

Tax Controversy

Contributing editor
Richard Jeens



2019

GETTING THE
DEAL THROUGH

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Contributing editor
Richard Jeens
Slaughter and May

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CONTENTS

| | | | |
|---|-----------|---|------------|
| Global overview | 5 | Malta | 56 |
| Richard Jeens Slaughter and May | | Donald Vella and Kirsten Cassar Camilleri Preziosi | |
| Austria | 7 | Mexico | 61 |
| Gerald Schachner and Walter Loukota bpv Hügel Rechtsanwälte GmbH | | Christian Solís Martínez and Jorge Arturo Rodríguez Ruiz SMPS Legal | |
| Belgium | 12 | Nigeria | 68 |
| Thierry Afschrift and Pascale Hautfenne Afschrift Law Firm | | Muhammad Dele Belgore (SAN) and Lateef Omoyemi Akangbe Sofunde, Osakwe, Ogundipe & Belgore | |
| Brazil | 17 | Norway | 73 |
| Ana Paula Schincariol Lui Barreto, Gabriela Silva de Lemos, Marcel Alcades Theodoro and Alessandra Gomensoro Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados | | Ola Mæle, Sindre Kleive and Anne Kristin Meyer KPMG Law Advokatfirma AS | |
| France | 22 | Panama | 79 |
| Anne Robert and Victoire de Ménonville Bredin Prat | | Ramón Anzola, Maricarmen Plata and Mariana Castillo Anzola Robles & Asociados | |
| Greece | 28 | Portugal | 85 |
| Sophia K Grigoriadou and John M Papadakis Dryllerakis and Associates | | Diogo Ortigão Ramos, Pedro Vidal Matos, Fernando Lança Martins and Iara Marques Freitas Cuatrecasas | |
| Ireland | 33 | Switzerland | 90 |
| Joe Duffy, Greg Lockhart and Kathryn Stapleton Matheson | | Ruth Bloch-Riemer Bär & Karrer Ltd | |
| Italy | 39 | Ukraine | 96 |
| Massimo Antonini, Raul-Angelo Papotti and Paolo Piantavigna Chiomenti | | Anna Pogrebna and Andriy Sydorenko CMS Reich-Rohrwig Hainz | |
| Japan | 45 | United Kingdom | 103 |
| Eiichiro Nakatani and Kei Takada Anderson Mōri & Tomotsune | | Dominic Robertson, Richard Jeens and Charles Osborne Slaughter and May | |
| Korea | 51 | United States | 109 |
| Byung-Moon Jung, Ji Soo Lee, Sim Seo and Woo Hyun Baik Kim & Chang | | J Walker Johnson, Robert J Kovacev and Carina C Federico Steptoe & Johnson LLP | |

Preface

Tax Controversy 2019

Sixth edition

Getting the Deal Through is delighted to publish the sixth edition of *Tax Controversy*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Belgium, Korea and Malta.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Richard Jeens of Slaughter and May, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
August 2018

Global overview

Richard Jeens

Slaughter and May

Stepping out of the tax controversies bubble, it is clear that the world remains an uncertain and challenging place. Innovation and digitalisation drives many businesses, albeit often with fear and distrust of what this may mean for different groups and whether the world (or any particular country) will be a better or fairer place as a result. Likewise, trade disputes, economic protectionism and Brexit have kept more 'normal' tax stories (or offshore leaks) off the front pages.

For many organisations and tax professionals, therefore, it is these challenges (and US tax reform) that have and will receive most attention. However, our experience and the contributions in the chapters that follow suggest that not only will the attention paid to these issues mean that challenges with resolving tax controversies as quickly and cost-effectively as possible remain unaddressed but also that these challenges will themselves lead to great tax-related controversy, not least as businesses adapt and restructure to survive in a changing world. Four main themes stand out. These are:

Lack of certainty

One of the most common issues we have seen raised by businesses is the lack of certainty in the tax landscape. In many respects, this lack of certainty is more important than the headline rate of tax in determining whether a jurisdiction is attractive for investment.

One aspect of this is the sense of tax authorities revisiting past arrangements or transactions with tools (or rules) not in place (or even considered) when the relevant arrangements or transactions were implemented. This can give a real sense of the goal posts having been moved unfairly. For instance, there are challenges in Australia and other jurisdictions relating to the proper characterisation for tax purposes of long-held fund structures and other indirect ownership rules; there are extensive challenges to a range of financing arrangements in France once thought to be perfectly 'normal'; and the European Commission continues its investigations into both whole tax regimes (eg, the UK's CFC rules on financing companies) and individual companies or rulings. In each case, even if proper records and 'defence' material has been preserved, it is often difficult (and expensive) for taxpayers to see off tax authorities armed with new legislative tools or increased political clout.

Clearly for individuals (as taxpayers and/or as employees or directors of legal entities), there are other factors at play in the decision about where to live. However, the ongoing instability (and at times aggressive approach taken by tax authorities) in many jurisdictions has the very real potential to drive out businesses or deter investment – just at a time when broader economic challenges should make countries keener than ever to attract and retain such investment.

Digitalisation and transparency

A second key theme that we have seen – and again one reflective of broader changes to the way we live and work – is increased focus on digitalisation and demands for transparency. In many respects, that's entirely understandable; businesses the world over are making more (and more sophisticated) use of data, and it's no surprise that tax authorities should want access to that data. One example of this in practice has been the detailed use of international arrival and departure data in transfer pricing, residency or permanent establishment cases.

Individuals have perhaps been used to 'counting days' for domicile or residence for some time but this sort of data mining makes

the evidential analysis or witness questioning in corporate tax investigations and disputes much more granular (and places a burden on taxpayers who may not have detailed historic calendar data). Similar examples come from Canada, where data analytics are being used to target perceived 'higher risk' businesses, or Italy, with its trial of digital returns.

This focus on data and its use to shine a light on taxpayers' affairs (and perceived abnormalities therein) is only likely to increase as the country-by-country reporting (CBCR) proposals become reality. With some regional variations or implementations, these often stem from Action 13 of the base erosion and profit shifting (BEPS) project. That action focused on multinationals with turnovers of more than €750 million but many predict its extension to other taxpayers if tax authorities see this as a useful source of data in guiding their priorities. Likewise, the pressure from NGOs or politicians focused on taxpayers making a 'fair' contribution is likely to lead to greater sharing of this sort of data (alongside information on tax rulings).

While digital information exchange and transparency seems here to stay, one practical aspect of this that many taxpayers will be familiar with is the significant expectations tax authorities frequently have about the level of information that taxpayers can 'just produce' in any investigation or dispute. Whether it is large-scale information requests, email reviews for extended periods or (repeated) interviews of key witnesses or business stakeholders, the burden on taxpayers to 'prove' their case has rarely seemed higher. At times, of course, that forensic review can be justified – for instance, if there is a real question about taxpayer motive. Too often, however, as chapter contributors note, information is sought that is at best tangentially relevant to the dispute or in such a large volume as to overwhelm the tax authority's realistic ability to review and use. While it is entirely understandable that tax authority governance processes require evidence to support conclusions, there seems to be a tendency towards an ever-upward ratchet of information requests (and cost) for taxpayers.

Internationalisation of disputes

Another theme that emerges from the contributions this year is the increasing internationalisation of tax disputes. In part, we see that as a by-product of the information exchange and transparency noted above and in previous years; tax authorities around the world are better informed about where taxpayers (and potential taxpayers) are generating profits and so look to assert their taxing rights. That in turn leads to a greater number of claims under the relevant treaty 'MAP' provisions. As shown by the growing backlog of such claims, these provisions all too frequently fail to deliver the certainty taxpayers want and need. However, the proposed 'baseball' arbitration built in to the OECD multilateral instrument is not free from criticism. To work in practice for taxpayers, much greater access to the information provided (and tax outcome sought) will be needed than has historically been the case for MAP.

Another aspect of this international theme is the need for taxpayers to take a more holistic and sophisticated approach to resolving disputes with cross-border aspects. From a legislative perspective, many more jurisdictions have introduced targeted (as well as general) anti-avoidance or purpose/motive rules. Likewise, there is increasing commonality in terms of the application of transfer pricing rules around the world. Practically, that means the days of saying transaction X was fine

in jurisdiction Y because the tax advantage or saving was in jurisdiction Z are over. And the attack on 'double non-taxation' in the BEPS project has been taken up in many jurisdictions as a way to challenge untaxed income or claims for credit or deductions, notably in the approach to financing transactions in France.

This international awareness and convergence in issues arising in tax disputes is likely to continue with CBCR – for example, as countries look at the results and ask why they are not receiving as much of the 'arm's length provision' as another country – and as the tools deployed by tax authorities, such as document and email requests or witness interviews, become more standard. Taxpayers will need sophisticated investigation and dispute management skills as well as technical expertise to manage these challenges.

Raised expectations

Notwithstanding the (at times attention-grabbing) broader political and economic backdrop, another theme emerging from this year's review is that public and political expectations remain high. That's something that tax authorities no doubt feel acutely – see for instance the testing that UK tax authorities face in the annual audit – and translates into a tougher approach for taxpayers. As has been the case for some time, that's a natural by-product of the public and political pressure that all taxpayers pay their 'fair share' and are seen to contribute. It takes very few examples of 'avoidance' or even unexplained or misunderstood gaps between 'profits' and tax paid to rekindle this public hostility – and no amount of factual reporting of the total tax paid by corporations or high-net-worth individuals seems to overcome this.

This does lead to something of a dissonance between the day-to-day experience of tax directors or advisers and the wider public or political perception. For instance, in the UK, the Treasury Select Committee in the House of Commons has begun a review of how tax disputes are managed in the UK. The questions suggest that they anticipated a continuation of previous reviews in identifying 'sweetheart' deals between big business and the tax authority. The answers, all publicly available, suggest the opposite is now true; tax disputes are much more like mainstream regulatory investigations or disputes, albeit too often without the usual commercial sensibilities or cost concerns. Hopefully the UK review – and its equivalents in other jurisdictions, such as Portugal – will recognise this and make constructive proposals.

A mixed future

For many, this paints a depressing picture. And the way in which many advisers and in-house tax professionals now need to track their advice on tax-related matters so as to be able to comply with the 'implemented but not in force' rules on intermediaries is a microcosm of the challenges faced.

However, it is important not to lose sight of the positives: greater information exchange could lead to a more level playing field for taxpayers operating across multiple jurisdictions and the growing number of countries signing up to the new multilateral instrument suggests that there remains momentum towards a more joined-up approach to international tax controversies. Nonetheless, the situation remains that tax controversies require, and look to continue to require, not only technical tax input but also detailed dispute resolution expertise, often combined with strategic communications advice.

Austria

Gerald Schachner and Walter Loukota

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The Austrian tax authorities must apply Austrian statutory tax law (including EU directives that have been transposed into national law) as well as constitutional law and directly applicable EU law. Bilateral double taxation conventions are transposed to national tax law by parliament and are as such directly applicable.

Ministry of Finance regulations serve to substantiate the law, and within the boundaries provided by the law are also binding for all taxpayers and the courts.

In contrast, guidelines or ordinances issued by the Ministry of Finance are binding only for the tax authorities themselves, and not for the taxpayer or the courts. Such guidelines provide explanations and interpretations of Austrian tax law and are intended to harmonise interpretations of the tax law. If a taxpayer relies on these guidelines or ordinances, he or she can expect protection of his or her good faith under certain conditions.

Case law of the European Court of Justice and the domestic courts is also important.

2 What is the relevant tax authority and how is it organised?

Austrian tax administration is divided among the federal government, nine provinces and the municipalities. Most taxes (such as income tax, corporate income tax and VAT) are federal taxes. The individual provinces and municipalities have implemented local taxes, which, however, play only a minor role.

The Austrian Ministry of Finance is the head of the federal tax administration and is superior to the local federal tax offices. Assessment of federal taxes is performed by the local tax offices. Local taxes are assessed by the local administration.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

Usually, tax returns are subject to a plausibility check before a tax assessment is made.

Normally, a review is only undertaken if certain aspects of the tax return are unclear to the tax office. It is also possible that a certain number of tax returns are randomly chosen for a comprehensive review.

The duration of a review depends on the workload of the tax office, the complexity of the tax return and the taxpayer's responses to questions. A review might take up to several months.

If the review takes place as part of a tax audit, specific rules apply.

If payment of taxes is not made on time, a late payment fine arises that amounts to 2 per cent of the total due. After three months, a further 1 per cent, and after another three months another 1 per cent, is charged.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

A resident taxpayer must file an income tax return if his or her annual income exceeds €10,000 (or €730 in addition to received employment income). A non-resident taxpayer must file a tax return if his or her annual income taxable in Austria exceeds €2,000.

In case of business income, the taxpayer's accounts serve as the basis for income taxation. Under commercial law, individuals or partnerships are obliged to prepare financial statements if their annual gross turnover exceeds €700,000. The financial statements are then the basis for the determination of taxable profits (after correction for deviating provisions in tax law, known as 'book-to-tax adjustments'). Austrian corporations must always prepare financial statements and file an annual corporate income tax return.

With regard to partnerships, the partnership must file a tax return to determine its taxable income, and the partners must file their annual tax returns, in which they have to include their share of the partnership's income (the partnership is transparent for tax purposes).

There are numerous other filing obligations; for example, for real estate transfer tax, for stamp duty and for entrepreneurs, there is an obligation to file monthly or quarterly as well as annual VAT tax returns. Notifications of certain donations have to be filed. Donations to Austrian private foundations are mostly subject to trust-entrance duty of 2.5 per cent (25 per cent in the case of non-Austrian trusts and foundations under certain circumstances).

Normally, the assessment is made by the tax office. Additionally, in case of electronic filing of the tax return, a review can take place after the assessment in an ex-post control decree within a year to adjust the result without further reasons.

Further, after the decree has become final and binding from the side of the tax office, tax audits may be performed (see also question 8). The frequency of tax audits depends on the business size. Large businesses are audited on a permanent basis.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

Tax authorities can request all kinds of information. The most intensive form of review will be a tax audit.

The voluntary system of 'horizontal monitoring', which will enter into force on 1 January 2019 for large enterprises, will involve an additional obligation of cooperation with the tax office on an ongoing basis for enterprises which have opted to participate (see question 9).

In a tax audit, taking place every few years, the taxpayer has the obligation to cooperate with the tax authority. In particular, the taxpayer must clarify his or her standpoint, prove the content of their declarations and supply to the tax authorities all the information that is needed to ascertain the facts alleged that are relevant for taxation. This includes business books, accounts and records, financial information and copies of invoices or transaction documents and the information necessary to understand the records.

The tax authority can also interview third parties, including the taxpayer's employees.

6 What actions may the agencies take if the taxpayer does not provide the required information?

During a review or a tax audit, an unjustified refusal to answer an information or document request from the tax authority constitutes a violation of the taxpayer's obligation to cooperate with the tax authority. In such cases, the tax authority has a right to assess the tax based on its justified estimation, applying certain rules as laid down in law and in interpretation by the courts. This assessment cannot be appealed unless the estimation has been wrongfully made.

There is no possibility of conducting compulsory measures (eg, house search or seizures) in the ordinary fiscal audit procedure. By contrast, in a criminal tax audit, the tax authorities may investigate documents on the premises or in the home of the taxpayer and seize what is relevant for the case, unless these are excluded from seizure (eg, because of attorney-client privilege).

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

Business secrets are protected in Austria, but not with regard to the tax authorities. The tax offices are bound to confidentiality, with the threat of a fine or up to three years' imprisonment. However, if a criminal tax procedure has been started, the authority may be obliged to inform other authorities or criminal prosecutors.

In the fiscal criminal law procedure, attorneys and legal professionals enjoy attorney-client privilege. Hence, they can lawfully refuse to provide information to the tax authority that was obtained by them in their capacity as the representative of the client (such documents may also not be seized even if they are found during a seizure at the taxpayer's premises). If faced with such refusal by the representative, the documents must be sealed and may only be accessed if a court authorises it.

8 What limitation period applies to the review of tax returns?

The results of a tax audit may be assessed until the statute of limitation. In general, the statute of limitation is five years, but it is 10 years in the case of deliberate tax evasion. The period starts with the elapse of the year for which the assessment was filed, which means that the statute of limitation is de facto extended to six years.

If the tax authority performs an official measure, the period is extended for another year. However, after a period of 10 years, the statute of limitation for the assessment expires in any case.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

No ADR procedures are available. It is always possible for the taxpayer to contact the competent tax office and ask for informal answers to tax questions or informal tax rulings.

Binding rulings can be requested from the tax office concerning group taxation, transfer prices or tax-neutral reorganisations and, as of 1 January 2019, additionally concerning other areas of international tax law and questions of the general anti-abuse provision. Regarding VAT issues, this comes into force on 1 January 2020.

The tax office should decide within a period of two months. A fee to the government becomes due for a positive ruling, which can range from €1,500 to € 20,000, depending on the size of the turnover of the applicant. In the case of a negative ruling, the taxpayer may submit an appeal to the Federal Finance Court.

Additionally, mutual agreement procedures according to double tax conventions should be noted.

Finally, it should be mentioned in relation to settlement options that a bill for the tax amendments 2018 has recently passed the first chamber of parliament, which provides for a regime of 'horizontal monitoring', probably entering into force on 1 January 2019. This regime will be available for enterprises with an annual turnover of more than €40 million, as well as generally for banking institutions and insurance companies.

If an enterprise opts for the 'horizontal monitoring', it will not be subject to tax audits, but is reviewed by inspectors of the tax authority on an ongoing basis. There are certain further conditions for the participation in the system – in particular that the previous tax behaviour of the applicant met some standards of compliance (eg, no criminal tax evasion occurred in the past). There is no experience with this system in

Austria (apart from the experiences gained from a trial horizontal monitoring project, which was in place from 2011).

10 How may the tax authority collect overdue tax payments following a tax review?

Enforcement by the tax authorities is possible as soon as a title for execution is given, which is an excerpt of the arrears on the taxpayer's tax account. The tax office may itself perform execution on assets (except immovable assets), receivables and other property rights. Movables belonging to the debtor may be seized and sold at auction. Monetary claims are executed by preventing the debtor from making any payments to his or her creditors. For the execution of immovable assets, the tax office requires court assistance.

11 In what circumstances may the tax authority impose penalties?

If a tax return is not filed on time, the tax office can impose a late filing penalty. If a tax amount is not paid when due, the tax office can assess a late payment penalty. Additionally, the tax office may impose fines to enforce certain actions of taxpayers (eg, to file a tax return).

12 How are penalties calculated?

The amount of the late filing penalty is at the discretion of the tax authority, but must not exceed 10 per cent of the assessed tax. The late payment penalty is always 2 per cent of the amount of tax due. However, it is increased by an additional 1 per cent three months after the initial imposition of the late payment penalty and another 1 per cent after a further three months have elapsed. After the second increase (to 4 per cent), no further increase takes place. The maximum fine is €5,000.

13 What defences are available if penalties are imposed?

Both the late filing penalty and the late payment penalty are administrative acts against which an appeal is possible. If, however, the underlying tax is appealed against, then no separate appeal is necessary against the late payment penalty.

14 In what circumstances may the tax authority collect interest and how is it calculated?

If an income tax or corporate income tax assessment leads to an additional tax payment, interest accrues to the advantage of the tax authorities. If, on the other hand, the tax assessment leads to a refund, interest accrues to the advantage of the taxpayer. This primarily plays a role in case of tax audits, where the interest accrual begins on 1 October of the year following the assessed year and ends after 48 months (ie, interest accrues for a maximum period of two years). The interest rate is 2 per cent above the base interest rate (which is published by the authorities).

If the taxpayer applies for a full or partial deferral of due tax payments (outside of an appeal procedure; see also question 27), the interest rate is 4.5 per cent above the base interest rate.

With regard to a request for suspension in the course of an appeal, see question 27.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

The taxpayer must notify the tax office and disclose to the tax office truthfully all information relevant for matters of his or her taxation. If a deliberate breach of this obligation leads to a reduction in taxes, criminal tax evasion occurs, for example, in case of deliberately wrong tax returns.

Criminal tax evasion is punishable with a fine of up to twice the reduced tax amount or up to two years' imprisonment. In case of qualified forms of tax evasion (eg, use of falsified documents or fictitious structures), up to 10 years' imprisonment is possible. In other cases, the punishment is up to five years (eg, in the case of commercial tax evasion, which occurs if the taxpayer has intentionally evaded taxes in a criminal manner for several (ie, more than two) years; or for tax evasion as a gang). If the tax evasion is committed with gross negligence, it is considered a tax offence that can be punished with a monetary fine up to the amount of the evaded tax.

The Financial Crime Act applies to individuals and – according to the Association Responsibilities Act – to legal entities if a decision maker or an employee commits the act for the benefit of the legal entity

and duties that affect the legal entity are violated; in the case of ordinary employees only, if the decision makers have violated duties of supervision. This means that the legal entities are also subject to large fines.

16 What is the recent enforcement record of the authorities?

There is no information available.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

In general, the tax authorities are entitled to involve third parties in order to investigate the facts and circumstances related to a taxpayer's returns. However, the Austrian statutes impose obligations of secrecy (eg, bank secrecy or professional secrecy) in which cases, the disclosure of such information is prohibited by law. Banking secrecy may be lifted by court order in a tax investigation. It must be noted that even illegally obtained information is admissible in administrative tax proceedings as long as it is suitable for determining the relevant facts or circumstances.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

In general, Austrian domestic authorities are obliged to cooperate with each other. That also includes a full exchange of information between Austrian tax and other domestic authorities as far as the disclosure of information is not prohibited by law.

In addition, Austria has committed itself to the International Standards for Transparency and Exchange of Information for Tax Purposes, which overrule even the domestic bank secrecy. All recently signed or revised double taxation conventions ensure an exchange of information to the most extensive degree possible, as stipulated by Article 26 OECD MTC. In addition, Austria has signed the multilateral convention that also enables mutual administrative assistance in tax matters. In relation to information exchange instruments between member states of the EU, the EU Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and the EU Directive 2010/24/EU regarding the assistance in the collection of taxes apply. With respect to US citizens, the exchange of information mechanism of the Foreign Account Tax Compliance Act applies.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

The Austrian income tax legislation provides for tax relief in the event of debt waivers in the course of insolvency proceedings. For companies, the offset of losses, contrary to the general rule, is not limited to 75 per cent of the profits. In the VAT system, the recipient of services can apply for an input tax refund even if VAT payments were not paid by the contracting party due to insolvency.

Taxpayers may apply for a full or partial deferral of due taxes. Upon application, the tax authorities are obliged to abstain from collecting due tax claims if their collection would be unreasonable. Moreover, if the collectability of due taxes is not possible due to the financial situation of the taxpayer and it can be reasonably assumed that the financial situation of the taxpayer will improve in the near future, the tax authorities may grant a temporary suspension of payments.

20 Are there any voluntary disclosure or amnesty programmes?

The Austrian Fiscal Act provides for the possibility of voluntary disclosure in order to avoid criminal prosecution arising from fiscal crimes. The taxpayer must voluntarily reveal all facts and circumstances related to the fiscal crime committed before the offence has been fully or partially detected by the Austrian authorities, and pay the amount of tax evaded within one month after the submission of the voluntary disclosure, or at least apply for payment reliefs within this month. If a voluntary disclosure is made at the beginning of a tax audit, a surcharge of 20 per cent of the tax evaded must be paid. Only the persons included in the voluntary disclosure will benefit from the voluntary disclosure.

Moreover, as of 1 January 2019, a system of 'horizontal monitoring' will be applicable for large enterprises (ie, banks, insurances and other enterprises with an annual turnover of more than €40 million) upon

their request (see question 9). Enterprises opting for this system will have to provide tax inspectors with requested documents on an ongoing basis as well as spontaneously address issues that are relevant for the taxation of the current business or business transactions.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

One of the fundamental principles of the Austrian tax assessment procedure is that the Austrian tax authorities must review all the facts that are also in favour of the taxpayer and, if necessary, collect additional evidence on their own. In addition, the Austrian Federal Fiscal Code grants several rights for taxpayers following the principles anchored in the Austrian Constitution (such as the principles of legality, judicial protection, efficiency rule, protection for bona fide, requirement of objectivity, unlawfulness of arbitrary rule, fair trial and principle of equal treatment, etc). The most important are the rights:

- to be heard and to have a fair trial before a decision is issued;
- to inspect the records of the tax authorities;
- to receive legal guidance if the taxpayer is not represented by a professional;
- to appeal before an independent judicial system;
- to file a request for restitution in integrum; and
- to reopen a tax assessment.

Finally, the tax authorities must comply with tax secrecy.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

The taxpayer is entitled to full disclosure of his or her tax file by the tax authorities upon request. The taxpayer may inspect any assessment file and any files relating to a tax audit as well. Should the access be denied, no remedy is available against such denial. In such case, the taxpayer may include in the appeal that the procedural right to get disclosure was violated.

In addition, the taxpayer is entitled to ask the tax authorities for any legal information in tax matters. The tax authorities are obliged to provide assistance to the taxpayer if he or she is not represented by a professional.

23 Is the tax authority subject to non-judicial oversight?

Tax offices are subject to oversight by the Austrian Ministry of Finance. Directives issued by the Ministry of Finance must be followed by the tax offices. The Ministry of Finance does not usually direct the tax office or the tax audit team. The tax courts are independent.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

Appeals lodged against decrees of the tax office fall under the competence of the tax courts. There are two kinds of tax courts, competent for different taxes. An Administrative Court in one of the nine federal states is competent in the case of municipal or state taxes, while the Federal Finance Court is competent when federal taxes are concerned, which include such taxes as income tax, corporate income tax and value added tax. An appeal against the tax court's decision can be brought before the Supreme Administrative Court in case of legal issues of fundamental importance or, if it is claimed that constitutional rights were violated, before the Constitutional Court. There is, however, no appeal on the facts of the case. The Supreme Administrative Court will not perform any factual investigations, nor will it review the facts and circumstances provided by the Federal Finance Court. No new facts will be considered in front of the Supreme Administrative Court.

The tax office and the Federal Finance Court are also competent in the field of fiscal criminal law, whereby the courts are generally competent if the amount in question exceeds €100,000 and the violation of the fiscal criminal law was committed with intent.

25 How can tax disputes be brought before the courts?

If a decree of the tax offices infringes taxpayer's rights, an appeal can be filed by the person addressed in the decree. This is usually the case after the tax office issues new decrees after the completion of a tax audit. An appeal against a tax office's decree must be filed in writing or declared

for record within one month from service and is addressed to the competent tax office, not the tax court. This one-month period may, upon the application of the taxpayer for 'good reason', be (also repeatedly) prolonged by the tax office. The tax office may issue a preliminary decision if the taxpayer has not requested that it may refrain from doing so or if only the illegality or unconstitutionality of legal provisions or the illegality of state contracts is claimed. The appeal must name the parties, the matter of the claim, the appeal decision and the arguments of the taxpayer; it is further recommended to provide evidence. There is no value threshold for an appeal. The taxpayer may seek the revision or annulment of the decree. The tax courts may, however, change the decree in any way also to the detriment of the appellant.

Furthermore, the taxpayer may file for suspension or deferral of payment (see question 27) and ask for payment facilities for the case that the tax claim is deemed to be valid.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Different tax claims may only be brought together by the tax authorities for litigation if the underlying tax assessment is contested by several taxpayers respectively or if several appeals are filed against the same tax assessment.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

An appeal against a tax office's decree or assessment does not have the effect of suspending the execution based on a disputed tax assessment. The disputed amount hence must be paid, even if an appeal is filed.

However, the taxpayer may ask for a deferral of payment before an appeal might be levied, if the immediate full payment of the tax would result in considerable hardship for the taxpayer and if the collectability of the tax is not jeopardised by the deferral. Interest on the deferred payment amounts to 4 per cent over the base interest rate (currently 3.38 per cent) if the amount exceeds €750.

Alternatively, together with the filing of the appeal, the taxpayer may apply for suspension in whole or in part. A suspension must be granted by the tax authorities if the appeal does not, from a reasonable perspective, appear to be almost certainly unsuccessful; and if the taxpayer's conduct does not indicate a danger in respect of the collection of the tax claim.

If the appeal is finally unsuccessful, interest is chargeable by the tax authorities for the period during which the payment of the tax was suspended (currently 1.38 per cent). If the taxpayer decides to pay and consequently the appeal is successful, the taxpayer may in turn also claim interest in respect of the amount paid. The interest rate is 2 per cent over the base interest rate of 1.38 per cent (see question 14).

28 To what extent can the costs of a dispute be recovered?

An appeal against a tax decree does not bear any costs itself. The costs of the tax dispute which occur due to representation by a professional representative, for example, cannot be recovered.

Successful proceedings against a tax court's judgment, however, warrant a claim for a partial refund in the form of a lump-sum payment amounting to €1,106.40 plus a refund of the court fees paid (which currently amount to €240 in the case of both the Supreme Administrative Court and the Constitutional Court).

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

In general, no such restrictions apply in Austria. Capital maintenance rules, however, prevent affiliated companies from financing the tax litigation of any parent company, sister company or other company that is not a direct or indirect subsidiary or otherwise non-subordinated company within a group of companies.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

Generally the tax court's decision is made by a single judge unless the taxpayer (or the judge in specific cases) has requested that the decision should be made by a 'senate', which is a body comprising a judge and two lay judges.

There are no jury trials in Austria in the case of tax proceedings.

When a tax court acts in fiscal criminal matters (see question 24), the senate comprises two judges and two lay judges.

Decisions of the Supreme Administrative Court (see question 38) are made by a panel of five judges. In matters of financial criminal law and in certain procedural matters, a panel of three judges decides. The Constitutional Court regularly decides as a senate of six, whereby the president of the court does not cast a vote. The Constitutional Court may, however, also decide as a larger senate or in a plenary sitting.

31 What are the usual time frames for tax trials?

After the appeal is filed, the tax office, if it was not requested that it may refrain from doing so (see question 25), must make its decision within a period of six months. If the decision is not made within six months, the taxpayer is entitled to file a complaint against the tax office's inactivity with the competent tax court. If such a complaint is levied, the tax office still has three months to make its decision.

The same time frames also apply to the tax courts, whereby complaints against the tax court's inactivity are filed with the Supreme Administrative Court.

In practice, it usually takes courts more time to come to their decisions than envisaged by the statute. A tax trial may take between six and 30 months approximately, depending on the court and the subject matter of the case.

An appeal before the Supreme Administrative Court may even take from nine to 36 months, whereas the Constitutional Court is usually quicker to decide on the claims levied that fall within its scope of competency.

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32 What are the requirements concerning disclosure or a duty to present information for trial?

Like the tax authorities, the tax courts must investigate in principle ex officio and may take evidence as well. However, it is in the interest of the taxpayer to clearly present his or her position in the appeal and provide substantiated evidence. The files of the tax authorities will be made available to the court in the course of the preparation. The taxpayer should also dispute the facts and legal arguments brought forward by the tax authorities.

In preparation for a hearing, the judge may conduct informal discussions with the taxpayer and the tax authorities in order to clarify and discuss the facts and merits of the case. Within such discussions, the parties and the judge may also discuss a settlement.

33 What evidence is permitted in a tax trial?

In a tax trial, anything may be considered as evidence that is appropriate according to the situation of the particular case. The most used types of evidence are documentary evidence and the testimony of witnesses, but site visits and expert witnesses are permitted as well. The taxpayer's testimony is generally considered by the court to be of great importance, although he or she is not formally regarded as a witness.

Oral translation assistance is not provided automatically for people who do not understand the language of the proceedings (which is German), but must be organised independently. Only deaf or hearing-impaired people receive mandatory assistance.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Taxpayers may represent themselves before a tax court, or they may be represented by a professional representative such as an attorney at law, a (registered) tax adviser or a certified public accountant.

During the proceedings in front of the Supreme Administrative Court, representation by an attorney, a (registered) tax adviser or a certified public accountant is mandatory, and publicly funded legal aid is available if legal representation cannot otherwise be afforded.

The tax authority is represented by specially qualified public officials.

35 Are tax trial proceedings public?

Tax court hearings are held publicly. If neither the taxpayer, in the complaint or in the appeal against the preliminary decision (see question 24), or the single judge or senate requests that a public hearing should be held, the court can also decide on a closed session.

The taxpayer may also request that no public hearing is held, whereby the tax office, witness or experts may only request that the public be excluded if things are discussed that fall under secrecy obligations or if the public would interfere with the objective of levying the taxes.

36 Who has the burden of proof in a tax trial?

Tax trials follow the principle of official investigation and there are no statutory provisions on the burden of proof regulations. The taxpayer is in charge of clearly presenting his or her position and providing substantiated evidence. In circumstances where it cannot be expected that the taxpayer can provide proof, he or she must at least demonstrate credibility. The tax authority, in turn, must prove all the facts and circumstances necessary to justify a tax claim.

37 Describe the case management process for a tax trial.

After the appeal is filed, the tax office that issued the contested decision has to make a preliminary decision unless an exception applies (see question 25). If a preliminary decision is made, the taxpayer has the right to file a request of remittance within one month, thereby initiating proceedings before the tax court. The preliminary decision then becomes null and void. The tax court performs the necessary investigation and may reject the appeal as unfounded or allow the appeal, which leads to the annulment or revision of the tax decision or assessment.

Case management is in the hands of the tax courts. They investigate the case ex officio (see questions 32 and 33) which entails that the courts are in complete charge of the proceedings, including case management. As mentioned above, the courts may, for example, consolidate or split pending cases (see question 26); refer the case to a single judge sitting alone (see question 30); summon and question the parties, third parties, witnesses and expert witnesses; request information; schedule pre-trials (see question 32) and so on. Electronic document filing and file management; pre-trials; and hearings and questioning of parties, witnesses or expert witnesses by video are permissible, albeit not widely used at present.

38 Can a court decision be appealed? If so, on what basis?

A taxpayer may file a 'revision' against the tax court's decision, which must be submitted within a non-prolongable period of six weeks. The revision is decided upon by the Supreme Administrative Court. There is no minimum threshold amount necessary to file a revision (see question 25). The revision is addressed to the tax court, which rules on compliance with procedural requirements and the admissibility. The matters brought before the Supreme Administrative Court must address fundamental questions so that it may secure the uniformity of the application of the (tax) law.

If the tax court negates admissibility, an 'extraordinary revision' to the Supreme Administrative Court is also possible within six weeks, but this requires additional arguments as to why a fundamental question is being raised.

The Supreme Administrative Court does not decide on the facts and circumstances of the case, but rules on errors of law or procedure.

The Supreme Administrative Court is obliged to refer cases to the Constitutional Court if it considers a legal provision to be unconstitutional or to the European Court of Justice if a question arises that needs to be interpreted under EU law.

If a taxpayer is of the opinion that a decision of a tax court violates his or her constitutional rights or is based on an unconstitutional or otherwise illegal provision, he or she may also directly address the Constitutional Court within a period of six weeks after the tax court's decision. The appellant may request that the Constitutional Court transfer the case to the Supreme Administrative Court if non-constitutional rights but no constitutional rights are found to have been potentially violated (this procedure is called 'successive revision'). The Constitutional Court and Supreme Administrative Court may also be addressed simultaneously ('parallel appeal').

Belgium

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The relevant legislation is codified in the Income Tax Code (special codes exist for inheritance taxes, registration duties and VAT), which establishes the rules governing the determination of taxes and the procedure for the assessment of taxes.

The Flemish Region has its own tax code, covering all taxes.

The general principles applicable in Belgian tax law flow from the Belgian Constitution and from the law in general.

Tax law must comply with:

- the Belgian Constitution;
- international treaties; and
- European legislation.

According to the legality principle (article 170 of the Constitution), no tax for the benefit of the state may be waived except by way of a law.

Royal decrees supplement the Income Tax Code and the Belgian tax authorities publish guidelines, but for information purposes only.

A dedicated service of the Belgian tax authorities, the SDA, can issue formal rulings on the assessment of a given situation. These advanced rulings are binding.

2 What is the relevant tax authority and how is it organised?

The Finance Federal Public Service (Finance FPS) forms part of the Ministry of Finance and falls under the responsibility of the Minister of Finance.

The Finance FPS is divided into different general authorities:

- General Administration of Taxes;
- Tax and Tax Collection;
- Special Tax Inspectorate;
- Customs and Excise;
- Patrimonial documentation; and
- Treasury.

The general administration is geographically organised.

The SDA (the ruling commission) is an autonomous department of the Finance FPS, where taxpayers can secure a ruling in advance. The SDA will give a written opinion on the tax effect of a contemplated transaction and will stick to the opinion provided that the relevant facts have been fairly presented.

Within the Finance FPS, there are centres specially dedicated to large companies. These fall into two types:

- The seven 'big business' centres. These deal with all aspects of taxation. It is no longer the type of tax (VAT or corporation tax) that determines the organisation of services, it is the company itself that is the starting point of these centres.
- The Large Companies Management and Specialised Controls Centre. Within this, the sector coordination division acts as a single point of contact for large companies and the management division is, among other things, responsible for the processing of returns and for the control and the treatment of litigation in five specific fields:
 - the sector of specific activities;

- transfer pricing;
- VAT units;
- tax shelter; and
- various taxes.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

All taxpayers subject to individual income tax, corporate income tax, legal entity tax and, subject to certain exceptions, non-resident income tax must file a tax return on a yearly basis. Assessment for income tax purposes is made on the basis of the income and the other data contained in the tax return, unless the tax authorities find these elements to be incorrect.

Upon request by the tax authorities, the taxpayer must communicate all books and documents needed to determinate the amount of taxable income within a month.

This investigative power granted to the tax authorities may be exercised without notice during the three-year period starting on 1 January of the assessment year for which the tax is owed.

An additional four-year period applies if the tax authorities inform the taxpayer in writing of evidence of fraud.

If the tax authorities intend to rectify a tax return file, a notice of deficiency must be sent to the taxpayer indicating the income or the data which the tax authorities intend to substitute for those reported by the taxpayer.

The taxpayer must reply in writing to the notice of deficiency within a month. Extensions of that term may be granted if justified. In the absence of a reply from the taxpayer within the term, the tax authorities may proceed to an assessment ex officio.

The taxpayer must indicate in his or her reply whether he or she agrees with the amendment suggested by the tax authorities.

If the tax authorities are not convinced, they must send a notice of taxation that states any supplementary tax bill and explains the reason for the decision and they may then proceed to the amendment of the tax return and to the subsequent tax assessment.

Claims against assessment are submitted to the locally competent director of taxes. Claims must be filed six months after the assessment date.

Upon request, the claimant may be granted access to the file. The director's decision must be notified and justified to the taxpayer.

If the director does not agree with the taxpayer's arguments and therefore rejects the claim, the taxpayer can appeal the decision before the Court of First Instance (judicial procedure) within three months of the decision.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

The documents that have to be reported in attachment to the tax returns may differ whether the taxpayer is a corporate entity or an individual.

Corporate entities must attach their balance sheet and profit and loss account to their corporate income tax return.

In line with guidance provided by the OECD under Action 13 of the base erosion and profit shifting (BEPS) project, Belgium introduced transfer pricing documentation requirements in 2016. Belgium thus moved from an era when no transfer pricing documentation was required (unless requested in the context of a tax audit) to a formal transfer pricing documentation regime that includes the electronic filing of documentation.

Individuals must disclose in their tax returns existing bank accounts, insurance contracts and legal entities or trusts held abroad.

The form of the tax return is determined annually by a royal decree which is published in the Official Journal. Different forms exist for individual income tax, corporate income tax, legal entity tax and non-resident income tax. There are special forms for the payment of personal withholding tax, professional withholding tax and such like.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

On request by the tax authorities, the taxpayer must provide all books and documents needed to determine the amount of taxable income. For corporate taxpayers, this obligation extends to the registers of the shareholders and bondholders and to the attendance list of the general shareholders meetings. The information so received may also be used in order to tax third persons.

The tax authorities, if holding a mandate, have the right to access without prior notice the taxpayer's professional premises at any time of the day.

Access to the inhabited private premises can only occur between 5 am and 9 pm and requires the prior authorisation of a Police Judge.

In order to assess taxes due by a taxpayer, the tax authorities may request written testament from third parties; they may also request from a third party any information considered to be essential for the establishment and the collection of the tax due. They may proceed to investigations involving third parties and to hearings of third parties, including employees.

In a recent decision, the Constitutional Court ruled on the topic of dawn raids carried out by the tax authorities, following a preliminary referral. The Constitutional Court was asked whether the tax authorities' broad interpretation with regard to dawn raids could be reconciled with the right to privacy and the 'inviolability of the home', as protected by articles 15 and 22 of the Belgian Constitution and article 8 of the European Convention on Human Rights.

The Constitutional Court ultimately decided that the relevant legal provisions do not violate the right to privacy and the inviolability of the home. It did however set out some boundaries, making it clear that the tax authorities do not have an unconditional and unlimited right to access and search the professional premises of a taxpayer. The court recalls that the right to privacy and the inviolability of the home are fundamental rights that apply to both individuals and legal entities.

Furthermore, the Constitutional Court accepts that a dawn raid constitutes an interference with these rights. Such interferences are only allowed when they have a sufficiently clear legal basis, respond to a pressing social need and are proportionate to the aim pursued.

6 What actions may the agencies take if the taxpayer does not provide the required information?

If the taxpayer does not provide the requested information, the tax authorities may use the ex-officio assessment, which implies the burden of proof being shifted from the tax authorities to the taxpayer.

Penalties can be imposed; criminal sanctions can also apply in the event of an opposition to a tax audit.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

Tax authorities may not proceed to a 'fishing expedition'. Belgian law provides particular conditions for information requested to financial institutions (banks and insurance companies) about their clients.

If a person approached by the tax authorities invokes the existence of a professional secrecy duty, the tax authorities may require the intervention of the competent disciplinary authority, which would be asked to determine whether and to what extent the requested information or

presentation of books and records may be deemed to be compatible with the professional secrecy duty invoked.

It is generally accepted that persons bound by professional secrecy obligations are those referred to in article 458 of the Belgian Criminal Code, which provides that:

Doctors, surgeons, health officers, pharmacists, mid-wives and all other persons who, either by profession or otherwise, have knowledge of confidential information, will be punished if they reveal the confidential information, except in instances when they are called to testify in court and when they are obliged by law.

Tax officials are under a duty of confidentiality:

Whoever intervenes, in any capacity whatsoever, in the application of tax laws or who has access to the offices of the administration in charge of the establishment, or that in charge of the collection and collection, income taxes, is bound to keep, outside the exercise of his functions, the most absolute secrecy with regard to all that he has become aware of as a result of the performance of his mission.

They may however transmit information to other authorities provided that they are necessary for the performance of their mission, which needs to be verified case by case.

8 What limitation period applies to the review of tax returns?

As a general rule, the tax return can be audited during the taxable period. Furthermore, the tax return can be audited by the tax authorities, 'without notice', during the three years from 1 January of the tax year.

Where there is 'evidence of fraud', provided that such evidence has been notified to the taxpayer, the assessment period could be increased by four years to an aggregate assessment period of seven years.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

The tax conciliation service was created in 2011 and is part of the Finance FPS. Its mission is to examine and clarify the taxpayer's point of view as well as that of the federal tax authorities.

Any taxpayer (private or business) in dispute with the federal tax authorities can call on the tax conciliation service.

Conciliation can take place at any time when the proceedings are in the administrative phase. As soon as the dispute comes before the courts, the tax conciliation service is no longer able to intervene.

10 How may the tax authority collect overdue tax payments following a tax review?

The general administration of tax collection and recovery may take precautionary and/or enforcement measures on the taxpayer's assets (they can serve garnishee, seize estate, undertake a simplified seizure on the attachable portion of wages) to ensure the recovery of the tax.

11 In what circumstances may the tax authority impose penalties?

As concerns income taxes, where no declaration of income has been submitted at all, or an incomplete or wrong declaration has been filed, within any of the different procedures for levying income taxes, the taxes due can be raised with an incremental penalty from 10 per cent up to 200 per cent, according to a determined scale.

Besides proportional increases, tax law also provides for flat penalties.

The Income Tax Code leaves the administration the option to sanction 'each violation of the provisions of the Income Tax Code as well as its executory decrees' with a fine from €50 up to €1,250.

The essential purpose of the flat penalties is to ensure cooperation of taxpayers and third parties within the tax procedures, under the risk of an additional penalty, in cases where a proportional penalty cannot be asked or would be too low.

Special penalties apply with respect to specific reporting duties.

Update and trends

- The calculation of late payment and moratorium interest has changed recently. Late payment interest is now determined within a fork between 4 per cent and 10 per cent and will always be 2 per cent higher than moratorium interest to be paid to the taxpayer by the tax authorities. This raises constitutional issues in the light of the equality principle. Taxpayers and tax authorities are indeed not treated equally. This discriminatory law could be challenged by the Constitutional Court.
- The Minister of Finance recently asked his administration to be more lenient with taxpayers on VAT penalties. In particular, the administration will assume that the taxpayer is in good faith rather than the opposite.

12 How are penalties calculated?

With regard to income taxes, the taxes due can be raised with an incremental penalty from 10 per cent up to 200 per cent, according to previously determined scales.

These scales make a difference according to whether the mistake in the tax return was outside the taxpayer's competence (no tax increase); whether the mistake was in good faith (subsequently 10 per cent, 20 per cent and 30 per cent, and the fourth time it is considered to be intentional); whether the mistake was done intentionally to avoid taxes due (subsequently 50 per cent, 100 per cent and 200 per cent); or whether the taxpayer made use of fraudulent documents (automatically 200 per cent).

The increase will only be applied when the non-declared income reaches at least €2,500, while the administrative penalty combined with the regular taxes due can never exceed the non-declared taxable income.

Besides this legal correction, the tax authorities still can correct the percentages in view of the concrete circumstances (in cases where the taxpayer is cooperative for instance).

Besides proportional increases, tax law also provides for a flat penalty for each violation of the provisions of the Income Tax Code.

As for the proportional penalties, these fines also progressively increase from €50 up to €1,250, according to determined scales depending on the repetition of the facts and the faith of the taxpayer.

Special penalties apply, ranging from €1,250 to 25,000 for non-compliance (late, incomplete, or no filing) with the new transfer pricing documentation requirements.

A penalty of €6,250 is imposed on a taxpayer for not reporting a foreign entity or a trust (€6.250 per year and per undeclared entity or trust).

13 What defences are available if penalties are imposed?

Taxpayers may ask the Finance FPS for a reduction in the penalties provided that some conditions are met (good faith in particular).

Any director's administrative decision may also be challenged (and therefore claims on surcharges and penalties in connection herewith) by the taxpayer by lodging a legal action to the court of first instance.

Taxpayers may request cancellation of penalties where the statement of reasons by the tax authorities is not sufficient or if the penalties are disproportionate.

14 In what circumstances may the tax authority collect interest and how is it calculated?

A late payment interest is charged on any income tax or penalty that remains unpaid after it has become due and payable.

The late payment interest rate is determined annually based on the 10-year linear bond rate (OLO) of the month of July, August and September. The rate varies between 4 per cent and 10 per cent.

Late payment interest for 2018 is 4 per cent.

For tax debts that have already generated late payment interest on 31 December 2017 at least two interest rates will apply. The interest rate of 7 per cent per year (as of 1 September 1996 until 31 December 2017) and the interest rate of 4 per cent (as of 1 January 2018).

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Belgian criminal law is regulated in separate codes, which describe the general criminal law procedure, as well as different offences and provide for sanctions. They can also be applied in a particular tax context. As such, capital benefits coming from tax offences can be confiscated profit from money laundering and handling of stolen goods is also sanctioned in a tax context.

'Tax fraud' is the basic criminal offence, sanctioned with imprisonment from eight days up to two years and a fine ranging from €250 to €500,000 or one of both sanctions. Tax fraud means each conscious contravention of the regulations provided for in the Income Tax Code as well as its implementing orders and can consist of acting, as well as failing to act.

An aggravated offence is provided in the Income Tax Code called 'Serious tax fraud whether organised or not'.

The fines can be subject to the additional surplus charge and criminal fines for tax offences can add up to €3 million.

Both individuals and legal entities can be subject to criminal proceedings.

16 What is the recent enforcement record of the authorities?

The number of enforcement and precautionary measures taken in 2017 was 582,606 (compared with 617,816 in 2016 and 778,527 in 2015).

In 2017, the rate for the recovery of tax debts was of 70.75 per cent.

A total of 1,876 courts proceedings were initiated in 2017 (compared with 1,783 in 2016).

According to the enforcement survey of 2017, reassessed taxes and associated penalties were estimated by the Special Tax Inspectorate to be €2.125 million (compared with €1.718 million in 2016).

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

In order to assess taxes due by a taxpayer, the tax authorities may request written testaments from third parties; they may also request from a third party any information considered to be essential for the establishment and the collection of the tax due. They may proceed to investigations involving third parties and to hearings of third parties.

Third parties must answer to the questions or penalties may ensue.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

The Finance FPS exchanges information at the Belgian level and with foreign tax authorities.

Belgium has signed a bilateral 'FATCA' agreement with the United States for an automatic exchange of data between both countries.

The OECD and its members, including Belgium, have developed the international Common Reporting Standard (CRS) for the purpose of automatically exchanging fiscal information at the international level (AEOI – automatic exchange of information).

The principles laid down by the OECD have been transposed in the European Union by means of a new directive on administrative cooperation (DAC 2014/107/EU) governing the automatic data exchange between the 28 member states.

Since September 2017, the Belgian tax authorities started automatically sharing information with foreign tax authorities about financial accounts and assets held in Belgium. In parallel, Belgium receives information about accounts and assets held by Belgium residents in other EU member states.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

The General Administration of Tax Collection and Recovery may grant payment facilities if the taxpayer is in financial hardship. A write-off of all or part of the taxes may under exceptional circumstances be granted.

Individual taxpayers facing financial difficulties may benefit from the indefinite suspension of payment of taxes. Several conditions must be met. No such procedure exists for companies.

In case of bankruptcy, the debtor is exempt from corporate income tax.

Since 1 April 2009, any company can also enter into an amicable settlement with some or all of its creditors (including the tax authorities) to address its difficult financial situation or to reorganise its enterprise. The parties to this amicable settlement are free to determine its content but the amicable settlement does not affect the rights of third parties. The amicable agreement is based on the free will of the debtor to enter into such agreement if and when he or she wants and with creditors he or she chooses.

20 Are there any voluntary disclosure or amnesty programmes?

A permanent regime of voluntary disclosure for tax and social security allows a regularisation for both federal taxes (income tax, VAT and social security contributions) and regional taxes (inheritance and registration duties).

Both individuals and legal entities can apply for tax regularisation.

The taxpayer will have to pay the tax due (at the legal rate) with a penalty of 24 per cent in 2019 (23 per cent in 2018).

If the taxpayer cannot prove that the capital has already been taxed, a penalty of 39 per cent applies in 2019 (38 per cent in 2018).

Special rates apply for registration duties and inheritance taxes.

The taxpayer will, after completion of the disclosure procedure, receive a certificate stating that he or she has a tax and a criminal immunity.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

The principle of equality laid down in the Constitution implies that all taxpayers that are in a similar situation must be taxed in a similar way and that taxpayers that are in different situations must be treated differently.

According to the principle of legality, no tax for the benefit of the state may be levied except by way of a statute. This competence may not be transferred to the judiciary or to the executive power.

This implies that tax law must be interpreted in a strict manner; tax law derogates indeed from the fundamental principle that goods and persons are free by nature.

The Constitutional Court is competent to test the potential infringement of the Constitutional principles.

Supranational treaties with direct national effect prevail over Belgian domestic tax law, meaning the domestic tax law must be interpreted in light of such treaties.

The Belgian taxpayer can thus invoke the rights from human rights conventions.

The Belgian taxpayer can also invoke the charter of EU taxation.

Belgium also applies the principle of fair play and of sound administration and the taxpayer has a right to legal certainty and predictability.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

The taxpayer has a legal right to access its tax file and to be heard by the regional director.

The tax authorities must explain the reasons for the assessment and they must respond to the arguments invoked by the taxpayer. If they do not justify their assessment, the court may declare the assessment null and void.

23 Is the tax authority subject to non-judicial oversight?

Any taxpayer may submit a complaint to the Complaint Coordinator (within the Finance FPS). The complaint must explain the reason why the taxpayer has a grievance against the Finance FPS and which entity is concerned. The Finance FPS will answer within 40 days.

If the taxpayer is not happy with the response, he or she may submit a complaint to the Federal Mediator.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

Tax disputes are under the exclusive jurisdiction of the tax chamber of the court of first instance. Appeals against first instance judgments can be brought before the Court of Appeal. Appeals against judgments of the Court of Appeal are brought before the Supreme Court.

25 How can tax disputes be brought before the courts?

The taxpayer can start the tax litigation proceedings at the court of first instance to appeal the regional director's decision in the event that the taxpayer is not satisfied with the decision or if the regional director fails to make a decision on a tax complaint within six months of its filing.

Tax proceedings are initiated by filing a petition within three months of the regional director's decision.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

There is *lis pendens* whenever requests are made on the same subject and for the same cause, between the same parties acting in the same capacity, before several different courts competent to know and be called upon to rule in the first instance of jurisdiction.

Claims may be treated as related where they are so closely linked that it is desirable to hear and determine them at the same time in order to avoid solutions that would be irreconcilable if cases were judged separately.

The taxpayer may also bring tax claims involving multiple assessments and multiple decisions together into a single procedure.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

The taxes must not be paid as long as the tax assessment is challenged.

The taxpayer is thus not obliged to pay the amounts in dispute into courts before bringing a claim.



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The collection of the challenged amount of tax is suspended while proceedings are pending.

28 To what extent can the costs of a dispute be recovered?

When a party loses its case, apart from the court fees that are automatically to be paid by the losing party, it risks having to settle a compensation for proceedings, granted by the court to the winning party.

The compensation aims at totally or partly covering the fees due by the winner to his or her lawyer.

The compensation is determined in relation to the value of the claim and can be adjusted by the judge at the request of the parties on the basis of the financial capacity of the losing party, the complexity of the case, the amount at stake and the apparently unreasonable character of the situation.

The amount of the compensation is calculated as follows: when the value of the claim is less than €1 million, the standard indemnity ranges from €180 to €24,000.

When the value of the claim exceeds €1 million, the standard compensation is €18,000 and the maximum indemnity is €36,000.

The compensation for proceedings is only due if the successful party has hired a lawyer to assist him or her before the court. In many tax cases, the tax authorities are represented by an official and they do not hire a lawyer and thus cannot benefit from a compensation award.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

There are no restrictions or rules relating to third-party funding or insurance for the costs of a tax dispute.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

Most cases are decided by a single judge. Complex cases are decided by a three-judge panel.

All cases heard by the Supreme Court are decided by a panel consisting of five judges.

There is no jury trial in tax matters.

31 What are the usual time frames for tax trials?

Each stage of trial (court of first instance, Court of Appeal and Supreme Court) lasts about two years. There are no mandatory time frames and depends on the complexity of the case.

32 What are the requirements concerning disclosure or a duty to present information for trial?

All documents are admissible and examined by the court for their relevance, credibility and value to the case at hand.

The court can order the parties to submit evidence in their possession.

The court can also request third parties to submit specified documents.

33 What evidence is permitted in a tax trial?

Tax proceedings are essentially based on written evidence. Witnesses are therefore very rarely heard at a trial.

In some complex cases, experts are asked to testify (eg, in cases of serious and organised tax fraud).

Evidence must be translated in the language of the procedure (French, Dutch or German, depending on the court).

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Taxpayers may represent themselves but it is recommended that they are represented by a lawyer.

Representation by a lawyer is mandatory before the Supreme Court.

Taxpayers who cannot afford legal representation may request legal aid.

The tax authority does not generally hire a lawyer before the court of first instance and is represented by its own agents but it is always represented by a lawyer before the Court of Appeal and before the Supreme Court.

35 Are tax trial proceedings public?

Tax trial proceedings are public.

36 Who has the burden of proof in a tax trial?

According to the rules relating to the burden of proof, the tax authorities have the onus to prove the facts increasing a taxpayer liability and the taxpayer to prove the facts decreasing his or her liability.

When a tax case is brought before the court of first instance, the taxpayer is always the claimant and the tax authorities are the defendant but the court will not presume the tax authorities' tax assessment to be correct.

37 Describe the case management process for a tax trial.

The exchange of briefs is organised by the court. Each party addresses its briefs to the court and to the other party.

Briefs are exchanged in two or three rounds (of approximately two months) and pleadings follow approximately two months after the last exchange of briefs.

38 Can a court decision be appealed? If so, on what basis?

Appeals against first instance judgments in tax matters can be brought before the Court of Appeal. The appeal against the judgment should be brought to the Court of Appeal within one month following service of the judgment. The taxpayer can choose to be heard by a chamber of three judges instead of one.

Appeals against judgments of the Court of Appeal are brought before the Supreme Court within three months following service of the judgment.

The Supreme Court reviews last instance decisions and rules only on points of law.

Brazil

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The Brazilian tax system is established by the Federal Constitution, which describes, in a very detailed manner, all collectable types of tax and the related federative entities entitled to collect it. In Brazil, the Federal Constitution affords a very detailed treatment to tax issues, determining the general aspects of taxable events and limits on the imposition of taxes.

The Brazilian tax code (Law No. 5,172/1996) establishes general tax rules (concerning aspects such as the definition of taxes, obligations, assessment, tax credits and the statute of limitations). In addition, each type of tax may be outlined in specific laws, which consist in a statute responsible for instituting taxes and governing all their aspects.

The tax system is guided by the strict legality principle, meaning that no other rule may contravene legal provisions settled in law. Furthermore, as the Brazilian Constitution provides for tax issues in details, such constitutional provisions must be strictly observed.

Competent authorities enact statutes (such as decrees, normative rulings, resolutions and ordinances) that, in theory, only serve the purpose of detailing and providing more practical rules related to what has been established in the constitution and in the pertinent laws. However, it is not unusual that such statutes end up creating rights and obligations not provided for in any laws or in the Federal Constitution, thereby exceeding their purpose and contributing to a litigation scenario in tax matters.

In addition, it is possible that other rules may arise in a more specific and practical manner, such as:

- once the taxpayer requests the government to issue an opinion on the correct interpretation of a certain rule regarding a particular case, it becomes obliged to act in accordance with the government's reply; and
- once higher courts rule in a certain case, its ruling binds other members of the judiciary branch (this is a consequence of rulings in repetitive and general repercussion appeals).

International treaties signed by Brazil are incorporated in the domestic legal system by means of decrees. Once they become rules enforceable by the legal authorities, taxpayers must also comply with them.

As for litigation tax matters, there are different levels of discussion: administrative and judicial. Such matters will be discussed under the terms of the procedure rules provided in Brazil by the Brazilian Code of Civil Procedure. The Code of Civil Procedure currently in force was enacted in 2015 (Law No. 13,105/2015), as a result of a reform in the Brazilian procedural system, which expressly consists in the general law governing all procedures before administrative and judicial courts. In spite of this, special laws are enacted in order to rule on specific procedures that may take place at the administrative and judicial levels of litigation. The Brazilian Code of Civil Procedure should be applied in a subsidiary and supplementary manner.

Tax foreclosures lawsuits are governed by a specific law (Law No. 6,830/1980) and the procedure at the federal administrative level is governed by Decree No. 70,235/1972 and by Law No. 9,784/1999).

2 What is the relevant tax authority and how is it organised?

Each federative entity (federal government, states and municipalities) has its own legislative structure for the purposes of administering and collecting taxes.

At federal level, taxes are enforced and inspected by the Brazilian Federal Revenue Service, a body subordinate to the Ministry of Finance, part of the Executive Branch.

The Brazilian Federal Revenue Service is divided into sub-secretariats that are responsible for collection and assistance, taxing and litigation, auditing and inspection, customs and international relations, and management of this public body. In addition, there are decentralised units for the audit and inspection of taxes and customs aspects.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

The law provides several tax-reporting obligations for the taxpayer, and, in most cases, the taxpayer is liable for determining and paying the taxes to which it is subject. Currently, authorities at the Brazilian Federal Revenue Service have cutting-edge technology to enforce the law and inspect taxpayers, especially considering that most of the tax-reporting obligations are delivered and analysed in an exclusively digital environment.

To formalise the beginning of an inspection, authorities at the Brazilian Federal Revenue Office issue an Instrument of Distribution for Tax Proceedings in which the issuing authority can question the taxpayer, request documents and conduct on-site inspections or diligences. Tax proceedings may last between 60 and 120 days, and this period may be extended by the issuing authority as many times as it deems necessary.

With regard to the inspection of individuals who are subject to income tax, the procedure carried out by the Brazilian Federal Revenue Office consists in analysing the information filled in and delivered electronically by the taxpayer.

If the authorities at the Brazilian Federal Revenue Office identify any inconsistencies in the information provided, the taxpayer will be notified. At the office's discretion, the taxpayer may either:

- rectify the provided information and, if applicable, pay any unpaid tax; or
- submit documents showing the accuracy of the information provided in the tax-reporting obligations.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

According to Brazilian legislation, taxpayers may be considered to be either enterprises or individuals.

As a general rule, enterprises are subject to one of the following taxation regimes: *Simples Nacional*, Actual Profit Regime (*Lucro Real*) or Presumed Profit Regime (*Lucro Presumido*).

Simples Nacional is a taxation regime that may be adopted by small businesses with an annual gross revenue of up to 4.8 million reais and

consists in applying a single rate to its monthly revenue for all the taxable performed activities.

Regarding the Actual Profit Regime, for purposes of calculating the income tax and Social Contribution over the Net Profit, the taxable amount corresponds to the net profit of the period determined from its accounting information, after introducing certain adjustments, such as additions and exclusions, as provided by law.

The Presumed Profit Regime may be adopted by taxpayers who are not legally required to adopt the Actual Profit Regime, reporting an annual gross revenue of up to 78 million reais. Under such a regime, the taxable amount is obtained by the application of a prior fixed percentage to its revenue, regardless of the expenses recorded in its accounting.

With regard to income tax and social contribution over the net profit, enterprises should fill in and deliver electronically to the Federal Revenue Service a tax-reporting obligation, which consists of a document in which all transactions affecting the taxable base of such taxes are reported, as well as the relevant amounts due and payable to the federal government.

In addition, enterprises are required to fill in and electronically deliver to the Federal Revenue Service, the EFD-Contribuições. It is another type of tax-reporting obligation under which taxpayers provide information regarding determination of the social contribution.

If their activities are of commercial or industrial nature, enterprises should record and deliver electronically their tax books in order to comply with the tax-reporting obligation known as EFD-ICMS/IPI.

Individuals, in their turn, are subject, among other taxes related to specific transactions and business, to income tax, which is determined by means of a tax report prepared and delivered electronically to the Federal Revenue Service. This tax report can be delivered in one of two taxation models available (simplified and complete mode), which the taxpayer chooses taking into account the option resulting in the lowest tax burden.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

Generally, a taxpayer should present all the tax-reporting obligations provided in legislation. The tax authority may request and examine goods, books, files, documents and other papers in order to verify compliance with the tax legislation. Furthermore, it may also address written questions regarding the transactions and facts under analysis as well as making enquiries of the taxpayer, the taxpayer's representatives or their employees.

However, it is common for tax authorities to require the presentation of other information in addition to the official documents and tax-reporting obligations required by legislation. Regardless of this, taxpayers are not obliged to present or disclose any information or document if the law does not require it.

6 What actions may the agencies take if the taxpayer does not provide the required information?

In the event that the taxpayer does not provide the requested clarification or fails to submit any files or documents requested by the tax authorities, the law provides that if the tax authorities are unable to determine the due and payable amount, they may decide such amounts based upon predetermined criteria, as well as increasing any relevant fines.

The tax authorities may also impose penalties for obstructing the tax-audit procedure.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

Information exchanged with the tax authorities is protected by the privacy of tax-related information (article 198 of the Brazilian Tax Code) and may not be disclosed to third parties. There are judicial precedents ruling that information provided solely to the tax authorities is subject to such privacy. Therefore, if the tax authorities require documents and information from taxpayers as provided by law, taxpayers cannot refuse to provide them based on confidentiality.

Attorneys and clients are not obliged to disclose messages, information or documents exchanged within the scope of an attorney-client

relationship, as they are deemed confidential by the Code of Ethics and Discipline of the Brazilian Bar Association (OAB).

8 What limitation period applies to the review of tax returns?

In accordance with Brazilian laws, any challenge by the tax authorities regarding the procedures adopted by the taxpayer should be made within a term of five years counted from the occurrence of the relevant taxable events. Therefore, in the event that the tax authorities intend to verify whether the taxation adopted by the taxpayer and informed through its tax-reporting obligations are in accordance with the legislation or not, it should always proceed with the service of notices and request for information or clarification within that five-year term.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

Brazilian law does not allow alternative solutions for settlement of disputes regarding tax matters. Discussion of the lawfulness of tax collection may occur at administrative level or before judicial courts. If the taxpayer does not obtain a favourable decision at administrative level, they may resort to judicial courts. Discussion at administrative level may also occur by means of the filing of appeals by taxpayers and by the tax authorities. The main difference between discussing matters at administrative or judicial level lies in the need to present collateral at judicial level.

10 How may the tax authority collect overdue tax payments following a tax review?

Payment of taxes, even overdue ones, may always be made by the taxpayer, duly added to by a fine (at 20 per cent) and interest on late payments calculated at the SELIC rate (official interest rate calculated by the Brazilian central bank) at federal level. In the event of non-payment by the taxpayer, the tax authorities may seek appropriate court redress and file a tax foreclosure lawsuit. In the context of this lawsuit, the tax authorities may claim the presentation of warranties by the taxpayer in order to assure the payment of the debt under discussion, such as assets, rights and even a portion of the company's income.

At the administrative level, in specific situations, tax authorities proceed with a measure intended to monitor the assets owned by the taxpayer in order to follow up its capability to pay the debts under discussion (*arrolamento de bens*).

11 In what circumstances may the tax authority impose penalties?

Penalties are imposed by the tax authorities in cases of official assessment for collection of tax claims. Penalty percentages may be increased in the event of evasion, fraud and wilful misconduct, or in the event taxpayer obstructs the tax-audit procedure (the initial percentage at federal level is of 75 per cent, and may reach 225 per cent).

12 How are penalties calculated?

Penalty percentages are applied based on the amount of tax allegedly due and payable, as determined by the tax authorities. Tax authorities may also apply penalties for non-compliance with tax-reporting obligations, even if all the taxes have been fully paid.

13 What defences are available if penalties are imposed?

A taxpayer has the right to challenge penalties at both administrative and judicial levels. As a rule, the administrative level comprises three instances for taxpayer's defence (defence, voluntary appeal and special appeal). Defence is judged by an administrative body formed by the tax authorities and appeals are analysed and judged by the administrative court called Conselho Administrativo de Recursos Fiscais (CARF). At CARF level, trials take place in judgment chambers formed by judges appointed by the tax authorities and taxpayers. At state and local administrative levels, there is also a due process of law, and appeals may be filed by both parties.

14 In what circumstances may the tax authority collect interest and how is it calculated?

Interest is due whenever taxes are collected in arrears. At federal level, interest is calculated by means of the application of SELIC.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

In the event of verification and evidence of fraudulent acts, wilful misconduct or simulation perpetrated by the taxpayer, fines are increased to 150 per cent (at federal level). Once the practice of such acts is verified and the increased fine is applied, the tax claim will be formalised for criminal purposes, and criminal measures shall be suspended until the final outcome of the administrative proceeding. If the administrative proceeding has an outcome favourable to the taxpayer, the criminal suit will not move forward. Alternatively, in general, if the tax debt is not paid, the case record is forwarded to the Federal Prosecution Office.

16 What is the recent enforcement record of the authorities?

In 2017, pursuant to information obtained from the Brazilian Federal Revenue Service's website, an amount of 204,9 billion reais was the subject matter of tax-deficiency notices and 390,193 tax claims were filed. The focus of tax surveillance proceedings was on large taxpayers, which represent 0.01 per cent of taxpayers in Brazil and 61 per cent of the tax revenue.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

The Brazilian Tax Code imposes on third parties the obligation to provide information as support to the tax authorities and lists the persons required to deliver to the administrative authority information in their possession, namely:

- government employees;
- financial institutions;
- asset managers;
- brokers, auctioneers and official forwarding agents;
- executors;
- trustees, commission merchants and liquidators; and
- any other entities or persons designated by the law on account of their activity.

It should be noted, however, that the obligation provided for in this provision does not embrace providing information regarding facts that the informing person or entity is bound to keep confidential by virtue of position, office, duty, ministry, activity or profession.

On the other hand, any unjustified refusal by a taxpayer or a third party to cooperate with the tax authorities may qualify as an obstruction to an inspection or audit, and may result in a fine by the tax authority.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Article 198 of the Brazilian Tax Code imposes on the tax authorities the duty to observe the privacy of tax-related information, preventing them from disclosing any taxpayer's tax information.

It should be noted, however, that privacy of tax-related information is not absolute, and the transfer of protected information is allowed under exceptional circumstances provided for in the law.

Item I of paragraph 1 of article 198 of the Brazilian Tax Code authorises the tax administrations to furnish information protected by privacy of tax-related information to comply with a requisition made by a court authority in the interest of justice.

Article 199 of the Brazilian Tax Code also deals with the privacy of tax-related information duty in a flexible manner when allowing the sharing of tax information between entities of the federal government, which is conditional on an authorising legal or contractual provision.

At international level, the Brazilian government is an active participant in tax-cooperation actions intended to fight abusive practices of evasion, elision and money laundering, by means of the Brazilian Federal Revenue Office and the Ministry of Foreign Affairs, known as the Itamaraty Palace. Those actions include the Global Forum of Transparency and Exchange of Tax Information (FG) and the project designed to fight the tax base erosion and transfer of profits (BEPS).

Brazil's adhesion to the FG, signed in 2011, will allow the country to comply with the G20's collective commitment to carry on, up until

2018, the automatic exchange of tax information with the more than 130 signatories of the convention.

Likewise, Brazil is strengthening tax cooperation in the bilateral sphere. Currently, Brazil has 32 agreements to avoid double taxation in place. All such agreements include mechanisms for the exchange of tax information.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

Companies under court-supervised reorganisation may request admittance to the instalment payment programme instituted by Law No. 13,043/2014, which is a special instalment payment system of the federal government to taxpayers in that situation.

Instalment payment of the court-supervised reorganisation solely embraces debts registered as overdue federal tax liability and, to adhere to the programme, it is necessary to include all of the taxpayer's debts in the instalment-payment facility. The debt may be divided into 84 monthly and consecutive instalments where it is not necessary to present collateral.

20 Are there any voluntary disclosure or amnesty programmes?

Federal, state and local governments often launch amnesty programmes to facilitate the settlement of debts from taxpayers.

Recently, the Municipality of Rio de Janeiro launched an amnesty programme to encourage the payment of tax debts from debtors in bankruptcy, judicial reorganisation, civil insolvency or insolvency risk, provided that they are properly evidenced in the accounts.

Decree No. 4,4639/18 regulates the implementation of conciliation agreements within the 'Concilia Rio Program', which are applicable to tax debts that, cumulatively, are not registered as active debt; refer to triggering events that occurred up to 31 December 2017; and involve:

- Tax on Services;
- Tax over Urban Real Property; and
- garbage collection rate.

In addition to amnesty programmes, which are established from time to time, the Brazilian Federal Revenue Service permits, at any time, a simplified instalment payment, which is an ordinary instalment payment that extends payment of the debt in up to 60 monthly instalments. This instalment payment facility does not require the presentation of collateral, and may be made online.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

The main rules protecting taxpayers' rights are set forth in the Brazilian Federal Constitution. The tax authorities must observe such rules, as they correspond to limitations on the authority to tax of the states, municipalities and federal government.

Furthermore, government activities, including the collection of taxes, are generally bound by the law. This means that, in such cases, tax auditors should act as expressly provided for and within the limits of the law, under threat of having their actions held unlawful by the internal affairs department of government entities (administrative disciplinary control) as well as the judicial courts.

Taxpayers are also granted the right to challenge the legality of tax assessments at both administrative and judicial levels.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

In Brazil, any audit procedure begins with the presentation of a formal request, which contains the identification of the tax auditor and information about the audit procedure. Taxpayers may confirm the accuracy of such information with the tax administration electronically or at the tax authority's office.

Furthermore, the Brazilian Federal Constitution grants taxpayers the right to have access to information held about them by public authorities.

In the event that access to any such information is denied or otherwise hindered by government entities, taxpayers may enforce the exercise of such right before courts.

23 Is the tax authority subject to non-judicial oversight?

The tax authorities are subject to internal oversight within the administrative government body, as they must act in strict compliance with the law. In that regard, tax assessments and audit procedures are subject to a quality and legality control carried out internally by the government body.

On the other hand, taxpayers are granted the right to challenge any tax assessments issued against them, at both the administrative and judicial levels.

Disputes involving tax assessments at the administrative level may be subject to different procedures, depending on the government entity. At the federal level, taxpayers are granted two levels of appeal within the administrative tax courts.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

The Brazilian judiciary branch structure deliberates over three instances: the first and second instances and the higher courts.

At first instance, lawsuits are judged by a single judge, and this decision may be subject to appeal that will be judged by the competent court formed by a collective of appellate judges.

In turn, the decision made by the collective may still be submitted to the review of higher courts, also formed of collective bodies, each of which has a specific jurisdiction to analyse violations of constitutional provisions (Supreme Court (STF)) or federal laws (Superior Court of Justice (STJ)).

For the analysis of tax matters, the first and second instances of the judiciary branch have one federal structure divided into five regions, which are competent to analyse federal taxes, and one state structure for each state of the federation with jurisdiction to examine issues related to state and local taxes.

25 How can tax disputes be brought before the courts?

Court disputes in Brazil can be brought for preventive purposes (to prevent a deemed undue collection from occurring); for a repressive purpose (to avoid a collection already in force); or for purposes of recovering unduly paid tax amounts.

Court lawsuits may be begun for violations of constitutional or legal provisions, or in factual situations that are liable to support the taxpayer's rights.

To file a lawsuit, the taxpayer must be represented by an attorney-at-law, who will file an initial pleading describing the factual situation, the right to be protected and the request or claim of the plaintiff. Such initial pleading should be accompanied by documentation supporting the taxpayer's rights (depending on the type of action, there is an allotted time within which to produce evidence) and evidence of procedural cost payment.

Lawsuits may be filed by taxpayers and one may not file a lawsuit aimed at protecting a third party's right in one's own name. There are exceptional situations, however, admitting the filing of class action suits (which may be filed by certain entities expressly provided for in the law, such as senior representative associations) that may have erga omnes effectiveness.

The law does not impose a minimum or maximum limit of value to be discussed in court.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

In repeated situations affecting several taxpayers in an equal manner, and depending exclusively on a matter of law, either with respect to the tax or to accessory obligations, it is possible to file lawsuits consolidating several taxpayers in a joinder of plaintiffs, with due regard to the principle of reasonableness of the number of parties.

There are also situations allowing the filing of class action suits with erga omnes effects, which may be brought by specific individuals or entities.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Discussion of taxes before the courts does not require their early payment or a court deposit of the relevant amount.

The convenience of early payment of tax and of the court deposit should take into account the specific situation of the taxpayer and the requirement.

28 To what extent can the costs of a dispute be recovered?

Procedural costs should be borne by the plaintiff and the appellant, provided that the winning party may ultimately claim from the losing party the court expenses incurred (not including attorney's fees agreed upon directly by the taxpayer).

In addition to recovery of procedural costs, as a general rule (subject to certain exceptions), the losing party should be ordered to pay a loss of suit percentage fixed by the judge pursuant to legal criteria, allocated to the winning party's attorney-at-law.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

In general, to be granted a suspension of enforceability of tax claim, allowing the taxpayer to remain in good standing before the tax authorities and avoiding any collection acts, it is necessary to make a court deposit, or obtain a court decision expressly suspending the enforceability of the collection.

A court deposit may be made at any time, but it must be made in the name of the taxpayer, even if the financial resources for such purpose are provided by a third party.

On the other hand, the law provides for alternative collateral for the tax claim enforced against the taxpayer (particularly in tax foreclosures). In such situations, it is possible to present a bank surety letter, a guarantee insurance letter or other personal or real estate property owned by the taxpayer or by third parties.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

At first instance, lawsuits are judged by a single judge, and this decision may be subject to appeal to be judged by the competent court formed by a collegiate of appellate judges.

In turn, the decision delivered by the collective may still be submitted to the review of higher courts (STJ and STF), and also by collective bodies (justices).

In Brazil, there is no jury trial available to hear tax disputes.

31 What are the usual time frames for tax trials?

There is no straightforward time frame for tax trials, but the best estimate for a suit that does not involve producing evidence, but matters of law only, is six to eight years, while suits involving factual issues may take between eight and 12 years to be decided.

32 What are the requirements concerning disclosure or a duty to present information for trial?

In general tax judicial proceedings, there is a specific phase to provide evidence, in which both parties may present documents and expert and witness (uncommon) evidence.

This phase begins after the presentation of the defence of the defendant and the definition by the judge of the controversial aspects of the case. Afterwards, the lawsuit is judged by the first level court. There is also the possibility of an early consideration of evidence, initiated before the judicial courts, before the filing of the lawsuit. This is a procedural instrument to provide evidence, with the participation of both parties involved and under the custody of a judge, that may be used in a future legal lawsuit. The parties are not obliged to produce evidence against themselves, but good faith must guide the production of evidence in a judicial lawsuit.

33 What evidence is permitted in a tax trial?

The Brazilian legal system admits as evidence in tax proceedings the testimony of the party or testimonial evidence.

However, considering that the scope of facts in a tax proceeding currently embraces technical or accounting issues, the solving of which requires specific technical knowledge, the production of expert evidence is more common in such proceedings.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

At judicial jurisdiction, the defence of a taxpayer must be conducted by an attorney-at-law duly registered at the OAB. Representation of the tax authority is made by government attorneys, who are lawyers approved in competitive selective examinations conducted by the municipalities, the states and the federal government.

In the event that the taxpayer cannot afford to pay an attorney, Law No. 1,060/50 provides for the grant of free judicial assistance. However, court precedents do not have a uniform understanding as to the grant of such benefit to legal entities.

At administrative jurisdiction, it is not mandatory that the taxpayer's defence be conducted by an attorney-at-law; the taxpayer may conduct his or her own defence. Defence of tax authorities at federal level is made by tax auditors at first instance and by government attorneys at second instance.

35 Are tax trial proceedings public?

Pursuant to the provisions of the caput of article 37 of the Federal Constitution of 1988 and of article 189 of the New Brazilian Code of Civil Procedure, all procedural acts are, as a general rule, of a public nature; that is, anyone may have access to the case record and to the judgments.

However, in the event that a certain matter is ordered to be prosecuted as a closed proceeding, access to the case record and to judgment sessions is permitted only to the interested parties.

In tax matters, closed proceedings may be ordered whenever the taxpayer attaches to the case record strategic information or confidential documents, or when there is suspected fraud under a pending criminal investigation, among others.

At administrative jurisdiction, access to case records is allowed only to the interested parties. However, judgments are opened to the public.

36 Who has the burden of proof in a tax trial?

As a general rule, in the Brazilian legal system, the burden of proof lies with whoever asserts the claim, according to the provisions of article 373 of the New Code of Civil Procedure.

In tax law, for an administrative act to generate a presumption of validity and thereby reverse the burden of proof against the taxpayer, it must be well founded.

However, in the event of any administrative act being unduly founded, the taxpayer is not required to produce negative evidence, or any evidence of impossible production, it being enough to demonstrate that occurrence of the taxable event was unduly substantiated by the administration.

On the other hand, in the event that the nature of the claim is legitimate, it will be exclusively incumbent upon the taxpayer to produce evidence that their conduct did not violate the law. Thus, the burden of proof is reversed.

37 Describe the case management process for a tax trial.

From the moment the taxpayer receives the proceeding notice, the term within which to file their defence and to request evidence production begins. If granted by the judge, the parties may start producing the requested evidence. Moving on, the case is remitted to the judge under advice to deliver a first instance decision.

If any party disagrees with the first instance decision, it is possible to file an appeal to be judged at second instance by the judging board composed of appellate judges and no longer by a single judge. At this time, the parties are allowed to present oral arguments.

From the decision to be delivered at second instance, it is still possible to appeal to higher courts. To file an appeal to the STJ, it is necessary to substantiate precedent dissension and violation to infra-constitutional laws, while to file an appeal to the STF, it is necessary to substantiate a violation to the Federal Constitution or to treaties, as well as the general repercussion of the disputed matter. Oral arguments are permitted.

38 Can a court decision be appealed? If so, on what basis?

In the Brazilian legal system, if a party does not agree with a decision delivered at first instance by a single judge, it is possible to file an appeal to be judged at second instance by a board formed by three appellate judges.

From the second instance decision, it is still possible to file a special appeal to the STJ and an extraordinary appeal to the STF, conditioned on evidence of compliance with all legal requirements for the filing of both appeals.

At judicial courts, in accordance with the provisions of paragraph 5 of article 1,003 of the New Code of Civil Procedure, all appeal terms are standardised to 15 days, with the exception of a motion for clarification, the term for which remains five days and aims at reforming a decision delivered with any ambiguity, contradiction, omission or material error.

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The relevant legislation is tax law, which is codified in the French Tax Code (FTC), which sets out the statutory rules applicable to the determination and filing of taxes, and the French Tax Procedure Code (FTPC), which sets out the rules governing tax-recovery procedures and tax controversies.

Tax law is enacted by parliament (mainly through yearly finance acts) and must comply with:

- the French Constitution;
- international treaties duly ratified or approved by parliament and in force;
- the treaty on the functioning of the EU;
- the European Convention on Human Rights; and
- European directives issued by the EU.

Once the law is enacted, the French government and the French Tax Authorities (FTA) are in charge of stipulating the terms and conditions of the application of such rules, under the control of the courts.

For that purpose, the FTA regularly issues comments on provisions of law that are compiled in the French tax guidelines published on the Public Finances' official bulletin website (bofip.impots.gouv.fr). Such guidelines may neither supplement nor detract from the law and are binding on the FTA. For information purposes, the FTA has also published (and regularly updates) a list of abusive practices.

Upon the request of a taxpayer, the FTA can also issue formal rulings on the assessment of a given situation with respect to a tax rule. Such rulings are binding on the FTA and, once published, may be invoked by third parties subject to certain conditions.

2 What is the relevant tax authority and how is it organised?

The FTA is a part of the General Directorate of Public Finances (DGFIP) and is subject to the authority of the Ministry of Budget. The FTA is responsible for drafting laws to be enacted by parliament, drafting the regulations and guidelines with respect to tax matters and ensuring control of the tax basis, the monitoring of tax audits and the recovery of taxes. Finally, the DGFIP represents the Ministry of Budget for international negotiations in tax matters and assesses the requests for rulings.

The DGFIP is composed of general and specialised services located in Paris (some of these services have national competence and handle tax matters relating to, in particular:

- large entities with an annual turnover that exceeds €400 million;
- wealthy individuals;
- non-resident entities and individuals; and
- tax fraud) and of local services throughout French territory.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

Tax is usually self-assessed by taxpayers, who have to file tax returns. The FTA periodically checks such tax returns, registered deeds or related documentation. For this purpose, the FTA may request justification or an explanation from taxpayers or third parties, as well as, for business entities, the communication of the accounting entry file (see question 5).

If such preliminary control is not satisfactory, such a review may trigger some adjustments, or may lead to the conduct of a tax audit.

The duration of tax audits conducted on individuals is limited to one year (with a possible extension to two years in certain cases) and the duration of tax audits on business entities is not generally limited (except for business entities whose annual turnover does not exceed certain thresholds and for which an audit may not last more than three months).

An audit may either result in the issuing of a notice stating that such audit is closed with no reassessment, or in the issuing of a tax reassessment notice.

Under certain specific circumstances, the FTA may also be allowed, upon authorisation of a judge, to carry out raids at the taxpayer's premises and to seize material and documents.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Business entities are required to file income tax returns in respect of each fiscal year, as well as additional returns in respect of all types of tax (local taxes, VAT, etc) and specific documentation. In particular, entities with a turnover or asset gross value equal to or higher than €50 million in a fiscal year, or that have an affiliate or a parent that has reached this threshold, are required to provide a simplified transfer pricing documentation within six months from the filing of the tax return; if the threshold mentioned is equal to or higher than €400 million in a fiscal year, entities are also required to prepare transfer pricing documentation, which must be provided to the FTA during a tax audit within 30 days upon first request. Business entities meeting certain criteria must also submit an annual country-by-country transfer pricing report in a dematerialised form.

Individuals are also required to file an income tax return, with respect to the household taxable income of a given calendar year, such filing generally being made online. The taxation at source for certain income categories is under implementation in France and should generally come into force as from 1 January 2019.

Under the French trust reporting rules, trustees are subject to annual and event-based reporting requirements in France in the event that:

- either the trustee, the settlor or one of the beneficiaries of the trust, is a French tax resident; or
- if any of the assets or rights placed in the trust are located in France.

The reported information is contained in a French Trust Register, which certain French administrative and judicial authorities can access.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

Business entities are generally required to provide copies of any document supporting the tax returns filed. Such documents include accounting documentation, business books and records, bank statements, transaction documents and invoices. They are also required to submit to the FTA a soft copy of all their accounting records in the form of an accounting entry file. Additionally, certain large business entities are required to report, as appropriate, their cost accounting and consolidated statements, and business entities subject to the transfer pricing requirements shall provide, upon request, their transfer pricing documentation (see question 4), including a copy of the rulings obtained from foreign tax authorities by their related parties.

An individual taxpayer will generally be required to provide the FTA with any document supporting the tax returns filed and, in particular, bank account documentation or justification regarding assets, debts or tax deductions or credits.

The FTA may, subject to specific provisions, request information from persons who are not bound by the obligation to provide such information, such as a taxpayer's employees, but the latter are not legally required to respond. The FTA may, under certain conditions, interview persons – other than the taxpayer (employees, customers, providers, etc) – who are likely to provide information useful to challenge international tax evasion. Persons contacted by the FTA in this respect may refuse to be interviewed.

6 What actions may the agencies take if the taxpayer does not provide the required information?

If the taxpayer does not provide the required information or if the tax audit cannot take place due to the taxpayer's behaviour (ie, opposition to a tax audit), the FTA is entitled, under certain conditions, to proceed to a discretionary adjustment of the taxpayer's taxes and to claim for penalties (up to 100 per cent of the adjusted taxes), as well as late payment interest. Opposition to a tax audit may also incur criminal sanctions (see question 15).

Upon authorisation of the relevant court and for specific cases of fraud, the FTA is entitled to proceed to raids (see question 3) through which they may access certain other documents and information.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

Taxpayers cannot invoke professional secrecy to refuse to disclose information requested by the FTA. Correspondence between attorneys and their clients is, however, protected by legal professional privilege, in respect of which there is no exception and does not have to be disclosed to the FTA.

FTA officers are legally subject to professional secrecy with regard to information collected in the course of their duties. A violation of this obligation constitutes a punishable criminal offence. However, this rule allows for exceptions to the benefit of other French administrative and judicial authorities, as well as foreign competent authorities on the basis of an exchange of information agreement. Nevertheless, French law prohibits the FTA, in certain circumstances, from providing information that would disclose any business, industrial or professional secret to foreign tax authorities.

8 What limitation period applies to the review of tax returns?

As a general rule, the statute of limitations expires after the sixth year following the year during which the event triggering taxation occurred. However, a reduced three-year statute of limitations applies to most taxes, such as corporate and individual income tax, turnover taxes, certain local taxes, transfer taxes and real estate wealth tax. For transfer taxes and real estate wealth tax, however, a taxpayer cannot benefit from the reduced statute of limitations in the event that he or she failed to file a tax return or to register a deed and where further FTA investigations are necessary. A specific four-year statute of limitations applies to

individual income tax for 2018, due to the implementation of the taxation at source in France.

The statute of limitations may be further extended, for example in the event that:

- a criminal complaint is filed (up to two additional years);
- a request for information from foreign tax authorities is made (up to three additional years); or
- the taxpayer is involved in fraud or with respect to hidden activity (up to 10 years).

Finally, irrespective of the above-mentioned statute of limitations, the FTA is entitled to audit fiscal years during which tax losses carried forward were generated, even if such fiscal years are statute barred, to the extent that such tax losses are offset against taxable income generated during fiscal years that are not statute barred.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

On being issued a reassessment notice by the FTA, an administrative review phase takes place, during which the taxpayer interacts with the FTA.

First, the taxpayer either acquiesces to the adjustment or raises arguments in writing to the relevant tax inspector within 30 days of receiving the reassessment notice (this may be extended in certain circumstances). In the latter case, the taxpayer is informed in writing by the FTA whether they agree with the taxpayer's arguments and, if not, is provided with the reason why. The FTA may respond with a new basis for its position.

Following this exchange of written comments, the taxpayer is entitled to meet the tax inspector's direct manager to discuss the legal arguments and factual circumstances. If the disagreement persists, the taxpayer may ask for a meeting with the tax inspector's general supervisor.

Under certain conditions, factual aspects of the case may also be submitted to an independent tax commission (either local or national) that will hear both the taxpayer and the FTA. However, its decision is not binding on the parties and does not reverse the burden of proof. Additional commissions may also be convened in specific circumstances (eg, in case of abuse of law, specific commission can be convened upon request of the FTA or the taxpayer, and its decision reverses the burden of proof).

During this administrative phase, no payment can be claimed from the taxpayer. If the FTA confirms the proposed reassessment, at the end of such phase, a tax-collection notice is issued that may be challenged by the taxpayer by introducing a contentious claim (see question 25).

The taxpayer may also introduce a claim for equitable relief with respect to taxes due (except for VAT) or penalties and the late payment interest.

10 How may the tax authority collect overdue tax payments following a tax review?

In the event that the taxpayer does not pay the taxes following a formal notice sent by the FTA and depending on the stage of the procedure, the FTA may take protective or executory measures in respect of the taxpayer's assets. For example, the FTA can seize tangible properties, real estate or receivables held on third parties, such as employers (subject to a minimum amount required for subsistence).

The statute of limitations for the recovery of taxes is generally four years after the date on which the tax-collection notice is issued (extended to six years under certain circumstances). Such statute of limitations may be suspended in cases of taxpayer-requested payment deferral (see question 25). It may also be interrupted by certain events, such as a formal notice to pay, precautionary measures or certain legal proceedings.

11 In what circumstances may the tax authority impose penalties?

Penalties are generally imposed if tax returns are inaccurate or incomplete, have not been filed or have been filed late, or if taxes have not been paid or paid late.

Penalties may also be imposed in certain other circumstances such as failure to comply with invoice requirements or reporting obligations.

In addition to such penalties (which are similar to sanctions), late payment interest is also generally due (see question 14).

12 How are penalties calculated?

Penalties are calculated as follows:

| Type of penalty | Method of calculation |
|--|---|
| Penalties for inaccurate or incomplete tax returns | <p>Penalties are assessed on the adjusted tax at the rate of:</p> <ul style="list-style-type: none"> • 10 per cent if the error or omission is not deliberate and relates to personal income tax returns (unless exceptions apply); • 40 per cent if the error or omission is deliberate or constitutes an abuse of law in which the taxpayer is not the main instigator or the principal beneficiary of said abuse; and • up to 80 per cent if the error or omission is either fraudulent or constitutes an abuse of law in which the taxpayer is the main instigator or principal beneficiary of said abuse. |
| Type of penalty | Method of calculation |
| Penalties for failure to file tax returns on time | <p>Penalties are assessed on the adjusted tax at the rate of:</p> <ul style="list-style-type: none"> • 10 per cent if the filing is done before a formal notice is issued or before the expiry of a one-month period following a formal notice by the FTA, increased to 20 per cent for personal income tax returns filed before the expiry of a one-month period following a formal notice by the FTA; • 40 per cent if it is done after that period; and • 80 per cent if the taxpayer carries out an undisclosed activity. |
| Penalties for failure to pay taxes when due | Penalties are assessed at the rate of 5 per cent or 10 per cent, depending on the taxes involved. |

Other penalties are assessed at fixed amounts (eg, fines for failure to provide documents required by the FTA), or at proportional rates on amounts required to be declared or reported on specific statements.

13 What defences are available if penalties are imposed?

The FTA must provide written justification for the penalties imposed and characterise, as appropriate, the omission or error.

Taxpayers are entitled to request the cancellation of penalties that are either not justified or insufficiently justified. In certain cases, a reduction of the penalties may automatically be granted as long as certain conditions are met. Discretionary reduction might also be contemplated in certain circumstances.

14 In what circumstances may the tax authority collect interest and how is it calculated?

The FTA is entitled to collect late payment interest where the payment of taxes has been improperly deferred, or tax returns have not been properly or timely filed. Late payment interest is, however, not due in certain specific cases (eg, when penalties are substituted for the avoided tax, such as in the case of hidden distributions).

By way of exception, late payment interest may be reduced or may not be due, subject to certain conditions, for example where a taxpayer has made an explicit statement in the tax return or where legal tolerance may be applied (ie, if the amount of tax reassessed does not exceed: (i) one-twentieth for income tax; or (ii) one-tenth for transfer tax and real estate wealth tax of the declared tax base).

Late payment interest is assessed at the rate of 0.2 per cent per month (0.4 per cent per month until 31 December 2017) on the amount of tax reassessed, and generally starts accruing as from the month following the month in which the relevant tax should have been paid (for personal income tax, on 1 July of the year following the year pursuant to which the taxation is set) and ends on the last day of the month of notification of the reassessment notice.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Opposition to tax audit may, in addition to discretionary reassessment, be criminally sanctioned by a fine, and, in the event of a repeated offence, by a prison sentence issued by the criminal court.

A taxpayer may be held criminally responsible for tax fraud if he or she has intentionally and fraudulently avoided, or tried to avoid, any tax liability. Prosecution for tax fraud is launched on the FTA's initiative, subject to, under current applicable rules, prior consent of an independent tax commission responsible for criminal tax matters. Changes to this procedure are, however, currently being debated before the parliament.

16 What is the recent enforcement record of the authorities?

According to the FTA's enforcement survey with respect to 2017, reassessed taxes and associated penalties were estimated to €17.9 billion. More than 1.3 million audits have been carried out and tax audits resulted in the recovery of €9.4 billion (compared with €11.1 billion in 2016). Approximately 2.8 million contentious claims were filed in 2017 and an equivalent number of claims were dealt with in 2017. The number of court proceedings filed in 2017 (about 23,000) was lower than the number of court proceedings filed in 2016 (about 26,000). About 920 criminal claims for tax fraud were filed by the FTA in 2017.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

The FTA is entitled to request information on taxpayers from third parties, provided that such third party falls within the categories enumerated in the FTPC. In that case, the third party is required to respond to the FTA's request and is subject to a fine if it fails to do so. Additionally, certain private entities, such as financial institutions, are required to disclose information to the FTA on their own initiative.

The FTA is not obliged to inform the taxpayer of a third-party investigation process. However, if the FTA relies on information and documents obtained through such investigations or through the interview procedure (see question 5) for the tax reassessment, it must inform the taxpayer of the content and origin of such documents or information.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

The FTA cooperates with both French and foreign tax and non-tax authorities. Such cooperation may be either on demand or automatic (eg, social security authorities and judicial authorities are required to automatically transfer certain information annually).

With regard to cooperation with foreign authorities, the FTA can rely on the provisions of double tax treaties, as well as on the provisions of French law implementing the EU Directive 2011/16/EU (as amended) and on the protocol to the OECD convention. Such provisions enable the FTA to request information in order to control the tax basis of French resident individuals and entities, and request assistance in the recovery of taxes.

France has signed an intergovernmental agreement regarding FATCA with the US, pursuant to which French financial institutions are required to report information about their US clients' accounts to the French government, which, in turn, will exchange that information with the US tax authorities. A reciprocity clause obliges the US tax authorities to transmit certain information about French residents holding US accounts. France has also implemented common reporting standards, pursuant to which financial institutions are required to carry out certain diligences to identify account holders and collect information (concerning tax residency and tax identification numbers notably) and to report certain information concerning accounts holders and accounts to the FTA.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

Taxpayers facing financial hardship may ask the FTA, under certain conditions, for payment deferral of the taxes due or, under exceptional circumstances, a write-off of all or part of the taxes.

Aside from such procedure (which applies on a case-by-case basis), there is no special recovery procedure in such cases. The FTA benefits from a preferential right over non-real estate assets and may obtain a mortgage over taxpayers' real estate assets. French tax law also provides for joint liability that enables the FTA to recover amounts due from third parties under specific circumstances (eg, from directors who are responsible for fraud or repeated serious failures to fulfil tax obligations, which render the recovery of taxes and penalties due by the legal entity impossible).

Specific rules relating to the assessment of taxes may also apply to entities that are in financial hardship.

20 Are there any voluntary disclosure or amnesty programmes?

In the course of an audit, taxpayers may regularise any unintentional mistake or inaccuracy made in their tax returns (provided that such tax returns relate to taxes concerned with the audit). If relevant, such taxpayers may benefit from reduced late payment interest.

No amnesty programme has been introduced in France, but taxpayers may request the FTA's leniency by introducing a claim for equitable relief.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

French tax law provides for certain rights and guarantees for taxpayers both before and after an audit.

When initiating the audit, the FTA must provide the taxpayer with a tax-audit notice that explicitly states that the taxpayer has the right to be advised by counsel and outlines the scope of the review. Failure to mention such information generally results in the procedure being void.

A reminder of the procedure and rights of the taxpayer to ask, for example, for formal meetings or commissions (see question 9), is also made at each step of the procedure.

Additionally, a taxpayer bill of rights, which outlines the main applicable rules in case of a tax audit, must be provided to the taxpayer prior to an audit.

Once the tax audit is over, the FTA has to provide the taxpayer with the outcome of the verification and, as appropriate, with the amount of the adjustments and penalties applied. The taxpayer has the right to ask for a report. The FTA cannot proceed to a new verification for the same time period and for the same tax (other than in certain limited specific situations).

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

The FTA must inform the taxpayers of the content and the origin of any information and documents obtained from third parties in respect of which it relies on in order to justify the reassessments. The FTA must transmit to the taxpayer, upon request and before the collection of the taxes, such documents, or a summary of their contents.

Furthermore, when the FTA implements raids, it must provide an inventory of all documents seized by the agents and return them within a certain time.

23 Is the tax authority subject to non-judicial oversight?

During the tax audit, the taxpayer may submit his or her case to various commissions composed of judges, practitioners, experts and so on (see question 9). Under current applicable rules, the FTA is also required to request the prior consent of the commission in charge of criminal tax matters before launching a prosecution for tax fraud (but also see question 15).

For complex cases, a national expert committee (composed of tax professionals who do not belong to the FTA) may be consulted by the FTA on legal aspects.

Under certain conditions, taxpayers may also request the intervention of the departmental tax conciliator or the tax ombudsman, in order to find solutions to conflicts between the FTA and a taxpayer in the event of a taxpayer complaint with regard to the way his or her request was dealt with by them.

Update and trends

In the context of a global policy aimed at tracking tax fraud and tax evasion schemes, France is strengthening its domestic arsenal of legal measures to prevent and combat tax, customs and social security fraud. In this respect, a draft law (currently under discussion in the French parliament) provides, in particular, for the assignment of judicial tax officers to the Ministry of Budget to improve the judicial investigations means in case of tax fraud; for additional exchange of information obligations between tax and non-tax authorities in certain circumstances; for the publication of penalties imposed on legal entities in the case of a particularly serious breach of law ('name and shame'); for new administrative penalties applicable to certain professionals who have intentionally contributed to a tax or social security fraud committed by their clients; and for increased criminal penalties. It is also looking at amending, and facilitating, the FTA's ability to launch prosecutions for serious tax fraud.

In the meantime, the FTA intends to improve its relation with bona fide taxpayers. In this respect, a very recent law enacted on 10 August 2018 establishes the 'right of citizens to make mistakes' in their relations with the FTA and provides, notably, for a reduction of late payment interest in cases of spontaneous submission of amended returns, the possibility for a taxpayer to obtain a tax ruling on a matter discussed with the FTA in the course of a tax audit and additional rights to protect the taxpayer.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

Tax disputes are held before administrative courts and civil courts depending on the type of taxes involved. Each procedure generally involves three levels of jurisdiction: lower court, court of appeal and supreme court.

| | Administrative courts | Civil courts |
|---------------------|--|---|
| Field of competence | <ul style="list-style-type: none"> Income taxes Local taxes Other direct taxes VAT | <ul style="list-style-type: none"> Transfer taxes Indirect taxes other than VAT Real estate wealth tax |

Specific questions (relating to the compliance of tax provision with the French Constitution) may be submitted by courts, upon a taxpayer's request, to the Constitutional Council. Access to the Council can be requested at each level of jurisdiction, and requires that the three following conditions are met:

- the provision that is challenged applies to the litigation or proceedings involved, or is the basis of such proceedings;
- such provision has not previously been found to be constitutional by the Constitutional Council; and
- the issue raised is a new one or is of a serious nature.

Preliminary rulings may also be sought by courts from the Court of Justice of the European Union regarding:

- the interpretation of the EU treaties; and
- the validity and interpretation of acts of the institutions or other EU bodies.

25 How can tax disputes be brought before the courts?

Any taxpayer may bring a tax dispute before the courts, subject to a prior claim before the FTA. A contentious claim of this nature must generally be introduced before the FTA before 31 December of the second year following the year during which the tax collection occurred, the tax collection notice was issued, the tax was paid or the event triggering the contentious claim occurred.

The FTA is not obliged to answer within a specific time frame. However, in the absence of an answer within a six-month period from the date of the contentious claim (which may be extended by an extra three months if requested by the FTA), such claim is deemed to be rejected.

The taxpayer can object to the FTA decision by bringing the issue before the court within a two-month period beginning from receipt of the letter informing the taxpayer of the refusal (or, according to current

applicable rules, at any time after the end of the six-month period in the event of an implicit refusal).

There is no minimum threshold amount for claims.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Whenever several contentious claims are brought separately before the judge but are similar in nature, the judge may decide to bring these claims together as one case. If such contentious claims are issued by two different taxpayers, the judge must inform them of his or her intention to consolidate the claims, and they may refuse this consolidation. The taxpayer may also ask for contentious claims relating to similar taxes to be dealt with as one case.

Contentious claims with respect to several taxes may be separated by the FTA through several contentious claim refusals if the proceedings are different. In that case, each refusal will be brought before the courts separately.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

A taxpayer who receives a tax-collection notice is obliged to pay the whole amount of the adjusted taxes and then introduce a contentious claim (see question 25). However, he or she may request payment deferral, provided that he or she provides guarantees to the FTA (cash payment to a special treasury current account, pledge, etc). If the taxpayer either does not provide guarantees or provides unsatisfactory guarantees, the payment is still deferred, but the FTA may implement protective measures. Specific rules of procedure apply in such cases that allow the taxpayer to contest any decision of the FTA in relation with the guarantees, usually through emergency proceedings.

The deferral is effective until the decision of the lower court, or the end of the period during which the taxpayer could go before the court.

If the lower court decision is in favour of the FTA, the taxpayer must pay the taxes immediately (including penalties and late payment interest), as well as:

- with regard to a sum due with respect to personal income tax and real estate wealth tax, a 10 per cent penalty and interest at a rate of 0.2 per cent per month (0.4 per cent per month until 31 December 2017) calculated from the first day of the thirteenth month following the month during which the payment was due, pursuant to the tax collection notice; and
- with regard to a sum due with respect to other taxes, a 5 per cent penalty and interest at a rate of 0.2 per cent per month (0.4 per cent per month until 31 December 2017) calculated from the first day of the month following the month during which the payment was due.

If the decision is in favour of the taxpayer, the latter is automatically eligible to default interest on the amount of tax that he or she had already paid, and is reimbursed for the fees related to the provision of guarantees.

28 To what extent can the costs of a dispute be recovered?

When the decision is favourable to the taxpayer, certain costs (such as costs for producing documents, registration fees (if any) or costs relating to expertise) are automatically reimbursed.

Other costs are borne by the losing party (for example, legal fees) to the extent requested by the other party and subject to the judge's decision (usually the amount charged on the defeated party may not exceed €5,000).

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

According to the National Internal Regulations, a lawyer may only charge fees to his or her client, or one of his or her representatives. A third party can guarantee a taxpayer (individuals and companies) in the event of a request for a payment deferral.

In some instances, and under certain circumstances, third parties may buy potential tax receivables held by taxpayers over the FTA and offer to assist in a claim for reimbursement and bear the related costs, in exchange for part of the gain obtained.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

The number of judges in a court depends on the level of jurisdiction. At each level, such numbers may vary, especially depending on the gravity or importance of the case.

For administrative courts

| Level of jurisdiction | Lower administrative court | Administrative court of appeal | Supreme Administrative Court |
|-----------------------|----------------------------|--------------------------------|--|
| Number of judges | One to three | Three to five | Three to 17 – varies from case to case |

For civil courts

| Level of jurisdiction | Lower civil court | Civil court of appeal | Supreme Civil Court |
|-----------------------|-------------------|-----------------------|--|
| Number of judges | Three | Three | Three to 19 – varies from case to case |

Specific rules apply for emergency proceedings. There is no jury for tax matters.

31 What are the usual time frames for tax trials?

The usual time frame for tax trials varies substantially depending on the level of jurisdiction and the situation. There are no mandatory time frames. In practice and on average, trials before lower courts and

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courts of appeal can take between one year and two-and-a-half years, and trials before Supreme Courts can take one to two years.

32 What are the requirements concerning disclosure or a duty to present information for trial?

There is no discovery process before French tax courts. Briefs and supporting documents received by the court (see questions 33 and 37) from taxpayers are automatically transferred to the FTA, whereas such documents received from the FTA are transferred to taxpayers under certain conditions. In any case, the court can only base its decision on elements, even those received from foreign tax authorities, each party had the opportunity to discuss.

33 What evidence is permitted in a tax trial?

Tax trials are based on a written procedure under which the judge examines the factual circumstances and legal arguments described by each party in their briefs. Parties may make oral observations during the hearing. In addition, the judge may ask for expertise, although such procedure is rarely used by judges in practice.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Legal representation of taxpayers is mandatory, except for the lower administrative court and generally the civil court (for tax cases).

The FTA may be represented by its own agents, even if in practice the FTA appoints lawyers in some instances. In rulings before the Supreme Civil Court, the FTA will be represented by a lawyer. In France, a specific category of lawyers represents parties before Supreme Courts.

Taxpayers who cannot afford legal representations may request, upon filing an application with the relevant justification, legal aid to finance in whole or part legal fees and expenses.

35 Are tax trial proceedings public?

Tax trial proceedings are public.

36 Who has the burden of proof in a tax trial?

The burden of proof generally lies with the FTA, except in certain specific situations in which such burden of proof lies with the taxpayer, such as where:

- the FTA has adjusted the taxpayer's taxes unilaterally (in the course of discretionary reassessments);
- the commission in charge of abuse-of-law matters has agreed with the FTA;
- the taxpayer did not answer to a reassessment notice; or
- the FTA has proved the existence and amount of a profit shift abroad (transfer pricing issues).

37 Describe the case management process for a tax trial.

Under French tax law, during the trial, exchange of briefs is organised by the court, with the court acting as an intermediary. Each party only addresses their briefs to the court and the court communicates the brief to the other party, giving a time limit to reply.

Once briefs have been exchanged, the court issues an order for the conclusion of proceedings. Briefs that are produced after the order are generally not examined by the court, except for notes in support of pleadings, which may be addressed to the president of the formation of the court.

38 Can a court decision be appealed? If so, on what basis?

Whenever the taxpayer or the FTA do not agree with the decision of lower courts, they may bring an appeal before the competent court of appeal and ultimately before the competent Supreme Court.

| Appeal before | Procedure |
|---|--|
| The administrative or civil court of appeal | The taxpayer is given a two-month period to file the appeal, against a four-month period in practice for the FTA, beginning at the date of notification of the lower court decision. |
| The Supreme Administrative or Civil Court | The taxpayer is given a two-month period to file the appeal, beginning at the date of notification of the court of appeal decision. |

Greece

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The applicable legislation relating specifically to tax administration is the Code of Tax Procedure (L 4174/2013), which regulates, among other matters, the process of tax audits and controversies up to the stage of recourse to Greek courts, and the Code of Administrative Procedure (L 2690/1999), which is in general applicable to the relations of citizens and any public law entity.

Moreover, the Independent Authority for Public Revenues issues circulars that are binding on the tax authority for the interpretation and implementation of tax legislation. However, these regulations are not binding on taxpayers.

Greece has signed bilateral treaties for the avoidance of double taxation with a long list of countries in the areas of both income tax and inheritance tax.

2 What is the relevant tax authority and how is it organised?

Every tax authority falls under the jurisdiction of the Independent Authority for Public Revenues, which as of 2017 became an independent authority, released from state control and monitoring. The Authority is governed by the administrative council, a governor and a European Commission expert. The European Commission has appointed two officials in the council.

The competent tax office is determined by the registered seat of the legal entity or the residence of the taxpayer. The three major cities (Athens, Piraeus and Thessaloniki) have separate tax offices for limited liability corporations. For individuals who have their residence abroad, the competent tax office is determined by the residence of their tax representative. For non-Greek tax residents with an obligation to be registered in Greece, the Tax Office of non-Greek Residents (residents abroad) is competent.

For large enterprises and for individuals of a certain wealth, audit authority has been granted to specific audit centres in Athens and Thessaloniki.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

Normally, on submission of a tax return, tax is assessed without further action by the tax authorities, either simultaneously with the submission of the tax return or shortly after in the case of annual income tax returns. However, following a tax audit, the tax authorities may issue a corrective tax assessment, provided that the audit shows that the previously submitted tax return was inaccurate or mistaken.

If the taxpayer does not file a tax return despite his or her respective obligation, an estimated tax assessment may be issued unless the taxpayer files a late tax return.

In extremely urgent cases, such as when there are indications that the taxpayer intends to leave the country, thus jeopardising the collection of taxes due, especially through the transfer of assets, the tax

authorities may issue a preventative tax assessment prior to the date for submission of the respective tax return. In such a case, the taxpayer either pays the tax indicated on the preventative tax assessment as a lump sum, or secures its payment by providing a guarantee or by accepting of a lien of property in favour of the tax administration for the total amount of the tax liability.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Different types of taxpayers are subject to different reporting requirements. Employees and pensioners are subject to limited reporting and essentially to an annual income tax return. Such individuals are usually subject to an audit if an unjustified increase in their assets is found (usually following an audit of their bank accounts). Individuals of a certain wealth are audited by a special audit centre.

Businesses (either individuals or legal entities) are subject to increased reporting standards, which involve maintaining accounting books on the basis of the simplified or double-entry accounting principle. Although efforts have been made to reduce the amount of reporting required, Greece is still a country of complicated and intensive requirements. Businesses are also subject to a variety of tax reviews, including, for example, full audit, partial audit (for a certain tax item), audit for VAT refund and audit for the issuance of fictitious invoices.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

Upon written request of the tax authorities, the taxpayer is obliged to provide copies of its books and records or any other related document for the determination of the tax liability of the taxpayer, including customers' and suppliers' lists, as well as any other information, within five business days from the notification of the request. There is also an obligation for certain third parties (banks, undertakings for collective investment in transferable securities, notaries, etc) to provide the tax authorities with all the requested information they possess in relation to the taxpayer within 10 days, with the exception of privileged information and documents. In the case of data and information in a foreign language, an official translation of them in Greek should be submitted.

Interviews with the taxpayer or the taxpayer's employees are not required by Greek tax legislation. However, in practice, during a tax audit, the auditors may discuss issues raised by the audit with the taxpayer. Additionally, before notification of the final assessment, the tax audit authority is obligated to inform the taxpayer of its preliminary findings and request the taxpayer's position.

6 What actions may the agencies take if the taxpayer does not provide the required information?

Failure to respond to requests by the tax administration to provide the required information constitutes a procedural infringement and a penalty is imposed on the taxpayer. Moreover, if the information not provided refers to the business books and records kept and issued by the taxpayer, the tax authorities may use indirect methods to determine the taxable income by calculating the taxpayer's gross income and outflows on the basis of generally accepted principles and techniques of auditing.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

Data concerning third parties in their transactions with taxpayers are not covered by professional secrecy and therefore there is an obligation to provide such data. However, professional secrecy may be lifted if written permission from the competent prosecutor for the granting of data covered by such secrecy is provided.

Employees of the tax administration are obliged to keep confidential all of the taxpayer's data and information that they receive during the exercise of their duties (duty of confidentiality). If they fail to do so, they are personally liable (for both civil and criminal purposes).

Pursuant to a recent amendment in tax legislation, in the case of outstanding debts of more than €150,000, the name of the taxpayer may be published without the taxpayer's consent.

8 What limitation period applies to the review of tax returns?

As of 1 January 2014, the tax assessment may be issued within five years from the end of the tax year and may be extended under certain conditions, which were recently defined by the Greek Administrative Supreme Court. For tax evasion cases, the tax assessment may be issued within 20 years from the end of the tax year. However, since tax evasion may include the inaccurate submission of a tax return aimed at tax avoidance, the 20-year statute of limitation will be considered as the general rule.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

As of 1 January 2014, an administrative appeal is provided as an extra-judicial mandatory remedy for challenging any act or omission of the tax authority (administrative appeal is a precondition for the admissibility of the judicial appeal lodged before the competent administrative court). Thus, prior to any judicial review, a re-examination of the disputed act or omission is conducted by a special administrative authority particularly formed for this purpose: the Dispute Resolution Directorate (DRD) (see question 25).

10 How may the tax authority collect overdue tax payments following a tax review?

As soon as the assessment is notified to the taxpayer, the tax administration issues the taxpayer with a payment notice prior to proceeding to any enforcement action. In the event of non-payment of the amount due within 30 days from the notification of the payment notice, the tax authorities may proceed (without a judicial decision) to the imposition of a seizure of movable assets, real estate, property rights, claims and, in general, all of the debtor's assets or, in case of the debtor being a legal entity, to all of the directors' assets bearing joint liability (the latter is applicable under conditions specified by the law). On the basis of the above conditions, the tax authorities may also proceed to take appropriate interim measures.

It should be noted that the non-payment of tax due for a period of time longer than four months is a criminal offence (misdemeanour).

11 In what circumstances may the tax authority impose penalties?

The tax authority may impose penalties in cases of infringement of Greek tax legislation. These penalties distinguish between penalties for procedural infringements and penalties for infringements found following an audit by the tax authority.

Procedural infringements include (indicatively):

- non-submission or late submission of a statement of informative character or a tax return or a withholding tax return;
- non-compliance with a request of the tax administration for the provision of information or data;
- non-cooperation during a tax audit;
- non-notification to the tax administration of the appointment of a tax representative;
- non-registration before the tax registry; and
- non-compliance with an obligation regarding the keeping of books and issuance of records according to Greek accounting standards, among others.

Infringements found following an audit by the tax authority include (indicatively):

- filing of an inaccurate tax return;
- non-filing of a tax return;
- non-payment of VAT;
- non-issuance of a tax record for a transaction subject to VAT;
- issuance of false tax records;
- issuance and receipt of fictitious tax records; and
- falsification of tax records, among others.

There are also special penalties for infringements of transfer pricing legislation.

12 How are penalties calculated?

Penalties for procedural infringements are fixed and depend on the simplified or complex accounting status of the taxpayers; that is, different penalties are imposed on taxpayers who are not liable to maintain accounting books and those liable to maintaining accounting books on the basis of simplified or double-entry accounting principles. Repetition of any infringement within five years results in the imposition of a double penalty, whereas a quadruple penalty is imposed for a second repetition.

Penalties for infringements found following an audit by the tax authority depend on the amount of the discrepancy and are calculated as a percentage of the value of the infringement, depending on whether it concerns the fictitiousness, forgery and concealment of taxable income or the non-payment of taxes or the fraudulent refund of taxes.

Penalties for infringements of transfer pricing legislation are calculated as a percentage on the declared gross profits.

13 What defences are available if penalties are imposed?

The taxpayer may raise all arguments regarding flaws in the formal process of the act of assessment (eg, violations of procedure or a lack of competence), as well as disputing the basis or reasoning of the assessment. Force majeure arguments are extremely difficult to prove and reliance on the advice of an attorney or accountant is disallowed.

By virtue of a recent amendment to the law, no penalties may be imposed on taxpayers if they acted following written instructions from the tax administration.

14 In what circumstances may the tax authority collect interest and how is it calculated?

In cases of late payment or non-payment of any amount of tax (the latter being found following a tax review), the taxpayer is obliged to pay interest for the period from the end of the legal deadline until the date of payment of the tax. The determination of the interest rate is a decision made by the Deputy Minister of Finance. The interest rate, according to the ministerial decision currently in force, is set at 8.76 per cent. However, up until 31 December 2017, interest was calculated on a monthly basis, whereas since 1 January 2018, it has been calculated on a daily basis.

The significance of this differentiation lies in the fact that if a debt is paid on the 15th day of the month, according to the calculation currently in force, the taxpayer will be called upon to pay interest for the entire month. In contrast, from 1 January 2019, the same taxpayer will be called upon to pay 15/365 of the relevant interest (which corresponds to the 15 days that the payment was delayed).

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Legal provisions governing criminal tax evasion have been incorporated in the Greek Code of Tax Procedures, pursuant to which tax evasion is considered to be committed by persons who:

- intentionally avoids the payment of taxes (eg, income tax, uniform tax on the acquisition of ownership, special real estate tax, VAT, turnover tax, premium tax, withholding and imputable taxes, fees or contributions, shipping tax, etc) by not paying or paying incorrectly or reimbursing or setting off or deducting or withholding taxes; and
- intentionally issues false or fictitious tax records as well as receives fictitious tax records or alters such records, irrespective of whether they evade paying taxes or not.

Under the Greek penal system, legal entities do not bear criminal liability. For this reason, individuals who are engaged with the effective management, administration and representation of a legal entity (either by holding specific executive positions or by exercising de facto management duties) are considered instead as the perpetrators or accomplices of tax evasion.

16 What is the recent enforcement record of the authorities?

Uncollected taxes due reached about €2.5 billion by the end of 2017. The Independent Authority for Public Revenues is said to have collected €4.8 billion in 2017 from new and old debt.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

The tax authority has the right to request any kind of information from third parties such as other public entities (authorities, organisations or companies owned by the state), judicial or prosecution authorities or other third parties, such as financial institutions, investment funds, chambers of commerce, notaries, registrars, heads of land registry offices, economic or social or professional associations or organisations. The right is restricted for pending criminal cases or investigations where the granting of a relevant permission by the court or the prosecutor is required in order to request the information.

Third parties bound by professional confidentiality (including lawyers) may provide information related to their economic transactions with the taxpayer. However, for the rest of the information covered by the confidentiality obligation, the tax authority should request permission from the competent prosecutor on proving that the taxpayer is suspected of tax evasion and invoking the reasons for which it wishes to obtain the information by the third party.

A fine ranging from €100 to €500 will be imposed if third parties refuse to provide the above-mentioned information to the tax authority.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

The tax authority may cooperate with every authority within the country.

As to tax authorities in other countries, Greece has adopted EU Directive 2011/16/EU on administrative cooperation in the field of taxation, by which every member state's authority may request information from other member states.

Greece has also signed and applies the Convention on Mutual Administrative Assistance in Tax Matters, which was developed jointly by the Council of Europe and the OECD and promotes international cooperation in the assessment and collection of taxes.

Furthermore, Greece has adopted the Automatic Exchange of Information tax standard, developed by the OECD, under which jurisdictions obtain financial information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. The Automatic Exchange of Information tax standard came into effect in September 2017.

In January 2017, Greece and the United States signed an intergovernmental agreement to facilitate compliance with the US Foreign Account Tax Compliance Act by financial institutions in Greece.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

If a taxpayer is declared bankrupt, the Greek state enjoys a priority right after the claims of secured creditors for claims of VAT, including any kind of surcharges thereof, and it ranks fifth after other priority creditors.

Concerning the declared bankrupt, if the Greek state has announced its claims within the bankruptcy procedure, it may request a settlement to be granted by the Minister of Finance. If the debt exceeds €600,000 the State Legal Council may accept a settlement that may involve:

- the payment of the total amount of debt along with the partial or total release from late payment surcharges, tax surcharges and fines;

- the payment of the basic debt and the late payment surcharges in monthly instalments (up to 90); or
- a combination of the previous two.

20 Are there any voluntary disclosure or amnesty programmes?

Since December 2016, there has been an ongoing voluntary disclosure programme of undeclared taxable income, which was effective until 20 November 2017.

Since January 2018, a possibility of the submission of a late (initial or amending) tax return following the issuance of a tax audit order was introduced. In the case of the submission of a tax return following the notification of the tax audit order and until the notification of the preliminary corrective tax assessment act, the penalties can reach up to 50 per cent of the tax due, as the case may be.

In such a case, however, on the condition that the taxpayer proceeds with payment of the tax within 30 days, the respective penalty (and not the interest for late payment) is reduced to 60 per cent.

The above reduction is not possible in certain cases specified in the law (eg, submission of late employment withholding tax returns).

Furthermore, the penalties are also reduced to 60 per cent where the taxpayer consents by means of an irrevocable and unconditional statement to the final corrective tax assessment act and further proceeds with payment of the respective penalties within 30 days.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

The aforementioned Code of Tax Procedure and the Code of Administrative Procedure protect taxpayers, as well as the general principles of the Greek Constitution.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Taxpayers may file a petition to the tax authority in order to receive copies of any public or private document within 20 days provided that they prove a legitimate interest. In practice, the period of reaction on behalf of the authorities may be longer and the legitimate interest may not be accepted. If the document is related to the private or family life of a third party, protected by confidentiality under a special provision, or if it is crucial to a police, judicial or administrative investigation, the tax authority may deny the petition.

23 Is the tax authority subject to non-judicial oversight?

Every tax authority is subject to the control and monitoring of the Independent Authority for Public Revenues (see question 2).

Before the taxpayer initiates pre-court or court actions against an act or omission by the tax authority (see question 24), he or she may file a complaint to the Greek Ombudsman, an independent authority that intervenes in cases involving public bodies, including tax authorities. Upon examination of the complaint, the consumer adviser should attempt to contact the tax authority and resolve the issue.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

Tax disputes fall within the jurisdiction of administrative courts, on two levels: the Administrative Court of First Instance and the Administrative Court of Appeals.

Tax disputes up to €60,000 and tax disputes arising from enforcement of tax claims by the tax authority (eg, seizures) fall under the competency of the single-member Administrative Court of First Instance.

Tax disputes from €60,000 and up to €150,000, as well as non-monetary tax disputes, lie within the competency of the three-member Administrative Court of First Instance.

If the tax dispute is valued at €150,000 or more, the three-member Administrative Court of Appeals has exclusive jurisdiction as a first and final instance.

Decisions issued by the Administrative Courts of First Instance may be appealed by any of the parties.

The territorial jurisdiction is determined by the seat of the tax authority that issued the contested act (or omission).

Final decisions issued by the Administrative Court of Appeals valued at more than €40,000 are subject to a petition for cassation before

the Supreme Administrative Court on limited exclusively legal grounds and if no prior jurisprudence of the Administrative Supreme Court exists or if the decision of the Administrative Court of Appeal contradicts prior jurisprudence of the Administrative Supreme Court or other Supreme Court or irrevocable decision of an administrative court.

Greek law has introduced the 'pilot trial', a process by which any legal matter of an appeal before the administrative courts may be examined first by the Supreme Administrative Court directly upon the filing of a petition by the interested party, provided that the matter is of great importance and it affects many taxpayers. Moreover, an administrative court itself may issue a preliminary decision, initiating a pilot trial before the Supreme Administrative Court. The final decision by the Supreme Administrative Court is binding on the court that initiated the pilot trial and any party that was involved in the pilot trial and constitutes jurisprudence on the legal matter in the way described in the previous paragraph.

25 How can tax disputes be brought before the courts?

Tax disputes are brought before administrative courts as a recourse against any act or omission of the tax authority (including assessment of taxes and fines or the denial of refunds to the taxpayer, etc). A recourse may be brought by any taxpayer who has a legitimate interest affected by the contested act or omission, on any legal or factual grounds and without any threshold.

Recourse may also be brought independently by individuals or entities who are jointly liable for tax obligations of legal persons or entities. Tax disputes may not be brought before the courts by the tax authority.

The Code of Tax Procedure requires that before recourse to administrative courts, an administrative appeal before the DRD of the Independent Authority for Public Revenues is filed as mandatory. The administrative recourse may be submitted to the DRD within 30 days of the date of notification of the final corrective assessment act or other tax dispute, or 60 days for taxpayers residing abroad. The DRD must issue a decision within 120 days from the filing of the administrative appeal; otherwise the appeal is considered tacitly rejected.

The taxpayer has the right to judicially challenge such rejection by submitting an appeal to the administrative courts within 30 days of the date of notification of the decision issued by the DRD, or the expiry of the 120-day period if no decision was issued by the DRD. In any case, he or she is obliged to pay upon filing a court fee amounting to 1 per cent of the tax in dispute up to €1,000. Another court fee between €3,000 and €15,000 is payable for the hearing of the appeal at first instance.

Relief sought is limited to total or partial annulment or modification of the contested act, including an obligation to refund any amounts unduly paid to or due by the tax authority, with interest. In case of contestation of an omission by the tax authority, the taxpayer may request the court to determine the amount of the taxpayer's claim.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

In principle, each contested act or omission by the tax authority is subject to a separate appeal. However, coherent act(s) may be contested in

one appeal, especially in cases of tax audits covering multiple taxations and fiscal years. In any case, the admissibility of the appeal is judged separately for each contested act (deadline or court fee, etc). In cases where multiple persons or entities are jointly liable for payment of any amount of tax, an appeal may be brought together or separately for all or any of them. 'Collective' appeals by taxpayers are not permitted under Greek law.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Payment of the amounts in dispute is not a prerequisite for the filing or hearing of an administrative appeal before the DRD or an appeal at first instance (except for the court fee mentioned in question 26).

The submission of an administrative appeal or an appeal suspends the payment of 50 per cent of the amount in dispute, provided that the remaining 50 per cent is paid. In any case, the taxpayer may seek suspension of the whole amount in dispute by the DRD or (more commonly) by the court, by proving inability to pay entailing irreparable damage in case of enforcement of the claim by the tax authority. In practice, it is difficult to obtain suspension and it requires the disclosure of the global income and assets of the taxpayer and his or her family members or, in case of legal entities, of jointly liable individuals, main shareholders and affiliated entities.

In case of an appeal before the administrative court of appeals against a decision of the Administrative Court of First Instance, the payment of 20 per cent of the amount determined by the court of first instance until the date of hearing before the Court of Appeal is a prerequisite for the appeal to be heard.

28 To what extent can the costs of a dispute be recovered?

The costs of a tax dispute may be sought by both the taxpayer and the tax authority. These only include costs connected to the proceedings before the court, in all instances. In practice, Greek courts only grant rather symbolic amounts as costs (a few hundred euros even for the Supreme Court). Court fees paid are refunded in full or in part in case of acceptance of the appeal.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

Greek law has no restrictions or rules relating to third-party funding or insurance for the costs of any dispute.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

Each party may file an appeal against a decision of the Administrative Court of First Instance within 60 days from the notification of the decision. A prerequisite for the hearing (but not filing) of the appeal is payment of 20 per cent of the tax levied (see question 27). The appeal may include any legal or factual ground.



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Against decisions of the Administrative Court of Appeals, a petition for cassation may be filed within 60 days from the notification of the decision, or 90 days if the taxpayer resides abroad.

31 What are the usual time frames for tax trials?

Time frames in Greek administrative courts are notoriously long, but the situation is gradually improving (especially before the courts of appeal). An appeal before the Administrative Court of First Instance of Athens may be heard within three to five years from filing, and a decision is issued within six to 12 months from the hearing. Time frames before administrative courts in other cities are shorter. However, tax disputes involving amounts exceeding €150,000 are brought directly before the Administrative Courts of Appeal and heard within six to 12 months from filing. A decision is usually rendered within six months from the hearing. Time frames before the Supreme Administrative Court range from one to three years, according to the importance of the case.

32 What are the requirements concerning disclosure or a duty to present information for trial?

In principle, in trials before the administrative courts there is not a specific requirement to present information and each party bears the burden of proof of its own pleadings (see question 36). In any case, if the court does not have enough evidence, it may issue a preliminary ruling ordering a re-audit or supplementary audit with a limited scope, which is carried out by the tax authority.

33 What evidence is permitted in a tax trial?

Tax trials usually do not involve testimonies other than sworn statements (affidavits). In any case, the taxpayer is not accepted as a witness. The persons most commonly providing sworn statements or testimonies in tax trials include accountants, employees of the taxpayer or counterparties in various transactions. Experts or persons providing technical reports or legal opinions are also permitted to testify. All written evidence must be translated into Greek. Sworn statements or testimonies by non-Greek speakers are carried out with the assistance of a translator.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

In tax trials with amounts in dispute exceeding €600, taxpayers must be represented by an attorney at law. The tax authority is represented either by its director or by members of the State Legal Council, a special body of lawyers representing the Greek state before all courts.

35 Are tax trial proceedings public?

All trial hearings before Greek administrative courts are public but, as explained, the procedure is basically on paper.

36 Who has the burden of proof in a tax trial?

In principle, in trials before the administrative courts, each party bears the burden of proof of its own pleadings. However, in Greek tax law, the taxpayer has the burden to prove all elements that are necessary for a tax assessment, which constitute the reasoning of such tax assessment (usually in the form of a tax audit report). As a result, a tax assessment or audit may be annulled on the grounds of lack of reasoning. As an exception to this rule, Greek tax legislation often introduces presumptions for the indirect proof of the existence of taxable matter; in these cases, the burden of proof is reversed. Also, according to recent case law, in some extreme cases (eg, of tax evasion), the court may decide an ad-hoc allocation of the burden of proof, subject to judiciary review by the Supreme Administrative Court.

In any case, if the court does not have enough evidence, it may issue a preliminary ruling ordering a re-audit or supplementary audit with a limited scope, which is carried out by the tax authority.

37 Describe the case management process for a tax trial.

In preparation for a tax trial, all evidence should be collected and translated and usually sworn statements are prepared. In certain cases, where additional legal grounds to the initial appeal exist, they can be submitted to the court 15 days before the hearing and notified to the other side and they become part of the appeal. Proxies or authorisation documents on behalf of the client should be submitted to the court at least one day before the hearing. The arguments of the appeal, the evidence and the counter arguments against the Greek state's position are analysed in the legal memorandum submitted within three days from the hearing; and in the following three days, the legal memorandum of the Greek state (if any has been submitted) can be rebutted.

38 Can a court decision be appealed? If so, on what basis?

Each party may file an appeal against a decision of the Administrative Court of First Instance within 60 days from the notification of the decision. A prerequisite for the filing of the appeal is payment of 20 per cent of the tax levied (see question 27). The appeal may include any legal or factual ground.

Against decisions of the Administrative Court of Appeals, a petition for cassation may be filed within 60 days from the notification of the decision, or 90 days if the taxpayer resides abroad.

Ireland

Joe Duffy, Greg Lockhart and Kathryn Stapleton

Matheson

Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The relevant legislation regarding direct taxes is principally the Taxes Consolidation Act (TCA) 1997. This Act includes provisions relating to income tax, corporation tax and capital gains tax. In respect of value added tax (VAT), the relevant legislation is principally the Value-Added Tax Consolidation Act 2010. The relevant legislation regarding stamp duty is the Stamp Duties Consolidation Act 1999, with respect to capital acquisitions tax it is the Capital Acquisitions Tax Consolidation Act 2003 and, for customs, the Customs Act 2015, which implements EU customs rules. Both direct and indirect taxes are administered by the Office of the Revenue Commissioners (Revenue). Decisions of Revenue can be appealed to the recently established Tax Appeals Commission (TAC).

In the practical sense, there are many other factors that are relevant to the interpretation and administration of tax legislation, which include:

- decisions of the courts: as Ireland is a common-law system, previous court decisions are binding on taxpayers, unless overruled by subsequent legislation or by a higher court;
- the Irish Constitution;
- the international dimension, for example, the laws of the ECHR or EU treaties, directives and regulations; together with obligations arising from Ireland's OECD membership and cooperation with the BEPS project;
- double taxation treaties between Ireland and other jurisdictions;
- Revenue guidance as to Revenue's administration of the law, for example, Revenue eBriefs and codes of practice; and
- Revenue internal guidance manuals that are issued to employees of Revenue to be followed in the course of their duties of administration of the Irish tax system and which are available to the public as a result of the Freedom of Information Act 2014.

2 What is the relevant tax authority and how is it organised?

Revenue is responsible for administration of the government's tax policies. Revenue was established by Government Order in 1923 and there are currently 110 Revenue offices countrywide. The board comprises three commissioners, one of whom is the chairman and all of whom carry the rank of secretary general. The chairman is also the Accounting Officer for Revenue. Its core function is the assessment and collection of taxes and duties. It derives its mandate from its statutory obligations and from the government as a result of EU membership. Within Revenue, there are 16 divisions:

- four regional divisions;
- the Large Cases Division;
- the Investigations and Prosecutions Division;
- the Personal Taxes Policy and Legislation Division;
- the Business Taxes Policy and Legislation Division;
- the Planning Division;
- the Corporate Services and Accountant General's Division;
- the Corporate Affairs and Customs Division;
- the Revenue Solicitor's Division;

- the Information, Communications Technology and Logistics Division;
- the Collector General's Division;
- the International Tax Divisions; and
- the Indirect Taxes Policy and Legislative Division.

The work that Revenue undertakes includes assessing, collecting and managing taxes and duties that account for the majority of Exchequer revenue, administering a customs regime for the control of imports and exports and the collection of duties and levies on behalf of the EU, as well as working with other state agencies in cross-departmental initiatives.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

In Ireland, businesses and individuals are required to self-assess their tax liability and file a return with Revenue. They assess their tax liability over a certain period, known as the chargeable period. A self-assessment is required to be made in, and as part of, the return, stating the amount of income, profits or gains, or chargeable gains arising to the taxpayer for the period, together with an assessment of the amount of tax chargeable to and payable by the taxpayer. The self-assessment must also identify if there is a surcharge applicable for a late return. In the event that the indicative calculation is incorrect, any additional tax due must be paid one month after the amendment of the self-assessment. Interest is chargeable on any tax underpaid or paid late (ie, not on or before the due date). Companies pay corporation tax in a payment or payments of preliminary tax for the chargeable period and then complete and file a return. Following receipt of the return, Revenue may make an assessment of the company for the relevant tax.

There are a number of different forms of intervention that Revenue may undertake to ensure that tax liability has been self-assessed correctly and that the tax laws have been complied with. Revenue has a multifaceted approach to tackling non-compliance and may carry out a number of activities. Revenue may undertake a non-audit compliance intervention, which does not have the same level of formality of an audit or investigation, and may be in the form of an unannounced visit, a request for a business to undertake a self-review of tax liability or a pursuit of returns from non-filers. Revenue may also undertake a formal audit, which is an examination of a taxpayer's tax return, declaration of liability, statement of liability or compliance with tax and duty legislation. A Revenue audit may be undertaken by a single Revenue auditor or a team of auditors depending on the complexity of the audit. Lastly, Revenue can undertake a formal investigation of a taxpayer's affairs where it believes that serious tax evasion may have occurred. Such an investigation may result in criminal prosecution.

Revenue assessments can be raised within four years of the end of the chargeable period for which the return is filed. Revenue may make an assessment if it is not satisfied with a particular return filed having received information in that regard, or where a Revenue officer has reason to believe that a return does not contain a full and true disclosure of all material facts. Revenue must give notice of assessment to the

chargeable person. This should include time allowed for an appeal. It must identify separate liability to different taxes if applicable.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

In Ireland, the taxpayer reporting requirements vary depending on whether the taxpayer is employed or self-employed. The taxation system for individuals employed by an employer is the Pay-As-You-Earn (PAYE) system and employees have their taxes deducted at source through payroll by their employer. Self-employed individuals are required to submit their own individual return on a self-assessment basis, in the same manner as a company submits a corporation tax return. Generally, the same processes of review are applied to all taxpayers. However, as Revenue adopts a risk-based approach to audits, certain categories of taxpayers would be considered lower-risk than others, for example, taxpayers who pay tax through the PAYE system. Furthermore, there are differing levels of engagement between taxpayers and Revenue; for example, companies in the Large Cases Division typically operate in a system of cooperative compliance and would have closer contact with Revenue officials on a more regular basis.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

Revenue officers may make such enquiries or take such actions within their powers as they consider necessary to ascertain whether a person is chargeable to tax and to assess the amount of income, profits or gains and the entitlement of the person to any allowance, deduction or relief. A Revenue officer may enter any business premises where that officer has reason to believe that there has been activity relating to chargeable tax, there are any records relating to such activity, or any property is or has been located. Such an officer may request a person who has information relating to such tax liability to provide information and explanations relating to the liability, and to produce any relevant records or property. They can also search the premises for any such records or property if they feel they have not been produced.

There is a limit as to what the officers can obtain; they cannot require anything within the ambit of legal privilege or professional advice given in a confidential nature to a client. The officer also needs a warrant to enter any premises that is a private residence.

6 What actions may the agencies take if the taxpayer does not provide the required information?

If a Revenue officer has reason to believe that a person is withholding records or property relating to tax, the officer is entitled to search the premises in question for such records or property. A person who does not comply with an officer for this purpose is liable for a penalty of €4,000.

If, during an audit intervention, a taxpayer refuses to facilitate the audit or to produce the requested information, it will be regarded as obstructing the audit process. If Revenue cannot obtain cooperation after a reasonable period, it will advise the taxpayer that such obstruction is a criminal offence. There may also be situations in which it may be necessary for Revenue to take immediate action to secure information.

Revenue may also serve notice on a financial institution and other third parties to make books, records or other documents available for inspection, if they contain information relating to a tax liability of a taxpayer, even if the taxpayer is not known to the officer but is identifiable by other means. The officer authorised by Revenue must have reasonable grounds to believe that the financial institution or other third party is likely to have information relating to this liability. Revenue may also avail itself of a provision in the legislation that allows for an application to be made to the High Court for an order requiring information from financial institutions or third parties.

Where a taxpayer fails to submit a return on time, Revenue may charge interest on any tax that is paid late, and a surcharge will apply to the tax liability in question. The surcharge is treated as part of the liability to tax. The principal risk of not engaging constructively with Revenue is triggering a Revenue assessment of a taxpayer's tax liability.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

No powers of search or request of Revenue should be construed as requiring a person to disclose any information that would be covered by legal professional privilege, or that would constitute professional advice of a confidential nature given to a client. Legal advice privilege applies to confidential communications between a solicitor and client and litigation privilege applies in the context of advice given regarding litigation. Legal advice privilege applies only to lawyers. However, as noted in question 5, the TCA protects professional advice given to a taxpayer if given in a confidential nature. An authorised officer of Revenue or a taxpayer who refuses to produce a document on the basis of privilege can apply to the District Court for a determination as to whether a document is privileged legal material.

Revenue is obliged by legislation to keep all taxpayer information held by it confidential. Information held by Revenue can only be disclosed in accordance with the TCA or other statutory provisions. Revenue is not obliged to withhold information in criminal proceedings or in proceedings to do with the administration or enforcement of the TCA or related legislation.

Revenue may only keep records that have been obtained from a taxpayer for as long as the investigation or audit into the taxpayer is ongoing. Information stored and maintained by Revenue is subject to the Data Protection Acts 1988 and 2018, and Revenue must comply with the General Data Protection Regulation (EU) 2016/679. The new data protection laws ensure that Revenue must act with a clear legal basis, while safeguarding taxpayers' rights as regards the use of retention and accuracy of information. Whereas before the Finance Act 2017, Revenue was required to disclose the name of the taxpayer relevant to a notice for information from a third party, this is no longer required. Revenue can seek non-specific information on taxpayers from third parties.

The TAC is required to publish determinations but must ensure that the identities of the parties involved are not revealed. The TAC may also publish reports on its decision, which must as far as possible prevent the identification of any party involved in the decisions.

8 What limitation period applies to the review of tax returns?

Where a chargeable person has delivered a return containing a full and true disclosure of all material information for a chargeable period in which the return is filed, Revenue may not make an assessment or an amendment to an assessment after the end of four years commencing at the end of the chargeable period in which the return is filed.

Unless and until a full and true return has been filed, the four-year time limit does not begin to run. A Revenue assessment on a person other than a chargeable person cannot be made any later than four years after the chargeable period to which the assessment relates.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

While there is no formal ADR programme in place, Revenue's Complaint and Review Procedure is the process by which customer service issues between taxpayers and Revenue can be resolved. There are a number of stages to such proceedings. First, a taxpayer makes a formal complaint to the office where their case is managed. If dissatisfied with the result, a taxpayer can seek review by the manager for the local office, or in certain circumstances, from the divisional or regional office. If still dissatisfied, a taxpayer can seek independent review by an internal or external reviewer.

The TAC is the body responsible for hearing appeals in relation to an assessment made by Revenue. The TAC is under an obligation to be flexible in its proceedings. Appeal commissioners must endeavour, to the best of their ability, to ensure a flexible approach in relation to procedural matters and the avoidance of undue formality. Appeal commissioners must also give the parties the opportunity to settle their dispute by agreement. It is understood that, particularly with regard to cases that were under appeal prior to the formation of the new TAC and are governed by transitional rules, Revenue will take a pragmatic and commercial view in seeking to negotiate a settlement with taxpayers relating to the alleged liability.

Generally, the Code of Practice for Revenue Audit and Compliance Intervention states that the use of appropriate monetary settlement is

consistent with the efficient management of the tax system and it has an important role in Revenue's compliance programmes.

10 How may the tax authority collect overdue tax payments following a tax review?

Revenue may take a number of enforcement actions in the collection of overdue tax payments. The most frequently used enforcement action is recovery by sheriff. Revenue uses the services of a number of sheriffs to deal with the majority of cases to do with overdue tax payments. Attachment is an exemplary enforcement option that can be used where conventional enforcement by sheriff has failed. Revenue also contracts with a number of solicitor firms for the purpose of pursuing payment through a court action. In certain circumstances, tax can also be collected through payroll.

11 In what circumstances may the tax authority impose penalties?

Revenue may impose a number of fixed penalties for non-compliance. Where a person has been required by notice given under or for the purposes of certain provisions relating to corporation tax to furnish any information or particulars and he or she fails to comply with this notice, he or she will be liable to a penalty of €3,000.

If the failure continues after judgment has been given, there is an additional penalty of €10 per day. If the taxpayer is a company, the penalty is €4,000 and €60 per day. Furnishing incorrect information or particulars gives rise to a penalty of €3,000 or €4,000 for a company.

Furthermore, Revenue may impose tax-geared penalties for specific defaults. In a case where a penalty arises, the amount of the penalty is generally computed by Revenue, agreed with the taxpayer and paid. If the taxpayer does not agree with the computation, it is a matter for a court to determine whether the taxpayer is liable.

12 How are penalties calculated?

The calculation depends on a classification of the default into categories; that is, whether the action that gave rise to the liability was careless or deliberate behaviour and whether it was with or without significant consequences. The level of disclosure made by a taxpayer is also considered. Qualifying disclosure is defined as disclosure of complete information in relation to, and full particulars of, all matters occasioning a liability to tax that gives rise to a penalty.

The penalty amount differs depending on whether the disclosure was the first, second or third disclosure made by the taxpayer in that category. Higher penalty rates arise when there is deliberate behaviour and with no qualifying disclosure. Cooperation with Revenue also affects the rate where there has been no disclosure.

The penalty also varies depending on whether the qualifying disclosure was prompted or unprompted. A full table detailing the rates of penalties in each scenario as outlined here is set out in the *Revenue Code of Practice for Revenue Audit and Other Compliance Interventions* at 5.6.2.

13 What defences are available if penalties are imposed?

Taxpayers are responsible for the filing and payment of their own taxes, even where filed on their behalf by a professional adviser. The TCA applies to self-assessments made by another person acting under the taxpayer's authority as if it was made by the taxpayer. As the penalty calculation rules take into account the extent to which the taxpayer's behaviour was careless or deliberate and the level of cooperation, the taxpayer who was unaware of non-compliance through carelessness and later cooperates with Revenue in assessment of the correct liability would likely incur a lesser penalty.

14 In what circumstances may the tax authority collect interest and how is it calculated?

Interest may be charged on late payments of tax in a number of sections in the TCA. In addition, where as a result of a Revenue intervention, it is clear that the taxpayer has not made a full and correct return and that an undercharge to tax or duty arises, interest charges arise under the relevant interest provisions in the TCA. Interest is treated as an increase in tax due for the accounting period in question. The rate of interest is determined by the relevant section in the TCA.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Criminal prosecution may result from a Revenue investigation and those convicted are liable to a fine or imprisonment or both. A Revenue investigation is an examination of a taxpayer's affairs where Revenue has reason to believe, after an examination of the relevant information, that a serious tax or duty evasion, or other offence, such as fraud, smuggling or trade without an excise licence, may have been committed.

A taxpayer commits a criminal offence under the TCA if he or she knowingly or wilfully files an incorrect tax return, or if he or she knowingly or wilfully aids, abets, assists, incites or induces another to file such a return. The Director of Public Prosecutions makes decisions as to whether a case should be prosecuted.

16 What is the recent enforcement record of the authorities?

The enforcement record of Revenue is good and public opinion in Ireland is strongly against tax-avoidance schemes.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

Revenue may request certain information from a bank or financial institution or other third party in relation to a taxpayer's affairs. As outlined in question 6, there is a provision in the TCA for an application for a court order directing a bank, financial institution or third party to furnish such information to Revenue. Taxpayers' rights regarding the privacy and security of their personal data are protected by the Data Protection Acts 1988 and 2003.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

In practice, Revenue works with a number of other authorities within Ireland in carrying out its functions, including An Garda Síochána (the Irish police force), the National Employment Rights Authority and the Department of Social Protection.

Revenue cooperates with multiple foreign tax authorities. Ireland has entered into a number of double taxation treaties with other jurisdictions. In addition to Ireland's treaty network, Ireland has entered into tax information exchange agreements (TIEAs) with many other jurisdictions, under which Revenue cooperates with foreign authorities in the exchange of tax information. Ireland's TIEAs tend to follow the OECD model for TIEAs. Ireland has also signed up to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which provides for information exchange to combat cross-border tax avoidance and evasion. Revenue has information exchange obligations arising from Ireland's membership of the EU and the OECD, both of which involve automatic exchange of information relating to cross-border tax rulings and advance pricing agreements (APAs).

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

In the past, Revenue has been sympathetic to occasional cash flow difficulties, but has been keen to stress that the legal obligations for payment apply equally to all taxpayers. The Office of the Collector-General is charged with the responsibility of ensuring the collection of the majority of business and personal taxes. Where a taxpayer falls behind on tax payments, Revenue will seek to engage with the taxpayer to address the issue. Where meaningful engagement is not forthcoming, Revenue may take other actions such as charging interest or commencement of an enforcement action.

20 Are there any voluntary disclosure or amnesty programmes?

Historically, Revenue has had a number of amnesty programmes but none exist at present.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

Revenue is subject to the Data Protection Acts 1988 and 2018. These acts confer rights on individuals with regard to their personal data and responsibilities on entities that use and process such data. Revenue treats all personal information received as confidential, and can only disclose such information to third parties under certain conditions. Revenue is also subject to the oversight of the TAC and the High Court in the discharge of its functions.

Under the Customer Service Charter that is part of Revenue's Complaints and Review Procedure, taxpayers can expect to be treated with courtesy and consistency, and can expect to be given the necessary information and assistance required to help them understand their tax obligations. A presumption of honesty also exists with respect to a taxpayer's dealings with Revenue.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Under the Data Protection Acts 1988 and 2018, Revenue must, on request from a taxpayer, provide that taxpayer with a copy of personal information that Revenue holds on them. Such information must also only be held by Revenue for as long as is necessary to carry out its functions in relation to such information. The taxpayer, who is the data subject, can request a copy of all information relating to them by way of a data protection access request in writing to the Data Controller in Revenue. The implementation of data protection legislation in Ireland is supervised by the Data Protection Commissioner.

Under the Freedom of Information Act 2014, any person can request access to information held by Revenue, as Revenue is a public body, provided it is not personal information or information that, if disclosed, would compromise law enforcement, security, or finances of the State.

23 Is the tax authority subject to non-judicial oversight?

Revenue is accountable to the Government of Ireland, which is responsible for the appointment of new Revenue commissioners. Decisions of Revenue can be appealed to the TAC as outlined in the following questions.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

In Ireland, the High Court, Court of Appeal and Supreme Court have appeal jurisdiction to hear appeals on a point of law from determinations of the TAC. A taxpayer who wishes to make an appeal against a decision or assessment made by Revenue must submit a written notice of appeal to the TAC, which is the newly established independent statutory body whose main task is hearing, determining and disposing of appeals against assessments and decisions of Revenue concerning taxes and duties in accordance with relevant legislation. The legislation concerned is the Finance (Tax Appeals) Act, 2015 and the TCA 1997. The TAC currently comprises two appeal commissioners appointed by the Minister of Finance, who have a renewable fixed term of seven years in office, together with staff who support the appeal commissioners in their duties. In addition, where certain actions of the Revenue do not give rise to a direct right of appeal before the TAC, the High Court may have jurisdiction in a judicial review procedure.

25 How can tax disputes be brought before the courts?

The taxpayer must submit a written notice of appeal to the TAC. It is possible for taxpayers to make their appeals electronically through the TAC website. The taxpayer must include in the notice of appeal all of the information relating to the issue, including the name and address of the appellant, the taxpayer's personal public service (PPS) number or tax reference number, information on the matter under appeal and the grounds for appeal, together with any other matters stipulated by the appeal commissioners. A taxpayer will have 30 days to appeal a decision or assessment made by Revenue. There is no minimum threshold value of an appeal stated in the rules of procedure.

As soon as practicable after receipt of the notice of appeal, the TAC will send a copy of the notice of appeal and any supporting documentation to Revenue. Revenue will be advised that any objection to the

acceptance of the appeal on the grounds of validity of the appeal must be communicated to the TAC by notice in writing, stating their reason for the objection, no later than 30 days after the date on which the copy of the notice of appeal has been sent to them. In order to be a valid appeal, it must be made in relation to an appealable matter and all conditions must be satisfied as required by the provisions of the acts relating to the appeal concerned.

Where no notice of objection has been received from Revenue within 30 days, or alternatively, where a notice of objection has been received from Revenue and the appellant has been afforded the opportunity to respond in writing to that notice of objection, the commission will decide whether or not the appeal should be accepted.

A decision on whether or not an appeal should be accepted may be made by a member or members of staff of the commission or by a commissioner. A decision not to accept an appeal will only be made where the member or members of staff of the TAC or the appeal commissioner is satisfied that the appeal is not a valid appeal, the appeal is without substance or foundation or the appeal is a late appeal and the requirements for acceptance of a late appeal have not been satisfied.

An individual can appeal a decision of the TAC to the High Court in situations where they consider that the TAC erred in its decisions in relation to a point of law only, but not in relation to the facts. A party to an appeal process who is dissatisfied with a decision of the TAC as being erroneous on a point of law may by notice in writing require the TAC to state and sign a Case Stated for the Opinion of the High Court. Such written notice must be given to the TAC, and copied to any other party to the appeal, no later than 21 days from the date on which the decision has been notified to the parties, and must specify the particular respect in which the decision is alleged to be erroneous in law. Decisions of the High Court can be then appealed to the Court of Appeal, and from there to the Supreme Court.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Where multiple appeals regarding the same matter are brought by different taxpayers, Revenue may apply to have the cases effectively joined on application to have all cases except one stayed for the duration of the hearing of the single appeal case and can then apply the determination to each appeal case on the same matter.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Having lodged an appeal against a Revenue assessment, a taxpayer will have paid the tax that the taxpayer believes is due for the relevant accounting period as a precondition of the appeal. There is no requirement to pay the disputed tax in order to appeal. On the determination of the appeal, if there is any additional tax due as a result of the determination, it will then become payable. Where a chargeable person has an additional liability to tax on the determination of an appeal, that additional amount of tax is generally deemed due and payable on the same date as the tax charged by the assessment that was under appeal.

If the tax paid was 90 per cent of the total tax after the determination of the appeal, then it will be due and payable one month from the date of the determination of the appeal.

28 To what extent can the costs of a dispute be recovered?

Each party is responsible for its own costs for a TAC hearing.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

There are no specific restrictions of this nature stated in the rules of procedure of the TAC. However, such provisions are not permitted by a general rule of litigation in Ireland.

The Supreme Court has recently confirmed that the law of champerty in Ireland prohibits a third party with no bona fide interest in a dispute from funding another party's litigation.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

The appeal commissioners decide on the issues under appeal and issue determinations. At present, there are two appeal commissioners; both

of whom have, prior to appointment, acted as practising barristers. Where the appeal commissioners think it appropriate, they may adjudicate on a matter without a hearing on consent of the parties. Appeal commissioners may have regard to a previous appeal that raised common or related issues. There is no provision for a jury trial in the TAC. Appeals on a point of law will be adjudicated before the High Court, Court of Appeal and the Supreme Court without a jury. A jury will only be relevant in a criminal prosecution of a tax case.

31 What are the usual time frames for tax trials?

There is no specified guideline in terms of the time typically taken to complete an appeal. However, the case-management powers of the TAC are aimed at concluding appeals as expeditiously as possible. Appeal commissioners have the power to direct that a case management meeting be held to help progress a case. An initial case management meeting will normally be held following the receipt of the statement of case. Further case management conferences may be held if necessary with the aim of securing the completion of the proceedings in a fair and expeditious manner.

32 What are the requirements concerning disclosure or a duty to present information for trial?

The TAC can request that the appellant and the Revenue submit a Statement of Case. The TAC may also direct in what order Statements of Case are to be submitted. Typically a Statement of Case would contain an outline of the relevant facts, a list of and copies of the relevant documents that will be relied upon, details of any witnesses, details of the statutory provisions being relied upon and any case law being relied upon. The Statement of Case must be furnished to the other party at the same time as it is furnished to the TAC and the TAC is to be given written confirmation that the other party has received a copy of the Statement of Case.

33 What evidence is permitted in a tax trial?

The appeal commissioners may summon any person who they think is able to give evidence regarding an assessment made on another person to appear before them to be examined, and may examine such person under oath. The clerk, agent, servant or other person confidentially employed in the affairs of a person chargeable can also be examined in the same manner, and subject to the same restrictions, as in the case of a taxpayer who presents himself or herself to be questioned in person. A person who, after being summoned, neglects or refuses to appear before an appeal commissioner at the time and place appointed for that purpose, appears but refuses to be sworn or subscribe the oath or refuses to answer any lawful question will be liable to a penalty. In general, the taxpayer may decide, but will not be compelled, to give evidence. The appeal commissioners may allow evidence to be given orally or in writing and may allow the submission of evidence that would not ordinarily be admissible in court. The appeal commissioners can limit the number of witnesses whose evidence a party may put forward.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

The taxpayer can submit their own appeal to the TAC or it can be submitted on their behalf by a legal representative. The TAC will hear any barrister or solicitor, or any person who is a member of a number of professional bodies set out in the TCA (the Irish Auditing and Accounting Supervisory Authority or an accountancy body that comes within its supervisory remit, the Irish Taxation Institute and the Law Society of Ireland), who appears on behalf of a party. Notwithstanding that a person does not fall within these categories, the TAC may hear such person if they are satisfied it is appropriate to do so. The appeal commissioners are required to manage and conduct proceedings in a way that will meet the reasonable expectations of members of the public with regard to the avoidance of undue formality and a flexible approach being adopted in respect of procedural matters.

There is no provision at present for legal aid specifically in the tax appeals system.

Where a taxpayer is being prosecuted for tax evasion due to deliberately misinforming Revenue of the true facts of their business affairs or where there has been wilful non-compliance with legislation, legal representation might be available due to the criminal nature of the proceedings.

35 Are tax trial proceedings public?

The taxpayer can opt for an appeal hearing to be heard in camera, but the default position is that every hearing will be held in public unless specifically requested otherwise, either at the statement of case stage, or within 14 days of receiving notice of the time and place of the hearing. Appeal commissioners may also direct that an appeal or part of an appeal be held in camera if deemed necessary. Determinations are published within 90 days of the decision with the name and any personal details of the taxpayer redacted.

36 Who has the burden of proof in a tax trial?

The burden of proof in civil cases generally is on the balance of probabilities. In tax cases, the burden of proof depends on the particular section in the legislation that is subject to the dispute; however, generally, the burden rests with the taxpayer.

37 Describe the case management process for a tax trial.

The Finance (Tax Appeals) Act 2015 includes a number of provisions aimed at assisting the expeditious and fair completion of proceedings, including the right for appeal commissioners to direct that a meeting, known as a case-management conference, be held to progress a case. Where such a conference is arranged, the appeal commissioners will fix a date and time for an initial case management conference following the receipt of the statement of case and this will be notified to the parties not less than 14 days prior to the time and date of the hearing. They may hold such further case management conferences as appear necessary or desirable with the aim of securing the completion of the proceedings in a fair and expeditious manner. The appeal commissioners

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will request the parties to the appeal to notify them in writing not later than seven days before the date fixed for a conference of any application for directions that the party intends to make, including a brief statement of the grounds on which the party will argue that such directions are necessary and appropriate for the fair and efficient disposal of the appeal. A party that notifies the commissioners of an intention to apply for a direction or directions should at the same time furnish the other party with a copy of such notification and should confirm in writing to the commission that this has been done.

The directions that can be made include a direction to join parties to an appeal, to stay the proceedings for a fixed period, to direct that the parties submit a statement of agreed facts, a book of core documents, or a book of authorities, as well as a statement of evidence to be furnished during the appeal. Appeal commissioners may also direct that any experts giving evidence of a scientific or technical nature be called to meet in advance of the hearing and prepare an agreed statement on the areas that the experts are in agreement and the areas in which they differ.

38 Can a court decision be appealed? If so, on what basis?

While decisions of the appeal commissioners are final and conclusive on the facts of the case, a party to an appeal process who is dissatisfied with a determination of the appeal commissioners as being erroneous only on a point of law may by notice in writing require the appeal commissioners to state and sign a Case Stated for the Opinion of the High Court. Written notice must be given and copied to any other party to the appeal, no later than 21 days from the date on which the determination has been notified to the parties. It must specify the particular respect in which the determination is alleged to be erroneous in law. This may in turn be appealed to the Court of Appeal and the Supreme Court. An appeal route that previously lay to the Circuit Court for a full rehearing is being discontinued.

Italy

Massimo Antonini, Raul-Angelo Papotti and Paolo Piantavigna

Chiomenti

Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

Italian tax law is based solely upon written sources at both national and EU levels. Among various written sources of law, the Italian Constitution is considered a primary source of law. It sets forth the rules that are directly applicable as well as the basic rules governing the approval of laws (including tax laws).

EU tax law is also applicable in Italy. Italian judges apply the law in compliance with EU law and European Court of Justice case law.

Tax treaties, as long as they are implemented by the Italian Parliament, are also applicable.

It should be noted that EU law and tax treaties set forth, in general terms, only substantive tax rules, whereas tax proceedings are governed by national rules and the Civil Procedure Code.

Among the others, the following supplementary legislative sources of tax law are noteworthy: Presidential Decree No. 600/1973 on assessment procedures, Legislative Decree No. 472/1997 on the imposition of tax penalties and Law No. 241/1990 on administrative proceedings in general.

Specific rules on tax litigation are provided by Decree No. 546/1992. According to article 1(2), tax courts will apply the specific provisions of such a decree and, to the extent compatible, the rules of the Civil Procedure Code. Also worthy of mention is Legislative Decree No. 545/1992, setting forth the basic rules governing the tax jurisdiction in Italy.

Circular letters by the Italian tax authorities are not binding on taxpayers. Taxpayers may also disregard individual pronouncements issued by the tax authorities, even if this would most likely give rise to a tax assessment. Conversely, replies by the Revenue Agency to the rulings regarding specific taxpayers on their own actual case are binding on the tax authority itself.

2 What is the relevant tax authority and how is it organised?

The Revenue Agency is the public authority in charge of the enforcement of all taxes (excluding customs and excise duties, and some other minor levies), competent to issue notices of assessment.

Since 1 December 2012, it has incorporated the Real Estate and Land Registry Agency.

The Revenue Agency is divided into territorial offices, namely:

- regional directorates, based in the head town of each region, responsible for the management, tax assessment, tax litigation and supervision of local offices; and
- provincial directorates, based in the main town of each province, structured with one or more local offices, namely an audit office (divided into up to three areas, according to the different types of taxpayers and different activities performed) and a legal office (which deals with litigation).

In some cases, other entities may take part in the administration of taxes; in particular, municipalities are responsible for the administration of the municipal tax on real estate properties.

Also worthy of mention is the Tax Police, which assists public prosecutors and plays an important role in verifying the correct compliance with tax laws.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

Italy implements a self-reporting tax system that requires taxpayers to file an income tax return estimating the amount of taxes payable for the tax period.

The Revenue Agency verifies the fulfilment of tax obligations and whether a tax return is correct through the following main procedure (applicable to both income and indirect taxes):

- an initial check (on errors in the determination of the taxable income or in the calculation of the tax due or regarding tax deductions and tax credits) is carried out automatically on all tax returns, before the submission of the tax return regarding the subsequent fiscal year;
- a second 'formal' check (on the consistency of the tax return with the documentation kept by taxpayers, including material from the tax registers' database) is carried out on samples of tax returns by the end of the second year following the year in which the tax return was submitted; and
- a third phase (substantive audit) is intended to rectify the individual incomes declared and to identify subjects who, although being obliged to submit the tax return, have not done so. This audit is based on all information and documents available to the Revenue Agency or acquired through access, inspections and verifications. If this audit is conducted at the taxpayer's place of business, tax auditors can stay for no longer than 60 working days (30 days in an ordinary term plus 30 days' extension). The officers must be authorised by way of special authorisation that is issued by the head of the tax office of their jurisdiction. Access to locations that are also used as a dwelling by the taxpayer must be authorised by the Public Prosecutor. At the end of their audit, the tax auditors must draw up the final tax report. This report may result in a notice of assessment indicating the amount of taxes to be paid. In the case of non-compliance with the procedural guarantees laid down for the protection of the taxpayer during the audit, the information illegally acquired cannot be used to determine the taxpayer's liability.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

All taxpayers state their income through an income tax return. The tax return must be submitted by all individuals who registered an income the previous year (entrepreneurs and those practising a craft or profession must submit it even if they did not receive any income) by using the forms provided every year by the Revenue Agency.

The forms vary depending on whether the tax return concerns individuals, partnerships or corporations.

For individuals, the form to be used can be the standard tax return form or – if the declarant reports only employment or pension income

– the ‘730’ form (the simplified form). Using the 730 form has considerable advantages, since it is easier to complete and does not require calculations; moreover, the taxpayer obtains the reimbursement of any tax that may have been overcharged directly with his or her payslip or in the pension instalment for July.

Individuals who possess business income and income deriving from the practice of crafts and professions must submit their tax return by 30 September of each year.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer’s employees? If so, are there any restrictions?

The powers of the tax offices are exerted on taxpayers through accesses, inspections and verifications, or mainly in the offices themselves, with requests for information and documents made to the taxpayer and to third parties.

In particular, through summons or questionnaires, the Revenue Agency can ask taxpayers for data, information and possible documents necessary for verification, to be completed, signed and returned within an established deadline, usually no less than 15 days.

Through questionnaires for statistics-based tax assessment, the Revenue Agency gathers data concerning each economic activity. They do not represent a base for tax assessment for the taxpayer who completes them.

Interviews with the taxpayer or the taxpayer’s employees are often carried out during tax audits at the taxpayer’s place of business, with the limitations illustrated at question 3.

Even if there is no legal obligation to respond, pursuant to article 10 of the Taxpayer’s Bill of Rights, taxpayers must collaborate with the tax authority and act in good faith.

Moreover, the Revenue Agency can examine all corporate books and accounting records that must be kept by all subjects with an economic business relevant for tax purposes, apart from specifically provided cases of exemption.

Corporate taxpayers are also expected to have compulsory registers provided by tax laws and the Italian Civil Code. They must be kept until the deadlines for the verifications relating to the corresponding tax period have expired, even after the deadline established by article 2220 of the Italian Civil Code (ie, 10 years after the last entry) or other tax laws.

Pursuant to the Italian Taxpayer’s Bill of Rights, a taxpayer may not be requested to provide additional documents already at the disposal of the Revenue Agency.

6 What actions may the agencies take if the taxpayer does not provide the required information?

If taxpayers do not provide the Revenue Agency with the requested information:

- a penalty of between €250 and €2,000 is applicable;
- deeds, documents, accounting books and records that have not been filed on specific request of the tax officers cannot be used by taxpayers in their favour in potential tax litigation. Taxpayers can overcome this presumption only by proving that they had no responsibility in failing to provide these documents; and
- the Revenue Agency can assess the taxpayer’s position by assumptions on the basis of their profits or turnover.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

The Revenue Agency’s audit must be carried out confidentially and without undermining the potential business secrets of the taxpayer. However, to guarantee privacy and confidentiality, Italian tax law does not specify what duties the tax authority is under.

Especially in audits on large corporations, the control activity must not be invasive to the taxpayer’s daily business in terms of time and media exposure.

Pursuant to article 200 of the Criminal Procedure Code, lawyers and advisers cannot be obliged to disclose their taxpayers’ situations, except in the case of a criminal offence.

8 What limitation period applies to the review of tax returns?

Pursuant to article 43 of Presidential Decree No. 600 of 29 September 1973, the assessment notices for income purposes will be notified, under penalty of forfeiture, by 31 December of the fifth year following the year in which the relevant tax return was filed.

In cases of failure to file a tax return or in the event of filing of a void tax return, the tax assessment notice may be served until 31 December of the seventh year following the year in which the tax return should have been filed.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

There are several procedures under Italian tax law that define claims before an appeal is filed with the tax courts. These procedures help to mitigate the time and costs invested in a potential tax dispute and, in certain cases, allow for a reduction of tax penalties.

The key features of these procedures are analysed below.

Early payment

If taxpayers pay the total amount of the assessed taxes (with relative interest) within 60 days from the service of a notice of assessment, they are entitled to a reduction of penalties of up to one-third of the minimum applicable penalty.

Voluntary disclosure

Voluntary disclosure allows for the correction of omissions or irregularities in the submission of the tax returns or the payment of taxes. Voluntary disclosure entails a reduction of the penalties applicable and is admitted until the deadlines provided by the law.

Self-defence

The Revenue Agency has the power to correct its own errors without the need for a judicial decision. The unlawful deed may be independently annulled by the tax authority or at the taxpayer’s request. However, the submission of the request does not suspend the term for filing an appeal before the tax court. The annulment can be carried out even if the judgment is pending or if the deed has already become final due to the expiry of the deadline for the filing of an appeal.

Tax settlement

Tax settlement procedures allow the taxpayer to settle a notice of assessment before filing a tax appeal. The tax settlement procedure may be activated either by the taxpayer or by the tax authority. Taxpayers must file their written proposal of tax settlement within 60 days of the notification of the notice of assessment. The notification of the proposal interrupts the term for the filing of the tax claim for 90 days. The tax authority then summons the taxpayer to discuss the proposal within 15 days of the notification of the request. If the parties reach an agreement, the contents of the agreement are set out in a written deed, which is signed by both parties. The tax settlement is not subject to appeal and cannot be modified by the tax office. This results in a reduction of penalties of up to one-third. If an agreement is not reached, the taxpayer may file an appeal with the tax court.

Judicial settlement

Judicial settlement allows the parties to the tax proceedings to settle the dispute before a decision is issued by the tax court. It may be activated by the taxpayer, the tax office or the judge. This procedure applies to all disputes and may take place before or during the public hearing (of first or second instance). If a settlement is reached, the agreement between the parties is reported in the minutes of the hearing. If a settlement is reached beforehand, the agreement is communicated to the judge, who must declare the proceedings closed. If the agreement is considered inadmissible by the judge, they must schedule the hearing date and the proceedings will continue as usual.

In a judicial settlement, the amount of tax is set out in order to close the dispute. The taxpayer obtains a reduction of up to 40 per cent of the tax in the penalties due under the agreement, in case of settlement before the provincial tax court, or up to 50 per cent in settlement cases before the regional tax court.

Conciliation

For tax assessments claiming less than €50,000, taxpayers who intend to appeal must submit an application for conciliation. The request will be filed with the tax office that has issued the tax assessment. The application must contain a reasoned proposal with the recalculation of the amount of the claim. If the tax office decides not to accept the claim for a full annulment of the assessment, it will provide the taxpayer with a proposal concerning its reasoning of the controversial issues. The application is treated like a formal tax claim. If, within 90 days from the presentation of the application, the Revenue Agency does not accept the claim, the application produces the effect of presenting a formal tax claim.

Mutual agreement procedure

In double taxation cases, taxpayers can start a procedure to designate government representatives of the competent authorities to work together to resolve international tax disputes (MAP), if it is allowed by the relevant bilateral tax treaty.

If the dispute concerns a related party resident in another EU member state, taxpayers may activate a MAP procedure according to the EU Arbitration Convention.

In both cases, the pending tax litigation is suspended.

10 How may the tax authority collect overdue tax payments following a tax review?

Overdue tax collection is entrusted to a public entity (Agenzia delle Entrate-Riscossione) and companies that, within a certain territory, are entrusted on a concession basis with the task of collecting taxes, even by force, on behalf of the Revenue Agency.

Further to the service of a notice of assessment, the taxpayer is requested to pay within the next 60 days the assessed taxes, interest and penalties, irrespective of the filing of an appeal before the tax court.

If the taxpayer fails to pay, the Revenue Agency is entitled to take interim measures aimed at preserving the tax credit, such as the registration of a mortgage on real estate property of the taxpayer and the 'administrative block' of movable registered assets (eg, cars). Should this be the case, the Revenue Agency must notify a specific payment demand 30 or 20 days before the mortgage or the block, respectively.

Moreover, 270 days after the service of the notice of assessment, the collector agent can enforce collection procedures, such as the divestiture of movable assets (eg, bank accounts) and the seizure of real estate and moveable property.

11 In what circumstances may the tax authority impose penalties?

The Revenue Agency imposes monetary penalties if:

- the taxpayer has engaged in the conduct sanctioned by tax law; or
- the taxpayer's conduct is characterised by guilt.

Additional penalties may be imposed on taxpayers to limit the exercise of a business activity, prevent participating in public tenders and suspend licences, concessions or authorisations necessary for specific businesses or activities.

12 How are penalties calculated?

The main penalties imply the payment of a sum of money; either a fixed sum or a percentage (related to the avoided or evaded tax). For example:

- penalties for failure to file a tax return: if a taxpayer is required to file an income tax return and fails to do so, the penalty may range from 120 to 240 per cent of the amount of unpaid tax (in any case, a minimum penalty of €250 is applicable);
- penalties for failure to file a correct tax return: the penalty may range from 90 to 180 per cent of the additional tax liability assessed (the penalty applies even if undue deductions or tax credits are exposed in the tax return); and
- penalties for failure to pay taxes on time: if a taxpayer is required to pay an amount shown on his or her tax return but fails to pay such amount within the applicable deadline, a penalty equal to 30 per cent of the amount of unpaid tax will be applied.

If the taxpayer, even at different times, commits a number of violations that, in their progression, prejudice or tend to prejudice the determination of the taxable income or of taxes, a juridical accumulative

penalty is applicable. Accordingly, the Revenue Agency imposes the penalty that should be imposed for the most serious violation, increased by a quarter to half. If the violations refer to various taxes, the basic penalty is first increased by a fifth. If they concern different tax periods, the basic penalty is first increased by half or triple.

The 'material' accumulative penalty, which is a simple sum of the applicable sanctions, is applicable if it is less than the juridical accumulative penalty.

13 What defences are available if penalties are imposed?

Apart from filing an appeal before a tax court, taxpayers can submit to the Revenue Agency a brief within 60 days of the notification of the deed of imposition of the penalties in order to justify their behaviour.

For example, taxpayers can prove that the violation is not punishable since it is determined by objective uncertainty about the scope and interpretation of the applicable tax rule.

The tax office has one year to annul or confirm the deed. In the second instance, the confirmed penalty may be challenged before a tax court.

In addition, taxpayers can define the penalties by paying an amount of penalties reduced to one third. The payment must be made before the expiry of the term for filing the tax appeal. The settlement concerns only the financial penalties and the taxpayer can decide to file an appeal with regard to the assessed taxes. However, in the event of a favourable decision with regard to the taxes assessed, the taxpayer cannot request any refund of the settled penalties already paid.

14 In what circumstances may the tax authority collect interest and how is it calculated?

Interest on arrears is automatically calculated as a consequence of tax assessments and is equal to:

- 4 per cent per year, from the day following the one on which the payment should have been made until the notification of the notice of payment; and
- the interest rate fixed yearly by the Ministry of Economy and Finance, from the notification of the notice of payment until the date of the effective payment.

Taxpayers applying for an instalment plan should pay interest equal to 4.5 per cent per year on the amount due.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

The Revenue Agency or the Tax Police that carried out the tax audit may notify the judicial authority that they have material that may constitute a criminal offence. The judicial authority then decides whether or not to conduct the criminal investigation and prosecute the taxpayer.

The criminal procedure applicable to tax crimes is the same applicable to other criminal offences. It is based on the assignment of the burden of proof to the Public Prosecutor, who must prove that the crime has been committed. For most tax offences, the Public Prosecutor must also prove the taxpayer's guilt. Accordingly, business entities cannot be prosecuted.

The most important criminal offences are:

- false tax return. If, on the basis of an allegedly false tax return, it turns out that, in a given fiscal year, the unpaid tax is greater than €150,000 and the amount of undeclared taxable income is higher than 10 per cent of the total positive items reported in the tax return or, in any event, higher than €3 million, the criminal penalty would consist of imprisonment for a term ranging from one to three years;
- fraudulent tax return. If a fraudulent tax return is filed by issuing an invoice for non-existent transactions, the criminal penalty would consist of imprisonment for a term ranging from one year and six months to six years; and
- fraudulent transfer of assets to impede collection of taxes. If the taxpayer commits fraudulent acts with regard to their own or others' assets, in order to avoid payment or the collection of taxes for a total amount exceeding €50,000, the applicable punishment is imprisonment for a term ranging from six months to four years. If the amount of taxes, penalties and interest exceeds €200,000, the applicable punishment is imprisonment for a term ranging from one year to six years.

16 What is the recent enforcement record of the authorities?

According to the report issued in March 2018 by the Ministry of Economy and Finance, the Revenue Agency is totally successful in tax litigation in around 46.2 per cent of cases.

Third parties and other authorities**17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?**

The Revenue Agency can request financial information from banks concerning the personal accounts of the taxpayer.

It can also request information and documents from contractual counterparties and make cross-checks with third parties.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Apart from the Public Prosecutor, the Revenue Agency rarely cooperates with other domestic authorities.

Despite Italy entering into bilateral agreements for the exchange of information with many countries, cooperation with foreign tax authorities is rare.

Although the cooperation with other domestic institutions (such as the employment and social security agency INPS) or foreign tax authorities is technically possible, the Italian tax authorities have been shown to be quite non-proactive.

Special procedures**19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?**

Taxpayers who are in temporary situations of objective difficulties, namely that are unable to pay a registered debt as indicated in the notice of payment, can apply to the collection office to obtain a rescheduling of the debt.

Application must be submitted on paper, along with appropriate documentation indicating the temporary situation of objective difficulties. The extension may be granted up to a maximum of 120 monthly instalments (10 years). The minimum amount of instalment, without exception, is €100.

Another way to reschedule a tax debt is through tax settlement, which is applicable during insolvency proceedings.

20 Are there any voluntary disclosure or amnesty programmes?

Non-Italian foreign companies belonging to multinational groups with a turnover exceeding €1 billion that sell goods or provide services in the Italian territory for more than €50 million through the support of one or more Italian resident related companies may apply to the Revenue Agency for an evaluation of the risk of existence of a permanent establishment in Italy in the past open tax periods.

If the existence of a permanent establishment is assessed, the company may define, in agreement with the Revenue Agency, the income attributable to the permanent establishment related to the tax periods for which the deadline to file a tax return has elapsed. If this is the case:

- penalties are reduced to a half;
- no criminal penalty may be enforced for the failure to file the tax returns; and
- the foreign company may apply for the Italian cooperative compliance programme.

Rights of taxpayers**21 What rules are in place to protect taxpayers?**

The Taxpayer's Bill of Rights has been introduced into the Italian system by Law No. 212/2000.

This law, integrated with a number of executive regulations, on the one hand establishes general principles that the legislator must respect if he or she intends to introduce tax rules, such as a prohibition on analogy, the non-retrospective effects of tax rules, the simplicity of tax rules and a prohibition on introducing new taxes by means of a law decree. On the other hand, the law recognises the taxpayer's rights to be clearly informed by the Revenue Agency, to receive tax deeds

adequately motivated, to compensate his or her debts and credits, to access to ruling and to be assisted by an ombudsman.

It is worth noting that the Taxpayer's Bill of Rights is an ordinary law, with no specific or stronger powers compared with other subsequent ordinary laws.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Taxpayers have no right of access to documents formed and held by the Revenue Agency before being served with a notice of assessment.

However, taxpayers can file an application for a ruling in order to receive a reply by the Revenue Agency regarding their own actual cases concerning:

- the application of statutory provisions of objectively unclear interpretations;
- the valuation and fulfilment of the requirements necessary to qualify for specific tax regimes;
- the application of the abuse-of-law rule; or
- the disapplication of specific anti-avoidance rules.

The applicant must submit a tax-ruling request before the deadline for the submission of the tax return or for the fulfilment of any other tax obligations connected to the object of the tax-ruling request. The Revenue Agency must reply within 120 days of the request (90 days in the case of the first type of ruling). However, where further information is required, the Revenue Agency may request additional documentation and the answer may be delivered within 60 days from its receipt.

Where the Revenue Agency does not reply within this term, the interpretation provided by the taxpayer is considered accepted. The reply must be motivated and the interpretation provided is binding on the Revenue Agency only vis-à-vis the applicant.

23 Is the tax authority subject to non-judicial oversight?

The Revenue Agency has full autonomy in regulation, administration, treasury, organisation, accounts and finance within the limits set by a convention agreed every year with the Ministry of Economy and Finance, which sets the strategic aims and carries out constant monitoring of its activities.

Due to its public nature, the Revenue Agency is subject to control by the State General Accounting Office and the Court of Auditors.

Court actions**24 Which courts have jurisdiction to hear tax disputes?**

As a general rule, the tax courts have jurisdiction over all tax disputes. Tax proceedings are aimed at verifying the procedural legality of the tax assessment and the substantive legality of the tax obligation. Disputes concerning enforcement are excluded from the jurisdiction of the tax courts. The civil courts have jurisdiction over enforcement disputes and claims for damages against the Revenue Agency. The only enforcement matters that are heard before the tax courts are disputes concerning the executive right for the collection of taxes.

The tax courts are:

- the provincial tax commission (first instance) of the territory where the tax office issuing the challenged deed is located;
- the regional tax commission (second instance), which can overrule judgments issued by the provincial tax courts located in the relevant region; and
- the Supreme Court of Cassation (third and final instance), which rules on decisions issued by the regional tax commissions, but only on legal grounds.

25 How can tax disputes be brought before the courts?

Article 19 of Legislative Decree No. 546/1992 provides a list of challengeable deeds. These include:

- notices of assessment;
- deeds providing for the application of financial penalties;
- notices of payments;
- registrations of mortgages on real estate assets;
- deeds related to cadastral qualifications;
- denials of tax refunds, penalties and interests not due; and
- the denial or revocation of benefits.

In this respect, it should be noted that the tax authority cannot base its defence on grounds that are different from those indicated in the challenged deed.

Litigation is initiated by filing a tax claim, which must contain:

- an indication of the tax court to which the appeal is submitted;
- the identification of the taxpayer and their legal representative;
- the taxpayer's residence or registered office or domicile;
- an indication of the tax authority against which the appeal is filed; and
- the subject matter of the appeal, and the grounds of the appeal.

In particular, the subject matter of the appeal consists of two elements: *petitum* (the claim filed with the tax court) and *causa petendi* (the grounds in support of the claim).

The claim must be served on the tax authority that issued the challengeable deed and filed with the tax court. The notification of the appeal may occur in these ways: through the postal service, by hand, via certified email or through a public official.

The claim must be served within 60 days of the service of the deed being appealed. The taxpayer must, within 30 days from the service of the tax claim, file it with the tax court along with supporting documentation. The appeal may be filed over internet using the SIGIT software (Sistema Informativo della Giustizia Tributaria) only if the appeal has been served via certified email.

After a claim has been filed, the tax court verifies that the contribution due for participation in judicial proceedings has been paid. Contributions are only paid once and there is no cost for the subsequent filing of briefs and documents. The contribution amount depends upon the value at stake in the dispute. The maximum amount of the contribution is €1,500.

Taxpayers must file a registration note, allowing the tax court to assign a docket number to the appeal. In the absence of such note, the proceedings are not initiated.

There is no minimum threshold amount for appealing. However, for tax assessments issued by the Revenue Agency claiming less than €50,000, taxpayers who intend to appeal must submit an application for conciliation (see question 9).

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

On the basis of the case law of the Supreme Court of Cassation, it is possible to file one single appeal regarding multiple tax assessments or different persons, only if the challenged obligation to pay taxes is the same.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

The filing of the appeal does not, per se, suspend the collection.

If the taxpayer files a tax claim with the tax court, the tax authority can request the payment of one-third of the assessed tax plus interest (but no penalties), while the litigation is pending before the first instance court.

If the first instance judgment is positive for the taxpayer, he or she has the right to be reimbursed of the interim payment.

In the opposite scenario, pending the litigation before the regional tax court, the taxpayer is requested to pay up to two-thirds of the taxes assessed and related interest and penalties.

Further to the negative judgment of the regional tax court, all the remaining amount due must be paid.

In order to avoid such interim payments, the taxpayer can ask the courts of first or second instance (even further to the appeal before the Supreme Court) to delay the assessment enforcement. The tax court will order a suspension where the payment may cause a serious damage to the taxpayer (*periculum in mora*) and the claim seems well-grounded (*fumus boni juris*).

28 To what extent can the costs of a dispute be recovered?

In tax proceedings, the court will require the unsuccessful party to bear the costs of litigation.

Under article 15(2) of Decree No. 546/1992, the costs of litigation can be (totally or partially) allocated equally only if both parties lose the lawsuit or for serious and exceptional reasons, to be specifically reported in the judgment.

Update and trends

Since July 2017, the digital tax trial has been running across the whole country.

The official website of the Tax Justice Administration (www.giustiziatributaria.gov.it) has been created. It allows for the electronic filing of documents and court records. In addition, tax courts, taxpayers, professionals and tax authorities, previously authorised, may consult the case files from home or from their offices.

Politically, the following proposals are currently on the table:

- the reorganisation of the Revenue Agency, aimed at simplifying the relations with taxpayers, improving the quality of assistance and information services, increasing powers to counter tax evasion and managing fiscal cases before the tax courts;
- the simplifications related to tax repayment obligations, corporate tax obligations, as well as abrogation of unnecessary hurdles for companies and citizens;
- the reform of the composition of tax courts, aimed at increasing the functionality, productivity and effectiveness of tax judges (eg, selecting judges after a public competition and creating single judge provincial tax courts); and
- the introduction of the possibility for taxpayers to avoid penalties by spontaneously regularising their past tax positions (known as '*pace fiscale*').

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

No.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

The provincial and regional tax courts are made up of a panel of three judges.

Tax issues are ruled by the Fifth Chamber of the Supreme Court, which is made up of a panel of five judges.

There is no jury trial in tax disputes.

31 What are the usual time frames for tax trials?

- From the filing of the appeal before the provincial tax court to the relevant judgment: approximately one year.
- From the filing of the appeal before the regional tax court to the relevant judgment: approximately one year.
- From the filing of the appeal before the Supreme Court to the relevant judgment: approximately five years (longer time frames are usually experienced).

32 What are the requirements concerning disclosure or a duty to present information for trial?

Tax courts have the power to access and request information relating to the facts submitted by the parties. However, tax judges cannot oblige the parties to submit documents that they consider necessary to reach a decision.

The parties can submit documents to support their arguments within the deadline indicated in question 37.

33 What evidence is permitted in a tax trial?

Only documentary evidence is permitted in a tax trial.

Confessions and witness testimony are not admissible in a tax trial.

It should be noted that witness testimony excludes third parties' recorded statements in the Tax Police's minutes or the tax authority's audit reports. Such indirect evidence can be used in judicial decisions so long as they are not the sole basis for the decision. Consistent case law has repeatedly taken this position.

For complex matters, the tax courts may request technical advice from the tax authorities, or public administrations. However, experts cannot testify, but just provide for written reports.

Similarly, the tax judge may request access to inspections, data, information and technical reports from public administrations advice.

There is no provision for translation of evidence.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

In tax proceedings, the taxpayer must appoint a professional legal counsel who is authorised to represent clients in proceedings before the tax courts.

The taxpayer may appear without legal representation if they are persons entitled to assistance before the tax courts or if the amount in dispute is less than €3,000.

The Revenue Agency is represented in the proceedings by its own officers.

35 Are tax trial proceedings public?

Even if tax proceedings in Italy are held without the presence of the parties or their legal counsel, the parties may request to be allowed to illustrate their arguments orally. In particular, each party may file a request for public hearing, to be served upon the other party and filed with the tax court 10 days before the hearing date.

36 Who has the burden of proof in a tax trial?

Generally, the burden of proof in tax litigation rests with the tax authority issuing the tax assessment.

However, where a specific presumption is mandated by law, or when the evidence is much closer to the taxpayer (eg, deductibility of costs), the burden of proof is on the taxpayer.

37 Describe the case management process for a tax trial.

The briefing process is as follows:

- the claim must be filed within 60 days from the notification of the notice of assessment;
- taxpayers must file the claim and submit the documentation before the tax court within 30 days from the notification of the claim;
- the Revenue Agency must file its reply and produce the documentation before the tax court (the tax authority may also appear directly before the tax court during the public hearing) within 60 days from the notification of the claim;
- if requested, the hearing for the suspension of the notice of assessment is scheduled by the tax court;
- if requested, the public hearing is scheduled by the tax court;

- by 20 days before the date of the hearing, parties can file other documents;
- by 10 days before the date of the hearing, parties can file replies; and
- after the hearing, the tax court issues its decision (there is no deadline).

38 Can a court decision be appealed? If so, on what basis?

The appeal before the regional tax courts must be filed within 60 days of receiving notification of the provincial tax court's decision. If there is no notification of the decision, the appeal before the regional tax courts may be filed within six months from the filing of the decision.

There are several requirements for appeals before the regional tax court. These include a summary of the proceedings, the subject matter of the appeal and the specific grounds for appeal. Like the appeal before the provincial tax court, the appeal before the regional tax court must contain both a *petitum* and a *causa petendi*.

The appellant may not propose requests that have not been submitted in the proceedings of first instance. An exception to this rule applies where the appellant requests a restatement of the taxes or penalties. The deductions and the documents acquired in the process before the provincial tax court are automatically submitted to the regional tax court for review. Issues and objections that are not raised in the proceedings of second instance are automatically waived.

The regional tax court's decision may be appealed before the Supreme Court, solely on legal grounds.

An appeal before the Supreme Court may be proposed on the following grounds:

- jurisdiction;
- violations of rules regarding territorial jurisdiction;
- violation and misapplication of rules of law;
- invalidity of the decision or of the proceedings; and
- a lack of examination on a decisive fact of the dispute.

The appeal before the Supreme Court must be filed within 60 days of the notification of the regional tax court's decision. If there is no notice, the appeal may be filed with the Supreme Court within six months of the filing of the regional tax court's decision.

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Overview

- 1 **What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?**

Legislation

Articles 30 and 84 of the Japanese Constitution require that all taxes be imposed by acts of the Diet. The legislation that is relevant to the procedural aspects of taxes in Japan includes:

- the National Tax General Rule Act (Act No. 66 of 1962), which deals mainly with matters generally related to national taxes, such as time limits for the tax authority to issue tax assessments, penalties for failure to file tax returns and rules on tax audits;
- the National Tax Collection Act (Act No. 147 of 1959), which stipulates the procedures for collection of national taxes; and
- the National Tax Violation Control Act (Act No. 67 of 1900), which sets out the criminal procedures related to evasion of national taxes.

Some pieces of legislation that mainly deal with substantive aspects of national taxes also provide procedural rules related to national taxes, such as the Income Tax Act (Act No. 33 of 1965), the Corporation Tax Act (Act No. 34 of 1965), the Inheritance Tax Act (Act No. 73 of 1950), the Consumption Tax Act (Act No. 108 of 1988) and the Act on Special Measures Concerning Taxation (Act No. 26 of 1957).

Other legally binding rules

Tax treaties

Tax treaties that have been concluded by the cabinet and approved by the Diet are given full force in Japan. As a member of the Organisation for Economic Co-operation and Development (OECD), Japan adopts provisions that are in line with the OECD Model Tax Convention when concluding treaties with other countries. As of 1 July 2018, Japan has concluded 70 tax treaties and such like that are applicable to 123 jurisdictions and designed to avoid double taxation, prevent tax evasion and foster the exchange of information and assistance in collection of taxes.

Cabinet orders and ministerial ordinances

The cabinet can, within the powers granted to it under the relevant acts, enact cabinet orders to implement the acts. Similarly, ministers can, within the powers granted to them under the acts or cabinet orders, enact ministerial ordinances to implement acts and cabinet orders.

Legally unbinding but practically respected rules

Administrative circular

The Commissioner of the National Tax Agency (NTA) issues circulars, which are directives to officials of the NTA and its subordinate bureaus to provide a uniform interpretation and application of tax laws. However, circulars are merely interpretations by the tax authority and are not binding as a source of law.

Court precedents

The courts' interpretations of tax laws are not binding as a source of law. The interpretations of the courts, especially those of the Supreme Court, are generally respected in practice as an authority to support one's position.

- 2 **What is the relevant tax authority and how is it organised?**

The NTA, which is an extra-ministerial bureau of the Ministry of Finance, is the primary governmental agency with respect to national taxes. The NTA has a three-tier organisational structure: the head office; 11 regional taxation bureaus and Okinawa Regional Taxation Office; and more than 500 tax offices. Local governments, their subordinate prefectural tax offices, city offices and town and village offices handle matters regarding local taxes.

Enforcement

- 3 **How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?**

The tax authority verifies compliance by reviewing filed tax returns and conducting field examinations, which are audits conducted at the site of the taxpayers. While reviews are generally handled by tax offices, corporations with over ¥100 million in capital and foreign corporations are subject to review by regional taxation bureaus.

If a review reveals failure to file tax returns or underreporting of the tax amount, the taxpayer is usually contacted by a tax officer and instructed to file a return stating the correct tax amount and paying the unpaid tax (with a penalty, if applicable). In other cases, taxpayers are subject to field examinations that are conducted at their site. The National Tax General Rule Act requires, in principle, the tax authority to give the taxpayer notification before the tax officer's visit to the taxpayer's site. A field examination can last from a few days to more than a year, depending on various factors, such as the scale of the business operated by the examined taxpayer. A field examination generally involves studying the books, accounting records and inventories of the taxpayer, and interviewing the taxpayer's employees. These interviews are conducted under the power to access the relevant book-records and other materials and to ask questions (see question 5). In field examinations of business entities or individuals operating businesses, the examiners investigate all income tax concurrently, including tax that should have been withheld, corporation tax and consumption tax. At the end of a field examination, the tax authority issues a disposition to impose the tax that the taxpayer should have reported in the returns for the previous years, or a document that no disposition is imposed on the taxpayer.

- 4 **Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?**

The reporting requirements for all taxpayers are generally the same. However, upon approval of the head of the relevant tax office, taxpayers can file 'blue returns' for income tax and corporation tax. A taxpayer who has received approval to file a blue return is granted certain privileges, such as a deduction of ¥100,000 or ¥650,000 from the amount of income. At the same time, individual taxpayers who file blue returns are obliged to attach their balance sheet, income statement and other documents containing sufficient details to calculate their income, to the returns. In contrast, individual taxpayers who file white returns (ie, tax returns that are not blue returns) are only required to submit documents explaining their gross income and deductible expenses.

There is no substantial difference between reviews of blue returns and white returns. Note that approval to file a blue return places an obligation on the taxpayer, which is stricter than that imposed on white return taxpayers, to keep book records of its transactions in the manner specified by the relevant ministerial ordinances. The tax authority can request the records from blue return taxpayers in tax audits. In this sense, taxpayers filing blue returns have more obligations at a review than those filing white returns.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

The National Tax General Rule Act provides that the tax authority may ask the taxpayer and certain persons specified by the Act (eg, persons to whom the taxpayer is or was obligated to pay money) to submit or present the relevant book-records and other materials, which generally include business books and records, financial information and copies of transaction documents. The tax authority is likely to interpret the phrase 'book-records and other materials' as authorising the auditors to access a wide range of information. However, the power to request information from taxpayers is restricted by the requirement of necessity (see question 7).

The Act empowers the tax authority to ask questions to the taxpayer and the persons specified by the Act. Under this rule, the tax authority can interview the taxpayer and its employees. As with the power to access book-records and other materials, the power to ask questions is also subject to the requirement of necessity.

6 What actions may the agencies take if the taxpayer does not provide the required information?

The agencies are prohibited from intruding on any private premises or auditing any materials without the consent of the taxpayer. However, a taxpayer is punishable by imprisonment for up to one year or a fine of up to ¥500,000 if the taxpayer fails to provide an answer, provides a false answer or obstructs an audit. If the matter concerns tax evasion, which is subject to criminal punishments, the agencies can obtain a court approval to access private premises or materials without the taxpayer's consent.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

Japanese law does not explicitly protect commercial information or professional advice against tax audits. But the tax agencies are subject to two requirements under the National Tax General Rule Act in their conduct of tax audits: the agencies are allowed to ask taxpayers questions or audit materials only if it is objectively necessary; and taxpayers are criminally punishable only if there are no reasonable grounds to refuse the agencies' request for materials or copies of the materials. These two requirements of necessity and lack of reasonable grounds function, to a certain extent, as protection of commercial information and professional advice. It is an open question as to whether a duty of confidentiality provides professionals, such as accountants or attorneys, with reasonable grounds to refuse the agencies' requests, although a few judicial decisions seem to deny the existence of reasonable grounds.

National public officers who are in charge of tax matters are subject to a duty of confidentiality regarding what they know in relation to the review (see question 18). A national public officer could face imprisonment for up to two years or a fine of up to ¥1,000,000 if he or she breaches such duty.

8 What limitation period applies to the review of tax returns?

The National Tax General Rule Act provides that the statute of limitation on assessment is five years from the statutory due date of tax return. This general rule does not apply to certain cases, such as cases of tax evasion (seven years) and situations to increase or decrease the amount of net loss (10 years). The Act further exempts cases where certain events occur after the statutes of limitation under the general rule have expired. For example, if a tax had been reported based on a transaction that brought about an income, and the income was later

returned due to invalidity of the transaction, the limitation is three years from the day that the income was returned.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

There are three methods for a taxpayer to seek resolution of a tax dispute with the government:

- filing a request for reinvestigation;
- requesting administrative review; and
- filing a lawsuit.

The first two are systems of administrative appeal and the last is a judicial appeal system. Besides these options, there are no other systems to resolve tax disputes with the government. Japanese tax laws do not allow the government to settle with taxpayers. However, there are some cases of de facto settlement, in which the government cancels a disposition in exchange for the taxpayer's concession of a related claim.

A request for reinvestigation is generally filed with the administrative agency that has made the disputed disposition. For example, a request for reinvestigation of a disposition of the head of a tax office is filed with him or her. It must be filed within three months from the date of receipt of the notice of disposition. Execution of a disposition is not suspended by the filing of a request. If the request is upheld, the disposition is cancelled; otherwise it will continue to be valid.

After the 2014 amendment to the National Tax General Rule Act, taxpayers have an option to file a request for administrative review without having filed a request for reinvestigation. If a taxpayer adopts this option, a request for administrative review is filed with the President of the National Tax Tribunal. It must be filed within three months from the date of receipt of the notice of disposition. Otherwise, a request for administrative review may be filed with the President of the National Tax Tribunal by a taxpayer who is not satisfied with the decision received concerning a request for reinvestigation within one month after the decision issuance date, or who has not received any decision concerning a request for reinvestigation within three months from filing the request.

See question 25 for details on the judicial appeal system.

10 How may the tax authority collect overdue tax payments following a tax review?

The general process to collect defaulted tax involves the tax authority first sending a collection letter to the taxpayer within 50 days from the original due date. If a payment is not made despite the demand letter, a disposition for non-payment will be instituted. The tax authority will then initiate a procedure to collect the defaulted tax if full payment of the tax due is not made within 10 days after the notice. Without the need for a court permit, the tax authority is allowed to seize the defaulting taxpayer's assets (including claims to a third party, such as a claim for funds in a bank account), convert the assets into money and seize the proceeds derived from the sales of assets. Such money raised is then used to pay the defaulted tax and any remaining amount is returned to the taxpayer or distributed to other creditors of the taxpayer.

11 In what circumstances may the tax authority impose penalties?

If a taxpayer underreports its payable tax amount, fails to file a tax return by the due date or fails to pay withholding tax by the due date, the tax authority will impose additional tax on the taxpayer as a penalty. In the case of tax evasion, additional aggravated tax will be imposed instead of the general additional taxes. Furthermore, a taxpayer who has violated tax laws may be subject to imprisonment of not more than 10 years, a fine of not more than the amount of tax evasion, or both.

12 How are penalties calculated?

The additional tax for underreporting is 10 per cent of the difference between the unreported and reported taxes (the 'Difference') plus 5 per cent of the difference between the Difference and the larger of ¥500,000 or the reported tax. In the case of a failure to file a tax return, the additional tax is 15 per cent of the unreported tax plus 5 per cent of the difference between the unreported tax and ¥500,000. The additional tax for a failure to pay withholding tax is 10 per cent of the unpaid amount. See question 20 for the case where a taxpayer files a tax return

with the correct tax amount (after filing an earlier erroneous tax return) without having predicted a disposition by the tax authority.

For tax evasion, the rate of additional tax as a penalty is increased to 35 per cent (in the case of underreporting tax or not paying withholding tax), or 40 per cent (in the case of non-filing).

13 What defences are available if penalties are imposed?

Penalties are not imposed if there are reasonable grounds for the taxpayer's non-compliance with the laws. For example, if a certain interpretation of the laws has been customarily established in practice and the interpretation is later found by the court to be a misinterpretation, a taxpayer may be regarded as having reasonable grounds for underreporting the tax amount due to the misinterpretation. However, mere misunderstanding of the laws or reliance on professional advice (eg, legal or accounting advice) does not constitute reasonable grounds.

14 In what circumstances may the tax authority collect interest and how is it calculated?

Additional tax is payable on unpaid taxes as interest. The rate of additional tax on unpaid taxes is: 7.3 per cent per annum for the period up to the due date or the period up to the day on which two months have elapsed from the day following the due date; and 14.6 per cent thereafter until the date payment is completed.

Under the current rule, the 7.3 per cent and 14.6 per cent rates are reduced respectively to: 1 per cent plus a certain rate calculated based on the average rate of banks' new short-term loans; and 7.3 per cent plus the certain rate.

Interest tax is also payable on postponement of tax payment, tax payment in kind (to be made after the initial due date), or postponement of due date of tax return. The amount of interest tax shall be a certain rate calculated based on the average rate of banks' new short-term loans.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Two types of criminal consequences can arise from a tax review. The first is criminal punishment for obstructing a tax audit. As mentioned in question 6, a taxpayer who has failed to provide an answer, provided a false answer or obstructed an audit is punishable by imprisonment for up to one year or a fine of up to ¥500,000.

The second is criminal punishment for tax evasion. If a tax review reveals potential tax evasion, the NTA is authorised to carry out a coercive investigation that is similar to the criminal investigation process. The NTA will report tax evasion that it discovers from such an investigation to the public prosecutors for criminal prosecution. As mentioned in question 11, a person who is prosecuted and convicted for tax evasion is punishable by imprisonment, a fine or both. The length of imprisonment and amount of fine depends on the type of tax and conduct, but imprisonment is no longer than 10 years and the fine is not more than the amount of tax evasion.

The above does not vary depending on the type of taxpayer.

16 What is the recent enforcement record of the authorities?

The NTA announced that, in operation year 2016, the number of field examinations that it conducted at the sites of individual and corporate taxpayers are, respectively, approximately 70,000 (while 21.69 million individual tax returns were filed) and 97,000 (while 2.86 million corporate tax returns were filed). These field examinations revealed unreported income of ¥535.9 billion in individual income tax and ¥826.7 billion in corporation tax. These figures do not include examinations that involved simply contacting and giving instructions to taxpayers.

In addition, the tax authorities conduct examinations of other taxes, such as consumption tax, inheritance tax, gift tax and withholding income tax.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

As mentioned in question 5, the tax authority may ask not only the taxpayer but also certain persons specified by the National Tax General

Rule Act (eg, persons to whom the taxpayer is or was obligated to pay money) for relevant materials and ask them questions. By exercising this power, the tax authority can involve third parties. Even though taxpayers or third parties do not have any specific rights with respect to involvement of third parties, the two requirements of tax audits as mentioned in question 7 (ie, necessity and lack of reasonable grounds) apply to tax audits involving third parties. The punishment mentioned in question 6 is applicable to third parties, which means that a third party that has failed to provide an answer, provided a false answer or obstructed an audit is punishable by imprisonment for up to one year or a fine of up to ¥500,000.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

There is no law generally authorising the tax authority to cooperate, or share information that it obtained through its operations, with other authorities in Japan. However, there are some acts that explicitly empower the tax authority to do so in specific cases (eg, the Public Assistance Act (Act No. 144 of 1950)). At the same time, it has been strongly argued that the tax authority should not share such information with other authorities due to the duty of confidentiality of all national public officers. The Supreme Court has not issued a clear position on this matter, and therefore Japanese law on this issue remains unclear.

On the other hand, there are relatively clear rules on the cooperation of the Japanese tax authority with authorities of other countries. Under tax treaties as mentioned in question 1, the NTA exchanges information with foreign tax authorities and collects data and information relating to taxpayers, including foreign corporations. In addition, the NTA cooperates with foreign authorities to resolve international double taxation issues.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

There is no single general rule aimed at dealing with taxpayers' hardship. However, some legislation provides rules that are applicable to specific cases of hardship. For example, there is legislation that provides for postponement of the due dates of taxes if certain conditions are satisfied.

Furthermore, the tax authority may suspend collection of taxes from taxpayers in certain kinds of hardship, such as a disaster, an illness or the closing of the taxpayer's business.

In addition to the postponement of due dates and suspension of collection, certain properties are prohibited from being seized to ensure that taxpayers have a minimum standard of living. Therefore, necessities such as clothes, bedding, furniture and also a portion of taxpayers' salaries cannot be seized for national taxes.

20 Are there any voluntary disclosure or amnesty programmes?

Additional tax as a penalty (see question 12) to be imposed on a taxpayer who files a tax return to amend a previously filed tax return in which the tax amount was underreported is reduced to 5 per cent per annum, as long as the taxpayer has not predicted a disposition by the tax authority. In addition, such additional tax is not imposed if the tax return for amendment is filed before a notice for review.

The rate of the additional tax is reduced to 10 per cent per annum if a tax return is overdue but it was not predicted that the tax authority would issue a disposition. In addition, such additional tax is reduced to 5 per cent per annum if the tax return is filed before a notice for review.

The rate of the additional tax on withholding income tax is reduced to 5 per cent per annum if the taxpayer pays the unpaid withholding tax amount without such a prediction.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

As mentioned in question 1, the Japanese Constitution requires that all taxes be imposed by acts of the Diet. The tax authority is required to give the taxpayer advance notification of the time, place, and purpose of the audit, relevant taxes, relevant years, books and materials to be

Update and trends

A recent judicial decision was issued by the Supreme Court of Japan (24 October 2017) in a case regarding the controlled foreign corporation (CFC) Rules. Although the Nagoya High Court's decision (February 10, 2016) was given against the plaintiff, Denso Corporation, the Supreme Court quashed the High Court's decision.

The decision of the Supreme Court is important for a number of reasons. First, it shows the relationship between a regional management business (ie, controlling and managing issuing companies which are in a certain region) and a shareholding business. Second, it identifies the criteria for determining the 'principal business' when a controlled foreign corporation operates multiple businesses.

Denso is a Japanese corporation that manufactures and sells automobile parts. As of 31 March 2007 and 31 March 2008, Denso wholly owned a company in Singapore (the Subsidiary).

The Subsidiary held the shares of more than 10 subsidiaries in ASEAN countries during the fiscal years 2007 and 2008. The tax burden rate on the Subsidiary's income in Singapore was 22.89 per cent in fiscal year 2007 and 12.78 per cent in fiscal year 2008. The Subsidiary conducted a regional management business for those subsidiaries, a shareholding business, a programming business and an agency business. Based on the interpretation that the Subsidiary is exempt from the CFC Rules, Denso filed a tax return in Japan without including the Subsidiary's income in its income.

However, the Nagoya Regional Taxation Bureau considered the Subsidiary's principal business was the shareholding business, which does not qualify for the exemption, and assessed that the Subsidiary's income must be included in Denso's income for tax purposes. In response, Denso filed a lawsuit for cancellation of such a reassessment.

The CFC Rules at issue in the Denso Case

The applicable CFC Rules at the time of the *Denso* case were somewhat different from the current rules. Generally, the applicable CFC Rules at the time meant that a domestic corporation that held a certain percentage of shares in a foreign company, which had a head or principal office in specified low tax countries, would be subject to the CFC Rules in principle and the domestic corporation was required to add the income of that foreign company to its own income for Japanese tax purposes.

However, the CFC Rules would not apply if the domestic corporation satisfied all applicable exemption criteria which are:

- business criteria;
- substance criteria;
- control criteria; and
- (i) location criteria, or (ii) unrelated party criteria.

The business criteria required, among other things, that a company's principal business should not be a shareholding business.

Nagoya High Court decision

The Nagoya High Court ruled that the Subsidiary's regional management business was subsumed in its shareholding business, which the court deemed to be the Subsidiary's principal business. In its decision, therefore, the Nagoya High Court held that the Subsidiary did not satisfy the business criteria since its principal business was the shareholding business.

Supreme Court Decision

The Supreme Court held that the Subsidiary's regional management business has its own purpose which is different from that of the shareholding business and, accordingly, qualifies for the exemption.

The Supreme Court then held that, if a company conducts multiple businesses, the principal business should be determined by comprehensively considering with respect to each business being conducted, factors including:

- the gross income or net profit earned by each business;
- the number of necessary employees; and
- the status of tangible fixed assets and such like.

When considering the businesses of the Subsidiary, the Supreme Court found the following:

- the sales from the Subsidiary's regional management business accounted for about 85 per cent of the Subsidiary's gross income, and, although the dividends from its subsidiaries accounted for about 80 per cent to 90 per cent of the Subsidiary's net income, the extent to which the profit arose from the regional management business was considerably reflected in the dividend income;
- most of the local employees were engaged in the regional management business; and
- most of the Subsidiary's tangible fixed assets were used in connection with the regional management business.

Based on these findings, the Supreme Court concluded that the regional management business was the Subsidiary's principal business. Moreover, the Supreme Court judged that all applicable exemption criteria were satisfied and, therefore, CFC Rules would not apply to Denso.

Relationship between the Supreme Court decision and the recent tax reforms

The 2017 Tax Reform and 2018 Tax Reform made numerous changes to the CFC Rules. However, notwithstanding the recent tax reforms, the Supreme Court decision in the *Denso* case remains a valuable judicial precedent, in that the regional management business is different from the shareholding business and qualifies for the exemption.

investigated, and other items specified by the relevant cabinet order, such as the names of the officers.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Taxpayers can obtain information from the tax authority under the Act on Access to Information Held by Administrative Organs (Act No. 42 of 1999). It sets out the right of taxpayers to access information held by the government by filing a claim to the head of the relevant administrative organisation, unless the requested information falls under any of the exempted categories specified by the Act, such as information that, if disclosed, will endanger the government's accurate understanding of the facts pertaining to tax collection.

23 Is the tax authority subject to non-judicial oversight?

Tax authorities are supervised by their superior agencies. For example, a tax office is supervised by the regional taxation bureau that has jurisdiction over the relevant region. However, there is no procedure for a taxpayer to request oversight by a superior agency. Dispositions of tax authorities can be subject to administrative appeal if requested by taxpayers, as summarised in question 9.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

There are no specialised courts for tax-related matters in Japan. Cases relating to tax matters are decided by ordinary courts. The rules under the Administrative Case Litigation Act (Act No. 139 of 1962) stipulate that more than one court can be specified as the forum of jurisdiction in many cases, and they are designed to include the Tokyo District Court as a forum in all cases in which the national government is the defendant. Therefore, taxpayers can select the Tokyo District Court as the first instance forum for all cases involving national taxes.

25 How can tax disputes be brought before the courts?

Prior to filing a claim with the court to cancel the disposition, the taxpayer is required to have undergone the administrative procedure, which is requesting administrative review. In particular, a taxpayer may file a lawsuit only if: (i) it files a complaint with the court within six months from the date of notice of the National Tax Tribunal's dismissal of the request for administrative review; or (ii) the National Tax Tribunal fails to give a decision within three months of the taxpayer filing a request for administrative review (see question 9 regarding the necessary administrative procedures and the 2014 amendment to the National Tax General Rule Act).

In general, a person with a legal interest in the cancellation of the disposition has standing to bring the claim. In most cases, the taxpayer, including a successor of the taxpayer, to whom the disposition was issued, has standing.

There is no minimum threshold amount to bring a claim to the courts.

A disposition will be cancelled if the taxpayer or plaintiff's request for cancellation is upheld in a final and binding court decision. In such a case, the government will usually refund any tax that the taxpayer has paid based on the cancelled disposition after the decision of the court becomes final. However, if the government does not do so voluntarily, the taxpayer has to file a separate claim for a refund.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Taxpayers can bring to court tax claims affecting multiple tax returns or taxpayers. However, this is subject to the requirement of relevance, which is detailed in statute.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

A disposition is valid until it is cancelled by an authority, including a court. This means that the taxpayer must pay the amount imposed by the disposition even while it is being disputed in court. If the taxpayer does not pay the imposed amount, the tax authority may collect the amount through the measures described in question 10.

28 To what extent can the costs of a dispute be recovered?

At the time of filing, the court fees to file the claim must be paid by the taxpayer or plaintiff (their amounts are calculated based on the claimed amounts). In addition, the court fees for the examination of testifiers and other services are also required to be paid by the taxpayer when the taxpayer petitions for them.

The court usually awards to the losing party the costs that arose from the administrative matters of the case (ie, the court fees above). Administrative costs can therefore be recovered by the taxpayer if the taxpayer or plaintiff is successful. Not all actual costs borne by the taxpayer are recoverable, which means that a successful taxpayer cannot recover any attorneys' fees from the government or defendant.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

There is no restriction on, or rule relating to, third-party funding or insurance for the costs of a tax dispute.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

Tax litigation is heard and decided by a panel of judges in ordinary courts. With regard to criminal cases, while there is a judicial system known as Saiban-in Seido, under which citizens and judges form a panel that decides a case, this system is not applicable to tax litigation.

31 What are the usual time frames for tax trials?

The Supreme Court published that, for administrative cases (including tax cases), the average period in 2016 for: (i) a first-instance decision was 14.4 months; (ii) an appeal court decision was 5.9 months; and (iii) a Supreme Court decision was 4.7 or 5.4 months (depending on the form of appeal). The time frame for tax trials varies from case to case depending on various factors. However, it tends to take longer if the issues in the case are complicated and the disputed amount is large. For example, a recent case that involved corporate restructuring, in which approximately ¥30 billion was disputed, took around three years between filing and the Tokyo District Court issuing first-instance decision, and around eight months between the first-instance decision and the appeal court decision of the Tokyo High Court. In that case, the Supreme Court delivered its decision 14 months after the appeal against the decision of the Tokyo High Court.

32 What are the requirements concerning disclosure or a duty to present information for trial?

As in all litigation concerning civil and administrative matters, a party may file a petition for the court to order the holder of the documentary evidence to submit it (the Petition for Order to Submit Document). A Petition for Order to Submit Document should be filed by clarifying:

- the title of the document;
- a summary of the contents of the document;
- the holder of the document;
- the facts to be proven by the document; and
- the grounds for the obligation to submit the document.

Unless there are statutory reasons otherwise, the holder may not refuse to submit the document. However, in certain cases, a Petition for Order to Submit Document will be dismissed unless this is necessary to make the request to examine documentary evidence.

Coverage of a Petition for Order to Submit Document is limited and there is no broad discovery process in Japan.

33 What evidence is permitted in a tax trial?

As in all litigation concerning civil and administrative matters, testifiers, experts and documentary evidence are permitted in tax litigation.

Tax litigation generally adopts a cross-examination system for examination of testifiers. Under the system, a person examined before the court is asked questions by the party who has requested the examination, the other party and the judge (in this order). Any person, including the taxpayer or experts, can be examined if the court finds, upon application by either the plaintiff or the defendant, that the person's statement is relevant to the case. There are only clerical differences between examination of a party to the case and examination of a third party.

Under article 138 of the Civil Procedure Regulation (Supreme Court Regulation No. 5 of 1996), a party filing evidence prepared in a language other than Japanese must attach a translation thereof to the evidence.

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34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

As in all litigation concerning civil and administrative matters, taxpayers can represent themselves in tax litigation. Taxpayers can also be represented by qualified attorneys. A certified public tax accountant can attend hearings and make allegations to the court as an assistant of the taxpayer and the attorney. The tax authority is represented by government officers.

35 Are tax trial proceedings public?

Court proceedings in tax cases are generally held at hearings that are open to the public. However, the court can choose to adopt non-public procedures, such as preparatory proceedings. Although case records are generally available to the public, only the parties to a case and third parties with legal interests in the case can obtain copies of the records. Further, the court can restrict the disclosure of the records if the records contain material disclosing a party's private life secret or a trade secret.

36 Who has the burden of proof in a tax trial?

In general, the government or defendant has the burden of proof of legality of the disposition at issue. In theory, this requires the government to prove the existence of the facts that form the basis of the tax and the tax amount. In practice, however, a taxpayer or plaintiff cannot be successful in cancelling a disposition unless it presents detailed facts and evidence to support the allegation that the disposition is illegal.

Further, there are exceptions to the general rule that the government or defendant bears the burden of proof. For example, the defence of reasonable grounds (mentioned in question 13), which relieves a taxpayer or plaintiff from the additional penalty tax, is available only to taxpayers who successfully prove the existence of such reasonable grounds. Further, in certain statutorily provided situations, the government is allowed to estimate the taxpayer's income based on general information about the taxpayer, such as changes in the amount of the taxpayer's assets or debts.

37 Describe the case management process for a tax trial.

The process varies on a case-by-case basis, but the usual process is as follows:

- the taxpayer or plaintiff files a complaint to the court with jurisdiction;
- the first hearing date is scheduled to be held one and a half months or more from the filing date;
- several hearings are held before examination and issuance of the court's decision;
- testimony is heard from testifiers or the taxpayer, or both (if necessary);
- during the intervals between the hearings, the parties submit briefs and evidence to the court;
- the court decides on the case; and
- the losing party may file an appeal (see question 38).

38 Can a court decision be appealed? If so, on what basis?

As in other cases, a three-tiered judicial system is applicable to tax cases. Under the system, if a taxpayer is dissatisfied with the judgment of the first instance court, the taxpayer may appeal to one of the High Courts of Japan within two weeks from the date the judgment is delivered to the losing party. If the decision of the High Court is unsatisfactory, subject to certain requirements, an appeal may be made to the Supreme Court of Japan within two weeks from the delivery of the judgment.

Korea

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The Korean Constitution establishes that ‘types and rates of taxes shall be determined by law’, thus all taxes must be imposed according to statutes passed by the National Assembly. Fundamental laws containing the basic rules of Korean taxes are as follows:

- the National Tax Basic Law (NTBL), which prescribes the general tax requirements, including a taxpayer’s rights and obligations;
- the National Tax Collection Law (NTCL), which stipulates the requirements for the collection of taxes;
- the Corporate Income Tax Law (CITL);
- the Personal Income Tax Law (PITL);
- the Value-Added Tax Law (VATL); and
- the Local Tax Law (LTL) for rules prescribing tax liabilities for specific taxable items imposed by local governments.

Relevant presidential decrees and ministerial decrees for each law above also function as sources of law.

The Korean National Tax Service (NTS) and the Ministry of Economy and Finance (MOEF) may issue authoritative rulings with respect to interpretation of tax laws. Such authoritative rulings are not legally binding but often exert substantial influence.

The principle of stare decisis does not apply to court decisions, including Supreme Court decisions. However, court decisions, especially the Supreme Court decisions, are often relied upon as authoritative interpretations of tax laws.

Tax treaties are given equal standing to domestic statutes, thus the various tax treaties between Korea and other countries have the same effect as any other domestic tax laws. However, under Korean statutory interpretation norms, ‘specific laws’ take precedence over ‘general laws’; accordingly where domestic laws and treaty provisions conflict with respect to a tax issue, the treaty will take precedence.

2 What is the relevant tax authority and how is it organised?

The MOEF is the ultimate governmental authority with respect to national tax policy and works closely with the National Assembly in the enactment and amendment of tax laws. Within the MOEF, the Office of Tax and Customs plans and coordinates the national policies on tax and customs. It is headed by the deputy minister for Tax and Customs and assisted by four director-generals and 16 division directors (12 for internal taxes, four for customs and duties).

The NTS, an independent agency under the MOEF, is mainly in charge of the administration of the tax laws. The NTS consists of eight bureaus and six regional tax offices in Seoul, Busan, Daegu, Daejeon, Gwangju and Suwon (Jungbu), as well as 117 district tax offices across the country. The bureaus set forth the administrative policies, liaise with counterparts in foreign tax administrations, issue rulings and such like. The regional and district tax offices conduct the tax audits.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

Taxpayers generally have the primary responsibility for calculating the tax base and the amount of tax, filing a tax return based upon their calculation and paying the taxes due. The most common return filings include:

- the annual corporate income tax return;
- the annual personal income tax return; and
- the quarterly VAT tax returns.

The NTS has the right to review the returns to confirm the correctness of the tax base and tax amounts. The reviews are conducted either through a desk audit, where the auditors review the return and related documents in the NTS offices, or field audits, where the auditors go on site to the taxpayer’s premises and conduct the audits for a set amount of time. Field audits generally last two to five months, depending on the size and complexity of the taxpayer’s business and transactions.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

The general reporting methods for individual taxpayers and business entities are similar. However, individual taxpayers and business entities may have different filing requirements and schedules. For instance, individual taxpayers who must file personal income tax returns must do so within the month of May of each year, while incorporated business entities must file corporate income tax returns within three months from the end of their fiscal year. Individuals are required to file personal income tax returns only if they have non-salary income such as dividend, interest or business income.

Although individuals operating an unincorporated business would generally report the business income in the personal income tax return, unincorporated businesses must be registered with the relevant tax office and obtain a tax registration number for VAT purposes. Business entities also must file VAT returns on a quarterly basis.

Once tax filings are submitted to the tax authorities, the relevant tax office with jurisdiction may conduct audits of the tax returns, either field audits or desk audits. The scope and duration of each audit may vary case by case, and thus no general statement could be made regarding the review time for certain types of taxpayers.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer’s employees? If so, are there any restrictions?

Corporate taxpayers are required to prepare and maintain certain financial statements – for example, income statement and balance sheet – that form the basis of their tax returns. Tax authorities are authorised to examine or order the submission of the accounting books, documents and other data, when necessary to perform their duty. Given the broad language in the law (‘when necessary to perform his duty’), it is a general understanding that as long as an examination or submission of data is relevant to determine the amount of tax liability or to confirm

the correctness of a tax return, then such an examination is allowed under the law. The tax authorities are also allowed to question:

- the employees of the taxpayer; and
- 'those who have transacted with the taxpayer' including, among others, third party consultants, counterparties to a transaction and financial institutions.

Tax authorities are subject to various limitations intended to protect taxpayers' rights, including (but not limited to) the following:

- the authorities must give the relevant taxpayer at least 15 days notice prior to the official commencement of an audit (absent exceptional circumstances);
- the audit period must be shortened as much as possible;
- audits of the same issue for the same taxable period are generally prohibited (absent exceptional circumstances); and
- the tax audit should be limited to only that which is 'necessary and minimally' required.

6 What actions may the agencies take if the taxpayer does not provide the required information?

A taxpayer is required by law to comply with orders issued by the tax officer and the non-compliance with such an order could constitute a crime under the Tax Criminal Punishment Law (TCPL), and may result in a fine of up to 20 million won (approximately US\$18,000) for non-compliance.

If the document submission request is made with respect to international transactions in an audit involving transfer pricing, the non-compliance with such a request may result in the non-admissibility of such documents as evidence in any following appeal procedures, including the Mutual Agreement Procedure. Also, a fine of up to 100 million won (approximately US\$90,000) may be imposed.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

There is neither a specific statutory provision or Korean court precedent that provides for the attorney-client privilege with respect to tax matters. Accordingly, there is still an open debate in Korea whether the attorney-client privilege can be used to protect documents from tax auditors. The Korean Bar Association has expressed its opinion in 2005 that attorney-client confidential communication should not be disclosed to the tax authority. However, based on our recent experience, the tax officers are generally reluctant in excluding such attorney-client communication from their scope of tax audit.

The tax laws impose a duty of confidentiality and accordingly, tax authorities must keep confidential documents and information collected with respect to any taxpayer, except where specifically permitted by law for prescribed purposes.

In addition, internal NTS guidelines require that tax audits must be conducted in good faith in a manner that protects the rights of the taxpayer by not unreasonably infringing on the taxpayer's property rights. Further, the internal guidelines also provide that the tax officer must handle temporary possession of books and documents submitted by the taxpayer within the limited scope as demanded by the audit, and in the event that any of the evidence proves to be irrelevant to the audit, the officer must immediately return any such evidence to the taxpayer.

8 What limitation period applies to the review of tax returns?

The general statute of limitations for the assessment of taxes is five years from the statutory due date of the tax return. The statute of limitations is extended in certain circumstances – for example, in the case of tax evasion, the statute of limitations is extended to 10 years.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

Korea has a robust advance pricing approval programme to settle transfer pricing issues prior to any tax audit or assessment. However, Korean tax laws do not provide for other ADR programmes and, within a tax audit, there are no formal settlement options.

The taxpayer, however, has the opportunity to contest a proposed assessment prior to the official tax assessment, and if a tax assessment

is made, the taxpayer has several routes to appeal the assessment. These are described below.

Pre-Assessment Appeal

Tax Treaty

If the taxpayer, either a resident of Korea or resident of the treaty country, believes that the tax assessment proposed by the Korean tax auditors is not in accordance with the provisions of the relevant tax treaty to which Korea is a party, then the taxpayer may request assistance from the competent authorities under the Mutual Agreement Procedure to resolve the issue.

Domestic

At the end of an audit, the tax authority is required to send a Pre-Assessment Notice setting forth the basis for and amount of the proposed tax adjustment. Upon receiving this Pre-Assessment Notice, the taxpayer may request a Review of Adequacy of Tax Imposition (RATI) with the relevant Regional Tax Office or the NTS within 30 days from the date of receipt of the Notice. In the case of a criminal referral or a Notice of Fine Due to the Violation of TCPL, however, the taxpayer is not allowed to make a RATI request.

Post Assessment Appeals

Tax Treaty

The taxpayer may request assistance from the competent authority of either treaty country under the Mutual Agreement Procedure to resolve a treaty issue.

Domestic

The taxpayer may also contest a tax assessment under the domestic appeals route. The first step of the domestic appeal process is for the taxpayer to file an administrative appeal to one of the following institutions:

- NTS;
- the Tax Tribunal; or
- the Board of Audit and Inspection.

If unsuccessful at this first administrative appeals stage, the taxpayer may file an appeal with the Administrative/ District Court. It should be noted that the tax authorities are bound by any decision of the NTS, Tax Tribunal or the Board of Audit and Inspection at the administrative appeal stage, and therefore, cannot appeal any adverse decision at this first level.

Either party to the litigation can appeal an Administrative/District Court's decision to the relevant High Court. Decisions of the High Court may be appealed to the Supreme Court by either party.

10 How may the tax authority collect overdue tax payments following a tax review?

If a taxpayer should fail to pay the taxes in full by the deadline stipulated in the Notice for Tax Payment, the NTS will issue a Notice of the Demand for Payment (of Delinquent Taxes). If a taxpayer does not pay in full the amount of taxes owed and the additional dues resulting from the delinquency by the stipulated due date, the tax authority may proceed with the collection actions, including attachment of the taxpayer's property. Taxpayer's property subject to attachment would include movable and immovable assets, securities, receivables, intangible rights and so on.

11 In what circumstances may the tax authority impose penalties?

If a taxpayer fails to file a tax return or pay taxes on time, the tax authority will impose the following penalties: a penalty of 20 per cent of unreported tax for failing to file a tax return; 10 per cent penalty for underreporting of the tax amount; 40 per cent penalty on the underreported tax as a result of fraud or other unlawful acts. In addition, the tax authorities will impose interest penalties at a rate of 10.95 per cent per annum to the amount of underpaid taxes, which is calculated up to the date of the issuance of the Notice for Tax Payment.

If the taxpayer fails to pay the full amount of taxes and penalties by the due date stipulated in the Notice for Tax Payment, tax authorities will impose additional penalties: (i) a flat 3 per cent penalty on all

the delinquent tax (ie, additional taxes and underreporting and underpayment penalties) plus (ii) 1.2 per cent a month on the delinquent tax amount, up to 60 months, for a total of 75 per cent of the delinquent tax amount.

The TCPL, which imposes tax criminal liability, establishes that a taxpayer who evades tax or obtains a tax refund or deduction by fraud or other improper means will be punished by imprisonment with labour as well as paying a criminal fine.

12 How are penalties calculated?

The penalty taxes are generally calculated on the underreported or underpaid amount of tax.

Criminal penalties are calculated on multiples of the evaded tax amount (usually within one to five times the evaded tax amount).

13 What defences are available if penalties are imposed?

Although theoretically a penalty tax may not be imposed if a taxpayer has justifiable grounds for non-fulfilment of its tax obligations, in practice, it is very difficult, if not impossible, to get penalty abatement or waiver.

A taxpayer may contest the legitimacy of a criminal penalty directly to the administrative/district court.

14 In what circumstances may the tax authority collect interest and how is it calculated?

A 10.95 per cent per annum interest penalty applies to the non-payment or underpayment of taxes, and is accrued up to the date of issuance of the Notice for Tax Payment.

Penalty on the delinquent payment of taxes, which begins to accrue from the day after the due date on the Notice for Tax Payment is calculated as (i) flat 3 per cent plus (ii) 1.2 per cent per month, up to 60 months, for a total of 75 per cent of the delinquent tax amount.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

The TCPL, which imposes criminal liability for tax-related matters, provides that a taxpayer who evades tax or obtains a tax refund or deduction by fraud or other improper means will be punished by imprisonment as well as paying a criminal fine. Specific laws also provide grounds for imposing heavy penalties in cases where the amount of tax evaded exceeds certain monetary thresholds.

Examples of tax-evading activities include:

- making false book entries, such as double bookkeeping;
- preparation and receipt of false evidence or a false document;
- destruction of books and records;
- concealment of property, fabrication or concealment of income, earnings, acts, transactions; and
- intentional failure to prepare or maintain books, or fabrication of bills, tax invoices, a sum table of bills or a sum table of tax invoices and such like.

Criminal sanctions apply to both individual and business entity taxpayers. In addition, vicarious liability can also apply to both. For example, if a representative, an agent, an employee, or any other worker of a business entity commits an offence prescribed in the TCPL with respect to the business of such an entity, not only the actual offender can be punished, but also the business entity on whose behalf the offender was working may be subject to sanctions. However, vicarious liability provisions do not apply to cases where the business entity has not been negligent in paying due attention and supervision in preventing such an offence.

16 What is the recent enforcement record of the authorities?

According to statistics published by the NTS, investigations have been conducted against 4,985 out of 5.48 million individual taxpayers and 5,445 out of 673,374 corporate taxpayers that filed final tax returns in 2016. In 2016, internal revenue of approximately 243 trillion won was collected, consisting of 70 trillion won of personal income tax, 52 trillion won of corporate income tax and 62 trillion won of VAT.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

In Korea, it is the prevailing view that a tax officer is allowed to question (i) an employee of a taxpayer and (ii) 'those who have transacted with the taxpayer' including, among others, third party consultant, transaction counterparty and financial institutions. Unlike some other jurisdictions, the Korean tax authority is not required to notify or provide the taxpayer with the list of the persons examined or contacted by the tax authority.

However, since the NTBL specifies that a tax officer must conduct tax audits within the minimum scope necessary to impose fair taxation, taxpayers or third parties may argue that a specific request exceeds the 'minimum scope' limitation. Privacy-related regulations in relevant laws, such as Personal Information Protection Law, Credit Information Protection Law, Real Name Financial Transactions and Confidentiality Law among others, may also provide legal grounds to challenge the tax authorities' request for information.

Taxpayers as well as 'those who have transacted with the taxpayer' are all under a duty to comply with the orders issued by the tax officer, unless provided with legitimate grounds for rebuttal. Therefore, non-compliance without a legitimate reason could result in criminal sanctions under applicable law, which may result in fine of up to 20 million won (approximately US\$18,000) for non-compliance.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

A tax office with jurisdiction over a certain taxpayer may request aid on various matters to tax offices in other jurisdictions if cross jurisdictional investigation is needed. When necessary to assess and collect taxes in relation to an international transaction, or to adjust the arm's length price for national taxes and dutiable values, the tax authority may request information or data to the head of the customs office, as prescribed by the Presidential Decree of ITCL.

The Submission and Management of Taxation Data Law provides legal grounds for the tax authority to cooperate with a variety of other authorities in Korea. Although the NTS is required to keep materials confidential, the law does provide specific exceptions where the NTS must provide taxpayer information to other government agencies.

The NTS also regularly receives information from other central government agencies, local government agencies, the Financial Supervisory Service and so on, which are required to submit taxation data prescribed in the law and presidential decree to the tax office on a quarterly basis.

In terms of cooperation with foreign tax authorities, Korea is a signatory to the OECD Convention on Mutual Administrative Assistance in Tax Matters. In addition, most of the bilateral tax treaties into which Korea has entered includes information exchange provisions.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

Generally, tax debts will not be discharged even if a taxpayer declares bankruptcy. Nevertheless, the tax authority may defer tax payments, agree to instalment payment agreements, or extend the payment deadline if:

- a great loss has been inflicted on the taxpayer's property due to theft or disasters;
- a conspicuous loss has been inflicted on the taxpayer's business;
- the taxpayer's business is in a serious crisis;
- the taxpayer or his or her family members living together have to receive long-term medical treatment due to disease or serious injury; or
- the taxpayer cannot pay for other valid reasons.

20 Are there any voluntary disclosure or amnesty programmes?

There are no amnesty programmes for voluntary disclosure. Although there is a limited penalty abatement for taxpayers that voluntarily disclose by filing corrected returns before notification by the relevant tax office, the time within which the corrections must be made for penalty abatement is extremely limited.

Update and trends

Historically, litigation to resolve international tax issues was unusual in Korea. However, especially in the last decade, the number of tax cases being litigated, as well as the issues under litigation, has steadily been on the rise. The majority of the cases still involve treaty interpretation issues – for example, beneficial ownership issues. There are few, if any, transfer pricing cases that have been litigated in court.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

According to the NTBL, the Commissioner of the NTS has the duty to establish and make public the Taxpayers' Bill of Rights Charter and tax officers must provide the Charter to a taxpayer before the start of a tax audit. Both the NTBL and the Taxpayers' Bill of Right Charter presume that a taxpayer is acting in good faith and the return submitted by the taxpayer is true. The taxpayers' charter limits the tax officer's investigatory discretion only to those necessary to impose appropriate and fair taxation, accords the right to legal assistance, and bars the tax authorities from duplicative investigation.

In addition, the NTS must appoint an Assistant Commissioner for Taxpayer Advocacy to be responsible for protecting the rights of taxpayers, and the Commissioner must assign officials in charge of taxpayer advocacy services in each regional and district tax office. The NTS, regional tax offices and district tax offices must also have a specially-dedicated committee that will review taxpayer rights issues.

A taxpayer may request a protection of right (a complaint filed in cases where an unfair conduct of a tax officer violates or is expected to violate the taxpayer's right before or during an audit) and/or a civil petition for grievance (a complaint filed where the tax officer's unfair conduct already violated the taxpayer's rights and the relevant audit has been conducted).

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

If a taxpayer requests information (which is related to the tax liability of its own) necessary for the exercise of its right, the relevant tax office should provide the information promptly. A taxpayer may seek protection of his or her rights if the relevant tax office declines or withholds the requested information without justifiable reason.

23 Is the tax authority subject to non-judicial oversight?

The Committee on Taxpayer Rights and the Assistant Commissioner for Taxpayer Advocacy within the NTS provide oversight of the relevant tax authorities.

The NTS, as part of the MOEF, is also subject to annual review by the National Assembly. Furthermore, the NTS is also subject to inspections conducted by the Board of Audit and Inspection.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

There are no specialised tax courts in Korea. If a taxpayer wants to contest a tax assessment by the NTS, or bring any other tax related suit against the NTS, it can initiate court proceedings in the jurisdiction in which the relevant tax office is located. The first level of court is the District Court. In Seoul only, the Administrative Court, which is a special court within the District Court system, oversees all disputes involving the government's regulatory agencies, including the NTS. Accordingly, in Seoul, the Administrative Court will be the venue for litigating tax assessment issues against the NTS. In all other districts, the District Courts will have the initial jurisdiction over tax cases between the NTS and taxpayers.

The appellate High Courts and the Supreme Court also have jurisdiction over tax disputes.

25 How can tax disputes be brought before the courts?

Taxpayers have the right to file a lawsuit against any tax assessment. However, procedurally, taxpayers cannot litigate claims against the NTS in court without first going through the administrative appeal

process. In other words, a taxpayer can only appeal in court a prior decision from one of the three administrative appeals forums: the NTS, the Tax Tribunal, and the Board of Audit and Inspection. If the NTS, Tax Tribunal or Board of Audit and Inspection rules against the taxpayer, the taxpayer may file a petition in the relevant administrative/district court within 90 days. The NTS, however, is bound by the decision of the administrative forums, and cannot appeal in court a taxpayer favourable ruling in the administrative appeals process.

There is no minimum amount required to bring a claim to the courts.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Generally, tax claims affecting multiple years with respect to the same taxpayer and the same tax issues may be brought together. Cases involving different taxpayers can also be brought together if the tax claim relates to the same issue and involves the same transaction.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

A taxpayer may, in theory, appeal a tax assessment without first paying the tax assessment. However, in most cases, because the cost of the interest (and other penalties) could be very significant if the taxpayer should ultimately lose the appeal, most taxpayers pay the taxes upfront before proceeding. Below are the potential costs associated with not first paying the assessed taxes, if the taxpayer should ultimately not prevail in eliminating the assessed taxes:

Non-payment (or partial payment) of the assessed tax

Under the NTCL, the tax authority is allowed to issue an attachment order on a taxpayer's assets if the taxpayer does not pay the assessed taxes by the deadline set forth on the Notice for Tax Payment. Delayed payment penalty will accrue until the payment is made:

- one-time 3 per cent penalty on the unpaid amount, if payment is not made by the due date; and
- penalty of 1.2 per cent a month on the unpaid amount (14.4 per cent per annum) until the payment is made up to a maximum of 60 months (ie, maximum of 72 per cent).

Application for postponement of collection while MAP is pending

The taxpayer may apply for a postponement of collection of taxes while a MAP is pending. Whether or not to allow such postponement, however, is at the tax authority's discretion. In almost all cases, the NTS will require the taxpayer to provide a guarantee or collateral.

Full Payment of Assessed Tax

The taxpayer may choose to make a full payment of the assessed tax by the designated deadline on the Notice for Tax Payment. If the taxpayer prevails in the appeal, there would be a tax refund with interest. The current tax refund interest rate is 1.6 per cent per annum.

28 To what extent can the costs of a dispute be recovered?

At the time of filing, the legal fees associated with filing a claim must be paid by the taxpayer. The court usually awards to the winning party the costs that arose from the administrative matters of the case. Administrative costs can therefore be recovered by the taxpayer if the taxpayer is successful. However, the amount of recovery is limited to predetermined amounts, and recovery of all the costs will not be complete.

The NTS can also recover costs from the taxpayer. Although historically, the NTS did not pursue the taxpayer for costs, it has recently begun to do so.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

No. There is no restriction on or rules relating to third-party funding or insurance for the costs of a tax dispute.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

Tax disputes are heard and decided by a panel of judges. The number of judges in a court depends on the level of jurisdiction. In both the

district and high (appellate) court levels, tax disputes are heard by a panel of three judges (one presiding judge and two other judges). A panel of four justices decide Supreme Court cases. Jury trials are not available for tax disputes.

31 What are the usual time frames for tax trials?

The courts have no time limits for their decisions. It is difficult to predict how quickly a decision will be rendered, but normally it takes one to two years for the administrative/district courts to render a decision, one year each for the high courts and the Supreme Court to render their respective decisions.

32 What are the requirements concerning disclosure or a duty to present information for trial?

There is no discovery process in Korea. A taxpayer or the tax authority may submit any relevant information or document they believe would support their claim and has no duty to share information with the other party.

If a supporting document or evidence lies in the possession of the other party or a third party, the court can issue an order for submission to the relevant party possessing the evidence, either upon a petition of a party or ex officio.

33 What evidence is permitted in a tax trial?

As in all litigation concerning civil and administrative matters, testifiers, expert and documentary evidence are permitted in tax litigation. The court, if necessary, may investigate the evidence and render judgment even to facts not asserted by the party. Witnesses may also request to testify in court.

Taxpayers do not have a duty to testify in court but may provide testimony after the court's approval. Examinations as to the facts known through special knowledge and experience are also permitted in a tax trial.

A Korean translation must be attached to documents written in a foreign language.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

As in all litigation concerning civil and administrative matters, taxpayers can represent themselves in tax litigation. Taxpayers can also be represented by qualified attorneys. Certified public accountants and tax accountants cannot represent taxpayers in tax trials. The NTS can be represented by government officers, who may or may not be lawyers, or engage third-party lawyers.

35 Are tax trial proceedings public?

Court proceedings in tax cases are generally open to the public.

36 Who has the burden of proof in a tax trial?

Generally, the tax authority has the burden of proof in tax disputes. Therefore, the tax authority must prove the existence of the facts that form the basis of the tax assessment. In practice, however, a taxpayer or plaintiff cannot be successful in revoking a disposition without presenting detailed facts and evidence to support the allegation that the assessment is illegal. Further, it should be noted that there are certain exceptions to the general allocation of burden of proof.

37 Describe the case management process for a tax trial.

There are limited provisions that set forth specific trial procedures in Korea. Generally, there is no formal discovery process. There are strict deadlines for when an appeal can be filed – for example, an appeal of an administrative decision by the NTS/Tax Tribunal/Board of Audit and Inspection must be filed with the relevant administrative/district court within 90 days of the decision. There is no recourse if such deadlines are not met. In the trial proceedings, however, the judges have broad discretion on the scheduling of brief submissions, trial dates and so on.

38 Can a court decision be appealed? If so, on what basis?

The three-tier court system applies to tax disputes. Appeals from an administrative/district court are heard by high courts and appeals from the high courts are heard by the Supreme Court. The taxpayer may appeal to the high court within two weeks from the delivery of judgment where the district court has made wrongful interpretation of the applicable law or has made the judgment based on inappropriate fact finding. The unsuccessful party may appeal the high court decision in the Supreme Court within two weeks from the delivery of judgment only where the high court decision has made wrongful interpretation of the applicable law (appeals to the Supreme Court on the ground of false fact finding is not permitted). See question 31 for information on the estimated time frame for tax disputes.

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Malta

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The relevant legislation governing tax administration and controversies is contained in the Income Tax Act (Chapter 123 of the Laws of Malta) (ITA); the Income Tax Management Act (Chapter 372) (ITMA); the Value Added Tax Act (Chapter 406) (VAT Act); the Duty on Documents and Transfers Act (Chapter 364; and various subsidiary legislation). In addition, Malta has concluded more than 70 double tax treaties which may also bind taxpayers and the Maltese tax authorities.

The Inland Revenue Department (IRD) has, over time, issued guidance relating to this subject area. Although non-binding, such guidelines are meant to assist taxpayers on the interpretation and application of the law. One example in the context of resolving cross-border international tax disputes is the Guidelines on the Application of the Mutual Agreement Procedure.

2 What is the relevant tax authority and how is it organised?

In 2012, the Commissioner for Revenue Act (Chapter 517) was introduced, establishing the office of the Commissioner for Revenue (the Commissioner) with the aim of merging revenue departments – such as the inland revenue, VAT and customs – into one department. The Commissioner is responsible for supervising inter alia the self-assessment system, the collection of taxes and raising assessments.

The following offices form part of the internal structure of tax authorities: the Director of Administration and the Director Operations & Strategy; the Director General Operations; the Director General Legal and International; the Director General Compliance and Investigations; and the Director General Customs Department.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

Malta operates a self-assessment system of tax where a taxpayer calculates his or her own tax liability. The ITMA requires that every taxpayer file an annual income tax return. Every return is to be accompanied by a computation that is to include:

- the chargeable income of the person for that year of assessment on the basis of the information provided in the return;
- the tax charge; and
- the tax payable or refundable for that year of assessment.

In order to verify information contained therein, the Commissioner may request an array of documentation including books, documents, accounts and returns from a taxpayer and may also request the taxpayer to attend personally (or via a representative) to examine such information.

In order to ensure the timely payment of taxes, the law prescribes tax payment deadlines for both natural and legal persons. Generally, tax is to be settled on the same day that the return is filed. However, there are certain specific circumstances – such as under the Final

Settlement System – where tax is withheld at source (rather than settled upon filing a return) from all salaries paid out by an employer to an employee.

Where a taxpayer fails to submit his or her return, the Commissioner determines the amount of tax payable by that person for the year of assessment on the basis of an estimate. If after an estimate, the taxpayer still does not deliver the required return, the Commissioner may make an assessment without having to notify the taxpayer that an inquiry is being conducted into his or her tax declarations and liability. Moreover, as a deterrent from not respecting the tax payment deadlines, the ITMA provides for the imposition of additional tax as well as interest for the late payment of tax.

There is no statutory deadline by which a review of a taxpayer's affairs has to be concluded.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Individuals and bodies of persons have different reporting periods. The Income Tax (Statutory Dates) Rules (Subsidiary Legislation (SL) 372.16) provide that individuals are to submit their return to the Commissioner by 30 June of the year of assessment and companies are to file their return by the end of the ninth month after their accounting date, or by 31 March of the calendar year following the accounting date, whichever is later.

The format of the return also differs between individuals, companies, clubs and associations and partnerships. Together with the return, a body of persons is also required to file audited financial statements covering the basis period corresponding to the year of assessment for which the return has been filed.

For VAT purposes, the time period within which VAT is to be settled as well as the form of the VAT return depends on the type of VAT registration. An Article 10 registrant generally files a return on a quarterly basis. An Article 11 registrant is required to submit a declaration instead of a return – it is due on a yearly basis, by 15 February of the following year. An Article 12 registrant files a particular return on a monthly basis as well as an annual summary.

The Commissioner's ability to assess a taxpayer for tax applies to both individuals and companies.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

The ITMA vests the Commissioner with wide formal powers to request an array of information and documentation from taxpayers. Besides books, documents, accounts and returns (including bank statements), the Commissioner may require a taxpayer to furnish a statement containing details of:

- all property held and wherever situated, including property transferred or delivered or held by designated persons (this includes, inter alia, a mandatory, nominee, trustee, agent, depository or custodian);
- all income derived from such property; and
- all facts bearing upon the taxpayer's liability to tax which he or she has, or has been, liable for.

It is pertinent to note that 'property' is widely defined to include property of any kind or description, whether movable or immovable, personal or real and, in relation to rights and interests whether vested, contingent, voidable or future, and including any money, investments, and amounts in savings, loan and other bank accounts, whatever the nature of the account. The taxpayer is to be given a time frame of at least 30 days to furnish the relevant information.

Specific to cross-border situations, the ITMA also provides that the Commissioner may be required to collect additional information to be provided to foreign tax authorities, if arrangements for the purpose of the exchange of information have been made between Malta and another jurisdiction. In such situations, the Commissioner is vested with the power to require any person to:

- appear before it when it has reason to believe the person is able to give additional information;
- produce for examination any books, documents, accounts (including bank statements, passbooks and other bank documents) and any other document which the Commissioner may require a copy or extract thereof; and
- give information by means of written statements.

The Commissioner may also visit the premises of a taxpayer for tax information purposes, where the Commissioner is vested with the power of full and free access for the inspection of any books, documents, accounts, returns and electronic data, and can observe and record the nature and importance of any professional activity carried out there.

Although the power to interview employees is indirectly referred to in the context of collecting information for cross-border exchange, this power is likely applied in domestic disputes. The Commissioner should respect the restrictions set out at law, such as giving 30 days' notice.

6 What actions may the agencies take if the taxpayer does not provide the required information?

Where a taxpayer fails to provide the required information, the taxpayer may be subjected to a penalty.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

Requesting and inspecting books is subject to the protection of any information that falls with the definition of a professional secret in terms of the Professional Secrecy Act (Chapter 377).

8 What limitation period applies to the review of tax returns?

An assessment may not be raised by the Commissioner earlier than the time prescribed for the submission of a return (see question 4) and not later than five years from the end of the year in which such a return was filed. That said, the five-year limitation period does not apply when a person:

- has not made a full disclosure in a return of all material facts relevant to the determination of income and allowable deductions; or
- for the purpose of avoiding tax, or through gross or wilful neglect, has furnished an incorrect or misleading return, in any material respect. In such a case, an assessment may be raised at any time.

For VAT purposes, where the Commissioner has reason to believe that a return filed by a VAT-registered person does not contain all the necessary information, it may make a provisional assessment and serve that assessment on the relevant person by not later than six years from the end of the tax period in question.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

The Maltese tax authorities are generally amenable to settling a dispute with a taxpayer prior to a dispute escalating to court. In certain situations, such settlement discussions may also be held while court proceedings are held in parallel. The intention is to hasten the litigation process and to settle the dispute as soon as is practicably possible.

The Mutual Agreement Procedure (MAP) is available in respect of cross-border matters if provided for in the relevant tax treaty.

10 How may the tax authority collect overdue tax payments following a tax review?

For the purposes of ensuring the collection of tax, the ITMA prescribes the notices sent by the Commissioner, such as a final assessment, including interest and penalties, that are to constitute an executive title. Executive titles are deemed to be equivalent to a judgment and may be enforced without the need for any court judgment. Where a payment is enforceable against a body of persons in virtue of an executive title, the Commissioner may, without the need of any other act, proceed with such enforcement against every officer thereof. The Commissioner may proceed for the enforcement of the payment of tax within two days from the lapse of 15 days allowed for the settlement of tax due. The Commissioner is thereafter entitled to register in the public registry or land registry (as the case may be) a note of privilege for the amount demanded in the judicial act.

11 In what circumstances may the tax authority impose penalties?

The ITMA imposes penalties in the form of additional tax and interest charges for the late submission of a return. Additional tax is a fixed amount based on the number of months that the return remains unsettled.

| | Individual € | Company € |
|------------------------|--------------|-----------|
| Within 6 months | 10 | 50 |
| 6 months to 12 months | 50 | 200 |
| 12 months to 18 months | 100 | 400 |
| 18 months to 24 months | 150 | 600 |
| 24 months to 36 months | 200 | 800 |
| 36 months to 48 months | 300 | 1,000 |
| 36 months to 48 months | 400 | 1,200 |
| Later than 60 months | 500 | 1,500 |

Penalties may be imposed either generally or with respect to specific offences. The ITMA provides that any person that contravenes or fails to abide by any provision of the ITA or ITMA is to be found guilty of an offence and will be subjected to a fine of not less than €23 and not exceeding €116. More specifically, penalties are provided in various situations, including:

- failing to comply with the requirements of a notice, intimation, request or demand note given or made to the taxpayer or served upon him or her, without sufficient cause – a fine of not less than €23 and not exceeding €10,000 and a further fine not exceeding €200 per day during which the default continues; or
- fraud, such as making any false statement or falsifying books – a fine ranging between €700 and €10,000 dependent on the nature of the fraud and an additional fine equivalent to treble the amount of evaded tax, or to imprisonment for a maximum term of six months, or both a fine and imprisonment.

12 How are penalties calculated?

Penalties as described in question 11 are calculated within the fixed limits prescribed by law.

13 What defences are available if penalties are imposed?

A taxpayer should not be subjected to a penalty where the taxpayer has a reasonable excuse. What constitutes a reasonable excuse is not explicitly defined in the ITMA. The VAT Act provides that an insufficiency of funds or when reliance is placed on any other person to perform any task, do not constitute a reasonable excuse.

14 In what circumstances may the tax authority collect interest and how is it calculated?

At present, if a taxpayer fails to pay tax by the tax settlement date, the ITMA provides that interest at the rate of 0.75 per cent a month or part thereof, will also be chargeable, for any period beginning on or after 1 January 2009. The interest can never exceed the amount of the said tax. Moreover, no interest runs on additional tax.

Update and trends

In the current context where tax transparency is in the spotlight and there is a clampdown on tax avoidance, there is an increase in enforcement activity from the tax authorities, which are more proactive in delving deeper into taxpayers' affairs. Current concerns of authorities and taxpayers relate to the timeliness of tax decisions. There is also more awareness and drive for court processes to be quickened for the benefit of taxpayers and for there to be the proper administration of justice.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

As stated in our response to question 11, a person that wilfully and with an intent to evade or assist any other person to evade tax has committed a crime and may face a trial in a magistrates' court. If found guilty, the person will face a fine (including an additional fine), a period of imprisonment or a combination of both. Fraudulent acts or omissions prescribed by law include inter alia:

- omissions from a return or any document or statement made, prepared or furnished in terms of income tax legislation; or
- false statements or entries in a return or any other document and false answers to any question or request for information.

The ITMA does not differentiate between different types of taxpayers committing the aforementioned offences. Thus, legal persons and natural persons are on an equal footing. That said, for legal persons, the ITMA expressly provides that managers, directors or other principal officers of a body of persons are to be answerable in law for complying with the provisions of tax legislation.

16 What is the recent enforcement record of the authorities?

There are no recent official statistics as to the enforcement record of the authorities.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

The Commissioner's power to involve or investigate third parties as part of the review of the taxpayer's return is wide.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Yes, insofar as local cooperation is concerned, the tax authority necessarily cooperates with the Malta Police Force such as when the Commissioner needs access to the premises of the taxpayer. In 2016, the Joint Enforcement Task Force (JET) was established in order to support the efforts of the tax authorities and detect, investigate and prosecute offences related to unfair business competition and the avoidance and evasion of tax. The JET is not a statutorily established body and is a pooling of resources of the various departments of the tax authorities.

Insofar as foreign cooperation is concerned, Malta has concluded several Tax Information Exchange Agreements on the basis of which Malta exchanges fiscal information with its non-EU treaty partners. A few examples include the Cayman Islands and Gibraltar. Moreover, Malta has implemented FATCA and also adheres to the Common Reporting Standard. Within the EU, Malta cooperates with other EU member states in various instances, via the EU Mutual Assistance Directive for the Recovery of Taxes as well as the Automatic Exchange of Information on Tax Rulings.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

Legal aid is available upon application by a taxpayer who cannot afford an attorney. There are certain conditions that need to be met before a person can successfully apply for legal aid. Although there is no formal framework, it may be possible to agree on scheduled payments;

however, this is fully dependent on any settlement agreements reached with the tax authorities.

20 Are there any voluntary disclosure or amnesty programmes?

Malta has a general programme of voluntary disclosure. A taxpayer who has omitted from a return may approach the tax authorities and rectify the omission by delivering a further return. Additional tax chargeable will be reduced by either:

- 90 per cent where the omission is in respect of employment income, investment income or gains from the disposal of immovable property; or
- 50 per cent, generally where an omission is not due to fraud or gross or wilful neglect and provided certain conditions exist.

The Commissioner may impose any conditions.

It is pertinent to note that a special programme, the Reduced Penalties Scheme, allowed taxpayers to regularise their outstanding income tax debts and their unfurnished returns to be settled. Taxpayers with pending tax balances until the year of assessment of 1998 could qualify for a 25 per cent reduction of the amount that would have been payable. This programme is no longer open.

With respect to VAT, by virtue of the Remission of Interest and Administrative Penalties Rules (SL 406.20), the Commissioner may remit any interest or administrative penalties that have been incurred by a taxpayer by virtue of late payment of VAT, if the Commissioner is satisfied that the VAT due was not paid due to a reasonable excuse.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

There is no official taxpayer 'bill of rights' or guidelines on taxpayer's rights issued by the tax authorities. That said, the general principles of good administrative behaviour apply in situations where a taxpayer has decided to enter an appeal to the ART. Thus, a taxpayer has the right to have his or her case decided on by the ART within a reasonable amount of time. A case must be decided on by an independent judge who has no interest in that particular case and all parties need to be heard before the ART can make a judgment.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

It is possible for taxpayers to obtain information from the tax authority via the Data Protection Act (Chapter 586) and the Freedom of Information Act (Chapter 496).

Insofar as data protection is concerned, the taxpayer would have the right to obtain from the tax authorities confirmation as to whether or not personal data concerning him or her is being processed and, where that is the case:

- the purposes of the processing;
- the categories of personal data concerned;
- the recipients or categories of recipient to whom the personal data has been or will be disclosed; and
- where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period.

The Freedom of Information Act also establishes a general right for citizens to obtain information held by public authorities to promote added transparency and accountability.

23 Is the tax authority subject to non-judicial oversight?

Yes, the tax authority is ultimately accountable to the Ministry of Finance. Moreover, the tax authority is in principle subject to the general oversight of the Ombudsman of Malta. The Ombudsman performs an independent function in the investigation and resolving of disputes between government bodies and individuals.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

The domestic dispute resolution process in the Maltese courts is initiated by way of an appeal to the Administrative Review Tribunal (ART) when a person feels aggrieved about a tax assessment after having his

or her objection refuted. There is also the possibility of recourse to the Court of Appeal on questions of law – that is, on the legal interpretation of provisions of Maltese income tax legislation. Should the taxpayer not be satisfied with the ART's decision. An appeal has to be filed within 20 days from the ART's decision.

Where the total amount of tax, additional tax, fines and interest in dispute at the time when the appeal was lodged before the ART is less than €1.16 million, appeals are heard before the Court of Appeal in its Inferior Jurisdiction. If the tax, additional tax, fines and interest is of €1.16 million or more, the appeal is heard before the Court of Appeal in its Superior Jurisdiction.

The final domestic outlet for taxpayers is the Constitutional Court.

25 How can tax disputes be brought before the courts?

Where the Commissioner has carried out an assessment, and the taxpayer does not agree with the findings of that assessment, the taxpayer may resort to the courts. Disputes are brought before the court through the filing of a written application by an advocate, indicating the court in which the action is being brought, the particulars of the parties, and the merits of the application being filed. The defendant will then be notified with the application, and will be given 20 days to file his or her statement of defence. It is either upon the statement of defence being filed, or upon the expiration of the 20-day period, that oral proceedings will start in court.

The ART may hear appeals by aggrieved taxpayers about a tax assessment carried out by the Commissioner within 30 days after having been served notice by which the Commissioner has refused to amend the assessment. The ART will reject appeals brought before it unless prima facie proof is brought by the appellant that he or she has filed his or her return for the said year of assessment. With respect to assessments raised by the Commissioner, the ART does not consider evidence as sufficient to warrant any change in the assessment if the taxpayer appealing against the Commissioner's decision has failed to provide the records, documents, accounts and electronic data previously requested by the Commissioner without any reasonable excuse.

The ITMA further provides that a taxpayer may appeal from the decision of the ART to the Court of Appeal within 20 days from the decision. Appeals are only possible on questions of law – that is, on the legal interpretation of provisions of Maltese income tax legislation. It is also an avenue of appeal for the Commissioner.

The Constitutional Court has appellate jurisdiction in a number of circumstances that may be of relevance from a tax dispute perspective. Recourse to the Constitutional Court is dependent on the claims being made. It hears appeals from decisions of the Civil Court (Superior Jurisdiction) on matters of human rights and fundamental freedoms as protected under Chapter IV of the Constitution of Malta. It also hears appeals as to the validity of laws other than those falling under article 46 of the Constitution that deals with human rights. This is the final outlet that taxpayers have domestically – a measure of last resort.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

There is no rule prohibiting tax claims affecting multiple returns from being brought together. That said, in practice, it is unusual for taxpayers to bring an action against a tax claim together. It would also ultimately be dependent as to how the Commissioner has made an assessment.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Where a notice of objection or appeal against an assessment has been given, the Commissioner may, using discretion, delay the collection of not less than 90 per cent of the part of the tax assessed that is in dispute. Moreover, the ITMA provides that for the appeal to be formally valid, the tax that is not in dispute must be paid in court. This requirement has, however, been deemed to be unconstitutional.

28 To what extent can the costs of a dispute be recovered?

The respective court that decides a case will determine the costs that are to be settled by the tax authorities and the taxpayer. The court may apportion costs between the parties; having a judgment handed down in favour of either party does not necessarily mean that the said party will not have to settle any fees. Generally, the winning party may recover the filing and related court expenses as well as legal fees and legal procurator fees, according to a tariff established by law.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

There are no such restrictions under tax law.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

The ART consists of a chairperson, who is appointed for a period of four years by the President of Malta (acting on advice of the Prime Minister), supplemented by two assistants. The Court of Appeal may consist of one or more chambers. Where the composition is of one or two chambers, each chamber is to consist of the Chief Justice and two other judges. Where the composition is of three or more chambers, the third and other chambers are to be presided by a judge that is nominated on the Chief Justice's advice. Trials by jury are not available in tax disputes.

31 What are the usual time frames for tax trials?

There is no specified time period within which a tax trial must be decided. It is not possible to state with accuracy the amount of time such a trial may take as it depends on the facts and the litigation process relating to each particular case.

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32 What are the requirements concerning disclosure or a duty to present information for trial?

The ART is empowered to summon any person to give evidence or produce books or other documents before it. The parties to a case can submit documents to support their arguments. The said documents are generally accessible to the other party.

33 What evidence is permitted in a tax trial?

Parties to a suit are competent to give evidence, either at their own request or at the request of any of the other parties to the suit, or at the request of the court ex officio. In this regard, taxpayers themselves are permitted to testify. Oral and documentary evidence are both permitted in a tax trial. Court experts are permitted under Maltese law. Such a person will issue a report stating the enquiries made and his or her findings, together with the grounds for such findings.

It is pertinent to note that the default language of civil proceedings is Maltese, although certain proceedings may be heard in English. Where any party does not understand the language in which the oral proceedings are conducted, such proceedings must be interpreted to him or her either by the court or by a interpreter, who has been sworn in.

Any evidence that is submitted by an affidavit must be drawn up in the language normally used by the person taking such an affidavit. The affidavit, when not in Maltese, is to be filed together with a translation in Maltese, which is to be confirmed under oath by the translator.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Parties can appear before the ART in person or can be represented through an advocate, a legal procurator or another person.

35 Are tax trial proceedings public?

Proceedings before the ART are to be conducted in public. The Code of Organization and Civil Procedure (Chapter 12) also states that cases held before the civil courts of Malta are to be held in public, although the court may order that a case be heard behind closed doors for the purposes of decency or good morals, or if both parties have requested it.

36 Who has the burden of proof in a tax trial?

The burden of proof is generally on the taxpayer, based on the fact that assessment made by the Commissioner is considered to be correct. Case law has, however, provided that the burden of proof can be shifted to the tax authorities if the assessment is made ex officio, and the taxpayer succeeds in convincing the court that the assessment made by the Commissioner was prima facie unreasonable.

37 Describe the case management process for a tax trial.

See question 25.

38 Can a court decision be appealed? If so, on what basis?

Yes. See questions 24 and 25.

Mexico

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The regulatory framework of the relationship between taxpayers and the federal tax authorities is mainly provided by the Federal Tax Code (each state has its own set of rules).

The Tax Administration Service (TAS) can delegate part of its authority to federal entities in certain cases. The scope of the authority that can be exercised by the TAS is established by the Tax Administration Service Law and its regulations.

With regard to tax controversies, the Federal Administrative Litigation Law provides the legal framework whereby taxpayers can challenge illegal resolutions issued by the tax authorities before the tax court.

Besides the federal laws, the executive branch is entitled to issue a set of regulations for each federal tax law, as well as an additional body of rules entitled Miscellaneous Tax Resolutions, which is frequently updated during the year.

Finally, Mexico has an extensive network of tax treaties to avoid double taxation and to exchange information with other countries.

2 What is the relevant tax authority and how is it organised?

In general, the TAS is the Mexican authority in charge of enforcing federal tax laws (see question 1).

The TAS is headed by the TAS chief. Below that, the TAS is divided into the following general departments:

- collection;
- tax audit;
- customs;
- audit procedures involving foreign trade operations;
- relevant taxpayers (that has specific collection, audit and legal sub-departments);
- operations involving oil and gas;
- taxpayers' services;
- legal;
- planning;
- resources and services;
- examination; and
- communications and information technology.

Each department has several sub-departments. Besides the general departments, the TAS has several decentralised local departments distributed over the whole national territory.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

The Federal Tax Code establishes different types of procedures to determine if a taxpayer is complying with the tax laws. The most commonly used are:

- automatic system reports generated as a result of differences between the tax returns and the information held by the federal tax authorities;
- audit procedures performed in the taxpayer's domicile;
- audit procedures performed in the tax authorities' office – in this case, the taxpayer receives an information request from the tax authorities and has a deadline to file the corresponding information;
- audit of the taxpayer's financial statements issued by a certified public accountant – for several years, having certified financial statements was an obligation for certain types of taxpayers. Also, according to our legislation, the facts recognised in such certified financial statements have the benefit that they are presumed to be true. Therefore, a special audit procedure that initiated with the public accountant that signed the financial statements was created; and
- electronic audits – for several years now, the tax authorities have been improving their electronic systems and have been pressuring taxpayers to migrate to an electronic invoicing and accounting system. As part of those efforts, taxpayers are required to upload to the tax authorities' portal part of their accounting information on a monthly basis. Such information is processed and, in certain cases, might result in preliminary tax assessments that will be notified to taxpayers via email.

However, audit procedures initiated in the taxpayer's domicile or in the tax authorities' office are by far the most common procedures used to verify if the taxpayers are complying with tax laws. We expect to see a significant increase in electronic audits in the next few years.

Typically, a tax audit starts with the notification of an official letter containing the list of taxes that are to be reviewed and over which period. Usually, the tax authorities have a 12-month period to review the documentation provided by the taxpayers and issue an official letter including the observations that could result in a tax assessment (certain exemptions apply). After being notified of such official letter, taxpayers have a deadline of 20 working days to provide additional information.

If the documentation provided by the taxpayer is considered insufficient by the tax authorities, they have six additional months to issue the corresponding tax assessment.

A tax audit usually lasts one year (not taking into account the six-month term the tax authorities have to issue the corresponding tax assessment). However, the following exceptions exist:

- audits initiated to financial institutions or business groups that consolidate for tax purposes can last 18 months;
- audits in which the tax authority requests information from foreign tax authorities can last two years; and
- audits related to transfer pricing issues or verification of the origin of goods can last two years.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Yes, the Mexican tax laws provide several differentiated reporting obligations depending on the type of taxpayers (as a matter of fact, such reporting obligations frequently transcend to other subjects dissociated from the tax relationship).

For instance, trustees have to submit a yearly report regarding income generated in the trusts in which they participate; Mexican companies with foreign investors have to submit a report during the three first months of the fiscal year; public notaries have to submit a report regarding the income tax and VAT paid in the operations in which they participate; entities authorised to receive deductible donations have to file a yearly report; and Mexican residents that generate income in low taxation regimes are required to file a yearly report (failure to file this report could even result in criminal charges).

Several reporting obligations are concentrated in the financial institutions (for instance, all financial institutions have to submit a yearly report identifying taxpayers' cash deposits that exceed 15,000 pesos).

Previously, the main reporting obligations for taxpayers were condensed in the Multiple Information Report. Nevertheless, the TAS announced at the end of fiscal year 2016 that such a report would not be binding anymore. In that sense, the above-mentioned report would be replaced by the information contained in the annual tax return and with the information contained in the newest versions of electronic invoices.

Finally, in order to comply with the newest guidelines issued by the OECD in matter of base erosion and profit shifting (BEPS), Mexico has implemented the following annual reports:

- master reports of related parties for multinational corporations;
- local reports of related parties; and
- country-by-country reports.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

Tax authorities are allowed to require a broad spectrum of documentation in order to verify that taxpayers are complying with the tax laws, provided that such documentation is related to the taxes and fiscal period under review.

Typically, in its first approach, the tax authority will request corporate documentation, accounting books, invoices related to the registered operations and the taxpayer's bank statements.

Depending on the information provided, the tax authorities may request supporting documentation related to the taxpayer's operations (agreements, wire transfers, work papers, etc).

As a result of bad corporate practice performed by certain companies, the tax authorities are focusing on the materiality and substance of the services received by the taxpayers in order to determine the deductibility of the corresponding payments. Basically, they request further documentation that they consider to be proof that the services were effectively rendered and, if such documentation is not provided, they reject the deduction. However, in many cases, taxpayers are not able to provide such documentation, since they were not required to have it even though the service was effectively rendered. For example, the tax authorities are requesting entry logs, call logs, call recordings, camera recordings, minutes of meetings, among others.

Unfortunately, our legal framework does not establish clear rules that define the documents the tax authority is entitled to request in order to verify the materiality or substance of a service. Even article 69-B of the Federal Tax Code, which establishes a procedure to generate a legal presumption regarding the nonexistence of a service, is unclear on this matter. Therefore, the most conservative strategy for companies is to record and preserve the largest amount of information and documentation involving any service received by the taxpayer that will be considered as a deductible expense.

The tax authorities have broad authority when conducting their audits and are entitled to request information from third parties to determine the tax situation of a taxpayer. Such third parties could even be the taxpayer's employees, but that is uncommon. Requesting information from a third party in connection with the taxpayer's operations has become very common practice that bears mixed results, since the information provided by the third party (even if it is not accurate) carries a lot of weight to the tax authorities if it does not coincide with the taxpayer's information.

It should be noted that, even though formal interviews can take place in certain cases, most audit procedures only include informal work meetings. In many cases, due to the tax authorities' workload, audit procedures are limited to the request, submission and review of the taxpayer's information and documentation, with minimal interaction between both parties. We recommend having as much interaction

with the tax authorities as possible, since many of the tax authorities' observations usually result from a lack of communication.

6 What actions may the agencies take if the taxpayer does not provide the required information?

The two most important measures that can be taken by the tax authorities if a taxpayer does not provide the requested documentation are: (i) impose a fine; and (ii) consider that taxes were omitted, since the lack of documentation has generated a legal presumption in prejudice of the audited taxpayer.

Regarding this second matter, there is broad understanding in our legal practice that the taxpayer has the burden of proof of the legality of their tax situation.

In that sense, according to the Federal Tax Code, a deposit registered in a taxpayer's bank account would be deemed taxable income if not clarified by the taxpayer with the corresponding documents. Similarly, in case of an enquiry by the tax authorities regarding a specific legal requirement for a deduction, the taxpayer must provide the necessary documents to demonstrate the fulfilment of such a requirement to avoid having that deduction rejected.

Finally, if the tax authorities consider that the taxpayer is obstructing the progress of the audit (which could happen if the taxpayer appears reluctant to provide the documentation requested), they can estimate the taxpayer's taxable profit based on any element they have (accounting books, tax returns, information provided by third parties, information contained in other tax authorities' cases or any other elements resulting from economic research).

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

In principle, taxpayers are compelled to provide all the documents requested by the tax authorities, provided that such documents are related to the audited taxes and period.

Consequently, according to article 69 of the Federal Tax Code, all public servants are required to keep information gathered in the course of their public functions confidential. However, certain exceptions apply (eg, in the case of criminal matters).

As a result, many taxpayers choose to hide their business secrets from the tax authorities, arguing that the details of such business secrets are not relevant for the purposes of the audit procedure. However, since the main consequence of failing to provide the requested information is the potential imposition of a tax assessment, taxpayers must be very careful when determining what information they will not disclose. If a tax assessment is imposed, taxpayers can try to prove the irrelevance of the undisclosed information for tax purposes and, if their arguments prevail, such tax assessment could be nullified.

Unfortunately, there is a lack of preventive mechanisms to avoid the disclosure of confidential information by public servants in office. Most of the mechanisms to avoid the disclosure of classified information held by public servants are punitive and do not mitigate the economic effects of the information leak.

8 What limitation period applies to the review of tax returns?

The general statute of limitations is five years following the date on which:

- the tax return from the respective period was filed (if the contribution is calculated by fiscal years), or shall have been filed (if the contribution is not calculated by fiscal years);
- the contribution was caused (if no tax return is filed for such particular tax);
- the infraction was committed; or
- the breach minute was issued (regarding guaranteed obligations).

A 10-year statute of limitations applies when the taxpayer:

- is not registered in the Federal Taxpayers Registry;
- does not have accounting records or does not keep them during the time required by law; and
- does not file an annual tax return or does not include in it the required information on the VAT and the special tax on production and services.

The statute of limitations can either be reset or suspended. The statute of limitations resets each time a corrective tax return is submitted by the taxpayer regarding the modified items. The statute of limitations is suspended by any audit procedure initiated by the tax authorities, by any administrative appeal or annulment lawsuit filed by the taxpayer, and in case of strike, demise of the taxpayer or if such taxpayer cannot be located in its designated tax domicile.

Criminal matters involving tax issues are not subject to the above-mentioned rules.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

The Federal Tax Code establishes the possibility of filing an administrative appeal before the tax authorities. Such an appeal is optional before filing an annulment lawsuit before the tax court.

In general terms, the administrative appeal must be filed within 30 working days following the day in which the tax resolution was notified.

According to the Federal Tax Code, the tax authorities must issue their resolution three months after the administrative appeal was filed (however, since no consequence results from their non-compliance, administrative appeals usually take longer to be resolved).

In May 2017, a special type of administrative appeal was introduced in the Federal Tax Code to settle high-value tax assessments. If the taxpayer chooses such special procedure and the requirements established in the Federal Tax Code are met, he or she can attack the legality of the tax assessment, disregarding the formal arguments contained in the tax resolution. In that sense, the referred modality allows the taxpayer to litigate the illegality of the tax resolution under a substance-over-form criterion. This new modality of appeal may become very popular in the future, as it allows the taxpayer to request a formal hearing in order to discuss the legality of the tax assessment.

In recent years, Congress has included an alternative dispute resolution procedure in the Federal Tax Code called 'conclusive agreement'. This is a non-controversial procedure in which the tax authorities and the taxpayer review and negotiate the items identified during the audit to try to reach an amicable settlement. This procedure is carried out with the mediation of the Mexican ombudsman in tax affairs (the Mexican Taxpayer's General Attorney).

In general terms, a conclusive agreement is initiated by a request filed by the audited taxpayer (such request can be submitted by the taxpayer at any time before the tax assessment is notified, provided that the tax authorities have already issued an opinion regarding the taxpayer's situation).

In its request, the taxpayer must address the observations identified in the audit, submitting any relevant documentation to support its position. Once the request is filed, any deadline relating to the audit procedure (including the issuance of the tax assessment) is suspended, so both parties can focus on reaching a settlement.

Once notified of the conclusive agreement, the tax authorities are granted a deadline of 20 working days to accept (either totally or partially) or reject the proposal.

Upon receiving the tax authorities' response, the Mexican Taxpayer's General Attorney can arrange meetings between the taxpayers and the tax authorities in order to analyse the outstanding observations, provide additional information and try to promote an agreement.

Even though a conclusive agreement is voluntary for both parties (any party can stop the procedure at any time, but if the party opting out of the conclusive agreement is the tax authority, it has to provide a valid reason to avoid a declaration of the Mexican Taxpayer's General Attorney stating that the tax authority's position is illegal or arbitrary), if a settlement is reached, it will be binding for them. The settlement cannot be appealed and does not constitute legal precedent.

Finally, reaching a conclusive agreement gives a one-time benefit to each taxpayer: all fines that could be imposed by the tax authorities in connection with the corresponding audit procedure are waived. The taxpayer can decide whether to use such a benefit.

10 How may the tax authority collect overdue tax payments following a tax review?

If a tax assessment is not challenged or guaranteed (once notified of the tax assessment, taxpayers have 30 working days to provide a guarantee), the tax authorities are entitled to initiate the administrative collection procedure.

The administrative collection procedure begins with the notification of a payment request made in the taxpayer's tax domicile. If payment is not made, the tax authorities are entitled to seize all necessary assets to cover the amount of the tax assessment, even using police force, if necessary.

After the assets are seized, the tax authority values them before selling them through a public auction. Certain types of asset – mostly personal and indispensable for the taxpayer's activity – cannot be seized). Seized assets cannot be sold if the corresponding tax assessment has been challenged. Taxpayers can recover the seized assets at any time by paying the total amount of the tax assessment.

In recent years, the tax authorities have been taking a much more aggressive position and, instead of notifying the payment request and seizing tangible assets, they send a notice to the banking commission to seize the taxpayer's bank accounts. Such practice imposes a lot of pressure on taxpayers, compelling them to pay the tax assessment or reach a settlement with the tax authorities.

The administrative collection procedure can be suspended (even when assets have been seized) if the taxpayer files an administrative appeal on time or files an annulment lawsuit before the tax court on time and provides a guarantee. By providing a copy of the filed administrative appeal or of the filed annulment lawsuit, the guarantee is usually enough to stop any action related with the collection procedure. However, if a guarantee is used to suspend the administrative collection procedure, it must be filed with the tax authorities for validation. There are several types of guarantees that can be used to suspend the administrative collection procedure; however, not all are accepted by the tax authorities, a situation that we consider highly irregular (the tax authorities prefer bonds but, depending on the amount of the tax assessment, they can be very costly).

11 In what circumstances may the tax authority impose penalties?

The Federal Tax Code provides a number of conducts or omissions that might result in fines. The most common penalties are those imposed for not paying taxes (ranging from 55 per cent to 75 per cent of the omitted tax), having calculation mistakes in a tax return (ranging from 20 per cent to 25 per cent of the omitted tax) and not complying with formal requirements (lack of registration in the Federal Taxpayers Registry, default in the submission of notices, designating a false tax domicile, default in the submission of a tax return, default in the fulfilment of provisional payments, accounting mistakes under the tax law, opposing to a tax audit, etc). The amount of the fine will depend on the formal requirement that was not fulfilled.

In general, no penalties will be imposed if the taxpayer fulfils the omitted obligation voluntarily.

If certain conditions are met, taxpayers may benefit from a reduction in fines (the reduction may even be of 100 per cent).

12 How are penalties calculated?

Depending on the type of penalty and if the conduct is deemed as aggravated (recurrence, false documents, having two accounting systems, intentional destruction of the accounting systems, etc), the tax authorities can impose a minimum or a maximum penalty.

The minimum or maximum can either be an amount or a percentage, depending on the type of penalties. Penalties related to omitted taxes are usually based on a percentage of the omitted tax, while penalties related to formal obligations are usually an amount in pesos.

Fines are updated in accordance with inflation.

13 What defences are available if penalties are imposed?

Taxpayers can challenge fines either by filing an administrative appeal before the tax authorities or by an annulment lawsuit before the tax court. In both cases, the deadline to file the means of defence is 30 working days after the date on which the resolution's notification came into force (roughly 30 plus one working days).

An administrative appeal is resolved by the tax authorities, while an annulment lawsuit is resolved by the tax court.

Even though an administrative appeal is not resolved by an impartial authority, it provides several benefits to the taxpayers (eg, the possibility of challenging the resolution without providing a guarantee, the possibility of filing additional evidence and the possibility of

filing simple copies as evidence instead of originals or certified copies). Filing an administrative appeal is optional before attending tax court.

On the other hand, an annulment lawsuit is resolved by the tax court, which is impartial. The details of the annulment lawsuit will be highlighted in subsequent responses.

14 In what circumstances may the tax authority collect interest and how is it calculated?

The tax authority can collect interest for any overdue payment under the tax laws. Such interest is calculated by applying a 1.13 per cent monthly rate to the amount of the updated omitted taxes. In general, interest can only be generated for a period of five years. However, such an obligation is linked to the tax authorities' statute of limitations; therefore, if the latter is extended, the interest-generating period can also be extended.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Yes. The Federal Tax Code provides a list of tax crimes, which are usually detected during the course of a tax review. Nevertheless, the criminal process must be initiated separately by the tax authorities by filing a grievance or an accusation before the Attorney General's Office.

Once the grievance or the accusation has been filed, the Attorney General's Office takes over the criminal prosecution. From there, the procedure follows the typical steps of any criminal process.

In general, only individuals can be responsible for a tax crime. Nevertheless, in recent years, the criminal law has been modified in order to consider economic consequences against legal entities that are used as a vehicle to commit a crime (although it is not clear yet which kinds of crimes will result in consequences for legal entities).

16 What is the recent enforcement record of the authorities?

During recent years, tax authorities have hardened their audit practices in order to improve their enforcement record. Additionally, the constitutional courts have assumed a position in favour of the tax authorities in their recent rulings. As a consequence, the enforcement record of the tax authorities has improved significantly.

Unfortunately, such improvements have been achieved by sacrificing other important values, such as the strict application of the law and respecting taxpayers' human rights.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

The tax authorities are entitled to request information from third parties in order to verify certain facts related to a tax audit. In this regard, the audited taxpayer is not allowed to participate in any manner in the progress of the procedure with the third party.

Nevertheless, the taxpayer does have the right to be notified of the results of the procedure and to make legal allegations regarding such a result during the 20 working days following the corresponding notification.

The Federal Tax Code provides that the third parties can be fined if they do not provide the documents required by the tax authorities.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Yes. Tax authorities, both local and federal, are part of the National Tax Coordination System, which allows them to join efforts to audit or collect taxes throughout Mexican territory. Also, the tax authorities are entitled to request information from any other authority within the country.

Finally, Mexico has numerous conventions to avoid double taxation and to promote the exchange of tax information. Such agreements are the result of active interest in cooperating with other countries in connection with tax issues. At present, Mexico is very involved in the BEPS discussions and is aggressively pursuing the enactment of provisions that allow an automatic exchange of information (both locally and internationally).

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

Yes. The Federal Tax Code provides two different scenarios: (i) deferred payment or payment in instalments; and (ii) debt write-off in cases of bankruptcy.

In both situations, several conditions must be met to obtain the corresponding authorisation.

20 Are there any voluntary disclosure or amnesty programmes?

Yes. Both the Federal Tax Code and the Federal Taxpayer's Rights Law regulate several hypotheses, in which interest and penalties can be condoned or reduced.

For example, in the case of voluntary disclosure (ie, cases in which the tax authorities have not detected the omission), no penalties will be imposed if the taxpayer pays the omitted taxes or fulfils his or her obligations.

Regarding audit procedures, the Federal Taxpayer's Rights Law establishes a reduced fine (20 per cent instead of the 55 per cent minimum fine established when taxes are omitted) if the taxpayer pays the owed tax after the beginning of the audit but before the final observations are notified.

If the tax is paid after the final observations but before the tax assessment is notified, the fine will be 30 per cent of the amount of the omitted taxes.

Also, the Federal Tax Code establishes some cases outside the audit procedures in which penalties can be written off.

For example, interest can be written off during a transfer pricing mutual agreement procedure (provided that there is a double taxation treaty with the other jurisdiction and that such a country does not refund to the corresponding taxpayer any amount referred to in interest).

Furthermore, if a taxpayer executes a conclusive agreement before the Mexican Taxpayer's General Attorney, they are entitled (as a one-off) to a 100 per cent write-off of the penalties that could be imposed.

Finally, in previous years, different decrees that provide benefits to taxpayers have been enacted (eg, in the matter of repatriation of capital and profits). Additionally, it is not uncommon to witness special amnesty decrees after a change of government in the executive branch, so depending on the circumstances and particular policies of the next administration, we may see a new amnesty programme anytime soon.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

The Mexican Federal Constitution establishes a set of human rights covering tax affairs.

In addition, the Federal Taxpayer's Rights Law contains some specific guarantees in favour of taxpayers (the right to submit evidence and testify during the administrative procedure; the right to rectify their tax situation; the right to a presumption of good faith regarding their acts; the right to offer as proof the administrative file of the tax audit, etc).

On the other hand, the Federal Tax Code provides several formalities that the tax authorities are required to follow during tax audits. If any of these formalities are infringed, the taxpayer can request before the tax court the nullity of the audit.

Finally, the Federal Administrative Litigation Law establishes the rules that taxpayers should follow in order to bring a lawsuit against an illegal tax assessment before the tax court.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

According to the Federal Taxpayer's Rights Law, taxpayers are entitled to request any information regarding the status of their legal procedures. Therefore, any kind of information regarding such status can be requested directly from the tax authority.

On the other hand, statistical information or data related to other tax procedures can be requested through the Access to Public Information and Data Protection Federal Institute, provided that the corresponding disclosure does not violate the confidentiality provisions established in the Federal Tax Code.

Finally, in certain cases, the tax authorities will publish general information from taxpayers (eg, taxpayers who have received a

write-off, taxpayers who cannot be found in their tax domicile or taxpayers who are deemed to be carrying out non-existent transactions).

23 Is the tax authority subject to non-judicial oversight?

Not really. In fact, most of the supervision related to tax collection is carried out internally (even the administrative appeal is filed before a specific area of the TAS). Theoretically, the TAS is always under the supervision of the Mexican Ministry of Treasury and Public Credit (which ranks above it) and the Superior Audit Office of Mexico (in connection with the administering of its budget), but, in general terms, it enjoys wide autonomy in the development of its functions.

In that regard, the TAS Law clearly establishes that TAS will have management and budgetary autonomy and will have technical autonomy in issuing its resolutions.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

Two different types of courts have jurisdiction to hear tax disputes: (i) the tax court; and (ii) the district and circuit courts.

Even though the tax court is part of the executive branch of government, it enjoys full autonomy regarding the issuance of its rulings. In that sense, such rulings are not subject to any kind of oversight by the executive branch.

The tax court is organised in several courtrooms across Mexico, headed by a superior courtroom (such courtroom only hears relevant disputes based on quantity or importance).

The tax court is mainly in charge of deciding whether an administrative resolution (usually resolutions imposing tax assessments) is valid.

The district and circuit courts are part of the judicial branch of the government and are headed by the Supreme Court of Justice.

District and circuit courts usually decide whether a tax provision or a resolution issued by a tax court complies with the principles established in the Mexican Constitution.

25 How can tax disputes be brought before the courts?

Tax disputes can be brought before the tax courts' attention by filing an annulment lawsuit within 30 working days following the date on which the administrative resolution was notified to the taxpayer.

Through an annulment lawsuit, taxpayers can request that the tax resolution is declared invalid based on the following arguments: incompetence of the issuing authority; omission of a formal requirement; irregularities of procedure; misunderstanding of the facts; wrongful application of the tax law; or inappropriate use of discretionary faculties.

The annulment lawsuit should be submitted through a leaflet signed by the legal representative or through the digital system of the tax court's digital portal.

The annulment lawsuit should mention the name of the plaintiff, its tax domicile, the domicile to receive notifications, email, the challenged resolution, the issuing tax authority, the background, the evidence, the arguments, the requested course of action and the name and domicile of any relevant third party.

The plaintiff should attach to their annulment lawsuit the power of attorney of their legal representative; the challenged resolution with their notification minute; the questionnaire for the legal expert or witnesses, if any; all the relevant documents offered as evidence; and enough copies of the lawsuit for all the parties involved.

Any individual or legal entity affected by a tax resolution can file an annulment lawsuit. Also, in some cases, the tax authorities can file an annulment lawsuit in order to invalidate a previous favourable response given to a taxpayer.

There is no minimum threshold required to file a claim. However, the law provides a shorter procedure in case of low-quantity affairs.

A taxpayer who files a claim can also request the recognition of a subjective right affected by a negative ruling issued by the tax authorities. Also, tax authorities can request that previous resolutions granted to taxpayers are declared invalid if they demonstrate the illegality of such resolutions.

As in the Federal Tax Code, a special procedure has been established in the Federal Administrative Litigation Law to resolve certain tax disputes on a substance-over-form basis. Just as in the special type

Update and trends

Currently, the efforts of the tax authorities are focused on implementing and improving the reporting framework in tax affairs in order to comply successfully with the latest base erosion and profit shifting policies. Some taxpayers have challenged the new reporting obligations implemented by the tax authorities and the legislator, but the stance of the constitutional courts (strongly in favour of the current tax administration) has made it almost impossible to nullify the new reporting obligations on constitutional grounds.

However, there has been a modest increase in favourable precedents regarding the evidential value of private documents. There have also been some new precedents limiting the presumption faculties of the tax authorities.

In that sense, while the constitutional courts seems to remain reluctant to assume a protective stance against the most aggressive policies implemented by the tax authorities in recent years, some tax courts seem to be willing to establish some legal padlocks to the almost unlimited faculties of the tax authorities regarding the presumption of taxable income.

Finally, in recent years, the Mexican Taxpayer's General Attorney has assumed a more reluctant stance against the tax authorities in the conclusive agreements and legal complaints filed before it. Therefore, it has gone from being one of the most revolutionary institutions in favour of taxpayer rights to a less useful tool – valuable only against clear and extreme transgressions of taxpayer rights.

of administrative appeal, quantity requirements should be met and a formal hearing takes place before the issuance of the final ruling.

Regarding district and circuit courts, taxpayers can file an amparo lawsuit within 15 working days following the date on which the tax provision has been applied for the first time (in certain specific cases, the amparo lawsuit can be filed within 30 working days following the date on which the tax provision is in force) or the tax court's resolution has been notified.

In this type of procedure, the claim can only be filed under constitutional grounds invoking a human right affected by the challenged resolution or provision.

The amparo lawsuit can be filed before the issuing authority (if the challenged resolution is a tax court ruling) or directly before the federal courts (if the challenged resolution is a general provision).

An amparo lawsuit can be filed through a written document or electronically (the law regulates the possibility of filing it verbally in some grave cases, but it is uncommon in tax affairs). The lawsuit must mention the name and domicile of the plaintiff and its legal representative, the name and domicile of any third party involved, the responsible authority, the challenged resolution, the background, the violated human rights and the pertinent legal arguments.

Any individual or entity can file an amparo lawsuit; however, authorities are not allowed to file such claims.

There is no minimum threshold to file an amparo lawsuit.

The legal effects are usually to make an unconstitutional resolution or the application of an unconstitutional rule void.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Yes. The Federal Administrative Litigation Law regulates the accumulation of tax cases when the parties and the arguments are the same or when two or more administrative resolutions are causally connected. Under this scenario, one tax claim can affect multiple resolutions.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Taxpayers are not required to pay the amounts in dispute before filing their claim. However, if the amount in dispute is not paid or guaranteed once the annulment lawsuit is filed, the tax authorities are entitled to initiate the administrative collection procedure to seize assets to guarantee the amount of the tax assessment.

If the taxpayer pays the amount in dispute and wins the case in tax court, the tax authorities are required to reimburse the updated amount plus interest.

28 To what extent can the costs of a dispute be recovered?

Expenses relating to the case can only be recovered by the tax authority if the taxpayer filed an annulment lawsuit with the sole intention of delaying a procedure.

However, taxpayers can request the payment of damages if the tax authorities committed a grave mistake when issuing their resolution (eg, the ruling of the tax authority does not take into consideration a binding legal precedent of the Mexican Supreme Court of Justice).

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

No. The taxpayer can cover his or her expenses through any means that he or she finds appropriate.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

The ruling of the tax court is made by a judicial body comprising three judges (the decisions are taken by majority). A jury trial is not available in tax affairs.

31 What are the usual time frames for tax trials?

A regular annulment lawsuit before the tax court usually lasts from 12 to 18 months, depending on the evidence filed by both parties (eg, expert opinions usually delay the process). Nonetheless, special expedited procedures exist for controversies that involve small amounts (these procedures last from three to six months).

If the resolution issued in the annulment lawsuit is unfavourable for the taxpayer, he or she is entitled to file a constitutional trial (juicio de amparo). Depending on the complexity of the case, several successive constitutional trials may be filed. The tax authorities are also entitled to appeal the tax court's resolution. Therefore, depending on the complexity of the case, the whole process can last several years.

32 What are the requirements concerning disclosure or a duty to present information for trial?

There is no discovery process as an independent pre-trial procedure. When filing an annulment lawsuit, the taxpayer is required to offer all the evidence that supports his or her position. If the taxpayer does not submit the necessary evidence upon filing, the tax court will grant the taxpayer a five business day deadline to submit it. Evidence not submitted before the deadline will not be admissible.

Apart from evidence offered and submitted at the beginning of the tax trial, only supervening evidence (eg, evidence that did not exist when the annulment lawsuit was filed) and evidence requested by the tax court to have a better understanding of the case are admitted.

Once all the evidence has been offered and submitted, the vast majority does not require any special procedure.

In general, each party is responsible for presenting the information that supports its stance. However, the taxpayer is entitled to demand the disclosure of the administrative file of the tax audit or the issuance of any certified copy of the information from the taxpayer that may be in the possession of the tax authorities.

The authorities are required to issue, within an appropriate time, any certified copy requested by the parties. Therefore, the parties can request that the tax court issues a formal request to the neglecting authority in case of delay. If the requested authority fails to provide the information during the term granted by the tax court, a fine can be imposed.

If one of the documents requested cannot be provided for justified reasons, the corresponding authority can request an extension to implement extraordinary measures in order to provide the requested information. However, if the presentation of the information remains impossible, the tax court can determine that the omission is justified.

33 What evidence is permitted in a tax trial?

Theoretically, any kind of testimony is allowed in a tax trial, except for the tax authorities' confession obtained through questioning. However, in practice, regular tax trials are predominantly based on documentation and typically the only evidence that resembles a testimony is expert opinion. (However, we have witnessed that sometimes testimonies have proved to be quite useful to demonstrate the existence of some deductible services, especially when the service provided by the supplier does not generate significant documental background).

With regard to the translation of evidence, the Federal Administrative Litigation Law does not establish the translation of evidence as mandatory. However, in recent years, the tax court has been demanding that all documents in a foreign language must be duly translated according to the requirement from the provisions applicable to civil litigation affairs.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Taxpayers can be represented by any person in tax court, provided that they grant him or her an appropriate power of attorney (also, individuals can represent themselves before the tax courts). If the tax authority recognises the legitimacy of the legal representative's capacity, it is not necessary to submit a new power of attorney.

Legal advice from a tax lawyer is not mandatory, but is advisable. Lawyers can be authorised in trials to make arguments and submit proofs. The authorised attorney must have a law degree and needs to be registered before the tax court. If such requirements are not fulfilled, the authorised person will only be empowered to receive notifications and review the case file.

Finally, it is important to mention that the Mexican Taxpayer's Attorney General is entitled to act as the legal representative of taxpayers (if requested) in any tax trial or legal procedure. The services of the Mexican Taxpayer's Attorney General are free of charge.



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On the other hand, the tax authorities are represented in trials by their legal departments. They can also designate delegates to receive notifications and review the case file.

35 Are tax trial proceedings public?

No, only the parties and the authorised individuals can be informed of the status of the legal procedure.

Nevertheless, the tax court's final rulings are published. However, the parties are entitled to request that their personal data is not published.

36 Who has the burden of proof in a tax trial?

In general terms, the taxpayer (acting as plaintiff) has the burden of proof, as the administrative resolutions are deemed valid until proven wrong.

However, some legal tools can help the taxpayer to revert such burden of proof, such as the statements contained in a public accountant's opinion or the legal presumption of good faith regarding the taxpayer's acts.

Under special circumstances, tax authorities can act as plaintiff in the annulment lawsuit (eg, when the taxpayer has a favourable resolution issued by a tax authority and the tax authorities want to revoke the resolution). In those cases, the tax authority will have the burden of proof.

37 Describe the case management process for a tax trial.

In a tax trial, the plaintiff has 30 days to file the corresponding lawsuit. Once admitted, the lawsuit is notified to the tax authorities, granting them an equal period to produce their opposing arguments. The evidence of each party, or the questionnaire for the expert opinion, should be submitted attached to their initial writ.

Most evidence does not require further diligence, but if one of the parties offers an expert opinion, the process could be prolonged for one or two additional months, because each party has to select an expert to submit an opinion and, in case of dissimilar opinions, a third expert could be designed to settle the matter.

Five days after the discovery process has concluded, the tax court will grant a deadline of five working days to all parties to file their closing arguments. Once the deadline has passed, the tax court has 45 days to pass judgment. However, since there are no repercussions for not issuing a ruling within the 45 day-term, sometimes the ruling takes longer.

38 Can a court decision be appealed? If so, on what basis?

Yes. If certain conditions are met, the tax authorities can file a tax appeal within 15 working days from the date on which the tax court's resolution was notified. The tax appeal is resolved by a circuit court. On the other hand, the taxpayer can appeal the tax court's resolution through a constitutional trial (the period in which to file the constitutional trial is the same as that which the tax authorities have to file their appeal).

Both procedures are conceptually different, as only the tax appeal is an appeal in a strict sense, while the constitutional trial is an independent constitutional procedure. However, in most cases, the constitutional trial is only oriented to challenge the legality of the tax court's ruling, so both legal means are similar.

The applicable law also regulates the possibility of filing complaints against resolutions issued by the tax court within the process (rejection of the annulment lawsuit, rejection of evidence, etc).

Nigeria

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The relevant legislation is:

- The Value Added Tax Act LFN 2004;
- The Capital Gains Tax Act LFN 2004;
- The Petroleum Profits Tax Act LFN 2004;
- The Stamp Duties Act LFN 2004;
- The Industrial Development (Income Tax Relief) Act;
- The Casino Taxation Act LFN 2004;
- The Personal Income Tax Act LFN 2004 only applicable in the Federal Capital Territory, Abuja;
- The Federal Inland Revenue Service (Establishment) Act 2007;
- The Companies Income Tax Act LFN 2004;
- The Income Tax (Authorised Communication) Act LFN 2004;
- The Deep Offshore and Inland Basin Production Sharing Contracts Act LFN 2004;
- The Taxes and Levies Act LFN 2004;
- The Education Tax (Amendment) Act LFN 2010; and
- The Tax Appeal Tribunals Act (Establishment) Order, 2009.

Apart from than legislation, other binding rules include:

- The Transfer Pricing Regulations, 2012;
- The Annual Operating Levy Regulations, 2014;
- The Nigeria Taxpayer Identification Number Regulations, 2014;
- The Tax Administration (Self Assessment) Regulations 2011;
- The tax authority powers to issue circulars advising or outlining taxpayer obligations; and
- Judicial decisions.

Nigeria has double taxation treaties with the following 13 countries: Belgium, Canada, France, Italy, Mauritius, the Netherlands, Pakistan, the Philippines, Romania, South Africa, South Korea, Sweden and the United Kingdom.

2 What is the relevant tax authority and how is it organised?

The Federal Inland Revenue Service (FIRS) is the tax authority at the federal level and in the Federal Capital Territory, Abuja. The focus here will be on the FIRS as the tax authority at the federal level. Each one of Nigeria's 36 states has its own tax authority, responsible for administering and collecting state taxes; for instance, the tax authority for Lagos is the Lagos State Internal Revenue Service (LIRS).

Organisationally, the FIRS has offices across Nigeria, with its head office in Abuja. Its board, the Federal Inland Revenue Service Board, is charged with overall supervision of the FIRS and its daily running. The board consists of an executive chairman, who heads the board, assisted by six members appointed by the Nigerian President to represent the country's six regions. The board also includes a representative (with the rank of director or above) from the Attorney General of the Federation (AGF), the Governor of the Central Bank of Nigeria and the Minister of Finance.

The FIRS' organisational structure includes:

- an investigation or intelligence department;
- a standards and compliance department;

- a field operations and support services department; and
- a legal department.

There is also the Joint Tax Board (JTB) created to help improve tax administration across Nigeria; particularly harmonising the Personal Income Tax Act. This body is headed by the executive chairman of the FIRS and its membership comprises a member from each state nominated by the respective state's governor. The other members include representatives of the Federal Road Safety Corps Commission (FRSC), Revenue Mobilization Allocation and Fiscal Commission (RMAFC), Federal Capital Territory Administration, Federal Ministry of Finance and the FIRS. The board's function is to advise all tiers of government on tax matters, so as to evolve an efficient tax administration, resolve areas of conflict on tax jurisdiction among member states and promote uniformity in the application of tax laws and the incidence of tax on individuals.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

The FIRS is responsible for administering the taxation of companies, wherever situated in Nigeria, and the taxation of individuals resident in the Federal Capital Territory.

Every company (whether or not it is liable to pay tax under the law) is required to file a self-assessment return with the FIRS in a prescribed form at least once a year. The return must contain the audited accounts, tax and capital allowances computation for the year of assessment and a true and correct statement in writing containing the amount of profit from each and every source computed; a completed self-assessment form, as prescribed by the FIRS, attested to by a director or secretary of the company and this should contain a declaration that it contains a true and correct statement of the amount of its profit computed in respect of all sources in accordance with the Companies Income Tax Act LFN 2004 and that the particulars given in such return are true and complete, together with evidence of payment of the whole or part of the tax due into a bank designated for the collection of the tax.

There is a timeline for filing company returns. For tax falling under the Companies Income Tax Act LFN 2004, if the company has been in business for more than 18 months, returns should be filed not more than six months after the end of its accounting year, and in the case of a newly incorporated company, within 18 months from the date of its incorporation or not less than six months after the end of its first accounting period, whichever is earlier. In addition, the returns form should be signed by a director who must be the chair or the managing director of the company and the secretary respectively.

For tax liable for VAT, returns must be filed on the 21st day of the month following the month of the transaction.

In the case of a withholding tax, tax returns must be filed within the statutory period of 21 days after the transaction.

Tax returns submitted as provided above are reviewed by a desk or field review. A desk review consists of a review of the material submitted by the taxpayer. Where a field review is considered to be necessary,

tax inspectors visit the taxpayer's premises and conduct a review of relevant material.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Different types of taxpayers are subjected to different reporting requirements. The reporting obligations of corporate entities are different from those placed on individuals, as are the methods of review.

All tax obligations, whether on corporate bodies or on individuals, are imposed by federal legislation. The legislation for corporations and residents of the Federal Capital Territory and members of the armed forces is administered by the FIRS, while the legislation dealing with tax on individuals is administered by the Board of Internal Revenue of each individual state.

Corporations are required to ensure registration with the FIRS within six months of commencing business. Where a company declares a dividend, it must also ensure that a list of its shareholders, together with the full particulars of the dividend, is made available to the FIRS within 14 days of declaring the dividends. A company operating in the capital market must file a return of its transactions with the FIRS no later than seven days after the end of a month.

Companies engaged in the petroleum sector are obliged to file estimated tax returns no later than two months after the commencement of each accounting period and file the actual tax return within five months (that is 31 May of each year) after the accounting period.

A taxable person should file within 90 days from the commencement of every year, without notice or demand, a return of income in a prescribed form together with a true and correct statement containing the amount of income from every source in the preceding year of assessment, with the relevant tax authority in which the taxable person is deemed to be resident.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

The FIRS is at liberty to call for any form of information it deems necessary to perform its duties. The law empowers it to notify any company as often as it thinks necessary, requiring it, within reasonable time, to provide fuller or further returns.

For the purpose of obtaining full information in respect of the profits within the time specified by the notice to any person, the FIRS is required to give notice to the taxpayer, requiring the taxpayer to complete and deliver any return specified in such notice, or appear personally before an officer of the FIRS for examination with respect to any matter relating to such profit.

The FIRS may also serve notice on a bank to provide, within the time stipulated in the notice, information including the name and address of any person specified in the notice. It is also authorised to enter the premises, registered office or place of management or residence of the principal officer of the company to conduct a search; this authority is equivalent to a search warrant and authorises the seizure and removal of any records and documents found on such premises, whether or not they belong to the company.

6 What actions may the agencies take if the taxpayer does not provide the required information?

The FIRS may prosecute a person who does not provide the requested information and, upon conviction, the person will be liable to a fine of 10,000 naira or to imprisonment of not less than six months, or to both a fine and imprisonment.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

The tax authorities are obligated to regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the profits or items of profits of any company, as secret and confidential. By implication, this is to protect the commercial information and business secrets of the taxpayers.

8 What limitation period applies to the review of tax returns?

Where a company that has paid tax for any year of assessment alleges that any assessment made upon it for that year of assessment was excessive by reason of some error or mistake in the return, statement or account made by or on behalf of the company for the purpose of assessment, it may apply for a relief at any time not later than six years after the year of assessment within which the assessment was made.

Where the FIRS discovers, or is of the opinion, that any company liable to tax has not been assessed at all or assessed at a lesser amount than that which it ought to have been charged, the FIRS may within the year of assessment, or within six years after the expiry, assess such company at such amount or additional amount as ought to have been charged, provided that where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed, the FIRS may at any time and as often as may be necessary, assess such company at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, wilful default or neglect.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

There is no provision in the statutes for any alternative dispute resolution or settlement option available to the taxpayer.

10 How may the tax authority collect overdue tax payments following a tax review?

Generally, any amount due by way of tax will constitute a debt due to the FIRS and may be recovered by a civil action brought by it.

The FIRS is also empowered (where a demand note has become final and conclusive) to distrain the taxpayer's goods or other chattels, bonds, securities, any land, premises, or place in respect of which a taxpayer is the owner, and recover the amount of tax owed by sale of anything so distrained.

11 In what circumstances may the tax authority impose penalties?

The FIRS may impose penalties for late filing or failure to file returns.

12 How are penalties calculated?

The penalty for late filing of company returns is 25,000 naira in the first instance. Failure to file incurs a 5,000 naira fine for each subsequent month in which the failure continues.

13 What defences are available if penalties are imposed?

Relying on professional advice (be it an attorney or accountant) is not available as a defence if penalties are imposed.

14 In what circumstances may the tax authority collect interest and how is it calculated?

If any tax is not paid within the prescribed period, a sum equal to 10 per cent of the amount of tax payable will be added thereto.

In the case of remittances paid in Nigerian naira, the tax due will carry interest at the prevailing minimum rediscount rate of the Central Bank of Nigeria, with its payment period to be determined by the minister from the date when the tax becomes payable until it is paid. The interest is recovered in the same way as the tax due.

In the case of remittances in foreign currency, the tax due will incur interest at the prevailing London Interbank Offered Rate or the prevailing minimum rediscount rate of the Central Bank of Nigeria, whichever is higher, with its payment period to be determined by the Minister of Finance from the date when the tax becomes payable until it is paid. The mode of tax recovery is applicable to interest recovery.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Yes. Under various tax legislation, there are criminal consequences for filing false statements and returns, or aiding, abetting, counselling, inducing, assisting in preparing, delivering false accounts, or preventing an authorised officer from carrying out a lawful duty, or unlawfully, to refuse or neglect to pay tax.

In addition to the offences in the FIRS Act, there could also be criminal prosecution under any other enactment.

16 What is the recent enforcement record of the authorities?

According to the FIRS' official website, the target for assessment year 2015 was to recover 4.6 billion naira. The actual amount recovered was 3.8 billion naira. However, the 2012 assessment year remains the record, with 5 billion naira recovered from a 3.6 billion naira target.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

Yes, the FIRS can involve or investigate a third party in order to verify, monitor or review a taxpayer's return or to call for fuller or further returns.

Upon demand, every bank should prepare quarterly returns specifying:

- for individuals, all transactions involving the sum of 5 million naira and above; or
- for body corporate, all transactions involving the sum of 10 million naira and above; the names and addresses of all customers of the bank connected with the transaction; and deliver the returns to the FIRS.

The FIRS may also, for the purpose of obtaining information for taxation, give notice to any person in Nigeria to provide information within the time stipulated in the notice, including the name and address of any person specified in the notice.

Without demand, every company operating in the Nigerian Stock Exchange is mandated to file with the FIRS' board a return in a prescribed form of its transactions during the preceding calendar month, not later than seven days after the end of each month.

Furthermore, without demand, every person engaged in banking should prepare a return at the end of each month specifying the names and addresses of new customers of the bank and should, not later than the seventh day of the following month, deliver the return to a tax authority of the area where the bank operates, or where such customers are registered as a company with the FIRS.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Yes. The FIRS cooperates with state tax authorities and this cooperation is exemplified by the work of the JTB.

In accordance with double taxation bilateral treaties between Nigeria and 13 signatory countries (see question 1), the FIRS will cooperate with the tax authorities in those countries.

Furthermore, the federal government has signed up to the Multilateral Competent Authority Agreement (MCAA). The aim of this agreement is to provide a standardised and efficient mechanism to facilitate the automatic exchange of information in accordance with the Standard for Automatic Exchange of Financial Information in Tax Matters (the Standard). This agreement provides for the automatic exchange of information between parties to the agreement, where two parties subsequently agree to do so.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

No. There are no special procedures in cases of financial or other hardship. On the contrary, where a company is being wound up, the liquidator should not distribute any of the assets of the company to the shareholders unless he or she has made provisions for the full payment of any tax payable by the company, including tax deductions relating to the tax of any individual in any part of the country.

20 Are there any voluntary disclosure or amnesty programmes?

The authors are not aware of any voluntary disclosures or amnesty programmes in Nigeria.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

The following are some of the rights afforded to taxpayers under the law:

- Taxpayers have the right to be informed of any assessment and have the opportunity to respond.
- Taxpayers have the right to contest or object to an assessment on any grounds cognisable under the law.
- Where an objection is refused, a taxpayer has the right of appeal.
- Whenever the FIRS is of the opinion that tax assessed on profits or income of a person has been fully paid, it should issue a tax clearance certificate to the person within two weeks of the demand for such certificate by that person or, if not, give reasons for the denial.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

While a taxpayer can approach the FIRS requesting information about their own tax records, it is unlikely that a taxpayer can obtain information about a third party. Although, under the Freedom of Information Act 2011, a person is entitled to obtain information from the government or any of its agencies, whether or not he or she has an interest in the matter and where the request for information is refused, the reason for the refusal must be given. However, the law recognises issues bordering on national security and privileged communication between a legal practitioner and client, health worker and client, and any other professional privileges conferred by the Act, as grounds for refusal.

Any person entitled to information under the Act will have the right to initiate court proceedings to compel a public authority to comply with the provisions of the Act.

23 Is the tax authority subject to non-judicial oversight?

The FIRS' board has oversight functions over the FIRS' activities. These functions include:

- providing the general policy guidelines relating to the functions of the FIRS;
- manage and superintend FIRS' policies on matters relating to the administration of the revenue assessment, collection and accounting system under any law;
- review and approve the strategic plans of the FIRS;
- employ and determine the terms and conditions of service, including disciplinary measures, of the FIRS' employees; and
- do such other things deemed necessary to ensure the efficient performance of the FIRS.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

The Constitution of the Federal Republic of Nigeria, 1999, vests the Federal High Court (FHC) with exclusive jurisdiction over matters concerning taxation or revenue in Nigeria over any other court.

However, certain statutes (the Companies Income Tax Act LFN 2004, the Petroleum Profits Tax Act LFN 2004, the Personal Income Tax Act LFN 2004, the Capital Gains Tax Act LFN 2004 and the Value Added Tax Act LFN 2004; see question 1) have also vested the Tax Appeal Tribunal (TAT) with jurisdiction to hear and determine tax disputes between the taxpayer and the FIRS. Curiously, the Act setting up the TAT confers on it the status of a court.

It is, however, worthy of note that the Court of Appeal in 2010 held that the proper venue for disputes over VAT is the FHC and not the TAT, although this case is now on appeal in the Supreme Court. Similarly, the FHC in 2013, following the earlier Court of Appeal case, held that the TAT lacked the jurisdiction to determine tax disputes and the appropriate forum for same is the FHC. This decision is also currently being challenged at the Court of Appeal.

25 How can tax disputes be brought before the courts?

In the FHC, a dispute is commenced by a writ of summons, followed by disputes of fact and by originating summons where the disputes are purely on questions of law or legislative interpretation.

If the dispute is referred to the TAT, it may be commenced by filing an appeal in no particular form.

Update and trends

There are no new trends in the enforcement and handling of tax controversies but there are a few relating generally to taxation in Nigeria. These are:

Voluntary Assets and Income Declaration Scheme

By an executive order signed by the Vice President, the Nigerian Government on the 29 June 2017 launched the Voluntary Asset and Income Declaration Scheme (VAIDS). The scheme is aimed at broadening the country's tax net and offering incentives to tax evaders.

The scheme is for a nine-month period beginning on the 1 July 2017 and it is provided for all categories of taxpayers who are in default of their tax liabilities to declare their assets and incomes from sources within and outside Nigeria relating to the preceding six years of assessment.

Part of the scheme includes the following:

- regularisation of the tax liabilities for all the relevant years;
- pay all outstanding taxes;
- prevent and stop tax evasion; and
- ensure full tax compliance.

Upon compliance, the scheme will provide the following benefits to taxpayers:

- immunity from prosecution for tax offences;
- immunity from tax audit;
- waiver of interest;
- waiver of penalties; and
- option of spreading payment of outstanding liabilities over a maximum period of three years as may be agreed with the relevant tax authority.

The scheme, however, has consequences in the event of failure to comply after the expiration of the moratorium. These include:

- liability to pay principal sum;
- liability to pay interest and penalty arising from the principal sum;
- liability to be prosecuted in accordance with relevant tax laws for tax offences;
- withdrawal of any relief, which may have been granted to the participant;
- liability to undergo comprehensive tax audit; and
- any sum paid in relation to the scheme may be counted as part-payment of any further outstanding tax in respect of undisclosed information.

The Nigerian President approved the extension of the expiration of the disclosure deadline from the initial 31 March 2018 to 30 June 2018, reportedly as a result of appeals from professional bodies and individual taxpayers.

Whether a consumer of goods and services within a state of the Federation is only liable to pay tax on the consumption to the State Revenue Service under the Sales Tax Law or to the Federal Revenue Service by virtue of the provision of the Value Added Tax Act

In a decision of the Supreme Court of Nigeria, in the case of *Attorney General of Lagos State v Eko Hotels and Another* (2018) reported in volume 36, Tax Law Report and delivered on the 8 December 2017, where the issue of whether a party is liable to pay tax on the consumption of goods and services consumed within the state to the State Revenue Service under the Sales Tax Law (enacted by the state legislature), or whether it ought to be paid to the Federal Revenue Service under the Value Added Tax Act (enacted by the Federal legislature) was finally resolved.

The Supreme Court held that the goods and services in respect of which tax is chargeable and the applicable rates provided for under the Sales Tax law of Lagos State and the Value Added Tax Act enacted by the Federal Government are the same. Therefore, the VAT Act being an Act of the National Assembly (a superior legislative body to that of the state) had effectively covered the field, with regard to a tax on consumption. Consequently, the provisions of the Act prevail over the provision of the Sales Tax Law of a state. The court then affirmed the decision of the two lower courts in holding that once an existing Federal Law or an Act of the National Assembly has covered the field, on an issue in respect of which both the National Assembly and a State legislature was competent to legislate, the Federal statute must prevail.

The Supreme Court further held that not only do both the Sales Tax Law of the State Legislature and the Value Added Tax Act of the Federal Legislature cover the same goods and services; they are also targeted at the same consumer. Therefore, it would amount to double taxation for the same tax to be levied on the same goods and services, payable by the same consumer under two different legislations.

Multilateral Competent Authority Agreement legislation

The most significant Nigerian development in the past year has been the signing of the Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of country-by-country reports (CbCR) on 3 August 2016 along with 30 other countries. The main objective of the MCAA is to aid the annual automatic exchange of information between the signatories to the agreement in which a multinational enterprise operates business activities, even through a permanent establishment.

Signatories to the MCAA can only access the CbCRs from other countries after they have enacted the CbC legislation in their country. The automatic exchange of information is only possible for a particular year, only if a country has legislation requiring the filing of the CbCR in respect of that particular year.

Surprisingly, Nigeria is yet to enact the CbC legislation, therefore making it impossible to take advantage of the first exchange which ought to take place by the end of the first quarter of 2018. It remains to be seen whether the Nigerian Government is keen to take advantage of this agreement by enacting the CbC legislation sooner rather than later.

There is no minimum threshold amount for claims, and claims can be sought for a declaration, orders for reversal of excessive liabilities or sums, or payments of outstanding sums or liabilities, together with interest upon the sum awarded.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Tax claims affecting multiple returns by the same taxpayers can be brought together, but tax claims involving more than one taxpayer cannot be brought together.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

No. Once an assessment is being challenged before the TAT or the FHC, the payment of the amount in dispute is put on hold until the judgment is given. Once the TAT or a court gives a judgment against a taxpayer, he or she will be required at that stage to pay the judgment sum, notwithstanding that the taxpayer intends to challenge the decision on appeal, except when a delay in carrying out the order is sought and obtained.

28 To what extent can the costs of a dispute be recovered?

The cost of filing an action in court, together with attorneys' fees, may be claimed in the same way as costs claimed through normal court actions, both by and from the taxpayer.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

There is no restriction on third party funding but the use of such rules remains rare.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

There are no jury trials in Nigeria.

In the TAT, there are five commissioners, as appointed by the Minister of Finance, with a quorum of three commissioners.

In the FHC, matters are heard with one judge sitting as a court of first instance.

Appeals to the Court of Appeal are heard by three justices or a maximum of five justices.

In the Supreme Court, tax appeals are heard by five justices or a maximum of seven justices.

31 What are the usual time frames for tax trials?

The act establishing the FHC provides that all revenue matters will, as far as practicable, be tried, determined or disposed of in priority to any other business of the court.

In practice, however, the court has the power to adjust the time frame depending on the case at hand, so it may take on average between six and 18 months.

32 What are the requirements concerning disclosure or a duty to present information for trial?

Parties before the tax tribunal may present either oral or documentary information. The tribunal may also, when it deems necessary, call upon or permit any party to produce any additional document or call additional witnesses or file any affidavit to enable it to issue proper directions or orders. Also, as an exception to the general rule of confidentiality and disclosure, the tax authority or any of its employees can provide necessary information when called upon in order to prosecute, or in the course of a prosecution for any offence committed in relation to any tax in Nigeria.

33 What evidence is permitted in a tax trial?

In claims before the TAT and the FHC, oral and documentary evidence of the taxpayer and of other witnesses may be adduced, including, where relevant, evidence from experts. Where the witness does not testify in English, the testimony of the witness must be interpreted by an interpreter provided by the court or tribunal. Written material must be translated into English in order to be used by the court or tribunal, and such translation will be at the expense of the party seeking to rely upon such material.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

A taxpayer may appear in person or by a legal practitioner of choice.

The FIRS is normally represented by legal practitioners within the service, who are seconded from the Federal Ministry of Justice.

In criminal proceedings, prosecutions are made by the AGF, legal practitioners in his or her chambers, or a private practitioner by obtaining consent of the AGF to prosecute.

35 Are tax trial proceedings public?

Yes. Tax proceedings in the TAT and the various levels of courts are held in public.

36 Who has the burden of proof in a tax trial?

The person who asserts bears the burden of proof. Thus, the party that institutes the claim must prove the same on a balance of probability.

In criminal proceedings, the prosecutor must establish the commission of the crime beyond a reasonable doubt.

37 Describe the case management process for a tax trial.

The rules of the TAT are silent on the case-management process for trial. However, when there is no provision or adequate provision in its rules of practice and procedure, it follows the rules applicable in the FHC. In the FHC, the process is as follows:

- Upon being served with the claim, the defendant should deliver a defence within 30 days of service.
- If the plaintiff wants to file a reply to the defence, he or she should file it within 14 days from the service of the defence.
- In the absence of any matter to be disposed of during interlocutory proceedings, the matter proceeds to trial.
- After the conclusion of evidence, the court adjourns to such time as it deems fit for final addresses.
- After the conclusion of the trial, the judgment will be delivered within 90 days from the conclusion of evidence and final addresses.

However, where a party defaults in complying with the time frames stipulated above, the party can apply to the court for the time to be extended and the court has the discretion to extend the time upon payment of a default fee of approximately 1,000 naira for each day of the default.

38 Can a court decision be appealed? If so, on what basis?

All decisions of the TAT and other courts except the Supreme Court are open to appeal, either as of right or with leave of the court. The time frames for these are:

- appeals from the TAT to be laid to the FHC within 30 days of the decision;
- appeals from the FHC laid to the Court of Appeal within 14 days in respect of an interlocutory appeal and 90 days in the case of a final appeal; and
- appeals from the Court of Appeal laid to the Supreme Court within 14 days if the appeal is interlocutory and 90 days where it is in a final decision.

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The relevant legislation for tax administration and controversies is the new Tax Administration Act of 2016, which has been in effect since 1 January 2017.

Income and wealth tax are assessed based on the provisions of the Tax Act of 1999. Other important legislation includes the Tax Payment Act of 2005, which governs issues relating to the collection and payment of taxes.

Norway also has important special tax legislation, such as the Property Tax Act of 1975 and the Petroleum Tax Act of 1975.

There are a number of relevant regulations to the tax laws. The most important are the comprehensive regulations issued by the Ministry of Finance and the Directorate of Taxes, respectively, to supplement and implement the Tax Act of 1999.

Other than legislation, there are sources of law and binding rules applying to both taxpayers and the tax authorities. These include the following:

- Norwegian parliament tax resolutions. These are annual parliamentary resolutions regarding taxes on income and capital in Norway. Parliament's resolutions govern, among other things, tax rates and duties that are set annually;
- the preparatory documents for legislation are highly relevant when legislation is interpreted. This includes documents from the Norwegian parliamentary committee, as well as protocols from proceedings in the Norwegian parliament;
- an important source of law is the EEA Treaty with which Norwegian tax laws must be compliant. The EEA Treaty is implemented into Norwegian legislation through the EEA Act of 1992;
- Norway is party to a large network of tax treaties and other international conventions. Tax treaties and international tax conventions have status as Norwegian legislation when the Norwegian government ratifies them;
- case law from the Supreme Court acts as precedent. However, case law from a lower court can serve as a relevant argument at that instance; and
- the Norwegian tax authorities issue binding and non-binding (guiding) tax rulings, as well as statements of general interpretation on tax matters. The Ministry of Finance also issues statements of general interpretation. The Directorate of Taxes collects and issues guidelines for the tax administration annually in a comprehensive publication collection called Tax ABC.

2 What is the relevant tax authority and how is it organised?

The Ministry of Finance is the highest governmental tax authority. The Ministry delegates the administration, supervision and control of tax matters to the Directorate of Taxes. Tax Administration offices do the daily administration, supervision and control of taxpayers. Currently, there are five regional Tax Administration units and numerous local offices. However, the Norwegian Tax Administration is to be reorganised from 1 January 2019. The tax authorities will enter into an organisational model with four nationwide performance units for the core business. In addition, there will be three common functions:

development; IT; and administrative services. Approximately 57 local tax offices will still be open to the public. In the new organisation, all tax offices will have nationwide task-solving and be included in the performance units. Formally, the dealings with the taxpayers will be with the local tax offices.

The Petroleum Tax Office assesses taxpayers engaged in exploration and pipe transportation of petroleum.

Additionally, there are two very important bodies within the tax regions:

- the Central Office for Foreign Tax Affairs (COFTA) is responsible for tax reviews of foreign companies and their foreign employees on assignments or work in Norway or on the Norwegian continental shelf; and
- the Tax Office for Large Entities deals with entities above a certain size, and with taxpayers subject to the special tax regimes for shipping and electric power production.

Municipal treasurers collect the taxes.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

It is the taxpayer's responsibility to ensure that the tax return complies with the tax laws.

The tax authorities may use different types of controls to verify the fulfilment of tax obligations, such as automatic and manual controls. All tax returns undergo an automatic mechanical control, which picks out tax returns for further evaluation. Tax return data and figures are used to determine manual controls. Every year, the Tax Administration offices evaluate which data and figures should be subject to particular manual control.

To ensure timely payment of taxes, delayed payment can result in penalty interest. Furthermore, a penalty for late filing can occur if the tax return is not submitted within its deadline. Tax collection and debt enforcement are provided by the Tax Collector's Offices in each municipality.

The tax review for a particular income year starts after receipt of the tax return. If there is nothing particular, the assessment is issued in June for taxpayers with pre-completed tax returns and from August through to October for self-employed, corporations and other legal entities.

Tax returns are reviewed based on the information provided. If the Tax Administration office finds that the taxpayer's tax return is incorrect or incomplete, the Tax Administration can change, omit or add items. The tax authorities have a right to require further information and clarification from the taxpayer and from third parties (see questions 7 and 17).

The Tax Administration and the local treasurer can demand field audits (see question 5 and 6).

It is common that a tax review will consist of several rounds of questions and answers, and it may take several years to complete. Starting out, the questions may be of an exploratory nature, intending to clarify whether there are grounds for reassessment. If the tax authorities

intend to amend a tax assessment, a notice of reassessment must be issued to the taxpayer outlining the factual and legal arguments. The tax authorities will also issue a draft assessment for review and comment by the taxpayer before the final assessment is made.

There is no legal time limit for conducting the tax review, but the courts must take extreme undue delay on the part of the tax authorities into account. This doctrine of passivity is based either on case law or on the rules of the European Convention of Human Rights (ECHR). The latter applies only to penalty taxes.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

The official forms used for tax returns require different kinds of information from individuals, self-employed, corporations and other legal entities.

Everyone who conducts business is required to submit an income statement for the enterprise together with the tax return. The income statement is a slightly simplified statement of the main items in the enterprise's profit and loss account and balance sheet. Those obliged to submit annual accounts complete Income Statement 2, while others in general are required to submit Income Statement 1.

There are different forms for different types of taxpayers.

Instead of the Income Statement, foreign companies and entities that are subject to tax review by COFTA can submit accounting excerpts (form RF 1045) in addition to the tax return.

The deadline for online submission of the tax return together with the required statement is 31 May in the year following the income year for both companies and self-employed persons. For companies that submit their tax return on paper, the deadline is 31 March. For self-employed persons who submit their tax return on paper, the deadline is 30 April.

For employees, pensioners and self-employed persons, suggested data and values are entered into the tax return in advance, based on information that the tax authorities have collected from third-party sources. The taxpayer is, however, still responsible for ensuring that the information in the pre-completed tax return is correct. If the information in the pre-completed tax return is incorrect and incomplete, the taxpayer must correct and submit the tax return to the Tax Administration. If the pre-completed tax return is complete and there is no need for any changes, the taxpayer is not obliged to submit the tax return.

The deadline for submission of the tax return for employees and pensioners is 30 April.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

The tax authorities can in practice demand that taxpayers provide any information that may affect the taxpayer's taxes. This is the case regardless of where the information exists. The obligation only includes information that may be suitable as means of checking the taxpayer's tax duties.

The obligation to provide information covers all forms of information. The tax authorities may require the taxpayer to provide access to accounting documentation, such as vouchers, contracts, correspondence and protocols of board meetings, electronic programmes and programme systems. The list is not exhaustive.

The obligation to provide information covers factual information. Legal assessments made by the taxpayer or his or her attorneys are not subject to the obligation.

It is the taxpayer, or whoever the taxpayer appoints, that is responsible for providing the information requested. Where the taxpayer or the appointed person is not present in a control situation, the tax authorities may not require employees to provide assistance.

Employers must deduct taxes for their employees. The local tax treasurer must supervise an employer's tax deductions. As part of this oversight, the treasurer can demand a field audit at the workplace. In these checks, anyone performing or having performed work or assignments for the employer is required to provide information about their employment conditions or assignments related to the work.

6 What actions may the agencies take if the taxpayer does not provide the required information?

The Tax Administration can carry out a field audit at places where the business is conducted – at a third party's premises, at a government agency or at a provider of access to electronic communication networks. The Tax Administration can choose whether it wants to request the information from the taxpayer in writing or immediately make a field audit.

The tax authorities may request the assistance of the police in field audits. This may typically take place where there is suspicion of serious tax fraud and risk of destruction of evidence. Such police assistance does not extend the rights of the tax authorities in obtaining information.

Furthermore, the tax authorities may request the taxpayer to present any kind of required documentation, such as accounting documents with annexes, contracts, correspondence and minutes of board meetings. Correspondence with lawyers is generally exempt from this obligation.

If no further information is either provided by the taxpayer or obtained from other sources, the Tax Administration can make its assessment based on the information available. Note that any rights to provide supplementary information are severely limited after the tax office has issued its assessment.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

The main rule is that the taxpayer is obliged to provide the requested information regardless of any duty of confidentiality. However, the taxpayer is only obliged to provide information that is relevant for the tax review. In this regard, it is important to be aware that the taxpayer only has to provide factual information, and not legal assessments made by the taxpayer or the taxpayer's legal adviser. Advice from other (non-legal) professionals is not protected by such privilege. The lawyer-client privilege in tax cases is currently subject to some debate, especially regarding information relating to the use of a lawyer's client account for transaction payments.

In accordance with the new Tax Administration Act, anyone who is or has been in a position within the tax administration is subject to a general and far-reaching obligation to maintain secrecy on information regarding companies' and private individuals' wealth, income, and economic, industrial or personal positions and so on. Furthermore, anybody who enters into a position within or with the Tax Administration is obliged to sign a form acknowledging both the existence of professional secrecy and that he or she will comply with it. However, the tax authority can hand over information to other public authorities, such as the police, the Norwegian national authority for investigation and prosecution of economic and environmental crime, the enforcement authorities, among others. If information subject to secrecy is delivered, for example, to another public authority that authority is subject to the same professional secrecy. Furthermore, the person or department within the tax authority that delivers the information is obliged to inform the recipient about the professional secrecy that applies.

The tax authorities are responsible for maintaining confidentiality and establishing safeguards to prevent unauthorised access to confidential information acquired in connection with the information and the check.

8 What limitation period applies to the review of tax returns?

The general time limitation under the new Tax Administration Act is five years, regardless of the documentation provided.

There is still a 10-year time limitation. This only applies in cases where the taxpayer is subject to an increased penalty tax of 20 or 40 per cent in addition to the normal penalty tax, or if the taxpayer is subject to a criminal charge of tax evasion.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

Norwegian law does not provide for an ADR procedure in tax matters.

A tax assessment may be contested by means of an administrative or judicial procedure. During such procedures, the tax authorities can sometimes reach a settlement with the taxpayer.

On choosing the administrative appeal route, the taxpayer must lodge a complaint in writing. The complaint must contain specific arguments and explanations of the grounds upon which such arguments are based. The complaint must be filed with the tax office within six weeks from the date the tax assessment was sent to the taxpayer. If the complaint regards a reassessment decision made by the tax office, a board of tax appeals will deal with the complaint. The tax boards are organs independent of the tax office, but the tax office prepares the cases. There is a new independent tax board system on the verge of being implemented.

If the tax board upholds the reassessment decision, the taxpayer has no right of further administrative appeal. If the taxpayer wishes to contest the case further, it must be brought before the courts.

The Directorate of Taxes may demand that a decision by a tax board is brought before the national tax board.

10 How may the tax authority collect overdue tax payments following a tax review?

Overdue tax payments must be paid even if the assessment is subject to appeal. Delay interest will accrue from the due date until the payment is made. If the claim is not paid voluntarily, the treasurer may enforce the payment, and charges may apply according to court fees.

If the overdue tax needs to be collected by enforcement, the treasurer may take liens over property, force sales of assets, file a petition of bankruptcy and such like.

As a general rule, the limitation period for overdue tax payments is three years after the end of the calendar year when the tax was due.

If a taxpayer is in no position to pay overdue tax, the taxpayer may apply to the local treasurer or the Tax Administration offices for a deferral or reduction in the overdue tax.

11 In what circumstances may the tax authority impose penalties?

If the taxpayer submits the tax returns, income statements or partnership statements after the deadline, a penalty for late filing is applicable.

If the taxpayer fails to submit the tax returns, or provides incorrect or incomplete information, this may result in penalty tax.

Taxpayers who wilfully or through gross negligence have given the tax authorities incorrect or incomplete information, or who have failed to submit tax returns, income statements or partnership statements, and who understood or should have understood that this could have led to a reduced tax burden, risk a higher rate of penalty tax.

Failure to submit tax returns, income statements or partnership statements can affect the right of the taxpayer to appeal.

12 How are penalties calculated?

The penalty for late filing varies somewhat depending on the situation. If the taxpayer has failed to comply with the deadline to submit the tax form, the penalty is half of the court fee for every day. The penalty is one court fee per day if the taxpayer does not fulfil its record-keeping requirement. Finally, the penalty is two court fees per day if a third party – employer, financial institution, company and so on – fails to fulfil its reporting duties under the Norwegian Tax Act and the Norwegian Tax Administration Act. At June 2018, a court fee is 1,130 kroner (approximately €118). The maximum penalty is 50 court fees. However, the maximum penalty for not fulfilling its record-keeping requirements is 1.13 million kroner (approximately €118,400).

The normal rate of penalty tax is 20 per cent of the tax reduction. Additional penalty tax, at a rate of 20 or 40 per cent of the tax deduction, is reserved for more serious cases and requires that the taxpayer intentionally or through gross negligence provides the tax authorities with incorrect or incomplete information, or neglects to provide mandatory information when he or she understands or should understand that it would lead to a tax benefit. More serious cases could involve criminal prosecution (see question 15).

13 What defences are available if penalties are imposed?

Legal grounds for exemption from penalty tax are illness, age, inexperience and other causes. These exemptions are meant to be limited, but are nonetheless important. Further, in the normal course of a complaint, the taxpayer would contest that the information submitted was indeed faulty or incomplete.

The penalty for late filing can be avoided after an overall evaluation based on the cause for late filing, the extent to which the taxpayer can be blamed for the late filing, if the late filing has caused any (tax) benefits and if the person obliged to report has been seriously ill.

It is the taxpayer's responsibility to ensure that the submission of tax returns is correct and within the deadline. The use of an accountant or auditor for the tax return generally does not relieve the taxpayer of the responsibility for the information being correct or of timely submission.

14 In what circumstances may the tax authority collect interest and how is it calculated?

The tax authorities may add delay interest to outstanding tax amounts. However, according to Norwegian law, interest upon penalty tax is illegal.

A delay interest will accrue from the due date until the payment is made. The Ministry of Finance shall determine the interest every six months, with effect from 1 January and 1 July.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Taxpayers who wilfully or through gross negligence give the tax authorities incorrect or incomplete information may be prosecuted for tax evasion if the taxpayer understood or should have understood that this may lead to reduced tax or tax-related benefit. Tax evasion cases under criminal law must observe the same rules regarding burden of proof as other criminal cases.

The same actions cannot result in both penalty tax and criminal prosecution. This would be a violation of the ECHR. The tax authorities must therefore choose between imposing the additional or increased penalty tax or criminal prosecution of the taxpayer. The choice will largely depend on the seriousness of the violation.

The general rule is that the taxpayer – whether the taxpayer is a company or a person – has the penalty tax or the criminal prosecution imposed. However, in some cases, the chairman of the board, the board members or the manager can be fined or even imprisoned; for example, if the company does not pay the withholding tax on salaries for its employees.

16 What is the recent enforcement record of the authorities?

The most recent enforcement record of the authorities is from 2014. Regarding the most serious tax crimes in 2014, the Tax Administration completed 316 inspections and recalculated nearly 728 million kroner in the income data. Regular controls or different levels are in the tens of thousands. The Tax Administration had a particular focus on stopping or limiting tax crime through pursuit of principals and backers in workforce tax violations.

In 2014, the tax crime departments reported 102 cases of organised 'underground' work and fictitious invoicing networks. The Tax Administration reported a total of 741 cases based upon tax reviews or field audits and 457 reports based upon failed tax returns, income statements or partnership statements.

Twenty-one arrests were made.

In 2015, from a total of 110 court cases becoming final, 62 per cent were held in favour of the tax authorities for material tax issues and 74 per cent were held in favour of the tax authorities on indirect tax. The statistics suggest outcomes are not in favour of the taxpayer. The higher courts do, however, tend to favour the taxpayer more in their rulings than the municipal/city court level.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

At the request of the tax authorities, any third party is obliged to provide information that may affect the taxpayer's assessment. No requirements exist relating to the relationship between the person who is obliged to provide the information and the taxpayer. The information must contribute to the clarification of someone's tax assessment.

The tax authorities can conduct a field audit at the third-party premises.

Third parties that are subject to legal confidentiality and requested to provide information only have to provide information on money

transfers, deposits and liabilities including the parties and regarding the third-party accounts belonging to the taxpayer.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

In tax matters, the tax authorities cooperate with relevant national governmental agencies, especially the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim), the Labour Inspection Authority, the Labour and Welfare Organization, the police and Toll Customs.

Norway has signed a number of international treaties with other states to avoid double taxation, prevent tax evasion and exchange information. Norway has particularly close cooperation with the other Nordic countries.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

The tax collector will act more or less as a normal creditor with regard to enforcement. There are, however, certain exceptions.

Deferred payment or reduction of tax due to the taxpayer's condition may be applied in instances of death, serious disease or a permanent reduction in the ability to service debts.

Deferred payment or reduction of tax due to the position of the tax collector as creditor may apply where the taxpayer is unable to service his or her debts in an ordinary manner. The conditions of the payment offer must provide a better return than continued enforcement of the tax claim.

In the case of bankruptcy, the bankruptcy estate is a separate tax entity from the debtor in bankruptcy. Tax debts rank below certain prioritised claims, but above normal creditors.

The estate has a duty to submit a tax return for any taxable activities under the regular rules and deadlines.

20 Are there any voluntary disclosure or amnesty programmes?

The Tax Assessment Act contains a voluntary disclosure or tax amnesty provision.

Taxpayers who want to come clean under the Norwegian tax amnesty provision are free from penalty tax and criminal prosecution if they do not come forward under threat of investigation. However, they are obliged to pay income and wealth tax, plus interest on the previously unpaid tax amounts.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

The Norwegian Constitution requires that all taxes must be imposed based on legislation (rule of law). New tax laws cannot be applied retroactively. An example is that the High Court declared the new tonnage tax regime implemented in 2007 unlawful with regard to its retroactive effects of taxation.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

The Tax Administration has a legal obligation to provide guidance to taxpayers. Taxpayers can call the Tax Administration offices for guidance, or find information on the Tax Administration's websites.

This right extends to guidance on filling in forms relating to the tax return, income statements, partnerships statements and tax reviews. When the work situation permits, the Tax Administration also provides guidance on laws, regulations and common practices that are relevant for the taxpayer's rights and obligations and, if possible, pointing out issues that could especially have an impact.

In addition to the general guidance, the taxpayer may apply to the Tax Administration for an advanced binding statement or ruling.

23 Is the tax authority subject to non-judicial oversight?

The tax authority is subject, as are other government and public agencies, to review by the Office of the Auditor General (OAG).

The OAG will ensure that the community's resources and assets are used and governed according to the Norwegian parliament's decisions.

This is carried out through auditing, monitoring and guidance of the agencies.

The OAG is an independent entity in relation to government. It reports the results of its auditing and monitoring activities to the Norwegian parliament.

Taxpayers also have the opportunity to lodge a complaint with the parliamentary ombudsman. The ombudsman carries out supervision based on complaints from citizens concerning any maladministration or injustice on the part of a public agency.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

There are no specialist courts for tax matters in Norway. Tax matters are dealt with in the ordinary courts, and there are no specific court structures for tax disputes.

A tax case must be lodged against the state of Norway, normally represented by one of the five regional tax bodies, or by the Petroleum Tax Office. Legal venues may be the ordinary courts where the taxpayer resides or has his or her principal place of business.

25 How can tax disputes be brought before the courts?

In general, the taxpayer has a right to appeal any tax assessment decisions issued by the Tax Administration. However, the taxpayer cannot appeal the advanced binding rulings from the Tax Administration.

There is no minimum threshold to be met before a claim can be brought to the district courts (courts of first instance).

Before lodging a claim before the courts, the taxpayer must provide the counterparty, in most cases the state, with a written notice of the appeal. The notification should state the appeal and the grounds for it. The notice should also invite the counterparty to respond to the claim. The counterparty should have reasonable time to respond before the taxpayer can bring the claim before the courts.

The taxpayer can bring a tax dispute before the courts regardless of whether an administrative appeal procedure has been undertaken or been completed.

An appeal regarding a tax assessment must be brought before the courts within six months after a tax settlement or tax amendment resolution was sent to the taxpayer.

The tax authorities' decisions on tax matters and tax assessments are administrative decisions. It is fundamental that the courts do not act as a tax administration. The courts therefore have somewhat limited competence in hearing decisions on tax matters. The courts will test the assessment of the facts of the case, of procedural matters and of the legal basis. At the outset, the discretionary assessment of the tax authorities cannot be tested as long as it is within the law.

On this basis, the courts must generally disallow new facts when hearing the Tax Administration decision.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Reassessment cases from the tax authorities will often include several income years, depending on the type of transaction(s) involved in a tax dispute. In principle, decisions regarding changes in the tax assessment can include several taxpayers. Common practice is, however, that the tax office prepares one decision for each taxpayer. This is the general rule, even if the changes involve both a company and its shareholders.

If a decision from the tax office is brought before the court, the Norwegian Civil Procedure Act applies. This means that both the taxpayer and the authorities can involve multiple parties on certain conditions.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

The taxpayer must pay the tax and the amounts in dispute, even when the case dispute is brought before the courts.

28 To what extent can the costs of a dispute be recovered?

In accordance with the new Norwegian Tax Administration Act, the taxpayer can recover costs concerning necessary assistance regarding a matter within the Tax Administration if it changes the tax assessment in favour of the taxpayer. The taxpayer can recover costs from a lawyer, an accountant, an appraiser, and so on, if the costs have been necessary

to change the decision from the Tax Administration in the taxpayer's favour.

If a decision from the tax office is brought before the court, the Norwegian Civil Procedure Act applies. This means that if the taxpayer has sustained his or her claim, he or she can get his or her costs completely or partly recovered.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

As a starting point, it is important to be aware that private parties have contractual freedom. There is no rule against third-party funding or insurance as such. We sometimes see that third parties formally intervene in a case, but this cannot be done without such party having a direct legal interest in the case.

If a third party suffers a loss, regardless of whether the loss is a consequence of a tax dispute, it is possible that insurance can cover the loss. This depends on the terms and conditions in the insurance. From a legal perspective, it is important to bear in mind that a third party can be obliged to give the tax authorities information, or to give his or her testimony in court. As a general rule, expenses and losses to fulfil these obligations are not refundable by the state.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

The decision maker in the court depends on whether there is a criminal or a civil case, and which court instance. In Norway, there are three court instances: the District Court (first instance), the Court of Appeal (second instance) and the Supreme Court (third instance).

Criminal case

It is a fundamental principle in the criminal courts that ordinary citizens shall participate in the decisions. Along with professional judges, lay judges therefore operate in criminal cases in the District Court (first instance) and the Court of Appeal (second instance). The mix between professional judges and lay judges is called a *meddomsrett*. Lay judges are ordinary citizens without any judicial background who operate as a judge in single cases along with the professional judge. The number of professional and lay judges varies with the complexity and size of the case and the court instance. In the most serious criminal cases in the Court of Appeal, a jury determines the question of guilt, but this is not relevant for tax cases. In the Supreme Court, the decision makers are a panel of professional judges.

Civil cases

The decision makers are mainly professional judges. In some cases, a party can demand that a lay judge who is a specialist in the field of the case matter will operate along with the professional judge (*meddomsrett*). The number of judges and lay judges will depend on the complexity of the case and which instance the case is brought before.

31 What are the usual time frames for tax trials?

The time frame for tax trials varies from case to case depending on various factors. The time frame will also depend on which regional court or court instance the case is brought before. There are no specific numbers available for tax cases as such, but statistics from the Court Administration from 2014 show that, in general, the time frame for civil cases in the district courts was just over five months, in the appeal courts six months, and in the Supreme Court also six months.

32 What are the requirements concerning disclosure or a duty to present information for trial?

The main rule under the Norwegian Civil Procedure Act is that both the parties and third parties are obliged to present any information and documentation that can be of relevance within a trial. However, within a tax trial, the taxpayer can only produce evidence and documentation that has been put forward during the administrative proceedings, when the tax administration considered the matter. This rule on exclusion of evidence does not apply to questions regarding additional (penalty) tax.

The general rules of pre-trial discovery in civil cases are applicable also to tax cases, but will not commonly be in use due to the above limitation on new evidence.

Update and trends

The cooperation between the prosecution authorities or police and the tax authorities has been debated over recent years. The *Transocean* case has been known internationally as one of the biggest court cases related to Norwegian tax issues. The National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim), charged three companies in the *Transocean* corporation and three of its tax consultants claiming that they were guilty of fiscal evasion. Økokrim spent years investigating the case before the proceeding started in Oslo City Court in December 2012.

In January 2017, *Transocean* and its tax consultants were cleared and found not guilty in the tax fraud case which had lasted for a decade. Thus, *Transocean* and the tax consultants avoided claims of about 7 billion kroner (US\$875 million), including penalties and interest, to the Norwegian tax authorities. Økokrim has been strongly criticised over how it handled the case, including its cooperation with the tax authorities and the blending of roles and authority. It remains to be seen whether this will lead to changes in the way such cases are handled, but there is no doubt that it has affected the reputation of both Økokrim and the tax authorities.

Changes are being discussed to enable the tax authorities to implement office or house raids on taxpayers without the aid of the courts. The suggested changes are controversial in the legal environment due to concerns related to due process, and it remains to be seen whether it will be enacted.

The changes that have been implemented in recent years in the complaint process, such as establishing an independent tax complaint board, have so far only been partly successful. The board has proven to have a very long processing time, currently reported to be well over 18 months and increasing.

33 What evidence is permitted in a tax trial?

The main rule under the Norwegian Civil Procedure Act is that all kinds of evidence – both oral and documentary – that can be of relevance in a tax trial are permitted (see question 32 for exceptions from the main rule). In accordance with the main rule, anyone who has knowledge of something that is relevant for the case and is legally summoned can testify in a trial. In general, testimony must be presented in person before the court.

Unless the taxpayer has a legally valid reason for absence, there is a requirement to attend and testify at the trial. If the party is present at the hearing, evidence will be given directly to the court. The taxpayer has a right of protection against self-incrimination. In criminal cases, there is therefore no corresponding duty to testify.

The parties are permitted to hire experts who can testify if it has relevance to the case.

As a general rule, evidence should not be translated because translation can affect the content and value of the evidence in question. Should it be necessary, both the Norwegian Civil Procedure Act, the Norwegian Criminal Code and the Norwegian Courts Act have provisions regarding translation of evidence and appointing interpreters.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Taxpayers may represent themselves, except before the Supreme Court. A lawyer may represent taxpayers. If the taxpayer cannot afford legal representation or otherwise raise support for the legal costs, he or she must resort to self-representation. In criminal cases, the state will in general appoint a free attorney for the trial.

The state of Norway is the defendant or plaintiff in matters regarding tax assessment and other decisions made by the tax authorities. Claims regarding the collection of taxes shall also be directed to the state. The Tax Administration region where the administrative decisions are taken represents the state position. In claims regarding the collection of taxes, the local treasurer or tax collector represents the state position. The Directorate of Taxes has issued a mandate concerning legal representation in various tax matters. According to these instructions, the tax authorities should refrain from self-representation.

Regarding tax assessments and other decisions, the lawyers at the office of the Attorney General and the Tax Directorate's special investigators may represent the state.

In lawsuits against the Ministry of Finance and the Petroleum Tax Office, the Attorney General will be engaged.

The state or tax regions and tax collectors may also choose to be represented before the courts by lawyers and law firms with a framework agreement with the state for such work.

35 Are tax trial proceedings public?

Trial proceedings and verdicts are generally public. There is no mandatory publication. Most tax cases are published in a journal collecting relevant tax material together with extracts of certain decisions and statements by different levels of the tax authorities. Cases with precedents, such as cases from the Supreme Court, are published in full.

36 Who has the burden of proof in a tax trial?

In criminal tax cases, the public prosecutor has the burden of proof. To fulfil this burden, the taxpayer must be proven guilty beyond reasonable doubt.

In civil tax cases, the taxpayer generally has the burden of proof that the tax authorities have made an incorrect or unlawful decision.

In some cases, the court will be able to make exceptions to this principle and place the burden of proof on the defendant.

37 Describe the case management process for a tax trial.

Civil cases

Before a trial, the parties shall consider the possibility of a settlement negotiation. At the trial, the judge starts by presenting the case. Thereafter the plaintiff, through his or her attorney, briefly presents the facts of the case and all the evidence. All evidence is presented orally. The defendant's attorney may thereafter make remarks to the defendant's presentation.

Furthermore, the parties and witnesses provide their testimonies. The plaintiff starts first with questions from the plaintiff's attorney, and thereafter the defendant's attorney. The judge or judges can ask each party and witnesses further questions.

Subsequently, the plaintiff's attorney provides the plaintiff's closing speech. After that, the defendant's attorney provides the defendant's closing speech. In the closing speeches, the attorneys explain their

perception of the existing law, why their client's explanation of the facts has to be accepted, and which legal consequences this will have. At the end of the procedure, the lawyers state the plaintiff's or defendant's claims.

If the plaintiff has remarks on the defendant's legal procedure, the plaintiff is allowed to comment thereon, and vice versa.

Criminal cases

The process in a criminal case is different from a civil case. Briefly, the prosecutor drives the criminal case and has an obligation to present it from all sides. The taxpayer does not have to testify (although in tax cases they normally do) and the taxpayer's attorney must make sure that any reasonable doubt regarding guilt is taken into account by the court. At the end of the trial, the prosecutor and the taxpayer's attorney hold their own legal procedures and present their claims and assertions regarding the case.

38 Can a court decision be appealed? If so, on what basis?

For information about court instances, see question 30.

A court decision from the District Courts can be appealed to the Appeal Court, and a court decision from the Appeal Court can be appealed to the Supreme Court.

The deadline for an appeal to the Appeal Court in civil cases is usually a month after the judgment of the District Court is made known to the parties, and 14 days in criminal cases after the judgment is formally notified to the taxpayer.

The disputed amount is relevant to whether the case can be appealed. If the appealed object's value is more than 125,000 kroner, an appeal will normally be granted. If the value is less than 125,000 kroner, permission from the Court of Appeal is required. The Appeal Court also has a limited right to refuse to hear an appeal if the Appeal Committee in the Appeal Court finds it obvious that the appeal will not succeed. The Supreme Court accepts only appeals that are approved by the Supreme Court's Appeal Committee. The main conditions for acceptance are that a decision from the Supreme Court will have fundamental importance or that there is a need to provide essential legal guidance for other cases.



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Panama

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The Panamanian Tax Code, approved by Law No. 8 of 27 January 1956, is the main source of tax legislation in Panama. Since its enactment, it has undergone a significant number of amendments, and supplementary legislation has been approved to regulate specific taxes and procedures. Tax legislation is enforced by the General Revenue Directorate of Panama (DGI).

Further to the Tax Code as amended and regulated, Panama also has a double taxation treaty (DTT) network and a tax information exchange agreement (TIEA) network. This includes:

DTTs signed and ratified

In force

- Barbados;
- Czech Republic;
- France;
- Ireland;
- Italy;
- South Korea;
- Luxembourg;
- Mexico;
- Netherlands;
- Portugal;
- Qatar;
- Singapore;
- Spain;
- United Arab Emirates;
- United Kingdom;
- Israel; and
- Vietnam.

It has negotiated DTTs with Austria, Bahrain and Belgium.

TIEAs signed and ratified:

In force

- Canada;
- Denmark;
- Faroe Islands;
- Finland;
- United States;
- Greenland;
- Iceland;
- Japan;
- Norway; and
- Sweden

It has negotiated a TIEA with Germany.

Taxpayers may submit to the DGI enquiries and specific applications, such as motions to obtain a benefit under a DTT, or other matters not involving controversy. However, responses and decisions made by the DGI will only apply to the specific request and are not binding for third parties.

Furthermore, Panama is also a party to a convention on mutual administrative assistance on tax matters. This allows the automatic exchange of information with countries with whom it agreed to the bilateral exchange of information and the new jurisdictions that agree to such exchange in the future.

2 What is the relevant tax authority and how is it organised?

The DGI is a Directorate of the Ministry of Economics and Finances, and operates under a General Revenue Director.

The General Revenue Director is appointed by the executive branch of the government as the legal representative of the DGI. The General Revenue Director is empowered to:

- issue general tax rules to regulate the relationship between the Treasury and the taxpayer;
- absolve inquiries on non-binding tax matters; and
- delegate certain powers or duties to other DGI officials.

The DGI is further organised into different national offices and sections under the supervision of the General Revenue Director, and into regional offices appointed for each province, as follows:

National offices

- National Revenue Subdirectorate;
- Directorate Consultants Office;
- General Secretary;
- Economic and Tax Studies Office;
- Management Control and Planning Office;
- Internal Control Office; and
- Communications and Public Relations Office.

National sections

- Organisational Management Section;
- Legal Management Section;
- Collection Management Section;
- Management Control Section;
- Regional Offices Section;
- International Taxation Section;
- Large Taxpayers Section; and
- Information and Technology Section.

Regional offices

- Panama Regional Tax Office;
- West Panama Regional Tax Office;
- Colon Regional Tax Office;
- Chiriqui Regional Tax Office;
- Cocolé Regional Tax Office;
- Bocas del Toro Regional Tax Office;
- Los Santos Regional Tax Office;
- Darien Regional Tax Office;
- Herrera Regional Tax Office; and
- Veraguas Regional Tax Office.

Sectional office

- Aguadulce Sectional Tax Office.

Enforcement**3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?**

The DGI verifies compliance with tax laws through general audits that cover all the taxes, fees, contributions and reports that the taxpayer is liable to submit or pay, or special audits that only include specific taxes, fees, contributions or reports that the taxpayer is liable to submit or pay.

The DGI ensures the timely payment of taxes by taxpayers applying fines, monthly interest and surcharges to each tax due. The surcharge will be of 10 per cent over the amount of tax due. The annual interest for 2016 is 9.5748 per cent.

The DGI has powers to directly order an audit process. An individual auditor or audit group is appointed to conduct the process, and a notice that details the general scope of the audit is issued for the appointed auditors to initiate contact with the taxpayer being audited.

The request and review of taxpayer information depends on the type and scope of the audit, since there is no statutory procedure for audits. Income tax return audits are usually the most extensive and, in such cases, the DGI can review:

- the allocation of income and expenses;
- the determination of deductible and non-deductible expenses;
- invoices, accounting registries, agreements and any other documents related to income and expenses;
- a comparison of the expenses and incomes registered in the income tax return of the clients and suppliers of the taxpayer; and
- the application of tax incentives.

There is no specific time period for an audit. The duration of the audit may vary depending on whether it is a general or special audit, the number of auditors appointed by the DGI and the complexity of the taxpayer's operations.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Individuals and business entities are required to submit different tax reports, as described below.

The DGI may audit business entities or individuals and the law does not stipulate different processes based on the type of taxpayer. However, audits of individuals are uncommon.

Individual taxpayers

Individual taxpayers must submit income tax returns and VAT reports. Individuals must pay income tax in accordance with the following rates:

| Taxable income | Tax rate |
|-----------------------------------|---|
| Up to US\$11,000 | 0 per cent |
| Between US\$11,000 and US\$50,000 | 15 per cent |
| More than US\$50,000 | US\$5,850 for the first US\$50,000 and 25 per cent for income over US\$50,000 |

Individuals who are registered on an employer's payroll and do not generate income other than their salaries are not required to file income tax returns. Employers withhold and submit applicable individuals' income tax to the DGI.

Individuals must pay VAT when transferring chattels or providing a service. The ordinary VAT rate is 7 per cent.

Individuals are not liable for VAT if, during the preceding year, they had an average monthly gross income not exceeding US\$3,000 and an annual gross income not exceeding US\$36,000.

Business entities

Business entities are required to submit income tax returns, indirect taxes reports, VAT reports and suppliers' reports.

Business entities must pay VAT when transferring chattels or providing a service. The ordinary VAT rate is 7 per cent.

Business entities are not liable for VAT if, during the preceding year, they had an average monthly gross income not exceeding US\$3,000 and an annual gross income not exceeding US\$36,000.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

The DGI may ask taxpayers to provide the information necessary for it to:

- determine tax obligations, sources of income, exemptions, costs, expenses and reserves related to taxes, including business books, accounting registries, records, financial information, invoices, inventories, copies of transactions documents and reports; and
- comply with the exchange of information under a DTT or TIEA when the other contracting state requests foreseeably relevant information.

An information request or inquiry from the DGI may include interviews with a taxpayer's employees or staff. The DGI may also require any public or private entity or third party to provide information that is necessary to review or determine tax obligations.

Information obtained by the DGI is classified, confidential and for the exclusive use of the DGI. Any information exchanged under a DTT or TIEA cannot be used by the DGI for purposes other than those provided for in the request and authorisation for its disclosure.

6 What actions may the agencies take if the taxpayer does not provide the required information?

The DGI may issue fines ranging from US\$100 to US\$5,000 to taxpayers who refuse to disclose books, records or documents necessary to verify the accuracy of the data supplied to the DGI, or to facilitate any investigation ordered by the competent fiscal officer relating to compliance with their tax obligations.

The DGI may issue fines (ranging from US\$1,000 to US\$5,000 for a first offence and from US\$5,000 to US\$10,000 for repeat offences) to public officials and individual taxpayers or business entities who do not submit, within a reasonable time, reports or documents of any kind relating to income tax.

When any of the above infractions occur, the DGI may apply recurrent and multiple fines until the taxpayers comply with its order or request.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

The protection of professional secrecy and private documents and information are constitutional rights in Panama. Therefore, private documents and information may only be disclosed if there is an order from a government authority that includes a specific information request that complies with applicable laws, as is the case with alimony and child-custody proceedings, cases where the state is a party, or in the case of agreements for the exchange of information.

The DGI may only request information necessary for determining tax obligations, sources of income, exemptions, costs, expenses and reserves related to taxes.

Any other information not related to tax obligations shall not be required by the DGI. The DGI and any DGI officials must maintain strict privacy of all tax returns and any ancillary or supporting documents and information, and of any documents or information obtained in the course of an audit.

Only the taxpayer, or a duly appointed agent of the taxpayer, may have access to documents and information received or obtained by the DGI.

Taxpayers have the right for information provided to the DGI to be kept confidential throughout the administrative and judicial procedures.

The DGI's public officials are obliged to ensure and maintain the strict confidentiality of the information handled during the course of an audit or an administrative or judicial process. A breach of this obligation is considered a major offence sanctioned by dismissal from office, and the officials responsible may also be subject to criminal or civil liabilities.

8 What limitation period applies to the review of tax returns?

The limitation period for the review of tax returns depends on the statute of limitations for the applicable tax obligation, as follows:

| Income tax – statute of limitations | |
|-------------------------------------|-------------------------------|
| General income tax | Statute of limitations period |
| Income tax | Statute of limitations period |
| Income tax return recalculation | 7 years |
| Complementary tax | 3 years |
| Withholding tax | Statute of limitations period |
| Dividend tax | 15 years |
| Services rendered from abroad | 15 years |
| Capital gains tax (shares) | 15 years |
| Salary retentions | 15 years |

The statute of limitations for payment of general income tax is seven years. However, income tax return audits may only cover the three tax periods immediately prior to the reviewed tax returns and, therefore, no further recalculation of income tax returns can be ordered after three years.

Withholding tax includes any capital the taxpayer is due to retain or withhold on behalf of others, such as dividend tax over shareholders' distributions, payment of services rendered from abroad, capital gains for share transfers and salary retentions.

For withholding tax, audits may be performed within the 15-year statute of limitations period.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

In Panama, there is no alternative dispute resolution process for tax controversies. However, defaulting taxpayers may settle a payment arrangement with the DGI for overdue tax payments. The DGI allows settlement agreements to include payment arrangements in monthly instalments.

10 How may the tax authority collect overdue tax payments following a tax review?

The DGI can directly apply existing tax credits to overdue tax payments. It may conduct administrative enforced collection processes for overdue tax payments and establish liens over any property or goods of the taxpayer to guarantee collection of overdue taxes. The value of the liens over property or goods may not exceed the overdue tax payments, surcharges, fines and interest.

As a result of these processes, the DGI may auction off any seized property to collect outstanding payments.

Administrative enforced collection processes will trigger an additional surcharge of 20 per cent over the taxes due.

However, taxpayers may reach settlements with the DGI to negotiate for additional surcharges to be partially or completely waived by the DGI.

11 In what circumstances may the tax authority impose penalties?

The DGI may impose penalties on taxpayers for:

- late payment of due taxes;
- contravening tax laws and regulations;
- failing to submit withheld taxes; and
- tax fraud.

Under the Tax Code, the DGI may apply the following penalties:

- fines for specific contraventions detailed in the Tax Code;
- surcharges in the case of withholding obligations;
- interest payments on overdue tax payments; and
- fines or imprisonment for tax fraud.

12 How are penalties calculated?

The DGI may impose fines that range from US\$100 to US\$5,000 depending on the specific infringement. The most common infringements and fines are detailed below:

| Schedule of applicable tax fines | |
|---|------------------------|
| Infringement | Fines |
| Failure to file income tax return | US\$100 to US\$1,000 |
| Failure to maintain statutory accounting records | US\$100 to US\$500 |
| Refusal to submit or provide required information in the course of an audit | US\$100 to US\$5,000 |
| Failure to file supplier's report | US\$1,000 to US\$5,000 |

13 What defences are available if penalties are imposed?

Taxpayers may, via an administrative review, challenge any resolution from the DGI ordering a penalty. Individual taxpayers and business entities must file any administrative review through a legal representative.

An affected taxpayer may request that the DGI correct fines that are levied by errors in the online tax payment system. In such cases, the DGI reviews the taxpayer's correction request and may directly amend or eliminate any penalties that are not applicable.

14 In what circumstances may the tax authority collect interest and how is it calculated?

Interest accrues on outstanding tax from the date when it should have been paid to the date when the taxpayer pays in full all the overdue tax.

The applicable interest rate is calculated monthly and corresponds to two percentage points above the benchmark rate, which is fixed annually by the Panamanian Bank Superintendent.

The interest rate was set at 0.7888 per cent in 2014, at 0.7973 per cent in 2015 and at 0.8048 per cent in 2016.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

The Criminal Code does not cover tax offences, such as circumvention, evasion and fraud. However, a taxpayer that is under review by the DGI can be subject to penalties if the authorities determine that there has been a tax violation or infringement.

Taxpayers involved in any tax violation or infringement are subject to fines, surcharges and interest payments. Although tax fraud is not considered a criminal offence under the Criminal Code, it is considered unlawful conduct under the Tax Code and can be punished with civil penalties in the form of monetary fines and criminal punishment in the form of imprisonment, which may range from one month to five years depending on the type of breach or violation. These consequences apply to all type of taxpayers, since the current legislation does not have different types of liabilities for each type of taxpayers.

16 What is the recent enforcement record of the authorities?

According to the publication *State of the Tax Administration in Latin America: 2006–2010*, published in 2013 and prepared in association with the Inter-American Development Bank, the Technical Assistance Center for Central America, Panama and the Dominican Republic of the International Monetary Fund, and the Inter-American Center of Tax Administration, enforcement figures in Panama are as follows:

| Taxpayer audit selection | |
|---------------------------------------|---------------|
| Selection based on | Percentage |
| Exchange of information | 27.8 per cent |
| Taxpayer's economic reality | 10.1 per cent |
| Economic reports per section | 0 per cent |
| Random criteria | 10.4 per cent |
| Discretionary selection from auditors | 4.6 per cent |
| Others | 47.1 per cent |

| Tax reviews | | | | | |
|------------------------------|---------------------------|-------------------------------|---------------------------|------------------------------|---------------------------|
| Invoicing control programmes | | Massive compliance programmes | | Field audits | |
| Number of taxpayers verified | Verified/active taxpayers | Number of taxpayers verified | Verified/active taxpayers | Number of taxpayers verified | Verified/active taxpayers |
| 153 | 0.1 per cent | N/A | N/A | 413 | 0.2 per cent |

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

Third parties are not involved in tax return reviews or audit processes conducted by the DGI. However, the DGI may request information, and third parties or other government offices must collaborate with it and provide any information that it considers relevant to a specific review or audit process.

As mentioned in question 5, all information obtained by the DGI in the course of an audit process is classified and treated as confidential. Furthermore, taxpayers have the right to:

- treatment with respect and consideration by DGI officers;
- fair treatment as a taxpayer in good standing while no conclusive evidence proves otherwise;
- require that the DGI's actions do not severely affect the normal business of the taxpayer, as long as this does not affect the DGI's right to audit and ensure tax collection;
- receive assistance from advisers throughout any tax reviews and audits;
- receive notice of any audit process that may affect the respective taxpayer and the identity of the officers in charge of the audit and their superiors;
- access any audit reports that may affect such taxpayer;
- classify information provided to the DGI as confidential, meaning it will remain private during the entire administrative and judicial procedure, except as otherwise expressly provided for by law;
- not be audited twice for the same tax in the same period. Taxes where the taxpayer acts as a withholding agent are exempted from this right; and
- have their electronic devices and equipment protected so that they are not seized during the audit process. The DGI may only obtain copies of relevant tax documents.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

The tax authorities may collaborate on tax matters based on a negotiated, signed and ratified DTT or TIEA between Panama and another jurisdiction. See question 1 for a complete list of Panama's DTTs and TIEAs.

To exchange tax information with foreign authorities, the tax authorities must follow the requirements and processes set forth under the applicable DTT or TIEA and Panamanian domestic exchange of information rules that regulate the exchange of information clauses included in DTTs and TIEAs.

When submitting an inquiry under a DTT or TIEA, the foreign tax authority must complete a request for tax information form that should include relevant taxpayer information and the tax inquiry. Although Panama does not have a general form for the request of information under DTTs or TIEAs, tailor-made forms have been agreed with Barbados, Mexico, Portugal and Spain under DTTs. For any other contracting states under DTTs or TIEAs with Panama, information may be requested through notes that must comply with the requirements of the respective DTT or TIEA.

Pursuant to domestic exchange of information rules, any request for tax information from a foreign tax authority of another contracting state must be foreseeably relevant. This means that the request must relate to a legitimate civil, administrative or criminal tax investigation conducted by the competent authorities of the requesting contracting state.

Once a form or note has been submitted by the competent foreign tax authority to the DGI, the International Taxation Section of the DGI

will review it to confirm that it complies with any requisite formalities and is a bona fide tax inquiry and not a 'fishing expedition'. If the International Taxation Section deems it appropriate, it will contact prospective local sources of the information sought by the foreign tax authority to ensure compliance with the request.

The domestic exchange of information rules do not specifically address or limit the scope of information that may be sought under a DTT or TIEA.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

No special tax procedures apply in cases of financial or other hardship, including bankruptcy and insolvency.

Due taxes have priority over other credits of the insolvent debtor.

Defaulting taxpayers may settle a payment arrangement with the DGI for overdue tax payments. The DGI allows payment arrangements to include monthly instalments.

20 Are there any voluntary disclosure or amnesty programmes?

No.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

See question 17.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Taxpayers may obtain and review their own tax information through the DGI's online system (e-tax software) or through a formal information request procedure.

The DGI's online system contains all information regarding due taxes, paid taxes, payment dates, income tax return filings and other report filings.

Taxpayers may register in the DGI's online system with their allocated single taxpayer registration number and access their information using the tax identification number (NIT). The NIT is an access key password to manage online transactions and services offered by the DGI. It is personal and non-transferable, and is accepted by the DGI as the taxpayer's electronic signature under local tax legislation.

Taxpayers may also request or review their information from the DGI's sections and offices. Each section and office has different request-for-information procedures. However, as a general practice, any request must be submitted in the form of a formal letter identifying the requested information and signed by the taxpayer or their legal representative.

23 Is the tax authority subject to non-judicial oversight?

The DGI is subject to the policy and guidance of the executive branch of the government and the supervision of the General Comptroller of the Republic of Panama.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

Any act or resolution issued by the DGI may be contested through an internal administrative procedure. The administrative procedure has two stages: administrative review and administrative appeal before the Tax Administrative Tribunal (TAT). The TAT is an independent government entity of the executive branch of the government. The TAT is formed by three magistrates; two of the magistrates are attorneys and the other is an accountant.

An administrative procedure may also escalate into a judicial challenge before the Administrative Chamber of the Panamanian Supreme Court.

The decision issued by the Administrative Chamber is final, definitive and mandatory for the taxpayer and the DGI.

An administrative review may be filed before the officer of the DGI that issued the act or resolution, or the National Tax Administrator of the DGI if the case is for more than US\$100,000.

An administrative appeal must be filed before the TAT's General Secretariat.

A judicial challenge must be filed before the Administrative Chamber.

25 How can tax disputes be brought before the courts?

Taxpayers have the right to challenge any act or resolution issued by the DGI.

A taxpayer can file claims to challenge tax returns, additional assessments, fines and sanctions, acts or resolutions directly related to the determination of taxes and tax obligations, acts or resolutions that undermine the rights of the taxpayer, and acts, resolutions or procedures that violate tax regulations.

There are no threshold amounts for tax claims. The taxpayer may request that excess tax payments are returned, or that acts, resolutions or procedures that infringe the taxpayer's rights and tax regulations are overturned.

As described in question 24, a tax dispute will begin with an administrative procedure and may escalate to a judicial challenge before the TAT. The taxpayer cannot file a judicial challenge before the TAT unless an administrative procedure has been completed.

According to the Tax Code, no stamp tax is required to submit an administrative review or administrative appeal, which must be issued on plain paper, be drafted respectfully and include the identification of the government entity to which it is addressed, clear statements of the claim, facts and applicable tax regulations, the date and place of the recourse, a signature and the address of the applicant.

According to the Judicial Code, a judicial challenge must include identification of the applicant, the legal representative and the process, a statement of the claim, the facts and principal omissions of the act or resolution, a list of the violated tax regulations and the concept of the violation.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

No, all claims regarding tax returns will be managed individually between each taxpayer and the DGI. The DGI can bring together reviews of different tax returns of one taxpayer.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

The taxpayer is not required to pay the amounts in dispute before bringing an administrative procedure and a judicial challenge.

28 To what extent can the costs of a dispute be recovered?

Neither the DGI nor the taxpayer may recover costs over a dispute. However, if a case is resolved in favour of the DGI, the taxpayer will have to pay all the due amounts plus the interest generated during the process until full payment of said amount.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

There are no rules regarding third-party funding or insurance for the cost of a tax dispute. However, said funding or insurance is not practised in Panama.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

At the administrative review stage, the decision maker is either the officer of the DGI that issued the act or resolution or the General Revenue Director of the DGI, if the case is for more than US\$100,000.

At the administrative appeal stage, the decision maker is a TAT trial judge.

At the judicial challenge stage, the Administrative Chamber is composed of three magistrates. A judicial challenge of a tax matter is resolved by a simple majority vote.

No jury trial is available to hear tax disputes.

31 What are the usual time frames for tax trials?

Although the time frame varies greatly in tax cases, the minimum time for obtaining a final decision in a tax trial is between two and five years.

The administrative procedure may take a minimum of one-to-three years. However, a judicial challenge of a tax case before the Administrative Chamber may take between four and five years or more.

32 What are the requirements concerning disclosure or a duty to present information for trial?

The DGI has the authority to request and examine all documents and information or perform any investigations that are relevant and useful to determine the proper tax obligation of any taxpayer.

In any audit proceedings commenced by the DGI, administrative recourses within the DGI, or appeals thereof, the DGI and the taxpayer may submit as evidence documents, expert witness or third-party statements and affidavits, inspection reports, or any evidence that is relevant and reasonable, provided that is not specifically prohibited by law. Fax or copies of documents are acceptable, provided these are or can be authenticated.

33 What evidence is permitted in a tax trial?

In an administrative tax review, administrative appeal and judicial challenge, expert witness or third-party statements or affidavits are allowed as evidence. Parties may submit affidavits through sworn statements before a circuit judge or a notary public and, when admissible, they must be submitted along with the administrative review or administrative appeal request.

The DGI officer that ordered or issued the challenged action or resolution may require an extension of the testimony in an administrative review. In an administrative appeal, the TAT trial judge has the same powers.



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34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

At all stages of a tax trial, a taxpayer shall be represented by a lawyer or a law firm, and the DGI will represent itself.

The DGI represents itself throughout the tax process including the judicial challenge stage. However, as part of the judicial challenge, the Administration's Public Attorney Office, as part of the Public Prosecutor's Department, must issue its opinion regarding the legality of the tax resolution that denied the administrative appeal.

35 Are tax trial proceedings public?

Tax trial proceedings are confidential. Only the taxpayer and the taxpayer's representative, the DGI and the government officers responsible for the tax trial process have access to the documents of the tax trial. In an administrative claim, the Administration's Public Attorney Office will also have access to the documents of the tax trial.

However, the final decision of the administrative appeal issued by the TAT will be published online by the TAT for further cases. References to the taxpayer's identity will be eliminated from the published final decision.

The final decision by the Administrative Chamber will also be published on its website as a precedent for further cases. References to the taxpayer's identity will not be eliminated from the published final decision.

36 Who has the burden of proof in a tax trial?

The taxpayer.

37 Describe the case management process for a tax trial.

Only lawyers or law firms may file administrative tax reviews, appeals and judicial challenges before local administrative and judicial authorities.

A request for an administrative review of an act or decision by the DGI may be submitted within 15 working days following the notification of a tax resolution issued by an officer or section of the DGI to the

DGI officer that issued the act or resolution, or the General Revenue Director of the DGI if the case is for more than US\$100,000.

If an administrative review is denied, the taxpayer may file for an administrative appeal before the TAT. An administrative appeal shall be submitted within 15 working days following the service notice date of the resolution that decided the administrative review.

Once an administrative appeal has been acknowledged by the TAT, the DGI will have five working days to submit a notice of opposition to the administrative appeal.

The TAT will proceed with the discovery process as described in question 32. After the discovery process, the TAT or the parties may require a hearing to allow for a better understanding of the case.

Following the discovery process (and the hearing, if applicable), the taxpayer and the General Revenue Director will both have five working days to submit written pleadings.

A decision issued by the TAT ends the administrative procedure, and may be subject to a judicial challenge before the Administrative Chamber. A judicial challenge shall be submitted to the Administrative Chamber within two months following the notification of the resolution that decided the administrative appeal.

38 Can a court decision be appealed? If so, on what basis?

In an administrative procedure, the taxpayer can appeal the administrative review through an administrative appeal before the TAT.

The TAT's decision shall be issued within a period of two months following the submission of the administrative appeal. However, the term can be extended by two months if the evidence is submitted and under review by the TAT.

The TAT's decision ends the administrative procedure and may only be challenged judicially before the Administrative Chamber. A judicial challenge before the Administrative Chamber must be filed within two months following the notification of the resolution that decided the administrative appeal.

The decision issued by the Administrative Chamber is final, definitive and mandatory for the taxpayer and the DGI. There is no term for the issuance of the decision.

Portugal

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Cuatrecasas

Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The General Tax Law, approved by Decree-Law No. 398/98, of 12 December 1998, and the Tax Process and Procedure Code, approved by Decree-Law No. 433/99, of 26 October 1999, are arguably the most important pieces of legislation currently governing tax administration and controversies. The former sets out the main tax principles and rules of the Portuguese tax system, while the latter governs in detail the procedural aspects and relevant material actions pertaining to tax administration, from the notification of taxpayers and issuance of tax certificates, to tax litigation on both first instance and appeal courts and enforcement of tax debts.

It is also worth mentioning the Tax and Customs Audit Procedure Regime, approved by Decree-Law No. 413/98, of 31 December 1998 – governing in detail the legal aspects of tax audits – and the General Regime of Tax Infringements, approved by Law No. 15/2001, of 5 June 2001 – stating the different tax crimes and misdemeanours, the corresponding penalties, and the procedural rules of taxpayers' defence.

Finally, Decree-Law No. 10/2011, of 20 January 2011, approved the Legal Regime of Tax Arbitration, introducing arbitration as an alternative dispute resolution mechanism available to taxpayers concerning most tax disputes.

In addition to ordinary legislation, the Portuguese Constitution, EU law and international treaties complete the legal framework applicable to tax administration and controversies. Tax rulings and tax authorities' guidance information and circular letters are not binding on taxpayers, but only on the tax authorities.

2 What is the relevant tax authority and how is it organised?

The Tax and Customs Authority (hereinafter tax authorities) is the relevant administrative service of the Ministry of Finance in charge of administering taxes and custom duties. Overseen by the Minister of Finance (and by the State Secretary for Tax Affairs), the tax authorities operate under the direction of a director-general and form a hierarchical structure with a multitude of specialised services, divisions and units.

In broad terms, the tax authorities' structure is topped by central services, which operate in close proximity to the director-general to prepare and implement decisions and measures concerning tax policy, directing, coordinating and controlling tax-administration actions regarding the assessment, audit and collection of the several taxes. In addition to these central services, there are territorial-based decentralised services at the regional and local levels, designed to pursue tax-administration services in close proximity to taxpayers (with the regional services playing a supporting role to local tax offices in their area of jurisdiction).

In 2013, the government introduced a special unit within the tax authorities exclusively dedicated to corporate taxpayers and high-net-worth individuals qualified as 'large taxpayers' – for example, companies with an annual turnover above €200,000,000 or individuals with an annual income above €750,000. This unit deals with all matters regarding such taxpayers and provides them with a dedicated tax manager who acts as a preferential contact when dealing with the tax authorities.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

Tax authorities may request clarifications and documents supporting the information disclosed by the taxpayers in their tax returns.

Further control may be carried out through tax audits, which may take place internally within the tax authorities' services or externally, at the taxpayer's premises.

Tax audits may start until the limitation period for tax assessment or infringement proceedings expires and may last up to six months. This deadline may be extended for another six months.

Once the investigation ends, the tax authorities issue a draft audit report. The taxpayer then has the right to a hearing regarding the content of the draft audit report. The tax authorities may only issue the final audit report once the taxpayer has filed their hearing or the deadline granted thereto expired.

Corrections laid down within the final audit report constitute the basis for additional tax assessments issued by the tax authorities.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Individual taxpayers undertaking independent business activities with an annual gross income above €200,000,00, corporations and companies undertaking a business activity are required to prepare financial statements and file an annual fiscal and accountancy information statement.

Country-by-country reporting obligations exist for resident business entities that either hold or control, directly or indirectly, one or more non-resident entity. These obligations entail, for instance, the disclosure of financial and fiscal information regarding non-resident group subsidiaries or branches.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

The tax authorities' mission is to perform all necessary steps to satisfy the public interest and to discover material facts not being subordinated to the initiative of the applicant regarding the collection of relevant information and data within a tax proceeding.

Accordingly, the tax authorities may collect a wide range of data and evidence from taxpayers or third parties.

This task is particularly relevant within tax audits, as the tax authorities benefit from special prerogatives regarding the collection of information and documents. Therein the tax authorities may, for instance, examine the taxpayer's accounting books, records and transaction documents; access their computer system; request documents in the possession of third parties economically related with the taxpayer under audit, notaries, public registrars and other public entities; and interview the taxpayers, their employees, directors, chartered accountants and any other person of interest.

Taxpayers may, however, refuse to disclose information regarding their intimate life as well as legally privileged information (see question 7).

Access to banking information and documents is subject to a specific administrative proceeding. However, previous court authorisation is not required.

6 What actions may the agencies take if the taxpayer does not provide the required information?

If the taxpayer does not voluntarily provide information requested within a tax audit, the tax authorities may take cautionary measures to safeguard such information, such as seizing accounting documents and respective computer equipment, sealing the taxpayers' facilities or assets or certifying the taxpayer's books and documents.

Moreover, if the taxpayer unjustifiably fails to cooperate within a tax audit, the tax authorities may resort to assessing tax by indirect evaluation of the taxable base.

Furthermore, refusal to surrender or exhibit accounting or other relevant documents may be punished with a fine ranging between €375 and €150,000.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

Taxpayers may lawfully refuse to provide information legally qualified as confidential, such as business secrets or information under attorney-client privilege. If faced with such refusal, the tax authorities may only access the information if authorised by the court.

On the other hand, the tax authorities are bound to a duty of confidentiality regarding any personal data pertaining to taxpayers, as well as regarding any information obtained with respect to a taxpayer's specific tax situation. Cooperation with other public entities within their corresponding sphere of competence and with foreign tax authorities under binding international exchange of information agreements is legally framed as not constituting a breach of such confidentiality duty.

8 What limitation period applies to the review of tax returns?

The tax authorities may review tax returns and assess additional tax until the limitation period for tax assessment expires.

As a general rule, the right to assess taxes expires if the assessment is not properly notified to the taxpayer within four years. For periodic taxes, the limitation period starts to run from the end of the year in which the taxable event occurred, whereas for single-incidence taxes, this period starts to run from the date in which the taxable event occurred. With regard to VAT and income taxes imposed by final withholding, the limitation period is counted from the beginning of the calendar year following that in which, respectively, the chargeability or taxable event occurred.

Where the review of tax returns connects with events under criminal investigation, the limitation period extends until the investigation is closed or the case decided by court, plus one year.

The limitation period extends to 12 years when the tax assessment relates to undisclosed taxable events connected with blacklisted tax havens or undisclosed deposit or securities' accounts held in financial institutions located outside the EU.

The limitation period is suspended, for instance, upon notification of the taxpayer of a service order or notice at the beginning of an external tax audit.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

Tax assessments may be challenged within administrative proceedings before the tax authorities. The decision issued in these proceedings is solely governed by law. No administrative or bargaining agreement on facts or on the applicable legal regime is admissible. The taxpayer may file a hierarchical appeal against the first-tier decision issued in this procedure.

Taxpayers may request binding rulings from the tax authorities regarding the application of law on certain facts.

At the request of the taxpayer, duly justified, the binding information may be provided urgently within 75 days. A fee ranging between €2,550 and €25,500 is due from the taxpayer in such cases.

Large taxpayers may request advance clearance on the tax and legal qualification of certain highly complex transactions – for instance, when such transactions may be subject to anti-avoidance rules or involve non-resident entities.

Mutual agreement procedures in accordance with double taxation treaties and advanced transfer pricing agreements are also set forth in Portuguese tax law.

Finally, a tax-arbitration procedure was enacted in 2011 as an alternative to the ordinary judicial tax disputes mechanisms (see questions 24, 25, 30, 31 and 38).

10 How may the tax authority collect overdue tax payments following a tax review?

The tax authorities collect overdue tax payments through enforcement procedures.

Within the enforcement procedures, the tax authorities may seize the debtor's assets; for instance, bank accounts, credits over third parties, immovable or movable assets, shares and other securities.

If necessary, seized assets are sold by the tax authorities in a public auction and the earnings used to settle the tax debt.

Taxpayers may request the suspension of the enforcement procedure if the legality of the tax assessment or the enforceability of the tax debt is undergoing litigation and a suitable guarantee is provided by the taxpayer or waived by the tax authorities.

11 In what circumstances may the tax authority impose penalties?

Tax offences specifically set out by law may be punished by penalties imposed by the tax authorities.

Such tax offences fall into two broad categories: (i) failure to withhold or surrender withheld or received tax; and (ii) failure to comply with ancillary obligations set out in tax law (eg, failure to submit tax declarations or failure to keep up accounting documents).

Penalties are only applicable to the extent that the tax authorities prove that the taxpayers acted with negligence or malice.

12 How are penalties calculated?

Penalties vary according to the specific tax offences set out by law and may entail both fines and ancillary sanctions.

For tax offences relating to the failure to withhold or deduct, or surrender withheld or deducted tax, penalties entail a fine calculated according to the amount of tax at stake, whereas penalties arising from failure to comply with ancillary obligations usually entail fines with fixed minimum and maximum limits set out by law.

Further to the fines, the tax authorities may punish tax offences with ancillary sanctions, such as the withdrawal of tax benefits or activity licences.

13 What defences are available if penalties are imposed?

Taxpayers may challenge penalties before the tax courts.

Within this process, taxpayers may present all evidence to ground their claim against the penalties imposed by the tax authorities.

Taxpayers, the tax authorities or the public prosecutor's office may appeal the first-instance decision held within this judicial process to a higher court.

14 In what circumstances may the tax authority collect interest and how is it calculated?

The tax authorities may collect both compensatory interest and late-payment interest.

Compensatory interest is due, currently at a 4 per cent annual rate, if through the taxpayer's fault:

- the assessment of the tax due or the delivery of tax payable in advance or withheld is delayed; or
- a larger refund is paid by the tax authorities.

Late-payment interest is due if the taxpayer fails to pay the tax due within the legal deadline. The yearly interest rate corresponds to the annual average of the monthly average of the 12-month EURIBOR rate plus 5 per cent.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Actions carried out with the purpose of avoiding the assessment, delivery or payment of taxes, or obtaining a tax benefit or refund through:

- the concealment or amendment of facts or amounts that should be recorded in the accounting books or tax returns and used by the tax authorities to assess and determine the taxable base;
- the concealment or amendment of facts or amounts that should be disclosed to the tax authorities; or
- the execution of sham transactions, may be criminally punished as tax fraud.

Moreover, failure to deliver, totally or partially, more than €7,500 of tax withheld or received (in the case of VAT) may be criminally punished as embezzlement.

Both individual taxpayers and business entities may be punished for these crimes. Directors of business entities are also criminally liable for such crimes.

16 What is the recent enforcement record of the authorities?

According to the latest information publicly available, in 2017, the tax authorities collected €1,066.70 billion through enforcement procedures.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

The tax authorities are entitled, under the legally set-out cooperation principle, to request information and demand cooperation from third parties – and they often do. Unlawful non-cooperation may amount to a tax infringement and lead to the application of fines.

The main limitation to the cooperation principle arises from the proportionality principle, according to which the tax authorities may not request cooperation from third parties that proves too burdensome or greatly interferes with the normal course of business or activity of the entities concerned. Likewise, tax authorities must refrain from requesting information that they already have on record or can obtain directly from the taxpayer. Historically, bank secrecy and other professional privilege regimes were major barriers to tax-information requests; but nowadays, following a trend of legal amendments aiming to enhance tax authorities' effectiveness, those are easily overcome by tax officials, most of the time without the need to resort to judicial clearance (although still being subject to judicial review after the fact).

On the other hand, any information provided to the tax authorities by third parties is covered by tax secrecy, meaning that it may not be disclosed to other entities. Breaching this secrecy is punishable as a criminal offence.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

The tax authorities actively cooperate with other public authorities within the country. Together with the police, they often form task forces to detect and fight contraband goods and control taxpayer compliance in areas such as road and vehicle taxes. Another good example of such cooperation with public authorities happens between the tax authorities and the economic and food safety authority, operating jointly to tackle the shadow economy and fight tax evasion. However, perhaps the most relevant cooperation occurs with the public prosecutor's office. Tax authorities are consistently called upon to provide assistance in the investigation and prosecution of virtually all tax crimes; from tax fraud to embezzlement, but also in white-collar crimes not directly tax-related, such as money laundering or corruption.

Regarding cooperation with foreign tax authorities, reference must first be made to EU Directive 2011/16/EU, which provides for extensive and comprehensive cooperation on tax matters between all EU member states. Regarding non-EU countries, cooperation exists under bilateral exchange of information agreements or under double taxation treaties, which typically follow the OECD model convention and include exchange of information provisions.

Finally, it is worth noticing that, since 2015, Portugal is party to the OECD/Council of Europe multilateral Convention on Mutual Administrative Assistance in Tax Matters. The tax authorities, therefore, are currently full participants in what is becoming an international network with the goal of enhancing the application and effectiveness of national tax rules worldwide.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

As a rule, bankruptcy entails the stay of foreclosure procedures, including those formed to collect tax debts, and their appendment to the bankruptcy procedure.

The tax authorities take part and claim payment of tax debts within the bankruptcy procedure together with all other creditors, with the sole but significant difference that tax debts cannot legally be pardoned within the context of measures aimed at recovering the failed entity from bankruptcy. Nevertheless, in those circumstances, payment by instalments of tax debts may benefit from extended instalment plans of up to 150 months, while in the absence of any financial hardship, the maximum number of monthly instalments is 36.

20 Are there any voluntary disclosure or amnesty programmes?

Although experience shows that from time to time amnesty programmes are implemented to encourage voluntary disclosure and compliance by evading taxpayers – between 2005 and 2015, there have been no less than four different extraordinary regularisation programmes – no such programme is currently in force.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

Proper taxpayer protection is first and foremost a consequence of the rule of law, which in Portugal is clearly asserted by the Constitution. From the rule of law and the constitutional provisions regarding citizens' fundamental rights, it is clear, for instance, that judicial review of tax authorities' actions must be possible and tax law cannot discriminate against taxpayers on the grounds of 'ancestry, gender, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation'.

Grounded in constitutional provisions, ordinary law does specify certain tax procedural rules of the utmost importance to taxpayers. Notably, the General Tax Law expressly foresees the taxpayer's right to be informed on decisions concerning them and, what is more, the requirement for such decisions to be clearly and explicitly grounded on both the facts and the law. Additionally, taxpayers also have the right to take part in the tax procedure, including the right to comment on draft decisions that directly affect them.

The General Tax Law also includes the statute of limitation deadlines for tax assessment (as a general rule, four years from the taxable event) and for tax collection (as a general rule, eight years from the taxable event), which is an important facet of a taxpayer's right to legal certainty.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Taxpayers have a general right of information on matters pertaining to their tax status as well as on the application of tax law provisions. Information requests can be made over the telephone (through a dedicated call centre to address taxpayers' queries), via the tax authorities' website, by post, and physically at the local tax offices.

The level and legal value of the information obtained varies greatly, ranging from general information on existing taxes and payment deadlines (available to everyone), to specific information about the status of tax procedures and the taxpayer's information on record (that typically may only be obtained by the taxpayer concerned or their representatives).

In this regard, taxpayers are entitled to ask the tax authorities for binding information on the way a certain tax rule or regime applies, or may apply, to their specific situation. If the taxpayer sees fit, they may choose to present a draft reply together with the binding information request and pay an urgency fee, in which case, if no reply exists

Update and trends

A current major concern affecting both tax authorities and taxpayers is the high volume of cases pending before the Portuguese tax courts. Although this overburdening of the court system is not exclusive to the tax courts, it is a well-known fact that tax disputes not being resolved in a prompt and efficient manner has a particularly severe impact on economic activity. Over the years, there have been a series of attempts to tackle this issue, the most important of which was the creation of tax arbitration tribunals in 2011 – which despite their relative success have failed in rescuing tax courts from a situation of chronic case overload. Other measures such as sporadic changes in the administrative and judicial tax procedure codes or internal staff reorganisation within the judiciary system have also proven unsuccessful.

Against this backdrop, the Ministry of Finance has appointed a special commission in charge of analysing the main areas of dispute that ultimately give rise to tax litigation, focusing in particular on situations created by informatics and automatism of procedures within the tax authorities. Indeed, after more than a decade of investing in the efficiency and digital aspects of the tax authorities' services, there is an overall sense that taxpayers' rights did not keep up with such development and that a new approach – less adversarial and more cooperative and business friendly – is needed from the tax authorities in their day-to-day interaction with taxpayers.

The appointed special commission is expected to present the result of its analysis together with concrete legislative proposals by September 2018, so that the Government may include them in the State Budget Law proposal for 2019.

within 75 days, the draft reply is considered tacitly accepted and the tax authorities become bound to it.

When tax authorities fail to reply adequately to a formal information request, a court order may be sought by the taxpayer to force such a request to be met and the information to be provided. Additionally, conforming with the tax authorities' reply to a binding information request may be judicially challenged in court by the taxpayer concerned.

23 Is the tax authority subject to non-judicial oversight?

No. However, to some extent, the Portuguese ombudsman, who often receives and reviews taxpayer complaints, can intervene, requesting explanations from the tax authorities (and making recommendations to government and parliament) with the aim of protecting taxpayers' legal rights.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

In Portugal, there are courts specialising in dealing with tax disputes. Except for Lisbon, where there is a first instance court dealing with tax disputes only, the rest of the courts around the country also have jurisdiction over administrative matters.

The tax arbitration courts, created in 2011, are an alternative means to settle tax disputes.

There are three courts of appeal: the Administrative Central Courts (North and South) and the Administrative Supreme Court.

25 How can tax disputes be brought before the courts?

Tax claims are filed in writing. There are different types of legal actions depending on the type and purpose of the claims. There is no minimum threshold amount applicable to those claims.

Taxpayers, including individuals and legal persons (jointly and severally liable or with an ancillary liability), may bring claims if they can show a legal interest worth protecting.

Tax claims are subject to legal costs. To present a claim, taxpayers must pay an amount between €102 and €1,632 depending on the total value of the litigation.

Unlawful tax assessments may be challenged based on (including but not limited to) the incorrect qualification or quantification of the taxable income, the tax authorities' insufficient powers and the infringement of procedural requirements.

Arbitration proceedings are subject to specific rules that, however, do not vary greatly from those above.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Yes, provided that the type of tax, the grounds and the court for the decision are identical.

Insofar as the requirements above are fulfilled, and as long as it does not prejudice the progress of the proceedings, it is also possible to attach judicial claims on different tax assessments already in course.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

No, there is no such obligation.

28 To what extent can the costs of a dispute be recovered?

The reimbursement of the judicial costs and fees (up to 50 per cent of the sum of the judicial costs borne by both parties) should be claimed by the winning party within five days from the date on which the decision becomes definitive. Any fees exceeding that threshold may be claimed by taxpayers in an action for damages arising from non-contractual liability of the Portuguese state. No corresponding legal action exists for the tax authorities to claim additional costs from taxpayers.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

There are no restrictions on or specific rules regarding third-party funding or insurance.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

The first instance court is constituted by a single independent judge who will make the first ruling on the tax dispute.

The rulings of courts of appeal are taken by a panel of judges formed (in most cases) by three judges.

In tax arbitration courts, if the taxpayer decides not to appoint an arbitrator and the amount at stake is less than €60,000, the court operates with a single arbitrator. The remaining cases take place before a panel of three arbitrators, chosen by the Ethics Committee of the Arbitration Centre or appointed by the parties.

31 What are the usual time frames for tax trials?

No up-to-date statistics are available in this regard.

Notwithstanding, practice shows that first instance decisions are often taken within five years from first being filed. For courts of appeal, the time taken is normally less and rulings are delivered in about three years.

Arbitration courts are more efficient and most of the decisions are obtained within six months.

32 What are the requirements concerning disclosure or a duty to present information for trial?

There is no discovery process, as such, within Portuguese tax trials. Consequently, the burden of proof plays an important role in the determination of the relevant matter of fact. Tax authorities typically bear the burden of proof as to the facts underlying tax assessments. On the other hand, taxpayers are required to present any documentary evidence backing their claim together with the initial application, as well as to indicate who is to be heard as witness or expert.

Nevertheless, tax courts are entitled to request additional information or documentation held relevant from either party, and a general duty of cooperation with the court exists.

33 What evidence is permitted in a tax trial?

As a rule, all forms of evidence are allowed within tax trials. Notwithstanding this, given that tax procedures conducted by the tax authorities must be documented in writing, documentary evidence is typically favoured by judges. Nevertheless, whenever the parties or the courts consider it convenient, the testimonies of taxpayers, witnesses and experts may be taken. Normally, affidavits are not allowed and testimonies must be made in person or 'live' through a teleconference.

If documents put forward as evidence are in a language other than Portuguese, the presenting party may be required to provide the

corresponding translation upon request by the other party of if the judge sees fit. Testimony in a foreign language is possible, but an interpreter must be provided by the presenting party.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Where the value of the tax case exceeds €2,500 or the case is at a court of appeal level, the taxpayer is required to be represented by a lawyer.

If a taxpayer cannot afford legal counsel, it is possible to request legal aid through social services, which, depending on that person's financial situation, can include the exemption of payment of fees and legal costs or their payment in periodic instalments.

Normally, public officers with a law degree represent the tax authorities in a tax trial.

35 Are tax trial proceedings public?

Generally, trial proceedings are public. However, the judge can decide otherwise in order to protect the taxpayer's dignity and public morale, or in order not to disrupt the proceedings in progress.

36 Who has the burden of proof in a tax trial?

As a general principle, the burden of proof regarding a certain fact falls on the party invoking it.

Nevertheless, when the evidence of a certain fact is in the possession of the tax administration, the burden of proof is considered to be met by the taxpayer simply on an accurate identification of the relevant information.

In addition, should the facts concerned be reflected in tax returns, accounts or on any supporting documentation, the burden of proof falls on the tax authorities.

Conversely, when tax authorities need to resort to indirect methods of computation of taxable profits because a direct and accurate quantification is not possible (namely in the case of no reliable accounting records or books exist), the burden of proof of any excessive quantification falls on the taxpayer.

37 Describe the case management process for a tax trial.

After the presentation of a claim regarding tax assessments, the court notifies the tax authorities to provide their response within 90 days. Within that same time frame, the tax authorities must bring forward evidence as well as the administrative procedure.

Subsequently, the trial hearing takes place and the statements of the parties, witnesses and experts are taken.

After that, the parties are notified to present (in a maximum of 30 days) their written arguments (which should summarise the grounds for the claims). Then the public prosecutor has the opportunity to submit his or her opinion and finally the judge issues his or her decision.

38 Can a court decision be appealed? If so, on what basis?

Any party disagreeing with a first instance court decision regarding tax assessments and being negatively affected by it may lodge an appeal within 10 days of the decision's notification. If the disagreement is exclusively based in matters of law, the Administrative Supreme Court will be the relevant court of appeal. For other situations, the Administrative Central Court (North or South) will be the competent court of appeal.

For cases valued less than €1,250, the first instance courts' rulings are definitive.

Courts of appeal rulings may also be disputed on the basis of either a contradiction of a previous judgment (within 10 days from the high court ruling's notification, or when the question at stake is of fundamental importance at a juridical or social level, or is clearly relevant for a better application of the law (in which case, a time frame of 30 days applies)).

Where a constitutional issue is raised during the proceedings, it is also possible to lodge an appeal to the Constitutional Court.

Appeals on arbitration courts' awards are quite restricted. They are possible only to the extent that they are based on a conflict with previous judgments from higher courts (in which case they must be lodged before the Administrative Supreme Court), or on constitutional issues (lodged before the Constitutional Court).

Finally, it is also important to note that the courts of appeal and the arbitration courts are obliged to present a request for a preliminary ruling to the European Union Court of Justice whenever there are uncertainties regarding any potential infringement of EU law.



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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

Taxation is based on the Swiss Federal Constitution, the relevant Swiss federal laws – eg, the Federal Direct Tax Act (DBG), the Federal Act on Tax Harmonisation (StHG), the Federal Act on Withholding Taxes (VStG), the Federal Act on Stamp Duties (StG), the Federal Act on Value Added Tax (MWSTG) and the Federal Act on Administrative Procedure (VwVG) – cantonal legislation, federal, cantonal and communal ordinances, international agreements (eg, double taxation agreements) and, in practice, the federal and cantonal judicial authorities' and federal and cantonal tax authorities' published practice (eg, Federal Tax Administration's circular letters, Federal Tax Conference's publications, cantonal guidelines).

2 What is the relevant tax authority and how is it organised?

The administration of taxation in Switzerland is divided between the Federal Tax Administration, the 26 cantonal tax administrations and the communal tax authorities. Social security contributions are administered by separate, typically cantonal, authorities.

The cantonal tax administrations are responsible for the correct and uniform assessment and the collection of the taxes for the federal government, cantons and municipalities. In addition, they carry out the federal and cantonal tax laws. Real estate capital gains taxes, property transfer taxes, and inheritance and gift taxes, as well as certain fees, are levied only at the cantonal level and, depending on the applicable cantonal legislation, at the communal level.

The Federal Tax Administration is, in addition to certain political functions and its coordinating role vis-à-vis other states in the context of double taxation and information exchange, responsible, for example, for VAT, withholding taxation, federal stamp duties and the military service exemption tax, and has supervisory duties with regard to the application of the DBG and the StHG. Customs duties are administered by the Federal Customs Administration.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

Federal, cantonal and communal taxes are, generally, levied by way of self-assessment by the taxpayer; that is, taxpayers declare the taxable objects themselves based on their qualification and assessment of the relevant taxable (and tax-exempt) factors. The tax authorities subsequently verify compliance with the tax laws and practice after submission of an individual's or entity's annual tax return or other declaration. The tax authorities' review of submitted forms is, particularly for entities, supplemented by recurring and non-recurring (ie, extraordinary) audits performed by the tax authorities or a mandated service provider on-site.

Cantons invoice the cantonal and municipal taxes as well as the federal income taxes usually in several provisional instalments. The due date for cantonal and communal taxes is determined by the

respective cantonal legislation. The due date for direct federal taxes is normally 1 March of the year following the tax year. In case of late payment, interest for late payment will accrue.

If taxes are not paid, the taxpayer is first reminded to pay the outstanding amounts. If the reminder is unsuccessful, debt-enforcement measures may be undertaken by the tax authorities.

In a typical procedure, after submission of the tax return, the tax return is reviewed preliminarily to verify its timely submission, the existence of the required signatures and completeness. The tax return is recorded in the electronic assessment system and, subsequently, its content is verified. If necessary, the tax authority may undertake further investigations, whereby the authorities determine on a case-by-case basis which information is required for correct and complete taxation. If the information provided by the taxpayer is deemed incomplete, the authorities may request information from the taxpayer and from third parties (eg, employers).

If such further investigations do not lead to satisfactory results, the tax authorities take a discretionary assessment by deciding unilaterally on the taxable income, profits, wealth and capital. The tax authorities' assessment is brought to the taxpayer's attention by way of a formally issued tax assessment order including the applicable taxable income, profits, wealth and capital as well as specifying the available legal remedies.

The duration of a tax return's review differs depending on the authorities' internal organisation and workload. A duration of two to three years for more complex cases may not be excluded; in principle, the tax authorities are only bound by the limitation periods.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Income, profit, wealth and capital taxes for individuals and (business) entities are generally levied based on similar reporting principles: the basis for taxation consists in the annual tax return, which, for entities, is based on their annual accounts. The tax return is accompanied by side forms that may vary depending on the taxpayer's situation and activities:

- detail forms for real estate (individuals and entities);
- professional activities (individuals); and
- specific accounting topics for entities (eg, depreciation and amortisation overviews, base cost overviews, capital contribution reserves).

In addition to the tax return and accompanying forms, entities are typically subject to recurring and non-recurring tax audits by the competent tax authorities, mostly performed on-site.

The taxation of certain capital income streams (mostly dividends) for individuals and entities is, furthermore, secured via a federal withholding taxation mechanism. Further income streams paid to individuals (eg, wages for certain resident aliens, payments to foreign resident wage recipients, board fee or pension recipients) are secured through a 'source tax' (wage withholding tax) mechanism. In certain circumstances, intra-group dividend payments (to entities) may benefit from a notice procedure instead of the regular tax payment. Compliance with the respective legislation and practice is typically also monitored by the competent authorities by recurring and non-recurring audits.

VAT and customs duties as well as social security contributions are levied in accordance with specific reporting forms and procedures, and compliance with the respective legislation and practice is typically also monitored by the competent authorities by recurring and non-recurring audits.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

Under the taxpayer's general requirement of cooperation, the taxpayer is obliged to do everything possible to allow for a complete and correct assessment (DBG 126 and StHG 42 I). Information may, in this context, be requested in written or oral (interview) form. The most important obligation to cooperate is the submission of the tax return.

The assessment authorities may, furthermore, call experts, conduct visual inspection and review accounts and receipts on the spot by way of auditing.

6 What actions may the agencies take if the taxpayer does not provide the required information?

If the taxpayer does not provide the required documents or information, his or her taxable income, profit, wealth and capital are assessed based on a discretionary judgment by the tax authorities (DBG 130 II). In view of the general burden-of-proof rules applicable in taxation matters which provide that the tax authorities must support facts leading to (increased) taxation, and the taxpayer must support facts from which he or she derives a claim for a reduction of the tax burden (eg, deductions), the tax authorities typically only consider certain minimum deductions provided for by the law (eg, social deductions for children) in the context of their discretionary judgment.

Furthermore, the failure to meet the obligations to deliver certificates, provide information and meet reporting obligations may be punished with penalties.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

An important restriction for tax authorities to enforce the disclosure of commercial information is set by the principle of proportionality. There is a balancing of interests between the protection of professional secrecy and the public interest in setting into effect a lawful and equal taxation. Furthermore, from the perspective of reasonableness, it is permissible in particular to refuse to provide specific information (eg, client names within the framework of the taxation of an attorney) that falls under legal confidentiality.

The tax authorities are, generally, bound to the confidentiality obligation (DBG 110 I and StHG 39 I). Confidential information may only be sought based on a legal provision (DBG 110 II and StHG 39 I). Certain cantonal tax legislations provide for the possibility for interested persons to obtain, under specific circumstances, information on the tax factors of taxpayers resident in the respective canton. Such information rights can, to a large degree, be countered by the taxpayer by a formal data-blocking request.

8 What limitation period applies to the review of tax returns?

The limitation period for the assessment of tax on income, profits, wealth and capital is five years ('relative limitation') and, in any case, 15 years ('absolute limitation') after the tax period (DBG 120 and StHG 47 I).

The limitation period for the collection and enforcement of income tax, wealth tax and capital tax is five years (relative limitation) after the assessment has become final (DBG 121 I and StHG 47 II) and 10 years (absolute limitation) after the tax has been legally established (DBG 121 III and StHG 47 II).

Legislation for other federal taxes provides for shorter limitation periods:

- the limitation period for the assessment of withholding tax; and
- the limitation period for stamp duty and VAT is five years after the end of the calendar year during which the taxable event occurred (VStG 17, StG 30, MWSTG 42).

The limitation period may, in particular, be interrupted and started afresh by any action of the tax authorities aimed at the assessment of the tax. VAT may not be levied 10 years (absolute limitation) after the end of the calendar year during which the taxable event occurred (MWSTG 42 VI).

The tax administrations are held to review tax returns, declarations and forms within the limitation period, whereby the duration of the review may differ from case to case. Currently, a motion is pending in the Swiss parliament that aims to harmonise the rules regarding the limitation period for withholding tax, stamp duty and VAT.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

An internal objection against the tax authorities' assessment decision may be raised by the taxpayer in writing within 30 days (DBG 132 I and StHG 48 I). The objection is treated by the same tax authority.

Swiss domestic tax legislation does not provide for alternative dispute resolution procedures. Settlements with regard to the taxable income, profits, wealth and capital are not permitted under Swiss law (see question 22); settlements may, however, be reached with the tax authorities with regard to the payment of taxes duly assessed and, in certain cases, in the context of a withdrawal of an objection.

Most of the Swiss double taxation agreements contain ADR mechanisms (competent authorities' agreement and mutual understanding procedures). Certain Swiss double taxation agreements contain arbitration clauses.

10 How may the tax authority collect overdue tax payments following a tax review?

After an unsuccessful reminder, the formal prosecution is initiated against the taxpayer by way of a regular debt enforcement procedure for overdue taxes and accrued interest for late payment (DBG 165). In this context, the final tax assessment is equal to an enforceable judgment so that the preliminary debt-enforcement procedures (eg, formal last invitation to pay) do not, by law, have to (but may out of courtesy) be undertaken by the tax authorities. Taxes related to real estate (eg, cantonal real estate capital gains taxes) are typically secured by a legal pledge that allows for a direct enforcement of the claim by way of a realisation of the pledge.

Further to formal debt-enforcement measures, tax claims may be secured by pledges or guarantees (DBG 169, 173), formal arrest (DBG 170), the refusal of radiation of a liquidating entity from the commercial register (DBG 171) and land register blockings (DBG 172). These measures should secure the taxpayer's Swiss assets, which may at a later stage serve as a basis for the enforcement and collection of the tax and interest claims.

11 In what circumstances may the tax authority impose penalties?

Penalties may be imposed in cases of tax evasion (DBG 175, StHG 56) and tax fraud (DBG 186, StHG 59), but also for breach of procedural obligations (DBG 174, StHG 55, eg, failure to submit a tax return or meet declaration obligations).

12 How are penalties calculated?

According to Swiss criminal legislation's principles, as a general rule, punishment is measured according to the degree of fault of the perpetrator. The court, in this context, takes into account the individual circumstances and the effect of punishment on the defendant's life. Penalties and fines in taxation cases are calculated according to the personal and economic circumstances of the offender at the time of the judgment; in particular by the income and wealth, living expenses, any possible family and support obligations and the subsistence level. Similar criteria are applied for fines imposed on entities.

According to legislation, fines for the breach of procedural obligations may amount to up to 1,000 Swiss francs in severe cases or in relapse cases to up to 10,000 Swiss francs (DBG 174 II, StHG 55).

In cases of tax evasion, the fine is, in principle, equal to the amount of tax evaded. It can be reduced to a third in cases of a minor degree of fault (mostly negligence) and increased to up to three times the amount of tax for serious cases of fault (DBG 175 II, StHG 56 I). Criminal prosecution may be waived if the taxpayer undertakes a spontaneous

voluntary disclosure (individuals and entities, with further requirements, see DBG 175 III, StHG 56 Ibis and DBG 181a, StHG 57b).

Tax fraud in income, profits, wealth and capital tax matters may be punished with imprisonment for up to three years or with a fine. A conditional imprisonment may, as of 1 January 2017, be combined with a fine of up to 10,000 Swiss francs (DBG 186 I, StHG 59 I). Tax fraud in federal tax matters ('Abgabebetrug', eg, VAT, withholding taxes and stamp duties) under the Criminal Code for Administrative Matters (VStR) is generally sanctioned with imprisonment for up to one year or fines up to 30,000 Swiss francs (VStR 14 II), with aggravation to imprisonment for up to five years combined with a fine, or a fine only (VStR 14 IV).

13 What defences are available if penalties are imposed?

Under Swiss law, the offender may be punished only if and insofar as he or she can be held personally responsible for an offence. It requires a case-by-case analysis to determine whether incorrect advice by the authorities may, therefore, serve as a justification for the offender.

14 In what circumstances may the tax authority collect interest and how is it calculated?

Interest is payable if taxes are levied retroactively (DBG 151 I, StHG 53 I) and if taxes are not paid within the deadlines set forth in tax legislation or provided in a formal order of the tax authorities (DBG 164 I).

The interest is fixed annually in the Federal Department of Finance's regulations on refund and late payment interest. For 2018, the interest rate amounts to 3 per cent a year. The obligation to pay interest starts 30 days after delivery of the definitive or provisional invoice or 30 days after the initial due date by procedure of supplementary tax.

The cantons determine their applicable default interest rates on an annual basis.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

If a tax review leads to an enforceable decision or judgment on tax evasion or tax fraud or the breach of procedural obligations, the mentioned criminal consequences (penalties and, in exceptional cases, imprisonment; see question 12) may apply.

Furthermore, in severe cases of tax fraud within the offender's professional or, in severe cases, non-professional context, a ban to perform professional activities, typically in sectors exposed to financial topics, may be issued for a limited or unlimited period of time.

16 What is the recent enforcement record of the authorities?

In Switzerland, no official figures are published with regard to enforcement records of the authorities. Generally, the cantonal tax administrations handle each year between 4,000 and 6,000 procedures for tax evasion (including voluntary disclosure cases).

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

Third parties have certain attestation, information and notification obligations (DBG 127-129, StHG 43-45).

The authority performing a tax assessment is also entitled to investigate without the taxpayer's participation or consent. However, third parties, as opposed to the taxpayer, do not have a general obligation to cooperate in the evaluation of facts. Their obligations are therefore limited to the obligations contained in DBG 127-129.

In case of refusal to provide the requested certificate or information, the third party may, after a reminder, be fined for violation of procedural obligations (DBG 174, StHG 55).

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Cooperation and assistance with tax authorities of all governmental levels is provided for in article 44 of the Swiss Federal Constitution and, for example, DBG 111 et seq. The authorities implementing and enforcing the tax and further legislation assist each other in fulfilling of

their tasks: they provide the necessary information to the tax authorities and other federal authorities, the cantons, districts, counties and municipalities and allow them to access official records. The federal authorities and the authorities of the cantons, districts, counties and municipalities grant the authorities responsible for the enforcement of this law all information necessary upon request.

International assistance in tax matters is, from a Swiss domestic perspective, governed by the Federal Act on Administrative Assistance in Tax Matters (StAHiG). The StAHiG provides the regulations for the implementation of international administrative assistance in tax matters under the double-taxation agreements and other international agreements concluded by Switzerland that provide for specific information exchange upon request in tax matters (in particular the Tax Information Exchange Agreements). The international exchange of information in tax matters is implemented and executed by the Swiss Federal Tax Administration, which provides assistance based on foreign requests and may also request information from foreign states' authorities.

Further to the exchange of information upon request, Switzerland has signed agreements with a number of partner countries and the EU on the introduction of the automatic exchange of information (AEOI). The legal basis in Switzerland for the introduction of the AEOI, that is, the Mutual Assistance Agreement, the MCAA and the Federal Act on the International Automatic Exchange of Information in Tax Matters, were adopted by the Federal Assembly in December 2015.

A number of bilateral treaties and the agreement between Switzerland and the EU, as well as the Swiss domestic legislation on the AEOI, entered into force on 1 January 2017. Based on the treaties and the Swiss implementing legislation, Switzerland began to collect data in respect of financial assets and will begin to exchange it from 2018. Switzerland has signed and is expected to sign further AEOI agreements with other countries, which, subject to ratification, will become effective on 1 January 2018 or at a later date. An updated list of the AEOI agreements negotiated or signed by Switzerland can be found on the website of the State Secretariat for International Financial Matters. Furthermore, Switzerland agreed to exchange certain information, which substantiates the suspicion that a taxpayer obtained an unduly tax reduction. The Swiss Federal Tax Authority transmitted in the first half of 2018 a total of 82 spontaneous notifications regarding tax rulings to 41 different states.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

If it can be demonstrated that the payment of the tax will lead to great hardship for a taxpayer as a result of an emergency or exceptional situation, the tax imposed may be waived fully or partially (DBG 167). This does not apply to taxes levied in retroactive taxation procedures and to penalties.

If the timely payment of taxes, interest and costs or penalties for a transgression causes considerable hardship for the taxpayer, the competent authority may extend the payment deadline or grant payment in instalments upon the taxpayer's request. The granting of payment facilities may be subject to reasonable securitisation (DBG 166).

Requests for tax abatement and tax payment deferral must be placed in writing with the competent authorities.

20 Are there any voluntary disclosure or amnesty programmes?

Individuals (DBG 175 III, StHG 56 Ibis) and business entities (DBG 181a, StHG 57b) have the opportunity to file a voluntary disclosure once in their lifetime or existence. The voluntary disclosure and amnesty benefits are only available if the tax authority had no knowledge of the offence, the taxpayer fully supports the administration in determining the correct tax and, in the end, pays all outstanding taxes and interest.

Voluntary disclosure is also available in inheritance cases (to be undertaken by the heirs, DBG 153a, StHG 53a) and for assets not included in estate inventories (DBG 178 IV, StHG 56 V).

As the main feature in voluntary disclosure proceedings, no penalties will be imposed on the taxpayer, but the taxpayer will only be required to retroactively pay the taxes due for 10 tax periods or, in inheritance cases, three tax periods, plus interest for late payment. Furthermore, the voluntary disclosure prevents criminal

proceedings for related criminal offences (eg, falsification of documents or accounts).

Rights of taxpayers

21 What rules are in place to protect taxpayers?

Aside from the remedies the taxpayer may raise vis-à-vis court or within the assessing tax authorities, the taxpayer is protected by the general procedural rules for administrative procedures, in particular, the secrecy obligation of persons and authorities entrusted with enforcing the tax legislation, and the right to refuse insight into official files to third parties.

To protect the taxpayer in the context of the assessment and enforcement of taxes, Swiss tax legislation is governed by the investigation principle, the requirement for the authorities to determine the relevant facts, the application of law ex officio, the principle of proportionality and the taxpayer's right to be heard. Furthermore, orders must be provided with a right of appeal and the taxpayer's rights to contest the order must be formally stated on the order.

Also Swiss tax legislation, particularly in the criminal law context, is based on the taxpayer's right to equal and fair treatment in the process, the right to a fair hearing, the right to legal aid and judgment, the right to refuse self incrimination (*nemo tenetur*) and the right to an effective remedy (articles 6 and 13 of the European Human Rights Convention and article 29 of the federal constitution of Switzerland).

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Taxpayers may seek a tax ruling from the competent tax authorities. In the tax ruling, the competent tax authority provides binding information on the tax treatment of the described fact patterns according to the applicable legislation. Tax ruling requests should be submitted in writing and must be submitted and typically confirmed by the tax authorities in advance, that is, before the described facts materialise. Tax rulings must not include agreements with the tax authorities on tax treatment if a case of the treatment contradicts the legal provisions: an illegal tax agreement.

Further, taxpayers are, according to DBG 114 I and StHG 41 I, entitled to inspect the files they have submitted to the tax authorities or they have signed vis-à-vis the tax authorities. Spouses taxed jointly are also entitled to inspect the other spouse's files. In certain cases, heirs have the right to inspect the decedent's files with the tax authorities. The right to inspect files will normally be granted only once the fact finding has been completed by the tax authorities and if no private or public interests are opposed.

23 Is the tax authority subject to non-judicial oversight?

The cantonal tax authorities are under administrative oversight in accordance with the respective cantonal legislation. For the application of federal legislation, the cantonal tax authorities are, furthermore, supervised by the Federal Tax Administration.

The Federal Tax Administration is supervised by the Federal Department of Finance.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

Tax disputes are initially treated within the assessing tax authority in the course of the objection procedure (see question 38). For subsequent court proceedings, the cantons are obliged by federal legislation to provide at least one court body for tax disputes (typically the tax recourse court or tax recourse commission (DBG 140 et seq). The cantons may provide for a second independent court instance in tax matters, typically a division of the cantonal administrative court (DBG 145).

On the federal level, the Federal Supreme Court has jurisdiction for tax matters (DBG 146), whereby the Federal Administrative Court is interposed for certain tax-related matters (eg, international administrative assistance in taxation matters).

25 How can tax disputes be brought before the courts?

The taxpayer may raise an objection against the assessment notice within 30 days after notification by the assessment authority (DBG 132, StHG 48). The objection may contest the assessment order, the

Update and trends

There has been an increasing trend towards tax litigation in the past few years. Whereas tax litigation historically was an 'ultima ratio' measure for many taxpayers and also the authorities, the number of cases that are brought before courts has increased. Previously, more issues had been settled between the taxpayers and the tax authorities in the course of the tax assessment procedure.

Further recent developments are caused by the introduction of the automatic exchange of information and, with this, increased transparency in cross-border situations. The enhanced transparency increases the tax authorities' opportunities to enforce the taxpayers' filing and taxation obligations and led to an increasing number of voluntary disclosures.

declaratory order on tax liability and exemption, the audit decision, the supplementary tax order, the decision regarding a fine, the liability order, the decision regarding a pledge, the decision regarding the recovery of paid tax amounts, the decision of the reimbursement of real estate gains tax, the decision concerning the refund of withholding tax, tax at source and the order concerning a reminder fee.

The objection may be submitted according to DBG 132 I and StHG 48 I by the taxpayer. But the legitimacy goes even further and applies to all those persons who have been assessed with the assessment order for the tax in question.

The taxpayer may raise a complaint by the independent recourse commission against the objection decision from the assessment authority within 30 days after notification in writing (DBG 140, StHG 50). Those entitled to raise the complaint are the taxpayer and other individuals who are affected by the respective order and have a legitimate interest in the annulment.

In the objection, the objector has a claim to unlimited review of the assessment decision and the annulment of reported deficiencies. Objections and complaints must be submitted in writing. There is no minimum threshold amount for claims.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Under Swiss legislation, tax claims affecting multiple tax periods are, at least formally, not combined in administrative and court proceedings.

According to DBG 9 I and StHG 3 III, spouses and minor children are taxed jointly so that tax claims brought forward by the tax authorities are formally addressed to both spouses. However, any spouse is entitled to take procedural steps, such as raising objections, independently. The objection raised by one spouse also takes effect for the other spouse.

In principle, communities of heirs are, under Swiss legislation, not taxed jointly, but every heir's share to the estate is allocated to his or her own taxation sphere as of the decedent's demise. If heirs are, nevertheless, affected jointly by a taxation (eg, for the decedent's taxation until his or her demise or for real estate held jointly), the heirs are also entitled to raise objections individually, but with effect also for the other heirs.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Tax amounts become due during the relevant tax period for cantonal and communal taxes, and shortly after the relevant tax period for federal taxes, and, in any case, once they are determined in a tax assessment order. Interest for late payment is levied after the payment due date. The submission of an objection or complaint does not interrupt the payment time lines and it is generally recommended to pay the disputed tax, despite court proceedings, in order to avoid interest charges for late payment in case the proceedings are not successful. Overpaid taxes are refundable or credited in favour of the taxpayer, usually bearing a refund interest, if the tax is reassessed, for example, after a court decision.

28 To what extent can the costs of a dispute be recovered?

The costs (procedural costs and administrative fees as well as costs for legal representation) of a dispute are, generally, imposed on the losing party by the court and, in certain circumstances, by the tax authorities.

The costs may be divided between the parties if the dispute leads to a judgment partially in favour of one party (DBG 144). For procedures at the cantonal level, the respective cantonal legislation applies. The applicable cantonal legislation may allow the court to require procedural costs to be paid in advance, for example, by the claimant or by the taxpayer, in order to accept the case for trial. In specific circumstances, the court may also waive the costs (DBG 144 III).

A final cost assignment issued by a court is, generally, enforceable by means of ordinary debt-enforcement procedures.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

Swiss legislation and practice do not contain any restrictions with regard to process financing via insurance solutions or third-party funding. The cost for tax disputes may be covered by legal protection insurances concluded by an increasing number of Swiss resident taxpayers. However, the scope of coverage of such legal protection insurances is to be reviewed on a case-by-case basis to determine whether tax disputes are included or explicitly excluded from coverage.

Under the Swiss legislation on the professional behaviour of lawyers, it is not permitted for a lawyer to finance a tax dispute indirectly via purely success-based compensation.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

Swiss administrative courts (eg, the Federal Administrative Court and the Federal Supreme Court) usually sit as a panel of three or five judges. The cantonal legislations are relevant for the composition of the cantonal courts. Swiss legislation does not provide for jury trials.

31 What are the usual time frames for tax trials?

The duration of a tax trial varies depending on the court and the complexity of the dispute in question.

32 What are the requirements concerning disclosure or a duty to present information for trial?

The taxpayer is obliged to do everything possible to allow for a complete and correct assessment (DBG 126 and StHG 42 I, see also question 5) generally during the assessment procedure but de facto also in court. Information may, in this context, be requested in written or oral (interview) form. In accordance with general criminal law principles, no taxpayer may be constrained to accuse him or herself in criminal proceedings.

Within the tax assessment procedure, the law specifically mentions the obligation of employees to file their payroll accounting and account statements regarding any payments received as directors or other official administrative organs of a legal entity (DBG 125 I). Furthermore, the same provisions oblige individuals to provide statements of their securities, outstanding loans and their debt (DBG 125 I c). Legal entities and self-employed individuals must file their balance sheet and P&L

statements (DBG 125 II). Legal entities have an obligation to show the development of their equity, including capital contribution reserves (DBG 125 III).

Every taxpayer has the duty to file a tax return (DBG 124). Taxpayers who are subject to Swiss VAT must keep records of all relevant transactions and store bills and accounts for such transactions for up to 20 years (MWSTG 70). They must provide a statement of all relevant transactions to the Swiss VAT authority within 60 days after the end of each declaration period (MWSTG 71). Income from Swiss sources, which is subject to the Swiss withholding tax, must be declared in the Swiss resident income-recipient's tax return as income in order to be eligible for a refund of the withholding tax (VStG 23). Taxpayers are, according to DBG 114 I, entitled to inspect the files they have submitted to the tax authorities or have signed vis-à-vis the tax authorities (see question 22). The right to inspect files will normally be granted only once the fact-finding has been completed by the tax authorities and if no private or public interests are opposed.

In general, during trial but also in the course of the assessment procedure, the burden of proof for tax-increasing assertions is upon the tax authorities. However, if there is a lack of proof caused by the taxpayer's insufficient cooperation, natural assumptions are put in place. Such assumptions shift the burden of proof to the taxpayer. Furthermore, the taxpayer has the burden of proof for assertions reducing his or her tax burden.

33 What evidence is permitted in a tax trial?

In a tax trial, the facts may be established based on documents, written or oral information provided by the taxpayer, information or testimony from third parties, visual inspections and reports (DBG 123 II).

According to the federal legislation on administrative proceedings and on criminal proceedings generally, everybody is obliged to give testimony. However, exceptions apply in certain cases for professional secrecy holders (these, typically, are required to seek a suspension of their professional secrecy for the proceedings). Furthermore, no one may be forced to incriminate him or herself in criminal proceedings (*nemo tenetur*).

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Under Swiss legislation, tax procedures and trials are not restricted by the requirement of professional representation of the taxpayer. The taxpayer may represent him or herself in the tax assessment, objection and complaint procedure, vis-à-vis the authorities and in court (including the Federal Supreme Court). Any party to an assessment, objection or complaint procedure may, however, be represented by a person capable of acting in the process (DBG 117), and it is customary and advisable to be represented, at least for complex cases, by a professional. For certain criminal proceedings, the defendant is obliged to be professionally represented.

State aid to cover the procedural and representation costs will be granted based on constitutional grounds if a party does not have the necessary resources and its legal request does not appear unsuccessful.



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Depending on the complexity and exposure of the case in question, the tax authorities represent themselves in tax proceedings before the courts or mandate external specialists. In criminal proceedings, the tax authorities are, typically, represented by the prosecutor.

35 Are tax trial proceedings public?

Tax assessment and tax objection procedures as well as complaint proceedings to the cantonal recourse commission are non-public procedures. Cantonal legislation governs the publicity of complaint procedures to a second cantonal instance (see question 38).

Oral hearings in complaint procedures on the level of the Federal Supreme Court are public unless the specific interests of the taxpayer would be offended.

Trial proceedings in criminal matters (eg, in the context of alleged tax fraud) are governed by the federal criminal procedure legislation (DBG 188 II) and are generally public.

36 Who has the burden of proof in a tax trial?

In accordance with the general principles as set out in the Swiss Civil Code and as applied also in tax matters, any party must prove the existence of a fact from which it derives a claim or right in its favour. In consequence, in taxation matters, for any circumstances that aim to reduce the taxpayer's tax burden (eg, income tax deductions), the taxpayer bears the burden of proof. Conversely, the tax authorities bear the burden of proof regarding any facts that lead to the existence or increase of a taxpayer's tax burden.

37 Describe the case management process for a tax trial.

Swiss legislation and practice do not provide for specific case-management rules in tax trials. Tax trials are governed by the applicable procedural legislation.

38 Can a court decision be appealed? If so, on what basis?

According to DBG 132 and StHG 48, tax assessment orders may be contested by the taxpayer by an objection in writing to the assessing authority within 30 days after notification of the order. An objection against an assessment based on a discretionary judgment (see question 6) must include evidence showing that the assessment is obviously incorrect (DBG 132 III, StHG 48 II). The objection procedure is free of charge for the taxpayer.

According to DBG 140, the tax authorities' decision in the objection procedure can be contested by a complaint raised by the taxpayer in writing to the respective cantonal recourse commission within 30 days after notification of the decision. Exceptionally, and if all the involved parties agree, an objection may also be treated directly as an advanced complaint, according to DBG 132 II. The complaint is subject to fees in accordance with the applicable cantonal legislation. The complaint must include a request and the relevant facts and must specify the relevant evidence and include or at least specify in detail the relevant evidence material (documentation). The complaint may concern all aspects of the contested decision and the previous procedure.

The decision rendered by the recourse commission may be challenged by the taxpayer or the cantonal tax authorities by a complaint to a further, independent cantonal court (typically the administrative court, for example, in the canton of Zurich) in accordance with DBG 145. The complaint is subject to fees in accordance with the applicable cantonal legislation.

The decision rendered by the recourse commission or, if applicable, the further cantonal court may be challenged by the taxpayer or the cantonal tax authorities by a complaint in administrative matters to the Federal Supreme Court (DBG 146). The complaint is subject to fees in accordance with the applicable federal legislation.

Ukraine

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The general legislation relating to tax administration and controversies is the Tax Code of Ukraine (the Tax Code). The Tax Code specifies tax rates, tax exemptions and the procedures and mechanisms for tax assessments and payments. Provisions of the Tax Code may not be introduced or changed by legislative acts other than special tax laws. In addition to the Tax Code, the Code of Administrative Procedure of Ukraine (the Administrative Procedure Code) stipulates the administrative procedure for appealing the actions and decisions of the tax authorities (including tax assessments).

Tax authorities issue: (i) an individual tax ruling in response to the taxpayer's request for a tax law clarification; and (ii) a general official tax ruling, in which the tax authorities state their official position with respect to a particular tax issue. The taxpayer may not be held liable by the tax authorities for a violation of the tax laws as a result of the taxpayer's reliance on either an individual tax ruling or a general tax ruling.

The taxpayer may act upon either of such tax rulings until it is revoked or succeeded by a controlling ruling on the same subject matter.

In addition to the local tax legislation, Ukraine has a network of more than 70 tax treaties, most of which are based on the OECD Model Convention. The provisions of tax treaties take priority over the national legislation in cases of conflict.

Almost all of these tax treaties provide for a competent authority procedure for resolving double tax issues. At the same time, no implementing regulations have been adopted in Ukraine yet.

2 What is the relevant tax authority and how is it organised?

The State Fiscal Service (SFS) is the central executive authority coordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance and implements state tax and customs policies. The SFS controls the transfer of taxes, fees, customs duties and other charges to the public budgets and state specialised funds.

The SFS internal structure consists of three levels: (i) national level – the Administration of the SFS; (ii) regional level – consists of regional departments for Kyiv city, regions and service of big taxpayers; and (iii) local level – district tax inspections. The administration of the SFS consists of various departments, including legal, audit, taxation of legal entities and taxation of individuals.

The Tax Code defines big taxpayers as Ukrainian legal entities or permanent establishments of the non-resident that within four consecutive quarters received income of €50 million from all types of business activities, or whose taxes paid to the state budget for the four consecutive quarters exceeded €1 million.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

The tax authority uses tax audits to verify compliance of taxpayers with the tax laws and ensure timely payment of taxes.

According to the Tax Code, a tax audit may be carried out in the form of:

- a cameral audit;
- a documentary audit (scheduled or unscheduled audit; on-site or off-site audits);
- a factual audit; and
- a transfer pricing audit.

Since 1 January 2017, only tax authorities at regional and national level can conduct documentary and factual tax audits.

A cameral audit is generally carried out by the Ukrainian tax authorities with respect to all of the taxpayers' filings. The audit is conducted by the tax auditors in the tax office on the basis of the tax returns and other mandatory filings of the taxpayer related to the computation of the latter's tax liability.

A cameral tax audit of the filed tax return may be conducted within 30 calendar days after the filing deadline for the tax return or the date of actual filing if the tax return was filed after the deadline. Generally, during a cameral tax audit, the taxpayer's tax returns and other mandatory filings are reviewed, inter alia, from the standpoint of their timeliness, completeness and correctness, as well as for possible arithmetic or methodological errors which may have been committed by the taxpayer in ascertaining its tax liability.

Documentary audits can be scheduled (planned) or unscheduled (not planned). In addition, depending on whether the audit is conducted within the taxpayer premises, the audit could be either on-site (within the taxpayer's premises) or off-site (within the tax office premises).

The taxpayer must be informed in advance about the forthcoming scheduled tax audit by being served at least a 10-day prior written notice indicating the dates on which the audit will be commenced and completed.

The duration of a scheduled on-site tax audit may not exceed 20 business days, except for the audit of a small business, which may not exceed 10 business days or 30 business days for big taxpayers. Under certain conditions, the duration of the audit may be prolonged by an additional 10 business days for most taxpayers, five business days for small businesses, and 15 business days for big taxpayers.

Planned tax audits are carried out according to a plan scheduled by the tax authorities with regard to the risk assigned to taxpayers (low, medium and high risk). The Tax Code defines that low-risk taxpayers may be inspected no more often than once per three years; medium-risk taxpayers may be inspected no more often than once per two years; and high-risk taxpayers may be inspected no more often than once per year.

Unscheduled tax audits may be conducted only under certain conditions, the list of which is set out in the Tax Code.

An unscheduled on-site tax audit is carried out at the location of a taxpayer pursuant to a formal written decision of the tax authority with audit jurisdiction over the taxpayer. The duration of an unscheduled on-site tax audit may not exceed 10 business days, except for the audit of a small business, which may not exceed five business days, or 15 business days for big taxpayers. Under certain conditions, the duration of the audit may be extended by an additional five business days (two business days for a small business or 10 business days for big taxpayers).

Factual audits are conducted without warning to the taxpayer. The factual audit must be performed at the factual place (premises) where the taxpayer conducts his or her economic activity or at the location of another taxpayer's object of property. The factual audit concerns compliance with the procedure of execution of payment and cash transactions, licence, patents and existence of certificates, including certificates of registration, production and circulation of excisable goods, and compliance with labour legislation.

A transfer pricing audit may be initiated by tax authorities in case of non-filing (or filing with errors) of a transfer pricing report or non-provision of transfer pricing documentation. A transfer pricing audit is conducted off-site, based on the transfer pricing documentation provided by the taxpayer. The duration of a transfer pricing audit may not exceed 18 months. However, under certain conditions (for example, a request for information from foreign tax authorities or conduct of expertise), it may be extended by an additional 12 months.

The conduct of a transfer pricing audit does not prevent the tax authority from conducting other tax audits of the reviewed taxpayer.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Generally, the reporting requirements for different types of taxpayers (business entities and individuals) are the same for each tax paid or reported. The difference, however, is that individuals file tax reports only in exceptional (expressly specified) cases. For example, if an individual receives income from a foreign source he or she is required to file an annual tax return for Personal Income Tax. Private entrepreneurs, in addition, report for Corporate Profit Tax and Value Added Tax.

Depending on the reporting period the Tax Code establishes the following reporting deadlines: for monthly reporting periods – within 20 calendar days following last day of the reporting month; for quarterly (half-year) periods – within 40 calendar days following last day of the quarter (half-year); for calendar year – 60 calendar days for business entities, 40 calendar days for private entrepreneurs, and until 1 May of the following year for individuals.

As noted in question 3, the Tax Code provides that the duration of tax audits (reviews) of big taxpayers is generally longer than for other taxpayers, especially for small businesses.

Ukrainian taxpayers with an annual income exceeding 150 million hryvnia (net of indirect taxes) may have to prepare and submit a transfer pricing report if the annual volume of controlled transactions exceeds 10 million hryvnia. The Tax Code defines the controlled transactions for transfer pricing purposes as transactions with non-residents who are either:

- related parties;
- registered in off-shore jurisdiction;
- commission agents; or
- engaged in chain transactions.

In addition to a transfer pricing report, the tax authorities may request the transfer pricing documentation from taxpayers:

- after submission of the report on the controlled transaction;
- after a follow-up request for additional information after the initial request for transfer pricing documents; and
- during the course of the transfer pricing tax audit.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

The Tax Code provides that during a tax audit the taxpayer should provide the tax authority with all the documents connected with the scope of the tax audit. Generally, such information consists of copies of the transaction documents (contracts, invoices, acts of acceptance, delivery documents, etc), financial information, business books and records.

Furthermore, the Tax Code, under certain conditions, grants the tax authority the right to request information from taxpayers outside of the tax audit. Generally, taxpayers have 15 working days for provision of the requested information (10 working days if the information is requested during a cross-audit).

In addition to requesting information, the tax authority has the right to interview the taxpayer's employees and its officials. However,

the Tax Code allows such interviews only during the transfer pricing audits. In practice, however, the representatives of the tax authorities conducting any tax audit usually conduct unofficial interviews with the taxpayer's chief accountant or accountants regarding the peculiarities of such taxpayer business activities and tax accounting.

6 What actions may the agencies take if the taxpayer does not provide the required information?

If the taxpayer does not provide the information requested by the tax authority, the tax authority may initiate an unscheduled tax audit of such a taxpayer.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

Ukrainian legislation has special protection mechanisms for commercial information, business secrets or professional advice. Generally, Ukrainian legislation not only defines what information may enjoy protection as business secrets and information covered by banking secrecy or attorney-client privilege. It also defines when such information may be disclosed. In practice, Ukrainian taxpayers often seek protection of sensitive commercial information and business secrets from the tax authority and disclose it only under the conditions prescribed in legislation.

Even when taxpayers have provided the tax authority with commercial information, the Tax Code provides that the tax authority should not disclose confidential commercial information, which includes state or banking secrets. Officials of the tax authority may disclose such information only upon written consent of the taxpayer that provided such information.

8 What limitation period applies to the review of tax returns?

The general rule is that the tax authorities can exercise their authority to issue an assessment of a taxpayer's liability with respect to a tax return only within a period of 1,095 days following:

- the final statutory date for filing for the tax return; or
- the date of the actual filing of the tax return, whichever is later.

After the expiration of this period of limitations, the taxpayer may not be assessed by additional taxes, tax penalties or late payment interest with respect to such past due tax liability.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

A tax dispute may be settled either during the course of an administrative appeal procedure (within the tax authority) or in court.

During an appeal procedure, either administrative or in court, the requirement to pay a tax assessment notice is suspended.

In general, the taxpayers have 10 calendar days from the day of receiving the tax assessment notice (or other decision of the tax authority) to initiate administrative appeal procedure. The taxpayer should file the appeal to the higher level tax authority; the decision of the local tax authority is appealed to the regional tax authority; and the decision of the regional tax authority is appealed to the national tax authority. In addition, the taxpayer should notify the tax authority whose decision is being appealed about the filed appeal.

The tax authority reviewing the appeal has 20 calendar days to take the decision to:

- dismiss the appeal;
- satisfy the appeal; or
- amend the decision that is being appealed.

The tax authority reviewing the appeal has the right to extend the duration of the appeal review up to 60 calendar days. However, if within a 20 calendar day period, the taxpayer is not notified by the tax authority reviewing the appeal about either the decision adopted or the extension of the review duration, then the taxpayer's appeal is deemed to be satisfied in full.

Ukrainian legislation provides a two-tier appeal procedure for decisions of the local tax authorities. Thus, the decisions of local tax authorities may be appealed to the regional tax authority and to the

national tax authority within 10 calendar days after the decision of the regional tax authority.

The administrative appeal procedure may be exhausted either when:

- the deadline for filing the appeal has run out;
- the appeal is satisfied in full;
- the national tax authority has issued its decision; or
- the taxpayer applies for delay of tax payment or payment of tax due by instalments.

After exhausting the administrative appeal procedure the taxpayer has 10 calendar days to initiate a court appeal in order to avoid the tax assessment becoming due.

10 How may the tax authority collect overdue tax payments following a tax review?

In order to collect overdue tax payments following a tax review, the tax authority uses its right for tax liens over the taxpayer's property. A tax lien over the taxpayer's property arises when the tax payments of the taxpayer are overdue or when the taxpayer concludes an agreement with tax authority for delay of tax payment or payment of tax in instalments (the amount of delayed or restructured tax should exceed 1 million hryvnia).

The tax lien over a taxpayer's property arises according to the provisions of the Tax Code and does not require any written formalisation. A tax lien does not cover assets that cannot be subject to lien and mortgage assets that act as security under mortgage-backed securities.

After taking the decision to impose a tax lien, the tax authority registers the lien in state registers of encumbrances over movable and immovable property.

The priority of a tax lien over other encumbrances (including liens) is regulated by law. Therefore, encumbrances that existed before the tax lien have priority over the tax lien.

The taxpayer may sell property covered by a tax lien only after approval from the tax authority, or if the taxpayer does not receive any response from the tax authority within 10 days after submitting such a request for approval.

The taxpayer may sell finished products or goods without the approval of the tax authority if the proceeds from such sale will be used in full amount for payment of salaries, social security contributions and overdue tax.

11 In what circumstances may the tax authority impose penalties?

The tax authority may impose penalties only in a number of cases defined in the Tax Code. Such cases include:

- penalties for failure to comply with filing requirements;
- accuracy-related penalties (25 per cent of the back taxes for the first violation or 50 per cent of the back taxes for repeated violation within a 1095 day period);
- penalties for failure to withhold Personal Income Tax or withholding tax (up to 75 per cent of the tax due); and
- penalties for failure to submit complete or timely transfer pricing documentation (up to 300 minimum salaries).

12 How are penalties calculated?

Penalties are calculated depending on the type of violation. In some cases, penalties are imposed for a fixed amount (eg, late filing of a tax return); and, in other cases, penalties are calculated as a percentage of tax due (eg, discovery of back taxes during a tax audit).

13 What defences are available if penalties are imposed?

Defence against penalties may be administrative or court appeal.

Against some penalties, such as late filing of a tax return, there is no defence unless such untimely filing is caused by force majeure circumstances.

In other cases, when the amount of the penalty is linked to the amount of taxes assessed during a tax audit, taxpayers should appeal either in administrative or court proceedings the assessment of the tax audit and thus seek defence.

14 In what circumstances may the tax authority collect interest and how is it calculated?

The tax authorities may collect interest in the case of untimely payment of tax due. The Tax Code provides a different start date and interest applied to the amount of tax due depending on whether the amount of tax due was calculated by the tax authority or by a taxpayer (tax agent).

Thus, in cases when the tax due is calculated by the tax authority, the interest is calculated from the first working day after the amount of tax was due for payment. In such cases, the interest is calculated for each day of payment delay in the amount of 120 per cent of the national bank's discount rate.

In cases when the tax due is calculated by the taxpayer (tax agent), the interest is calculated after 90 days from the day when the amount of tax was due for payment. In such cases, the interest is calculated for each day of payment delay in the amount of 100 per cent of the national bank's discount rate.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

If, after the tax audit, the tax authorities assess additional taxes at more than 881,000 hryvnia (for 2018), a criminal investigation may be initiated. The officials of the taxpayer (general manager and chief accountant) could be held accountable for tax evasion. Depending on the gravity of tax avoidance, these officials would be held accountable by paying a fine of up to 425,000 hryvnia and would be prohibited from occupying certain positions or engaging in certain activities for a term of up to three years. In certain cases, property may also be confiscated.

Generally, Ukrainian legislation provides for criminal liability of legal entities. Legal entities could be held criminally responsible for crimes such as money laundering, bribery, undue influence, terrorism, certain crimes against national security and peace, public security and public order. Ukrainian legislation does not provide for criminal liability of legal entities for tax evasion.

16 What is the recent enforcement record of the authorities?

The most recent enforcement record of the tax authorities is for the period from 1 January 2018 to 1 June 2018. In first five months of 2018, the tax authorities conducted 7,376 tax audits, the results of which were agreed by taxpayers. Therefore, considering that taxpayers usually appeal the results of tax audits, the total number of conducted tax audits is even higher. Out of 7,376 audits, 1,711 were scheduled and 5,665 were unscheduled.

As a result of the findings of such tax audits, the tax authority has issued tax assessment notices for the amount of 7.2 billion hryvnia, of which 995 million hryvnia was assessed during scheduled audits and 6.2 billion hryvnia during unscheduled audits.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

In principle, the tax authority may involve third parties as part of the review of the taxpayer's tax returns. However, in most cases when the tax authority uses a cameral tax audit to review the taxpayer's tax returns, it sends information requests to the taxpayer whose tax returns are being reviewed. Rarely, when there are mistakes with VAT invoice registration, information requests may be sent to third parties – counterparties of the taxpayer.

More often, the tax authorities request information from third parties during documentary audits of the taxpayer. Such information requests are usually done to cross-audit information provided by the taxpayer during a documentary audit.

The tax authorities have the right to interview employees of the taxpayer only during a transfer pricing audit; such an interview right does not include third parties.

If third parties do not provide the information requested by the tax authority in its request, the tax authority may initiate an unscheduled tax audit of such third party.

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

The Ukrainian tax authorities cooperate with other authorities within the country. For example, local tax authorities in different regions cooperate to conduct cross-audit of taxpayers located in different regions of Ukraine. The tax authorities cooperate with customs offices regarding payment of import VAT during import or other tax issues connected with import and export operations. In addition, the tax authorities cooperate with the Ukrainian treasury (for example, regarding refund of overpaid taxes) and exchange information with other state authorities.

The power of the Ukrainian tax authorities to obtain tax-related documents or information is not enforceable outside Ukraine. Therefore, the tax authorities cannot oblige foreign third parties to provide such documents or information. However, the Ukrainian tax authorities may address foreign tax authorities with a request to assist in obtaining documents and information from third parties located in their own foreign jurisdiction.

According to the applicable double tax treaties, the Ukrainian tax authorities may request tax-related information from foreign tax authorities. Most of the effective double tax treaties of Ukraine provide for an exchange of information along the lines established by the OECD Model Treaty.

In addition to the information exchange mechanism provided by double tax treaties, Ukraine is a party to the 1988 Convention on Mutual Administrative Assistance in Tax Matters (the Convention), with some reservations.

The Convention sets forth the procedure for cross-border administrative assistance in tax matters, namely:

- the exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
- assistance in the recovery of tax claims; and
- assistance in the service of documents, including those related to judicial decisions.

The Convention applies in Ukraine with respect to the following taxes and mandatory payments:

- the Corporate Profit Tax;
- the Personal Income Tax;
- the Unified Social Security Contribution;
- the Land Tax;
- the Value Added Tax;
- the Excise Duty;
- the Wine-growing Duty;
- the Transport Tax;
- the Unified Tax;
- the Fixed Agricultural Tax;
- State Duties;
- Rent Payments; and
- the Duty for the Use of Natural Resources.

Ukraine has reserved the right to fulfil the requests of other parties to the Convention only with regard to taxes similar to those listed above; and not to provide administrative assistance with regard to tax claims outstanding on the date on which the Convention came into force for Ukraine.

The tax authorities are required to maintain the confidentiality of all of the information in their possession concerning a taxpayer, except for information in the public domain. Taxpayer information may be disclosed to a third party only on the basis of a judicial decision.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

The Tax Code clearly states that its provisions do not apply to entities that are in the process of bankruptcy proceedings. Ukrainian bankruptcy legislation provides that a moratorium on satisfaction of existing creditors' claims (including the tax authorities) is introduced once bankruptcy proceedings are initiated.

During bankruptcy proceedings, taxpayers are responsible for payment and reporting of taxes that arise during such proceedings (including, but not limited to, Personal Income Tax and Unified Social Security

Contribution). However, if the taxpayer fails to pay such taxes, no penalty and interest is calculated on such late payments.

Once the taxpayer is recognised as bankrupt and liquidation is initiated, the claims of the tax authority that developed during the bankruptcy proceeding have a higher priority over the claims of other creditors. However, such tax authority claims are satisfied only after payment of salaries, court fees, social security contributions and other related expenses. Other tax claims that were established before the bankruptcy proceedings were initiated are satisfied together with the claims of other creditors.

20 Are there any voluntary disclosure or amnesty programmes?

There are no voluntary disclosure or amnesty programmes currently effective in Ukraine.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

Tax Code expressly states that the tax authorities should act according to the constitution of Ukraine, the laws of Ukraine and other legislative acts. Moreover, the tax authorities should not violate the rights and protected interests of individuals and legal entities.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Taxpayers may obtain information from the SFS through a request to obtain public information. The request can be submitted to the tax authority in paper form, electronically, via mail or by telephone. The taxpayer may prescribe the preferred form of response. The response should be given within five days after the date of the receipt of the request or within 20 days if the preparation of a response requires the processing of a large amount of data.

The SFS also provides extensive information on its official website, including information about organisational structure, functions, mission and main duties, financial resources, regulatory acts and their projects, reports, and so on. The tax authority has a special telephone number that can be used by taxpayers to receive information, for consultation and to report the actions of tax authority officials that may be unlawful or contradictory to anticorruption laws.

If the protection or realisation of the taxpayer's rights is dependent on information about another person, such taxpayer may address the court to receive a court order for access to such information.

Public information is classified as information with unlimited access and information with limited access.

Taxpayers are able to request information with unrestricted access and can get access to information with limited access under certain conditions. Information with limited access includes confidential, secret and official information. Access to confidential information may be allowed only after the consent of the person or legal entity that limited access to the information. Secret information may be accessed in cases and in accordance with the procedure prescribed by the law. Official information has limited access based on the decision of the official body. The SFS classifies certain information as official information (about tax inspections, activities with respect to state secrets, software and digitalisation, law enforcement activities, etc).

23 Is the tax authority subject to non-judicial oversight?

The SFS is coordinated by the Cabinet of Ministers through the Minister of Finance. The Minister of Finance is responsible for issuing obligatory orders to the SFS. He or she has competence to approve the appointment and dismissal of heads of structural and territorial bodies. The Minister of Finance may initiate before the Cabinet of Ministers the cancellation of regulatory acts of the SFS. The initiation of disciplinary responsibility of the officers or internal investigation in the SFS is also the competence of the Minister of Finance. Moreover, the SFS is responsible for the submission of monthly reports about its activity to the Ministry of Finance.

The compliance of tax authority officials with the laws and, especially, anticorruption laws is controlled by the state law enforcement bodies, including the National Anticorruption Bureau of Ukraine.

In addition, taxpayers may address the Business Ombudsman to investigate complaints concerning alleged acts of corruption and other violations of legitimate interests of businesses by actions, omissions

Update and trends

On 6 July 2018, the President of Ukraine submitted to the Verkhovna Rada a draft law 'On Introduction of Changes to Tax Code of Ukraine Regarding Distributed Profit Tax' (the Distributed Profit Tax Law) that, if adopted, will replace the corporate profit tax, starting 1 January 2019. The tax regime would be similar to the regime used by Estonia and the regime adopted by Latvia this year. Distributed Profit Tax Law proposes to levy a tax on profit distribution transactions at rates of 5 per cent, 15 per cent and 20 per cent (depending on the type of transaction).

On 23 July 2018, the acting Minister of Finance of Ukraine signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI). Ukraine has become an 83rd jurisdiction to sign the MLI. Upon Ukraine ratifying the MLI, its provisions will become effective and will supersede the respective double tax treaties in force between Ukraine and those jurisdictions that sign and ratify the MLI by then. The envisaged MLI modifications to tax treaties include the introduction of provisions with regard to preventing treaty-shopping arrangements, limitation of benefits under the treaties, among others.

and decisions on behalf of state authorities, including tax authorities and their officials.

An investigation may be initiated by complaint of a taxpayer or on the Business Ombudsman's own initiative if he or she discovers the alleged act from any source.

Upon completion of the investigation, Business Ombudsman takes one of the following decisions:

- to provide recommendations to the tax authority within the scope of their administration as to how to address the issue in question;
- to submit the complaint to the tax authority with a request to investigate the matter further; or
- to dismiss the complaint as unsubstantiated.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

Since the Administrative Procedure Code came into force on 1 September 2005, all tax disputes have been referred to the jurisdiction of the system of administrative courts of Ukraine.

The system of administrative courts includes:

- local administrative courts as courts of first instance;
- appellate administrative courts as courts of second instance; and
- the Supreme Court as the court of third instance.

In exceptional circumstances, a motion for judicial review may be filed with the Supreme Court and the case will be reviewed by the Great Chamber of the Supreme Court.

25 How can tax disputes be brought before the courts?

The legal grounds for addressing the tax dispute to the administrative court is for the protection of the taxpayer's rights, freedoms and interests.

Taxpayers have six months to file a claim before the administrative court. This period is calculated from the date of receiving a decision from the tax authority and, if a taxpayer used his or her right for administrative appeal, the three-months term calculated finalising the administrative appeal procedure within the tax authority is applicable. Please note that this general term is applicable for challenging tax assessment notices as, according to the clarification of the Highest Administrative Court of Ukraine, a taxpayer has 1,095 days (three years) to challenge a tax assessment notice.

The court fee for filing a claim challenging the tax authority's assessment is established to be 1.5 per cent of the amount of the claim but may not be less than 1,841 hryvnia (1,921 hryvnia from 1 December 2018) and is capped at 644,350 hryvnia (672,350 hryvnia from 1 December 2018).

The enforceability of the tax assessment notice is suspended once a claim has been filed by the taxpayer with the court of first instance within 10 days upon the receipt of such notice by the taxpayer. The enforceability of the notice is normally suspended until the court of second instance has rendered its enforceable decision in the case.

The taxpayer may seek in administrative court the cancellation of the tax assessment notification in full or in part:

- because it contradicts Ukrainian legislation;
- because it obligates the tax authority to conduct certain actions (or refrain from them); or
- in order to request collection of funds from the tax authority.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

The court may decide to bring together the separate tax claims of one taxpayer or similar tax claims of different taxpayers. However, in practice, the Ukrainian administrative courts seldom use this right in tax cases.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

No, the taxpayer disputing a tax assessment does not pay the amount in dispute before bringing a tax claim. The taxpayer must pay the court fee, which depends on the amount of tax assessment that he or she wants to challenge.

28 To what extent can the costs of a dispute be recovered?

Under the Administrative Procedure Code, the court costs include the court fee and expenses connected with consideration of the case. The court fee is payable by the taxpayer filing the claim or appeal. Expenses connected with consideration of the case include:

- the cost of legal assistance;
- the costs of parties and their representatives getting to court;
- the costs with regard to involving witnesses, experts, translators and conducting forensic examination; and
- the costs of reviewing evidence where it is located.

The general rule is that the court awards compensation for the court expenses of the winning party from the party that lost the case. The idea is that the winning party should not bear losses due to court proceedings.

If the court decision is awarded in favour of the taxpayer, the court awards compensation for the court costs of the taxpayer against the tax authority. These costs must be confirmed by documents.

If the court decision is in favour of the tax authority, the taxpayer must compensate the tax authority for the cost of involving witnesses and conducting forensic examinations.

If the court decides to partially satisfy the claims of the taxpayer (or tax authority), then the compensation for court costs is awarded to each side in proportion to the satisfied claims.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

Ukrainian legislation does not provide any restrictions or rules on third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

The decision maker in the local administrative courts is the judge hearing the case. In exceptional cases (eg, challenging a resolution of the Cabinet of Ministers of Ukraine), the panel of judges will consider the case in a local administrative court. In appellate administrative courts, tax disputes are heard by a panel of three judges and, in the Supreme Court, by a panel of three judges or more (the number of judges will be odd).

No jury trial is available to hear tax disputes.

31 What are the usual time frames for tax trials?

As a general rule, the local administrative court must review the case with respect to substantive matters and issue a decision within 90 days from the date of opening of the case. However, in practice, such time frames are extended and the decision of the first instance court can take up much more time depending on the circumstances of the case.

The appellate administrative courts should review the appeal complaints within 60 days after opening the appeal proceedings.

However, due to the fact that the tax authority appeals almost all decisions made not in its favour, a taxpayer should be prepared for cassation appeal of the appellate administrative court decision. In Ukrainian court practice, it is common that the final decision of the Supreme Court in tax trials is awarded more than a year after the initial filing of the tax claim.

32 What are the requirements concerning disclosure or a duty to present information for trial?

The Administrative Procedure Code provides that the position and arguments of the each party to the case, including the taxpayer, should be supported by evidence.

33 What evidence is permitted in a tax trial?

The administrative courts accept witness testimony along with the other forms of generally accepted evidence – oral and documentary. The taxpayer is not required to testify in tax disputes.

The administrative courts recognise electronic documents as documentary evidence. In practice, taxpayers usually submit documents generated from electronic sources (eg, printouts of emails) as evidence. It is unlikely that the administrative court will make a decision in tax trials based on electronic documents as evidence alone.

Upon request of either party, but at the court's sole discretion, the court may order expert examination of issues that require specialist knowledge. Expert opinions must be given by competent agencies or individual specialists. Furthermore, they must contain a detailed description of the analysis performed and the conclusions reached, as well as providing substantial answers to the questions raised by the court.

In general practice, all evidence reviewed by the administrative court should be translated into Ukrainian; otherwise such evidence may be considered inadmissible.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Taxpayers may represent themselves in tax trials. In addition, they may appoint representatives to represent them.

Recent amendments to the Constitution of Ukraine regulate representation of taxpayers before the courts. Before 1 January 2017, any duly authorised individual could represent any person in court, except for criminal proceedings. From 1 January 2018, only state-licensed advocates are allowed to represent clients in appeal and cassation matters. From 1 January 2019, this will also be the case for the courts of first instance. Also, a person who is authorised by statutory documents of a legal entity to represent it without power of attorney is entitled to represent it before the court of any instance.

In tax trials, the same rules are applied to the tax authority.

35 Are tax trial proceedings public?

Tax trial proceedings are public. However, in exceptional cases, the administrative court may declare a court session or a part of it as closed.

Grounds for declaring court proceeding as closed include, among others, non-disclosure of state secrets or other secrets protected by law, protection of privacy or protection of the interests of a minor.

36 Who has the burden of proof in a tax trial?

As a general rule, a taxpayer may not be held liable for a tax violation and, thereby become subject to tax penalties, unless the tax authorities prove that the taxpayer is at fault. The tax authorities have the burden of proof regarding those facts and circumstances that establish or substantiate the tax claim brought by them. In practice, this is not a very heavy burden for the tax authorities to prove.

37 Describe the case management process for a tax trial.

The case-management process for a tax trial may be divided into the following sections:

- receipt of the claim and opening of the proceedings;
- preparatory proceedings;
- court hearings; and
- award of a decision.

After receiving the court claim in tax trials, the judge of the local administrative court reviews the claim regarding compliance with requirements set out by the Administrative Procedure Code. If the claim is not compliant then the judge may, depending on the circumstances of the case, return it to the claimant; leave it without consideration; or deny opening the proceedings. If the claim is compliant then the judge opens the proceedings.

If the claim complies with all formal requirements, the judge opens preparatory proceedings within which the following actions are taken:

- request documents or other materials, review evidence and appoint forensic examination;
- take a decision on the required appearance of the parties, including third parties;
- call in a witness, expert or translator; and
- appoint a preliminary court hearing.

During the preliminary court hearing, the judge reviews the claim and objections; reviews the persons involved in the case; reviews the facts to be discovered during the proceeding and whether the facts of the case are disputed or accepted by the parties; specifies the list of evidence that the parties intend to bring and the time for their submission; and sets the date and time of the court hearing.

A standard trial process in Ukraine includes the following stages:

- opening statement by the (presiding) judge, introducing the parties and their representatives, subject matter of the dispute, composition of the court, party's rights and other formal issues;
- consideration of the procedural motions of the parties and other involved persons (includes announcement of the motion and grounds thereto, hearing of the parties' opinions, and delivery of the court's decision);

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- formal questioning of the parties about whether they support, respectively, their claim and objection and whether they wish to make a settlement agreement;
- opening statements by the parties (the explanations);
- determination by the court of the order and schedule of proceedings, including the order of appearance of the witnesses. In practice, this stage is often omitted, especially when there are no witnesses in the case;
- examination of evidence (including witnesses, documents, tangible evidence, video or audio recordings, expert opinion);
- closing statements by the parties (the debates); and
- retirement of the court for deliberation in camera and announcement of the decision. Often the court may announce only the resolution part of the decision, providing the full text within a five-day period from the announcement of the resolution part.

38 Can a court decision be appealed? If so, on what basis?

The administrative court decision may be appealed to the appellate administrative court by filing an appeal complaint. Such appeal complaint should be filed with the first instance court within 30 days after the decision is announced (15 days after the ruling was given) or, in cases when whole text of the decision is prepared at a later date, within 30 days after the decision was rendered or 15 days after the ruling was given by the first instance court.

Similar to the court of first instance, the appellate administrative court may either change the decision of the court of first instance or cancel it and render a new decision in the case. Decisions of the appellate administrative court may be further appealed by filing a cassation complaint. A cassation complaint may be filed with the Supreme Court within 30 days from the date the decision was rendered or ruling was given by the appellate administrative court.

United Kingdom

Dominic Robertson, Richard Jeens and Charles Osborne

Slaughter and May

Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The legislation governing the administration of, and the process for dealing with disputes relating to, tax is not located in a single statute. For example, the Taxes Management Act 1970 contains rules for the administration of direct taxes on individuals, the Finance Act 1998 contains rules for the administration of corporate income tax and the Value Added Tax Act 1994 contains rules for the administration of value added tax (VAT).

In addition to being found in primary legislation, rules relating to tax administration and tax controversies are also found in secondary regulations. These regulations include rules relating to particular taxes, such as the Value Added Tax Regulations 1995, but also the rules governing how disputes are brought before the UK tax tribunals, such as The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The UK tax authority also publishes guidance that, although not binding, sets out its approach to certain issues.

International legislation and treaties, including double tax treaties (of which the UK has an extensive network) and EU law, may also bind taxpayers and the UK tax authority.

In addition to the legislation and treaties described above, decisions of the UK and EU courts are also binding on taxpayers and the UK tax authority.

2 What is the relevant tax authority and how is it organised?

The relevant tax authority is Her Majesty's Revenue & Customs (HMRC). Although HMRC is a government department, ultimately accountable to the Chancellor of the Exchequer, government ministers are not involved in its day-to-day activities.

The legal powers given to HMRC are vested in persons known as the Commissioners for Her Majesty's Revenue & Customs (Commissioners). There are two key managerial bodies within HMRC – the Executive Committee and the HMRC Board – which are broadly analogous to the senior executive team and a supervisory board within a company.

Decisions around tax disputes are taken at various levels of HMRC, depending on the significance and sensitivity of the dispute. Three of the Commissioners sitting together make decisions on the most significant and sensitive disputes. In reaching their decisions, these Commissioners consider the recommendations of the Tax Disputes Resolution Board, which is made up of senior representatives across HMRC. Decisions about the next level down of dispute are referred to case boards that sit within the various business areas of HMRC, and are made up of senior leaders across the department. There are several different case boards, including Enforcement and Compliance; Large Business; Specialist Personal Tax; Diverted Profits; and Transfer Pricing. A large transfer pricing case may need to be approved by the Transfer Pricing Board, the Tax Dispute Resolution Board and the Commissioners. HMRC also has a Penalty Consistency Panel.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

The UK tax system is fundamentally a self-assessment system: generally, individuals and companies are required to self-assess their liability to tax and file a return with HMRC stating their tax liability for the particular period in question.

HMRC is able to open an enquiry into a self-assessment return within 12 months of it being filed. HMRC may open such an enquiry without giving any justification for doing so, and the enquiry can be into any aspect of the return. On opening an enquiry, HMRC typically sets out the specific issues that it wishes to enquire into. HMRC is not bound by the contents of the initial enquiry notice, and may narrow or expand the scope of its enquiry at any time.

There is no legislative deadline by which time HMRC must have completed its enquiry but, where an enquiry takes an unduly long time, taxpayers are able to apply to a tribunal for a direction that HMRC closes the enquiry.

Once HMRC closes an enquiry (using a closure notice), recent case law suggests that the matters that can then subsequently be disputed in relation to the particular return are limited to what is referred to in the closure notice.

HMRC does not enquire into every self-assessment return that it receives, instead choosing which returns to enquire into based on risk factors, such as the taxpayer's size, record of compliance, use of tax avoidance schemes and involvement in cross-border transactions. In any event, the taxpayer itself is under an obligation to retain all records and documents that were required in order to produce a full and accurate tax return for, generally, a minimum of six years.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Individuals and companies are required to self-assess their liability to tax and file a return with HMRC, stating their tax liability for the return period. The period in relation to which the individual or company is required to compute their tax liability will depend on the tax in question and the nature of the taxpayer. For example, companies compute their income tax liability by reference to accounting periods that are 12 months in duration, and are required to file their tax return within 12 months of the end of the accounting period in question. VAT liability is typically computed quarterly.

Both individuals and companies may have to make payments on account to HMRC.

HMRC's ability to open an enquiry into a tax return or issue a 'discovery' assessment applies equally to individuals and companies. The duration of any enquiry will generally depend on the complexity of the taxpayer's affairs.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

HMRC has formal powers to request information from taxpayers, but also commonly requests information informally. Formally, subject to restrictions in the case of information or documents subject to legal professional privilege (LPP) (see question 7), and to a limited right to appeal, HMRC has the power to require a taxpayer to provide information or to produce a document if the information or document is reasonably required by HMRC for the purpose of checking the taxpayer's tax position. HMRC can also require a third party to provide information or produce documents in relation to a taxpayer's tax affairs if that information or document is reasonably required to check the taxpayer's tax position. In both cases, HMRC cannot require anyone to produce a document that is not in their possession or power (but note the record-keeping obligation described above).

HMRC may also inspect a taxpayer's business premises and other property in the exercise of its functions.

Although HMRC's formal powers to interview taxpayers and the employees of taxpayers are generally triggered only in cases of fraud or criminal investigations, in practice, it is quite common for HMRC to informally request such interviews.

6 What actions may the agencies take if the taxpayer does not provide the required information?

Failure to comply with a formal information request from HMRC can result in penalties (see questions 11, 12 and 13). Criminal consequences may arise in cases of concealment of information or fraud.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

Subject to specific exemptions in relation to criminal conduct, the key protection for taxpayers in this area is LPP. The two forms of LPP that are most likely to apply are:

- legal advice privilege, which applies to confidential communications that pass between a lawyer and a client for the purpose of obtaining legal advice; and
- litigation privilege, which applies to confidential communications that are made for the dominant purpose of existing, pending or completed litigation that pass between (i) a lawyer and a client; and (ii) a lawyer, client or a third party.

Under its normal powers, HMRC is not able to request or inspect any document protected by LPP, though HMRC may (and frequently does) dispute whether or not particular documents are subject to LPP.

Subject to a number of limited exceptions, HMRC officials are prohibited by statute from disclosing to any third party any information that is held by HMRC in connection with its functions. There are criminal sanctions for breach of that prohibition if the breach relates to a person whose identity is specified in the disclosure or can be deduced from it.

8 What limitation period applies to the review of tax returns?

HMRC is able to open an enquiry into a self-assessment return within 12 months of it being filed.

Once the time limit for opening an enquiry into a tax return passes, or HMRC formally closes its enquiry into a particular tax return, the tax return is generally regarded as final. In such circumstances, HMRC can only collect further tax by raising a discovery assessment.

A discovery assessment is raised by HMRC on 'discovery' (which can extend to a change of heart by HMRC) that a taxpayer has been under-assessed to tax, or has been given excessive relief from tax. Formally, a discovery assessment can only be raised by HMRC where one of the following conditions is satisfied:

- the under-assessment to tax or excessive relief was brought about carelessly or deliberately by the taxpayer or someone acting on his or her behalf; or
- at the time that the 12-month time limit for enquiry into the relevant return expired or HMRC formally closed its enquiry into the relevant return (as applicable), a hypothetical HMRC officer could

not reasonably be expected, on the basis of the information then available to him or her, to be aware of the under-assessment to tax or excessive relief.

The second of these conditions has been interpreted by the courts very widely.

Where only the second of these two conditions applies, a discovery assessment can only be made within four years from the end of the period to which the assessment relates.

In cases involving a loss of tax brought about carelessly by the taxpayer, a discovery assessment can be made within six years from the end of the period to which the assessment relates. Where such a loss of tax is brought about deliberately, a discovery assessment can be made within 20 years from the end of the period to which the assessment relates.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

HMRC has set out its approach to the resolution of tax disputes in its Litigation and Settlement Strategy document (LSS), which gives HMRC a number of options other than formal litigation.

Once a notice of appeal has been given to HMRC, but before a tax dispute proceeds to the tribunal, taxpayers may request that HMRC carries out an internal review of their case. This review will be carried out by an officer of HMRC who has not been involved in the taxpayer's case to date. It is up to HMRC to choose the nature and extent of the review. Around 20 per cent of these reviews result in a reversal or amendment of HMRC's initial decision.

Settling tax disputes in the UK using ADR is a relatively recent development that, given the potential savings that it can result in for both taxpayers and HMRC, may become increasingly common. ADR commonly uses mediation and may be suitable to deal with some tax disputes, but HMRC has made clear that it does not consider it appropriate in cases that turn on a point of law.

It is possible to conclude a contractual settlement agreement with HMRC; however, the LSS sets out a number of restrictions on this:

- HMRC will only agree to such a settlement where it considers that it is better off overall (ie, considering both tax receipts and the use of HMRC resources) to settle than to pursue a claim in the courts;
- where HMRC believes that it has a 51 per cent or better chance of winning a binary dispute, it will not settle for less than 100 per cent of the tax; and
- there must be a technical basis for any settlement outcome.

10 How may the tax authority collect overdue tax payments following a tax review?

HMRC has a wide range of enforcement options available to it, including:

- seizing certain of the taxpayer's goods in order to compel the payment of tax. If the taxpayer continues to refuse to pay, HMRC can arrange for the goods to be sold at auction;
- recovering tax through the civil courts. Where this is unlikely to be effective, HMRC can seek a bankruptcy or winding-up order against the taxpayer;
- recovering tax against taxpayers who are employees through deduction at source on their employment income;
- demanding security for debts of certain taxes; and
- recovering the tax from third parties if the person primarily liable does not pay it.

Legislation was introduced in 2015 that allows HMRC to collect tax due to it directly from taxpayers' bank accounts in the UK provided that the sum that HMRC seeks to collect exceeds £1,000. This is intended to be a measure of last resort.

11 In what circumstances may the tax authority impose penalties?

Generally, HMRC may impose penalties for:

- inaccuracies in tax returns and documents;
- failures to notify HMRC of a liability to tax;
- failures to file returns on time; and
- failures to pay tax on time.

There are also distinct penalty regimes relating to failure to comply with HMRC information requests and for the promotion or use of tax-avoidance schemes.

12 How are penalties calculated?

Penalties for inaccuracies in tax returns and documents and for failures to notify HMRC of a liability to tax are often described as ‘tax-geared’ penalties, meaning that they are calculated as a percentage of the tax that is due. The amount of the percentage will depend on whether the inaccuracy or failure was careless, deliberate, or deliberate and concealed and also whether the discovery of the increased liability to tax was voluntarily disclosed to HMRC or not.

Penalties for a failure to file a return or pay tax on time differ depending on the tax to which the failure relates. These penalties often start as requirements to pay fixed amounts, but can become fixed daily penalties or tax-geared penalties, depending on the nature and length of time for which the failure continues.

Penalties for failure to comply with HMRC information requests start as a requirement to pay a fixed amount, with a variable daily default penalty. Tax-geared penalties will apply in cases of continued failure to comply.

The raising of penalties is subject to review by HMRC’s Penalty Consistency Panel.

13 What defences are available if penalties are imposed?

Penalties for a non-deliberate failure should generally not apply if there is a reasonable excuse for the failure. HMRC takes a restrictive view on what amounts to a reasonable excuse, with not having enough money to pay the tax generally not being sufficient. Reliance on an agent (such as accountants or lawyers) may be a reasonable excuse, or, more likely, indicates that the taxpayer has taken reasonable care.

Penalties may be suspended in situations where the failure is a ‘one-off’.

14 In what circumstances may the tax authority collect interest and how is it calculated?

Interest becomes due when tax is paid late. HMRC publishes a late payment interest rate on its website. This rate is currently the Bank of England base rate plus 2.5 per cent.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Criminal consequences will generally require fraudulent or dishonest conduct by the taxpayer. Where HMRC suspects a person of acting fraudulently, it has certain criminal investigation powers that go beyond its usual powers.

Traditionally, corporates were generally only criminally liable for the actions of their employees and other associated persons if the controlling mind of the corporate is proved to have been involved in the relevant criminal behaviour. However, following recent global tax scandals, in 2017 the UK government introduced a new strict-liability, US-style approach, where the burden is on corporates to demonstrate that appropriate prevention procedures were in place in order to avoid a criminal charge of ‘failing to prevent’ a tax-related crime committed by someone else.

The consequences of being found guilty of a tax-related crime depend on the taxpayer involved. For individual taxpayers and for the directors of corporations, fines and prison sentences are available. For the corporations themselves, fines are available.

16 What is the recent enforcement record of the authorities?

The majority of tax disputes are resolved before proceeding to the tribunal, with one or other party conceding, or reaching a compromise settlement (which, to comply with HMRC’s Litigation and Settlement Strategy, must be a technically justified outcome). In those cases that do proceed to court, HMRC’s enforcement record is good, particularly in cases involving perceived tax avoidance. In 2017/18, the First-tier Tribunal ruled in HMRC’s favour in 78 per cent of the tax disputes that it heard.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority’s review of a taxpayer’s returns?

Yes. With the approval of the taxpayer or the tribunal, HMRC can require a third party to provide information or produce documents if that information or document is reasonably required to check the taxpayer’s tax position. HMRC cannot require the third party to produce a document that is not in its possession or power, and the LPP rules in the answer to question 6 apply.

HMRC may also inspect a third party’s business premises and other property in the exercise of its functions. Recent case law suggests that the taxpayer does not need to be given an opportunity to make representations to HMRC opposing the inspection of the third party’s premises where the tribunal gives permission for such an inspection.

If the third party is an auditor, such third party cannot be required to provide information held in connection with the performance of carrying out a statutory audit. Likewise, any person appointed to give advice about the tax affairs of another person cannot be required to produce documents that consist of relevant communications with that person’s client or another tax adviser of the client related to advice on that client’s tax affairs.

Failing to comply with an information request by HMRC may result in penalties (see questions 11, 12 and 13).

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Yes. HMRC cooperates with a variety of other authorities in the UK, including the National Crime Agency, the Serious Fraud Office, the Financial Conduct Authority and Her Majesty’s Treasury.

HMRC also increasingly cooperates with the tax authorities in other countries to share information. In particular, the UK has entered into many Tax Information Exchange Agreements with other jurisdictions, under which HMRC and the relevant tax authorities agree to cooperate in tax matters through the exchange of information. HMRC also exchanges information with other tax authorities under the joint Council of Europe/OECD Convention on mutual administrative assistance in tax matters, numerous EU directives and regulations and many of the UK’s double taxation treaties.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

HMRC may agree to scheduled payment plans in cases where the taxpayer’s means or situation make it difficult to pay the full amount of tax owed on time. Late payment interest will continue to apply on any tax not paid by the due date.

20 Are there any voluntary disclosure or amnesty programmes?

HMRC has historically operated a number of campaigns designed to encourage individuals to voluntarily disclose under-declared income. By disclosing as part of one of these schemes, taxpayers would be treated as having made a ‘voluntary’ disclosure to HMRC, giving the taxpayer the most favourable outcome when it comes to levying applicable penalties.

HMRC has also operated schemes allowing settlement opportunities for the users of certain marketed tax-avoidance schemes. The aim is to offer taxpayers and HMRC the best opportunity to resolve disputes in these areas in a way that is both cost-effective and consistent. Where people decline the settlement opportunity, HMRC will move to take legal action against such taxpayers as swiftly as possible.

Given the current climate of cracking down on tax avoidance, whether any similar schemes will be launched in the future is uncertain.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

HMRC has published a non-binding taxpayer charter that sets out the rights and responsibilities of HMRC and taxpayers in relation to one another. For example, the charter provides that taxpayers can expect HMRC to provide a helpful, efficient and effective service, to protect

Update and trends

Although tax, and particularly perceived tax avoidance, has perhaps received less attention in the UK media this year than in previous years, the UK's legislative calendar remains full of tax-related proposals. In addition, certain changes made by the UK Government in recent years are only now starting to be considered and have an impact. For example, at the end of September 2017, the UK Government introduced a new strict-liability criminal offence for corporates of 'failing to prevent' a tax-related crime committed by someone else (see question 15), which many corporates are still getting to grips with.

In addition, HMRC's greater interest in transfer pricing, especially since the introduction of the diverted profits tax in 2015, continues to result in a significant increase in the number of transfer pricing enquiries being undertaken. Coupled with this, there has been a marked change in the nature of HMRC's approach to these enquiries, which now involves seeking out a detailed understanding of the taxpayer's circumstances and activities using the full range of tools available to HMRC, including requests for documentary evidence, employee interviews and, occasionally, email reviews. This new style of enquiry continues to represent a considerable burden for taxpayers (both in terms of their internal resources and financially) and means that dispute-resolution tactics and evidence-gathering skills are an essential consideration early on (as well as technical tax input).

taxpayers' information and respect their privacy, and to deal with complaints quickly and fairly. Among other things, HMRC expects taxpayers to keep accurate records, to keep HMRC informed and to respond in good time. In addition, although not binding on HMRC, HMRC has published guidance for its employees on resolving tax disputes in the LSS that can be used by taxpayers as a helpful guideline on how HMRC will approach disputes.

HMRC also has well-established internal governance procedures and is ultimately subject to judicial review procedures (see question 25) and parliamentary oversight (see question 23) in the discharge of its functions.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Taxpayers can request information from HMRC pursuant to the provisions of the Data Protection Act 1998 (DPA 1998) and the Freedom of Information Act 2000 (FOIA 2000).

Under DPA 1998, taxpayers may request personal information that HMRC holds about the taxpayer. HMRC must comply with requests within 40 days. HMRC may withhold information where, for example, release would be likely to prejudice the prevention or detection of crime, the apprehension or prosecution of offenders, or the assessment or collection of any tax or duty.

Under FOIA 2000, taxpayers may request any recorded information held by HMRC (other than in relation to personal information, for which see previous paragraph). A request under the FOIA 2000 must be made in writing, and HMRC must respond within 20 working days.

23 Is the tax authority subject to non-judicial oversight?

HMRC is subject to internal reviews, publishes annual reports setting out its performance for the year in question and is ultimately accountable to the Chancellor of the Exchequer (see question 2) and various parliamentary committees.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

Generally, the court of first instance for tax disputes is the tax chamber of the First-tier Tribunal. Occasionally, disputes with no contested facts that instead turn on a particularly complex point of law, or that involve a particularly large sum of tax, will bypass this stage. Such cases, and cases on appeal from the First-tier Tribunal, will be heard in the tax and chancery chamber of the Upper Tribunal.

In England and Wales, appeals from the Upper Tribunal are heard by the Court of Appeal and from there proceed to the Supreme Court, the highest court in England and Wales. There is an equivalent process for tax disputes proceeding through the Scottish courts.

The European Court of Justice and the European Court of Human Rights can also hear tax disputes, particularly cases involving EU or VAT.

Criminal cases or cases involving judicial review (see question 25) may be heard in other courts, such as the Crown Court or the Administrative Court.

25 How can tax disputes be brought before the courts?

Appeals can generally be brought against any final decision of HMRC to levy tax or penalties. There is no minimum monetary threshold before an appeal can be brought.

In order to bring a claim before the courts, a taxpayer must first give HMRC notice of appeal against the final decision in question. The deadline for doing so is usually within 30 days of the decision being appealed. The taxpayer must then raise the appeal with the tribunal (as discussed in question 24, this will generally be the First-tier Tribunal). Only the taxpayer has the standing to appeal to the tribunal.

As well as the traditional method of bringing a tax appeal, the decisions of UK public bodies (including HMRC) may be reviewed in certain circumstances using judicial review. Where an appellant successfully brings a judicial review challenge in respect of a public body's decision, the public body can be required to revisit its decision and the reasoning behind it.

There are strict requirements that must be satisfied about when a judicial review claim can be brought (particularly as to timing), and the extent of the failings of the public body, before a court will agree to hear a judicial review appeal. The First-tier Tribunal cannot hear judicial review claims.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Yes. The tribunals and courts have broad case management powers (see, for example, question 33), which allow the tribunal or court in question to bring multiple claims together so that they are heard at the same time, to make group litigation orders, and to direct that a number of cases that turn on the same point of law to be stayed pending the outcome of a lead case. Such orders can be made by the tribunal or court on its own initiative, or at the request of the parties.

Usually, where a number of cases turn on the same point of law, HMRC and the relevant taxpayers will agree which case is the most suitable to proceed as the lead case, and ask the tribunal to issue a direction on this basis. Where, however, agreement cannot be reached, the parties may make representations to the court, and a hearing may occur during which the tribunal will decide which case is to be the lead case.

Where a particular issue is relevant to multiple tax returns of a single taxpayer, HMRC may agree with the taxpayer that a decision in relation to one particular tax return will govern the outcome of the disputes relating to each tax return.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Generally, no. However, in certain cases involving indirect taxes or diverted profits tax or, since July 2014, perceived tax avoidance, taxpayers may be required to do so.

If the taxpayer ultimately loses its appeal before the courts, the penalty and interest obligations in respect of the tax in dispute will run from the original payment deadline, and not from when the dispute is finally concluded.

Taxpayers may, however, apply for a postponement of any tax due that, if accepted, effectively puts a stop on any penalties pending determination of the substantive dispute. If the taxpayer loses a direct tax appeal at first instance then, notwithstanding any onward appeal to the Upper Tribunal, the taxpayer must pay the disputed tax in question.

28 To what extent can the costs of a dispute be recovered?

Generally, costs can only be recovered in the First-tier Tribunal if the case is complex or if the tribunal considers that one of the parties has acted unreasonably in bringing, defending or conducting the proceedings.

In the Upper Tribunal, Court of Appeal and Supreme Court, the general approach is that the unsuccessful party will be ordered to pay a proportion of the costs of the successful party.

However, the tribunal or court may choose not to take this approach where, for example, the conduct of the successful party is such that it appears appropriate to penalise it by not awarding costs in its favour.

It is generally difficult for litigants in person (see question 34) to recover costs.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

There are no formal restrictions on the use of third-party funding or insurance for the costs of a tax dispute. Many third-party funders are members of the Association of Litigation Funders, which issues a code of conduct that sets out rules governing the relationship between a funder and its client and provides clarity on issues such as case control, settlement and withdrawal. Insurance companies that issue policies of legal expenses insurance are regulated in England and Wales by the Financial Conduct Authority and the Prudential Regulation Authority.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

This depends on which court the proceedings are before. In the First-tier Tribunal and the Upper Tribunal, decisions are generally made by a panel made up of judges or judges and lay members (individuals who are not legally qualified but who have other relevant professional qualifications or experience), but they may also be made by a single judge sitting alone. Whom the case is heard by will depend on the nature of the case.

Where there is a panel, decisions are taken based on a simple majority, with the presiding member of the panel having the casting vote in tied decisions.

In the Court of Appeal and Supreme Court, decisions are taken by a panel of judges deciding based on a simple majority.

Jury trials are not used in tax disputes unless these are part of criminal proceedings.

31 What are the usual time frames for tax trials?

The time frame for each trial will vary according to the complexity of the dispute in question.

32 What are the requirements concerning disclosure or a duty to present information for trial?

In the run-up to any tax trial, each party will disclose to the other a list of documents on which it proposes to rely. Should one party form the view that the other is in possession of relevant material that it is not disclosing, that party may request the tribunal to direct that the other party provides documents, information or submissions.

Recent case law suggests that, in cases involving complex issues or serious allegations, there may be a presumption that parties will be under a duty to disclose all relevant material, not just that on which either seeks to rely.

In practice, the parties will often try to agree a statement of agreed facts to save the court having to hear evidence on points that are already agreed.

33 What evidence is permitted in a tax trial?

The First-tier Tribunal has extensive case management powers to control what evidence is admitted (whether oral or documentary).

The tribunal may permit the testimony of various witnesses of fact (including the taxpayer) and expert witnesses. There is no requirement that the taxpayer gives testimony; however, if a question of fact turns on an issue that the taxpayer ought to be able to give evidence on but chooses not to, the court may draw certain inferences from this.

Nonetheless, in many tax trials, even where testimony is permitted, there will be no need for the witnesses to take to the stand, with their pre-prepared witness statements standing as evidence before the tribunal.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

A taxpayer can appear as a litigant in person before the full range of courts that deal with tax trials, from the First-tier Tribunal to the Supreme Court.

Taxpayers may also appoint a representative to represent them before the full range of courts. Before the First-tier Tribunal and Upper Tribunal, this representative does not need to be legally qualified. Before the Court of Appeal and the Supreme Court, however, this representative must be a barrister.

Where a taxpayer cannot afford representation, public funding may be available on a means-tested basis. There are also a range of organisations and individuals, including lawyers, who may be able to provide pro bono advice and representation to taxpayers.

HMRC is generally represented by barristers who are appointed and briefed by the HMRC Solicitor's Office.

35 Are tax trial proceedings public?

Generally, yes. A tribunal or court may grant permission for proceedings to take place in private, but this will only be granted in exceptional circumstances.

36 Who has the burden of proof in a tax trial?

The burden of proof is normally on the appellant. In the context of a first instance tax trial, this will normally be the taxpayer.

37 Describe the case management process for a tax trial.

All of the tribunals and courts that deal with tax trials have extensive powers to manage proceedings. These powers include the ability to require expert evidence, to compel the attendance of witnesses and to consolidate cases. Although the tribunals and courts can issue directions on their own initiative, it is more common for the parties to apply for directions. In general, the parties will agree directions for the management of the case between themselves, but if they are unable to do so

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the tribunal or court will list a preliminary hearing at which the judge will issue relevant case management directions.

38 Can a court decision be appealed? If so, on what basis?

Yes, with permission. At each of the First-tier Tribunal, the Upper Tribunal and the Court of Appeal, the losing party can apply for permission to appeal to both the tribunal or court in which it has just lost and the higher tribunal or court.

Appeals from the First-tier Tribunal must be applied for within 56 days of the decision. Appeals from the Upper Tribunal must be applied for within one month. Appeals from the Court of Appeal must be applied for within 28 days.

Appeals may generally only be made in respect of points of law. However, in certain cases, where the finding of facts is such that no judge acting properly could have come to the determination under appeal, this may be extended.

United States

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

Tax administration and controversies are governed by the Internal Revenue Code (the IRC), Title 26 of the United States Code. The IRC is amended from time to time by tax acts passed by Congress and those acts contain effective dates and transition rules. The Internal Revenue Service (the IRS) officially interprets the IRC through Treasury regulations, revenue rulings and revenue procedures, and provides additional guidance in announcements, notices and publications. In addition, the US is party to income tax treaties with numerous foreign countries, under which residents of foreign countries may be taxed at a reduced rate or may be exempt from US income taxes on certain items of US source income.

2 What is the relevant tax authority and how is it organised?

The IRS has authority to administer and enforce the IRC. The IRS is supervised by its Commissioner and its enforcement operations are divided into major divisions entitled Large Business and International (LB&I), Small Business/Self-Employed, Tax Exempt and Government Entities, Wage and Investment and Criminal Investigation. The IRS Chief Counsel provides legal interpretations and the Office of Appeals seeks to settle disputes between the IRS and taxpayers. Other departments provide administrative support and govern practice before the IRS by attorneys and other qualified tax practitioners.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

Compliance is verified by examination of tax returns. Tax returns may be randomly selected, identified by comparing the return to information reported to the IRS or chosen based on the size of the taxpayer or the compliance risk resulting from the taxpayer's status or operations. Tax returns may be examined by mail or during in-person interviews at an IRS office. Larger taxpayers typically have their tax returns examined at their place of business. Depending on the complexity of the return, examinations may be completed in months or over the course of several years. Taxpayers admitted into the IRS's Compliance Assurance Process (CAP) work with the IRS to identify and resolve tax issues before the tax return is filed, generally resulting in shorter and narrower post-filing examinations.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Whether a US citizen or resident alien must file an annual federal income tax return depends on the individual's gross income, filing status, age and dependent status. Some individuals may file a return even if they owe no tax, for example, to recover withheld taxes or refundable tax credits. Citizens or residents of the US also must file gift tax returns and estate tax returns, when appropriate.

All domestic US corporations, including corporations in bankruptcy, must file annual corporate income tax returns, whether or not they have taxable income. Likewise, partnerships must file annual information returns to report their income, deductions, gains and losses from operations. Numerous other information returns may also be required, most commonly to report wages, interest, dividends or other items paid. Information returns also must be filed by US persons who own foreign business entities, by US corporations that are foreign owned and by foreign corporations operating in the US (IRC Section 6038, 6038A, 6038C).

While all tax returns are subject to IRS examination, high-income individuals and large corporations are more frequently audited. For fiscal year 2014, the IRS audited 0.86 per cent of individual returns, 0.95 per cent of small corporation returns and 12.2 per cent of large corporation returns.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

Taxpayers are required by law to maintain documents that are sufficient to establish that the items reported on their tax returns are correct (IRC Section 6001). In order to comply with this requirement, taxpayers should compile all relevant documentation and maintain it pursuant to a document-retention policy.

The IRS has broad power to examine the taxpayer's books, papers, records and other data, including electronic data (IRC Section 7602). The only restrictions on the IRS's examination power are that the time and place of the examination must be reasonable and that unnecessary examinations, including multiple examinations, are discouraged. The IRS is able to inspect the taxpayer's premises and is able to interview the taxpayer and the taxpayer's employees.

6 What actions may the agencies take if the taxpayer does not provide the required information?

The IRS typically requests information from the taxpayer by means of a written Information and Document Request (IDR). All taxpayers should discuss with the IRS the need for and scope of IDRs, their response due date and alternative ways to satisfy the need for information. In LB&I examinations of large corporate taxpayers, there are formal requirements for the issuance, response to and enforcement of IDRs.

If the taxpayer fails to respond to an IDR seeking documents held at a foreign location, the IRS can issue a Formal Document Request (IRC Section 982). If the taxpayer fails to respond in a timely manner, the taxpayer may be prohibited from introducing the requested documents in any subsequent tax proceeding. The taxpayer has the right to initiate a proceeding in court to quash the formal document request.

If a taxpayer does not respond in a timely manner to an IDR, the IRS can issue an administrative summons to compel production of the information sought (IRC Section 7602). Alternatively, if the taxpayer has not responded to an IDR and the IRS's limitation period for assessment is close to expiration, the IRS can issue a Designated Summons, which tolls the running of the IRS's limitation period for assessment (IRC Section 6503). If the taxpayer does not respond to a summons, the IRS can initiate a proceeding in court to enforce the summons.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

The taxpayer need not disclose protected information to the IRS. In the US, attorney-client privilege protects confidential communications between the taxpayer and an attorney, even an in-house attorney employed by the taxpayer. Business communications, however, are not privileged. A similar privilege protects communications between the taxpayer and a federally authorised tax practitioner, which includes accountants (IRC Section 7525). Finally, the work product doctrine protects materials prepared in anticipation of litigation or for trial. Work product generally does not receive absolute protection, but can be disclosed if another party establishes substantial need for the materials. Courts, however, will protect against the disclosure of work product that contains an attorney's mental impressions, analysis, legal theories or conclusions.

If the IRS obtains taxpayer information, its ability to further disseminate that information is limited. The IRS is prohibited from disclosing tax returns and tax return information outside of the IRS unless the disclosure falls within one of various specific exceptions, which generally allow disclosures to other enforcement agencies (IRC Section 6103). Tax return information is broadly defined and includes data received by, recorded by, prepared by, furnished to or collected by the IRS. Wilful violations of the provision are punishable as a felony, while negligent violations subject the IRS to a suit for damages. If the IRS seeks to introduce confidential commercial information in a court proceeding, the taxpayer may seek a protective order preventing public disclosure of the information.

8 What limitation period applies to the review of tax returns?

The IRS generally must assess any increase in tax owed within three years of the date the tax return is filed (IRC Section 6501). In the case of a failure to file a return, the filing of a false or fraudulent return or a wilful attempt to defeat or evade tax, the IRS may assess an increase in tax at any time. If the taxpayer omits a substantial amount of income from gross income, the IRS may assess any increase in tax owed within six years of the date the tax return is filed. The taxpayer and the IRS may agree to extend the limitations period on assessment (IRS Form 872). Subsequent extensions may be agreed to if executed before the expiration of the immediately prior extension.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

Taxpayers who disagree with increases in tax proposed on audit may protest to the IRS Appeals Office. Generally, taxpayers must file a protest within 30 days after receiving IRS examination's final report proposing an increase in tax. After the protest is filed, IRS examination can file a rebuttal to the protest. Thereafter, IRS Appeals will independently assess the issues using a quasi-judicial approach. IRS Appeals may reject the IRS examination's position or the taxpayer's position in full, or may seek to settle the dispute by applying a hazards of litigation standard.

Two alternative procedures allow the taxpayer to involve IRS Appeals at an earlier date. First, under the Fast Track Settlement programme, the dispute remains in the jurisdiction of IRS examination, but IRS Appeals acts as a mediator and helps the parties resolve factual or legal issues. If agreement is reached, IRS Appeals will exercise its settlement authority and effect the settlement. If no agreement is reached, the Fast Track issues can be protested later to IRS Appeals. Second, under the Early Referral programme, taxpayers being audited by the LB&I division can ask IRS examination to refer developed, unagreed issues to IRS Appeals, while the examination team continues to audit other issues. IRS Appeals can exercise its settlement authority to settle the Early Referral issue. Unagreed issues are returned to IRS examination and, if the case is later protested, those issues will not be reconsidered by IRS Appeals.

At IRS Appeals, under the Rapid Appeals Process, IRS Appeals can bring IRS examination and the taxpayer together early in the appeals process, serve as a mediator and use its settlement authority to effect any settlement reached. Also, either IRS Appeals or the taxpayer can seek a Technical Advice Memorandum on legal issues from IRS attorneys and, if the advice favours the taxpayer, IRS Appeals will follow

the advice. If IRS Appeals and the taxpayer cannot agree to a settlement, the Post Appeals Mediation procedure may be utilised. A different IRS Appeals officer will be supplied by the IRS to act as a mediator, and the taxpayer may elect to involve a non-IRS co-mediator at its own expense. The mediation is non-binding, but if agreement is reached, IRS Appeals will use its authority to effect the settlement. A binding Appeals Arbitration procedure formerly existed, but was discontinued in 2015.

10 How may the tax authority collect overdue tax payments following a tax review?

The IRS will send the taxpayer an invoice seeking payment and, if no payment is received, a second invoice. If no payment is made, the IRS can file a notice of federal tax lien, which attaches to the taxpayer's property (real estate and personal property) and rights to future property (amounts owed to the taxpayer and payable later). The IRS can also proceed to seize (or levy) the taxpayer's property and rights to future property. Generally, the IRS can attempt to collect taxes up to 10 years after the date of assessment, although that time period may be suspended for various reasons.

11 In what circumstances may the tax authority impose penalties?

Civil penalties can be imposed for failure to file a tax return, failure to pay taxes or estimated taxes and in a myriad of other circumstances in which the taxpayer fails to comply with an IRC requirement. Penalties can also be imposed if the taxpayer files a tax return showing a knowingly improper amount of tax, such as on a fraudulent tax return. Accuracy-related penalties can be imposed in more ambiguous situations if the tax return reports tax positions the IRS determines are negligent, that disregard rules or regulations, that result in substantial understatements of income tax, that make substantial valuation misstatements, that involve a transaction that lacks economic substance or that involve a transaction the IRS has identified as a reportable transaction (IRC Sections 6662 and 6662A).

12 How are penalties calculated?

Many penalties are in amounts specified in the tax code. The civil fraud and the accuracy-related penalties are calculated by reference to the amount of the understatement of tax on the tax return, which is the amount of tax that was required to be shown on the return minus the amount of tax actually shown on the return. The amount of these penalties ranges from 20 per cent to 40 per cent of the understatement.

13 What defences are available if penalties are imposed?

A negligence penalty can be avoided by showing that there was a reasonable basis for the reported tax position. The disregard of rules or regulations penalty can be avoided by showing that there was a reasonable basis for the position and that the position was adequately disclosed on the tax return. The substantial understatement penalty can be avoided if there was substantial authority for the position, or if there was a reasonable basis for the position and it was adequately disclosed on the return. All of the foregoing penalties, and the fraud penalty, can be avoided by showing that there was reasonable cause for the position and that the taxpayer acted in good faith. A reportable transaction understatement penalty can be avoided by disclosing the position on the tax return, having substantial authority, and having a belief that the position is more likely than not correct. These rules will differ if the tax position involves a tax shelter (IRC Sections 6662 and 6664).

14 In what circumstances may the tax authority collect interest and how is it calculated?

If any tax deficiency or penalty is not timely paid the IRS will charge interest, which will be assessed and collected in the same manner as tax. The underpayment rate is a variable federal short-term rate plus three percentage points. For large corporate underpayments, the interest rate enhancement is increased to five percentage points after the IRS proposes a tax deficiency.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Criminal penalties can be imposed on a taxpayer for tax evasion, wilful failure to file a tax return, for filing a false return or statement and for other specified actions. The consequences are typically specified to be a monetary fine, a term of imprisonment or both.

16 What is the recent enforcement record of the authorities?

The IRS budget for the current fiscal year is about US\$900 million below that for 2010, which has resulted in a degradation of its compliance, audit and collection programmes, leading to a steady decline in the number of individual audits over the past six years. In fiscal 2015, the IRS completed the fewest audits in a decade. The IRS Commissioner has stated that this trend of fewer audits is expected to continue.

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

The IRS is able to seek information and documents from, and may interview, unrelated third parties who may have information relevant to the taxpayer's return. Before the IRS contacts a third party, it must give the taxpayer notice that such contacts may be made. Thereafter, the IRS must provide to the taxpayer a list of third parties contacted. Taxpayers do not have an automatic right to be present when third parties are interviewed, but the third party can request the taxpayer's attendance.

If a third party fails to respond to an IRS request for information, the IRS can issue a third-party summons. The IRS must notify the taxpayer of the issuance of the summons and the taxpayer can initiate a proceeding in court to quash the summons. Alternatively, if the IRS seeks to enforce the summons against the third party in court, the taxpayer has the right to intervene in that proceeding (IRC Section 7609).

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

The IRS is permitted to disclose tax information to other federal law enforcement agencies and to state tax authorities for tax administration purposes and does so with safeguards to protect that information against misuse and unauthorised disclosure (IRC Section 6103). State agencies likewise share tax information with the IRS. The IRS has tax information exchange relationships with approximately 90 countries, in the form of tax treaties, tax information exchange agreements (TIEAs) and mutual legal assistance treaties (MLATs).

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

Taxpayers with unpaid taxes may seek to pay the IRS over time pursuant to an instalment payment agreement, or they may make an offer in compromise to pay less than the full amount owed. Taxpayers can seek assistance from the IRS's Taxpayer Advocate Service, request a Collection Due Process hearing, and may access IRS Appeals through the Collections Appeals Program. Bankruptcy courts have the authority to determine the amount or legality of any tax imposed on a debtor. A bankruptcy court can discharge a debtor from personal liability for some taxes, but many tax debts cannot be discharged. The scope of bankruptcy discharge depends not only on the nature of the tax debt, but also on the chapter of the bankruptcy code under which the case was filed.

20 Are there any voluntary disclosure or amnesty programmes?

The IRS has an Offshore Voluntary Disclosure Program (OVDP) for submissions made on or after 1 July 2014, which is available to taxpayers who wish to voluntarily disclose their offshore accounts and assets to avoid prosecution and limit their exposure to civil penalties. The IRS also has a domestic voluntary disclosure procedure.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

The IRS's Taxpayer Bill of Rights accords taxpayers the right to be informed, the right to pay no more than the correct amount of tax, the right to challenge the IRS's position and appeal to an independent forum, the right to finality and privacy, and the right to retain representation. As federal employees, IRS employees are subject to the Office of Government Ethics' Standards of Ethical Conduct.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

The IRS issues numerous publicly available publications, notices, announcements and rulings covering both procedural and substantive topics. Also, taxpayers can request documents from the IRS pursuant to the Freedom of Information Act, 5 USC 552. While all IRS records are subject to Freedom of Information Act (FOIA) requests, the IRS may withhold documents (or parts of documents) based on exemptions and exclusions in the FOIA statute. Commonly withheld documents include inter-agency or intra-agency memoranda or letters covered by the deliberative process privilege, the work product privilege or the attorney-client privilege. If the IRS does not respond to an FOIA request or withholds documents, the taxpayer can protest to IRS Appeals and, if necessary, initiate suit in federal district court.

23 Is the tax authority subject to non-judicial oversight?

The Government Accountability Office, the Office of Management and Budget and the Treasury Inspector General for Tax Administration oversee IRS operations. Within the IRS, the Taxpayer Advocate Service operates as an independent organisation to pursue taxpayer complaints. Advisory boards include the IRS Oversight Board and the Taxpayer Advocacy Panel. Finally, both the Senate and House have IRS oversight subcommittees.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

A taxpayer can initiate a tax dispute in the US Tax Court, the Court of Federal Claims or federal district court. In Tax Court, a simplified small tax case procedure is available for certain cases involving US\$50,000 or less. Trials in small tax cases are less formal and result in a speedier disposition, but the decisions cannot be appealed.

25 How can tax disputes be brought before the courts?

To litigate in the Tax Court, the taxpayer must receive a statutory notice of deficiency (IRC Section 6213). Following an examination or consideration by IRS Appeals, the IRS will inform the taxpayer of any proposed deficiency and request payment. If the taxpayer does not pay the deficiency, the IRS will issue a statutory notice of deficiency. The taxpayer then has 90 days (or 150 days if the notice is addressed to a taxpayer outside the US) to file a petition with the Tax Court. In the Tax Court, the taxpayer seeks a determination that the assessment is incorrect and that no tax is due.

In contrast, to litigate in the Court of Federal Claims or a federal district court the taxpayer must first pay the tax. The tax payment can occur with the tax return, following an IRS examination in which a tax deficiency is proposed, or after consideration by IRS Appeals. Within the applicable statute of limitations (Code Section 6511), the taxpayer must then file an administrative refund claim with the IRS (IRC Section 7422). Unless the IRS disallows the claim sooner, the taxpayer must wait six months to file a complaint initiating the suit. If the IRS disallows the claim, the complaint must be filed within two years of the date of the IRS notice of disallowance. In these courts, the taxpayer seeks a determination that the tax is not legally owed and must be refunded.

In most cases, the tax Anti-Injunction Act (IRC Section 7421) prevents a taxpayer from filing suit to restrain the assessment or collection of tax and the Declaratory Judgment Act (28 USC 2201) prevents a taxpayer from filing suit to have a court declare whether the taxpayer is liable for tax.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Each tax year is considered a separate cause of action. Nevertheless, the IRS may examine more than one tax year at a time. If the taxpayer seeks to litigate in the Tax Court, multiple years can be included in the petition. If the taxpayer seeks to litigate in the Court of Federal Claims or a federal district court, the taxpayer must file a separate refund claim for each year, but multiple years can be included in the complaint.

Cases that involve different taxpayers but a common question of law or fact may be consolidated for trial, but separate trials may be ordered to avoid prejudice.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

To litigate in the Tax Court, a taxpayer need not pay the tax assessed, but after the petition is filed, the taxpayer may decide to do so to stop the running of interest. To litigate in the Court of Federal Claims or a federal district court, the taxpayer must first pay the tax.

28 To what extent can the costs of a dispute be recovered?

A taxpayer may recover litigation costs incurred in connection with a court proceeding brought by or against the US if the taxpayer establishes that it is the prevailing party, that it exhausted the available administrative remedies, that it has not unreasonably protracted the court proceedings and that the claimed litigation costs are reasonable (IRC Section 7430). Recovery will be denied if the taxpayer's net worth exceeds specified limits. The IRS cannot recover litigation costs from a taxpayer.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

No such restrictions exist.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

In the Court of Federal Claims and in the Tax Court, a single judge is the decision-maker and a jury trial is not available. In a district court, a single judge will hear the case, but either party may request a jury trial. The judge decides procedural and legal issues. If no jury is requested, the judge acts as the trier of fact, while in a jury trial, the jury acts as the trier of fact.

31 What are the usual time frames for tax trials?

After the taxpayer files its petition or complaint, the government will file an answer, which is due within 60 days, although extensions are typically sought. Thereafter, the judge and the parties usually agree to a scheduling order which sets a time frame for discovery, the exchange of expert reports, pretrial conferences and other matters. Depending on the number of issues and their complexity, this pretrial period may extend for six months or over a year. Trials may take place in a single day or over a month or more, depending on the number of issues, the complexity of the facts and the number of fact and expert witnesses. A case is likely to proceed more quickly in Tax Court than in the Court of Federal Claims or district court because the Tax Court encourages the parties to stipulate to facts, which may shorten the pretrial and trial stages. After the close of trial, the judge likely will not issue a decision for six months or a year or longer.

32 What are the requirements concerning disclosure or a duty to present information for trial?

Discovery in the Court of Federal Claims and a district court is often extensive and lengthy. First, the parties are required to make initial disclosures of the potential evidence and witnesses that they may use to support their case. Thereafter, the parties may serve interrogatories (written questions), take depositions (transcribed interviews), seek admissions and move for the production of documents. The judge may limit the number of discovery requests and the period during which discovery can occur. In contrast, the Tax Court requires that the parties are required to seek the objectives of discovery through informal communication before resorting to formal discovery. Moreover, the parties

are required to stipulate all relevant facts to the fullest extent possible, which may reduce the need for discovery. As needed, however, the parties can serve interrogatories, take depositions, seek admissions and move for the production of documents.

33 What evidence is permitted in a tax trial?

Documentary evidence may be introduced at trial. Fact witnesses can testify at trial regarding facts that are not stipulated. Generally, the taxpayer will present fact witnesses, who may be the taxpayer, employees of the taxpayer, counterparties to a transaction or any other individual with relevant information. The government may present fact witnesses, but often primarily cross-examines the witnesses presented by the taxpayer. If a fact witness was deposed and is unavailable for the trial, his or her deposition testimony may be read into the trial record. Both parties can present expert witnesses, who can be cross-examined by the opposing party. Written expert reports may be introduced into the record.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

In the Court of Federal Claims and the district courts, taxpayers may represent themselves, but more often are represented by lawyers admitted to practise in those courts. In the Tax Court, taxpayers may also represent themselves, but more often are represented by lawyers or by non-lawyers admitted to practise in the Tax Court.

In the Court of Federal Claims and the district courts, the IRS is represented by trial attorneys in the Tax Division of the US Department of Justice. In the Tax Court, the IRS is represented by IRS attorneys. In major cases in all three courts, the government trial team may have both Tax Division and IRS lawyers.

35 Are tax trial proceedings public?

In all three courts, trials are held in courtrooms open to the public. Documents introduced into the trial record, testimony given at the trial and briefs prepared by the parties are also open to the public. If evidence sought to be introduced is a trade secret or otherwise confidential, the public can be excluded from the courtroom while that evidence is introduced and that part of the trial record can be sealed to prevent public disclosure.

36 Who has the burden of proof in a tax trial?

The taxpayer has the burden of proof in tax litigation. In tax refund litigation in the Court of Federal Claims and in district court, the taxpayer bears the burden not only to prove that its position on the issues raised in the complaint is correct, but also that its asserted amount of tax liability is correct. Thus, if the IRS raises a new issue to offset the taxpayer's claimed decrease tax liability, the taxpayer bears the burden of proof on that new issue. In contrast, if the IRS raises a new issue in Tax Court litigation, the IRS bears the burden of proof on that new issue. By statute (IRC Section 7491), the burden of proof can shift to the IRS in certain circumstances, but this rule is inapplicable if the taxpayer's net worth exceeds specified limits.

37 Describe the case management process for a tax trial.

Case management begins when the taxpayer engages in a transaction giving rise to a potential tax dispute. Relevant documents and electronic information must be carefully compiled and stored. Before the case is filed, facts must be marshalled, legal research performed, witnesses identified and experts retained. Once the case is filed, discovery will begin in earnest and the value of adequate prior preparation becomes evident.

As trial approaches, the content of the evidence to be introduced and the order of its introduction must be designed. Evidentiary and other motions must be anticipated and responses prepared. In addition, the necessary trial staff must be identified, including the lawyers, staff to organise and manage the documentary evidence, and staff to coordinate the availability of fact and expert witnesses in a timely manner. In the US, the 'electronic courtroom' has become standard, with documents stored on computers and displayed on screens throughout the courtroom. Arrangements must be made to prepare and operate this system. In addition, demonstratives (charts, diagrams, summaries) must be prepared in advance. Finally, witness testimony outlines and the opening argument must be finalised.

During the trial, the active trial team will present the evidence and examine and cross-examine witnesses. A team of 'backroom' lawyers and staff must be available to locate documents and to research legal issues that become relevant during the trial.

38 Can a court decision be appealed? If so, on what basis?

Tax cases can be appealed by either party to one of the 13 US courts of appeals. District courts are located in 94 federal judicial districts, which are organised into 12 regional circuits, each of which is assigned to a court of appeals. Appeals from the Tax Court and a district court are heard by the court of appeals for the judicial district in which the taxpayer is located. Appeals from the Court of Federal Claims are heard by the court of appeals for the Federal Circuit.

The appeal is initiated by timely filing of a notice of appeal. Thereafter, the parties submit briefs pursuant to a scheduling order. After briefing concludes, the parties will orally argue the case before a three-judge panel. After a decision is rendered, which may take up to a year, the unsuccessful party can file a petition seeking US Supreme Court review. Supreme Court review is discretionary, and only a small percentage of petitions are granted, usually in instances in which courts of appeals have reached different conclusions regarding the same issue.

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