

Discussion Draft on

Chapter 3: Dispute Resolution: Domestic Procedures

UN HANDBOOK ON DISPUTE AVOIDANCE AND RESOLUTION

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DISCUSSION DRAFT ON CHAPTER 3: Dispute Resolution: Domestic Procedures

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¹ Index to be revised to include sections within the Sub-chapters and page numbers.

3.0. Introduction

Tax authorities around the world have the power to verify that their taxpayers have complied with the letter and spirit of the tax law. A tax authority's review of the accuracy of the tax paid and/or the return that is filed may conclude with a determination of an underpayment of tax, followed by the assessment and collection of the determined tax deficiency. Regardless of where in the overall governmental structure that the tax authority may reside (e.g.; Department of Treasury, Ministry of Finance), and regardless of the specific approach that the country takes, the general approach to examining a taxpayer's tax return is quite similar throughout the world. There are of course variations depending upon a particular country's statutes and regulatory guidance, but the goal of all revenue authorities is the same: to confirm that their taxpayers are complying with the law and paying the correct amount of tax.²

Procedures for determining the correct amount of tax due to the revenue authority follow a similar path around the world.³ A revenue authority will generally conduct an examination, sometimes referred to as an investigation or an audit, in which it will request information and documents. If, upon examination, the revenue authority determines a deficiency (or amount due to the government), it will seek payment of the determined amount. Taxpayers are generally offered an opportunity to resolve a disagreement over the revenue authority's determination, with a wide variety of options available depending on the jurisdiction. In today's global tax environment, tax authorities are learning from each other and sharing information and "best practices" on a regular basis. As this continues, the similarities in process grow greater.⁴

Most countries provide the opportunity to settle the matter at the initial level of review (examination or investigation). Should that fail, there are further opportunities to elevate the matter and seek resolution at a higher level of administrative process. In recent years, many countries have developed a range of administrative approaches which may lead to resolution, all of which are focused on avoiding costly and protracted litigation. This effort to avoid litigation recognizes that it is best to resolve a matter at the earliest point in time, as it is most cost effective for both the taxpayer and the tax authority.

This chapter will focus on the examination of business/corporate entities. Procedures for examining individuals generally follow a similar approach, with the same goal of confirming the taxpayer's compliance with the tax law.

² This chapter discusses the *civil* domestic disputes processes. Procedures in a criminal tax context are generally quite different from a civil matter and are outside the scope of this discussion. While criminal tax matters often begin with a civil examination, in most countries the procedures change when the matter is determined to be criminal in nature.

³ See Appendix XXX which sets forth the procedures in a number of different countries.

⁴ For information on ways in which the OECD, Forum of Tax Administration ("FTA") shares, see <http://www.oecd.org/tax/forum-on-tax-administration/>

3.1. Tax Audit Process

3.1.1. Administrative Review

Investigation/Examination/Inquiries

The examination of tax returns is the primary tool that revenue authorities use to begin the process of confirming compliance with – and the enforcement of – revenue laws. The mere possibility of having the revenue authority examine a taxpayer’s return can serve as a strong deterrent to noncompliance.⁵ As a result, the tax authorities must be given broad authority to examine taxpayers to determine if they have complied with the relevant tax laws.

The method used to select tax returns for examination varies from country to country; yet virtually every revenue authority performs some form of risk assessment that aligns with its enforcement priorities when determining which returns to examine. Common criteria for examination selection include: (a) apparent irregularities in a filing (e.g., information presented on the tax return does not match information provided to the revenue authority from another source), (b) businesses reporting losses for many consecutive years, (c) taxpayers entering into specific transactions which have a history of being tax aggressive, (d) taxpayers reporting results that are not consistent with industry benchmarks, and (e) random selection.⁶ In some countries, large taxpayers are subject to continuous audit regardless of their risk profile. In Kuwait, for example, examinations are mandatory for all corporate income taxpayers for each year a return is filed.

In the case of an examination of a business organization, revenue authorities will often audit multiple years concurrently during one examination.⁷ This allows the revenue authority to develop a better sense of the organization’s business cycle and operations. In addition, some revenue authorities may decide to review only a specific item reported on a tax return, while other revenue

⁵ Note that overall rates of examination are not necessarily rising. In the United States (“U.S.”), in fiscal year 2017 the Internal Revenue Service only examined .6% of *all* tax returns that were filed. <https://www.irs.gov/statistics/enforcement-examinations>

⁶ Note that in many jurisdictions, technology is used to perform a risk assessment and determine whether a return reflects “audit potential.” Because many governments face strict budgetary constraints and limitations on their resources, revenue authorities are being encouraged to do more with less. Thus, to the extent that technology is available to assist in determining whether a return reflects a compliance issue, it should be considered. The use of data and analytics in tax administration is gathering speed across the world, as revenue authorities seek to develop efficiencies in process. See, *Use of Technology in Tax Administrations 1: Developing an Information Technology Strategic Plan (ITSP)*, Margaret Cotton and Gregory Dark, International Monetary Fund, March 2017

⁷ For example, the New Zealand Inland Revenue Department will examine two years concurrently. The U.S. will often audit at least two, and often three years in one examination “cycle.”

authorities will perform an examination of the entire tax return. In Germany, large corporations are often subject to an examination of the entire return for three filing years.

3.1.2. Information Gathering

Document Requests

The most common approach to gathering information is a formal (i.e., written) request for documentation from taxpayers. This information will form the basis for the inquiry and will assist the revenue authority in developing the file, which will be used to document the examiner's findings. Examiners should be given broad authority to compel the production of information that may be relevant to the examination of a tax return. Common requests for information include accounting work papers, bank statements, financial statements, copies of prior income tax return filings (generally the prior year), prior revenue authority reports, and basic corporate documents including meeting minutes. If a risk assessment is done at the start of the examination, the examiner should also request documents to support items on the return for which it has determined there may be a compliance risk.

Document requests should always be made in writing. This allows both the revenue authority and the taxpayer to maintain a clear record of what was requested and what was provided in response. Best practice indicates that prior to the formal issuance of a document request the examiner should discuss with the taxpayer not only what will be included in the document request but the reason that the examiner needs the information. Such an approach has been adopted in various countries and ensures that the taxpayer fully understands the examiner's request so that they can provide the relevant documentation. Similarly, document requests should be issued with a formal deadline. Although taxpayers should have some input into the deadline, the ultimate determination should be made by the examiner. Reasonable extensions of time to respond to requests should be granted if the taxpayer provides a compelling reason.

Some jurisdictions have enforcement procedures for use in situations in which a taxpayer does not comply with the request in a timely manner. These enforcement procedures, while effective, should not be so rigid as to prevent the examiner and the taxpayer from amicably resolving issues and should provide enough incentive for a taxpayer to comply with the request. In the U.S., if a taxpayer fails to comply with a document request, after following a series of escalation procedures, the Internal Revenue Service can issue a summons for the information. A summons is a formal document which must be complied with, and if the summonsed party does not comply, the matter may ultimately be heard in a U.S. federal court. A very, very small number of document requests in the U.S. ultimately lead to a court proceeding to enforce the request.⁸

⁸ According to the U.S. Taxpayer Advocate, between June 1, 2015 and May 31, 2016, only 87 cases involving IRS summons enforcement issues were litigated. Of these cases, the taxpayer was fully or partially successful in

Request for Testimony

Although document requests are the most common form of information gathering, revenue authorities can use other procedures to gather information.

One common approach is interviewing taxpayers and/or their employees to obtain oral testimony regarding an issue under inquiry. Interviews are especially useful when trying to gather information about general business activities as well as discrete functions performed.⁹ Interviews may be formally recorded (either written transcript or audio recording) or the parties may keep their own set of notes.

Revenue authorities often conduct site visits and tours of the taxpayer's business. These visits can assist with the substantiation of certain items on a tax return. For example, if a taxpayer has extensive depreciation or salary expense on its return, it may be helpful for the examiner to physically see the property being depreciated and the various number of employees working.

Use of Tax Treaties and Tax Information Exchange Agreements

While not the focus of this chapter, it is important to be mindful that there exist additional ways to gather information, other than direct requests from the taxpayer. In the past several years, there has been an increase in information sharing between revenue authorities and it is now quite common for one revenue authority to contact another for information regarding a common taxpayer and their business operations.¹⁰ Tax treaties and Tax Information Exchange Agreements contain provisions whereby the parties to the agreement can exchange information that is general in nature (e.g. about an industry) or about a specific taxpayer.¹¹ This information can be used in an ongoing examination or as part of a risk assessment in determining whether to select a taxpayer for examination.

Privilege Concerns

Some requested documents may be considered legally privileged. A legal privilege is a right that taxpayers may assert in response to a request for information, which would prevent the revenue authority from requiring a taxpayer to provide the information. The most commonly asserted

challenging the summons in eight of those cases. National Taxpayer Advocate 2016 Annual Report to Congress, Volume One, MLI #3.

⁹ For example, in a transfer pricing examination, interviews of employees may help the examiner determine which party retained certain business risks for which it should be compensated.

¹⁰ See, <http://www.oecd.org/tax/transparency>. The OECD Forum on Transparency now has 150 member countries all focused on information exchange. [Also need mention the AEOI and common reporting std and FATCA]

¹¹ See, e.g., OECD (2017), *Model Tax Convention on Income and on Capital: Condensed Version 2017*, Art. 26.

privilege is the attorney-client privilege, which recognizes that communications between an attorney and her client are private and are not subject to disclosure. This concept of privileged communications extends to both oral and written communication and could therefore be applicable to a request for documents.¹²

There are other forms of privilege which may also apply and limit a revenue authority's ability to obtain information in response to an information request. Like attorney-client privilege, these vary considerably around the world and are often based on common law principles. Less often, the privileges are statutory. In the U.S., for example, there exists a statutory privilege that essentially provides tax practitioners with much of the same protection found in attorney-client privilege.¹³

3.1.3. Types of Examinations

Correspondence/Desk Audits

Correspondence examinations are typically reserved for small non-business returns where a specific issue has been identified that can likely be resolved via correspondence between the taxpayer and an examiner. There is typically no verbal communication between the agent and the taxpayer, and all issues are dealt with in writing. If a tax return has been identified for examination, the agent may request that the taxpayer produce receipts, bank statements, canceled checks, or other similar items to support an item of income or deduction on the taxpayer's return.

Although perhaps viewed as a more "informal" examination of the taxpayer's return, correspondence examinations carry equal "weight" as other types of examinations and should follow the same administrative procedures for reviewing returns (e.g., notice requirements¹⁴) and proposing adjustments to tax. A correspondence exam may be smaller in scope and shorter in duration than other types of examinations, but the same administrative processes would apply, including the taxpayer's right to challenge and appeal a determination.

Office and Field Examinations

Office and field examinations are conducted by tax examiners at either a local government office, the taxpayer's domicile, the taxpayer's representative's office, or some combination thereof. These types of examinations are generally reserved for medium and large businesses, high net-

¹² The concept of some type of attorney-client privilege exists in many countries. The precise limitations of the privilege and the application of the privilege vary quite a bit. In the U.S., attorney-client privilege is strictly respected by the government and the courts. In France, the privilege provides less protection. Jurisdictions that follow the common law view privilege differently from those which follow civil law.

¹³ The U.S. distinguishes between practicing law and practicing tax. This distinction led to the creation of statutory privilege for attorneys practicing in a non-legal setting and for other non-attorney practitioners. See Internal Revenue Code Section 7525

¹⁴ Notice requirements are discussed further throughout this chapter.

worth individuals, and other taxpayers whose returns may present a very technical tax issue. Examiners who conduct these examinations generally have more technical expertise than those who conduct correspondence examinations. These examinations generally cover more than one issue (i.e., more than one item of income or expense) on the return. If necessary based on the complexity of the taxpayer's return, the tax authority might consider assigning a team of agents to the examination who will each bring a special area of expertise to the examination.

The examination generally begins with a notification letter sent (either electronically or hardcopy) by the tax authority to the taxpayer. This letter notifies the taxpayer of the tax year(s) and return selected for examination and provides the relevant contact information of the examiner. The letter should also include a deadline to reply and request acknowledgement of receipt of the letter.

It is a best practice to have some form of an opening meeting between the taxpayer and the examiner so that the examiner can ask basic questions about the taxpayer's business and/or sources of income. During this meeting, the examiner should also provide an explanation of the basic audit process and procedures and inform the taxpayer of their rights (e.g. the right to be represented).¹⁵ These procedural rules should be codified in either the statutory law or published guidance by the tax authority, and the examiner should provide the taxpayer guidance on where they can find more information about the examination process.

After this initial meeting the taxpayer and the examiner will meet as needed to discuss potential issues and examination status and to resolve any questions either party may have. In any event, the examiner should maintain open lines of communication with the taxpayer and speak with the taxpayer on a regular basis.

Throughout the course of the examination, the agent(s) will collect information (as discussed above). The first request for information generally encompasses the basic books and records (e.g. corporate meeting minutes) and financial statements (e.g. balance sheet, trial balance, income statement, etc.). The examiner should also conduct an initial risk assessment of the return and determine if any of the income or expense items warrant close consideration, and any issues that arise should be communicated to the taxpayer. As the examination progresses, the requests should become narrower and issue focused. The length of the examination will of course depend on the complexity of the taxpayer's tax return but should typically last between 12-18 months for complex returns and 6-12 months for more standard returns.

If the examiner determines that an adjustment to income may be necessary, the examiner should prepare a preliminary report which provides the taxpayer with the factual and legal basis for the proposed adjustment. The taxpayer should be provided a period of at least 30 days to review and respond to the report. The taxpayer can submit additional documentation to support its position,

¹⁵ [See Section 3.4 for a discussion of taxpayer rights.]

provide additional factual information, correct information that is included in the examiner's preliminary report, or provide a formal memorandum explaining why the technical position taken by the examiner is incorrect. The examiner should review the information submitted by the taxpayer and request additional information or clarification, if necessary.

At the conclusion of the examination, the examiner should provide the taxpayer with a final examination report that explains the examiner's findings and conclusions. The report should either:

1. Notify the taxpayer that no changes are being made to the return as filed, or
2. Provide the proposed changes to taxable income along with a factual and technical explanation of why the examiner believes an adjustment is necessary.

The taxpayer can either agree with the report or challenge the examiner's findings, in which case the taxpayer may pursue an additional level of administrative review, utilize some form of alternative dispute resolution, or proceed to a public forum and litigate the issue. In some jurisdictions the final examination report must be signed by the taxpayer, indicating his agreement or disagreement with the proposed adjustments.

Electronic examination

Tax authorities are permitted to conduct taxpayer reviews based on electronic information and documentation. These reviews are often conducted more quickly than the traditional examination, and the revenue authority will generally conduct these examinations from their headquarters. Thus, there is no need for the revenue officer to be physically present at the taxpayer's location. If the revenue authority determines that the taxpayer has not paid all of their tax and/or has not fulfilled their tax obligations, the revenue authority may proceed to determine an amount due. Different jurisdictions approach an electronic audit in different ways and having an e-tax filing environment is crucial for a successful electronic examination review process.

An e-tax filing environment allows for the efficient practice of electronic examinations by the revenue authority as the information and documentation of taxpayers needed to perform such examinations is readily available to be reviewed and analyzed. Furthermore, this "digitalization" can enable tax authorities to cross check information provided by a given company with the information from suppliers, clients, banks, etc., which ultimately results in widely effective reviews.

3.2. Administrative Appeal Process

If the taxpayer and examiner cannot agree on the proposed adjustment at the conclusion of the examination process, taxpayers are typically afforded the right to challenge the examiner's determination at the administrative level prior to filing a lawsuit. While some jurisdictions (e.g., Brazil and Angola) do not allow for an administrative review of the examiner's findings, most do. Resolution through administrative review (and not litigation) is much less costly from both a financial and resource perspective, and it is generally more cost efficient for both the government and the taxpayer. Most jurisdictions do not require taxpayers to pay any potential tax due prior to filing an administrative appeal. Moreover, an administrative review function that can resolve disputes prior to litigation not only saves taxpayers and the revenue authority time and money, but it also alleviates the potential burden on the court system, which would otherwise experience a potentially unmanageable increase in the influx of tax cases.

The division reviewing the taxpayer's appeal should be independent of the examination function and seek to resolve tax disputes in a fair and impartial manner, with the goal of resolving cases without requiring the taxpayer to file a lawsuit. As such, the administrative review body should consider all facts present in the file and all relevant legal authorities when determining the appropriate resolution of a tax dispute.

The specifics of the administrative appeal process vary from one jurisdiction to another. Consistent differences arise between countries with legal systems that are based on common law and countries that are not based on such legal system. In the U.S. for example, the administrative review officers are authorized to negotiate and conclude a final settlement on behalf of the government during the administrative appeal process; while in other countries like Peru the possibility of reaching a legal settlement at this stage does not even exist.

In countries where settlements are not available at the administrative appeal stage, the procedure is limited to the analysis of the appeal/rebuttal and evidence filed by both parties (taxpayer and tax authority that performed the audit) and the appeal process finalizes with the issuance of a ruling that can be favorable to the taxpayer, partially favorable or that can confirm the initial assessment, all of this alternatives based on the legal arguments and evidence presented by both parties.

Another notable practice with respect to the administrative appeal process in some countries is the implementation of preliminary reviews before the appeal is accepted. In Germany, an initial review of the documentation submitted by the taxpayer and the revenue authority for the administrative appeal is conducted by an agent who was not involved in the examination before the case is officially assigned for appeals consideration. If the agent conducting this review agrees with the taxpayer, the proposed adjustment is amended and the case is resolved. If the reviewing agent agrees with the proposed adjustment, the case is forwarded for further review and a conference.

Other countries have provided different alternatives to taxpayers with respect to the filing of administrative appeals. In 2016 Mexico implemented a new type of administrative appeal called the “Tax Substance Administrative Appeal” as part of a modification to the Federal Fiscal Code of Mexico. This new procedure is similar to the existing administrative appeal process, but focuses exclusively in solving the substance of the case with an emphasis on oral arguments instead of focusing on the formalities of the examination process. The appeal is only available when the liability at issue is at least (approximately) 310,000 USD.

3.3. Litigation Process

As discussed earlier in this chapter, taxpayers may challenge a determination issued by the applicable tax authority via administrative appeals or judicial resolution.¹⁶

The benefits of judicial resolution include securing a final determination of the taxpayer’s tax liability, which cannot be re-examined by the tax authority or another court (except to the extent the jurisdiction provides for judicial appeals). In addition, judges may be more impartial and objective than representatives (administrative reviewers) from a tax authority. Further, cases decided in courts are usually made public, thus providing other taxpayers with precedential value.

Taxpayers in most jurisdictions may raise challenges in different types of courts, such as “ordinary” civil courts (courts that hear all types of legal challenges), specific commercial courts (courts that hear business disputes), administrative courts, or in special tax tribunals, where the case is heard and judged by tax experts (i.e., tax courts).¹⁷

Some jurisdictions have pre-trial fact findings that may be formal or informal. Informal fact-finding, or “discovery,” often means that the parties will stipulate to the facts in advance of a trial, which speeds up the litigation process and assists in settlement of many cases prior to trial. Formal discovery, on the other hand, may involve, for example, requests for documents from the opposing party and depositions of witnesses. The parties are not required to stipulate to any facts; instead, the facts are determined by the fact-finder – either a judge or a jury.¹⁸

¹⁶ Note that in some jurisdictions, taxpayers may be required to first raise their challenge with administrative appeals before a court will hear the case. In other jurisdictions, however, filing a challenge in court precludes the taxpayer from bringing an administrative appeal. [NEEDS CITE]

¹⁷ Tax tribunals will be discussed in more detail in the next section.

¹⁸ In jurisdictions that provide for jury trial, a taxpayer may prefer a jury if the taxpayer’s facts are compelling but the legal basis for the taxpayer’s position is not totally persuasive. In those cases, the taxpayer might want to select a forum in which it can lay out its facts in front of the jury, and not a forum in which facts must be stipulated or would be heard only by a judge. However, juries may not be able to comprehend complex tax laws, thus a case by case analysis must be performed.

Other jurisdictions however, do not have pre-trial fact findings. The facts and legal arguments are presented by the parties (taxpayer and tax authority) to the Court at the moment the lawsuit is filed along with the information and evidence they were able to obtain. Litigation procedures may be imminently oral or written, it varies from one jurisdiction to another.

In some jurisdictions, the taxpayer is required to pay the tax liability prior to bringing a challenge in a particular judicial venue. The requirement that the taxpayer pay or guarantee the tax liability will often preclude taxpayers from availing themselves of these judicial venues.

Almost all jurisdictions provide the parties (both the taxpayer and the revenue authority) with the right to appeal a decision of a lower court. Some appellate level courts will review only the legal argument (i.e., the courts will not act as fact-finder), while other courts will review both the parties' legal arguments and findings of fact.

In the U.S. taxpayers may bring suit in a specialized tax court, a federal district court (a court of general competency), or the federal Court of Claims (a specific forum to bring litigation against the government and its agencies). To bring a lawsuit in the latter two fora, taxpayers must first pay the tax, penalties, and interest that the revenue authority believes the taxpayer to owe and then file a formal claim for a refund of such tax with the revenue authority. If the revenue authority denies or otherwise fails to act on the taxpayer's claim, the taxpayer may challenge that determination by bringing a suit for a refund of the tax paid in district court or the Court of Claims.¹⁹

To challenge the determination of the Brazil revenue authority, a taxpayer must first bring proceedings before an administrative court. Payment of the tax liability is not a pre-requisite to filing an administrative proceeding. Only after a decision is rendered by the administrative court may the taxpayer file a lawsuit in the judicial courts. The court will most likely require the taxpayer to guarantee the amount of tax assessed prior to commencing litigation. Hearings are public unless the judge orders them confidential. Pre-trial discovery is mandated; the parties must exchange any documentary evidence that they plan to use at trial.

On the other hand, with respect to direct taxation, the role of civil courts in Luxembourg is limited to litigation regarding the recovery of overpaid taxes. However, civil courts do have jurisdiction over indirect tax litigation, including VAT taxes. Beyond civil courts, Luxembourg's legal system provides for administrative courts, which may hear direct tax cases related to assessment and liquidation of direct taxes, but only with respect to certain kinds of taxes. For disputes related to those taxes not heard in administrative courts, the taxpayer would be required to pay the tax due

¹⁹ The same process is used where taxpayers claim refunds based on overpayment of tax not resulting from a deficiency assessment upon examination.

and bring its challenge in civil court instead. Hearings in both administrative and civil courts are public (although in limited cases, the public may be excluded from a hearing in civil court).

Under Luxembourg law there is no pre-trial exchange of documentary evidence, although a list of the evidence that will be used at trial is usually provided.

In China for example, if a dispute is not resolved at the administrative level, a taxpayer may request an administrative review or bring suit in the local “People’s Court.” Tax must be paid prior to commencing the administrative review or litigation.

Historically, China has not had much tax litigation as a result of its tax administration process, in which most disputes are resolved via consultation between the taxpayers and the tax authorities. However, in the past two years, China’s local People’s Courts have seen an increase in the number of tax disputes being decided through litigation. And in April 2017, the first tax case was heard by the Chinese Supreme People’s Court, which was brought by a taxpayer against the Guangzhou Local Tax Bureau following earlier administrative review and hearings at local and provincial court levels.

3.4. Special Tax Chambers/Tribunals

As mentioned in the previous Sub-chapter, because of the complexity of tax law, a country’s legal system may have a specialized court that is responsible solely for tax issues.²⁰ Judges who preside over these “tax courts” are experts in tax matters and are thus specifically suited to hearing cases dealing with tax assessment determined by tax authorities. Accordingly, special tax courts do not contemplate jury trials even if available in certain jurisdictions. Tax court judges are also independent, even in those countries where the tax tribunal is established within the revenue authority, thus promoting trust from taxpayers.

In addition to the benefits of having experts adjudicate tax cases, tax courts are useful to ease the workload of a country’s traditional court system, and they encourage a faster, more efficient disposition of tax disputes than the traditional courts.

Tax courts in some jurisdictions can enable and encourage settlement at an early stage of the litigation process, to avoid the need for trial. However, as in the case of the administrative appeal process, other jurisdictions do not provide taxpayers and/or tax authorities the possibility of reaching a settlement once litigation has commenced.

²⁰ The jurisdiction of these courts may be limited to a particular category of tax matters such as international disputes or may extend to a wide variety of direct and indirect tax matters.

Some countries require that a taxpayer exhaust all administrative remedies, including appealing within the tax authority, before bringing suit in tax court. Taxpayers will often be allowed to appeal the ruling of a tax court; however, appellate level courts are not typically tax experts.

In South Africa for example, the Special Income Tax Courts consist of a judge assisted by an accountant who has at least 10 years of experience and a representative of the business community. To file a petition with the Special Income Tax Court, the dispute with the South African Revenue Service must involve an assessment exceeding R100, 000. Tax disputes of less than R100, 000 are heard by the Tax Board, which is chaired by an attorney, advocate, or accountant who works in the private sector.

India's Income Tax Appellate Tribunal ("ITAT") is a quasi-judicial body that hears appeals of the India Revenue Department's decisions. The ITAT consists of tax experts with a background in law and/or accounting. The ITAT's decisions with respect to legal positions is binding on the Revenue Department. Appeals from the ITAT are brought before appellate level courts, but those courts may only review substantive points of law; the ITAT is the final arbiter on the facts.

3.5. Tax Ombudsmen

3.5.1. Introduction

The availability and quality of public services provided by governments depends on a great measure on the level of compliance that exists among taxpayers with respect to the fulfillment of their tax obligations. The governmental body responsible of ensuring that such obligations are met on a correct and timely manner are typically tax administrations.

A consequence of this activity is that the relationship between taxpayers and tax administrations is commonly a complicated one. In this respect, tax compliance can be influenced by the fear of detection and punishment or by social norms such as trust, belief in the legitimacy of the government, reciprocity, altruism and education, among others.²¹

A tax system should provide the right balance between the use of coercive measures (fines and penalties for those un-complaint taxpayers) and incentives (mechanisms to facilitate taxpayers to overcome costs and administrative burdens) to ultimately encourage taxpayers to meet their tax obligations. In a time were technology has changed the way businesses record data and pay their

²¹ Marjorie E. Kornhauser, "Normative and Cognitive Aspects of Tax Compliance: Literature Review and Recommendations for the IRS Regarding Individual Taxpayers", 2007. https://taxpayeradvocate.irs.gov/Media/Default/Documents/ResearchStudies/aspects_tax_compliance_dec2007.pdf

taxes, as well as the way tax administrations supervise and collect taxes,²² governments should endeavor to develop a culture that incentives voluntary compliance by taxpayers.

Furthermore, the increasing activities and powers of governments, specifically of tax administrations, have rendered the traditional means of defense insufficient to attend to the entire spectrum of taxpayers in their controversies with the tax authority. The judiciary protection of taxpayers' rights seems to be inefficient and inopportune to tend to all the needs of taxpayers when their rights are threatened in their dealings with the tax authority.²³

Following this need for reinventing the relationship between tax administrations and taxpayers, and the necessity of providing taxpayers with efficient mechanisms to protect their rights, governments have found themselves creating and developing public institutions²⁴ to ensure the correct balance of the relationship, safeguard taxpayers' rights and improve the overall tax system, through agencies such as the Tax Ombudsman.

The concept of Ombudsman -understood as an institution that defends the people- was first used in its modern sense in 1809 when the Swedish Parliament established the office of Justitieombudsman, who was to look after the interests of citizens in their dealings with government.²⁵ This was a result of the increase in the administrative and regulative activities of the State, which derived in the need to safeguard the rights of the people.

The protection of taxpayers' rights may fall under a general ombudsman who has the responsibility for overseeing the activities of all branches of government, including those related to tax matters. A specific Tax Ombudsman or taxpayer advocate, however, may be established solely for safeguarding taxpayers' rights. The role of a Tax Ombudsman may differ depending on the legal system and constitutional framework in which it was built on.

Fortunately, the tendency to recognize the benefits and advantages of having a specific Ombudsman in tax matters has been gaining momentum in the last years. This tendency indirectly reflects that the governments, jointly or unilaterally, distinguish the complexity of the regulation that exists in their respective tax systems and that, consequently, the presence of a Tax Ombudsman would improve the overall system by putting the rights of taxpayers as a fundamental factor to be addressed in the performance of their tax administrations.

²² PWC and the World Bank Group, "Paying Taxes 2018", 2017. https://www.pwc.com/gx/en/paying-taxes/pdf/pwc_paying_taxes_2018_full_report.pdf?WT.mc_id=CT13-PL1300-DM2-TR2-LS1-ND30-TTA4-CN_payingtaxes-2018-intro-pdf-button.

²³ Diana Bernal and others, "El Ombudsman y la Opinión Pública", November, 2012. <http://www.prodecon.gob.mx/Documentos/Banner%20Principal/2012/OmbudsmanyOpinionPublica.pdf>

²⁴The term "institutions" is used in a conceptual sense. As will be seen in this Sub-chapter, the role of the Tax Ombudsman, depending on the country, is performed by an individual who can lead from an independent public agency, to a unit, department, division or office of the governmental structure, regularly located within the tax administration.

²⁵ <http://www.ombudsman.parliament.nz/about-us/history>

The relevance of the issue is exemplified in the recommendation adopted jointly by the countries that conform the Inter-American Center of Tax Administrations²⁶ in its Tax Code Model, regarding the creation of the Tax Ombudsman in its member jurisdictions. This Tax Code Model was approved in May 2015 and in its article 76 it literally proposes the existence of this figure, referring to some of its main characteristics:

Article 76. The entity of Taxpayers Defender shall be created in the form of a public entity independent from the Tax Administration, in order to guarantee the timely assistance, respect for the rights of the Taxpayers and customs users and fair assistance and processes in Tax Administration performance of their legal functions.²⁷

Furthermore, as it will be seen throughout this Sub-chapter, the concept of a specialized Tax Ombudsman has been also developed unilaterally by several countries. A first reference that can be given as an example is South Africa. The Tax Administration Act of South Africa has included in its Article 16 the mandate of its Tax Ombudsman:

16. Mandate of Tax Ombud.—(1) The mandate of the Tax Ombud is to—

- (a) review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS²⁸; and
- (b) review, at the request of the Minister or at the initiative of the Tax Ombud with the approval of the Minister, any systemic and emerging issue related to a service matter or the application of the provisions of this Act or procedural or administrative provisions of a tax Act.

A specialized Tax Ombudsman should have several different functions and services. It should have a general obligation to scrutinize the operation of the tax authority to ensure a legal and respectful delivery of services to taxpayers, it should grant taxpayers the ability to file specific complaints

²⁶ The Inter-American Center of Tax Administrations (CIAT) supports the efforts of national governments by promoting the evolution, social acceptance and institutional strengthening of tax administrations, encouraging international cooperation and the exchange of experiences and best practices. It is a non-profit international public organization that provides specialized technical assistance for the modernization and strengthening of tax administrations. Founded in 1967, CIAT currently has 40 member countries and associate member countries from four continents: 31 countries of the Americas, 5 European countries, 3 African countries and 1 Asian country. Angola, India and Morocco are associate members. <https://www.ciat.org/about-us/?lang=en>

²⁷ English version of the CIAT Tax Code Model found at <https://www.ciat.org/version-en-ingles-del-modelo-del-codigo-tributario-del-ciat/>

²⁸ South African Revenue Service.

against the conduct of the tax authority and it should have the legal ability to intervene in cases on behalf of the taxpayer before the tax authority.²⁹

It is important to note that the role of a Tax Ombudsman in tax disputes should not be to replace the traditional means of defense that taxpayers have, which may entail administrative procedures before the tax authority or legal claims before domestic courts.

Rather, a Tax Ombudsman should work as an intermediary between taxpayers and the tax authority to seek a solution to the respective tax dispute in a less adversarial way than by means of litigation. If it succeeds in bringing both parties together in an amicable and informal manner, the tax Ombudsman may indirectly influence in a good way the traditional administrative and legal ways of solving a dispute.³⁰

The Tax Ombudsman may operate within the tax authority or as a separate independent body outside the tax authority. This independence may have significant influence in its ability to perform its functions since it may be complicated to handle issues with the tax authority while it is seen as part of that authority and not independent from it. The independence and specialization of a tax Ombudsman will also provide the ability and experience to the institution to efficiently handle its various matters with the tax authority.

Recognizing that not all these institutions that have been created and developed by governments are identified as a “Tax Ombudsman”, as they may have been named as Taxpayer Advocates, Inspectors, Defenders, etc., this Sub-chapter focusses on presenting a general overview of their common mission by analyzing the relevant practical domestic experiences in countries where the institution of the Tax Ombudsman exists.

It must be highlighted that the description of the relevant characteristics presented at the domestic level in this Sub-chapter, derive essentially from academic research, official information available and the Country Report in Tax Ombudsmen Practice³¹ provided by national rapporteurs on the nature, scope and experiences of the Tax Ombudsman in their respective jurisdictions.

This concentration of data and experiences will be summarized for two main objectives:

- a)** Detect the best practices at worldwide level that make a Tax Ombudsman a key institution to avoid and solve domestic tax disputes in a timely, flexible and efficient manner.

²⁹ The International Fiscal Association, “Cahiers de Droit Fiscal International”, 69th Congress of the International Fiscal Association, Basel 2015 Volume 100b, page 58.

³⁰ Victor Thuronyi and Isabel Espejo, Legal Department of the International Monetary Fund, “How Can an Excessive Volume of Tax Disputes Be Dealt With”, December 2013.

³¹ The template of this Report can be consulted in the following link: [Link TBD]

b) Ultimately, propose the “Golden Standard Model” to be followed by member countries of the United Nations Organization that are interested in creating or improving the Tax Ombudsman in their respective jurisdictions.

3.5.2. Country Report in Tax Ombudsmen Practice.

The domestic reports of the countries that were subject to study are presented below. As mentioned, the information that will be reported derives from three essential sources, academic research, official information available and the Country Report in Tax Ombudsmen Practice submitted by national reporters who generously agreed to contribute to this exercise.

The countries that are suggested to be analyzed are Australia, Colombia, France, India, Mexico, New Zealand, Pakistan, Peru, South Africa, Spain, Sweden, United Kingdom and the United States. Other countries may be added if they provide the necessary information through the Country Report questionnaire.

The information reported for each country is presented in four blocks to allow an efficient and structured analysis. The **first** block refers to the origin and legal framework of the Tax Ombudsman. The **second block** deals with the autonomy and relevant operative issues of the Tax Ombudsman. The **third block** deals with the substantive powers, influence and communication that the Tax Ombudsman has with the tax authorities. The **fourth** block refers to the main achievements that the Tax Ombudsman has had benefiting taxpayers in its country.

It is important to mention that for the drafting of each section, an eminently practical approach has been favored to give a high degree of pragmatism to the information presented.

As an example the structure that will be developed for each country is the following:

3.5.2.1. Australia.

[Country Report of all Countries to be included with the following structure]

Origin and legal framework.

...

Autonomy and relevant operative issues.

...

Substantive powers, influence and communication with the tax authorities.

...

Main achievements in benefit of the taxpayers.

...

3.5.3. Best Practices and Relevant Takeaways.

This section will describe the best practices detected in the reported jurisdictions regarding the innovative and effective ways to protect the taxpayers' rights and the remarkable experiences in avoiding and solving tax conflicts on a domestic level by the Tax Ombudsman.

3.5.4. The “Golden Standard Model” when creating or improving a Tax Ombudsman.

This section is intended as a guide to exemplify how the Tax Ombudsman institution should be created or improved, focusing in the main substantive and administrative key issues that such institutions should have to accomplish the effective protection of taxpayers' rights and successful avoidance and alternative resolution of tax conflicts in a domestic level.

Information presented in sections 3.4.2. and 3.4.3. will be exploited to develop the qualities that a Tax Ombudsman should have envisioning a “Golden Standard Model”.

3.5.5. Conclusions.

In this section reflections will be made with respect to the importance of the role of a Tax Ombudsman at a domestic level, in an environment where tax laws are in constant change and the tax collection measures of tax authorities in several countries are increasingly intensified.

3.6 Tax Settlements

Tax settlements are widely used by tax administrations around the world to solve tax disputes at the administrative level. They provide an effective and efficient mechanism to solve disputes between taxpayers and the tax authority without the need to resort to litigation.

Although tax settlements are usually considered an alternative dispute resolution procedure, for academic purposes in this Sub-chapter they are analyzed independently from other alternative dispute mechanisms that exist in other jurisdictions.

3.6.1. Settlements

Taxpayers are typically granted the right to settle their disputes with the tax authority using alternative dispute mechanisms, specifically, via settlement agreements. Settlement agreements are not always available since some jurisdictions do not permit them as is the case of Peru; on the other hand, settlements are common in the U.S. where taxpayers and tax authorities can settle a tax dispute at the administrative appeal stage, as discussed previously in this Chapter.

Settlements are commonly available once the tax authority has issued a notice of deficiency or tax assessment to the taxpayer as a result of the audit stage.³² A settlement process between taxpayers and tax authorities should consider “the hazards of litigation,” i.e., the costs and likelihood of success should the case be presented to a judge. Jurisdictions with a legal framework that permits them to reach a settlement during the secondary administrative review or appeal process overwhelmingly resolve matters at this level without the need for litigation.

As a general rule, once the case is assigned to the officer overseeing the potential settlement a meeting or conference call should be scheduled. In most jurisdictions where settlements are available, both the taxpayer and the examiner are included in the meeting or conference so that both parties may present their case. In the U.S., it was the prevailing practice for many years for the conference to only include the taxpayer and the officer overseeing the potential settlement, referred to as an Appeals Officer (since settlement occurs during the appeal stage).

The officer responsible for the settlement process should be empowered to ask questions of the participating parties and if necessary request additional support or supplemental explanations of the parties’ position. After considering all relevant facts and authorities, the reviewing officer should seek to enter into negotiations with the taxpayer on behalf of the government. This negotiation should not be an “all or nothing” discussion; the reviewing officer should be allowed to settle the matter for a portion of the total item. This would allow for the prompt resolution of the dispute without the need for litigation. There are of course instances where a full concession by either the government or taxpayer is warranted and a settlement should not be reached simply for the sake of reaching a settlement.

3.6.2. Alternative Dispute Resolution Procedures

Some jurisdictions have domestic Alternative Dispute Resolution (“ADR”) mechanisms available for taxpayers to utilize in seeking to resolve their matter without resorting to litigation.

³² A slightly different process is followed in Norway. If a taxpayer disagrees with the proposed adjustment, a conference is held with the taxpayer, the examiner, and a senior revenue officer who acts as a mediator. If, after that conference, the revenue officer and the taxpayer still disagree, each party would file a statement of position with the Office of the Chief Tax Counsel which adjudicates the matter. [Is the OCTC part of the administrative body? Not clear from the language.]

Those jurisdictions which do provide ADR procedures generally offer some form of mediation process.³³

ADR procedures can provide taxpayers and tax authorities alike with an alternative not only to litigation but also to settlement procedures, as this alternative procedures may provide for the involvement of an independent third party (such as a Tax Ombudsmen) to facilitate and encourage the solving of a tax dispute in an informal and flexible scenario. Domestic ADRs are usually a non-binding procedure of dispute resolution, this is appealing to the parties as they keep control over the outcome of the dispute. However, it is sometimes considered as a weakness, since if no agreement is reached, the dispute remains unresolved.

ADR procedures are used in several jurisdictions with success, In the United Kingdom, HMRC operates a formal ADR program for the most significant and complex disputes called the High Risk Corporate Programme (“HRCP”). This program is geared towards corporations with large amounts of tax at stake, significant inherent risks, and a historically poor compliance record that has the potential to improve. This process has been successful in providing an effective dispute resolution process that brings up to date the affairs of businesses that had a range of outstanding complex and contentious issues. The HRCP requires HMRC and businesses to commit resources to working disputes in an open and collaborative manner and adopting project management techniques to work intensely towards agreed upon due dates. HMRC has published governance procedures that describe the strategic decision making and settlement approach. HRCP allows taxpayers to have access to key HMRC officers who will develop HMRC’s technical position on contentious issues. This enables businesses to quickly establish their options for settlement either through negotiation or litigation.

Mexico has had remarkable success with its ADR process managed by its Tax Ombudsman Agency PRODECON acting as an independent mediator between both parties. [To be developed]

3.7 Other topics relevant to domestic disputes

Statutes of Limitation

In almost every jurisdiction, revenue authorities have a limited time period in which it may assess additional tax owed by a taxpayer. In some countries tax authorities generally must assess additional tax within three years after a tax return was deemed filed (regardless of whether the return was filed timely). In other countries the statute of limitation may five years and can be extended to six or ten years if certain thresholds of omitted income are met or if the taxpayers incurred in illegal conducts.

³³ For a detailed discussion of the advantages and disadvantages of mediation, please see Chapter 6

Once the time period for assessment has expired, the revenue authority is generally precluded from assessing any additional tax. In addition, a revenue authority may “offset” any deficiency determined after the expiration of the assessment period with any refund that the taxpayer may later claim for the same year.

In some jurisdictions, upon agreement of the taxpayer, tax authorities may be able to extend the time period for assessment of additional tax. Such an extension may be requested during an examination of the taxpayer’s return, where the revenue authority has not yet finished its review. In some countries, taxpayers may be able to request that an extension of the time period be limited to certain issues, meaning that the revenue authority may assess additional tax only with respect to those issues.

Taxpayers who seek a refund of already paid tax are also often limited to a specific time period within which they may file a claim for refund. Depending on the jurisdiction, the time period may begin when tax is paid and/or when the relevant return is filed.

Collection Considerations

Once a tax liability, penalty, or interest is assessed (either by the taxpayer as a self-assessment or by the tax authority), the tax must then be collected. Revenue authorities will have a specific mechanism to collect tax from taxpayers who fail to remit the appropriate tax liability.³⁴ These “collection” divisions have various tools at their disposal to assist them in collecting the tax which is owed.

These tools may include imposing levies or liens on a taxpayer’s bank accounts or other property. Where the taxpayer is unable to pay the liability, jurisdictions may permit a taxpayer to enter into a compromise with the tax authority to pay a lesser amount and/or pay the liability in installments over a period of time.

Penalties and Fines

To enhance voluntary compliance, countries with self-reporting tax systems often provide for penalties for non-compliance.

There are various types of penalties which may be asserted. Delinquency penalties may be asserted against taxpayers who either fail to pay a tax liability or file required tax forms. Accuracy-related

³⁴ Note that certain countries have provisions in their Tax Treaties through which they agree to assist another jurisdiction in collecting the tax due. Currently, the U.S. has provisions in their treaties with Canada, Denmark, Sweden, France, and the Netherlands, through which these jurisdictions will assist the other with collection efforts.

penalties may be asserted where a taxpayer fails to report the correct amount of tax due and underpays the correct tax liability. Penalties may generally be based upon a taxpayer's negligence or careless, reckless or intentional disregard of the tax law. Penalties may also be asserted where the taxpayer has undertaken a transaction that is specifically designed to avoid tax and has no other business purpose.

A revenue authority may consider waiving or removing a penalty if the taxpayer can prove that it had cause for its failure to comply with the various obligations. For example, penalties may be inappropriate if circumstances leading to non-compliance were beyond the taxpayer's control, or where the taxpayer properly relied upon the advice of the revenue authority, a tax professional, or legal precedent such as court decisions.³⁵

Some jurisdictions may also impose penalties upon tax return preparers who are negligent or willfully disregard their own obligations to represent taxpayers with a high level of diligence.

The UAE recently established its Federal Tax Authority ("FTA"),³⁶ which is empowered to issue tax assessments and issue administrative penalties for acts including a taxpayer's failure to submit a tax return, failure to settle payable tax, underpayment of tax as the result of tax evasion, the deliberate failure to settle payable tax or penalty amount, the deliberate understatement of value, and tax evasion or conspiracy to commit tax evasion. Penalty amounts are at least AED 500, but no more than three times the amount of unpaid tax, unless the taxpayer's actions were deliberate, in which case penalties of up to five times the amount of unpaid tax may be applied.

Advance Rulings³⁷

Tax disputes between taxpayers and tax authorities may take years to conclude, representing a significant expenditure of resources by both the taxpayer and the government. Thus, the ability to avoid disputes is a goal for which all countries should strive. To that end, a number of jurisdictions offer advance rulings which can be an effective tool to prevent lengthy controversies, as they provide both the revenue authority and the taxpayer with certainty as to the tax treatment of transactions.³⁸

Advance rulings can encompass a wide variety of arrangements between tax authorities and taxpayers, such as advance letter rulings, pre-filing agreements, and advance pricing agreements.³⁹

Letter Rulings/ Pre-Filing Agreements

³⁵ The U.S., and the U.K. provide for this concept of "reasonable cause."

³⁶ [NEEDS FORMAL CITE]

³⁷ For a detailed discussion of advance rulings including APAs, please see Chapter 2.6

³⁸ See Appendix XXX for details of country specific approach to advance rulings, and other issues.

³⁹ Advance pricing agreements are discussed in Chapter XXX.

A tax ruling or “letter ruling” is generally a statement provided by the tax authority regarding the tax treatment of a future transaction proposed by a taxpayer. The taxpayer provides the facts of the proposed transaction to the tax authority in its request for a ruling, and, provided that those facts do not change substantively, the taxpayer should be entitled to rely upon the ruling when entering the transaction.⁴⁰

While different jurisdictions have specific approaches to the issuance of rulings, the countries which do offer advance rulings do so in order to increase certainty. The U.S. offers a very specific process by which a taxpayer can request certainty for the tax treatment of a completed transaction and obtain a “pre-filing agreement,”⁴¹ which confirms the IRS’s agreement on the specific position to be taken on a yet-to-be-filed tax return. This type of “pre-filing” program is helpful for the taxpayer in providing certainty in advance of a return filing. It is equally beneficial for the revenue authority as it allows examination of, and agreement on, issues immediately after a transaction occurs. Availability of evidence and taxpayer personnel familiar with the issue allow for a focused and immediate examination of the issue, prior to filing the return. The effect of these programs is to reduce the cost and burden associated with a post-filing audit, to provide certainty as to the tax treatment of the transaction, and to make better use of the taxpayer’s and the tax authority’s resources.

Issues that are factual in nature and governed by well-established law are eligible for a pre-filing agreement. Upon concluding the pre-filing agreement, taxpayers have certainty that the subject issue has been resolved and will not be re-examined by the tax authority post-filing. Note that other aspects of the taxpayer’s return may be audited, but the tax treatment of the transaction may not be reviewed absent certain conditions, such as fraud or misrepresentation by the taxpayer.⁴²

⁴⁰ Note that only the taxpayer for whom the letter ruling is issued is permitted to rely upon the ruling.

⁴¹ See, **Revenue Procedure XXXX**

⁴² See, <https://www.irs.gov/businesses/fact-sheet-pre-filing-agreement-pfa-program>, for details of the PFA Program.

APPENDIX: COUNTRY SPECIFIC DOMESTIC DISPUTES TOPICS (NOTE: we will be adding additional information to this appendix from another 35 countries.)

Country Name	Angola	Brazil
Name of Country's Revenue Authority	Administração Geral Tributária	Receita Federal do Brasil/ Secretaria da Fazenda Estadual/Municipal (Federal/State/Local Revenue Agency)
Type of Taxes at Issue	Real estate; industrial; personal income; stamp duty; consumption; tax on invested capital; training; custom duties; municipal property transfer tax (SISA) and inheritance and gift tax; municipal property tax; petroleum income tax; mining tax	All taxes.
Short Overview of Structure of Revenue Authority	The Angolan Tax Authority is based in Luanda and has local offices throughout the country. The Authority is managed by a Board of Directors, and headed by a President. Depends hierarchically on the Ministry of Finance, the final appeal prior to litigation.	Federal taxes administered by Receita Federal do Brasil, which is divided into branches among major cities. Branches are responsible for administration and audit of taxpayers. There are also specialized branches for certain issues. Estate taxes administered by Secretaria da Fazenda, which is also divided into regional branches. Municipal taxes administered by local city authorities.
Prefiling Opportunities to Resolve Matters Prior to Filing Tax Return?	Yes. May submit request for binding rule issued by the Tax Authority to confirm tax treatment applicable to a specific case. Issued within 30 days after submission, may be extended. Decision issued cannot be challenged.	Yes. Procedures are applicable to individuals and legal entities and are filed prior to audit.
Voluntary Disclosures?	Case-by-case basis. May give reduction up to 30% of minimum applicable penalty.	Yes. Can be applied to taxes not declared by taxpayers prior to beginning audit procedure. If all legal requisites fulfilled avoids penalties with 100% success rate.
Examination Process	Selected according to specific business/activities and dimension. Time period varies cases to case, but takes at least four months. Tax years are open to inspection during a five-year period.	No specific deadlines for tax audit and no specific criteria for selection. Large taxpayers are priority target. Statute of limitation of 5 years. Examination/audit notice specifies the kind of tax in period under analysis. A cross check of tax returns, fiscal and accounting information can be performed by authorities without notice.
How to Proceed if Matter Does Not Resolve at Administrative Level	File for judicial claim in a Law Court which requires assistance of lawyers registered with the Angolan Bar Association.	File lawsuit to discuss at judicial court.
At What Point Does the Matter Pass Out of the Administrative Process into Litigation?	When the administrative tax claim is not successful and the subsequent hierarchical appeal is rejected.	If taxpayer receives a tax assessment notice, can challenge it at administrative level. After a final and unfavorable decision, can move to judicial level.
Likelihood of Resolution Without Litigation?	Has been increasing as a consequence of the tax reform which involved a restructuring of the Tax Authority.	Depends on subject matter.
ADR Techniques?	No.	No.

Country Name	People's Republic of China	Costa Rica
Name of Country's Revenue Authority	State Administration of Tax (central level), State Tax Bureau and Local Tax Bureau (provincial and local level)	Dirección General de Tributación- Ministerio de Hacienda.
Type of Taxes at Issue	Corporate income tax; VAT: collected by State Tax Bureau. Tax revenue shared by central, state and local government. Eventually, VAT will replace business tax as applicable turnover tax. Business tax: collected by local tax bureau. Full amount retained by state and local government. Other applicable taxes: stamp duty, consumption tax, customs duty, individual income tax, etc.	National Level: income tax; withholding taxes on remittances abroad, salaries, interests, financial income, government payments; sales tax (VAT). Local Level: land tax; tax for lucrative activities. Other taxes: taxes on consumption; taxes on property of vehicles; tax on fuels; cigarettes and alcohol, etc.
Short Overview of Structure of Revenue Authority	The State Administration of Taxation is central tax authority: issues state level tax rules. Does not collect tax payments. Depending on location, each tax payer falls under jurisdiction of a State Tax Bureau and a Local Tax Bureau. Both bureaus enforce tax compliance in its own jurisdiction. Issue at controversy can be solved at State Tax Bureau and Local Tax Bureau. If not, ultimate decision maker is State Administration of Taxation.	Based on income. Tax Administration divided into ten geographic areas. Special tax audit department for the supervision of "big territorial companies." There is a special tax audit department for the supervision of the 500 biggest taxpayers.
Prefiling Opportunities to Resolve Matters Prior to Filing Tax Return?	Yes. Opportunities to discuss with in charge tax authorities before filling. Discussion is informal and limited to oral discussion.	Yes. Consultation process ruled by Section 119 of the Tax Code. Query is very specific and has informative effects for the tax payer who files it.
Voluntary Disclosures?	Yes. Penalties can be waived or reduced.	Yes. Voluntary disclosure results in reduction of penalties. Reduction of the penalty can be as high as 80% and as low as 25% depending on intervention of authorities.
Examination Process	Selections based on: tip off from other parties; important industry tax payer; selected type of transactions that trigger tax non-compliance behavior (ex: equity transfer, export sales, VAT refund); tax assessment software to identify taxpayer with abnormal tax liabilities. Time span varies. Usually covers past three years, but may be extended to five years. TP audit usually covers past ten years. Tax Authority may take softer means such as tax assessment and self-assessment.	The Tax Administration selects taxpayers to be examined using a variety of indicators including industry averages. Exam process takes at least six months. Statute of limitations for tax matters is four years, but may be extended to ten if the Tax Authority presumes tax fraud.
How to Proceed if Matter Does Not Resolve at Administrative Level	Three ways to proceed: escalate the issue to the next level of tax authority; request for administrative review; litigation. Tax needs to be paid up front to proceed with administrative review and litigation.	If it does not resolve, generally, a tax payer may appeal. First to the Tax Administration, and then to Fiscal Administrative Court.
At What Point Does the Matter Pass Out of the Administrative Process into Litigation?	Once final decision is issued and the tax payer does not agree with the decision, taxpayer can start litigation process.	Resolution of the Administrative Tax Court can be disputed in the Judicial Court before the Public Law Chamber of the Supreme Court (tax-special process).
Likelihood of Resolution Without Litigation?	High. Taxpayers often accept the Tax Authority's position because administrative review and litigation are expensive and complicated.	~50%.
ADR Techniques?	No.	Yes. There are alternative mechanisms to solve disputes, but the Tax Administration does not use those mechanisms in fiscal matters with audited taxpayers.

Country Name	Germany	Kuwait
Name of Country's Revenue Authority	Local Tax Office (Finanzamt) or the competent municipality.	Kuwait Tax Authority/ Ministry of Finance
Type of Taxes at Issue	The German tax department deals with all German taxes. Specialists deal with many types of tax like wage tax and VAT. The regular client service team deals with tax dispute resolution and tax controversy. Special matters are addressed to specialized service lines.	Corporate income tax, Zakat and national labor support tax.
Short Overview of Structure of Revenue Authority	The structure is geographically based. For income tax, the competence of the authority depends on where the taxpayer is domiciled. For corporations, the competence of tax authority is governed by the district in which the management of the corporation is located.	One central office with separate departments.
Prefiling Opportunities to Resolve Matters Prior to Filing Tax Return?	Yes. <u>Advance Ruling</u> : may apply if he/she can show a particular interest in the tax matter. An application for an advance ruling is possible if the underlying facts are not yet realized. German tax authority is bound by the advance ruling unless the facts do not conform. Taxpayer must pay a fee for an advanced ruling. <u>Advance Ruling for Wage Tax Purposes</u> : deals with all questions relating to the pay-as-you-earn procedure. This is free of charge. <u>Binding Undertaking after Tax Audit</u> : after a tax audit, the German tax authority should issue a binding undertaking to the taxpayer regarding future treatment of tax matters audited. Free of charge. <u>Advance Pricing Agreements</u> : bilateral or multilateral arrangements where taxpayers and tax authority agrees in advance on issues. <u>Binding Tariff Information</u> : tariff classification decision in writing by the customs authority at the request of economic operators. Legally binding for all customs authorities of all member states.	Yes. When the contract is related to supply of goods to Kuwait or where no services have been rendered in Kuwait, companies may request a No Objection Letter.
Voluntary Disclosures?	Yes. Exemption from punishment upon voluntary disclosure under certain circumstances. Taxpayer must correct or supplement incorrect or incomplete tax declarations and has to repay the amount of evaded taxes. In certain instances, exemption is not possible.	No.
Examination Process	German tax authority has discretion to decide with taxpayer is subject to tax audit. Selection process based on size of companies. Generally, large companies are completely audited.	Inspections/audits are mandatory for all corporate income taxpayers. Tax inspection duration depends on level of complexity.
How to Proceed if Matter Does Not Resolve at Administrative Level	Taxpayer may appeal against a tax assessment within one month by the local tax office. If local tax office decides the assessment is incorrect, a new assessment is issued. If the local tax office thinks the assessment is correct, the issue is forwarded to another department specializing in appeals. This department will issue a written decision and is viewed as correct. The local tax office is obligated to inform the taxpayer of any disadvantageous ruling.	May send a tax objection letter to the KTA. After objection stage, can appeal to Tax Appeal Committee.
At What Point Does the Matter Pass Out of the Administrative Process into Litigation?	Taxpayer may file a suit against the decision of the local tax office at the Lower Tax Court within one month.	May contest the matter in Kuwaiti court.
Likelihood of Resolution Without Litigation?	~64.2% of tax assessments against which a taxpayer has lodged an appeal have been advantageously amended by the local tax office.	Few cases because long and costly process.
ADR Techniques?	Mediation Process: confidential and structured process where the disputing parties try to resolve their dispute with the help of a mediator. Mediation between taxpayer and tax authorities must be mediated by a certified tax advisor or attorney at law. Mediation may be applied for during out of court proceedings or during court proceedings. In cases where the facts are uncertain, a final settlement is used. It is binding for the parties and can be changed only by mutual agreement.	No.

Country Name	Mexico	New Zealand
Name of Country's Revenue Authority	Servicio de Administracion Tributaria: responsible for administration, assessment and collection of taxes. The Tax Administration Service, part of the Ministry of Finance and Public Credit is responsible for the tax policy.	Inland Revenue Department (IRD).
Type of Taxes at Issue	All federal taxes.	Income Tax, GST, PAYE, Withholding Taxes including Non-resident Contractors Tax, Fringe Benefit Tax
Short Overview of Structure of Revenue Authority	Federal, local and municipal tax authorities. Tax Administration Service (TAS) collects taxes. Has 10 directions. States have some taxing powers and rights to collect federal taxes. Municipal authorities may only collect taxes.	Four parts to IRD: Tax Policy & Strategy; Office of the Chief Tax Counsel; Service Delivery; Support Services. IRD is also responsible for administering social welfare payments, collecting employer contributions to KiwiSaver work-based savings scheme, administering Child Support and collecting student loans.
Prefiling Opportunities to Resolve Matters Prior to Filing Tax Return?	No. Some matters may be resolved through private rulings. There is also an informal way to resolve matters but does not give taxpayers any rights.	Yes. Formal, binding, rulings can be sought in advance of taking a tax filing position. Non-binding views can also be sought from IRD on certain transactions.
Voluntary Disclosures?	Yes. If tax return is voluntarily amended, no penalties. Tax payer may amend and file a tax return at any time if there is no examination in progress.	Yes. Must draft a letter that includes the facts and the tax positions that were incorrectly taken. When there has been full and formal voluntary disclosure, taxpayers are entitled to a 100% reduction in penalties.
Examination Process	Generally, developing a risk model to rank taxpayers depending on their profile. If the taxpayer does not opt into the statutory tax report (<i>dictamen fiscal</i>), the examination process begins with the taxpayer. If the taxpayer opts to file the statutory tax report, the examination starts by reviewing working papers of the registered accountant who filed and the tax authority may continue with the taxpayer. Examinations must be completed within 12 months. Tax authority will issue a letter of findings and the taxpayer has 20 days to rebut the findings.	Irregularities in tax return filing may be cause for examination. IRD does routine risk reviews designed to detect irregularities and non-compliance. Corporations with annual turnover of more than NZ\$80m are required to file a Basic Compliance Package (BCP) to allow for micro-level analysis. IRD benchmarks industry performance and selects taxpayers for investigation who have financial results not in line with the benchmarks. A written request is used to retain information from the taxpayers. Questionnaires are used to gather information for risk reviews and audits. Investigations can last between 1 month and 2 years depending on the issue; generally completed in 12 months.
How to Proceed if Matter Does Not Resolve at Administrative Level	Administrative appeal before the tax authority; Appeal before the Tax Court; Amparo before the Supreme Court of Justice; Mutual Agreement Procedure in international taxation cases.	There is a formal disputes resolution process. Taxpayers self-assess and if the taxpayer or IRD want to adjust, the party needs to make a Notice of Proposed Adjustment. The party receiving needs to make a Notice of Response, either agreeing or rejecting in whole or in part. The dispute moves to a "conference" stage to ensure each party understands the issues. Then each party files a statement of position. All notices and statements are then reviewed by the Adjudications Unit. If the decision is in favor of the commissioner, the taxpayer may dispute through litigation.
At What Point Does the Matter Pass Out of the Administrative Process into Litigation?	Taxpayer can appeal before the tax authority that made the assessment. Administrative process ends with that appeal. Then move to a lawsuit before the Federal Court of Administrative and Fiscal Justice.	After adjudication. Sometimes, the taxpayer can have the option to bypass adjudication and go directly to the Courts.
Likelihood of Resolution Without Litigation?	Usually, a settlement is made before the tax assessment is made. One the assessment is issued, it is more likely the case will go to court.	Many disputes are solved through the taxpayer discontinuing its argument or settling the matter. Likelihood of resolution is high.
ADR Techniques?	Yes.	No.

Country Name	Norway	Oman
Name of Country's Revenue Authority	Skatteetaten	Secretary General for Taxation
Type of Taxes at Issue	Corporate and personal income tax; wealth tax on resident individual residents and VAT levied at state level. Municipalities can impose tax on real estate property located in their jurisdiction.	Income Tax (corporate); Withholding Tax; Customs Duty.
Short Overview of Structure of Revenue Authority	Norwegian Tax Administration is divided into 5 regions: Norway East, Norway South, Norway West, Norway Central and Norway North. The Central Office Foreign Tax Affairs (COFTA) handles foreign companies/personnel liable to Norway. There is also the Central Taxation Office for Large Enterprises and the Oil Taxation Office.	Based in Muscat, with satellite offices.
Prefiling Opportunities to Resolve Matters Prior to Filing Tax Return?	Yes. Can ask the Tax Office for a binding advanced ruling on how a planned tax matter should be resolved. All taxpayers may apply for a binding advance ruling.	An advance ruling may be applied for on particular transactions.
Voluntary Disclosures?	No. Taxpayers may enter into voluntary disclosures. No tax is levied if the disclosure corrects or supplements previously submitted information.	No formal provisions, but voluntary disclosures are welcomed at the earliest opportunity.
Examination Process	Tax audits are performed by regional and special tax offices. Depending on the Tax Authority's focus is how they decide who to audit. Audit begins with a notification to the taxpayer. The tax office will visit the taxpayer and review the requested document. The tax office will then write an audit report. Process can take several months to several years before a decision is made.	A full assessment system: all annual returns are assessed within 5 years.
How to Proceed if Matter Does Not Resolve at Administrative Level	If the decision is unfavorable to the taxpayer, the taxpayer may appeal the decision to the Tax Appeal Board or bring the case directly before the courts.	Objection stage and then Appeal stage (considered by a formal Tax Committee)
At What Point Does the Matter Pass Out of the Administrative Process into Litigation?	After receiving the decision, the taxpayer can either bring the case before the Tax Appeal Board or go to the courts. Can challenge the decision from the Tax Appeal Board through the court system after the administrative process has been exhausted.	After the Appeals stage, a taxpayer can go into three progressive levels of Commercial Court.
Likelihood of Resolution Without Litigation?	The issue rarely end up in the court system. When the amounts involved are significant, is when the taxpayer bring the case before the court.	Many issues are solved as part of the dialogue process with the Tax Authorities.
ADR Techniques?	No. In some cases, that taxpayer and Tax Authority may reach an out of court settlement, but this is rare.	No.

Country Name	Philippines	South Africa
Name of Country's Revenue Authority	Bureau of Internal Revenue (BIR)	South African Revenue Authority
Type of Taxes at Issue	Income tax, VAT, withholding taxes (expanded, final, compensation), documentary stamp tax, percentage tax, fringe benefits tax.	Corporate income tax, payroll tax, and VAT all have similar procedures. Customs and excise taxes have different procedures.
Short Overview of Structure of Revenue Authority	Under supervision and control of Department of Finance and its duties include the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties and fines. BIR is headed by the Commissioner of Internal Revenue who is supported by four Deputy Commissioners. The country is divided into revenue regions, each of which is headed by a Regional Director. Each revenue region is further divided into revenue district offices, which is headed by a Revenue District Officer. The Revenue District Officer and the Regional Director are under the control and supervision of the Commissioner of Internal Revenue.	South African Revenue Service (SARS) has many regional offices across the country. SARS' Legal and Policy division is located in the SARS head offices, located in Pretoria, Cape Town, and Durban. SARS has begun trying to be structured on an industry basis, which is currently under review.
Prefiling Opportunities to Resolve Matters Prior to Filing Tax Return?	No.	Yes. The Income Tax and VAT Acts make a provision for advanced tax rulings. This applies to all taxpayers, but certain aspects are specifically excluded, including whether a structure/transaction will be considered a scheme to avoid tax. The Customs and Excise Act makes a provision for determinations in respect to tariff classification aspects.
Voluntary Disclosures?	Yes. Tax returns are based on "self-assessment," meaning the taxpayer is responsible for declaring and reporting their income and expenses for tax purposes. Taxpayer may file an amended return provided the taxable period covered by the return is not under audit. Filing an amended return after the deadline is subject to a 25% surcharge and an interest penalty of 20% per annum based on amount of tax due.	Yes. There is a Voluntary Disclosure Programme (VDP) in place which grants relief for additional tax and interest. The VDP deals with transactions prior to 17 February 2010 and is effective from November 2010 through October 2011. However, the success rate is low. There is also a draft Tax Administration Bill pending, which includes a standard VDP. The relief under this will be limited to additional tax.
Examination Process	BIR can conduct a tax audit within three years of the time of filing. This is extended to 10 years in certain cases. All taxpayers may be subject to tax audit by the BIR. The taxpayer will be notified of tax audit with a Letter of Authority, which serves as an authority to examine the taxpayer's books for internal revenue taxes. The taxpayer is required to present its books of accounts to the BIR examiner, failure of which may result in issuance of a subpoena duces tecum against the taxpayer. BIR will then issue a Preliminary Assessment Notice. If the taxpayer fails to respond within 15 days, a Formal Letter of Demand and Final Assessment Notice will be issued by the Commissioner calling for payment of the taxpayer's deficiency tax. This may be protested within 30 days of receipt. Failing to protest will make the assessment final. If protest is denied, taxpayer may (i) appeal to Court of Tax Appeals within 30 days; (ii) elevate protest through request for reconsideration to the Commissioner within 30 days.	SARS does not provide information about the selection process. However, taxpayers are often selected if they have regular VAT refund claims; if a specific type of transaction is considered as being aggressive; if, upon assessment of income tax, an error is made by a particular industry; and if a matter is reported anonymously.
How to Proceed if Matter Does Not Resolve at Administrative Level	If administrative protest is denied, or not acted upon within 180 days of submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within 30 days of receipt of the decision, or from the lapse of the 180 day period.	SARS notifies the taxpayer of its findings and intention to raise assessment. Taxpayer may file objection to assessment. If objection is disallowed, taxpayer may appeal to have the matter considered through ADR or appeal to tax court. At any time during the appeal objection and appeal process, settlement is available.
At What Point Does the Matter Pass Out of the Administrative Process into Litigation?	As long as the assessment is with the BIR, the Assessment is at the administrative level. Once the assessment is elevated to the Court of Tax Appeals, the assessment is considered to be at the judicial level.	Legal process commences at the objection stage, but the first court action occurs on appeal to the tax court.
Likelihood of Resolution Without Litigation?	It is best to settle the assessment at the administrative level because the Court of Tax Appeal is very strict on documentation, and elevating the assessment results in legal fees	Dependent upon the facts of the case and whether or not SARS wants to have the matter tested in court. Alternative resolution procedures are very likely to be successful.
ADR Techniques?	No.	Yes. ADTR is applied for by the taxpayer, and requires approval by SARS. ADR is an informal process where a recommendation is made to both parties. Recommendation is not binding, but should they agree, it becomes binding on both. SARS often does not adhere to ADR processes, procedures, and timelines. SARS' approach is driven by the quantum of tax and SARS is more likely to agree on settlement towards its financial year end in March.

Country Name	United Kingdom	United States
Name of Country's Revenue Authority	HM Revenue & Customs (HMRC)	Internal Revenue Authority
Type of Taxes at Issue	All main UK taxes are covered with most disputes: corporation tax, income tax, capital gains tax, VAT and other indirect taxes, and PAYE and other employment taxes.	All federal taxes: income, employment withholding, excise. State and local taxes are not subject to IRS review but are handled by the locality.
Short Overview of Structure of Revenue Authority	Policy and Process teams are responsible for the design, implementation and development of tax policy and for maintaining integrity of UK tax legislation. Operational teams are responsible for engaging with taxpayers, monitoring compliance and undertaking audits. HMRC is instructed to manage UK businesses by size and complexity through a three tiered structure including: small and medium enterprises, mid-size business, and large business.	IRS is divided into divisions. Most corporate entities fall within the Large Business & International Division ("LB&I"). Small companies and pass throughs with assets under \$US10M fall within the Small Business and Self Employed Division ("SBSE")
Prefiling Opportunities to Resolve Matters Prior to Filing Tax Return?	Yes. Pre-filing matters may be resolved formally or informally. For certain transactions, businesses may seek formal advance statutory clearance from HMRC specialists. Additionally, businesses can obtain non- statutory clearances regarding the application of legislation where there is 'significant uncertainty' through the formal non-statutory clearance process. HMRC also encourages businesses to	There are a number of Pre-Filing opportunities including letter rulings, voluntary disclosures and pre-filing agreements. All provide an opportunity for the taxpayer to obtain certain before filing or early on in the disputes process.
Voluntary Disclosures?	Yes. Voluntary disclosure in the UK typically refers to under and over declarations of indirect taxes. There is a unified penalties scheme in place covering all main taxes which applies a range of penalty loadings to businesses that make errors, dependent on the seriousness of the error. Penalty loading often depends on extent and quality of taxpayer's disclosure. Significant reductions can be achieved for unprompted voluntary disclosures.	Yes. IRS permits voluntary disclosures of noncompliance errors. There are formal processes that the IRS itself may sponsor (like the Off Shore Voluntary Disclosure Program) and a taxpayer may also approach the IRS (or a state) to address a non-compliance error. The goal of a voluntary disclosure is to bring the taxpayer into compliance. IRS will often waive penalties upon a showing of good faith and reasonable cause. Interest is statutory and will apply to any underpayment.
Examination Process	Businesses will be selected for audit following a risk assessment by HMRC. Audits will usually derive from risks specific to a particular business, however HMRC also conducts multiple audits into sector risks affecting many similar businesses. Length of the audit depends on the nature of the risk under investigations. HMRC tries to conclude audits within 18 months. Typically, the audit will be confined to a specified tax year or accounting period. However, where HMRC establishes risks have occurred over a longer period, they will extend the period covered. The UK has a Disclosure of Tax Avoidance Schemes (DoTAS) regime which requires notification to HMRC by businesses that have implemented tax avoidance schemes. HMRC adopts a central approach to dealing with tax avoidance schemes.	Taxpayers are selected for examination in a variety of ways. The top 1000 or so companies in corporate America are part of the Coordinated Industry Case ("CIC") program, in which they are always under examination. Although the IRS has recently revised their exam approach, and has moved to the creation of "campaigns" (an approach to risk assessing specific issues for specific taxpayer populations). The CIC program is still in effect. The campaign approach has impacted the selection of other entities for exam, and different taxpayer populations are being impacted. For example, small and medium sized distributors are now frequently subject to exam as this is a campaign issue. Other specific of selection are not readily available, though certain issues (large corporate restructurings; large continual NOLs, etc.) may make a taxpayer more likely to be selected.
How to Proceed if Matter Does Not Resolve at Administrative Level	May appeal and apply for the matter under appeal to be passed to an independent HMRC officer for 'internal review.'	If a matter is not resolved at exam, a taxpayer may proceed to the IRS Office of Appeals for consideration. There are also a variety of mediation like approaches which are available to lead to resolution. Ultimately, if they do not success then a taxpayer may of course litigate the issue.
At What Point Does the Matter Pass Out of the Administrative Process into Litigation?	If unable to resolve a dispute through negotiation with HMRC, taxpayer may apply for an appeal before an independent Tax Tribunal.	At the conclusion of the Appeals process, the matter may proceed to Appeals. Also, a taxpayer may choose not to go to Appeals, and proceed directly to litigation from the examination phase.
Likelihood of Resolution Without Litigation?	A majority of tax disputes are resolved without litigation. A greater proportion of indirect taxes, as opposed to direct taxes, are resolved through litigation.	The vast majority of matters are resolved without litigation.
ADR Techniques?	ADR follows a "business as usual" approach to resolving disputes that might otherwise have been litigated. For Small and Medium Enterprises, ADR process is facilitated by an independent HMRC officer; Large and Complex Businesses use external mediators to facilitate the ADR process. Most of these types of cases are co-facilitated by trained mediators, one from HMRC and one from an advisory firm.	Yes, there are a variety of ADR techniques which are available, including Fast Track Settlement, Early Referral to Appeals. And Post Appeals Mediation. In these situations, the issue is heard by a specially trained Appeals Officer, who applies meditation techniques to resolve the issue. At Post Appeals Mediation, a taxpayer may also engage a mediator so that tow mediators hear the matter. Mediation is non-binding and both parties must agree.