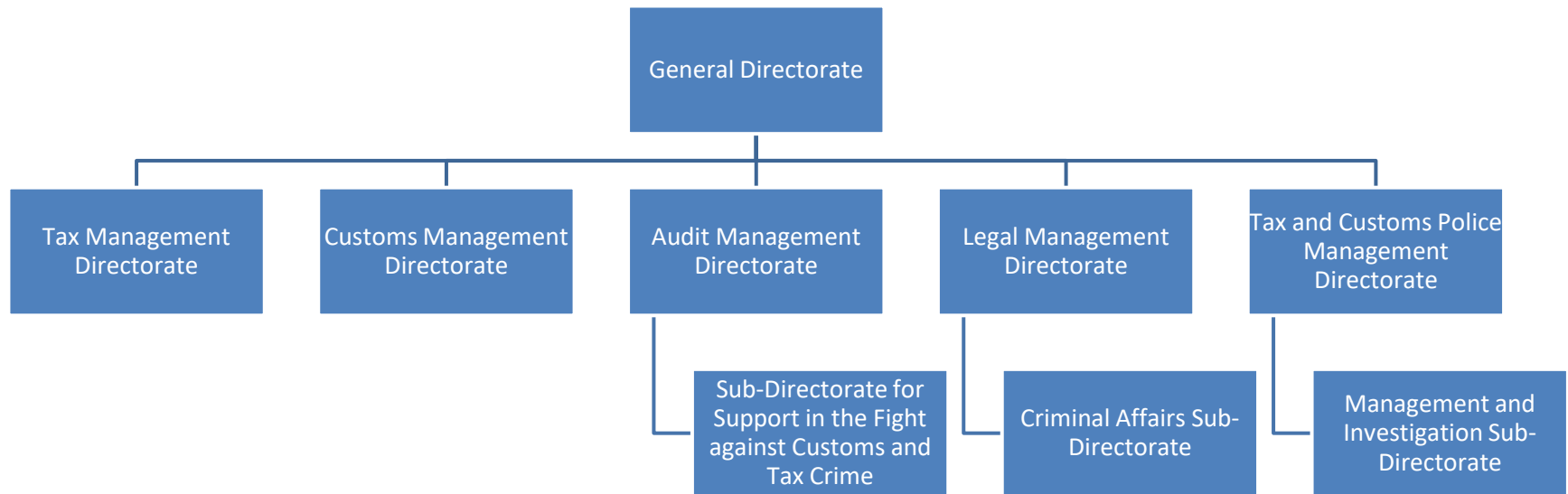
Tax Investigations

- **The National Tax and Customs Directorate (“DIAN”) of Colombia (Decree 1742 of 2020):**
 - Responsible for administering national taxes (income, stamp duty, VAT, etc.);
 - With powers to audit, liquidate, challenge and impose sanctions, among others.
 - Customs authority;
 - With powers to audit, liquidate, challenge and impose sanctions, etc. on customs taxes, as well as to seize, confiscate or declare goods abandoned, and to administer, inspect and dispose of them.
 - Exchange authority in foreign trade operations.



Tax Investigations

Main DIAN units involved in the investigation of tax offences (Decree 1742 of 2020)





Tax Investigations

DIAN's Audit Powers (Tax Statute, Art. 684)



Investigate incidences of undeclared taxable activities



Summon taxpayers and third parties to file returns



Demand the submission of documents from parties obliged to keep books and records



Order the disclosure and partial examination of books, records and documents



Tax Investigations

DIAN's Special Investigations (Decree 1742 of 2020, Art. 33)



Conduct special investigations based on:

- Actionable intelligence from DGEA: (Directorate of Strategic and Analytical Management)
- The Priorities of the Inter-institutional Committee for the Fight against Smuggling, Money Laundering and Tax Evasion
- The priorities of the Director General



Facilitate visits, exchanges and joint analysis of information with international authorities:

- Fight against smuggling
- Fight against money laundering
- Fight against tax evasion



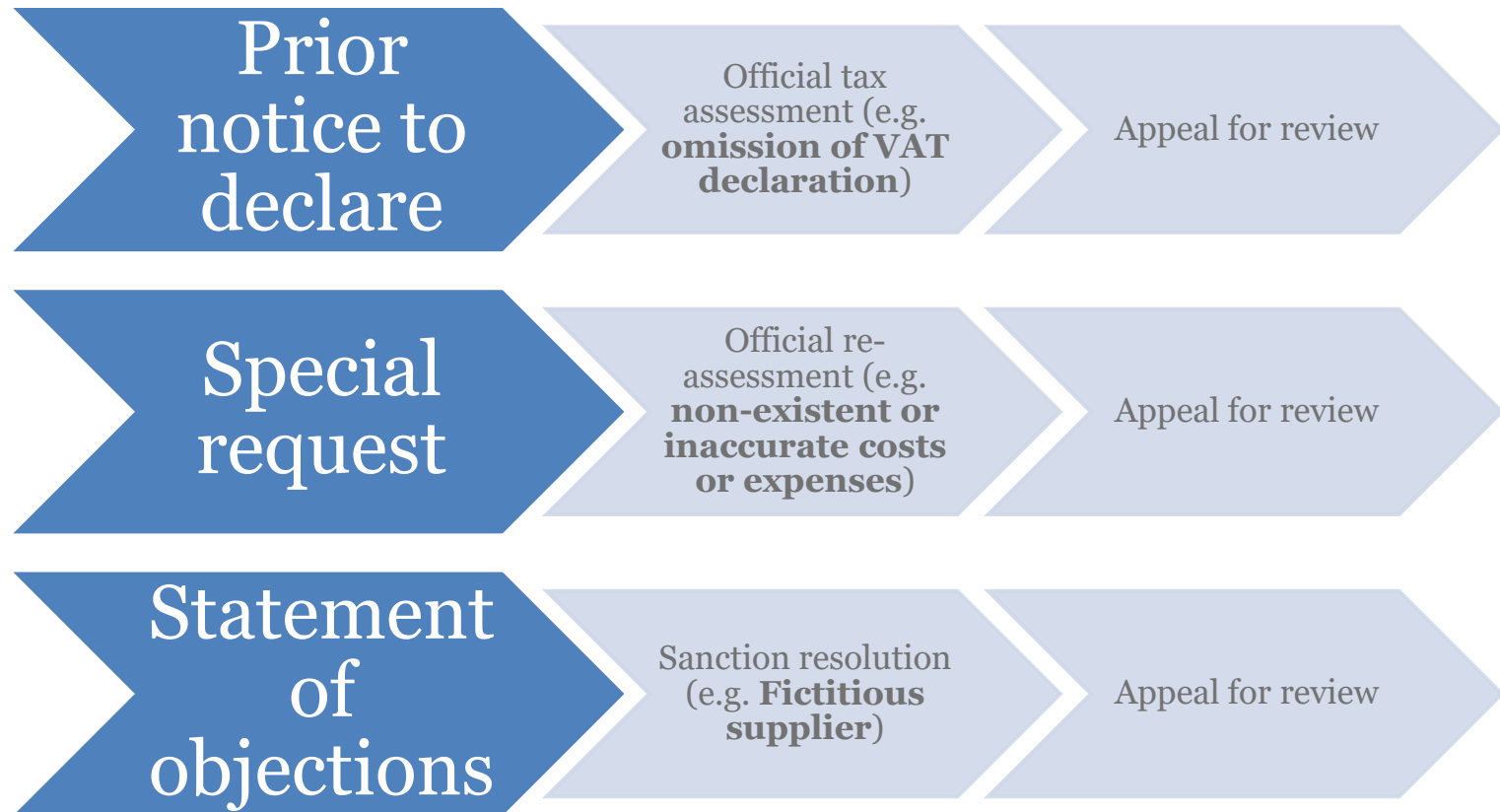
Forward information to relevant agencies:

- DIAN
- Attorney General's Office



Tax Investigations

Tax-related procedures





Tax Investigations

Customs procedure





Criminal Investigations



Identification of suspected offences during audits, special investigations or tax and customs procedures.



Information forwarded to the Criminal Affairs Sub-Directorate or those acting in its place.



Legal-criminal analysis.



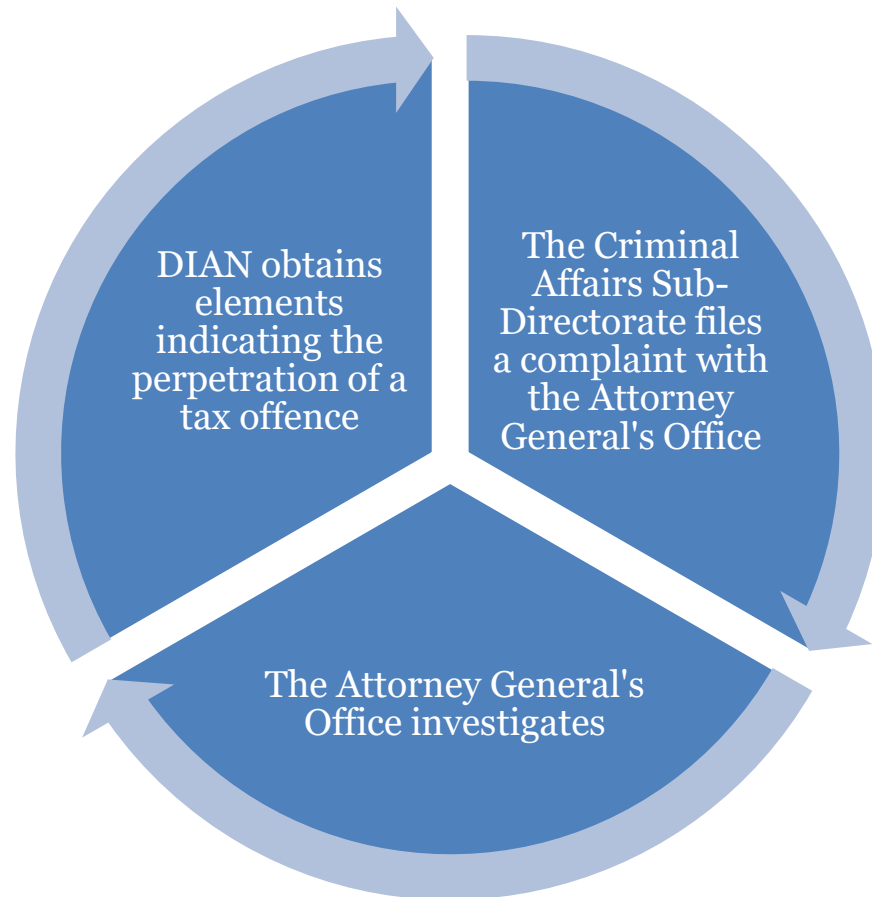
Criminal Investigations

What do the Criminal Affairs Sub-Directorate and other units analyse?

Objective criminality of the conduct	Adequacy of the information provided
“... in order to structure this first element of justification, it is enough for the investigating official to establish that the reported conduct is classified as an offence, prosecutable ex officio, without entering into the consideration of evaluative aspects.”	“It is not a question of shifting to the complainant the burden of proof regarding the material nature of the act, which evidently rests with the investigating agency, but of requiring them to comply with an elementary duty to make their statement of knowledge credible and to provide information, not evidence, that allows for the construction of an investigative hypothesis.”



Criminal Investigations





Criminal Investigations



DIAN
participates
as a victim

- **Activities requiring a preliminary judicial review**
 - Selective database searches
- **Activities that do not require a preliminary judicial review**
 - Inspections
 - Interviews and interrogations
 - Raids and searches
 - Searches of electronic media
 - Retention of correspondence
 - Interception of communications



Submission of information from DIAN to the Attorney General's Office

- **Criminal Affairs Sub-Directorate:**
 - All of the Attorney General's offices, unless assigned to other DIAN units
- **Sub-Directorate for Support in the Fight against Customs and Tax Crime:**
 - Specialised Anti-Tax Crime Directorate ('DECDF')
 - Specialised Anti-Money Laundering Directorate



Submission of information from DIAN to the Attorney General's Office

- In Colombia, tax information (Tax Statute, Arts. 583, 586 and 587) and customs investigations (Decree 920 of 2023, Art. 17) are **confidential**.
- Before providing information, DIAN must verify that the investigating officer provides:
 - a judicial police order (CCP., Arts. 200 - 204),
 - (if applicable) a pre-audit order to legally perform a selective search in databases (CCP., Art. 244),
 - The investigator's report which contains the following information:
 - Subject/s investigated,
 - Item/s being investigated (e.g. tax declarations, exogenous information, sanctions, etc.),
 - Timeliness of the request..
- The DIAN sends the information to the Attorney General's Office and the latter must certify that it has been received before a guarantees judge before it can be used in court.

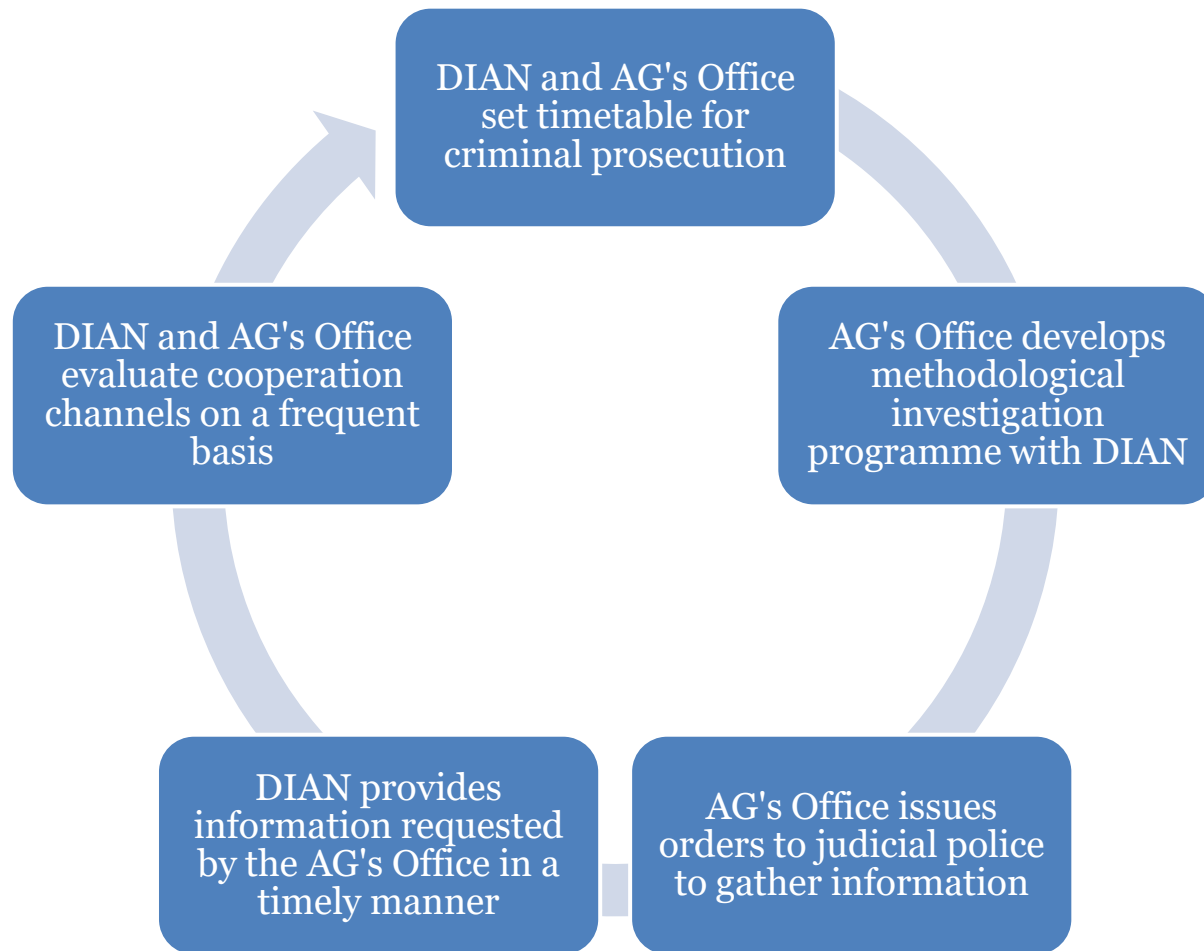


Need for Coordination

- The Tax Crime Investigation Maturity Model recommends an "integrated way of functioning as “whole of government”, with enhanced model of collaborative arrangement, having recourse to extended investigative capability." (OECD, 2020)



Need for Coordination





Case Study

- **The “La Patrona” case:**

- DIAN identified nearly 2,500 taxpayers submitting fictitious costs in their tax returns,
- DIAN detected a network of suppliers of fictitious costs associated with ‘La Patrona’,
- DIAN reported the activity to the Attorney General's Office,
- The Attorney General's Office conducted an investigation focused on the professional providers of fictitious costs, their intermediaries and the taxpayers' auditors who approved fraudulent returns,
- At least three (3) convictions were obtained for these activities,
- DIAN has been able to seek full compensation for losses estimated at more than EUR 200 million.

Thank you!