

General Communication with Tax Authorities in friendly or unfriendly ways

Tax Commission – of course...!

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General Report

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1. Introduction

Tax authorities – surely each one of us had the pleasure to deal with one: as taxpayer at least with the tax authority of the country you are resident of, as a lawyer helping others in tax matters you might have had the chance to deal with the tax authorities of other countries as well. If the latter is the case you might have seen some differences in the behaviour of the different tax authorities. You might have realized that the tax authorities in some or even the majority of the countries do treat the taxpayers not as their customers or clients but rather as subordinates (one could even say as “possible criminals”). In such cases the communications tends to be rather hierarchical and often results in administrative proceedings against the tax authorities with more or less success.

Other countries have realized that treating the taxpayer in ways like we know from the tale of Robin Hood and the Sheriff of Nottingham only results in the tax payers trying to circumvent their tax obligations. Some countries, thus, have not only reduced the taxes in their countries. They also made their tax authorities treat the taxpayers as their clients e.g. in offering the taxpayers the possibilities for tax rulings and trying to take a more tailored approach towards their taxpayers.

These – sometimes very significant – differences are what we are focusing on in this year’s tax report: We want to show that there are big distinctions in the behaviour of and the dealing with the tax authorities in different countries both in the stage of an advance agreement on a tax position as well as in an objection or litigation phase. For this reason AIJA members from several countries around the globe were so kind to volunteer as national reporters for this report which is crucial for such a comparative topic.

As such we received national reports of the following countries that we will refer to as the General Report Countries (“GRC”):

1. Brazil
2. China
3. Cyprus
4. Denmark
5. Estonia
6. Germany
7. Japan
8. Jersey
9. Latvia
10. Liechtenstein

11. Luxembourg
12. Mexico
13. Russia
14. Spain
15. Sweden
16. Switzerland
17. Turkey
18. United Kingdom

The General Reporters would like to thank all National Reporters for their contributions! It is them who make such a General Report possible.

2. Questionnaire

The Questionnaire was focussing on the discussions with the tax authorities regarding (corporate) income tax or indirect taxes. If a difference would apply in the treatment between either of these, it was asked to be indicated in the report. Also, if there are different levels of tax authorities for different taxes or issues, it was asked to be marked in the respective national report.

2.1 Communication general (Christian Presoly)

How does the General Communication with the Tax Authorities take place?

- a. Is a direct contact in between the tax payer and the Tax Authorities possible/common/advisable?**
- b. If not, does the communication only take place via tax counsels?**

It may be stated that in all General Report Countries (“GRC”) as defined above direct contact between the tax payer and the Tax Authorities is seen as possible, common and advisable. In general the advice was given to involve a special tax consultant for more complex cases. There are some GRC with already a very sophisticated web site of the national tax authority (Sweden, Brazil, Estonia and Latvia). In these countries large parts of the communication are carried out electronically. In Estonia it was said to be common to even contact the national tax authority via Facebook or Skype. Turkey explained that it will be hard to get to a person with the relevant knowledge as tax inspectors may only be turned to during an ongoing tax inspection.

- c. How can the communication regarding special matters be described?**

Here the answers differ a bit: for some GRC also for special matters the start is direct (oral) communication with the tax authority (China, Japan, Mexico, Switzerland...). In some GRC like in Mexico it is necessary to deal directly with a high ranking tax official. For others like Russia, Cyprus, Brazil, Jersey or Turkey in such cases the communication is started on a written basis. However, for most of the GRC it is finally a mix of written and oral communication.

Some GRC like Switzerland or Liechtenstein offer the possibility to discuss special matters on the phone on a no name basis, thus allowing the tax payer to look for the best suitable solution together with the tax authority.

d. Does it take place only in a written form or are meetings possible?

For all GRC it can be said that meetings are possible. In some GRC like Switzerland there is a tendency rather to meetings whereas others like China and Spain will rather see meetings as an exception. However, in all GRC the communication finally is a mixture of written communication and meetings.

e. Can the behaviour of the Tax Authorities in your country be described as all dominant, cooperative, customer-oriented or otherwise?

This is maybe the most interesting question because here the biggest differences are to be seen. On the one hand you will find here the dominant countries like China, Germany, Turkey or Brazil.

In Germany the situation seems to be very special in a negative sense as tax officers of the revenue authority are stated to not only act dominant and aggressively but even to not feel bound by the laws... .

On the other hand you have the client oriented ones like Switzerland and Liechtenstein. E.g. in Switzerland the tax authorities see the Swiss corporations' importance for Switzerland's future economic success; as the tax regime and the behaviour of the tax authorities are often decisive for companys to be kept in Switzerland instead of being transferred to countries with lower costs they see the need for favorable tax solutions. Also Denmark and Luxembourg is stated to have a tax authority that is acting in a cooperative and professional way.

There are some GRC that were ranked in between these two groups like Japan, Russia or Sweden, UK and Jersey. Also in Mexico they vary between more dominant behaviour in audits but nevertheless customer oriented in other matters. For UK a negative tendancy was mentionned: HMRC is stated to be increasingly driven by the need to meet revenue targets at certain times of the year and this to affect communications and decisions made by HMRC.

Surprisingly for Russia it was stated that there was a remarkable change to the positive in the last years with a strong tendency for the national tax authority to become a service oriented company rather than a state authority. In Sweden it

seems that once an audit is started the will for cooperation quickly changes to a much more dominant behaviour.

2.2 Agreements between tax payers and tax authority (Christian Presoly)

a. Is there the possibility of a tax ruling and, if so, which costs can be expected?

Also for this question the GRC may be split in three main groups:

Only for China it was stated that tax rulings are not common.

In very few countries agreements will only be closed in special cases like e.g. in Russia for the “largest tax payers” or in the UK.

The biggest group is the one in which agreements are closed frequently like in Switzerland, Denmark, Cyprus, Luxembourg, Latvia, Liechtenstein, Spain, Japan, Brazil or Mexico and even Germany and Turkey. In Germany, however, tax rulings are only closed to fix the application of a certain law on determined facts. There will no rulings to agree upon legal consequences and effects like the tax rate (as it can be the case in Switzerland or Liechtenstein). Estonia and Sweden tend to a quite similar sort of rulings like Germany.

Regarding the costs for such rulings it may be said for all GRC that they are low or even without fees for the tax payer.

b. What is the average time frame to get a tax ruling done?

Here the answers vary from up to one month to up to a year. However, for most of the GRC it takes between 1 and 3 months:

Up to 1 month: Cyprus, Latvia

1 to 3 months: Japan, Mexico, Switzerland, Estonia, Denmark, Turkey, Luxembourg

3 to 6 months: Russia, Sweden, Germany, Spain

Longer than 6 months: Brazil

c. Are these consultations binding and, if so, which possible remedies do exist?

Also for this question big differences are to be found among the different GRC: There is one group that grants such rulings no binding effect at all. Whereas for another – quite large group – such rulings will have a binding effect for the tax authority (even though the extent of the binding effect varies among these GRC):

No binding effect: China, Turkey

Binding effect granted: Japan, Russia, Sweden, Germany, Mexico, Brazil, Switzerland, Estonia, Denmark, Cyprus, Liechtenstein, Spain, Luxembourg, Latvia

Among the GRC with binding effect the possibilities to challenge such rulings vary extremely: On the one hand e.g. in Denmark, Sweden or Brazil a ruling may be appealed against by the tax payer. On the other hand e.g. in Estonia and Mexico there is no right to take the unfavorable tax ruling to court.

d. Once a tax ruling between all the parties concerned has been achieved, can one rely on it?

If a tax ruling may be relied upon strongly depends on it having binding effect or not. In general for all the GRC in which a tax ruling is granted a binding effect is stated to be reliable.

Not reliable: China

Reliable: Japan, Russia, Sweden, Germany, Mexico, Brazil, Switzerland, Estonia, Denmark, Cyprus, Liechtenstein, Spain, Luxembourg, Latvia, Turkey (even though no binding effect)

e. What is the exact legal status of a tax ruling?

Most of the GRC see the legal status of a tax ruling to be some sort of administrative act: e.g. Germany, Denmark (administrative decision), Spain, Switzerland (confirmation by the tax authority), Brazil (secondary rule). However, in most of the cases an exact legal status remains hard to be defined.

f. Is it common in order to get a tax ruling that the tax payer has to give up certain rights or explicitly agree to e.g. information exchange?

It is clear and as such can be stated for all GRC that in order to conclude a tax ruling with the tax authority the tax payer has to provide the tax authority with the relevant pieces of information. For this information to be provided e.g. in Russia the special situation is to be found that the tax payer will have to grant the tax authority spontaneous access to the tax payer's records and documents instead of tax audits. However, there are no specific rights mentioned by the GRC the taxpayer has to give up in order to be allowed to conclude a tax ruling.

g. Is a tax ruling a public document or will it be treated confidentially by the tax authority? Does the taxpayer have an obligation to keep it confidential?

Here again the answers differ widely between countries seeing such tax ruling to be a public document and, thus, open to the public, whereas others see it as confidential document with (if any) only limited access to third parties.

***Seen as public document:** Japan (publication can be postponed for one year), Sweden, Mexico, Brazil (however, the taxpayers that requested the ruling will remain anonymous), Spain, Turkey (however, in an anonymous form only)*

***Seen as confidential document:** China, Russia, Jersey, Switzerland, Estonia (however, summary of the ruling may be disclosed), Denmark (only Private Letter Rulings issued by the National Assessment Council (= upper level administrative body) may be published in a depersonalized version), Liechtenstein, Luxembourg, Latvia (publication as anonymized documents only)*

2.3 Remedies against decisions of the Tax Authorities (Gustavo Yanes)

- a. Is it common that one has to litigate if a decision has been made by the Tax Authorities and which remedies do exist?**
- b. Is there the possibility of addressing a court or is this an administrative proceeding?**
- c. Which costs are to be expected in such a case?**

Despite the fact some national reports do not address this matter directly, only in Turkey and China the taxpayer does not normally appeal the decisions/tax assessments of the Tax State Agency. According to this, and as a unified approach in majority of countries is common to litigate the decisions of the Tax Authorities regarding tax assessments.

It must be underlined the case of Latvia, where the litigation before courts is not common, since the State Audit Office pursues the case through all instances.

As a result of this, it must be said that the relation between taxpayers and tax administration is in general conflictive.

In this respect the practice in the majority of national tax systems require that the taxpayer present an appeal before the corresponding Tax Authority before going to courts. Therefore, as a general rule it does exist a prior review at the administrative level, and it makes less common to appeal before the judicial courts as in the case of Denmark or Spain. Besides, in most cases the administrative proceedings are free or the legal costs are small (i.e. Denmark or Estonia).

On the contrary, the scenario in relation to the legal costs to appeal before the Courts varies greatly in the reporting countries. Anyway, the most important costs in this regard are our legal fees, this is, the fees of tax lawyers, accountants, witnesses, etc. However in States such as Spain, Germany, Jersey or Switzerland - under certain limits- the amount of legal costs in case they can be significant.

Besides, it must be stated that in some reporting countries such as Germany, Spain, Sweden, Switzerland the legal cost are to be reimbursed the tax payer obtains a positive judgment. On the contrary they cannot be recovered in Estonia, or the recovery is rather limited like in Denmark.

Summing up, the legal costs may differ greatly in the reporting countries.

- d. Is it compulsory to have a lawyer in case of any remedy?**
- e. What timeframe can be expected in case of a remedy/litigation?**

As confirmed by the majority of the reporting countries it is not compulsory to be assisted by a tax advisor or a lawyer in the appeals before the tax authorities. However, in some countries such as in Brazil, Spain, Cyprus, or Luxemburg and Germany – in these last countries depending of the competent court- the taxpayer must be represented by a lawyer when he/she appeals before the judicial courts.

In most countries the decision at the administrative level of the tax authorities can be expected within 3 months as an average, above all, in European countries. In Brazil or Mexico the proceedings are lengthier, and they can take up to 24 months. Court procedures take normally in most countries between 1.5 and 4 years. Many reporting countries have declared this depends on the complexity of the issue.

As a result, if we consider at the beginning of a tax audit that a case must be claimed before the courts, the average time framework will range between 2 and 3 years in total.

- f. Is it possible to postpone the payment of the tax debt as assessed by the tax authority until the end of a pending litigation with the tax authority? Will the tax authorities require guarantees for the postponement (Bank guarantees, mortgages etc.)?**

In the majority of the reporting countries the postponement of the tax assessment is possible. However the tax payer shall pay as a general rule default interest and offer guarantees to the tax authorities to cover the amount of the pending tax debt. However in some countries guarantees are not compulsory, such as Cyprus or Liechtenstein.

There are some peculiar cases as Estonia. In this country the tax payer can propose an amount of the tax assessment calculated by the Tax Authorities. In the

case of the United Kingdom where no pre-payment of the tax assessment is required,

Finally, it must be said that in some countries a postponement of the tax assessment is not possible – Luxemburg, Latvia China - or rather limited such as in the case of Sweden.

g. Is it possible that the tax authorities submit a report to the public prosecutor to investigate on possible criminal tax offences and under what circumstances?

Unanimously all reporting countries have confirmed that the tax authorities can report of possible tax offences to the public prosecutor, in order to begin either civil or criminal investigations. It must be highlighted the cases of Germany and Sweden, where the reporting to the public prosecutor are quite often.

We assumed that in accordance with criminal law principles these cases refer to tax fraud or evasion, where a gross negligence has been proofed in the administrative phase of the proceedings.

2.4 Sanctions (Gustavo Yanes)

- a. What is the statute of limitations for tax related matters?**
- b. What is the typical sanction/amount of fines in your jurisdiction? Is there a different fine level for direct or indirect taxes?**

	Statute of limitation for tax related matters	What is the typical sanction/amount of fines in your jurisdiction? Is there a different fine level for direct or indirect taxes?
Japan	Generally 5 years for Corporate Tax and Income Tax ; however, if a taxpayer commits fraudulent acts, including disguise, it will be 7 years.	In the case of a tax correction, an Additional Tax (up to 35%) will be levied, depending on how the taxpayer committed the incorrect tax filing.
Russia	3 years	Typical sanctions applicable to all taxes are: fine calculated as 20% of arrears and late payment interest calculated as 1/300 of the Russian Central Bank rate for each day of delay with payment.
Sweden	6 years back in time as regards unreported assets abroad or previously submitted incorrect information. However, if a substantial amount (circa SEK 453 000) has been withheld as a result of the incorrect information, the statute of limitation is extended to a period of ten years.	Tax penalties amount to a certain percentage of the tax in question. As regards direct tax the tax penalty is 40 % , and as regards indirect tax the tax penalty is 20 %.

<p style="text-align: center;">Germany</p>	<p>The statute of limitation is:</p> <p>1 year for consumption taxes (e.g. tobacco tax, energy tax) and customs – if not otherwise stated by European Law,</p> <p>4 years for other taxes,</p> <p>5 years in case of careless tax evasion,</p> <p>10 years in case of tax evasion.</p>	<p>There are different sanctions, most frequent at administrative level.</p> <ul style="list-style-type: none"> • Assessment Procedure. • Interest for late payment: 6% p.a. • Interest in case of tax evasion: 6% p.a. <p>There is no different fine level for direct and indirect taxes.</p>
<p style="text-align: center;">Mexico</p>	<p>The statute of limitations for tax related matters is 5 years and 10 years in exceptional cases.</p>	<p>From 55% to 75% of the amount due, except for cases deriving from arithmetic mistakes, where fines will range from 20% to 25% of the amount due. There are other different fines for specific infractions to tax provisions.</p> <p>There is no distinction in fine levels for direct or indirect taxes.</p>
<p style="text-align: center;">Brazil</p>	<p>As a general rule, under the statute of limitations the enforceability of a tax debt is of 5 years. Still, the beginning of this period varies depending on the situation and the tax. For example, it is possible to count the 5 years period from: (i) the day the tax obligation was created; (ii) the first day of the year following the one in which the tax could have been originally assessed; or (iii) the day in which a decision declaring a tax assessment null due to formal reasons becomes final.</p>	<p>On the Federal Sphere, the general fine is of 75% (which can be raised under aggravating circumstances) on the due tax not declared by the taxpayer, or a late-payment fine of 0,33% per day, limited at 20%, on overdue taxes, that were declared but not collected by the taxpayer. Interest is also calculated by a specific index. As for indirect taxes collected by the States (e.g. VAT), each Brazilian State has its own Law, however, some penalties can reach over 150% of the amount in controversy</p>
<p style="text-align: center;">Jersey</p>	<p>Therefore a taxpayer must bring a claim within 5 years. Additionally, there is no all-embracing limitation statute in Jersey.</p>	<p>There are scales for late filing fees and late payments. There are fines that range from £50 to £5,000 depending on the severity of the delays in filing and payments of taxes due.</p>

<p style="text-align: center;">United Kingdom</p>	<p>In general, there are three main time limits (with some specific variations in relation to certain taxes). The main time limits are:</p> <ul style="list-style-type: none"> • 4 years – to make an assessment to recover tax that has been under-assessed or under-declared or over-repaid. • 6 years where tax has been paid but revenue has been lost as a result of careless behavior of the taxpayer or the person acting on their behalf. • 20 years – where the revenue was lost as a result of deliberate behavior or the taxpayer has failed to meet certain obligations. 	<p>In the case of VAT, if a deadline is missed the penalty takes into consideration the level of turnover of the taxpayer (over/under £150,000), whether other defaults have been made in the previous 12 months and then the penalty is calculated as a percentage of the VAT due.</p> <p>If an inaccurate VAT return is submitted then HMRC will issue a penalty after a decision has been reached about the correct tax position.</p> <p>The penalty for an inaccurate return is affected by the reason the error was made and whether the taxpayer makes a prompted or unprompted disclosure, and if this is careless (up to 30%) or deliberate (up to 70%)</p>
<p style="text-align: center;">Switzerland</p>	<p>In Switzerland, the statute of limitations for tax related matters is as follows:</p> <ul style="list-style-type: none"> • Corporate income and capital taxes: 5 years and can be extended by 5 years in specific cases the absolute statute of limitations is 15 years. For tax fraud in connection with Swiss corporate income and capital taxes, the statute of limitations is 7 years. • Withholding taxes on dividend and interest payments: 5 years; it can be extended by 5 years in specific cases The statute of limitations for withholding tax fraud as well as for withholding tax evasion is 7 years. • Stamp duties: 5 years; it can be extended by 5 years in specific cases provided in Swiss tax legislation regarding stamp duties. The statute of 	<p>According to Swiss tax laws, the typical sanction for tax evasion and tax fraud or any other illegal act committed with respect to direct and indirect taxes is a fine. The typical amount of fines is as follows:</p> <ul style="list-style-type: none"> • Corporate income and capital taxes: For tax fraud up to CHF 30'000 (imprisonment is also possible, but almost never applied). In cases of tax evasion, the fine is generally equal to the amount of taxes evaded. • Withholding taxes on dividend and interest payments: the typical fine is an amount of up to CHF 30'000 or – if higher – up to the triple amount of taxes evaded. For tax fraud up to CHF 30'000. • Stamp duties: the typical fine is an amount of up to CHF 30'000.

	<p>limitations for tax fraud as well as for tax evasion in connection with stamp duties is 7 years.</p> <ul style="list-style-type: none"> Value added taxes: 5 years after expiry of the respective tax period. The absolute statute of limitations is 10 years. The statute of limitations for import VAT evasion and VAT fraud is 7 years. Customs duties: 5 years <p>The absolute statute of limitations is 15 years. The statute of limitations for tax evasion in connection with customs duties is 5 years.</p>	<ul style="list-style-type: none"> Value added taxes: up to CHF 400'000. This amount can be up to CHF 800'000 under certain circumstances. Customs duties: up to the quintuple value of the commodities involved. A tax fraud committed in connection with customs duties by a criminal group is subject to a monetary penalty or imprisonment of up to 5 years (however only applied in severe cases).
<p>Estonia</p>	<p>The limitation period for making an assessment of tax is 3 years. In the event of intentional failure to pay or withhold a tax, the limitation period for making an assessment of tax is 5 years.</p> <p>A limitation period commences on the due date for the submission of the tax return which was not submitted or which contained information that caused the amount of tax to be calculated incorrectly.</p>	<p>If a taxable person fails to pay tax by the date prescribed by law, the interest at the rate of 0.06 per cent per day is due on the amount of tax outstanding by the due date.</p> <p>Other penalties and fines are also applied, although not very often. There are criminal sanctions foreseen in the law with the maximum amount of a criminal fine (pecuniary punishment) of EUR 16,000,000 for legal persons and 500 daily rates for natural persons. The maximum amount of a misdemeanor fine is EUR 32,000 for legal persons and EUR 1,200 for natural persons.</p>

<p>Denmark</p>	<p>The general rule is that a tax assessment on the tax authorities' initiative must be completed before 1 August in the fourth year after the end of the relevant tax year.</p> <p>The described time limits for tax assessments, do not apply in certain situations where the specific circumstances of the case call for a longer time limit – especially where the taxpayer have acted grossly negligent.</p>	<p>For case relating to direct taxes as well as for VAT-related matters monetary sanction of twice the evaded tax amount, when the amount is below DKK 250,000 (approximately EUR 33,333). Gross negligent the normal sanction level is one time the evaded tax amount. However, for the first DKK 60,000 (approximately EUR 8,000) of evaded tax the sanction will be limited to one time the evaded amount for intentional tax evasion and half the evaded amount for gross negligence. Where the tax evasion is considered intentional, and the evaded amount of tax exceeds DKK 250,000 (approximately EUR 33,333), individual taxpayers further risk prison sentences of up to 1.5 years. For tax evasion amounting to more than DKK 500,000 the prison sentences for individual taxpayers can be up to 8 years for intentional evasion.</p>
<p>Cyprus</p>	<p>Monetary fines maybe imprisonment in the cases of VAT</p>	<p>Usually interest on the owed tax amount</p>
<p>Lichtenstein</p>	<p>For violation of procedural obligations (like omitting to render the tax return on time the statute of limitations is one year.</p> <p>For tax evasion and tax fraud the statute of limitations amounts to five years.</p>	<p>In case of violation of procedural obligations fines may be imposed of up to CHF 1000.00. For tax evasion the taxpayer may pay a penalty in the same amount of the tax not paid. In VAT matters penalties up to CHF 400'000, – may be imposed. Severe VAT tax evasion may be punished with imprisonment for up to two years or a monetary penalty of up to 360 penalty units.</p> <p>In case of tax fraud (= tax evasion with forgery of documents) the threat of punishment is imprisonment for up to six months or one year (VAT) a monetary penalty up to 360 penalty units (depending on monetary situation of the offender).</p>

<p style="text-align: center;">Spain</p>	<p>The statute of limitations is four years for tax related matters (five/ten years for criminal tax offences).</p>	<p>The Spanish General Tax Act establishes different kinds of infringements of the tax laws with different penalties for each of them. Every infraction has its specific penalty and there is not a different fine level for direct or indirect taxes.</p> <p>If an audit turns into tax due, average penalties are 50% of such tax due, plus interests.</p>
<p style="text-align: center;">Turkey</p>	<p>Taxes shall not be levied if they are not assessed and notified to the taxpayer within five years from the beginning of the year following the calendar year in which the tax debt arose.</p>	<p>For tax loss penalty;</p> <ul style="list-style-type: none"> • One fold of the lost tax will be imposed. • For irregularity penalty. • For corporations, administrative fines are imposed as TRY 110, 00 for first degree irregularity, and TRY 60, 00 for second degree irregularity. <p>For tax fraud;</p> <ul style="list-style-type: none"> • Three times the tax loss penalty, • A term of imprisonment from eighteen (18) months to three (3) years. <p>In case of repeat offenses, the penalties for tax loss and irregularity will be applied as mentioned above, with increases of 50% and 25% respectively.</p>
<p style="text-align: center;">Luxemburg</p>	<p>Usually the statute of limitations is 5 years, which may be extended to 10 years in case of incorrect or no filing of the relevant tax return. For registration duties, the general statute of limitation is 30 years, but usually shorter periods are foreseen (2 years).</p>	<p>In case of non-filing of tax returns within the legal delays, the tax authorities may impose a fine for late filing and/or proceed to a taxation based on their valuation (taxation d'office). In case of late payment of a tax, an administrative fine may be in addition to interest. Imprisonment (max. 6 months) is only possible in case of aggravated tax fraud (escroquerie fiscale).</p>

<p style="text-align: center;">China</p>	<p>3 years in general this can be extended to 5 years; (iii) in case of tax evasion, tax revolt or tax fraud, the afore-mentioned limitations will not be applicable.</p>	<p>Late Payment: surcharge for overdue payment at a rate of 0.05% per day (commencing from overdue date). This rate is normally applicable for overdue payment of both direct and indirect taxes. The amount of additional fine imposed by the tax bureau varies on case-by-case basis.</p>
<p style="text-align: center;">Latvia</p>	<p>While no specific statute of limitations exists for tax matters, the maximum scope of the SRS tax audits plays a similar role – taxpayers may be subject to a general tax audit with a scope of three years from the respective payment due date, and a transfer pricing audit with a scope of five years.</p>	<p>A late payment fine of 0.05%/day and an additional fine based on the ratio between the difference and the taxpayer’s total tax liability (depending on whether the difference exceeds 15% of the tax amount to be declared, the additional fine is 20/30%) are applied to this difference. The additional fine is doubled for taxpayers who are classed as repeat offenders and may be halved for taxpayers who have otherwise acted in good faith.</p> <p>100% of the payable amount if an entity conducts business activities without registering for the relevant taxes or fails to submit tax declarations.</p>

- c. **Is it possible for a taxpayer to prevent tax penalties to be imposed should he/she be able to prove her good faith or reasonable interpretation of the law?**
- d. **Is it possible to regularize your tax situation with reduced or no fines/sanctions?**

The possibility to avoid the imposition of tax penalties, or at least a reduction in the tax fines differ greatly in the reporting countries.

In the first group (Japan, Germany, United Kingdom, Jersey, Denmark, Latvia, Spain and Luxemburg) this option is available for the tax payers. However, this is not applied automatically, and the tax payer must proof he has acted in good faith

and there is a lack of negligence at any level. And for example in Japan the courts are strict to apply the relief of the tax fine.

In the second group (Sweden, Mexico, Brazil, Estonia, China or Liechtenstein), this possibility is not established by the different intern tax systems. As a result of this, despite the diligence of entrepreneurs and a correct tax management policy in the second group of countries a fine may be imposed at any case.

On the order hand and in connection with the “Voluntary Regularization” to avoid the imposition of tax penalties or at least reduced fines, this option is granted to taxpayers in the majority of reporting countries. However, some requirements have to be met in most states.

For example in Germany, Spain, Denmark or United Kingdom a full and complete disclosure are mandatory. It must be mentioned, the case of Switzerland where only certain taxes (indirect taxes, stamp duty, tax withholdings on dividends or interests, etc.) must be regularized voluntarily by the Tax payer.

It is necessary to underline that there are in many reporting countries, special programs (amnesty) to voluntarily regularize the situation of tax payers. In countries such as Brazil these kind of program are quite common (they are called REIFS). Besides, Spain, Denmark or United Kingdom has passed several programs to disclose the assets located abroad.

e. May tax advisors/tax lawyers be held responsible by the tax authority for their advice to taxpayers?

	May tax advisors/lawyers be held responsible by the tax authority for their advice to taxpayers
Japan	No. Only in criminal cases
Russia	Unlikely
Sweden	No
Germany	No. Only in some cases of tax evasion
Mexico	No. Only in criminal cases
Brazil	No. Only civil liability
Jersey	No. Only in cases of misconduct

UK	Yes. Dishonest conduct
Switzerland	Not frequent. Only tax evasion or fraud
Estonia	Not frequent
Denmark	Yes. Fines imposed by the State in cases of tax evasion
Cyprus	No
Liechtenstein	Yes
Spain	No. Only civil/criminal liability
Turkey	No
Luxemburg	Yes
China	Yes

2.5 Tax information exchange (Christian Presoly)

- a. Does a tax information exchange on the EU level or OECD level happen and how does it take place?

Although it is clear that an information exchange on the EU level or OECD level only affects GRC that are EU or OECD member countries and not GRC like e.g. China or Brazil. Nevertheless, most of the countries do exchange tax information with other countries either based on the OECD model tax convention, based on tax information exchange agreements (“TIEAs”) or based on double taxation treaties (“DTA”). So most of the GRC already have a very broad network with many different countries with which they exchange information. However, in general such exchange takes place upon a specific request, only, and (at least for now) not in form of an automatic exchange of information.

- b. Does your country enter into tax treaties that oblige to exchange information spontaneously, automatically and/or upon request?

The answers of the GRC show that for many of the GRC it is normal to have all three forms of information exchange (spontaneous, automatic and/or upon request). This varies depending on the respective TIEA or DTA concluded. There remain only some GRC that base tax information exchange mostly upon request (e.g. Russia, Jersey, Switzerland, Estonia, Cyprus, Liechtenstein, Turkey and Luxembourg). However, a tendency in direction of automatic exchange of tax information to come also for these countries is to be seen.

c. Is the tax payer notified in case information is exchanged with foreign tax authorities?

Here again the GRC are split up in many GRC where the respective tax payer is not informed or at least there is no obligation for the authority to inform the tax payer. Whereas in some GRC it is compulsory to inform the respective tax payer about the information request.

GRC where the taxpayer in general is not informed: China, Japan, Russia, Sweden, Mexico, Brazil, Estonia, Denmark, Spain, Turkey, Luxembourg

GRC where the taxpayer in general is informed: Germany, Jersey, Switzerland, Cyprus, Liechtenstein

d. Can the tax payer object to an exchange of information?

Here we find both: GRC where an objection is possible as well as GRC where an objection is not possible. Anyway, although there might be a possibility to object some national reporters already mentioned their doubts that such an objection (though granted) would have any chance to be successful... .

Possibility to object (if notified):

- *China (if notified, success doubtful)*
- *Germany*
- *Mexico (for violations of procedure rules or other related provisions only)*
- *Brazil (success doubtful)*
- *Jersey*
- *UK (depending on respective TIEA)*
- *Switzerland*
- *Estonia (if notified, for violations of procedure rules or other related provisions only)*
- *Liechtenstein*
- *Luxembourg*

No possibility to object: Japan, Russia, Sweden, Denmark, Cyprus, Spain, Turkey